



# AGENDA

**Thursday, July 10, 2014 - 10:00 AM**  
**BOARD OF COUNTY COMMISSIONERS**

Beginning Board Order No. 2014-72

## CALL TO ORDER

- Roll Call
- Pledge of Allegiance

**I. CITIZEN COMMUNICATION** *(The Chair of the Board will call for statements from citizens regarding issues relating to County government. It is the intention that this portion of the agenda shall be limited to items of County business which are properly the object of Board consideration and may not be of a personal nature. Persons wishing to speak shall be allowed to do so after registering on the blue card provided on the table outside of the hearing room prior to the beginning of the meeting. Testimony is limited to three (3) minutes. Comments shall be respectful and courteous to all.)*

**II. PUBLIC HEARINGS** *(The following items will be individually presented by County staff or other appropriate individuals. Persons appearing shall clearly identify themselves and the organization they represent. In addition, a synopsis of each item, together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)*

1. Board Order No. \_\_\_\_\_ for Boundary Change Proposal No. CL 14-001 for Clackamas County Tri-City Service District (Chris Storey, County Counsel & Ken Martin, Boundary Change Consultant)
2. Board Order No. \_\_\_\_\_ for Boundary Change Proposal No. CL 14-002 for Clackamas County Service District No. 1 (Chris Storey, County Counsel & Ken Martin, Boundary Change Consultant)

**III. DISCUSSION ITEMS** *(The following items will be individually presented by County staff or other appropriate individuals. Citizens who want to comment on a discussion item may do so when called on by the Chair.)*

**~NO DISCUSSION ITEMS SCHEDULED**

**IV. CONSENT AGENDA** *(The following items are considered to be routine, and therefore will not be allotted individual discussion time on the agenda. Many of these items have been discussed by the Board in Study Session. The items on the Consent Agenda will be approved in one motion unless a Board member requests, before the vote on the motion, to have an item considered at its regular place on the agenda.)*

### **A. Health, Housing & Human Services**

1. Approval of a Change Order No. 3 with Housing & Community Development and JWC, LLC for the River Road Head Start - Kitchen Remodel Project - *Housing & Community Development*
2. Approval of an Intergovernmental Agreement between the Department of Health, Housing and Human Services and the City of West Linn for the West Linn Senior Center Expansion Addition Project - *Housing & Community Development*

- 5 3. Approval of a Revenue Intergovernmental Agreement with the Workforce Investment Council of Clackamas County for Specialized Work Force Services – *Community Solutions*
- 6 4. Approval of an Intergovernmental Subrecipient Agreement with City of Oregon City/Pioneer Community Center to Provide Social Services for Clackamas County Residents age 60 and over – *Social Services*
- 7 5. Approval of an Agency Service Contract with Cascadia Behavioral Healthcare for Outpatient Mental Health Services and Outpatient Substance Abuse Services – *Behavioral Health*
- 8 6. Approval of an Agency Service Contract with Cascadia Behavioral Healthcare for Intensive Case Management and Outpatient Mental Health Services – *Behavioral Health*
- 9 7. Approval of an Agency Service Contract with Catholic Community Services of Western Washington Home-Based Stabilization Services/Child Level D and Outpatient Mental Health Services – *Behavioral Health*
- 10 8. Approval of an Agency Service Contract with ColumbiaCare Services, Inc. for Supported Housing Services – *Behavioral Health*
- 11 9. Approval of an Agency Service Agreement with Lake Oswego Counseling Center for Outpatient Mental Health Services – *Behavioral Health*
- 12 10. Approval of an Agency Service Contract with Trillium Family Services for Home-Based Stabilization Services/Child Level D and Outpatient Mental Health Services – *Behavioral Health*
- 13 11. Approval of an Agency Service Agreement with Trillium Family Services for Psychiatric Day Treatment Services for Children, Psychiatric Residential Treatment Services and Sub-Acute Psychiatric Services for Children – *Behavioral Health*
- 14 12. Approval of Professional Services Agreement with Cascadia Behavioral Healthcare for Peer Support Services at Villebois Housing Sites – *Behavioral Health*

**B. Department of Transportation & Development**

- 15 1. Approval of Amendment No. 1 to the Local Agency Agreement No. 29634 with Oregon Department of Transportation for the Sunnyside Road Adaptive Signal System Project
- 16 2. Approval of an Intergovernmental Agreement with Oregon Department of Fish and Wildlife for a Fish and Wildlife Biologist Liaison for Technical Assistance for Capital Improvement and Road Maintenance Programs

**C. Finance Department**

- 17 1. Approval of Amendment No. 4 and Renewal No. 2 to the Contract Documents with Earthworks Landscape Service, Inc. for Landscape Maintenance Services for Clackamas County Facilities

**D. Elected Officials**

- 18 1. Approval of Previous Business Meeting Minutes – *BCC*

**E. Department of Emergency Management**

19

1. Approval of FY 2012 Urban Area Security Initiative Intergovernmental Agreement Amendment No. 1 between Clackamas County and the City of Portland

**F. Department of Employee Services**

20

1. Board Order No. \_\_\_\_\_ Approval of the Clackamas County Sheriff's Office Independent Retiree Medical Trust Fund

**V. NORTH CLACKAMAS PARKS & RECREATION DISTRICT**

21

1. Board Order No. \_\_\_\_\_ Authorizing North Clackamas Parks and Recreation District to Apply for Oregon Parks and Recreation Department Recreational Trails Program Grant for Sunnyside Village Trail

**VI. DEVELOPMENT AGENCY**

22

1. Approval of Amendment No. 2 to the Ground Lease Agreement between Clackamas County Development Agency and Oregon Iron Works, Inc. for the Laydown Yard and Streetcar Facility Agreement

**VII. COUNTY ADMINISTRATOR UPDATE**

**VIII. COMMISSIONERS COMMUNICATION**

**NOTE: Regularly scheduled Business Meetings are televised and broadcast on the Clackamas County Government Channel. These programs are also accessible through the County's Internet site. DVD copies of regularly scheduled BCC Thursday Business Meetings are available for checkout at the Clackamas County Library in Oak Grove by the following Saturday. You may also order copies from any library in Clackamas County or the Clackamas County Government Channel.**

[www.clackamas.us/bcc/business.html](http://www.clackamas.us/bcc/business.html)



**OFFICE OF COUNTY COUNSEL**

**PUBLIC SERVICES BUILDING**  
2051 KAEN ROAD OREGON CITY, OR 97045

July 10, 2014

Board of County Commissioners  
Clackamas County

Members of the Board:

**Stephen L. Madkour**  
County Counsel

**Kimberley Ybarra**  
**Kathleen Rastetter**  
**Chris Storey**  
**Scott C. Ciecko**  
**Alexander Gordon**  
**Amanda Keller**  
**Nathan K. Boderman**  
**Christina Thacker**  
Assistants

Approval of Annexation to Tri-City Service District

<b>Purpose/Outcomes</b>	Conduct Public Hearing/Approve Order
<b>Dollar Amount and Fiscal Impact</b>	None
<b>Funding Source</b>	Not Applicable
<b>Safety Impact</b>	Not Applicable
<b>Duration</b>	Permanent
<b>Previous Board Action</b>	None
<b>Contact Person</b>	Chris Storey, Assistant County Counsel 503 742 4623 Ken Martin, Boundary Change Consultant - 503 222-0955
<b>Contract No.</b>	Not Applicable

**BACKGROUND**

The County Board is charged with making boundary change decisions (annexations, withdrawals, etc.) for many types of special districts (water, sanitary sewer, rural fire protection, etc.) within the County. One type of special district over which the Board has jurisdiction is a county service district and Tri-City Service District ("TCSD") is such a district.

Proposal No. CL 14-001 is a proposed annexation to Tri-City Service District.

State statute and the Metro Code require the Board to hold a public hearing on the proposed annexation. Notice of this hearing invited testimony from any interested party. Notice consisted of: 1) Posting three notices near the territory and one notice near the County hearing room 20 days prior to the hearing; 2) Published notice twice in the Clackamas County Review; 3) Mailed notice sent to affected local governments and all property owners within 100 feet of the area to be annexed.

As required by statute the Board of the District has endorsed the proposed annexation. The Board of TCSD has delegated authority to endorse annexation petitions to the WES Director, who has duly taken all appropriate actions relating to that endorsement. Also as required by statute the City of Oregon City has agreed to annexation of territory inside the City into the

District. The Board of TCSD has delegated authority to endorse annexation petitions to the WES Director, who has duly taken all appropriate actions relating to that endorsement.

This proposal was initiated by a consent petition of the property owners and registered voters. The petition meets the requirement for initiation set forth in ORS 198.855(3) (double majority annexation law), ORS 198.750 (section of statute which specifies contents of petition) and Metro Code 3.09.040(a) (lists Metro's minimum requirements for petition). If the Board approves the proposal, the boundary change will become effective immediately.

The territory to be annexed is located generally inside the City of Oregon City on the east edge of Beavercreek Road south of Loder Road. The territory contains 9.66 acres, is vacant and is assessed at \$230,820.

## **REASON FOR ANNEXATION**

The property owners desire sewer service to facilitate development. According to the applicants, "Plans are for 121 rental apartments and 62 live-work units in 4 stacked-flat buildings and 8 townhouse buildings with one building set aside as a private community space." While physical service to the property will be provided by the City, major trunk lines and treatment service is provided to the City (and the cities of Gladstone and West Linn) by Tri-City Service District. When properties are annexed to the City of Oregon City (as this property was in 2008) they must subsequently be annexed to the District and that is what is happening here.

## **CRITERIA**

Oregon Revised Statute 198 directs the Board to "consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district."

Additional criteria can be found in the Metro Code. The code requires a report which addresses the criteria listed below and which includes the following information:

1. The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
2. Whether the proposed boundary change will result in the withdrawal of territory from the legal boundary of any necessary party<sup>1</sup>; and
3. The proposed effective date of the boundary change.

Service availability is covered in the section below. Staff has examined the statutes and determined that approval of this annexation will not cause the withdrawal of the affected territory from the boundary of any necessary party. The proposed effective date (immediately upon adoption) was noted above.

To approve a boundary change, the reviewing entity [the County Board] must apply the

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<sup>1</sup> A "necessary party" is another governmental entity which includes the same area or provides an urban service to the area.

following criteria:

To approve a boundary change the County must:

- (1) Find that the change is consistent with expressly applicable provisions in:
  - (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;
  - (B) Any applicable annexation plan adopted pursuant to ORS 195.205;
  - (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;
  - (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
  - (E) Any applicable comprehensive plan;
  - (F) Any applicable concept plan; and
- (2) Consider whether the boundary change would:
  - (A) Promote the timely, orderly and economic provision of public facilities and services;
  - (B) Affect the quality and quantity of urban services; and
  - (C) Eliminate or avoid unnecessary duplication of facilities and services.

There are no cooperative agreements, urban service agreements or annexation plans specifically adopted pursuant to ORS 195 in effect in this area. The City's public facility plan calls for major transmission and treatment service by the District. The proposal is consistent with the Oregon City Comprehensive Plan as stated in the section below.

## **LAND USE PLANNING**

### *REGIONAL PLANNING*

#### General Information

This territory is inside of Metro's jurisdictional boundary and inside the regional Urban Growth Boundary (UGB).

The law that requires Metro to adopt criteria for boundary changes specifically states that Metro shall " . . . ensure that a boundary change is in compliance with the Metro regional framework plan as defined in ORS 197.015 and cooperative agreements and urban service agreements adopted pursuant to ORS chapter 195." ORS 197.015 says "Metro regional framework plan means the regional framework plan required by the 1992 Metro Charter or its separate

components.” The Regional Framework Plan was reviewed and found not to contain specific criteria applicable to boundary changes.

There are two adopted regional functional plans, the Urban Growth Management Functional Plan and the Regional Transportation Plan, which were examined and found not to contain any directly applicable standards and criteria for boundary changes.

#### *CITY PLANNING*

The territory is designated Mixed Use-Corridor on the City Comprehensive Plan and is zoned MUC-1.

The *Community Facilities Goals And Services* Chapter of the Oregon City Comprehensive Plan contains the following pertinent sections.

#### Goal

*Serve the health, safety, education, welfare and recreational needs of all Oregon City residents through the planning and provision of adequate community facilities.*

#### Policies

1. *The City of Oregon City will provide the following urban facilities and services as funding is available from public and private sources:*
  - a. *Streets and other roads and paths*
  - b. *Minor sanitary and storm water facilities*
  - c. *Police protection*
  - d. *Fire protection*
  - e. *Parks and recreation*
  - f. *Distribution of water*
  - g. *Planning, zoning and subdivision regulation*

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3. *Urban public facilities shall be confined to the incorporated limits.*

#### *Sanitary Sewers*

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4. *Urban development within the City's incorporated boundaries will be connected to the Tri-City sewer system with the exception of buildings that have existing sub-surface sewer treatment, if service is not available.*

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6. *The Tri-City Service District will be encouraged to extend service into the urban growth area concurrent with annexation approval by Oregon City.*

## **FACILITIES AND SERVICES**

ORS 195 Agreements. ORS 195 requires agreements between providers of urban services. Urban services are defined as: sanitary sewers, water, fire protection, parks, open space, recreation and streets, roads and mass transit. These agreements are to specify which governmental entity will provide which service to which area in the long term. The counties are responsible for facilitating the creation of these agreements. There are no urban service agreements relative to sewer service in this area.

Sewer. The District provides treatment and interceptor sewer transmission lines for the cities of Oregon City, West Linn and Gladstone. The City of Oregon City will provide the collector sewers and city-specific transmission lines.

Water. The City of Oregon City provides water service to the area.

Police Service. The area receives police service from the City of Oregon City.

Fire. The area receives fire service through Clackamas County Fire District No. 1.

Parks and Recreation. The area to be annexed receives park & recreation service from the City of Oregon City.

## **RECOMMENDATION**

Based on the study and the Proposed Findings and Reasons for Decision attached in Exhibit A, the staff recommends Proposal No. CL-14-001 be **approved**.



**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of Approving  
Boundary Change Proposal  
No. CL-14-001



ORDER NO.

This matter coming before the Board at this time, and it appearing that more than half the electors and owners of more than half the land in the territory to be annexed have petitioned to annex the territory to Tri-City Service District;

It further appearing that this Board is charged with deciding this proposal for a boundary change pursuant to ORS Chapters 198 and Metro Code 3.09; and

It further appearing that staff retained by the County have reviewed the proposed boundary change and issued a report which complies with the requirements of Metro Code 3.09.050(b); and

It further appearing that this matter came before the Board for public hearing on July 10, 2014 and that a decision of approval was made on July 10, 2014;

NOW, THEREFORE, IT IS HEREBY ORDERED that Boundary Change Proposal No. CL-14-001 is approved for the reasons stated in attached Exhibit A and the territory described in Exhibit B and depicted on Exhibit C is annexed to Tri-City Service District.

ADOPTED this 10<sup>th</sup> day of July, 2014.

BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Secretary

## FINDINGS

Based on the study and the public hearing the Board found:

1. The territory to be annexed contains 9.66 acres, is vacant and is assessed at \$230,820.
2. The property owners desire sewer service to facilitate development. According to the applicants, "Plans are for 121 rental apartments and 62 live-work units in 4 stacked-flat buildings and 8 townhouse buildings with one building set aside as a private community space." While physical service to the property will be provided by the City, major interceptor lines and treatment service is provided to the City (and the cities of Gladstone and West Linn) by Tri-City Service District. When properties are annexed to the City of Oregon City (as this property was in 2008) they must subsequently be annexed to the District and that is what is happening here.
3. Oregon Revised Statute 198 directs the Board to "consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district."

Additional criteria can be found in the Metro Code. The code requires a report which addresses the criteria listed below and which includes the following information:

1. The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
2. Whether the proposed boundary change will result in the withdrawal of territory from the legal boundary of any necessary party<sup>1</sup>; and
3. The proposed effective date of the boundary change.

Service availability is covered in the findings below. Staff has examined the statutes and determined that approval of this annexation will not cause the withdrawal of the affected territory from the boundary of any necessary party. The proposed effective date is immediately upon adoption.

To approve a boundary change, the reviewing entity [the County Board] must apply the following criteria:

To approve a boundary change the County must:

- (1) Find that the change is consistent with expressly applicable provisions in:

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<sup>1</sup> A "necessary party" is another governmental entity which includes the same area or provides an urban service to the area.

- (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;
  - (B) Any applicable annexation plan adopted pursuant to ORS 195.205;
  - (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;
  - (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
  - (E) Any applicable comprehensive plan;
  - (F) Any applicable concept plan; and
- (2) Consider whether the boundary change would:
- (A) Promote the timely, orderly and economic provision of public facilities and services;
  - (B) Affect the quality and quantity of urban services; and
  - (C) Eliminate or avoid unnecessary duplication of facilities and services.

There are no cooperative agreements, urban service agreements or annexation plans specifically adopted pursuant to ORS 195 in effect in this area. The City's public facility plan calls for major transmission and treatment service by the District. The proposal is consistent with the Oregon City Comprehensive Plan as stated in Finding No. 5.

4. This territory is inside of Metro's jurisdictional boundary and inside the regional Urban Growth Boundary (UGB).

The law that requires Metro to adopt criteria for boundary changes specifically states that Metro shall ". . . ensure that a boundary change is in compliance with the Metro regional framework plan as defined in ORS 197.015 and cooperative agreements and urban service agreements adopted pursuant to ORS chapter 195." ORS 197.015 says "Metro regional framework plan means the regional framework plan required by the 1992 Metro Charter or its separate components." The Regional Framework Plan was reviewed and found not to contain specific criteria applicable to boundary changes.

There are two adopted regional functional plans, the Urban Growth Management Functional Plan and the Regional Transportation Plan, which were examined and found

not to contain any directly applicable standards and criteria for boundary changes.

5. The territory is designated Mixed Use-Corridor on the City Comprehensive Plan and is zoned MUC-1.

The *Community Facilities Goals And Services* Chapter of the Oregon City Comprehensive Plan contains the following pertinent sections.

Goal

*Serve the health, safety, education, welfare and recreational needs of all Oregon City residents through the planning and provision of adequate community facilities.*

Policies

1. *The City of Oregon City will provide the following urban facilities and services as funding is available from public and private sources:*
  - a. *Streets and other roads and paths*
  - b. *Minor sanitary and storm water facilities*
  - c. *Police protection*
  - d. *Fire protection*
  - e. *Parks and recreation*
  - f. *Distribution of water*
  - g. *Planning, zoning and subdivision regulation*

\*\*\*

3. *Urban public facilities shall be confined to the incorporated limits.*

*Sanitary Sewers*

\*\*\*

4. *Urban development within the City's incorporated boundaries will be connected to the Tri-City sewer system with the exception of buildings that have existing sub-surface sewer treatment, if service is not available.*

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6. *The Tri-City Service District will be encouraged to extend service into the urban growth area concurrent with annexation approval by Oregon City.*

6. ORS 195 requires agreements between providers of urban services. Urban services are defined as: sanitary sewers, water, fire protection, parks, open space, recreation

and streets, roads and mass transit. These agreements are to specify which governmental entity will provide which service to which area in the long term. The counties are responsible for facilitating the creation of these agreements. There are no urban service agreements relative to sewer service in this area.

7. The District provides treatment and major sewer transmission lines for the cities of Oregon City, West Linn and Gladstone. The City of Oregon City will provide the collector sewers.
8. The City of Oregon City provides water service to the area.
9. The area receives police service from the City of Oregon City.
10. The area receives fire service through Clackamas County Fire District No. 1.
11. The area to be annexed receives park & recreation service from the City of Oregon City.

### **CONCLUSIONS AND REASONS FOR DECISION**

Based on the Findings, the Board determined:

1. The Metro Code requires the boundary change decision to be consistent with expressly applicable provisions in any urban service provider agreements, cooperative agreements and annexation plans adopted pursuant to ORS 195. As noted in Findings 3 & 6 there are no such agreements or plans in place in this area. The Board concludes that its decision is not inconsistent with any such agreements and plans.
2. The Metro Code calls for consistency between the Board decision and any "applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services." The Board notes the City's public facility plan calls for major transmission and treatment service to be provided by the Tri-City District.
3. ORS 198 requires consideration of the comprehensive plan and any service agreements affecting the area. The Board has reviewed the applicable comprehensive plan, which is the City's Comprehensive Plan and concludes this proposal complies with it. All other urban services are available from the City of Oregon City.
4. The Board considered the timing & phasing of public facilities to this area, the quantity and quality of services available and the potential for duplication of services. The Board concludes this annexation is timely, the District has an adequate quantity and quality of services available and that the services are not duplicative.

Exhibit B

*Legal Description*

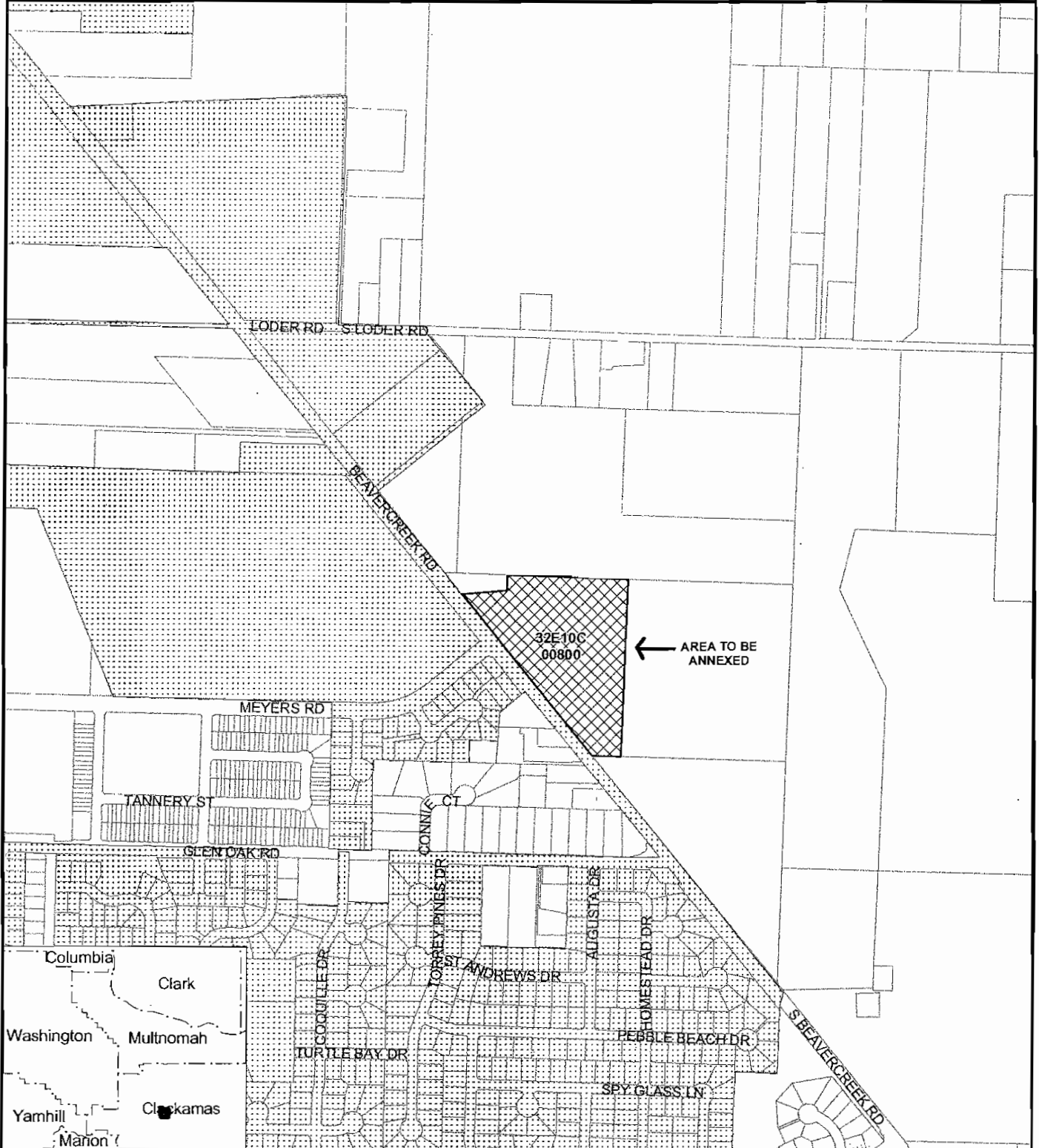
Tax Lot 800 SW ¼ Section 10, T3S R2E. W.M., Clackamas County, OR

# CL-14-001

3S2E10

Tri-City Service District

Clackamas County



Data Resource Center  
600 NE Grand Ave  
Portland, OR 97232-2736  
<http://www.oregonmetro.gov/drc>  
Metro

- Tri-City Service District
- Area to be annexed

CL-14-001

Ken Martin Consulting  
P.O. Box 29079  
Portland, OR 97296-9079  
(503) 222-0955

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OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING

2051 KAEN ROAD | OREGON CITY, OR 97045

July 10, 2014

Board of County Commissioners  
Clackamas County

Stephen L. Madkour  
County Counsel

Kimberley Ybarra  
Kathleen Rastetter  
Chris Storey  
Scott C. Ciecko  
Alexander Gordon  
Amanda Keller  
Nathan K. Boderman  
Christina Thacker  
Assistants

Members of the Board:

Approval of Annexation to Clackamas County Service District No. 1

<b>Purpose/Outcomes</b>	Conduct Public Hearing/Approve Order
<b>Dollar Amount and Fiscal Impact</b>	None
<b>Funding Source</b>	Not Applicable
<b>Safety Impact</b>	Not Applicable
<b>Duration</b>	Permanent
<b>Previous Board Action</b>	None
<b>Contact Person</b>	Chris Storey, Assistant County Counsel Ken Martin, Boundary Change Consultant - 503 222-0955
<b>Contract No.</b>	Not Applicable

**BACKGROUND**

The County Board is charged with making boundary change decisions (annexations, withdrawals, etc.) for many types of special districts (water, sanitary sewer, rural fire protection, etc.) within the County. One type of special district over which the Board has jurisdiction is a county service district and Clackamas County Service District No. 1 ("CCSD#1") is such a district.

Proposal No. CL 14-002 is a proposed annexation to Clackamas County Service District No. 1.

State statute and the Metro Code require the Board to hold a public hearing on the proposed annexation. Notice of this hearing invited testimony from any interested party. Notice consisted of: 1) Posting three notices near the territory and one notice near the County hearing room 20 days prior to the hearing; 2) Published notice twice in the Clackamas County Review; 3) Mailed notice sent to affected local governments and all property owners within 100 feet of the area to be annexed.

As required by statute the Board of the District has endorsed the proposed annexation. The Board of CCSD#1 has delegated authority to endorse annexation petitions to the WES Director, who has duly taken all appropriate actions relating to that endorsement.



Also as required by statute (ORS 198.720(1)) the City of Happy Valley has approved this petition.

This proposal was initiated by a consent petition of property owners and registered voters. The petition meets the requirement for initiation set forth in ORS 198.855(3) (double majority annexation law), ORS 198.750 (section of statute which specifies contents of petition) and Metro Code 3.09.040(a) (lists Metro's minimum requirements for petition). If the Board approves the proposal the boundary change will become effective immediately.

The territory to be annexed is located generally in the eastern part of the District within the City of Happy Valley. The territory contains 0.5 acres, one single family dwelling, a population of 2 and is valued at \$283,185.

### **REASON FOR ANNEXATION**

The property owners desire annexation to provide sewer service to the existing single family dwelling.

### **CRITERIA**

Oregon Revised Statute 198 directs the Board to "consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district."

Clackamas County Service District No. 1 and the City of Happy Valley do have an agreement calling for the District to be the provider of sewers inside the City.

Additional criteria can be found in the Metro Code. The code requires a report which addresses the criteria listed below and which includes the following information:

1. The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
2. Whether the proposed boundary change will result in the withdrawal of territory from the legal boundary of any necessary party<sup>1</sup>; and
3. The proposed effective date of the boundary change.

Service availability is covered in the section below. Staff has examined the statutes and determined that approval of this annexation will not cause the withdrawal of the affected territory from the boundary of any necessary party. The proposed effective date (immediately upon adoption) was noted above.

To approve a boundary change, the reviewing entity [the County Board] must apply the following criteria:

To approve a boundary change the County must:

---

<sup>1</sup> A "necessary party" is another governmental entity which includes the same area or provides an urban service to the area.

- (1) Find that the change is consistent with expressly applicable provisions in:
  - (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;
  - (B) Any applicable annexation plan adopted pursuant to ORS 195.205;
  - (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;
  - (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
  - (E) Any applicable comprehensive plan;
  - (F) Any applicable concept plan; and
- (2) Consider whether the boundary change would:
  - (A) Promote the timely, orderly and economic provision of public facilities and services;
  - (B) Affect the quality and quantity of urban services; and
  - (C) Eliminate or avoid unnecessary duplication of facilities and services.

There are no cooperative agreements, urban service agreements or annexation plans specifically adopted pursuant to ORS 195 in effect in this area. The original public facility plan for this area does call for service by the District. The proposal is consistent with the Comprehensive Plan as stated in the section below. No concept plans cover this area.

## **LAND USE PLANNING**

### *REGIONAL PLANNING*

#### General Information

This territory is inside of Metro's jurisdictional boundary and inside the regional Urban Growth Boundary (UGB).

#### Regional Framework Plan

The law that requires Metro to adopt criteria for boundary changes specifically states that Metro shall " . . . ensure that a boundary change is in compliance with the Metro regional framework plan as defined in ORS 197.015 and cooperative agreements and urban service agreements adopted pursuant to ORS chapter 195." ORS 197.015 says

“Metro regional framework plan means the regional framework plan required by the 1992 Metro Charter or its separate components.” The Regional Framework Plan was reviewed and found not to contain specific criteria applicable to boundary changes.

There are two adopted regional functional plans, the Urban Growth Management Functional Plan and the Regional Transportation Plan, which were examined and found not to contain any directly applicable standards and criteria for boundary changes.

### *COUNTY PLANNING*

The PUBLIC FACILITIES AND SERVICES Element of the Comprehensive Plan contains the following Goal:

#### POLICIES

##### Sanitary Sewage Disposal

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- 6.0 Require sanitary sewerage service agencies to coordinate extension of sanitary services with other key facilities, i.e., water, transportation, and storm drainage systems, which are necessary to serve additional lands.

### *HAPPY VALLEY PLANNING*

The City of Happy Valley's Rock Creek Area Comprehensive Plan identifies this area as Mixed Use Commercial. Zoning is CCC, Community Commercial Center.

#### **FACILITIES AND SERVICES**

ORS 195 Agreements. ORS 195 requires agreements between providers of urban services. Urban services are defined as: sanitary sewers, water, fire protection, parks, open space, recreation and streets, roads and mass transit. These agreements are to specify which governmental entity will provide which service to which area in the long term. The counties are responsible for facilitating the creation of these agreements. There are no urban service agreements under ORS 195 relative to sewer service in this area of Clackamas County.

Sewer. The District can provide sewer service to the property from an existing 8 inch District line in SE 162<sup>nd</sup> Avenue on the west edge of the property. The District provides surface water management services to the City of Happy Valley. Storm drainage in this area is handled through separate lines and with open ditches and retention areas.

Water. The territory to be annexed is within and served by the Sunrise Water Authority.

Police Service. The area receives police service from City of Happy Valley which contracts with the Clackamas County Sheriff's Department.

Fire. The territory is within the Clackamas County Fire District No. 1. This service will not be affected by annexation to the County Service District for sanitary sewers.

Parks and Recreation. The area to be annexed is already within the North Clackamas County Parks & Recreation District.

### **RECOMMENDATION**

Based on the attached Order and Findings, Staff recommends approval of Proposal No. CL-14-002, annexation to Clackamas County Service District No. 1.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of Approving  
Boundary Change Proposal  
No. CL 14-002



ORDER NO.

This matter coming before the Board at this time, and it appearing that more than half the electors and owners of more than half the land in the territory to be annexed have petitioned to annex the territory to Clackamas County Service District No. 1;

It further appearing that this Board is charged with deciding this proposal for a boundary change pursuant to ORS Chapters 198 and Metro Code 3.09; and

It further appearing that staff retained by the County have reviewed the proposed boundary change and issued a report which complies with the requirements of Metro Code 3.09.050(b); and

It further appearing that this matter came before the Board for public hearing on July 10, 2014 and that a decision of approval was made on July 10, 2014;

NOW, THEREFORE, IT IS HEREBY ORDERED that Boundary Change Proposal No. CL 14-002 is approved for the reasons stated in attached Exhibit A and the territory described in Exhibit B and depicted on Exhibit C is annexed to Clackamas County Service District No. 1 as of July 10, 2012.

ADOPTED this 10<sup>th</sup> day of July, 2014.

BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Secretary

## FINDINGS

Based on the study and the public hearing the Board found:

1. The territory to be annexed contains 0.5 acres, one single family dwelling, a population of 2 and is valued at \$283,185.
2. The property owners desire annexation to provide sewer service to the existing single family dwelling.
3. Oregon Revised Statute 198 directs the Board to “consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district.”

Clackamas County Service District No. 1 and the City of Happy Valley do have an agreement calling for the District to be the provider of sewers inside the City.

Additional criteria can be found in the Metro Code. The code requires a report which addresses the criteria listed below and which includes the following information:

1. The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
2. Whether the proposed boundary change will result in the withdrawal of territory from the legal boundary of any necessary party<sup>1</sup>; and
3. The proposed effective date of the boundary change.

Service availability is covered in the findings below. Staff has examined the statutes and determined that approval of this annexation will not cause the withdrawal of the affected territory from the boundary of any necessary party. The proposed effective date is immediately upon adoption of an approval order.

To approve a boundary change, the reviewing entity [the County Board] must apply the following criteria:

To approve a boundary change the County must:

- (1) Find that the change is consistent with expressly applicable provisions in:
  - (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;

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<sup>1</sup> A “necessary party” is another governmental entity which includes the same area or provides an urban service to the area.

- (B) Any applicable annexation plan adopted pursuant to ORS 195.205;
  - (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;
  - (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
  - (E) Any applicable comprehensive plan;
  - (F) Any applicable concept plan; and
- (2) Consider whether the boundary change would:
- (A) Promote the timely, orderly and economic provision of public facilities and services;
  - (B) Affect the quality and quantity of urban services; and
  - (C) Eliminate or avoid unnecessary duplication of facilities and services.

There are no cooperative agreements, urban service agreements or annexation plans specifically adopted pursuant to ORS 195 in effect in this area. The original public facility plan for this area does call for service by the District. The proposal is consistent with the Comprehensive Plan as stated in Findings No. 6 & 7. No concept plans cover this area.

4. This territory is inside of Metro's jurisdictional boundary and inside the regional Urban Growth Boundary (UGB).
5. The law that requires Metro to adopt criteria for boundary changes specifically states that Metro shall “. . . ensure that a boundary change is in compliance with the Metro regional framework plan as defined in ORS 197.015 and cooperative agreements and urban service agreements adopted pursuant to ORS chapter 195.” ORS 197.015 says “Metro regional framework plan means the regional framework plan required by the 1992 Metro Charter or its separate components.” The Regional Framework Plan was reviewed and found not to contain specific criteria applicable to boundary changes.

There are two adopted regional functional plans, the Urban Growth Management Functional Plan and the Regional Transportation Plan, which were examined and found not to contain any directly applicable standards and criteria for boundary changes.

6. The PUBLIC FACILITIES AND SERVICES Element of the County Comprehensive Plan contains the following Goal:

POLICIES

Sanitary Sewage Disposal

\* \* \*

- 6.0 Require sanitary sewerage service agencies to coordinate extension of sanitary services with other key facilities, i.e., water, transportation, and storm drainage systems, which are necessary to serve additional lands.
7. The City of Happy Valley's Rock Creek Area Comprehensive Plan identifies this area as Mixed Use Commercial. Zoning is CCC, Community Commercial Center.
8. ORS 195 requires agreements between providers of urban services. Urban services are defined as: sanitary sewers, water, fire protection, parks, open space, recreation and streets, roads and mass transit. These agreements are to specify which governmental entity will provide which service to which area in the long term. The counties are responsible for facilitating the creation of these agreements. There are no urban service agreements under ORS 195 relative to sewer service in this area of Clackamas County.
9. The District can provide sewer service to the property from an existing 8 inch District line in SE 162<sup>nd</sup> Avenue on the west edge of the property. The District provides surface water management services to the City of Happy Valley. Storm drainage in this area is handled through separate lines and with open ditches and retention areas.
10. The territory to be annexed is within and served by the Sunrise Water Authority.
11. The area receives police service from City of Happy Valley which contracts with the Clackamas County Sheriff's Department.
12. The territory is within the Clackamas County R.F.P.D. #1. This service will not be affected by annexation to the County Service District for sanitary sewers.
13. The area to be annexed is already within the North Clackamas County Parks & Recreation District.



## CONCLUSIONS AND REASONS FOR DECISION

Based on the Findings, the Board determined:

1. The Metro Code requires the boundary change decision to be consistent with expressly applicable provisions in any urban service provider agreements, cooperative agreements and annexation plans adopted pursuant to ORS 195. As noted in Findings 3 & 8 there are no such agreements or plans in place in this area. The Board concludes that its decision is not inconsistent with any such agreements and plans.
2. The Metro Code calls for consistency between the Board decision and any “applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services.” The Board notes the original public facility plan for this area does call for sewer service by the District.
3. ORS 198 requires consideration of the comprehensive plan and any service agreements affecting the area. The Board has reviewed the applicable comprehensive plans (Clackamas County’s Comprehensive Plan and Happy Valley’s Rock Creek Area Comprehensive Plan) and concludes this proposal complies with it. All other necessary urban services are available.
4. The Board considered the timing & phasing of public facilities to this area, the quantity and quality of services available and the potential for duplication of services. The District has service available to the area to be annexed as noted in Finding No. 9. The Board concludes this annexation is timely, the District has an adequate quantity and quality of services available and that the services are not duplicative.
5. The Metro Code at 3.09.050 (B) (2) requires a determination of whether the boundary change will cause withdrawal of the territory from the boundary of any necessary party. An examination of this issue found that no such withdrawals would be caused by approval of this annexation.

Exhibit B

*Legal Description*

Tax Lot 700, NW ¼ NW ¼ Sec. 6, T2S, R3E, W.M., Clackamas County, OR.

# CL-14-002

2S3E06

Clackamas County Service District #1

Clackamas County



Data Resource Center  
600 NE Grand Ave  
Portland, OR 97232-2736  
<http://www.oregonmetro.gov/drc>  
Metro

- CCSD#1
- Area to be annexed

CL-14-002

Ken Martin Consulting  
P.O. Box 29079  
Portland, OR 97296-9079  
(503) 222-0955



1:7,542

July 10, 2014

Board of County Commissioner  
Clackamas County

Members of the Board:

Approval of a Change Order Number 3 with  
Housing & Community Development Division and JWC, LLC for the  
River Road Head Start - Kitchen Remodel Project

<b>Purpose/Outcomes</b>	Change Order No. 3 is for additional work requested by the Owner (Children's Commission). By approving this Change Order, the Children's Commission will have a more improved kitchen facility.
<b>Dollar Amount and Fiscal Impact</b>	Change Order No. 3 is for the amount of \$27,728.56 for a new total contract amount of \$232,202.86.
<b>Funding Source</b>	Community Development Block Grant (CDBG) funds and Children's Commission Grant funds are being used for the project. No County General Funds will be used for this project.
<b>Safety Impact</b>	None
<b>Duration</b>	March 24, 2014 - August 5, 2014, Add of 14 calendar days
<b>Previous Board Action</b>	Approval of Change Order No. 2 on June 12, 2014
<b>Contact Person(s)</b>	Steve Kelly – Community Development 650-5665
<b>Contract No.</b>	6590

**BACKGROUND:**

The Housing & Community Development Division of the Health, Housing & Human Services Department requests approval of this Change Order with JWC, LLC for the River Road Head Start Kitchen Remodel Project. On February 19, 2014, JWC, LLC was the lowest responsive bidder for this project. The changes includes: revising dishwasher hood, removal and replacement of old restroom flooring in two locations, moisture testing of restroom floors, painting existing interior walls added to scope, purchase and installation of sound panels for dining space, additional electrical work in project area.

Original Construction Contract	\$148,000.00
Change Order No. 1	\$ 13,796.02
Change Order No. 2	\$ 42,678.28
Change Order No. 3	\$ 27,728.56
<b>TOTAL CONTRACT</b>	<b>\$232,202.86</b>

No CDBG funds will be used for Change Order No. 3. The full amount of \$27,728.56 will be paid entirely by the Children's Commission.

These additional improvements will make for a more complete project. This remodeled kitchen will serve moderate and low-income children of the Milwaukie area. This Construction Contract was reviewed and approved by County Counsel.

**RECOMMENDATION:**

Staff recommends the Board approve this Change Order and authorizes Cindy Becker, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C. Becker', written in a cursive style.

Cindy Becker, Director

# CHANGE ORDER FORM

JWC, LLC  
PO Box 821409  
Vancouver, WA 98682

Architect  
 Contractor  
 H3S Director

Project Name: RRHS – Kitchen Remodel  
Project Address: 16518 S.E. River Road  
Milwaukie, OR 97267

Change Order No: **3**  
Contract Date: **3/13/2014**  
Notice to Proceed: **3/24/2014**  
Change Order Date: **6/30/2014**

To: Clackamas County-Community Development  
2051 Kaen Road, Suite #245  
Oregon City, Oregon 97045

The following changes have been authorized by Clackamas County-Housing & Community Development and the Children's Commission. See the listed changes (increases) to the project and are deemed as changes to the original construction contract:

JWC's Change Proposal 006:

\* Summary of Subcontractor Costs – Electrical work, Sound Panels Materials,  
Revised Dishwasher Hood, New Restroom Flooring, Moisture Test for New Floors...\$14,853.56  
\* Summary of General Contractor Costs - Coordination, Labor, Painting Existing  
Walls, Sound Panels Labor Installation, Replace Restroom Toilets.....\$ 8,210.00  
\* Profit & Overhead %, Insurance % and Bond %.....\$ 4,665.00  
Change Order #3 Total:.....\$27,728.56

Attached is the supporting cost documentation.

Original Contract Price .....	\$148,000.00
Net Increase by Change Order #1.....	\$ 13,796.02
Contract Price including Approved Change Order #1 .....	\$161,796.02
Net Increase by Change Order #2.....	\$ 42,678.28
Contract Price including Approved Change Order #2 .....	\$204,474.30
Contract Price will be (increased) ( <del>unchanged</del> ) by this Change Order (#3).....	<b>\$ 27,728.56</b>
The new Contract Price including this Change Order (#3) will be.....	\$232,202.86

The Contract Time will be increased by this Change Order (#3) will be 14 calendar days.  
The date of Substantial Completion as of the date of this Change Order therefore is (8/5/2014).

Approved:

by:

Willy Coomes 6-26-2014  
Willy Coomes, Manager (date)  
JWC, LLC Joe Currie  
Manager

Approved:

by:

John Kyle 6-26-2014  
John Kyle, Project Architect (date)  
Rep. for Children's Commission

Approved:

by:

Steve Kelly 6/26/2014  
Steve Kelly, Project Coordinator (date)  
Housing & Com. Dev.

Approved:

by:

Cindy Becker (date)  
Cindy Becker, Director (date)  
Health, Housing & Human Services

**JWC** GENERAL CONTRACTOR LLC  
 PO Box 821409  
 Vancouver, WA 98682

**CHANGE PROPOSAL: 006**

DISTRIBUTED TO:

<input checked="" type="checkbox"/> Owner's Rep	<input type="checkbox"/> Contractor
<input checked="" type="checkbox"/> Architect	<input type="checkbox"/> Subcontractor
<input type="checkbox"/> Field	<input type="checkbox"/> Other

PROJECT: River Road Head Start Kitchen Remodel

TO: Clackamas Co. Community Development  
 ATTN: Steve Kelly  
2051 Kaen Road #245  
Oregon City, OR 97045

DATE: May 21, 2014  
 PROJECT NO.: 53325  
 CONTRACT DATE: March 13, 2014  
 CONTRACT FOR: General Construction

The Contract is changed as follows:

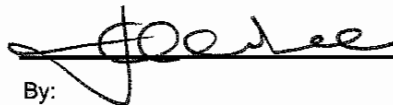
#	GC Cost	Sub Cost	Description
	\$ 400.00		Coordination by JWC Construction
1			Acoustical Treatment:
		\$ 1,458.56	Electrical Rough-in, Precision Electric
	\$ 18,350.00		Sound Panels (Material \$11,200; Labor to Install \$7,150 by JWC)
2		\$ 704.00	Revised Dishwasher Hood, HVAC, Inc.
3	\$ 410.00		Paint Existing Walls by JWC
4			Add Floor Coveirng at Existing Restroom:
		\$ 1,106.00	Seamless Armstrong flooring at Existing Boys/Girls Restroom, Rubensteins
		\$ 385.00	Moisture Testing at New Floors, Rubensteins
	\$ 250.00		Remove/replace toilets (Material \$80, Labor 2 hrs @ \$65) by JWC
<b>SUBTOTAL</b>	<b>\$ 19,410.00</b>	<b>\$ 3,653.56</b>	

\*A time extension of 10 working days is requested for this work.

Subtotal:	\$	23,063.56
Contractor P&O 15%	\$	3,459.53
Insurance 3%	\$	795.69
Bond 1.5%	\$	409.78
Subtotal	\$	27,728.56
<b>Total</b>	<b>\$</b>	<b>27,728.56</b>

Accepted By:

JOHN KYLE, ATA  
 Owner's Representative

 6.26.2014  
 By: \_\_\_\_\_ Date: \_\_\_\_\_





# Change Order

Order#: 3

Order Date: 05/20/2014

License: PRECIEW962KG

PO Box 2353  
Battle Ground WA 98604  
360-260-4544

**To:** JWC Construction  
PO Box 821409  
Vancouver WA 98682

**Project:** 59030406  
River Road Head Start Kitchen  
16518 Se. River Road  
Milwaukie OR 97267

The contractor agrees to perform and the owner agrees to pay for the following changes to this contract.

Plans Attached

**Ordered By:**

**Customer Order:**

Specifications Attached

Description of Work	Amount
Box extensions for sound board	1,458.56

Negative changes will lower the overall contract price requiring no additional payment by owner.

**Requested Amount of Change**

**1,458.56**

The original Contract Sum was .....	20,000.00
Net change by previous Change Orders .....	20,954.16
The Contract Sum prior to this Change Order .....	40,954.16
The Contract Sum will be changed by this Change Order .....	1,458.56
The new Contract Sum including this Change Order will be .....	42,412.72
The Contract Time will be changed by .....	0 Days

Owner: \_\_\_\_\_ Date: \_\_\_\_\_

Contractor: \_\_\_\_\_ Date: \_\_\_\_\_

Head start ceiling extensions  
Totals (Summary) - Bid Summary: Box Extensions for sound board

<b>Material</b>	
Non-Quoted	\$95.51
Quotes	0.00
Sales Tax (0.00%)	0.00
<b>Total Material</b>	<b>\$95.51</b>
<b>Labor</b>	
Direct (14.10 hours @ \$75.00)	\$1,057.50
Non-Productive Labor	0.00
<b>Total Labor</b>	<b>\$1,057.50</b>
Direct Job Expenses	\$0.00
Tools and Miscellaneous Materials	0.00
Subcontracts	0.00
<b>Job Subtotal (Prime Cost)</b>	<b>\$1,153.01</b>
Overhead (15.00%)	172.95
Profit (10.00%)	132.60
<b>Job Total</b>	<b>\$1,458.56</b>
<b>Actual Bid Price</b>	
	<b>\$1,458.56</b>
<b>Material to Direct Labor ratio: 0.08</b>	
Prime Cost per square foot	\$0.00
Job Total per square foot	\$0.00
Actual Bid Price per square ft	\$0.00
Labor cost per square foot	\$0.00
Labor hours per square foot	0.00
Gross Profit %	20.95
Gross Profit \$	\$305.55
Net Profit %	9.09

Head start ceiling extensions

Item #	Description	Quantity	Price	Ext Price	Labor	Ext Labor
6869	3/16"X3" Toggle Bolt	20.00	25.50 C	5.10	0.22 E	4.40
2571	4" Square Box (1/2 & 3/4 KO's)	10.00	72.08 C	7.21	0.30 E	3.00
6839	Red Wirenuts	60.00	100.60 M	6.04	3.50 C	2.10
4367	#14-12-10 Wire Termination Labor	10.00	0.00 E	0.00	0.18 E	1.80
2729	4" Square-3/0 Plaster Ring-1-1/4"D	10.00	194.70 C	19.47	0.15 E	1.50
2790	#12 THHN CU Stranded Wire	84.00	111.74 M	9.39	6.00 M	0.50
6908	1x1/2" RE Washers	40.00	1.00 E	40.00	0.01 E	0.40
6890	Sheetrock Clamps	20.00	41.49 C	8.30	0.02 E	0.40





**CHANGE ORDER**

Job Name: River Road Hd Start TO: Name: Willy, Chad  
 Date of Change: 5/19/2014 Company: Jwc  
 Change Order Number: 01 Address: po box 821409  
 Job Number: 5560 City, State, Zip: Vancouver Wa. 98682

Description of changes and/or modifications to original scope of work:

As per requested by Chad, the cost to build a 12" tall s/s dishwasher hood, on a 3 week delivery.

\$704.00

Original Contract Price ..... \$  
 Changes to Date ( ) ..... \$  
 This Change (\$704.00) ..... \$  
 Current Contract Price ..... \$

**Please note your acceptance and return the signed original (white) copy to this office for our file records. Retain the canary copy for your records.**

This work covered by this order shall be performed under the same Terms and Conditions as that included in the Original Contract.

ACCEPTED BY: *[Signature]*  
*[Signature]*  
 TITLE

BY HVAC, INC. \_\_\_\_\_  
 \_\_\_\_\_  
 TITLE

**HVAC Inc.**

5188 SE INTERNATIONAL WAY Δ MILWAUKIE, OREGON 97222 Δ (503) 462-4822 Δ FAX (503) 462-6555  
 OR-CCB# 50897 WA-L&I# HVACI\*\*125J6

White - Recipient - Sign & return to HVAC, Inc. Canary - Recipient Copy Pink - HVAC, Inc. - Project Manager

# Rubenstein's Contract Carpet

## FAX COVER SHEET

1800 S.W. First Ave., Suite 160  
Portland, OR. 97201

Phone: (503) 224-1007  
Oregon C.C.B. # 85976

Fax: (503) 224-0915  
Wash. # RUBEN CC 038JA

TO: JWC  
ATTEN: Willie

FAX NUMBER: \_\_\_\_\_

FROM: Terri Mackley  
RE: River Road Head Start  
Change Order

Number of sheets sent including cover page: 1

To furnish and install new sheet vinyl with no seams and rubber base in 2 restrooms

Material - Sheet Vinyl Armstrong Abode 12' wide material	\$525.00
Material - Rubber Base 6"	\$120
Labor to install Sheet vinyl, Prep Floor and install Rubber base	\$461.00
Total	<b>\$1,106.00</b>

Due to the multiple layers of existing VCT there will not be a manufactures warranty

Thanks Terri

Date: 5/20/14

Please telephone us at (503) 224-1007 if you have any questions on documents received. Verify all pages received.

July 10, 2014

Board of County Commissioners  
Clackamas County, Oregon

Members of the Board:

Approval of an Intergovernmental Agreement between  
the Department of Health, Housing and Human Services and the City of West Linn  
for the West Linn Senior Center Expansion Addition Project

<b>Purpose/Outcomes</b>	The project will include a new construction of a 3,700 square foot addition to the West Linn Adult Community Center to provide additional meeting space, a new class room and a new multipurpose room.
<b>Dollar Amount and Fiscal Impact</b>	City of West Linn.....\$ 360,000 CDBG Funds (grant)...\$ 240,000 Total Project Budget...\$ 600,000
<b>Funding Source</b>	Community Development Block Grant (CDBG) Funds- no County General Funds are involved.
<b>Safety Impact</b>	Improved building capacity and safety – public safety
<b>Duration</b>	Effective when signed and terminates fifteen years after completion of the project.
<b>Previous Board Action</b>	All 2014 CDBG projects were approved by the Board of County Commissioners on May 1, 2014 - agenda item 050114-A1
<b>Contact Person</b>	Chuck Robbins, Director – Community Development Division – 650-5666
<b>Contract No.</b>	H3S # 6866

**Background**

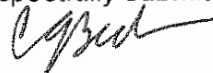
The Housing & Community Development Division of the Health, Housing & Human Services Department requests approval of an Intergovernmental Agreement with the City of West Linn. The City of West Linn requested CDBG funds for part of the design and construction costs for the expansion addition to the West Linn Senior Center building. This public facility project includes construction of a 3,700 square foot addition to provide additional meeting space, a new class room and a new multipurpose room to accommodate the growing population of seniors being served by the community center at 1180 Rosemont Road in West Linn.

This Agreement has been reviewed and approved by County Counsel on May 8, 2014.

**RECOMMENDATION:**

Staff recommends the Board approval of this amendment and authorizes Cindy Becker, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,



Cindy Becker, Director

*Healthy Families. Strong Communities.*

**INTERGOVERNMENTAL AGREEMENT**  
**BETWEEN**  
**CLACKAMAS COUNTY DEPARTMENT OF**  
**HEALTH, HOUSING AND HUMAN SERVICES**  
**COMMUNITY DEVELOPMENT DIVISION**  
**AND**  
**THE CITY OF WEST LINN**

**I. Purpose**

- A. This Agreement is entered into between Clackamas County, acting by and through its Housing and Community Development Division (COUNTY) and the City of West Linn (CITY) for the cooperation of units of local government under the authority of ORS 190.010.
- B. This Agreement provides for the design and construction of an expansion addition to the West Linn Senior Adult Community Center located at 1180 Rosemont Road in West Linn, OR 97068. These improvements are herein referred to as the PROJECT.
- C. The COUNTY has determined that the PROJECT is eligible for Community Development Block Grant (CDBG) funds as a Low-Mod Limited Clientele Activity – Presumed Benefit due to the facility being for the particular needs of or used exclusively by senior citizens in West Linn.

**II. Scope of Responsibilities**

- A. Under this Agreement the responsibilities of the CITY shall be as follows:
  - 1. The CITY shall provide all necessary supervisory and administrative support to assist the COUNTY with the completion of the PROJECT.
  - 2. The CITY shall obtain any easements or approvals necessary to allow access onto private property. Acquisition of any easement shall be obtained pursuant to the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA).
  - 3. The CITY shall provide Architecture services for the design and construction oversight of the PROJECT. Such services shall be provided at no cost to the COUNTY. The CITY shall assume responsibility for ensuring the following:
    - a. The CITY shall hire a licensed professional Architect (herein after referred to as Architect) to prepare all plans and specifications necessary to publicly bid the PROJECT for award to a construction contractor (herein after referred to as Contractor) and provide construction oversight.



INTERGOVERNMENTAL AGREEMENT between Clackamas County and the City of West Linn  
Senior Adult Community Expansion Project

- b. The CITY shall require the Architect to maintain comprehensive general (including contractual liability) and automobile liability insurance in the amount of not less than \$500,000 combined single limit per occurrence/\$1,000,000 general annual aggregate for personal injury and property damage for the protection of the County, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to Architect's or any of Architect's subcontractor's performance of this Agreement.
- c. The CITY shall require the Architect to maintain professional liability insurance in an amount of not less than \$1,000,000 per claim. Such insurance shall include limited contractual liability coverage. The Architect shall endeavor to use good faith in order to maintain in force such coverage for not less than three (3) years following completion of the PROJECT. The COUNTY, at its option, may require a complete copy of the above policy and evidence of required coverage.
- d. The CITY shall require the Architect to include the County as an additional insured and refer to and support the Architect's obligation to hold harmless the County, its officers, commissioners and employees. Such insurance shall provide 30 days' written notice to the COUNTY in the event of cancellation, non-renewal, or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the County under this insurance. The insurance company will provide written notice to the COUNTY within thirty (30) days after any reduction on the general annual aggregate limit.
- e. The CITY agrees to require the Architect to furnish the COUNTY evidence of the insurance required in II.A.3 (b) and (c).
- f. The CITY shall ensure that the Architect's responsibilities include, but are not limited to, the following:
  - (1) During construction the Architect shall endeavor to guard the COUNTY against apparent defects and deficiencies in the permanent work constructed by the Contractor.
  - (2) All reports and recommendations concerning construction shall be submitted to the COUNTY for their approval. The COUNTY agrees that no decisions affecting construction shall be made without CITY approval.
  - (3) In the event modifications to the construction contract, which result in an increase in the contract amount, are made without the prior approval of the COUNTY, CITY shall be solely responsible for these modifications.
4. The CITY shall operate and maintain the improvements for public purposes for their useful life subject to the limitations on the expenditure of funds by the CITY as provided by Oregon Statute.
5. The CITY will bear the risk of loss from fire, extended coverage, and will purchase and maintain property insurance on all affected CITY property. The CITY will bear the risk of loss from accidents coverable by owner's liability insurance and may, at its option, maintain such insurance.

INTERGOVERNMENTAL AGREEMENT between Clackamas County and the City of West Linn  
Senior Adult Community Expansion Project

6. The CITY will submit to COUNTY for its approval all reports and recommendations concerning construction of PROJECT. The COUNTY will submit to CITY for its approval all of COUNTY's decisions affecting construction. Both parties agree that their approval may not be unreasonably delayed, withheld or conditioned and will be deemed given within 7 business days of receiving written request for approval from the other party or its agent, if such party has not given written disapproval and the specific basis for same within such 7 day period.
  7. Upon completion of the PROJECT the CITY
    - a. agrees to accept ownership of the improvements
    - b. agrees to become the successor of the Construction Contract, and
    - c. agrees to continue operating the property as a Senior Community Center facility.
  8. The CITY shall ensure that the predominate use of the facility will be for senior citizen activities. Seniors are defined as individuals whose age is 62 years or older.
  9. The CITY agrees to report to the COUNTY information on the number of seniors participating in activities at the senior community center. The report shall cover the period between July 1 to June 30 for each year or partial year until completion of the PROJECT. The report format shall be provided by the COUNTY and shall be submitted to the COUNTY no later than the 31st day of August (ATTACHMENT A).
  10. The CITY agrees to maintain ownership of the property for the life of the PROJECT.
  11. The CITY agrees to inform the COUNTY in writing prior to making any change in the use of the property. Should the new use not meet HUD eligibility criteria, and/or the clients no longer meet the HUD income guidelines the CITY shall reimburse COUNTY as provided in 24 CFR Part 570.505. Said provision is attached as ATTACHMENT C and hereby made a part of this Agreement.
  12. Should the property be sold and converted to a non-qualifying use the CITY agrees to reimburse the COUNTY as provided in 24 CFR Part 570.505.
  13. The CITY shall complete and submit a Matching Funds Report following completion of the PROJECT. (ATTACHMENT B)
- B. Under this Agreement the responsibilities of the COUNTY will be as follows:
1. The COUNTY agrees to provide and administer available Federal Community Development Block Grant (CDBG) funds (CFDA 14.218) granted by the U.S. Department of Housing and Urban Development (HUD) to finance the PROJECT.
  2. The COUNTY will appropriately seek bids and enter into a contract for construction of the PROJECT. In this contract the COUNTY will act as the Owner and shall assume all of the Owners rights and responsibilities.
  3. The COUNTY with the advice of the CITY, will approve changes, modifications, or amendments as necessary to serve the public interest.
  4. The COUNTY shall provide reasonable and necessary staff for administration of the PROJECT. A Project Coordinator from the County's Community Development

Division will assist with the project management, coordination and contract administration.

5. The responsibilities of the Project Coordinator shall include:
  - a. Prepare a Bid Packet to be advertised in a local contractor's publication;
  - b. Conduct the Bid Opening on the date determined by all PARTIES;
  - c. Hire a General Contractor via the lowest responsible and responsive bidder;
  - d. Issue a Notice to Proceed after the Construction Contract is approved;
  - e. Conduct a Pre-Construction Conference with the General Contractor and CITY, and the Architect;
  - f. Coordinate with the Architect, CITY and General Contractor throughout General Contractor's performance of the Work;
  - g. Administration of federal and state prevailing wage requirements;
  - h. Closeout Paperwork and all federal reporting requirements;
  - i. With the Approval of the Architect and both PARTIES;
    - (1) Make payment to the General Contractor
    - (2) Release retainage funds to the General Contractor as appropriate;
  - j. Notify CITY of their responsibilities for all warranty related issues after the Release of Retainage.
6. The COUNTY shall conduct and provide necessary environmental review(s) described in 24 CFR 570.604 of the CDBG regulations for compliance with the CDBG program.
- C. The COUNTY and CITY agree to jointly review and approve all design, material selection, and contract documents for the PROJECT.

### **III. Budget & Financial**

- A. The COUNTY will apply CDBG funds in the amount of **\$240,000** to the PROJECT. The obligations of the COUNTY are expressly subject to the COUNTY receiving funds from HUD for the PROJECT, and in no event shall the COUNTY'S financial contribution exceed the amount finally granted, released and approved by HUD for this project.
- B. The CITY agrees to contribute the greater of:
  1. Twenty percent (20%) of the total cost of the PROJECT, or
  2. All costs for design and construction which exceed available CDBG funds budgeted for the PROJECT.
- C. In the event the PROJECT can not be completed with available funds the COUNTY and CITY will jointly determine the priorities of the improvements to be made within funding limits.
- D. The CITY shall be credited towards the matching requirements stated in Part III. C. an amount equal to **15%** of the final construction cost for providing architectural services as detailed in Part II. A. 3.

INTERGOVERNMENTAL AGREEMENT between Clackamas County and the City of West Linn  
Senior Adult Community Expansion Project

- E. In no event shall CITY'S financial participation be less than twenty percent (20%) of the PROJECT costs. PROJECT Costs include final construction costs which is defined as original construction amount plus approved change orders, and the credit for architectural services.
- F. In the event that unforeseeable conditions arise which necessitate the execution of a change in the amount of the construction contract, the CITY and the COUNTY will jointly evaluate the circumstances surrounding the conditions. Upon approval by the CITY and the COUNTY, the COUNTY shall instruct the Contractor to execute a change order.
- G. In the event a contractor is entitled to payments for work completed after \$240,000 in CDBG funds have been expended, the COUNTY shall request a transfer of funds from the CITY for the amount necessary to make such payments.
- H. The CITY in payment of PROJECT costs shall remit requested funds to the Community Development Division within Twenty-One (21) working days of the invoice by the COUNTY. All checks shall be made payable to Clackamas County and mailed to the following address:

Attn: Toni Hessevick  
Public Services Building-Department of Finance  
2051 Kaen Road, 4th Floor  
Oregon City, OR 97045

#### **IV. Liaison Responsibility**

Ken Warner will act as liaison from the CITY for the PROJECT. Mark Sirois will act as liaison from the COUNTY.

#### **V. Special Requirements**

- A. Law and Regulations. The COUNTY and CITY agree to comply with all applicable local, state, and federal ordinances, statutes, laws and regulations.
- B. Public Contracting Requirements. To the extent applicable, the provisions of ORS 279B.220, 279B.225, 279B.230, and 279B.235 are incorporated by this reference as though fully set forth.
- C. Relationship of Parties. Each party is an independent contractor with regard to the other party. Neither party is an agent or employee of the other. No party or its employees is entitled to participate in a pension plan, insurance, bonus, or similar benefits provided by any other party.
- D. Indemnification. Subject to the limits of the Oregon Tort Claims Act, and Oregon Constitution each of the parties agrees to hold harmless and indemnify the others, and their elected and appointed officials, agents, and employees, from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising on account of personal injuries, death or damage to property caused by or resulting from their own acts or omissions or those of their officials, agents and

INTERGOVERNMENTAL AGREEMENT between Clackamas County and the City of West Linn  
Senior Adult Community Expansion Project

employees provided however, upon completion of the improvements, the CITY will assume all responsibility for claims made thereafter against the COUNTY or its officers, agents or employees pertaining to the design and construction of the Project, and will indemnify and defend them therefore.

- E. Notice. Each party shall give the other immediate written notice of any action or suit filed or any claim made against the party which may result in litigation in any way related to this Agreement.
- F. Record and Fiscal Control System. All payroll and financial records pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. Such records and documents shall be retained for a period of three (3) years after receipt of final payment under this Agreement; provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved.
- G. Access to Records. The COUNTY, the State of Oregon and the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the CITY which are directly pertinent to the Agreement for the purpose of making audit, examination, excerpts, and transcripts.
- H. Debt Limitation. This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Obligations of the COUNTY are also expressly subject to the COUNTY receiving funds from HUD for this project and in no event shall the COUNTY's financial contribution exceed the amount finally granted, released and approved by HUD for this project.
- I. Conflict of Interest. No officer, employee, or agent of the CITY or COUNTY who exercises any functions or responsibilities in connection with the planning and carrying out of the Block Grant Program, or any other person who exercises any functions or responsibilities in connection with the program, shall have any personal financial interest, direct or indirect, in the use of the funds provided pursuant to this Agreement, and the Parties shall take appropriate steps to assure compliance. The Parties will insure that no contractor, subcontractor, contractor's employee or subcontractor's employee has or acquires any interest, direct or indirect, which would conflict in any manner or degree with the performance of his services.
- J. Insurance. The CITY will bear the risk of loss from fire, extended coverage, and will purchase and maintain property insurance on all affected CITY property. The CITY will bear the risk of loss from accidents coverable by owner's liability insurance and may, at its option, maintain such insurance. If applicable, the CITY shall be required to maintain flood insurance. Each party agrees to maintain insurance, or self-insurance, in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.270.
- K. Nondiscrimination. The CITY and the COUNTY agree to comply with all Federal, State, and local laws prohibiting discrimination on the basis of age, sex, marital status, race,

INTERGOVERNMENTAL AGREEMENT between Clackamas County and the City of West Linn  
Senior Adult Community Expansion Project

creed, color, national origin, familial status, or the presence of any mental or physical handicap. These requirements are specified in ORS chapter 659; Section 109 of the Housing and Community Development Act of 1974; Civil Rights Act of 1964, Title VII; Fair Housing Amendments Act of 1988; Executive Order 11063; Executive Order 11246; and Section 3 of the Housing and Urban Development Act of 1968; all as amended; and the regulations promulgated thereunder.

- L. Handicapped Accessibility. The CITY agrees that all improvements made under this Agreement shall comply with standards set for facility accessibility by handicapped persons required by the Architectural Barriers Act of 1968, as amended. Design standards for compliance are contained in 24 CFR 8.31-32 and the document entitled Uniform Federal Accessibility Standards published by HUD in April, 1988 as a joint effort with other Federal agencies.
- M. Nonsubstituting for Local Funding. The CDBG funding made available under this Agreement shall not be utilized by the CITY to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of funds under this Agreement.
- N. Evaluation. The CITY agrees to participate with the COUNTY in any evaluation project or performance report, as designed by the COUNTY or the appropriate Federal department, and to make available all information required by any such evaluation process.
- O. Audits and Inspections. The CITY will ensure that the COUNTY, the Secretary of HUD, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to all books, accounts, records, reports, files, and other papers or property pertaining to the funds provided under this agreement for the purpose of making surveys, audits, examinations, excerpts, and transcripts.
- P. Acquisition. If completion of the project requires acquisition of any real property the parties agree to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended.
- Q. Change of Use. The CITY agrees to comply with applicable change of use provisions contained in 24 CFR 570.505 (refer to Attachment C).
- R. Reversion of Assets. Upon expiration or termination of this Agreement, CITY shall transfer to County any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. Also for any real property under CITY'S control that was acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to CITY in the form of a loan) in excess of \$25,000 shall ensure said real property is either:
  - 1. Used to meet one of the National Objectives in CFR 570.208 for the term of this Agreement; or
  - 2. Not used to meet on the National Objectives for the term of this Agreement, in which event, the CITY shall pay to COUNTY an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property.

**VI. Amendment**

This Agreement may be amended at any time with the concurrence of both Parties. Amendments become a part of this Agreement only after the written amendment has been signed by both Parties.

**VII. Term of Agreement**

- A. This Agreement becomes effective when it is signed by both Parties.
- B. The term of this Agreement is a period beginning when it becomes effective and ending fifteen (15) years after completion of the PROJECT.
- C. This Agreement may be suspended or terminated prior to the expiration of its term by:
  - 1. Written notice provided to the COUNTY from the CITY before any materials or services for improvements are procured, or;
  - 2. Written notice provided by the COUNTY in accordance with 24 CFR 85.43, included as Attachment D, resulting from material failure by the CITY to comply with any term of this Agreement, or;
  - 3. Mutual agreement by the COUNTY and CITY in accordance with 24 CFR 85.44.
- D. Upon completion of improvements or upon termination of this Agreement, any unexpended balances of CDBG funds shall remain with the COUNTY.

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**THE CITY OF WEST LINN**

**CLACKAMAS COUNTY**

Chair: John Ludlow  
Commissioner Jim Bernard  
Commissioner Paul Savas  
Commissioner Martha Schrader  
Commissioner Tootie Smith

Signing on Behalf of the Board.

  
Chris Jordan, City Manager

\_\_\_\_\_  
Cindy Becker, Director  
Department of Health, Housing & Human Services

6/17/2014  
Date

\_\_\_\_\_  
Date

# ATTACHMENT A

## COMMUNITY DEVELOPMENT BLOCK GRANT ANNUAL MEASURES REPORT

FOR THE PERIOD: JULY 1, \_\_\_\_\_ TO JUNE 30, \_\_\_\_\_

### Project Name: West Linn Senior Adult Community Center Expansion Project – West Linn

The Adult Senior Center Project is a Low-Mod Limited Clientele Activity – Presumed Benefit. The performance measure will be the number of seniors accessing the senior center for nutrition, services and activities.

Total Number Assisted (H or P)	Total of Columns C, D, and E	Income Categories			Female Headed Households
		Low/Mod (80% - 51%)	Very Low (50% - 30%)	Extremely Low (<30%)	
(A)	(B)	(C)	(D)	(E)	(F)

Choose all that apply:

# of persons \_\_\_\_\_ with new access this Public Facility or Infrastructure Improvement

# of persons \_\_\_\_\_ with improved access to Public Facility or Infrastructure Improvement

# of persons \_\_\_\_\_ with access to this type of Public Facility or Infrastructure Improvement

that is No Longer Substandard. Total Number of persons assisted: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Organization



**ATTACHMENT B**

**CDBG Project Matching Funds**

**For reporting to HUD at the end of the year, indicate the specific sources and amounts of matching funds for your ESG projects:**

2014-15 CDBG Funds	\$240,000
--------------------	-----------

<b>SOURCES OF LOCAL MATCH:</b>	
Other Federal (including pass-through funds, e.g. County CDBG, State FEMA, etc.)	
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

<b>State/Local Governmental Funding (e.g. State Housing Trust Funds, Local Assessment, etc.)</b>	
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

<b>Private (including recipient) Funding</b>	
Fund Raising/Cash	\$ _____
Loans	\$ _____
Building Value or Lease	\$ _____
Donated Goods	\$ _____
New Staff Salaries	\$ _____
Volunteers (\$5/hr)	\$ _____
Volunteer Medical/Legal	\$ _____
Other _____	\$ _____

Prepared By: (Print name)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## ATTACHMENT C

### Change of Use

#### Excerpt from 24 CFR Part 570

##### 570.505 Use of real property.

The standards described in this section apply to real property within the recipient's control which was acquired or improved in whole or in part using CDBG funds in excess of \$25,000. These standards shall apply from the date CDBG funds are first spent for the property until five years after closeout of an entitlement recipient's participation in the entitlement CDBG program or, with respect to other recipients, until five years after the closeout of the grant from which the assistance to the property was provided.

(a) A recipient may not change the use or planned use of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made unless the recipient provides affected citizens with reasonable notice of, and opportunity to comment on, any proposed change, and either;

(1) The new use of such property qualifies as meeting one of the national objectives in **570.208 (formerly 570.901)** and is not a building for the general conduct of government; or

(2) The requirements and paragraph (b) of this section are met.

(b) If the recipient determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify under paragraph (a)(1) of this section, it may retain or dispose of the property for the changed use if the recipient's CDBG program is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property.

(c) If the change of use occurs after closeout, the provisions governing income from the disposition of the real property in **570.504(b) (4) or (5)**, as applicable, shall apply to the use of funds reimbursed.

(d) Following the reimbursement of the CDBG program in accordance with paragraph (b) of this section, the property no longer will be subject to any CDBG requirements.

## ATTACHMENT D

### Excerpt from 24 CFR Part 85

#### §85.43 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

- (1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,
- (2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,
- (3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,
- (4) Withhold further awards for the program, or
- (5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after

termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to Debarment and Suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see §85.35).

#### §85.44 Termination for convenience.

Except as provided in §85.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either §85.43 or paragraph (a) of this section.

July 10, 2014

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of a Revenue Intergovernmental Agreement with the  
Workforce Investment Council of Clackamas County for Specialized Work Force Services

<b>Purpose/Outcomes</b>	Provides job preparation, case management and job placement for Clackamas County adults with challenges to employment.
<b>Dollar Amount and Fiscal Impact</b>	The total amount of this revenue agreement is \$242,000
<b>Funding Source</b>	Workforce Investment Council of Clackamas County; no County General Funds are involved.
<b>Safety Impact</b>	None
<b>Duration</b>	Effective July 1, 2014 and terminates on June 30, 2015
<b>Previous Board Action</b>	The original contract was approved by the Board of County Commissioners on May 27, 2010 agenda item #062713
<b>Contact Person</b>	Lori Mack 503-655-8843
<b>Contract No.</b>	CSCC 6869

Community Solutions for Clackamas County (CSCC) a division of the Health, Housing & Human Services (H3S) Department, requests approval of a Revenue Intergovernmental Agreement (IGA) between the Workforce Investment Council of Clackamas County and CSCC for specialized work force services designed for individuals leaving the correctional system, individuals managing a mental illness, and the long term unemployed.

The agreement provides for 1.0 FTE Job Development Specialist, support services and training funds for participants; and wage subsidies for employers to train our participants on the job. This agreement was approved by County Counsel on July 1, 2014.

**Recommendation:**

We recommend approval of this agreement and further recommend that Cindy Becker be authorized to sign on behalf of the Board of Commissioners.

Respectfully submitted,



Cindy Becker, Director

**PERFORMANCE CONTRACT #14-15-3  
FOR EMPLOYMENT & TRAINING SERVICES  
under the  
WORKFORCE INVESTMENT ACT of 1998**

This contract is authorized by the Workforce Investment Act of 1998 and is made and entered into between the Workforce Investment Council of Clackamas County (WICCO), an Oregon Nonprofit Corporation, that is exempt from income taxation under Internal Revenue Code Section 501(c)(3), and

Community Solutions for Clackamas County  
112 11<sup>th</sup> Street  
Oregon City, Oregon 97045

The purpose of this contract is to provide employment & workforce training services to Adult/Dislocated Workers in Clackamas County.

In consideration for the services to be provided by the Contractor for the period beginning **July 1, 2014 through June 30, 2015** the Contractor will be paid an amount up to **\$109,600 for Adult Services** and **\$121,400 for Dislocated Worker Services** and **\$11,000 in state general funds for Certified Work Ready Communities Services**. All payments will be made on a cost- reimbursement basis.

Total amount of this contract shall not exceed **\$242,000** except as amended.

The parties, by their signatures, agree to comply with all the terms of this contract including those sections and attachments listed below.

Section A - General Provisions  
Section B - Project Description/Scope of Work  
Section C - Fiscal Provisions & Budget  
Section D - Special Provisions  
Section E - Certification Regarding Debarment  
Section F - Certification Regarding Lobbying  
Attachment 1 - Detailed Budget

**WORKFORCE INVESTMENT COUNCIL  
OF CLACKAMAS COUNTY**

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Julie Hugo  
Board Chair

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Date

365 Warner Milne Rd., Suite 202  
Oregon City, OR 97045  
(503) 657-6644

Federal ID Number 93-1246270

**CLACKAMAS COUNTY**

Commissioner: John Ludlow  
Commissioner: Jim Bernard  
Commissioner: Paul Savas  
Commissioner: Martha Schrader  
Commissioner: Tootie Smith

Signing on Behalf of the Board:

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Cindy Becker, Director  
Dept of Health, Housing & Human Services

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Date

---

Maureen Thompson, Director  
Community Solutions for Clackamas  
County

---

Date

Federal ID Number: 96-6002286

**WORKFORCE INVESTMENT COUNCIL OF CLACKAMAS COUNTY CONTRACT**  
**SECTION A**  
**GENERAL PROVISIONS**

1. **Authority to Contract**

Contractor certifies that it possesses the legal authority under laws of the State of Oregon to enter into this contract by approval of its governing board which has authorized the execution of this contract.

2. **Debarment** 20 CFR 667.200 (e)

The Contractor, as a recipient of any Federal assistance funds, whether all or only a part of the funds are provided by the Workforce Investment Council of Clackamas County (WICCO), certifies by signature of this contract that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency (see Section E of this contract).

3. **Project Coverage**

The Contractor shall operate the WIA project and services described in Section B.

4. **Compliance**

Contractor will comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Work under this Contract. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with: (i) Title IV of the Civil Rights Act of 1964; (ii) section V of the Rehabilitation Act of 1973 (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

Agency's performance under this contract is conditioned upon Contractor's compliance with the provisions of ORS Chapters 279A, 279B, and 279C, which are incorporated by reference herein. Contractor will ensure that the language "equal opportunity employer/program" and "auxiliary aids and services are available upon request to individuals with disabilities" appear on each work product in both English **and Spanish**. Contractor will ensure that it does not discriminate on the basis of any of the protections covered by the Workforce Investment Act and the regulations set forth at 29 CFR part 37.

Additionally the following special terms apply to this contract promulgated by the funding source and cited Federal Code:

- 20 CFR 667.210(g) *Nepotism*. No individual may be placed in a WIA employment activity if a member of that person's immediate family is directly supervised by or directly supervises that individual.
- 20 CFR 667.260 *Construction, purchase and renovation of real property*: Notwithstanding the exceptions listed in subsection 260 (b-d), WIA title I funds provided under this contract must not be spent for construction or purchase of facilities without prior approval from the agency.
- 20 CFR 667.262 *Employment generating activities* WIA funds may not be spent on employment generating activities, economic development activities, investment in revolving loan funds, capitalization of businesses, investment in contract bidding resource centers, and similar activities that are not directly related to training for eligible individuals

- 20 CFR 667.264 *Prohibited activities*: WIA title I funds must not be spent on: (1) The wages of incumbent employees during their participation in economic development activities provided through a Statewide workforce investment system, (WIA sec.181(b)(1).); (2) Public service employment (WIA sec. 195(10)), except to provide disaster relief employment, as specifically authorized in section 173(d) of WIA.; (3) Expenses prohibited under any other Federal, State or local law or regulation. WIA funds must not be used for foreign travel. (WIA sec. 181(e). (4) Drug testing (WIA sec 181(f)
- 20 CFR 667.266 *Limitations on sectarian activities*: WIA title I financial assistance may not be spent on the employment or training of participants in sectarian activities.
- 20 CFR 667.268 *Business relocation service prohibitions*: (1) WIA funds may not be used or proposed to be used for: the encouragement or inducement of a business, or part of a business, to relocate from any location in the United States, if the relocation results in any employee losing his or her job at the original location; (2) no customized training, skill training, or on-the-job training or company specific assessments of job applicants or employees of a business or a part of a business that has relocated from any location in the United States, may be provided until the company has operated at that location for 120 days, if the relocation has resulted in any employee losing his or her jobs at the original location.
- 20 CFR 667.270 *Employee displacement prohibitions* (a) A participant in a program or activity authorized under title I of WIA must not displace (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits) any currently employed employee. (b) A program or activity authorized under title I of WIA must not impair existing contracts for services or collective bargaining agreements. When a program or activity would be inconsistent with a collective bargaining agreement, the appropriate labor organization and employer must provide written concurrence before the program or activity begins.(c) A participant in a program or activity may not be employed in or assigned to a job if: (1) Any other individual is on layoff from the same or any substantially equivalent job; (2) The employer has terminated the employment of any regular, unsubsidized employee or otherwise caused an involuntary reduction in its workforce with the intention of filling the vacancy so created with the WIA participant; or (3) The job is created in a promotional line that infringes in any way on the promotional opportunities of currently employed workers.
- WIA sec 195(2) WIA funds shall only be used for activities that are in addition to those that would otherwise be available in the local area in the absence of such funds.
- WIA sec 195 (5) No person or organization may charge a fee to any individual for referral to or placement in training or employment programs

The Contractor agrees to comply with the Uniform Administrative Requirements; 29 CFR Part 97, for State/Local Governments and Indian Tribes; or 29 CFR Part 95, for Institutions of Higher Education, Hospitals and other Non-Profit Organizations and Commercial Organizations.

The Contractor agrees to comply with all applicable Oregon State and Clackamas County laws, rules and regulations, as well as State and WICCO policies, procedures, and regulations.

The Contractor shall comply with the Workforce Investment Act (WIA) as amended and all subsequent amendments thereto and all implementing regulations.

5. **Indemnity Clause** PL 105-220 Sec. 184; 20 CFR Subpart G.

To the extent permitted by the Oregon Constitution, Article XI, Sections 7 and 10, and to the extent permitted by the Oregon Tort Claims Act or provided for in private insurance contracts, Contractor agrees to indemnify, defend, and hold WICCO and Clackamas County harmless from all damages, losses, and expenses including (but not limited to) attorney fees, and to defend all claims, proceedings, lawsuits, and judgments arising out of or resulting from Contractor's negligence in the



performance of or failure to perform under this contract. Either party to this contract shall not be required to indemnify or defend the other party for any liability arising out of wrongful acts of its own officers, employees, or agents.

Any act or omission by Contractor which results in repayment of funds to the funding source shall be the responsibility of Contractor. Contractor agrees to repay such funds and to defend and indemnify WICCO as set forth above.

6. **Records Control** PL 105-220; 29 CFR Parts 37, 95.53, 97.42; ORS Chap. 192, ORS 660.300-660.339; OAR 151-020-0060 – 151-020-0090; CCWD WIA Policy #589-40.4

(A) The Contractor shall establish maintain and safeguard all participant files, records, project records, and documents. Contractor shall ensure confidentiality of participant information as provided in State law and administrative rules. Records must be sufficient to justify all payments claimed and paid under this contract. Contractor and any subcontractor will incorporate into their management systems the following procedures for the management of all WIA records.

1. Retain all records and documents pertinent to the grants, grant agreements, interagency agreements, contracts or any other award, including financial, statistical, or other pertinent records, and supporting documentation, for a period of at least three (3) years after the original submittal by the State of Oregon Department of Community Colleges and Workforce Development (CCWD) of the final expenditure report (closeout) for that funding period to the federal Department of Labor, the awarding agency;
2. Retain all records of non-expendable property for a period of at least three years after final disposition of property;
3. Retain indirect cost records such as computations or proposals, cost allocation plans, and supporting documentation for three years from the date the indirect cost rate package is submitted for negotiation. If not submitted for negotiation, the three-year period identified in (1) above shall apply;
4. Retain all records pertinent to applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment for a period of not less than three years from the close of the applicant program year. Such records must be maintained as whole record system;
5. Retain records regarding complaints and action taken on the complaints for a period of not less than three years from the date of resolution of the complaint;
6. Retain all records beyond the required three years if any litigation or audit has begun or a claim is instituted involving the grant or agreement covered by the records. The records shall be retained until the litigation, audit, or claim has been resolved or the required three years, whichever period is longer.

In the event Contractor or subcontractor is unable to keep their records, Contractor shall notify WICCO who will take custody and be responsible for the maintenance and retention of the records.

**Disposal**

No records addressed in this policy shall be disposed of without instruction from or approval of WICCO. WICCO will provide instructions and timelines for disposing of records. Any records that

are confidential in nature, including participant records, must be shredded, or similarly destroyed. Non-confidential records may be recycled. If there is any outstanding litigation or audit claim begun on records prior to termination of retention, the records will be retained until resolution of litigation or audit claim.

- (B) At any time during normal business hours and as often as WICCO shall deem necessary, the Contractor shall make available for examination all its records relating to all matters covered by this contract. WICCO, the Oregon State Workforce Investment Administration, The U.S. Department of Labor, the Comptroller General of the United States, their duly authorized representatives, or representatives of other governmental funding sources contributing through WICCO to activities under this contract shall have the authority to audit, examine, and make excerpts or transcripts from any books, documents, papers, records, files, forms, or other documents of the Contractor which are necessary to permit tracing of participant activity and funds to a level of expenditure adequate to insure that the funds have not been spent unlawfully, and to determine compliance with all applicable rules and regulations, and the provisions of this contract including the proper allocation of costs to this contract.
- (C) The Contractor shall provide to WICCO upon request, sufficient staff time necessary to aid in the performance of contract related (a) project research, (b) project evaluation, (c) project monitoring, and (d) completion of project fiscal review and audits.

## 7. **Contracting**

Contractor shall not assign or subcontract in whole or in part any contractual duties unless the Subcontractor agrees to indemnify WICCO and the Clackamas County Board of Commissioners (BCC) in accordance with the terms of paragraph 5, above and:

- (A) Section B-Project Description provides for contracting, or
- (B) WICCO has provided advance written approval of subcontracting.

## 8. **Termination Clauses**

### (A) Termination for Cause

WICCO retains the right upon written notice of default to suspend funds and activities under this contract and to terminate this contract in whole or in part for cause if Contractor fails to perform in a timely and proper manner its obligations, fails to make sufficient progress towards its objectives, or violates any of the covenants, agreements, or stipulations of this contract, or fails to meet performance standard as outlined in Section B-Project Description of this contract.

Any such termination of this contract shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

### (B) Other Terminations

Either party to this contract may elect to terminate the contract without cause upon providing written notice of intent to terminate to the other party thirty (30) calendar days prior to the date of such termination.

WICCO may terminate this contract effective upon written notice to the Contractor, or at such later date as may be established by WICCO, under any of the following conditions:

- (i) If WICCO's funding from federal, state, or other sources is not obtained and/or sustained at levels sufficient to allow for purchase of services as specified herein, then this contract

may be terminated or modified to accommodate a reduction in funds. All allocable and allowable costs incurred by the Contractor under the terms of this contract shall be reimbursed up to and including the date of notice provided for herein.

- (ii) If federal and state regulations or guidelines are modified, changed, or interpreted in such a way that services are no longer allowable or appropriate for purchase under this contract or WICCO is no longer eligible for the funding proposed for payment as authorized by this contract.
- (iii) If any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this contract is for any reason denied, revoked, or not renewed.

## 9. **Modifications**

- (A) It is a condition for receipt of funding under the terms of this contract that the Contractor agrees to accept unilateral modifications to this agreement whenever there has been a change in any Federal statute, rule, regulation, order, or other relevant authority under which this document is written.
- (B) Contractor may request a modification to this contract, which shall be subject to the approval of WICCO. All requested Contract Modifications must be presented in writing to WICCO no later than fifteen (15) calendar days prior to the beginning of the affected quarter. All Contract Modifications shall be within the sole discretion of WICCO.
- (C) Contractor must receive prior written approval from WICCO for a Contract Modification prior to initiating changes in program design and/or program objectives.
- (D) WICCO may issue Contract Modifications, including unilateral Contract Modifications, under the following circumstances:
  - (i) To incorporate administrative changes into the contract;
  - (ii) When authorized to do so by federal or state law, rule, regulation, or terms of this contract;
  - (iii) When there has been a change in any federal or state statute, rule, regulation, order, or other relevant authority;
  - (iv) As necessary to implement policy.
- (E) Contract Modifications shall not become a part of this contract until they are signed and executed by WICCO. Nothing in this section shall be construed to allow expenditures under this contract to exceed the total dollar amount authorized by this contract. Contract Modifications will follow rules and procedures established by WICCO to comply with U.S. Department of Labor requirements.
- (F) Contractor assures that any and all subcontracts or agreements entered into as a result of this contract shall contain the limitation regarding unilateral modification as set forth in paragraph 9(A), above.

## 10. **Non-discrimination and Accessibility** PL 105-220 Sec. 188; CFR Part 33 & 37; ORS Ch. 659

Contractor will comply with all Federal, state and local laws, regulations, executive orders and ordinances regarding nondiscrimination and equal opportunity provisions applicable to work under this contract. Contractor expressly agrees to comply with the Equal Employment Opportunity provisions in Executive Order (E.O.) 11246, as amended by E.O. 11375 and supplemented by the

requirements of 41 CFR Part 60. Contractor assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the Workforce Investment Act of 1998 (WIA), including the Nontraditional Employment for Women Act of 1991; Title VI of the Civil Rights Act of 1964, as amended; section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; Title IX of the Education Amendments of 1972, as amended; and with all applicable requirements imposed by or pursuant to regulations implementing those laws, including but not limited to 29 CFR, Part 33 & 37. The United States has the right to seek judicial enforcement of this assurance. Contractor will not discriminate against, nor deny employment or services to any person on the grounds of race, creed, color, religion, sex, national origin, marital status, expunged juvenile record, age (except as provided by WIA regulations), disability, citizenship, or political affiliation or belief.

Additionally, Contractor shall comply with the accessibility provisions of Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act.

#### **11. Collective Bargaining Agreements**

Contractor certifies that this contract does not violate any collective bargaining agreements to which it is a party.

#### **12. Reference Documents**

WICCO will provide, within (30) thirty days following execution of this contract, copies of WIA laws, regulations, and other WIA issuances referenced in this document.

#### **13. Certificates of Insurance:**

As evidence of the insurance coverages required by this contract, Contractor shall furnish a certificate of insurance to WICCO. Any certificate of insurance required under this contract shall specify parties who are Additional Insureds and must include a provision requiring notice to WICCO in the event of cancellation. Insurance coverages required under this contract shall be obtained from insurance companies authorized to do business in the State of Oregon. If Contractor is self-insured under the laws of the State of Oregon, Contractor shall provide appropriate declarations of coverage.

Contractor shall not cancel, materially change, or not renew insurance coverages affecting this contract. Contractor shall notify WICCO, in writing, of any material reduction or exhaustion of aggregate limits. Should any policy be canceled before final payment by WICCO to the Contractor, and should Contractor fail to immediately procure other insurance as specified, WICCO reserves the right to procure such insurance and to deduct the cost thereof from any sum due Contractor under this contract. Failure to maintain the insurance coverages required herein, may result in termination of the contract.

Contractor shall not commence any work until Contractor obtains, at Contractor's own expense, all required insurance as specified below. Such insurance must have the approval of WICCO as to limits, form, and amount. The types of insurance Contractor is required to obtain or maintain for the full period of the contract are as follows:

- (A) Commercial General Liability insurance including contractual liability coverage with limits no less than \$1,000,000 combined single limit;

- (B) Automobile Liability Insurance, comprehensive form, with limits not less than \$500,000 combined single limit when using motor vehicles in performance of actions authorized under this contract;
- (C) Worker's compensation coverage consistent with the laws of the State of Oregon;
- (D) A fidelity or surety bond shall be purchased by the Contractor at Contractor's own expense in an amount to exceed the total amount of cash on hand at any time provided under this contract. The bond shall cover all persons who handle funds provided under this contract and shall extend beyond the contract termination dates to the contract close-out date.
- (E) Additional Insureds Clause. The liability insurance coverages required for the performance of this contract shall be endorsed to name Workforce Investment Council of Clackamas County AND Clackamas County AND the Oregon Department of Community Colleges & Workforce Development, as additional insureds with respect to the activities performed under this contract.

Nothing contained in these insurance requirements is to be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from Contractor's operation under this contract.

14. **Workers' Compensation** ORS 656.017

The Contractor and its subcontractors, if any, are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. The Contractor is also an independent contractor for purposes of the Oregon Workers' Compensation Law and is solely liable for Workers' Compensation coverage under this contract.

Unless specified elsewhere, when Contractor places or employs participants in subsidized jobs the participants shall be provided with workers' compensation coverage, benefits, and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work.

15. **Tax Laws, MBE/WBE** ORS 279A.110 and Chapter 305.385

By execution of this contract, Contractor certifies under penalty of perjury that:

- (A) To the best of Contractor's knowledge, Contractor is not in violation of any tax laws described in ORS 305.380(4); and
- (B) Contractor has not discriminated against minority, women, or small business enterprises in obtaining any required contracts.

16. **Drug Free Workplace** (E.O. 12549; Sec. 5151-5160 Public Law 100-690, Title V, Subpart D; 41 U.S.C. 701 *et seq.*) and (29 CFR 98.600).

Contractor certifies that it has adopted and instituted a policy to insure a drug-free workplace in accordance with local, state and federal laws, rules, and regulations.

17. **Responsibility for Taxes, Unemployment Insurance, Workers' Compensation Coverage** ORS 30.265, ORS Chapters 279A, 279 B, and 279C

The service or services to be rendered under this contract are those of an independent contractor who is not an officer, employee, or agent (as those terms are used in ORS 30.265) of WICCO or of Clackamas County. Contractor is solely liable for any workers' compensation coverage, social security, unemployment insurance, retirement payments, and federal or state taxes due as a result of payments under this contract. Any subcontractor hired by Contractor shall be similarly responsible.

18. **Conflict of Interest** (ORS Chapter 244) and (29 CFR 95.42 and 29 CFR 97.36(b)(3))

Contractor, its officers, employees or agents, shall avoid all activities, which constitute an improper conflict of interest under local, state or federal laws, rules, or regulations.

19. **Certification Regarding Lobbying** 31 U.S.C. Sec. 1352

Contractor certifies that no Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions (see Section F of this contract).

Contractor shall require that the language of this Certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

20. **Publicity and Public Information**

Whenever written, magnetic media, electronic, or verbal information related to the services provided pursuant to this contract is distributed to the media or directly to the general public, another agency or governmental audience, whether such information is solicited or unsolicited, the Contractor shall acknowledge and name the Workforce Investment Council of Clackamas County and the Awarding Agency as providing funding for the services provided through this contract.

All advertisements or recruitment materials must contain the following language: "An equal opportunity employer/program" and "auxiliary aids and services are available upon request to individuals with disabilities" appear on each work product in both English **and Spanish**.

21. **Billings and Payments to Contractor**

WICCO shall reimburse the Contractor, upon submittal and approval by WICCO, of a written invoice. Contractor shall base all costs claimed on allocable, allowable, and reasonable expenses incurred pursuant to this contract as determined under local, state, and federal laws, including applicable Office of Management and Budget Circulars. Payments will be made within thirty (30)

calendar days following receipt of written invoice on forms and with backup documentation as listed in Section C. The invoice format will be provided by WICCO.

At the discretion of WICCO, payments may be suspended, withheld, or disallowed if participant tracking documents, performance reports, or financial reports (including billings and matching share documents) specified in Sections B, C, and D of this contract are not submitted on the proper forms within the agreed upon time frames.

## **22. Audits**

Unless otherwise directed by WICCO, Contractor shall arrange for the performance of a financial and compliance audit of funds received under this contract in accordance with the Office of Management & Budget Circular A-133 (and the Single Audit Act of 1984, P.L. 98-502, and OMB Circular No. A-128, "Audit Requirements for State and Local Governments,)", 50 Fed. Reg. 19114.

Contractor shall submit the report of such audit to WICCO no later than thirty (30) calendar days after receipt of the report or within one hundred twenty (120) calendar days following the close of the Contractor's fiscal year, whichever is sooner.

## **23. Equipment Purchase and Tracking**

All purchases must comply with the applicable OMB Circulars, Uniform Administrative Requirements, and WICCO policies. Equipment purchases with an acquisition cost of \$5,000 or more per unit require prior approval from WICCO and Awarding Agency.

Unless otherwise specified, ownership and title of all non-expendable personal property and equipment purchased with funds provided under this contract rests with WICCO and is vested in the U.S. Department of Labor and/or State of Oregon. WICCO may take possession of all such equipment and property at any time during or upon termination of this contract.

Contractor shall maintain a current inventory of all WIA property in its custody with an individual purchase price of \$5000 or more, and shall implement adequate maintenance procedures to keep such property in good condition. Further, Contractor shall conduct an annual inventory of equipment and properties purchased with contracted funds and submit a list of same to WICCO with the final invoice. All such property purchased under this contract shall be returned to WICCO within thirty (30) days after the contract has terminated, unless otherwise authorized by WICCO.

## **24. Patent and Copyrights**

All patent, copyrights, and other intellectual property pertaining to products produced with funds under this contract shall be the property of the Department of Labor, the State of Oregon, or WICCO as required by local, state, and federal laws, rules, or regulations.

## **25. Corrective Action**

All activities conducted under this contract will be monitored by WICCO. In addition, the Contractor shall develop and maintain a mechanism for the continuous monitoring of all activities conducted pursuant to this contract.

WICCO may issue a Notice of Corrective Action for any deviations from the contract provisions or the planned performance in Section B. Within fifteen (15) calendar days of receipt of the Notice of Corrective Action, Contractor shall respond by submitting to WICCO a completed written

Corrective Action Plan. WICCO will determine the appropriateness of the Contractor's Corrective Action Plan and notify the Contractor in writing within fourteen (14) calendar days if the plan is not satisfactory. Thereafter, WICCO, at its own option and within its own reasonable discretion, may terminate the contract, establish a Corrective Action Plan on its own accord, or follow the procedures set forth in Section B regarding performance expectations.

WICCO may terminate the contract, in whole or in part, if the Contractor fails to respond to the Notice of Corrective Action within fifteen (15) calendar days after receipt.

**26. Failure to Enforce**

Failure on the part of WICCO to enforce a provision of the contract shall not constitute a waiver of WICCO's rights to enforce such provision in the future or any other provision of this contract.

**27. Program Income**

In the event the program generates any program income, Contractor shall report to WICCO, the program income as a separate line item, by cost category, on the month following accrual. Program income is defined as "income received by the recipient or sub recipient directly generated by a grant or sub grant supported activity, or earned only as a result of the grant or sub grant". Such income is to be applied against the costs of the project.

**28. Implementation of Workforce Investment Act. (Public Law 105-220)**

This contract, its Exhibits, Attachments, Endorsements, Changes, or References incorporated is authorized under the federal Workforce Investment Act of 1998 (Public Law 105-220). The Contractor understands and agrees that modifications to this agreement will be necessary throughout the contract period as federal, state or local laws, rules, regulations or local ordinances necessitate change under this implementation. The Contractor is notified that such changes shall be bilaterally agreed upon or unilateral, as necessary pursuant to Section 9 above.

**29. Notices**

All contract-related notices shall be in writing and delivered by email, personal delivery, facsimile, or mailing postage prepaid to the address in this contract or other email, facsimile number or address either party may indicate pursuant to this section. Any notice given by email is effective upon the sender's receipt of confirmation generated by the recipient's email system. Any notice given by personal delivery is effective when actually delivered. Any notice delivered by facsimile is effective when a transmission receipt is generated if during recipient's normal business hours, or on the next business day, if outside recipient's normal business hours. Any notice mailed is effective three (3) days after mailing.

**30. Veteran's Priority Provisions PL 107-288 Sec. 188; 20 CFR Part 1010, TEGL No. 10-09**

The Jobs for Veterans Act requires priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program directly funded, in whole or in part, by DOL. In circumstances where a choice must be made between two qualified candidates for a service, one of whom is a veteran or eligible spouse, the veterans priority of service provisions require that the veteran or eligible spouse be first provided that service. To obtain priority of service, a veteran or spouse must meet the program's eligibility requirements. Contractor agrees to comply with DOL and ETA guidance on implementing priority of service for veterans and eligible spouses.



**WORKFORCE INVESTMENT COUNCIL OF CLACKAMAS COUNTY CONTRACT  
SECTION B  
PROJECT DESCRIPTION**

**1. Executive Summary**

This contract is between the Workforce Investment Council of Clackamas County and Community Solutions for Clackamas County (CSCC) and is funded with Title I of the Workforce Investment Act of 1998 (WIA) funds and other discretionary grants. This contract calls for the delivery of workforce development services to adults and dislocated workers who live and/or work in Clackamas County in order to help them find jobs, keep jobs and advance in jobs, with a special priority of service provided to veterans and eligible spouses.

**2. Relationship to the Workforce Investment Council of Clackamas County's Local Strategic Plan and Local Strategic Priorities**

The Local Strategic Plan, which is aligned to the Oregon's Workforce Investment Board's Strategic Plan, outlines priorities for both adult and dislocated worker services for both rural and urban populations. The services in this contract will support the following 2013 – 2015 Local Strategic Plan priorities:

• **Sector Strategies**

This approach to working with employers focuses on analyzing and identifying strategies to meet the needs of employers and support job seekers in obtaining jobs in specific, cross regional, growing industry sectors (including manufacturing and health care). This work will include strong partnership with neighboring workforce regions through the Columbia Willamette Workforce Collaborative.

• **Certified Work Ready Communities**

A community is identified as Certified Work Ready when a predetermined number of individuals obtain a National Career Readiness Certificate (NCRC) and employers prefer it in job postings. In Region 15 this involves reaching specific goals outlined in Section 5, National Career Readiness Certificate.

• **System Innovation**

Three primary system innovation focuses were identified by the Region 15's Local Workforce Investment Board.

- Assessment - Identify current skill levels of job seekers and training participants through informal interviews, career advisement, occupation and skills explorers, and foundational skills review.
- Career readiness and preparation - Connect participants to career exploration, pathways and certificate programs.
- Job placement via sector engagement - Place participants with the skills and qualifications to meet the needs of employers in the identified sectors through job development, on the job training, and work experiences.

The services in this contract will also support the following 2012-2014 local strategic priorities also identified by the Board:

*Create opportunities for jobs and apprenticeship*

- Promote and invest in skill development solutions to fill skill gaps
- Encourage business mentoring in schools
- Maintain partnerships with labor
- Actively participate in attracting, retaining and growing businesses
- Promote and support work-based experiences

*Train and/or place jobseekers in high demand occupations*

- Implement and coordinate best practices for skill identification, job seeking and placement
- Maintain alignment with priority sectors identified by county, region and state
- Facilitate career readiness, preparation and career pathways
- Implement best practices for skill identification and development

*Attract resources to the county and region*

- Share information and promote communication flow among partners
- Diversify funding
- Advocate at the state and federal level for workforce investment funding
- Participate in area economic development and chamber of commerce organizations

*Cultivate and prioritize key industries*

- Align with area economic development organizations
- Review industry data on a regular basis to inform decisions
- Connect with and convene industry groups regularly
- Actively participate in broad regional collaboration to address industry workforce needs

**3. Worksource Clackamas Annex**

The Workforce Investment Council serving Clackamas County, along with other funding partners, expect that through this contract CSCC will manage and oversee the WorkSource Clackamas Annex (WSC Annex). Through braided funding, the WSC Annex targets job seekers who face challenges to finding employment and is also open to the public. Job seekers who utilize the WorkSource Clackamas services through the WSC Annex must complete the WorkSource Oregon Welcome process. Staff that work directly with employers are expected to represent the funding partners and WorkSource Clackamas. It is expected that Business Services staff focus on specific sectors and work closely with other workforce staff in the region to ensure non-duplication of services to employers.

**4. WIA Formula Funds Program Overview**

CSCC will provide career development, training and employment services for Clackamas County residents living with a mental illness, criminal backgrounds, and/or who are experiencing long-term (18 months or longer) unemployment. The work under this contract will help individuals who have not typically accessed the broader WorkSource system to be able to enter and succeed in work. This project provides the services and supports that those individuals need to access WIA services and to enter and maintain good jobs.

This plan promotes and supports skill development of the local workforce through the local integrated model of service provision provided at the WorkSource Clackamas Annex, 104 11th Street, Oregon City, OR. At this location, under this integrated model, customers have access to skill development services throughout the week, with the exception of holidays. The Oregon Workforce Investment Board has adopted a policy that all Oregonians are potentially subject to job loss in today's economy, and therefore, Oregonians cannot be considered self-sufficient. This policy, which the Workforce Investment Council of Clackamas County adopts, allows all job seekers to be registered into the program, regardless of employment status. This integrated model is staffed locally by Oregon Employment Department (funded by DHS) and CSCC working in cross functional teams.

The integrated model is built on the following components:

- Using WorkSource Oregon's Management Information System customer registration process to register all WorkSource Clackamas customers into a performance pool.
- Skill development to match customer skills with self-sufficiency needs, industry needs, job profiles and a skill development/training opportunity.
- The enhancement of the Business and Employment Services team to provide the welcome/skills development teams with a better understanding of the needs of industry and reach into the job seeker pool to make quality referrals to companies.

CSCC will be responsible for the following tasks relative to the Integrated Service Delivery Model:

- Outreach and Recruitment: CSCC will provide outreach to recruit participants. New participants could also come as referrals from WorkSource Clackamas staff or from other CSCC programs.
- Customer Registration and Initial Skills Review: CSCC staff will assist with the initial eligibility determination through the State's WorkSource Oregon's Management Information System (WOMIS). CSCC staff will work as members of the Welcome Team to support participants in completing the debrief process which includes customer registration and completion of iMatchSkills registration at the WorkSource Clackamas Annex. CSCC staff will meet with the participant upon completion to discuss next steps to begin the development of an employment and training plan.
- Individual Employment and Training Plan: Ongoing WIA eligibility is the responsibility of CSCC. Upon completion of the customer registration, CSCC will work with participants to develop an employment and training plan that takes into consideration the participant's goals, their current skill level and aptitude, and a plan for accomplishing their goals that will lead to employment.
- Individualized Workforce Preparation and Job Search: Based on the Individual Employment and Training plan, individuals may enter job skills training if needed to becoming employment ready. CSCC will provide support to ensure participants are prepared to enter the labor market.
- Employment and Employment Retention Services: Contractor will provide job search and placement services. Once a participant becomes employed, the contractor will keep in contact with the new employee to ensure job retention and advancement gains are attained and entered into the data management system. CSCC staff working with businesses will share information with partners to reduce duplication of service.

CSCC is expected to actively participate in WorkSource Clackamas Leadership Team meetings, Clackamas Menu of Resources and Services team meetings, service provider meetings and WorkSource Clackamas partner meetings.

CSCC WIA program policies that are more restrictive than the Workforce Investment Council of Clackamas County's policies must come to the Workforce Investment Board via the Workforce Investment Council of Clackamas County Program Manager for review and approval.

Additional service design elements are as follows:

1. The Workforce Investment Act (WIA) includes a provision for adult and dislocated worker participants to receive training services from providers and programs that have met specific standards and expectations in order to be on the State Eligible Training Provider List.

Occupations considered "in-demand" or with significant annual openings or vacancies will be the priority for Individual Training Account (ITA) funding. CSCC will use the Workforce Investment Council of Clackamas County's ITA Strategic Occupation List which lists occupations that can be funded with ITAs. Occupational training programs and training

providers funded with ITAs must be on the Statewide Eligible Training Provider List. Exceptions to the ETPL or to the Strategic Occupation List must be brought before the Workforce Investment Council of Clackamas County Program Manager for review and consideration prior to funding.

CSCC will track the number of ITAs for each occupation and will provide the Workforce Investment Council of Clackamas County with a report when/if requested which lists the number of ITAs for each occupation that has been funded. No more than 10% of ITAs can be funded for any one occupation without bringing to the Workforce Investment Council of Clackamas County Program Manager for review and consideration prior to funding.

## 2. Support Services

WIA includes provisions for participants to receive supportive services payments for the purpose of addressing barriers to employment and training. These services are provided when they are not available through other agencies and are necessary for the individual to participate in workforce activities.

These services may not be accessed until a customer has been registered. Depending on results of the assessment and the individual employment plan developed by the case manager/advisor, support services will be approved based on reasonable and allowable costs, individual needs, and the availability of funds. Contractor shall adhere to the Workforce Investment Council of Clackamas County support services policy.

## 3. Job Search Workshops:

At the WorkSource Clackamas Annex, CSCC staff will design, market and deliver dynamic, engaging, fast-paced and effective job search and employment retention and advancement workshops to enrolled WIA participants with a goal of instilling in attendees skills, hope and motivation resulting in the acquisition of a sustainable job. Half to full day workshops will cover job search, retention and advancement topics such as applications and resumes, networking, interviewing techniques, and the skills needed to succeed at a job. At least once per month, CSCC will work with WorkSource Clackamas partners to host the Employer Spotlight, featuring local employers who will share valuable information with job seekers.

CSCC will work closely with the Workforce Investment Council of Clackamas County regarding the design and scheduling of workshops and Employer Spotlight. CSCC will also work with the existing Clackamas Menu of Resource and Services (CMRS) advisory team and the Menu of Resources and Services coordinator to ensure the workshops being delivered are meeting the demands of customers.

CSCC will deliver 15 hrs of workshops per week and one-2 hour Employer Spotlight session per month. Employers for Employer Spotlights will be secured a minimum of 3 weeks prior to each Spotlight, and the Spotlight promoted a minimum of 2½ weeks prior to each Spotlight. Employer Spotlight-specific marketing will include lobby Power Point, fliers, email promotion and other methods. Content and schedule will be developed through consultation between the Workforce Investment Council of Clackamas County and CSCC, with final approval by the Workforce Investment Council of Clackamas County. Additionally, CSCC will work with WorkSource Clackamas to develop and promote Employer Spotlights to be held at WorkSource Clackamas throughout the year.

Workshops, including participant materials, and travel expenses are included in this contract. CSCC will use the iTRAC management information system for tracking participant attendance in workshops.

CSCC will evaluate the satisfaction of attendees at the end of every workshop to help ensure quality. All original evaluations will be provided to the Workforce Investment Council of Clackamas County, as well as a monthly summary of evaluation scores. CSCC will work with the Workforce Investment Council of Clackamas County regarding the design of this evaluation form. It is expected that the design of these workshops will result in increased job placements for WIA participants.

CSCC will be responsible for marketing workshops and events, in coordination with WorkSource Clackamas and the Workforce Investment Council of Clackamas County, to ensure there is an average of 7 attendees per workshop, including Employer Spotlight. If attendance of any workshop falls below the expected average, CSCC, CMRS and the Workforce Investment Council of Clackamas County will discuss possible solutions. The Workforce Investment Council of Clackamas County will make the ultimate decision of workshop design and delivery.

CSCC must notify the Workforce Investment Council of Clackamas County's Program Manager prior to cancellation of any workshop. CSCC must also notify the Workforce Investment Council of Clackamas County of any changes to the workshop schedule, workshop curriculum, or trainer.

The Workforce Investment Council of Clackamas County's Program Manager will monitor, in person, CSCC workshops at least annually and will meet with the CSCC Program Manager to review the Workforce Investment Council of Clackamas County's completed observation form. The Workforce Investment Council of Clackamas County's Program Manager may require curriculum change or removal and replacement of workshops. In the event the workshop trainer receives low overall ratings, the CSCC Program Manager will be responsible for addressing and remedying the issue.

CSCC will work with the Oregon Employment Department to coordinate and promote the workshops, events and programs at the WorkSource Clackamas Annex.

Workshop Performance Outcomes for Program Year 2013

The expectation for participants served is that they find employment, keep employment and advance in employment in order to become self-sufficient. The workshops designed are expected to meet the needs of the WIA Adult and Dislocated Workers in Region 15 and therefore are expected to be filled to capacity on an ongoing basis.

Performance Measure	Negotiated Level
Participant evaluations rated outstanding*	90%

\* Outstanding is defined as 80-100% on Workshop Evaluation forms

If performance falls below 80% of the negotiated level after 6 months, the Workforce Investment Council of Clackamas County will take the following actions with the Contractor:

- Report to the Workforce Investment Council of Clackamas County Board that performance has not been achieved.
- Meet with the Contractor to assess why the performance measure was not met, and create a written performance improvement plan.

If performance remains below 80% in the same performance standard after a year, the Workforce Investment Council of Clackamas County will take the following actions with the Contractor:

- Report to the Workforce Investment Council of Clackamas County Board that performance has not been achieved.
- Follow the considerations and recommendations of the Workforce Investment Council of Clackamas County Board of one of the following options:
  - Meet with the Contractor to assess why the performance measure was not met again and create a written corrective action plan.
  - Discontinue use of the Contractor due to inability to achieve required performance levels.

4. Participant Case Management File

CSCC will use the I-Trac and iMatchSkills management information systems for participant tracking. CSCC must maintain an electronic file for each participant which will detail the service history. Additionally, information must be maintained in such detail so as to support the expenditure of funds. All users will enter data in to the I-Trac system within 5 business days of the activity.

5. Performance Outcomes for Program Year 2014

At any given time CSCC during a quarter will serve 65 participants living with a mental illness, those with a criminal background, and/or are long-term unemployed in the Adult and Dislocated Worker WIA program. Individuals are also expected to have secondary barriers such as addiction histories.

Performance Expectations

Performance Measure	Level
Entered Employment Rate	57%
Employment Retention Rate	70%
Average Earnings	\$9,872

If performance falls below the negotiated level after the first year, the Workforce Investment Council of Clackamas County will take the following actions with the Contractor:

- When final performance numbers have been issued, report to the Workforce Investment Council of Clackamas County Board which performance measure(s) have been missed/achieved.
- Meet with the Contractor to assess why the performance measure(s) were not met and create a written performance improvement plan.

If performance remains below the negotiated level for a second year in a row, the Workforce Investment Council of Clackamas County will take the following actions with the Contractor:

- When final numbers have been issued, report to the Workforce Investment Council of Clackamas County Board that a performance measure(s) has been missed two years in a row.
- Review historical data and follow the considerations and recommendations of the Workforce Investment Council of Clackamas County Board from the following options:
  - Review historical data and make a determination if course corrections are adequate and grant additional year of the contract under a corrective action plan.
  - Require other appropriate measures designed to improve the performance of the Contractor.

- Discontinue use of the Contractor due to inability to achieve required performance levels.

## **5. Certified Work Ready Communities**

Oregon's National Career Readiness Certificate (NCRC) is nationally recognized and transferrable across the country and industries and documents an individual's skill level in three areas: Applied Mathematics, Reading for Information, and Locating Information. A soft skills component will be incorporated into the product at a later date by the State.

In an effort to meet statewide expectations, CSCC staff will promote and encourage participants to take the tests when appropriate. CSCC will proctor group internet-based and paper-pencil testing at special requests as directed by Workforce Investment Council staff. Proctors will be trained to ACT standards and follow all guidelines set by Region 15 and CCWD. NCRC testing days and times may change. Proctors will check participant's photo ID and WorkSource job seeker ID number which confirms the participant has been through the WOMIS registration system. CSCC will be required to enter testing completions into the I-Trac data management system and iMatchSkills. CSCC will assure successful completers receive their certificates and will keep a record of certificates distributed. CSCC will provide technical assistance to Oregon Employment Department and other organizations proctors when needed.

CSCC will provide total number of participants earning a National Career Readiness Certificate from the WorkSource Clackamas testing monthly. CSCC will also share strategies and activities used to reach the CWRC goals.

CSCC will also educate employers about the NCRC, how it can be used to screen for potential employees and ask employers to sign Letters of Support to prefer the NCRC in appropriate job listings.

CSCC will help the region become a Certified Work Ready Community by working towards the following goals from April 2014 to June of 2015::

- 2,880 Certificates
- 302 Letters of Support from employers

Staff will forward all signed letters to the Workforce Investment Council of Clackamas County and document which employers have signed letters in the company's iMatchSkills profile.

CSCC will submit one job seeker and one employer success story every quarter, using the Guide to Creating Certified Work Ready Community and NCRC Success Stories. At least one success story a year must be a video. The video can be done with a job seeker or employer who signed a Letter of Support to prefer the NCRC, and must follow the element requirements below:

- Data on the percent decrease in turnover
- Data on the percent savings/cost reduction in the hiring process
- Data on the percent training costs were reduced
- Data on the overall contribution to bottom-line profitability

## **5. Solutions to Work (July 1, 2012 – December 31, 2014)**

People released from incarceration within the corrections system have fundamental unmet needs that still exist with job placement, mental health care, residential treatment, accessible and affordable transportation and child care. Community Solutions for Clackamas County is the lead service provider for the *Solutions to Work* program funded by Department of Labor (DOL) Serving Adult Ex-offenders through Strategies Targeted to Characteristics Common to Female Ex-

Offenders Grant. *Solutions to Work* will serve a minimum of 250 individuals, with an emphasis on females, with multiple barriers leaving incarceration and returning to the Clackamas County community, over a 30-month period, beginning July 1, 2012.

#### Program Description

Community Solutions for Clackamas County will engage in highly-individualized case management and job development, client centered empowerment and self development, education and training, and workforce development services. A 16-week long cohort model will support participant engagement and a sense of belonging, essential to achieving performance goals.

- CSCC will offer program recruitment opportunities
- CSCC will conduct an Empowerment and Soft Skills Workshop series, Job Club and support groups. Each will have a group mentoring component. CSCC will make individual referrals, as appropriate, to the identified community mentoring programs, resources and other service providers. The Empowerment workshop series will last approximately five days. The Empowerment workshops, available to all program participants, will include, but not limited to, training on financial literacy; counseling about their civil rights (including issues related to criminal records and employment), workplace accommodations, if necessary, and assistance applying for jobs and Federal benefits such as Pell Grants, Food Stamps and Medicaid.
- CSCC will utilize Career Mapping and Resource Planning, a highly successful WorkSource tool that can effectively guide case management and skill development through person-centered planning.
- Regular meetings will be held with community supervision officers to reinforce the program, provide attendance progress reports, and to discuss specific participants as-needed.
- CSCC through Solutions to Work will provide a full array of education interventions and/or supports for participants to secure their high school diploma and/or GED equivalent, academic skills to achieve success in the work world, credentials to qualify for in-demand industries and/or non-traditional occupations, and access to a degree in higher education.
- Each Solutions to Work participant will be expected to spend, depending on their individual needs and learning style, at least 20% of their time working towards a program that will get them closer to a GED or certificate when appropriate.
- CSCC will involve participants in this process of developing next steps, education and training objectives, and realistic career goals. Individualized Career Plans will be created based on each participant's long-term career goals. Opportunities available to participants of the program will be suggested and used if and when they reinforce the ICP's employment goal and identify next steps for participants with their input. Participant strategies can include: (1) Apprenticeships through Oregon Tradeswomen, Inc.; (2) Credit retrieval, (3) Career and Technical Education (CTE); (4) Two Year Vocational (Career and Technical Education) degrees; (5) One Year Certificates; (6) Less than one year certificates; (7) Career Pathway Certificates; (8) National Career Readiness Certificate; (9) On the Job Training; and (10) Cooperative Work Experience.

The ICP builds on information gathered in the assessment and Career Mapping process. Plans include (1) General work and education history; (2) Completed career exploration, and (3) Assessments (could include career exploration workshops, online assessments, discussions with participants); (4) Employment goal, along with the steps and services needed



to achieve that goal; (5) Agencies that will provide resources (explored and exhausted), including cost and who will pay; and (6) Participant's responsibilities in carrying out the plan. The participant must fully support the ICP and be prepared for the next steps.

- CSCC will facilitate women's access to jobs and training in non-traditional occupations and sectors where women are under-represented. CSCC will work closely with the following in-demand industries for Clackamas County and the Portland Metro region.
  - Advanced Manufacturing-Metals and Machinery (welders, laborers and stock workers, assemblers).
  - Wholesale Trade (welders, sales reps, laborers and stock workers, shipping and logistics).
  - Nurseries and Greenhouses (landscape professionals, nursery grower, suppliers).
  - Wood Product Manufacturing (woodworkers/carpenters, laborers, stock workers, maintenance).
- Other demand industries include Health Care, Professional Business Services, Advanced Technology-High Tech, Manufacturing, and Trucking/Transportation and Distribution. Employment forecasts project thousands of positions to be hired in these industries.
- CSCC will be able to fund support services as indicated by the Workforce Investment Council of Clackamas County policy, when other resources have been explored or exhausted.

#### Eligibility

- Enrollment will include completed Welcome registration with WorkSource Oregon.
- While both men and women will be recruited for the program, the clear emphasis of messaging and recruitment will be female ex-offenders.
- CSCC will create outreach materials for *Solutions to Work*.
- CSCC will conduct the following recruiting efforts: in the jail weekly and in other correctional facilities when appropriate, contact community supervision officers (parole and probation), judges, service agencies (emphasis on those serving the eligibility traits listed below) and promote self-referral.
- CSCC will make sure eligible participants include:
  - (1) At least 18 years of age;
  - (2) Citizen of the U.S. or legal to work in the U.S.;
  - (3) Residing in Clackamas County;
  - (4) Convicted of a crime and sentenced to serve time in Clackamas County Jail or state facility, and who will be released within 90 days or has been released in the previous 180 days;
  - (5) Possess a government issued identification; and
  - (6) Have the ability to benefit from the services offered from the program;
  - (7) Be eligible and have a desire to work.

Individuals not appropriate for the program include those: (1) Refusing treatment, (2) Currently experiencing significant crisis (a threat to themselves or others), and (3) Who have committed a sexual crime against another, except for prostitution.

#### Enrollment

- CSCC will use the Solutions to Work: Participant Enrollment Assessment tool , customized to

capture all essential information needed to ensure the success of Solutions to Work that is reflected in the grant proposal. Every participant assessment should be completed and scored to determine risk factors necessary to enter the program. Case managers must narrate program eligibility based on the risk factors, scores, observation, and other pertinent information.

- CSCC will use the Disability Screening tool that identifies possible physical or mental impairments, learning and cognitive disabilities, and areas of struggle.
- CSCC will facilitate inmate access to services before release from incarceration, within the 90 days prior. CSCC case managers will conduct bi-weekly orientations and provide assessments every other week. One on one meetings are held to focus resource planning and supports that can be accessed after release. This early contact values the development of a trust relationship between the case manager and inmate.
- CSCC will perform a comprehensive assessment of each participant's strengths, skills, interests, aptitudes, and needs. An assessment tool developed by local WorkSource providers - *Career Mapping and Resource Planning* - will be used to guide development of career pathway options and the crafting of Individual Career Plans.
- CSCC will use online tools - the Oregon Career Information System (CIS) and other online tools (skill tests to indicate skill level in certain occupations). Paper-pencil assessments will also be used to assist the development of realistic career goals.

#### Retention

- After job entry, CSCC will provide follow-up services for at least 3-4 months to ensure that participants keep employment. CSCC will support problem-solving with both the new employee and the employer that, without intervention, may result in an employee quitting or losing their job.
- For all appropriate participants, CSCC will identify advancement opportunities within industries and occupations. A skill enhancement plan will be developed with newly employed participants.
- CSCC will maintain regular contact with participants to ensure retention in employment and/or school. This could include assistance in addressing work-related or school-related problems; assistance in securing better paying jobs or career development; furthering education; referrals to peer support groups; mentoring; and tracking progress made by participants in employment and/or education after training. These activities should be consistent with the ICP.
- Frequent contact will be expected during the training period and within 2-3 weeks after becoming employed. CSCC can visit the job site at the request of the employer or participant. Scheduling will be individualized.
- A progress evaluation will be completed by CSCC coupled with the client's self evaluation, after the client has been in the program for 8 weeks. The purpose of the evaluation is to provide the client with feedback about their progress and address any issues that could prevent the client from being successful in the workplace.
- CSCC will ensure positive participant outcomes and retention, bridging the time between being in the active program and the 3-4 month follow-up program.

The grant proposal Memorandum of Understanding describes all required partners and their responsibilities under this funded project. CSCC will actively work with the partners outlined in the MOU. Also, a number of additional partners have been secured to support the success of this project with a letter of support. CSCC will actively work with the partners who wrote letter of support.

### Performance

The Department of Labor has set goals for each of the long-term performance measures. These goals are targets for Community Solutions for Clackamas County to strive toward and may be adjusted with additional data. The goals for each indicator are as follows:

- **Enrollment Rate:** defined as the number of participants enrolled in the program divided by the enrollment goal. The enrollment goal is based on the total grant award amount divided by \$6,000 (the upper limit of the expected cost-per-participant range of \$4,000 – 6,000). The calculated enrollment goal is **250 participants. The goal for this measure is 100%.**
- **Entered Employment Rate:** defined as of those who are not employed at the date of participation (enrollment) and who exit the program: the percentage of participants who are employed in the first quarter after the exit quarter. **The goal for this measure is 60%.**
- **Employment Retention Rate:** defined as of those who exit the program and are employed in the first quarter after the exit quarter: the percentage of participants who are employed in both the second and third quarters after the exit quarter. **The goal for this measure is 70%.**
- **Average Earnings:** defined as of those who exit the program and who were employed in the first, second, and third quarters after exit: the average total earnings for the second and third quarters after exit. **The goal for this measure is \$9360**, which works out to be **\$9/hour** if working full time and just under 200% of the poverty rate for a family of 1.
- **Recidivism Rate:** defined as the percentage of participants who were re-arrested for a new crime or re-incarcerated for revocation of the parole or probation order within one year of their release from prison. If a participant is re-arrested and subsequently released without being convicted of a new crime, they may be taken out of the recidivism rate. **The goal for this measure is 22% or below**, which is roughly half of the national recidivism rate of 44.1% one year post-release found in the Bureau of Justice Statistics report.
- **Industry-Recognized Certificate/Degree Rate:** This measure is two-fold and will focus not just on increasing the attainment of degrees and industry-recognized certificates but also increasing the number of participants who enter degree- and industry-recognized certificate-awarding programs:
  - The participation rate is defined as the percentage of enrolled participants in degree- or industry-recognized certificate-awarding programs. **The goal for this measure is 30%.**
  - The attainment rate is defined as the percentage of participants that have participated in degree- or certificate-awarding training who receive a degree or an industry-recognized certificate within three quarters after exit from the program. **The goal for this measure is 50% of those enrolled in degree awarding programs and 50% of those enrolled in certificate awarding programs.** This means that, of the subset of participants who enroll in degree- or certificate-awarding programs, it is expected that at least 50% of those that enroll in a degree-awarding program will attain a secondary or post-secondary degree (such as a GED, high school diploma, or Associate's Degree) and at least 50% of those that enroll in vocational or occupational skills training that leads to industry-recognized certification will attain the certificate. **All degrees and industry-recognized certificates must be attained during the performance period of the grant.** Further guidance on what qualifies as an industry-recognized certificate can be

found in Attachment B of TEGL 17-05 (located at [http://wdr.doleta.gov/directives/attach/TEGL17-05\\_AttachB.pdf](http://wdr.doleta.gov/directives/attach/TEGL17-05_AttachB.pdf)).

#### Reporting

CSCC will submit a quarterly narrative style project and quantitative performance report on the 28<sup>th</sup> day after the end of each quarter, beginning July 1, 2013. The Final Project Report is due by January 31, 2015, unless otherwise directed by the Workforce Investment Council of Clackamas County.

#### **11. Housing Works Grant (July 1, 2012 – October 31, 2015)**

This Department of Labor (DOL) Workforce Innovation Fund Grant is to help 50 PHA housing residents gain the life and employment skills necessary to attain self-sufficiency.

Contractor will:

- Coordinate with county partners to ensure local implementation is consistent with program requirements and implementation across regions.
- Perform WorkSource Liaison duties as outlined in the WorkSource Liaison position description.
- Ensure the case manager performs duties as outlined in the case manager position description.
- Facilitate orientations as part of recruitment and selection activities.
- Ensure eligibility and enrollment before commencement of grant-funded services to participants.
- Engage participants in all program activities including interacting regularly with case managers, Oregon Pathways for Adult Basic Skills (if appropriate), Career Link courses, Occupational Skills Training, internships, On-the-Job Training, Workforce Coaching and job search activities. Training activities will be in accordance with targeted Housing Works industries.
- Work with the employers named in the MOU, the Regional Competitiveness Committee (of the Columbia-Willamette Regional Workforce Collaborative), WorkSource, and additional local employers to develop ongoing industry intelligence to inform training pathways, and to develop employment opportunities and work experiences for Housing Works participants.
- Ensure participant access to general WorkSource services supported by grant and leveraged dollars including WIA enrollment, job search workshops and individual assistance.
- Track program services, collect data, secure release of information agreements, and support evaluators in implementation of evaluation plan.
- Fully participate in the Housing Works County and Regional Alliances and coordinate with partners to adhere to grant goals and reporting guidelines.
- Complete and submit quarterly program narrative reports by the 20<sup>th</sup> of month following quarter's end (January, April, July and October).
- Set aside training resources through leveraged dollars, as outlined in the Workforce Innovation Fund grant proposal and budget narrative, to supplement the resources provided through the

Workforce Innovation Fund grant. Ensure that the following WorkSource resources are reserved for the Housing Authority program participants enrolled in the Housing Works Project and available throughout the life of the grant:

- Workforce Investment Act enrollment at WorkSource (all participants).
  - Workshops and one-on-one staff assisted services (all participants).
  - Internships (25), Occupational Skills Training programs/certifications (25), and/or On-the-Job Training (OJT) programs (8), as appropriate.
- Resource other project expenses through leveraged dollars as outlined in the Workforce Innovation Fund grant proposal/budget narrative, to supplement the resources provided through the Workforce Innovation Fund grant itself.

#### PERFORMANCE

Contractor Performance Measures	<i>Goal</i>
Participants who complete WIA and Housing Works Eligibility and begin project funded services	50/100%
Participants who earn industry-recognized credential	22/44%
Participants who complete internship and/or OJT	22/44%
Percent of participants that enter long-term basic skills instruction courses who complete successfully	75%
Participants who report that barriers to employment have been removed	33/65%
Of participants who enter program unemployed, the percent who enter employment	65%
Of participants who enter employment, the percent who are retained in 2 <sup>nd</sup> and 3 <sup>rd</sup> quarters that follow the quarter of employment start date	70%
Of participants who enter employment, the average six month earnings	\$12,000
Of participants employed at enrollment, the average increase in earnings	20+%
Average annual reduction in subsidy by households that retain employment because of an increase in income directly attributable to a participant's employment income and controlling for other factors.	\$3,250
Participants vocationally case managed who attain identified training and employment goals in the Career and Resource Plan.	75%
Average annual reduction in subsidy by households that retain employment because of an increase in income directly attributable to a participant's employment income and controlling for other factors.	\$3,250

Participants vocationally case managed who attain identified training and employment goals in the Career and Resource Plan.	75%
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If performance falls below the negotiated level after the first year, the Workforce Investment Council of Clackamas County will take the following actions with the Contractor:

- When final performance numbers have been issued, report to the Workforce Investment Council of Clackamas County Board which performance measure(s) have been missed/achieved.
- Meet with the Contractor to assess why the performance measure(s) were not met and create a written performance improvement plan.

If performance remains below the negotiated level for a second year in a row, the Workforce Investment Council of Clackamas County will take the following actions with the Contractor:

- When final numbers have been issued, report to the the Workforce Investment Council of Clackamas County Board that a performance measure(s) has been missed two years in a row.
- Review historical data and follow the considerations and recommendations of the Workforce Investment Council of Clackamas County Board from the following options:
  - Review historical data and make a determination if course corrections are adequate and grant additional year of the contract under a corrective action plan.
  - Require other appropriate measures designed to improve the performance of the Contractor.
  - Discontinue use of the Contractor due to inability to achieve required performance levels.

**WORKFORCE INVESTMENT COUNCIL OF CLACKAMAS COUNTY CONTRACT  
SECTION C  
FISCAL PROVISIONS & COST REIMBURSEMENT BUDGET**

**1. The budget for this contract will be divided into three separate budgets:**

- (A) Adult WIA Services.
- (B) Dislocated Worker WIA Services
- (C) Certified Work Ready Communities

**2. Allocation of Funding**

The allocation of funds under this contract shall initially be as follows:

Funding Stream	Amount
Adult WIA Services	\$109,600
Dislocated Worker WIA Services	\$121,400
Certified Work Ready Communities	<u>\$ 11,000</u>
Total:	\$242,000

Additional funding for Program Year 2014 will be incorporated into this contract via amendment.

Program Year 2013 Carry Forward funds will be incorporated into this contract via amendment.

**3. Costs for Which Payment Shall be Made**

Only reasonable, allocable and allowable costs paid out by the Contractor, which are based on benefits received associated with the activities and services delineated in Section B-Project Description shall be reimbursed to the Contractor.

**4. Transfer of Funds**

For the purpose of this contract, the Contractor may request to modify budgeted line item amounts within each WIA funding stream per paragraph 9 below to cover unanticipated over-expended line items.

Such movement of funds shall not exceed 15% of the funding stream's total annual budget and are to be approved in writing **and in advance** by WICCO. Written consent is defined as formal business correspondence submitted by Contractor and signed by the WICCO Executive Director or designee. Funder approval may be required.

Funds may only be moved between the WIA funding streams in paragraph 2 above via contract amendment as permitted by law.

**5. Billings**

Invoices shall be submitted monthly and should include the aggregate of accrued expenditures (cash disbursements plus accruals not yet paid) incurred for allowable costs. The Contractor shall bill WICCO on forms and in a format approved by WICCO within twenty (20) calendar days following the month in which expenses are incurred.

The following Informational Items are to be noted on the invoice but will not be reimbursed under this contract:

- (A) Estimates of incurred expenses for which invoices have not yet been received by the Contractor,
- (B) Program Income earned and expended,
- (C) Stand-In Costs (optional): allowable costs that were actually incurred for the benefit of the ETA-funded program and paid by a non-ETA fund source.

## **6. Invoices After Contract End**

Upon completion of the Contract, Contractor shall submit a final invoice (marked FINAL), which will be the final accounting of all accrued and actual expenditures under this Contract. Duration of award: July 1, 2010 – June 30, 2012 with option for three annual renewals. All invoices must be received by WICCO within forty-five (45) days of discharge of this award. Any invoice received more than forty-five (45) days after said date will be considered null and void, and will not be processed for payment.

## **7. Expenditure Documentation**

The Contractor shall retain original expense documentation, or a digital image of original expense documentation, including proof of payment or properly posted accrued liabilities. Documentation shall include canceled checks, invoices annotated with date paid, check number and initials, annotated receipts, payroll ledgers, and/or accounts payable ledgers. Documentation shall be annotated with a Project Budget line item reference. Documentation of costs which are allocable to more than one line item and/or which are only partially allocable to the Project Budget shall be annotated with amounts allocated to each source. Reimbursement requests shall be made only within the limits of the Project Budget line items.

## **8. Authorized Signature List**

The Contractor will submit to WICCO a list of names and signatures of persons authorized to sign agreements, modifications and billings. As changes occur, the Contractor shall file changes with WICCO.

## **9. Leveraged Funds**

The Contractor has committed to provide leveraged funds for Solutions to Work and Housing Works as set forth in project grant proposals. Leveraged funds must be tracked and reported periodically as required by WICCO.

### **Housing Works Leverage Requirements**

- 1) Cost line items are restricted by individual line item budgets
- 2) Contractor shall meet or exceed at least 80% of each line item amount
- 3) Any additional leverage line item flexibility must be requested in writing and include sufficient documented justification for the change(s) based on program objectives. Approval from funder is required.

Contractor is required to contribute a total of \$175,351 in leverage by the completion of the grant period. The projected schedule for annual leverage contributions is detailed below:



Budget Period ending	Total Cumulative Leverage Required
June 30, 2014	\$ 94,689
June 30, 2015	\$157,816
October 31, 2105	\$175,351

Should Contractor fail to show progression towards meeting the milestone leverage amounts, WICCO may require Contractor to provide a written plan for meeting leverage requirements. Payment may be withheld until a satisfactory plan for meeting leverage requirements has been presented and approved by funder.

**10. Project Budget** (see Attachment 1 for details)  
PY13-14

WIA Adult Funding Stream

Budget Line Item	Begin Bal	Change	Total
General Costs	18,900		18,900
Direct Participant Costs	90,700		90,700
Adult Total	<b>109,600</b>	<b>0</b>	<b>109,600</b>

WIA Dislocated Worker Funding Stream

Budget Line Item	Begin Bal	Change	Total
General Costs	19,900		19,900
Direct Participant Costs	101,500		101,500
Dislocated Worker Total	<b>121,400</b>	<b>0</b>	<b>121,400</b>

Work Ready Communities

Budget Line Item	Begin Bal	Change	Total
General Costs			0
Direct Participant Costs	11,000		11,000
Work Ready Communities Total	<b>11,000</b>	<b>0</b>	<b>11,000</b>

**11. Additional Expenditure Restrictions**

Consultant fees paid under this Contract shall be limited to \$585 per day

Salary and Bonus Limitations: In compliance with public Law 109-234 and section 111 of the Department of Labor Appropriation Act 2009 (Public Law 111-8), none of the funds appropriated under the heading "Employment and Training" that are available for expenditure on or after June 15, 2006, shall be used by Contractor to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II. The salary and bonus limitation does not apply to vendors providing goods and services as defined in OMB Circular A-133. Reference DOL TEGL 5-06 for further clarification.

Housing Works funds have the following restrictions for the entire project period.

- 1) Equipment or capital outlays may not be purchased with Housing Works funds.

- 2) Expenditures are
  - a. Restricted by individual line item budgets.
  - b. Over-expenditures of line items of up to 20% may be balanced by under-expenditures of other line items without a formal budget modification. Case management expenditures are excluded.
  - c. Case Management line item expenditures must meet or exceed budgeted amounts
- 3) All other changes to the budget require a formal budget modification and must be requested by the Contractor in writing and be approved by funder prior to Contractor expending funds outside of the budget line flexibility. Sufficient rigorous justification for the change(s) must be documented and be based on program requirements.

Certified Work Ready Communities Funds shall be used solely in a manner that complies with the regulations and cost principles referenced in grant GRNT0987 between the State of Oregon and WICCO.

**WICCO SERVICE PROVIDER CONTRACT  
SECTION D  
SPECIAL PROVISIONS**

**1. Representations and Warranties**

The Contractor represents and warrants to WICCO that (1) the Contractor has the power and authority to enter and perform this contract; (2) this contract, when executed and delivered, shall be a valid and binding obligation of the Contractor enforceable in accordance with its terms; (3) the work under this contract shall be performed accordance with the highest professional standards; (4) the Contractor shall, at all times during the term of this contract, be qualified, professionally competent, and duly licensed to perform the work.

**2. Unused Funds**

All funds provided under this contract, which are unused upon contract discharge, shall be de-obligated and returned to WICCO. Such funds are subject to redistribution or use at the discretion of WICCO. De-obligated funds may be returned to the grantor agency or WICCO, or redirected by WICCO as it deems necessary.

**3. Memorandum of Understanding**

The Memorandum of Understanding and Resource Sharing Agreement, which by this reference is hereby incorporated into and made part of this contract, states that the partners are committed to develop and implement a comprehensive, cooperative workforce development system with services to be delivered via WorkSource Clackamas.

**WICCO SERVICE PROVIDER CONTRACT  
SECTION E  
CERTIFICATION REGARDING DEBARMENT**

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Certification Regarding  
Debarment, Suspension, Ineligibility and Voluntary Exclusion  
Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participant's responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

(BEFORE COMPLETING CERTIFICATION, READ ATTACHED INSTRUCTIONS  
WHICH ARE AN INTEGRAL PART OF THE CERTIFICATION)

- (1) The prospective recipient of Federal assistance funds certifies, by submission of this document, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective recipient of Federal assistance funds is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Print Name and Title**

**(Instructions on following page)**

## INSTRUCTIONS FOR DEBARMENT CERTIFICATION

1. By signing and submitting this document, the prospective recipient of Federal assistance funds is providing the certification as set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective recipient of Federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department of Labor (DOL) may pursue available remedies, including suspension and/or debarment.
3. The prospective recipient of Federal assistance funds shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective recipient of Federal assistance funds learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred", "suspended", "Ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective recipient of Federal assistance funds agrees by submitting this document that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the DOL.
6. The prospective recipient of Federal assistance funds further agrees by submitting this document that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required, to check the List of Parties Excluded from Procurement and Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the DOL may pursue available remedies, including suspension and/or debarment.

**WICCO SERVICE PROVIDER CONTRACT  
SECTION F  
CERTIFICATION REGARDING LOBBYING**

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**Certification Regarding Lobbying  
Lower Tier Covered Transactions**

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This certification is required by the regulations implementing The Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 90, Section 319 of which amended Title 31, United States Code by adding a new section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions." The regulations were published as Part III of the February 26, 1990 Federal Register (pages 6736-6756).

**The undersigned certifies, to the best of his or her knowledge and belief, that:**

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the Federal grant, contract, loan, or cooperative agreement funding this contract, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards to all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Print Name and Title**

	WIA Adult Funds	WIA Dislocated Worker Funds	CWRC	TOTALS
<b>PY14-15 Funding</b>	<b>\$ 109,600</b>	<b>\$ 121,400</b>	<b>\$ 11,000</b>	<b>\$ 242,000</b>
<b>General &amp; Administrative</b>				
Personnel (Admin & Fiscal staff)	\$ 3,000	\$ 3,000	-	\$ 6,000
Employment & Training Svcs Mgr - 0.07 FTE	\$ 1,500	\$ 1,500	-	\$ 3,000
Fringe - approx 50% of wages	\$ 4,500	\$ 4,500	-	\$ 9,000
<b>Administrative - Other</b>				
Materials & Supplies	\$ 4,800	\$ 5,000	-	\$ 9,800
Operations (Rent)	\$ 9,800	\$ 10,400	-	\$ 20,000
Indirect Costs	\$ -	\$ -	-	\$ -
<b>Non-Personnel Subtotal</b>	<b>\$ 14,400</b>	<b>\$ 15,400</b>	<b>\$ -</b>	<b>\$ 29,800</b>
<b>Total General &amp; Admin Costs</b>	<b>\$ 18,900</b>	<b>\$ 19,900</b>	<b>\$ -</b>	<b>\$ 38,800</b>
<b>Direct Participant Costs</b>				
Personnel (Intensive, Training, Retention staff)				
Job Development Specialist - 1.0 FTE	\$ 24,000	\$ 27,300	-	\$ 51,300
Job Development Specialist - 0.50 FTE	\$ 12,800	\$ 13,000	-	\$ 25,800
Workshop Instructor - 0.50 FTE (temp)	\$ 10,400	\$ 11,000	-	\$ 21,400
Program Aide - 0.50 FTE	\$ 5,000	\$ 6,000	7,000	\$ 18,000
Fringe - approx 85% of wages	\$ 34,300	\$ 38,000	4,000	\$ 76,300
<b>Personnel Subtotal</b>	<b>\$ 86,300</b>	<b>\$ 95,300</b>	<b>\$ 11,000</b>	<b>\$ 192,600</b>
<b>Participant</b>				
Intensive Services	\$ -	\$ -	-	\$ -
Support Services	\$ 2,000	\$ 2,200	-	\$ 4,200
Training-ITAs	\$ -	\$ -	-	\$ -
Training-CJT / Work Exp	\$ 2,400	\$ 4,000	-	\$ 6,400
<b>Participant Subtotal</b>	<b>\$ 4,400</b>	<b>\$ 6,200</b>	<b>\$ -</b>	<b>\$ 10,600</b>
<b>Total Direct</b>	<b>\$ 90,700</b>	<b>\$ 101,500</b>	<b>\$ 11,000</b>	<b>\$ 203,200</b>
<b>Total PY14-15 Budget:</b>	<b>Adult \$ 109,600</b>	<b>DW \$ 121,400</b>	<b>CWRC \$ 11,000</b>	<b>\$ 242,000</b>

**CSCC LEVERAGE SUMMARY**

Admin Personnel - 3 staff @ 0.07 FTE each \$20,000.00  
 Admin Other - Materials and Supplies \$2,500.00  
 H3S Indirects \$5,000.00

**TOTAL: \$27,500.00**

July 10, 2014

Board of County Commissioner  
Clackamas County

Members of the Board:

Approval of an Intergovernmental Subrecipient Agreement with City of Oregon  
City/Pioneer Community Center to Provide Social Services for  
Clackamas County Residents age 60 and over

<b>Purpose/Outcomes</b>	Subrecipient Agreement with the City of Oregon City/Pioneer Community Center to provide mandated Older American Act (OAA) funded services for persons in the City of Oregon City service area.
<b>Dollar Amount and Fiscal Impact</b>	The maximum agreement is \$111,829. The contract is funded through the Social Services Division agreement with the Oregon Dept of Human Services, State Unit on Aging.
<b>Funding Source</b>	The Older American Act - no County General Funds are involved.
<b>Safety Impact</b>	None
<b>Duration</b>	Effective July 1, 2014 and terminates on June 30, 2015
<b>Previous Board Action</b>	Approved by the Board of Commissioners on June 20, 2013 BAI # 062013-A8
<b>Contact Person</b>	Brenda Durbin, Director, Social Services Division 503-655-8641
<b>Contract No.</b>	6648

**BACKGROUND:**

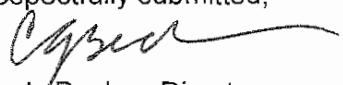
The Social Services Division of the Health, Housing and Human Services request the approval of the Subrecipient agreement with the City of Oregon City/Pioneer Community Center to provide Older American Act (OAA) funded services for persons living in Oregon City. The services provided include congregate and home delivered meals, health promotion activities, transportation, and information and referral activities. These services link residents with resources to meet their individual needs. This helps them to remain independent and interactive in the community.

In the spring of 2011 Social Services advertised for a contractor to provide Older American Act mandated services for older persons in Clackamas County during Fiscal Year 2011-12, with an option for renewal for four additional years. No agency other than City of Oregon City/Pioneer Community Center showed an interest in providing these services in the Oregon City area, so an intergovernmental agreement with the City of Oregon City/Pioneer Community Center was negotiated. This is the fourth renewal under this RFP. Approved by County Counsel May 28, 2014.

**RECOMMENDATION:**

Staff recommends the Board approval of this agreement and authorizes Cindy Becker, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,



Cindy Becker, Director



**CLACKAMAS COUNTY, OREGON  
SUBRECIPIENT GRANT AGREEMENT 15-011**

This Agreement is between Clackamas County, Oregon, acting by and through its  
Health Housing & Human Services Department,  
Social Services Division – Area Agency on Aging and  
City of Oregon City – Pioneer Community Center (Subrecipient).

**Clackamas County Data**

Grant Accountant: Sue Aronson	Program Manager: Stefanie Reid-Danielson
Clackamas County – Finance 2051 Kaen Road Oregon City, OR 97045 503-742-5421 suea@co.clackamas.or.us	Clackamas County – Social Services Division 2051 Kaen Road Oregon City, OR 97045 503-655-8330 stefanierei@co.clackamas.or.us

**Subrecipient Data**

Finance/Fiscal Representative: <b>Mireya McIlveen</b>	Program Representative: <b>Kathy Wiseman</b>
Mireya McIlveen, Deputy Finance Director 625 Center Str., P.O. Box 3040 Oregon City, OR 97045 503-657-0891 mmcilveen@orcify.org	Kathy Wiseman, Center Supervisor 615 Fifth Street Oregon City, OR 97045 503-657-8287 Kwiseman@orcify.org
FEIN: 93-6002230	

**RECITALS**

1. This Grant Agreement of Federal financial assistance sets forth the terms and conditions pursuant to which SUBRECIPIENT agrees on delivery of the Program.

NOW THEREFORE, according to the terms of this Subrecipient Grant Agreement the COUNTY and SUBRECIPIENT agree as follows:

**AGREEMENT**

1. **Term and Effective Date.** This Agreement shall be effective as of the **July 1, 2014** and shall expire on **June 30, 2015**, unless sooner terminated or extended pursuant to the terms hereof.

2. **Program.** The Program is described in Attached Exhibit 1 - Purpose, Service Descriptions and Service Objectives. SUBRECIPIENT agrees to perform the Services in accordance with the terms and conditions of this Agreement.
3. **Standards of Performance.** SUBRECIPIENT shall perform all activities and programs in accordance with the requirements set forth in this Agreement and all applicable laws and regulations. Furthermore, SUBRECIPIENT shall comply with the requirements of the Older Americans Act and 45CRF Part 1321 collectively "OAA", that is the source of the grant funding, in addition to compliance with requirements of State of Oregon, Department of Human Services, State Unit on Aging Older Americans Act Program Standards.
4. **Funds.** The maximum, not to exceed, grant amount that the COUNTY will pay is **\$111,829**. This is a cost reimbursement grant and disbursements will be made in accordance with the requirements contained in Exhibit 5 – Reporting Requirements and Exhibit 6 – Budget and Units of Services. Failure to comply with the terms of this Agreement may result in withholding of payment. (The split between funding sources is outlined in Exhibit 6 – Budget and Units of Services.)
  - a. **Grant Funds.** The COUNTY's funding for grant funds in this Agreement is the Older Americans Act (CFDA: 93.041, 93.043, 93.044, 93.045, 93.052, 93.053) issued to the COUNTY by the State of Oregon, Department of Human Services, State Unit on Aging and 5310 Federal Transportation Administration funds (CFDA: 20-513) issued to the COUNTY by Ride Connection, Inc.
  - b. **Other Funds.** The COUNTY's funding for transportation services outlined in this agreement are from Medicaid funds issued to the COUNTY by the State of Oregon, Department of Human Services and from Elderly and Disabled Transportation funds issued to the COUNTY by Ride Connection, Inc and TriMet.
5. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties. **SUBRECIPIENT must submit a written request including a justification for any amendment to the COUNTY in writing at least forty five (45) calendar days before this Agreement expires.** No payment will be made for any services performed before the beginning date or after the expiration date of this Agreement. If the maximum compensation amount is increased by amendment, the amendment must be fully effective before SUBRECIPIENT performs work subject to the amendment.
6. **Termination.** This Agreement may be terminated by the mutual consent of both parties or by a party upon written notice from one to the other. This notice may be transmitted in person, by mail, facsimile, or by Email.

- 7. Funds Available and Authorized.** The COUNTY certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Agreement within the current fiscal year budget. SUBRECIPIENT understands and agrees that payment of amounts under this Agreement is contingent on the COUNTY receiving appropriations or other expenditure authority sufficient to allow the COUNTY, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.
- 8. Future Support.** COUNTY makes no commitment of future support and assumes no obligation for future support for the activity contracted herein except as set forth in this agreement.
- 9. Administrative Requirements.** SUBRECIPIENT agrees to its status as a Sub-Recipient, and accepts among its duties and responsibilities the following:
- a. **Financial Management.** The Sub-recipient shall comply with 2 CFR Part 215, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Educations, Hospitals, and Other Non-Profit Organization* (OMB Circular A-110) if a non-profit or OMB Circular A-102 if a local government, and agrees to adhere to the accounting principles and procedures required therein, use adequate internal controls, and maintain necessary sources documentation for all costs incurred. In addition, the SUBRECIPIENT agrees to comply with the standards set forth in the "OAA".
    - i. SUBRECIPIENT shall maintain a financial management system that assures that state and federal funds used for activities under this Agreement are expended and accounted for in accordance with applicable state and federal requirements
  - b. **Cost Principles.** The SUBRECIPIENT shall administer the award in conformity with 2 CFR 230, (OMB Circular A-122) *Cost Principles for Nonprofit Organizations* if a non-profit; or with 2 CFR 225 (OMB Circular A-87) if a local government. These principles must be applied for all costs incurred whether charged on a direct or indirect basis. Costs disallowed by the Federal government shall be the liability of the SUBRECIPIENT.
  - c. If SUBRECIPIENT is organized as local government, it will comply with:
    - i. A-87 for cost principles, Relocated to 2 CFR, Part 225
    - ii. A-102 for administrative requirements and
    - iii. A-133 for audit requirements
  - d. If SUBRECIPIENT is organized as a non-profit, it will comply with
    - i. A-122 for cost principles, Relocated to 2 CFR, Part 230
    - ii. A-110 for administrative requirements, relocated to 2CFR, Part 215 and
    - iii. A-133 for audit requirements
  - e. **Period of Availability.** SUBRECIPIENT may charge to the award only allowable costs resulting from services provided during the funding period.
  - f. **Match.** SUBRECIPIENT agrees to provide matching funds for the services provided as outlined in Exhibit 5 – Budget and Units of Services.

- g. Budget.** The SUBRECIPIENT use of funds may not exceed the amounts specified in the Exhibit 5 – Budget and Units of Services. The SUBRECIPIENT may not transfer grant funds between services without the prior written approval of the COUNTY. At no time may budget modifications change the scope of the original grant application or agreement.
- h. Payment.** The SUBRECIPIENT must submit a final request for payment no later than ten (10) days after the end date of this Agreement. Routine requests for reimbursement should be submitted as specified in Exhibit 4 – Reporting Requirements.
- i. Performance Reporting.** The SUBRECIPIENT must submit Performance Reports as specified in Exhibit 4 – Reporting Requirements for each period (monthly, quarterly, and final) during the term of this Agreement.
- j. Financial Reporting.** Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR Part 205. Therefore, upon execution of this agreement, Sub-Recipient will submit completed Reimbursement Request on a monthly/quarterly basis as specified in Exhibit 4 – Reporting Requirements.
- k. Universal Identifier and Contract Status.** The SUBRECIPIENT shall comply with 2 CFR 25.200-205 and apply for a unique universal identification number (DUNS) as required for receipt of funding. In addition, the SUBRECIPIENT shall register and maintain an active registration in the Central Contractor Registration database, now located at <http://www.sam.gov>.
- l. Suspension and Debarment.** The SUBRECIPIENT shall comply with 2 CFR 180 and 901. This common rule restricts sub-awards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. SUBRECIPIENT is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. SUBRECIPIENT may access the Excluded Parties List System at <http://www.sam.gov>.
- m. Lobbying.** The SUBRECIPIENT certifies (Exhibit 8: Lobbying and Litigation) that no portion of the Federal grant funds will be used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law and shall abide by 2 CFR Part 215 (*OMB Circular A-122*), which prohibits the use of Federal grant funds for litigation against the United States. In addition, the SUBRECIPIENT certifies that it does not and will not; engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.
- n. Audit.** The SUBRECIPIENT shall comply with the audit requirements prescribed in the Single Audit Act Amendments and revised *OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations"*. SUBRECIPIENT expenditures of \$500,000 or more in Federal funds require an annual Single Audit. SUBRECIPIENT is required to

hire an independent auditor qualified to perform an A-133 audit and submit the audit reports to the COUNTY within 9 months from the SUBRECIPIENT'S fiscal year end or 30 days after issuance of the reports, whichever is sooner.

- o. Monitoring.** The SUBRECIPIENT agrees to allow access to conduct site visits and inspections of financial records for the purpose of monitoring. The COUNTY, the Federal government, and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of Sub-Recipient that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Monitoring may be performed onsite or offsite, at the COUNTY's discretion.
- p. Record Retention.** The SUBRECIPIENT will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.
- q. Fiduciary Duty.** SUBRECIPIENT acknowledges that it has read the award conditions and certifications for OAA Funding, that it understands and accepts those conditions and certifications, and that it agrees to comply with all the obligations, and be bound by any limitations applicable to the Clackamas County, as grantee, under those grant documents.
- r. Failure to Comply.** SUBRECIPIENT acknowledges and agrees that this agreement and the terms and conditions therein are essential terms in allowing the relationship between COUNTY and SUBRECIPIENT to continue, and that failure to comply with such terms and conditions represents a material breach of the original contract and this agreement. Such material breach shall give rise to the COUNTY's right, but not obligation, to withhold SUBRECIPIENT grant funds until compliance is met or to terminate this relationship including the original contract and all associated amendments.

#### **10. Compliance with Applicable Laws**

- a. Federal Terms.** The SUBRECIPIENT shall comply with the federal terms and conditions as outlined in Exhibit 2 - Required Federal Terms and Conditions.
- b. State Statutes.** SUBRECIPIENT expressly agrees to comply with all statutory requirements, laws, rules, and regulations issued by the State of Oregon, to the extent they are applicable to the agreement.
- c. Conflict Resolution.** If conflicts are discovered among federal, state and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the Agreement, SUBRECIPIENT shall in writing request County to

resolve the conflict. SUBRECIPIENT shall specify if the conflict(s) create a problem for the design or other Services required under the Agreement.

- d. Criminal Records and Abuse Checks.** SUBRECIPIENT agrees to meet requirements set forth in OAR 407-007-0200 through 407-007-0370 and ORS 181.534 through 181.537 and ORS443.004. Subject individuals are employees of the SUBRECIPIENT; volunteers of the SUBRECIPIENT; employees and volunteers of SUBRECIPIENT's subcontractors and direct care providers of clients for which SUBRECIPIENT provides service authorization.

County will assist SUBRECIPIENT to meet this requirement by processing criminal record checks utilizing the DHS Criminal Records Information Management System (CRIMS) for SUBRECIPIENT's subject individuals as requested.

- e. Mandatory Reporting of Elder Abuse.** SUBRECIPIENT shall ensure compliance with the mandatory reporting requirements of ORS 124.050 through 124.095 and OAR Chapter 411, Division 20 for employees and volunteers of the SUBRECIPIENT's clients to whom the SUBRECIPIENT provides services.

- f. Americans with Disabilities Act.** SUBRECIPIENT will ensure facilities used for the provision of OAA funded services meet the requirements as stated in Title II of the Americans with Disabilities Act of 1990, as amended ("ADA"), Section 504 of the Rehabilitation Act and DHS Policy #010-005.

**g. Confidentiality of Client Information.**

- i. All information as to personal facts and circumstances obtained by the SUBRECIPIENT on the client shall be treated as privileged communications, shall be held confidential, and shall not be divulged without the written consent of the client, the responsible parent of a minor child, or his or her guardian except as required by other terms of this Agreement. Nothing prohibits the disclosure of information in summaries, statistical, or other form, which does not identify particular individuals.
- ii. The use or disclosure of information concerning clients shall be limited to persons directly connected with the administration of this agreement. Confidentiality policies shall be applied to all requests from outside sources.
- iii. DHS, County and SUBRECIPIENT will share information as necessary to effectively serve DHS Clients.

**11. SUBRECIPIENT Standard Terms and Conditions.** The SUBRECIPIENT shall comply with the terms and conditions in Exhibit 3 – Subrecipient Standards Terms and Conditions

**12. Federal and State Procurement Standards**

- a.** All procurement transactions that involve the Federal grant funds, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. All sole-source procurements

that use the Federal grant funds in excess of \$25,000 must receive prior written approval from County in addition to any other approvals required by law applicable to the SUBRECIPIENT. Justification for sole-source procurement in excess of \$25,000 should include a description of the project and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Interagency agreements between units of government are excluded from this provision.

- b. County's performance under the Agreement is conditioned upon SUBRECIPIENT's compliance with, and SUBRECIPIENT shall comply with, the obligations applicable to public contracts under ORS 279C.520 and 279C.530, which are incorporated by reference herein
- c. The SUBRECIPIENT shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, and/or Requests for Proposals (RFP) for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to County.
- d. The SUBRECIPIENT agrees that, to the extent they use contractors or subcontractors, such recipients shall use small, minority, women-owned or disadvantaged business concerns and contractors or subcontractors to the extent practicable.

### **13. General Agreement Provisions.**

- a. **Indemnification.** SUBRECIPIENT agrees to indemnify and hold COUNTY harmless with respect to any claim, cause, damage, action, penalty or other cost (including attorney's and expert fees) arising from or related to SUBRECIPIENT's negligent or willful acts or those of its employees, agents or those under SUBRECIPIENT's control. SUBRECIPIENT is responsible for the actions of its own agents and employees, and COUNTY assumes no liability or responsibility with respect to SUBRECIPIENT's actions, employees, agents or otherwise with respect to those under its control.
  - i. **Ride Connection/Tri-Met funds:** To the fullest extent permitted by law, SUBRECIPIENT agrees to fully indemnify, hold harmless and defend Ride Connection, its directors, officers, employees and agents, TriMet, its officers employees and agents, and the State of Oregon, its officers, employees and agents, from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense thereof including reasonable attorney's fees resulting from or arising out of the activities of SUBRECIPIENT, its officers, directors, employees, agents, subcontractors and volunteers under this Agreement.

their officers, agents, and employees from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of SUBRECIPIENT or its officers, employees, subcontractors, or agents, in performance of this contract

**b. Insurance.** During the term of this agreement, SUBRECIPIENT shall maintain in force, at its own expense, each insurance noted below:

- i. Commercial General Liability.** SUBRECIPIENT shall obtain, at SUBRECIPIENT's expense, and keep in effect during the term of this agreement, Commercial General Liability Insurance covering bodily injury and property damage on an "occurrence" form in the amount of not less than \$1,000,000 per occurrence/ \$2,000,000 general aggregate for the protection of COUNTY, its officers, commissioners, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this agreement. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute to it.
  - (1) Required by State of Oregon for non-medical rides for Medicaid clients.** Commercial General Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided for this funding source.
  - (2) Required by Ride Connection/Tri-Met Transportation Funding.** Broad form comprehensive general liability coverage, \$1,000,000 combined single limit bodily injury and property damage
- ii. Commercial Automobile Liability.** If the Agreement involves the use of vehicles, SUBRECIPIENT shall obtain at SUBRECIPIENT expense, and keep in effect during the term of this agreement, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$1,000,000.
  - (1) Required by State of Oregon for non-medical rides for Medicaid clients –** Commercial Automobile Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each occurrence for Bodily injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.
  - (2) Required by Ride Connection/Tri-Met Transportation Funding –** Automobile bodily injury and property damage liability insurance covering all motor vehicles, whether owned, non-owned, leased, or hired, with not less than the following limits: Bodily injury: \$500,000 per person; \$1,066,700 per occurrence; and Property Damage: \$1,066,700 per occurrence AGENCY shall pay all deductibles for vehicles.



- iii. **Professional Liability.** If the Agreement involves the provision of professional services, SUBRECIPIENT shall obtain and furnish the COUNTY evidence of Professional Liability Insurance in the amount of not less than \$1,000,000 combined single limit per occurrence/\$2,000,000 general annual aggregate for malpractice or errors and omissions coverage for the protection of the COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this agreement. COUNTY, at its option, may require a complete copy of the above policy.
- iv. **Additional Insured Provisions.** All required insurance, other than Professional Liability, Workers' Compensation, and Personal Automobile Liability Insurance, shall include "Clackamas County, its agents, officers, and employees" as an additional insured.
  - (1) Required by State of Oregon for non-medical rides for Medicaid clients – Insurance must provide that the State of Oregon, Department of Human Services, and its divisions, officers and employees are Additional Insured but only with respect to the transportation services funded under Agreement between the State of Oregon and Clackamas County Social Services.
  - (2) Required by Ride Connection/Tri-Met Transportation Funding – the insurance shall:
    - (a) include Ride Connection and Tri-Met and its directors, officers, representatives, agents, and employees as additional insured with respect to work or operations connected with providing transportation;
    - (b) give Ride Connection and Tri-Met not less than thirty (30) days notice prior to termination or cancellation of coverage; and
    - (c) include an endorsement providing that the insurance is primary insurance and that no insurance that may be provided by Ride Connection or Tri-Met may be called in to contribute to payment for a loss.
- v. **Notice of Cancellation.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice to the COUNTY. Any failure to comply with this provision will not affect the insurance coverage provided to COUNTY. The 60 days notice of cancellation provision shall be physically endorsed on to the policy.
- vi. **Insurance Carrier Rating.** Coverage provided by SUBRECIPIENT must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating.

- vi. **Insurance Carrier Rating.** Coverage provided by SUBRECIPIENT must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
  - vii. **Certificates of Insurance.** As evidence of the insurance coverage required by this agreement, SUBRECIPIENT shall furnish a Certificate of Insurance to COUNTY. No agreement shall be in effect until the required certificates have been received, approved, and accepted by COUNTY. The certificate will specify that all insurance-related provisions within the agreement have been compiled with. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration.
  - viii. **Primary Coverage Clarification.** SUBRECIPIENT coverage will be primary in the event of a loss.
  - ix. **Cross-Liability Clause.** A cross-liability clause or separation of insured's condition will be included in all general liability, professional liability, and errors and omissions policies required by the agreement.
- c. **Assignment.** This Agreement may not be assigned in whole or in part without the express written approval of the COUNTY.
  - d. **Independent Status.** SUBRECIPIENT is independent of the COUNTY and will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder. SUBRECIPIENT is not an agent of the COUNTY and undertakes this work independent from the control and direction of the COUNTY excepting as set forth herein. SUBRECIPIENT shall not seek or have the power to bind the COUNTY in any transaction or activity.
  - e. **Notices.** Any notice provided for under this Agreement shall be effective if in writing and (1) delivered personally to the addressee or deposited in the United States mail, postage paid, certified mail, return receipt requested, (2) sent by overnight or commercial air courier (such as Federal Express), (3) sent by facsimile transmission, with the original to follow by regular mail; or, (4) sent by electronic mail with confirming record of delivery confirmation through electronic mail return-receipt, or by confirmation that the electronic mail was accessed, downloaded, or printed. Notice will be deemed to have been adequately given three days following the date of mailing, or immediately if personally served. For service by facsimile or by electronic mail, service will be deemed effective at the beginning of the next working day.
  - f. **Governing Law.** This Agreement is made in the State of Oregon, and shall be governed by and construed in accordance with the laws of that state. Any litigation between the COUNTY and SUBRECIPIENT arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Clackamas County court

- g. Severability.** If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be stricken.
- h. Counterparts.** This Agreement may be executed in any number of counterparts, all of which together will constitute one and the same agreement. Facsimile copy or electronic signatures shall be valid as original signatures.
- i. Third Party Beneficiaries.** Except as expressly provided in this Agreement, there are no third party beneficiaries to this Agreement. The terms and conditions of this Agreement may only be enforced by the parties.
- j. Binding Effect.** This Agreement shall be binding on all parties hereto, their heirs, administrators, executors, successors and assigns.
- k. Integration.** This agreement contains the entire agreement between COUNTY and SUBRECIPIENT and supersedes all prior written or oral discussions or agreements. When a requirement is listed both in the main boilerplate of the agreement and in an Exhibit, the Exhibit shall take precedence.

(Signature Page Attached)

SIGNATURE PAGE TO SUBRECIPIENT GRANT AGREEMENT

This agreement consists of thirteen (13) sections plus the following exhibits which by this reference are incorporated herein.

- Exhibit 1 Scope of Work and Service Objectives and Elements of Completion
- Exhibit 2 Required Federal Terms and Conditions
- Exhibit 3 Subrecipient Standard Terms and Conditions
- Exhibit 4 Reporting Requirements
- Exhibit 5 Budget and Units of Service
- Exhibit 6 SCP Program Purpose, Service Descriptions
- Exhibit 7 RSVP Program Purpose, Service Descriptions
- Exhibit 8 Congressional Lobbying Certificate
- Exhibit 9 Subrecipient Information

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers. AGREED as of the Effective Date.

**City of Oregon City - Pioneer Community Center**

**CLACKAMAS COUNTY**

By: A. KLI

David Frasher, City Manager  
A. KONKOL - ACTING CITY MANAGER

6/26/2014  
Date

Commissioner: John Ludlow, Chair  
Commissioner: Jim Bernard  
Commissioner: Paul Savas  
Commissioner: Martha Schrader  
Commissioner: Tootie Smith

**Signing on Behalf of the Board:**

\_\_\_\_\_  
Cindy Becker, Director  
Department of Human Services

\_\_\_\_\_  
Date

## Exhibit 1

### PURPOSE, SERVICE DESCRIPTION AND SERVICE OBJECTIVES

#### **1. PURPOSE OF THE SERVICES**

The purpose of this contract is the cooperation of both parties in providing the Area Agency on Aging's designated services of nutrition services, outreach, assessment, information and assistance, case management, reassurance, transportation, health promotion and legal consultation for Clackamas County residents age 60 and older. The goal in providing these services is to assist older residents in meeting their individual needs by linking them with County resources.

#### **2. DESCRIPTION OF SERVICES**

- a. **CASE MANAGEMENT:** Is an in-depth interview with a client to provide access to an array of service options to assure appropriate levels of service and to maximize coordination in the service delivery system. Case management must include four general components: access, assessment, service implementation, and monitoring:
- i. Access & Assessments:
    - (1) Informing clients of available services and, where appropriate, developing a goal-oriented service plan.
    - (2) Utilize an approved County-wide standardized assessment/intake form.
    - (3) Assessment is re-done with a change in client life situation/condition - every six to twelve months.
    - (4) May be billed upon submission of assessment/intake form.
  - ii. Service Implementation & Monitoring:
    - (1) Provide early identification of current or potential problem areas.
    - (2) Assess the need for changes/improvements in service.
    - (3) Identify any gaps/unmet needs.
    - (4) Review intervention results to determine if what was done achieved the desired result.
    - (5) Determine if services should be discontinued.
    - (6) Case monitoring services are available to frail but mobile elderly as well as homebound individuals.
- b. **REASSURANCE:** Regular friendly telephone calls and/or visits to physically, geographically or socially isolated registered clients that are receiving services to determine if they are safe and well, if they require assistance, and to provide reassurance. A unit is one contact

- c. INFORMATION & ASSISTANCE:** Consists of request for assistance locating resources to meet a specific need, or assistance prioritizing and locating resources to meet multiple needs. Inquiries require:
- i. Informal assessment of the client's needs.
  - ii. Evaluation of appropriate resources.
  - iii. Assistance linking the client to the resources.
  - iv. Completion of an intake form to document background information on the client, the client's needs and what actions or referrals were made.
  - v. Follow up with the client or agency to see if the needs were met.
  - vi. Tallying the category of need for each inquiry.
  - vii. Documenting any unmet needs including recording the request, resources tried and the reason unable to help.
- d. TRANSPORTATION:** Is the service that provides one-way rides for older persons and younger persons with disabilities. The goal is to ensure that transportation needs are met for those who are unable to meet their transportation needs independently. OAA funded rides are scheduled for persons who are age 60 and older for trips to medical appointments, clinics, personal business and to senior center activities. Ride Connection funded rides are scheduled for individuals age 60 and older and for persons with disabilities age 18 and over for medical appointments, clinics, personal business, shopping, nutrition and recreation activities.
- i. Pioneer Community Center Transportation Consortium Goals:
    - (1) Increase replacement reserve fund with separate accounting.
    - (2) Assure all drivers meet Ride Connection training and eligibility requirements as defined in the Operations Manual for Transportation Coordinators.
    - (3) Continue regular publicity/marketing efforts regarding transportation program
    - (4) Continue to explore ways to increase ridership, including contact with long term care facilities in the area.
    - (5) Attend all scheduled Transportation Consortium meetings.
  - ii. Guidelines for Non-Medical Transportation for Waivered Medicaid Clients
    - (1) This funding source is available for Medicaid clients who are receiving "waivered" services. Medicaid clients with a case manager who reside in all types of living situations except nursing facilities are waivered Medicaid clients. All rides must be authorized in writing on a *NON MEDICAL RIDE REFERRAL FORM FOR WAIVERED MEDICAID CLIENT* form by an Aging and Disability Services case manager before reimbursement may be requested for them. SUBRECIPIENT must keep the client ride authorizations on file – faxed forms are adequate. Case Managers will authorize rides yearly, at a minimum and will note the need for non-medical transportation in the client's signed case plan. COUNTY will coordinate completion and distribution of forms for SUBRECIPIENT and case managers through the Transportation Reaching People (TRP) program.

(2) Services shall be billed by SUBRECIPIENT according to the following rate scale:

One person, one-way ride: \$14.00 per ride

(3) Clients receiving the rides will not be asked or expected to contribute to the cost of the ride.

(4) Trips will be tracked daily by client and type of ride. This information will be sent monthly to COUNTY, and be available for State and Federal representatives for audit purposes.

iii. SUBRECIPIENT will be responsible for:

(1) recruitment of volunteer and/or paid drivers who will qualify for insurance coverage or who are willing to provide proof of coverage as drivers, and maintaining an adequate number of qualified volunteer and/or paid drivers to provide services.

(2) orientation of drivers to the transportation program and informing them of other specialized training opportunities required to maintain safety of operations.

(3) submission of criminal record check requests on all potential drivers and receiving satisfactory reports back prior to scheduling them to transport any client.

(4) drug and alcohol testing on all potential paid drivers prior to hiring them is recommended for all drivers of Center-owned mini vans and buses, including volunteers.

e. **MEAL SITE MANAGEMENT:** Meal Site Management includes such tasks as: supervising final on-site preparation and serving/delivery of meals to eligible congregate and home-delivered participants; recruiting, training, scheduling and monitoring program volunteers; determining eligibility of participants; collecting and accounting for participant donations; completing and submitting required budget and program reports, providing events and activities for meal site participants; meeting with meal site Advisory Committee; and publicizing meal site in the Oregon City community to enhance visibility and encourage participation. One unit is one meal served.

f. **PHYSICAL ACTIVITY AND FALLS PREVENTION:** The provision of physical fitness programs that include a focus on strength, balance, and flexibility exercise to promote physical activity and/or prevent falls, which have been demonstrated through rigorous evaluation to be evidence-based and effective with older populations.

g. **PREVENTIVE SCREENING, COUNSELING, AND REFERRALS:** The provision of educational programming about the availability, benefits and appropriate use of Medicare preventive health services and/or other preventive health programs.

h. **LOW INCOME ENERGY ASSISTANCE PROGRAM (LIEAP) Intakes** – A service provided by SUBRECIPIENT staff to assist vulnerable, homebound, low income County residents in

completing applications for LIEAP funds. A unit of service is one correctly completed, accepted application submitted to COUNTY prior to the November 30, 2013 deadline.

### **3. SERVICE OBJECTIVES**

#### **a. Case Management**

**Objective:** To provide contracted units of service throughout the contract period for County residents age 60 and older who are identified as needing assistance from County agencies.

Elements:

- i. SUBRECIPIENT Client Services Coordinator (CSC) assesses clients within two weeks following their request for services or referral from another source (outreach effort, gatekeeper, neighbor, family member, etc.).
- ii. SUBRECIPIENT CSC completes assessment on a County approved assessment/intake form.
- iii. SUBRECIPIENT CSC writes case plan, as appropriate, for the client from the information gathered on the assessment form.
- iv. SUBRECIPIENT CSC re-assesses clients' service needs/eligibility every six months or when their condition or life situation dramatically changes
- v. SUBRECIPIENT CSC reviews client case plans quarterly, at a minimum, and provides follow up contact by phone or home visits.
- vi. SUBRECIPIENT CSC (upon request from client, other agency or family member) provides additional follow up to coordinate services.
- vii. SUBRECIPIENT CSC consults with SPD Case Manager (if client has one) to maximize coordination of services. Consultations will be annotated on Case Monitoring forms within 2 work days.
- viii. SUBRECIPIENT CSC documents all reviews and additional follow ups on case monitoring contact forms which are kept in client record file.
- ix. SUBRECIPIENT CSC keeps all client information in a secured area, accessible to only authorized personnel.

#### **b. Reassurance**

**Objective:** To provide contracted units of service throughout the contract period for County residents age 60 and older who are identified as needing assistance from County agencies.

Elements:

- i. SUBRECIPIENT Client Services Coordinator (CSC) assesses clients provides follow up contact by phone to ensure that services outlined under case plan are meeting clients need.
- ii. SUBRECIPIENT CSC documents all reviews and additional follow ups on case monitoring contact forms which are kept in client record file.



- iii. SUBRECIPIENT CSC keeps all client information in a secured area, accessible to only authorized personnel.

**c. Information and Assistance - COUNTY Responsibilities**

**Objective:** To provide participating SUBRECIPIENT with training, technical assistance, resource development, networking and information sharing.

Elements:

- i. County will provide orientation on County's I&R program to SUBRECIPIENT I&A staff.
- ii. County will notify SUBRECIPIENT's I & A Specialist of "Networking" I & R Breakfast Meetings and schedule speakers to meet interests expressed by SUBRECIPIENT.

**d. Information and Assistance - SUBRECIPIENT Responsibilities**

**Objective 1:** Have a system in place which enables SUBRECIPIENT to provide referral services to link people with needs to the appropriate resources.

Elements:

- i. SUBRECIPIENT will designate a single individual (paid or volunteer) who is at least 0.5 FTE with the SUBRECIPIENT as an I & A Specialist.
- ii. SUBRECIPIENT will notify COUNTY I & A Coordinator and Contract Specialist within 30 days of any change in SUBRECIPIENT's designated I & A Specialist, and will schedule an on-site training with the County I & A Coordinator for the new designee within 60 days of appointment.
- iii. SUBRECIPIENT's I & A Specialist will attend a minimum of 6 monthly County "Networking" I&R breakfasts meeting each year and attend Scheduled CSC meetings.
- iv. SUBRECIPIENT's I & A Specialist will update center information for the County's Community Resources Guide, initiate notification to County's I&R program regarding any changes to SUBRECIPIENT programs, and notify County's I&R program of any significant changes in local community resources.
- v. SUBRECIPIENT I & A Specialist will compile and submit quarterly data reports, including a description of unmet needs, to the Contract Specialist for forwarding to the County I & A Coordinator by the 10th day following each quarter.

**Objective 2:** To provide contracted units of service throughout the contract period for County residents age 60 and older who need help identifying resources to meet their individual needs.

Elements:

- i. SUBRECIPIENT Director or CSC annotates name, Medicaid status, address, phone number, date of request, and nature of request/need.
- ii. SUBRECIPIENT makes referral and follows up with client within a 2 day work period.

- iii. SUBRECIPIENT annotates follow up taken and number of referrals needed on Referral Log.
- iv. SUBRECIPIENT Director keeps completed Referral Logs in a secured area, accessible to only authorized personnel.

**e. Transportation**

**Objective:** To provide contracted units of service throughout the contract period for County residents age 60 and older, and to younger persons with disabilities who are unable to meet their transportation needs.

Elements:

- i. SUBRECIPIENT designates one person to be coordinator for the transportation program. This person will be responsible for:
  - (1) Recruiting drivers.
  - (2) Submitting criminal checks
  - (3) Ensuring all drivers meet Ride Connection training requirements
  - (4) Scheduling road tests for all drivers.
  - (5) Conducting periodic/seasonal driver safety training.
  - (6) Providing a copy of written procedures for transportation services to each driver.
  - (7) Scheduling vehicle maintenance.
  - (8) Maintain daily Pre- and Post- trip Reports
- ii. SUBRECIPIENT provides transportation as scheduled each day.
- iii. SUBRECIPIENT maintains system to document each trip of each day.

**f. MEAL SITE MANAGEMENT**

**Objective 1:** To supervise preparation of meals, serving meals to congregate participants, and delivery of meals to home delivered clients.

Elements:

- i. Procurement of milk is part of site management.
- ii. Packaging of home delivered meals is part of site management.

**Objective 2:** To organize and supervise the recruiting, training, scheduling and monitoring of program volunteers.

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**Objective 3:** To determine eligibility of participants and target services to individuals who are in the greatest economic or social need, with particular attention to low income minority individuals.

Elements:

- i. Economic need is defined as income equal to, or less than, the poverty level as determined by the Department of Commerce.
- ii. Persons with social need are those persons who have at least two of the following characteristics:
  - (1) be 75 years or older
  - (2) live alone
  - (3) have a physical or mental impairment which prevents proper functioning within society
  - (4) be of a minority group
  - (5) have no significant other(s)

**Objective 4:** To offer a range of events and activities to enhance daily living efforts of older people or to provide opportunity for their participation in community life.

Elements:

- i. SUBRECIPIENT plans educational presentations in areas such as nutrition, health, safety, utilization of community services and programs, and other topics of interest to participants.
- ii. SUBRECIPIENT provides opportunities to promote personal growth and self image.
- iii. SUBRECIPIENT provides opportunities for a variety of types and levels of involvement.
  - (1) Small and large group activities
  - (2) Active and spectator participation
  - (3) Participation with the general community and other generations.
- iv. SUBRECIPIENT plans activities which are flexible and responsive to change in:
  - (1) Individual participant needs and interests.
  - (2) Characteristics of the service area's older population.
  - (3) Other programs in the relevant service area.

**Objective 5:** To inform the community about the meal site program.

Elements:

- i. SUBRECIPIENT publicizes programs in local newspapers, flyers, brochures, posters, fraternal organizational meetings, etc.
- ii. SUBRECIPIENT ensures Center is identified by an easily visible sign at its entrance.
- iii. SUBRECIPIENT posts monthly menus in an obvious position in the Center and delivers them to home-bound clients each month.

- iv. SUBRECIPIENT mails or delivers calendar of upcoming Center activities to current and potential participants.

**Objective 6:** To plan for provision of services in cooperation with site Advisory Committee and Area Agency on Aging (AAA) Adult Center Liaison Committee.

Elements:

- i. SUBRECIPIENT identifies needs and concerns specific to the Center and service area participants.
- ii. SUBRECIPIENT incorporates information from other service providers, community agencies, and governmental organizations in providing services.
- iii. SUBRECIPIENT conducts program participant satisfaction survey at least once per year.
- iv. SUBRECIPIENT food service manager meets quarterly with COUNTY nutrition consultant to go over status of meal program files, plans, goals, accountings, etc.

**Objective 7:** To collect, account for and report program income (participant donations).

Elements:

- i. SUBRECIPIENT provides each participant (congregate and home delivered) with an opportunity to voluntarily contribute to the cost of the service.
- ii. SUBRECIPIENT sets up container for donations at meal site which ensures and protects the privacy of the participants.
- iii. SUBRECIPIENT has system set up at site to collect full meal price from persons not eligible for services.
- iv. SUBRECIPIENT posts:
  - (1) full cost of the meal, and
  - (2) a notice describing the donation and payment policies.
- v. SUBRECIPIENT may post suggested donation information if it is clear that:
  - (1) every donation from an eligible participant is on a "pay what you can afford" basis, and
  - (2) no means test is used in the collection of contributions or provision of the meal.

**i. Physical Activity/Falls Prevention**

**Objective:** To provide contracted units of service throughout the contract period.

Elements:

- i. SUBRECIPIENT regularly schedules physical activity classes that meet the evidenced-based requirements and include a focus on strength, balance, and flexibility to promote physical activity and/or prevent falls.
- ii. SUBRECIPIENT registers participants for activities, obtaining a waiver to injury for each participant.

- iii. SUBRECIPIENT has physical condition of clients assessed before setting up plan for workouts with equipment.

**j. Preventive Screening, Counseling, and Referrals**

**Objective:** To provide contracted units of service throughout the contract period.

Elements:

- i. SUBRECIPIENT contacts qualified professionals/organizations to conduct educational programming about the availability, benefits and appropriate use of Medicare preventive health services.
- ii. SUBRECIPIENT contacts qualified professionals/organizations to conduct Health risk assessments and screenings or preventive health education programs at their facility or a facility convenient for their clientele.
- iii. SUBRECIPIENT schedules and advertises programs.
- iv. SUBRECIPIENT registers participants for activities, if necessary.
- v. SUBRECIPIENT has staff and/or trained volunteers available on site to coordinate the programs.
- vi. Where appropriate, SUBRECIPIENT keeps demographic records of participants for future planning purposes and so that participants may be notified of other preventive health education programs available to them.

**I. Low Income Energy Assistance Program (LIEAP) Intakes**

**Objective:** To provide contracted units of service throughout the contract period.

Elements:

- iv. SUBRECIPIENT Client Services Coordinator (CSC) assists home-bound clients with the completion and submission of a LIEAP annual application.
- v. SUBRECIPIENT CSC ensures that the application form is completed per program requirements.

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## EXHIBIT 2

### Required Federal Terms and Conditions

**General Applicability and Compliance.** Unless exempt under 45CFR Part 87 for Faith-Based Organizations (Federal Register, July 16, 2004, Volume 69, #136), or other federal provisions, SUBRECIPIENT shall comply and, as indicated, require all subcontractors to comply with the following federal requirements to the extent that they are applicable to this Agreement, to SUBRECIPIENT, or to the Work, or to any combination of the foregoing. For purposes of this Agreement, all references to federal and state laws are references to federal and state laws as they may be amended from time to time.

1. **Miscellaneous Federal Provisions.** SUBRECIPIENT shall comply and require all subcontractors to comply with all federal laws, regulations, and executive orders applicable to the Agreement or to the delivery of Work. Without limiting the generality of the foregoing, SUBRECIPIENT expressly agrees to comply and require all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Executive Order 11246, as amended, (e) the Health Insurance Portability and Accountability Act of 1996, as amended, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (j) all federal laws requiring reporting of Client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. No federal funds may be used to provide Work in violation of 42 U.S.C. 14402.
2. **Equal Employment Opportunity.** If this Agreement, including amendments, is for more than \$10,000, then SUBRECIPIENT shall comply and require all subcontractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).
3. **Clean Air, Clean Water, EPA Regulations.** If this Agreement, including amendments, exceeds \$100,000 then SUBRECIPIENT shall comply and require all subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to DHS, United States Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency.

SUBRECIPIENT shall include and require all subcontractors to include in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section.

4. **Energy Efficiency.** SUBRECIPIENT shall comply and require all subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42 U.S.C. 6201 et. seq. (Pub. L. 94-163).
5. **Truth in Lobbying.** By signing this Agreement, the SUBRECIPIENT certifies, to the best of the SUBRECIPIENT's knowledge and belief that:
  - a. No federal appropriated funds have been paid or will be paid, by or on behalf of SUBRECIPIENT, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
  - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the SUBRECIPIENT shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
  - c. The SUBRECIPIENT shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients and subcontractors shall certify and disclose accordingly.
  - d. This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by section 1352, Title 31 of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
  - e. No part of any federal funds paid to SUBRECIPIENT under this Agreement shall be used other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the United States Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government itself.

- f. No part of any federal funds paid to SUBRECIPIENT under this Agreement shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the United States Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.
  - g. The prohibitions in subsections (e) and (f) of this section shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.
  - h. No part of any federal funds paid to SUBRECIPIENT under this Agreement may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance of that federally sponsored clinical trials are being conducted to determine therapeutic advantage.
6. **HIPAA Compliance.** To the extent that any Work or obligations of SUBRECIPIENT related to this Agreement are covered by the Health Insurance Portability and Accountability Act and the federal regulations implementing the Act (collectively referred to as HIPAA), SUBRECIPIENT must comply. SUBRECIPIENT shall determine if SUBRECIPIENT will have access to, or create any protected health information in the performance of any Work or other obligations under this Agreement. To the extent that SUBRECIPIENT will have access to, or create any protected health information to perform functions, activities, or services for, or on behalf of, COUNTY as specified in the Agreement, SUBRECIPIENT shall comply and cause all subcontractors to comply with the following:
- a. Privacy and Security of Individually Identifiable Health Information. Individually Identifiable Health Information about specific individuals is confidential. Individually Identifiable Health Information relating to specific individuals may be exchanged between SUBRECIPIENT and COUNTY for purposes directly related to the provision of services to Clients which are funded in whole or in part under this Agreement. To the extent that SUBRECIPIENT is performing functions, activities, or services for, or on behalf of COUNTY, in the performance of any Work required by this Agreement, SUBRECIPIENT shall not use or disclose any Individually Identifiable Health Information about specific individuals in a manner that would violate OAR 407-014-0000 et. seq., or COUNTY HIPAA Privacy Policies and Notice of Privacy Practices. A copy of the most recent COUNTY HIPAA Privacy Policies and Notice of Privacy Practices may be obtained by contacting COUNTY.





that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in SUBRECIPIENT's workplace or while providing services to DHS clients. SUBRECIPIENT's notice shall specify the actions that will be taken by SUBRECIPIENT against its employees for violation of such prohibitions; (ii) Establish a drug-free awareness program to inform its employees about: The dangers of drug abuse in the workplace, SUBRECIPIENT's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations; (iii) Provide each employee to be engaged in the performance of services under this Agreement a copy of the statement mentioned in paragraph (i) above; (iv) Notify each employee in the statement required by paragraph (i) above that, as a condition of employment to provide services under this Agreement, the employee will: abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; (v) Notify DHS within ten (10) days after receiving notice under subparagraph (iv) above from an employee or otherwise receiving actual notice of such conviction; (vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988; (vii) Make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs (i) through (vi) above; (viii) Require any subcontractor to comply with subparagraphs (i) through (vii) above; (ix) Neither SUBRECIPIENT, or any of SUBRECIPIENT's employees, officers, agents or subcontractors may provide any service required under this Agreement while under the influence of drugs. For purposes of this provision, "under the influence" means: observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the SUBRECIPIENT or SUBRECIPIENT's employee, officer, agent or subcontractor has used a controlled substance, prescription or non-prescription medication that impairs the SUBRECIPIENT or SUBRECIPIENT's employee, officer, agent or subcontractor's performance of essential job function or creates a direct threat to DHS clients or others. Examples of abnormal behavior include, but are not limited to: hallucinations, paranoia or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to: slurred speech, difficulty walking or performing job activities; (x) Violation of any provision of this subsection may result in termination of this Agreement.

- 11. Pro-Children Act.** SUBRECIPIENT shall comply and require all subcontractors to comply with the Pro-Children Act of 1994 (codified at 20 U.S.C. section 6081 et. seq.).
- 12. Medicaid Services.** SUBRECIPIENT shall comply with all applicable federal and state laws and regulation pertaining to the provision of Medicaid Services under the Medicaid Act, Title XIX, 42 U.S.C. Section 1396 et. seq., including without limitation:
  - a.** Keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving Medicaid assistance and shall furnish such information to any state or federal agency responsible for administering the Medicaid program regarding any payments claimed by such person or institution for

providing Medicaid Services as the state or federal agency may from time to time request. 42 U.S.C. Section 1396a(a)(27); 42 CFR 431.107(b)(1) & (2).

- b. Comply with all disclosure requirements of 42 CFR 1002.3(a) and 42 CFR 455 Subpart (B).
- c. Maintain written notices and procedures respecting advance directives in compliance with 42 U.S.C. Section 1396(a)(57) and (w), 42 CFR 431.107(b)(4), and 42 CFR 489 subpart I.
- d. Certify when submitting any claim for the provision of Medicaid Services that the information submitted is true, accurate and complete. SUBRECIPIENT shall acknowledge SUBRECIPIENT's understanding that payment of the claim will be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.
- e. Entities receiving \$5 million or more annually (under this Agreement and any other Medicaid Agreement) for furnishing Medicaid health care items or services shall, as a condition of receiving such payments, adopt written fraud, waste and abuse policies and procedures and inform employees, contractors and agents about the policies and procedures in compliance with Section 6032 of the Deficit Reduction Act of 2005, 42 U.S.C. § 1396a(a)(68).

**13. Agency-based Voter Registration.** SUBRECIPIENT shall comply with the Agency-based Voter Registration sections of the National Voter Registration Act of 1993 that require voter registration opportunities be offered where an individual may apply for or receive an application for public assistance.

**14. Disclosure.**

- a. 42 CFR 455.104 requires the State Medicaid agency to obtain the following information from any provider of Medicaid or CHIP services, including fiscal agents of providers and managed care entities: (1) the name and address (including the primary business address, every business location and P.O. Box address) of any person (individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity; (2) in the case of an individual, the date of birth and Social Security Number, or, in the case of a corporation, the tax identification number of the entity, with an ownership interest in the provider, fiscal agent or managed care entity or of any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest; (3) whether the person (individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling, or whether the person (individual or corporation) with an ownership or control interest in any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling; (4) the name of any other provider, fiscal agent or managed care entity in which an owner of the provider, fiscal agent

or managed care entity has an ownership or control interest; and, (5) the name, address, date of birth and Social Security Number of any managing employee of the provider, fiscal agent or managed care entity.

- b. 42 CFR 455.434 requires as a condition of enrollment as a Medicaid or CHIP provider, to consent to criminal background checks, including fingerprinting when required to do so under state law, or by the category of the provider based on risk of fraud, waste and abuse under federal law.
- c. As such, a provider must disclose any person with a 5% or greater direct or indirect ownership interest in the provider whom has been convicted of a criminal offense related to that person's involvement with the Medicare, Medicaid, or title XXI program in the last 10 years.
- d. SUBRECIPIENT shall make the disclosures required by this Section 14. To DHS. DHS reserves the right to take such action required by law, or where DHS has discretion, it deems appropriate, based on the information received (or the failure to receive information) from the provider, fiscal agent or managed care entity.

**15. Federal Intellectual Property Rights Notice.** The federal funding agency, as the awarding agency of the funds used, at least in part, for the Work under this Agreement, may have certain rights as set forth in the federal requirements pertinent to these funds. For purposes of this subsection, the terms "grant" and "award" refer to funding issued by the federal funding agency to the State of Oregon. The SUBRECIPIENT agrees that it has been provided the following notice:

- a. The federal funding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the Work, and to authorize others to do so, for Federal Government purposes with respect to:
  - i. The copyright in any Work developed under a grant, subgrant or agreement under a grant or subgrant; and
  - ii. Any rights of copyright to which a grantee, subgrantee or a SUBRECIPIENT purchases ownership with grant support.
- b. The parties are subject to applicable federal regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."
- c. The parties are subject to applicable requirements and regulations of the federal funding agency regarding rights in data first produced under a grant, sub-grant or agreement under a grant or sub-grant.

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### EXHIBIT 3

#### Sub-recipient Standard Terms and Conditions

1. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between the parties that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within a circuit court for the State of Oregon of proper jurisdiction. THE PARTIES, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Except as provided in this section, neither party waives any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. The parties acknowledge that this is a binding and enforceable agreement and, to the extent permitted by law, expressly waive any defense alleging that either party does not have the right to seek judicial enforcement of this Agreement.
2. **Compliance with Law.** Both parties shall comply with laws, regulations, and executive orders to which they are subject and which are applicable to the Agreement or to the Work. Without limiting the generality of the foregoing, both parties expressly agree to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations; (b) all state laws requiring reporting of Client abuse; (c) ORS 659A.400 to 659A.409, ORS 659A.145 and all regulations and administrative rules established pursuant to those laws in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the Work. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. All employers, including SUBRECIPIENT and COUNTY, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126.
3. **Independent Contractors.** The parties agree and acknowledge that their relationship is that of independent contracting parties and that SUBRECIPIENT is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.
4. **Representations and Warranties.**
  - a. SUBRECIPIENT represents and warrants as follows:
    - i. **Organization and Authority.** SUBRECIPIENT is a political subdivision of the State of Oregon duly organized and validly existing under the laws of the State of Oregon. SUBRECIPIENT has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder.

- ii. Due Authorization. The making and performance by SUBRECIPIENT of this Agreement (a) have been duly authorized by all necessary action by SUBRECIPIENT and (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of SUBRECIPIENT's charter or other organizational document and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which SUBRECIPIENT is a party or by which SUBRECIPIENT may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by SUBRECIPIENT of this Agreement.
  - iii. Binding Obligation. This Agreement has been duly executed and delivered by SUBRECIPIENT and constitutes a legal, valid and binding obligation of SUBRECIPIENT, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
  - iv. SUBRECIPIENT has the skill and knowledge possessed by well-informed members of its industry, trade or profession and SUBRECIPIENT will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in SUBRECIPIENT's industry, trade or profession;
  - v. SUBRECIPIENT shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the Work; and
  - vi. SUBRECIPIENT prepared its proposal related to this Agreement, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.
- b. COUNTY represents and warrants as follows:
  - i. Organization and Authority. COUNTY has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder.
  - ii. Due Authorization. The making and performance by COUNTY of this Agreement (a) have been duly authorized by all necessary action by COUNTY and (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which COUNTY is a party or by which COUNTY may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by COUNTY of this Agreement, other than approval by the Department of Justice if required by law.
  - iii. Binding Obligation. This Agreement has been duly executed and delivered by COUNTY and constitutes a legal, valid and binding obligation of COUNTY,

enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

- c. Warranties Cumulative. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

**5. Ownership of Intellectual Property.**

- a. Definitions. As used in this Section 8 and elsewhere in this Agreement, the following terms have the meanings set forth below:
  - i. "SUBRECIPIENT Intellectual Property" means any intellectual property owned by SUBRECIPIENT and developed independently from the Work.
  - ii. "Third Party Intellectual Property" means any intellectual property owned by parties other than COUNTY or SUBRECIPIENT.
- b. Except as otherwise expressly provided herein, or as otherwise required by state or federal law, COUNTY will not own the right, title and interest in any intellectual property created or delivered by SUBRECIPIENT or a subcontractor in connection with the Work. With respect to that portion of the intellectual property that the SUBRECIPIENT owns, SUBRECIPIENT grants to COUNTY a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to (1) use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the intellectual property, (2) authorize third parties to exercise the rights set forth in Section 8.a.(ii) on COUNTY' behalf, and (3) sublicense to third parties the rights set forth in Section 8.a.(ii).
- c. If state or federal law requires that COUNTY or SUBRECIPIENT grant to the United States a license to any intellectual property, or if state or federal law requires that the COUNTY or the United States own the intellectual property, then SUBRECIPIENT shall execute such further documents and instruments as COUNTY may reasonably request in order to make any such grant or to assign ownership in the intellectual property to the United States or COUNTY. To the extent that COUNTY becomes the owner of any intellectual property created or delivered by SUBRECIPIENT in connection with the Work, COUNTY will grant a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to SUBRECIPIENT to use, copy, distribute, display, build upon and improve the intellectual property.
- d. SUBRECIPIENT shall include in its subcontracts terms and conditions necessary to require that subcontractors execute such further documents and instruments as COUNTY may reasonably request in order to make any grant of license or assignment of ownership that may be required by federal or state law.

- 6. **Records Maintenance; Access.** SUBRECIPIENT shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition,

SUBRECIPIENT shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of SUBRECIPIENT, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document SUBRECIPIENT's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of SUBRECIPIENT whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." SUBRECIPIENT acknowledges and agrees that COUNTY, Ride Connection, Oregon Department of Transportation, the Public Transit Division, TriMet, State Unit on Aging and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to all Records to perform examinations and audits and make excerpts and transcripts.

7. **Records Retention.** SUBRECIPIENT shall retain and keep accessible all Records for a minimum of six years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. SUBRECIPIENT shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.
8. **Information Privacy/Security/Access.** If the Work performed under this Agreement requires SUBRECIPIENT or its subcontractor(s) to have access to or use of any COUNTY computer system or other COUNTY Information Asset for which COUNTY imposes security requirements, and COUNTY grants SUBRECIPIENT or its subcontractor(s) access to such COUNTY Information Assets or Network and Information Systems, SUBRECIPIENT shall comply and require all subcontractor(s) to which such access has been granted to comply with OAR 407-014-0300 through OAR 407-014-0320, as such rules may be revised from time to time. For purposes of this section, "Information Asset" and "Network and Information System" have the meaning set forth in OAR 407-014-0305, as such rule may be revised from time to time.
9. **Assignment of Agreement, Successors in Interest.**
  - a. SUBRECIPIENT shall not assign or transfer its interest in this Agreement without prior written approval of COUNTY. Any such assignment or transfer, if approved, is subject to such conditions and provisions as COUNTY may deem necessary. No approval by COUNTY of any assignment or transfer of interest shall be deemed to create any obligation of COUNTY in addition to those set forth in the Agreement.
  - b. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns.
10. **No Third Party Beneficiaries.** COUNTY and SUBRECIPIENT are the only parties to this Agreement and are the only parties entitled to enforce its terms. The parties agree that SUBRECIPIENT's performance under this Agreement is solely for the benefit of COUNTY to assist and enable COUNTY to accomplish its statutory mission. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons any greater than the rights and



benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

11. **Severability.** The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

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**Exhibit 4**  
**Reporting Requirements**

**1. INVOICES**

SUBRECIPIENT shall submit invoices in a format designated or approved by COUNTY. Invoices are due by the 10th of the subsequent month. The COUNTY shall make payment to SUBRECIPIENT within 21 days of receipt of each invoice submitted.

Invoices and reports on units of service provided shall bear the SUBRECIPIENT's name and address and be signed by an authorized representative of SUBRECIPIENT. The authorized signator of the invoice shall verify that the services purchased have been performed.

SUBRECIPIENT shall submit the following invoices and reports:

1. Financial summary including match and program income.
2. Vehicle Maintenance Invoices – Original approved vendor invoices for vehicle maintenance will be submitted monthly with transportation reports.
3. Additional financial reports for the administration of this contract, as required by the COUNTY.

Withholding of Contract Payments: Notwithstanding any other payment provision of this agreement, should the SUBRECIPIENT fail to submit reports when due, or submit reports which appear patently inaccurate or inadequate on their face, or fail to perform or document the performance of contracted services, the COUNTY shall immediately withhold payments hereunder. Such withholding of payment for cause may continue until the SUBRECIPIENT submits required reports, performs required services, or establishes to the COUNTY's satisfaction that such failure arose out of causes beyond the control, and without the fault or negligence of the SUBRECIPIENT.

SUBRECIPIENT shall return to the COUNTY all funds which were expended in violation of this contract.

**2. PROGRAM ACTIVITY REPORTS**

The SUBRECIPIENT shall submit monthly program activity reports presenting data comparing actual levels of service to the planned levels specified in Exhibit 4. These reports are due with the invoices. The format of these reports shall be designated or approved by the COUNTY, and contain the following:

- a. The SUBRECIPIENT shall submit nutrition reports monthly. These reports shall have:
  - i. the over and under age 60 meal program participation numbers broken out by: Congregate, HDM, Medicaid, volunteers, guests and staff.
  - ii. the amount of participant donations by Congregate and HDM .

- b. SUBRECIPIENT may bill Food Services for OAA funded HDM if they have been ordered by recipients then cancelled after 2:00 PM the day before delivery. SUBRECIPIENT may not bill for Meal Site Management for these meals.
- c. Service/unit summary with current reporting period figures
- d. Monthly NAPIS/Oregon Access information for client registration and program service data including client identifiers for all new clients. Programs service data must be equal to or greater than units of service billed for.
- e. Transportation Report forms A, B, and C
- f. List of Medicaid waived services clients who were provided non-medical transportation during the billing period, with number of rides provided for each client by ride type.
- g. SUBRECIPIENT shall submit copies of the SPD Medicaid Home Delivered Meals vouchers on current State approved form.

### **3. AUDIT/MONITORING**

SUBRECIPIENT shall permit authorized representatives of the COUNTY and other applicable audit agencies of the state or federal government, to review the records of the SUBRECIPIENT in order to satisfy program audit and evaluation purposes deemed necessary by the COUNTY and permitted under law.

SUBRECIPIENT agrees to participate with the COUNTY in any evaluation project or performance report, as designated by the COUNTY or applicable state or federal SUBRECIPIENT, and to make available all information required by any such evaluation process.

COUNTY agrees to notify SUBRECIPIENT in writing of intent to conduct onsite evaluation of reported performance management data and SUBRECIPIENT agrees to provide COUNTY access to its facility and staff, all related programs and fiscal documents, SUBRECIPIENT'S reports and on any other related documentation to substantiate performance management reporting of data.

### **4. ADMINISTRATION**

The COUNTY Project Manager shall be the ADS Contract Specialist or any other person as shall be designated in writing by the Director of the Social Services Division. The Project Manager is authorized to approve invoices, make site inspections, and be the COUNTY representative in matters related to this contract. The SUBRECIPIENT shall designate one or more representatives in writing who shall be authorized to sign the invoices and accompanying activity reports.

**Exhibit 5**  
**Budget and Units of Service**

**1. BUDGET**

The COUNTY's payment to the SUBRECIPIENT will be based on the provision of the units of service and according to the service elements and amounts specified in this Exhibit.

As required in OAA 315(b)(3) no means testing for services eligibility will be conducted and per OAA 315(b)(4)(A-D), all recipients of OAA services will be provided the opportunity to voluntarily contribute towards the cost of service. SUBRECIPIENT has appropriate safeguards in place to account for all contributions. Said contributions are hereby referred to as Program Income and shall be used by the SUBRECIPIENT for the sole purpose of expanding services if the program income is equal to or less than the budgeted amount.

\$.96 of program income collected per meal served will contribute to reimbursement rate for each meal. The total of the number of meals served times \$.96 will be deducted from the amount requested by SUBRECIPIENT from the COUNTY on the reimbursement request.

Program income above the \$.96 per meal will be retained at the Oregon City meal site and be used for meal site management activities.

SUBRECIPIENT may not transfer funds from one service category to another without written approval from the COUNTY.

SUBRECIPIENT agrees to provide matching funds in accordance with Section 309(b)(1) and 373 (g)(2) of the Older Americans Act for qualified expenditures with cash or in-kind resources of non-federal means as follows:

Match shall be figured at 10% of the total OAA Title III-B expenditures and III-C funds contracted per service provision, and at 25% of the total OAA Title III-E funds.

Match for Ride Connections Vehicle Maintenance program is 10.27%.

SUBRECIPIENT match funds must be from sources other than Federal funds, and SUBRECIPIENT will provide COUNTY with a statement of assurance stating this.

SUBRECIPIENT will invoice and receive direct reimbursement from the State of Oregon, Dept. of Human Services, Senior & People with Disabilities for Home Delivered Meals provided for authorized Medicaid clients at the state approved per meal rate.

City of Oregon City - Pioneer Community Center

City of Oregon City - Pioneer Community Center  
Fiscal Year 2014-15

2. UNIT COST SCHEDULE

	LIEAP Funds	OAA IIB Funds	OAA IIC Funds	OAA IID Funds	OAA IIE Funds	OAA Match	NSIP Funds	Ride Con Funds	STF Funds	Medicaid Funds	Program Income	NO. OF UNITS	TOTAL COST
CFDA Numbers		93.044	93.045	93.043	93.052		93.053		20,513				
Service Category	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(13)	(14)	(15)
LIEAP Intakes	540											83	540
Case Management		4,792				533						121.7 hrs	5,325
Reassurance		3,770										95	3,770
Information & Assistance		3,359				374						117	3,733
Transportation - OAA		13,988				1,555					2,331	4,663	17,875
Physical Activity/ Falls Prevention				812		0						41	812
Preventative Screening, Counseling, & Referrals				705		0						18	705
Family Caregiver Assist.					0	0						0	0
OAA Meal Site Management			19,350			2,152					25,800	32,250	47,302
Medicaid HDM - SPD			(7,398)			(823)	(3,465)			42,930	(3,600)	4,500	27,644
Transportation - Ride Con In District								19,394			1,293	2,586	20,687
Transportation - Ride Con Out-of Dist									3,212		214	428	3,426
Transport - non-med T19									4,954			960	13,440
TOTALS	540	25,909	11,952	1,517	0	3,791	(3,465)	19,394	8,166	51,416	26,038		145,258

Source of OAA Match - Staff time

CFDA Number 20.513 applies to Ride Connection Vehicle Maintenance funds only

Contract Amount: \$ 111,829

### 3. UNITS OF SERVICE

SUBRECIPIENT or COUNTY may request substantive changes in the program activities as described in "Exhibit 1". Such changes must be mutually agreed upon by and between SUBRECIPIENT and COUNTY and incorporated in a written amendment to this contract. Such amendment shall not become effective until signed by both the SUBRECIPIENT and the COUNTY.

Client Service Objectives:

Service Category	Planned Number of Service Units	Unit of Measurement	Number of Unduplicated Clients to be Served
Case Management (OAA)	121.7	1 hour of service	50
Reassurance (OAA)	95	1 contact	50
Information and Assistance (OAA)	117	1 response to inquiry and follow up	60
Transportation (OAA)	4,663	1 one-way ride	225
Physical Activity/ Falls Prevention	41	1 class session	25
Preventative Screening, Counseling, & Referrals	18	1 program/activity	18
Transportation (Medicaid non-medical)	960	1 one-way ride	25
Transportation (Ride Connection)	3,014	1 one-way ride	225
Meal Site Management (OAA)	32,250	1 meal delivered/served	450
Medicaid Home Delivered Meals	4,500	1 meal delivered/served	20
LIEAP Applications	83	1 Completed Application	83

## EXHIBIT 6

### Senior Companion Program Scope of Work and Performance Standards and Guidelines for Service

#### ~ BASIC PROVISIONS ~

#### Both Parties agree to:

Designate and keep current a representative to serve as liaison to the other party –

**COUNTY-SCP** designates: Kathy Henderson Title: SCP Director

Phone: 503-655-8875 E-mail: khenderson@co.clackamas.or.us

**VOLUNTEER STATION** designates: Jamie Davie Title: Client Services Coordinator

Phone: 503-657-8287 E-mail: jdavie@ci.oregon-city.or.us

1. The Clackamas County Senior Companion Program (COUNTY-SCP) will, as sponsored by Clackamas County Social Services and under the oversight of the Corporation for National Service:
  - a. Recruit, interview, screen, select, and enroll volunteers in the program. The volunteers will meet the Corporation criteria for enrollment in the program.
  - b. Provide accident and liability insurance coverage as required by the program.
  - c. Be responsible for the management and fiscal control of the program.
  - d. Provide orientation to volunteers and provide in-service training on an on-going basis, including Confidentiality Training.
  - e. Provide orientation to Volunteer Station staff.
  - f. Permit and encourage the Volunteer Station to screen Senior Companions pursuant to established criteria of Volunteer Station.
  
2. The Pioneer Community Center (VOLUNTEER STATION) will:
  - a. Designate a coordinator to serve as liaison with the SCP staff.
  - b. Provide Supervision of volunteers on assignment in coordinator with the SCP staff.
  - c. Provide Senior Companions with assignments which utilize their skills and training.
  - d. Assist SCP in the coordination of volunteer assignment, orientation, in-service instruction and other project-related activities.
  - e. Have the right to request the SCP reassign a volunteer.
  - f. Provide for adequate health and safety protection of volunteers. Investigate incidents, accidents, and injuries involving volunteers and notify the SCP on a timely basis.
  - g. Submit required paperwork to the SCP on a timely basis, i.e., including
  - h. SCP Impact Evaluations and SCP Performance Measure information.
  - i. Collect and validate appropriate volunteer reports for submission to the SCP.
  - j. In consultation with the SCP, make investigations and reports regarding accidents and injuries involving volunteers.

- k. Obtain a written CarePlan/Letter of Agreement prior to assignment of Senior Companions in homes of clients served, specifying volunteer activities to be performed. CarePlan/This Letter of Agreement will be signed by the volunteer station and person to be served in the home or his/her legal representatives.
- l. Ensure Senior Companions serve in a volunteer capacity. The Station will verify the Senior Companions will not: displace nor replace paid or contracted employees, relieve staff of their routine duties.
- m. Maintain the programs and activities to which Senior Companion volunteers are assigned accessible to persons with disabilities and provide reasonable accommodation to allow persons with disabilities to participate in programs and activities.
- n. Provide cash/in-kind contribution(s) in support of the project – (Donor verifies funds are not from other federal sources unless authorized under law.)

**~ ADDITIONAL PROVISIONS ~**

1. **Inclusivity**: Station will not discriminate against SCP volunteers or in the operation of its program on the basis of race, color, national origin, sex, age, political affiliation, religion, or disability, if the volunteer is an otherwise qualified individual.
2. **Accessibility**: Station will provide reasonable accommodation to allow persons with disabilities to participate in programs to which volunteers are assigned.
3. **Prohibited Activities**: SCP volunteers will participate in (1) partisan political activities, (2) religious activities, (3) a position for which pay is available or which supplants a paid employee.
4. **Removal or Separation**: The Station may request the removal of an SCP volunteer at any time. A volunteer may withdraw from service at the Station or from SCP at any time. Discussion of individual separations will occur between SCP staff, Station staff and the volunteer to clarify the reasons, resolve conflicts, or take remedial action, including another placement. Clackamas County Social Services has a grievance policy that may be used by an SCP volunteer or Station at any time.

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## EXHIBIT 7

### Retired Seniors Volunteer Program (RSVP) Scope of Work and Performance Standards and Guidelines for Service

Both Parties agree to:

Designate and keep current a representative to serve as liaison to the other party

**COUNTY-RSVP** designates: Wendy Hays Title: RSVP Director

Phone: 503-650-5796 E-mail: wendyhay@co.clackamas.or.us

**VOLUNTEER STATION** designates: Kathy Wiseman Title: Director

Phone: 503-657-8287 E-mail: kwiseman@ci.oregon-city.or.us

1. Clackamas RSVP agrees to:

- a. Recruit, interview and enroll RSVP volunteers (55 and older) and refer volunteers to the Station.
- b. Instruct RSVP volunteers in RSVP procedures including available benefits, reporting and mileage reimbursement guidelines.
- c. Provide orientation to Station staff prior to placement of volunteers and at other times as needed.
- d. Furnish accident, personal liability and excess automobile liability insurance coverage as required by program policy. Insurance is secondary coverage and is not primary insurance.
- e. May provide a program of volunteer mileage reimbursement, for the commute from home to the Station and back, where transportation costs would otherwise hinder the ability of an individual to serve
- f. Be available to provide resources and periodically monitor volunteer activities at Station to assess and/or discuss needs of volunteers and Station.

2. Pioneer Community Center (RSVP STATION) agrees to:

- a. Provide orientation, in-service or special training of volunteers as required by the volunteer positions
- b. Interview or screen volunteers who are referred by RSVP and make final decision on volunteer placement. Refer to Addendum B: *Best Practices for Volunteer Screening*.
- c. Provide supervision of RSVP volunteers on assignments and furnish volunteers with materials for their assignments.
- d. Provide for adequate safety of volunteers during assignments. Investigate and immediately report to RSVP any incident, accident or injury involving an RSVP volunteer.
- e. Validate monthly volunteer service hours and send to RSVP office by the 5th of each month.

- i.  Volunteers will use RSVP forms: \_\_\_ sent individually \_\_\_ kept at Station
  - ii. \_\_\_ volunteers will record time on Station's forms
- f. Provide mileage reimbursement for volunteers whose assignments require driving their own vehicles for tasks assigned by the RSVP Station.
- g. Provide no cost meals as a benefit to volunteers,
- i.  Contributed meals are FEDERALLY FUNDED under:
    - (1)  Title III C of the Older Americans Act
    - (2)  Other federal funding source
  - ii. \_\_\_ Contributed meals are not provided through federal funds. Meals will be provided to volunteers free or at a reduced price when \_\_\_ hours of service will be given during that day. Number of meals will be reported to RSVP quarterly.
- h. Collaborate with RSVP to measure community impact of volunteerism in Clackamas County as follows:
- i.  Upon request provide RSVP with data on numbers served.

~ ADDITIONAL PROVISIONS ~

1. **Inclusivity:** Station will not discriminate against RSVP volunteers or in the operation of its program on the basis of race, color, national origin, sex, age, political affiliation, religion, or disability, if the volunteer is an otherwise qualified individual.
2. **Accessibility:** Station will provide reasonable accommodation to allow persons with disabilities to participate in programs to which volunteers are assigned.
3. **Prohibited Activities:** RSVP will not refer volunteers for (1) partisan political activities, (2) religious activities, (3) a position for which pay is available or which supplants a paid employee.
4. **In Home Assignments:** When a volunteer is assigned by Station to in-home assignments, there will be a clear position description filed with RSVP and the parties involved will sign a letter of agreement that authorizes volunteer service and identifies the specific volunteer activities, periods and conditions of service.
5. **Removal or Separation:** The Station may request the removal of an RSVP volunteer at any time. A volunteer may withdraw from service at the Station or from RSVP at any time. Discussion of individual separations will occur between RSVP staff, Station staff and the volunteer to clarify the reasons, resolve conflicts, or take remedial action, including another placement. Clackamas County Social Services has a grievance policy that may be used by an RSVP volunteer or Station at any time.

**EXHIBIT 8  
CONGRESSIONAL LOBBYING CERTIFICATE**

The undersigned certifies, to the best of his or her knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any SUBRECIPIENT, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of ANY Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any SUBRECIPIENT, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with THIS Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions [as amended by "Government-wide Guidance for New Restrictions on Lobbying," 61 Federal Regulations 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)].

The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all SUBRECIPIENTS shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.]

The Contractor, CITY OF OREGON CITY-PIONEER COMMUNITY CENTER, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

Date: 6/26/2014

Company Name: City of Oregon City

Signature: A. KUI

Name: David Frasher A. Konkol -ACTING CITY MANAGER  
(printed)

Title: City Manager

**EXHIBIT 10  
SUBRECIPIENT PROFILE**

**1. SUBRECIPIENT IDENTIFICATION** \_\_\_\_\_

**2. IRS/STATE NONPROFIT NUMBER:**

City of Oregon City – Pioneer Comm. Ctr.  
Legal Name

Federal ID#: 93-6002230

615 Fifth Street  
Street Address:

**3. CHIEF ADMINISTRATIVE OFFICIAL**

Name: **David Frasher, City Mgr.**

Same as above  
Mailing Address

Address: 625 Center Street

Oregon City

Phone: 503-496-1504

\_\_\_\_\_  
City / Zip

\_\_\_\_\_  
Phone                      FAX

**4. TYPE OF AGENCY:** City – Adult Community Center

**5. TYPE OF PROGRAM:** Multi-purpose

**6. BOARD OF DIRECTORS (List Members):**

Oregon City Commissioners

City of Oregon City  
Parks and Recreation Advisory Committee

Mayor: Doug Neely  
Kathy Roth  
Betty Mumm.  
Rocky L. Smith, Jr  
Carol Pauli

Mike Mitchell, Chair; Lisa Norman, Vice Chair;  
Kathleen Baker; Bob Burns; Shawn Dachtler;  
Roger Fowler-Thias; Joyce Gifford;  
Dustin Moyes; Daniel Tupper;

Frequency of Meetings:  
Twice Monthly

Larry Potter, Parks Department Manager  
Scott Archer, Community Services Director  
Denise Kai, Asst. Parks & Rec. Director

Frequency of Meetings: Monthly

7. SUBRECIPIENT INFORMATION:

The following have been approved and adopted by the SUBRECIPIENT's Board of Directors:

	<u>YES</u> <u>NO</u>		Approved Usage Certificate	
			<u>YES</u>	<u>NO</u>
Written Personnel Policies	X			
Staff Job Descriptions	X		Fire Marshal	X
Written Benefits Policies	X		Co. Health	X
Affirmative Action Plan	X		County Zone	X
Nondiscrimination Plan	X			
State/Federal Certifications	X			

Current Articles of Incorporation: Original Incorporation 12/1844

Last Total SUBRECIPIENT Audit: Done annually as part of City audit

8. Types and Amounts of Insurance Held: Commercial General Liability \$3,000,000 per occurrence, \$6,000,000 aggregate; Commercial Automobile Liability \$3,000,000.

9. SUBRECIPIENT CERTIFICATION STATEMENT:

I certify that to the best of my knowledge, the information contained in the SUBRECIPIENT Profile is accurate and complete and that I have the legal authority to commit this SUBRECIPIENT to a contractual agreement.

A. K. O.

Signature, David Frasher

*A. Konkol - ACTING CITY MANAGER*

City Manager

Title

6/26/2014

Date

## RESPONSE SECTION

1. Describe your grievance procedure for clients and how CCSS will fit in the process:

PIONEER COMMUNITY CENTER  
PROCEDURES FOR HANDLING COMPLAINTS

### WHO CAN USE THIS PROCEDURE

Any persons who have been denied a Center service or been told they are ineligible for a service, or who have a complaint about how a service is provided may use this complaint/appeal procedure. The complaint must be made by a complainant who has firsthand knowledge; it cannot be something you have only heard about. Employees who have a complaint about a matter which may affect their employment adversely must use the City's Grievance Procedure established in its Personnel Policies.

### BEFORE YOU MAKE A COMPLAINT OR APPEAL

It is important that you try to solve a problem informally with the people directly involved. Talk over your complaint with them first. If the problem is still not resolved, speak to the Center Supervisor. Any decision must be in accordance with Pioneer Community Center policies and procedures. City of Oregon City policies and procedures, City of Oregon City policies and, in the case of contracted services, in accordance with established policies and procedures of the contracting agency. You may go ahead with the procedure described below if the problem isn't solved informally.

### WHERE TO TAKE YOUR COMPLAINT

If the problem is not resolved after speaking to the Center Supervisor, you may take your complaint to the Director of Community Services. Your complaint can be in writing or in person (see address and phone below).

Director of Community Services  
City of Oregon City

625 Center Street  
Oregon City, OR 97045  
Phone: 503-657-0891

### HOW THE COMPLAINT WILL PROCEED

When you make a formal complaint with the Director of Community Services, the Director will start a file with your name on it. The file will contain a description of your complaint, what you want to do about it and a report on any action taken to solve the problem. The Director will discuss the complaint with you to try to solve the problem. Within five (5) working days of the discussion, you will be notified of what action is being taken.

If you are still not satisfied with actions taken, you may re-address your complaint to the City Manager. Within thirty (30) days of receipt of your letter the City Manager will meet with you and the Pioneer Community Center Supervisor to discuss the problem. The City Manager will send you a written decision within five (5) working days. The decision of the City Manager is final as to whether actions taken were justified and whether circumstances warrant policy review by the City Commission.

City Manager  
City of Oregon City

625 Center Street  
Oregon City, OR 97045  
Phone: 503-657-0891

2. Describe the organization's procedure for prioritizing services for the target population of frail, low income, minority and rural residents age 60 and older:

Currently, no formal procedure

3. Describe SUBRECIPIENT's operating procedures (use space provided only):

- a. Hours of Operation: Mon. - Fri. 9:00 a.m. to 4:00 p.m.  
Total hours per day: 7 hrs Mon. - Friday  
Total hours per week: 35 hrs

- b. Official Closures:

New Year's Day, January 1  
Martin Luther King, Jr. Day, in January  
President's Day, third Monday in February  
Memorial Day, last Monday in May  
Independence Day, Fourth of July  
Labor Day, first Monday in September  
Veterans' Day, November 11  
Thanksgiving, and day after (fourth Thursday in November)  
Christmas, December 25

4. Please describe the boundaries of the area for which a person propose to provide services.

Oregon City and West Linn areas

**Eastside of Willamette River:**

Northern Boundary: Mouth of Clackamas River to Springwater Rd. to intersection with Ridge Road.

Western Boundary: Willamette River south to Leland Road

Southern Boundary: Leland Road to Steiner Road to Ridge Road

Eastern Boundary: Ridge Road to Springwater Road

**Westside of Willamette River (West Linn Area:**

**Northern Boundary:** Stafford Road and Lake Oswego City limits

**Western Boundary:** Tualatin River and West Linn City limits

**Southern Boundary:** West Linn City limits

**Eastern Boundary:** Willamette River

5. Show an organizational chart which identifies staff positions and FTE within the contracted program.

Center Supervisor - 1 FTE (40 hrs.)

Client Services Coord. - 1 FTE (40 hrs.)

Program Coordinator - 0.9 FTE (36 hrs.)

Nutrition Coord. - .82 FTE (33 hrs.)

Meals on Wheels coord. - .77 FTE (34 hrs.)

Van Drivers - 133 FTE ( 60hrs.)

Senior Companions - 3 ea.

Friendly Visitors - 0 ea.

Telephone Reassurance - done by receptionists Mon-Fri and Fire Department on weekends & holidays

6. Describe methods for providing information about services.

The receptionists and hostesses have limited information, telephone numbers, and dates for distribution of commodities, etc., and are instructed to refer clients, when necessary, to the Client Services staff who are trained to give more intensive I&A.

Services offered are posted at the Center and in the newsletter. News releases in The Clackamas Review and The Oregonian are made periodically

7. List the services provided and include the strategies and methods for conducting these services (i.e. staff time, volunteers used, method of community awareness, intake, and record keeping procedures).

The contracted services of assessment, case monitoring, information & assistance, and transportation are being provided by the client services coordinator. Transportation services are provided by one to two van drivers. For community awareness, see F. above. The workers use a generic intake form which is kept to track and document progress. A daily log of contacts is also kept which provides statistics for monthly and year-end reports

8. Briefly, describe methods for providing legal services.

Clients are referred to Oregon Legal Services if they are under 60 or are low income or have a case involving SS, AFS, FS, Veterans, etc., since most attorneys do not have expertise in these areas.

For those 60 and over, local volunteer attorneys donate one afternoon a month on a rotating basis to provide free 1/2 hour appointments. If a client needs further help on that matter and are within 125% of poverty guidelines, they may have continued pro bono assistance but are responsible for out-of-pocket expenses. A person may have additional appointments if or when other matters arise



## II. GUIDELINES FOR INCLUSION OF RESIDENTS OF CONGREGATE LIVING FACILITIES IN CLACKAMAS COUNTY SENIOR CENTER ACTIVITIES

Clackamas County Senior Centers provide a variety of program and services for adults who are able to participate independently and without special assistance or supervision.

Those who use the Center must be:

1. Mobile or if of limited mobility, able to use walker, cane, wheelchair or other device completely unassisted.
2. Continent or wear appropriate protective undergarments and not need assistance with bathroom concerns.
3. Physically able to care for personal needs and be able to take part in activities selected without special assistance.
4. Mentally able to make responsible decisions regarding participation.
5. Able to behave in an appropriate manner so not to disrupt or require supervision.
6. Able to remove self from danger without assistance.
7. Or, if unable to meet the above criteria, accompanied by a caregiver provided by the family or facility where the individual lives, to assist as necessary to comply with guidelines.

If an individual lives in a care facility it is the responsibility of the facility to:

1. Determine if it is appropriate for their resident to take part in Center activities.
2. Make advance arrangements for such participation with the Center Director or appropriate designee.
3. Communicate the information contained in these guidelines to their employees, residents and/or residents' guardians and others involved in residents' care who should be aware of these guidelines.

### **Transportation**

Some Centers provide transportation to and from the Centers and to grocery shopping. Rides are subject to available space and priority is given to isolated individuals without access to transportation. Individuals using Center transportation must be able to:

1. Meet the Guidelines listed above.
2. Be physically able to use the transportation available.
3. Be mentally able to follow procedures, e.g., regarding arrival and departure, seat belt use, etc.

If an individual is being transported from a care facility by a Center bus, the facility must make arrangements in advance for that individual's transportation and is responsible to reimburse the Center for the bus fare.

Under no circumstances is the Center responsible for individuals who call and request a ride without the facility's knowledge and for whom a ride is given. The Center is not responsible for

individuals who once arrive at the Center, leave the Center, make other arrangements to return home or request to be returned to a location other than the original pick up address.

### **Nutrition**

Individuals who wish to participate in the Center's nutrition program must meet the guidelines listed above. If an individual is from a care facility, the facility must make arrangements in advance for that individual's participation in the nutrition program and is responsible to reimburse the Center for the meal cost.

### **Emergency Care**

It is imperative that a care facility's staff provide contact information prior to one of their residents coming to the Center. It is imperative that a care facility's staff be accessible by phone for the period of time when their resident is taking part in Center activities. In the event that an individual who lives in a care facility becomes ill or incontinent while at the Center, the Center staff will call the facility. It is the facility's responsibility to provide transportation for the individual from the Center back to the facility. In the event of a serious illness or injury, the Center's staff will call "911" for emergency assistance. The facility will be notified by the Center's staff in order for the facility to provide follow-up instructions for care of their resident.

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July 10, 2014

Board of Commissioners  
 Clackamas County

Members of the Board:

**Approval of an Agency Service Contract with  
 Cascadia Behavioral Healthcare for  
Outpatient Mental Health Services and Outpatient Substance Abuse Services**

<b>Purpose/Outcomes</b>	To provide mental health services to indigent Clackamas County residents.
<b>Dollar Amount and Fiscal Impact</b>	The contract does not contain an upper limit; expenditures are controlled by Behavioral Health Division staff who pre-authorize and monitor services on an on-going basis.
<b>Funding Source</b>	Oregon Health Authority - no County General Funds are involved.
<b>Safety Impact</b>	None
<b>Duration</b>	Effective July 1, 2014 and terminates on June 30, 2015
<b>Previous Board Action</b>	The previous agreement was approved by the Board of County Commissioners on January 24, 2013 - agenda item 012413-A2
<b>Contact Person</b>	Jill Archer, Director – Behavioral Health Division - 742-5336
<b>Contract No.</b>	6687

**BACKGROUND:**

The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of an Agency Service Contract with Cascadia Behavioral Healthcare for outpatient mental health services and outpatient substance abuse services to indigent Clackamas County residents.

- Outpatient mental health services include an array of treatment such as individual and group therapy, skills training, case management and psychiatric services.
- Outpatient substance abuse services include an array of treatment such as individual, group and family therapy; assessment; treatment and discharge planning; pharmacotherapy; case management peer-delivered services and supports.

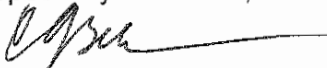
The Behavioral Health Division has partnered with Cascadia Behavioral Healthcare for behavioral health services since 2007. This contract is a continuation of these services.

The contract is effective July 1, 2014 and continues through June 30, 2015. County Counsel has reviewed and approved this contract as part of the H3S contract standardization project.

**RECOMMENDATION:**

Staff recommends the Board approval of this contract and authorizes Cindy Becker, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,

  
 Cindy Becker, Director

# AGENCY SERVICE CONTRACT

**Contract # 6687**

This Agency Service Contract is between Clackamas County acting by and through its Health, Housing and Human Services Department, Behavioral Health Division, hereinafter called "COUNTY," and **CASCADIA BEHAVIORAL HEALTHCARE**, hereinafter called "AGENCY." Throughout this contract and all exhibits, the term "DEPARTMENT" shall refer to and mean the State of Oregon, Oregon Health Authority.

The services set forth under this Agency Service Contract reflect required pass-through language from the 2013-2015 Intergovernmental Agreement for the financing of Community Addictions and Mental Health Services between the COUNTY and the DEPARTMENT.

## CONTRACT

### 1.0 Engagement

COUNTY hereby engages AGENCY to provide outpatient mental health services and outpatient substance abuse services as more fully described in Exhibit C, Scope of Work, attached hereto and incorporated herein.

### 2.0 Term

Services provided under the terms of this contract shall commence on **July 1, 2014** and shall terminate **June 30, 2015** unless terminated by one or both parties as provided for in paragraph 6.0 below.

### 3.0 Compensation and Fiscal Records

3.1 Compensation. COUNTY shall compensate AGENCY as specified in Exhibit D, Compensation. The payment shall be full compensation for work performed, for services rendered, and for all labor, materials, supplies, equipment, mileage, and incidentals necessary to perform the work and services.

3.2 Withholding of Contract Payments. Notwithstanding any other payment provision of this contract, should AGENCY fail to submit required reports when due, or submit reports which appear patently inaccurate or inadequate on their face, or fail to perform or document the performance of contracted services, COUNTY shall immediately withhold payments hereunder. Such withholding of payment for cause may continue until AGENCY submits required reports, performs required services, or establishes to COUNTY's satisfaction that such failure arose out of causes beyond the control, and without the fault or negligence, of AGENCY.

3.3 Financial Records. AGENCY and its subcontractors shall maintain complete and legible financial records pertaining in whole or in part to this contract. Such records shall be maintained in accordance with Generally Accepted Accounting Principles and/or other applicable accounting guidelines. Financial records and supporting documents shall be retained for at least six (6) years or such period as may be required by applicable law, following final payment is made under this agreement or until all pending matters are resolved, whichever period is longer. If an audit of financial records discloses that payments to AGENCY were in excess of the amount to which AGENCY was entitled, AGENCY shall repay the amount of the excess to COUNTY.

3.4 Access to Records and Facilities. COUNTY, DEPARTMENT, the Secretary of State's Office of the State of Oregon, the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers and records of AGENCY that are directly related to this contract, the funds paid to AGENCY hereunder, or any services delivered hereunder for the purpose of making audits, examinations, excerpts, and transcripts. In addition, AGENCY shall permit authorized

representatives of COUNTY and DEPARTMENT to perform site reviews of all services delivered by AGENCY hereunder.

3.4.1 AGENCY shall maintain up-to-date accounting records that accurately reflect all revenue by source, all expenses by object of expense, and all assets, liabilities and equities consistent with Generally Accepted Accounting Principles and Oregon Administrative Rules. AGENCY shall make reports and fiscal data generated under and for this agreement available to COUNTY upon request.

3.4.2 COUNTY conduct a fiscal compliance review of AGENCY as part of compliance monitoring of this agreement. AGENCY agrees to provide, upon reasonable notice, access to all financial books, documents, papers and records of AGENCY which are pertinent to this agreement to ensure appropriate expenditure of funds under this agreement. COUNTY shall monitor compliance with COUNTY's financial reporting and accounting requirements.

3.4.3 AGENCY may be subject to audit requirements. AGENCY agrees that audits must be conducted by Certified Public Accountants who satisfy the independence requirement outlined in the rules of the American Institute of Certified Public Accountants (Rule 101 of the AICPA Code of Professional Conduct), the Oregon State Board of Accountancy, the independence rules contained within Governmental Auditing Standards (1994 Revision), and rules promulgated by other federal, state and local government agencies with jurisdiction over AGENCY.

3.4.4 AGENCY shall establish and maintain systematic written procedures to assure timely and appropriate resolution of review or audit findings and recommendations. AGENCY shall make such procedures and documentation of resolution of audit findings available to COUNTY upon request.

#### **4.0 Manner of Performance**

4.1 Compliance with Applicable Laws and Regulations and Special Federal Requirements. AGENCY shall comply with all Federal, State, local laws, rules, and regulations applicable to the work to be performed under this contract, including, but not limited to, all applicable Federal and State civil rights and rehabilitation statutes, rules and regulations, and as listed in Exhibit B, paragraph 9. Compliance with Applicable Law, attached hereto and incorporated herein by this reference. AGENCY shall comply with Oregon Administrative Rule (OAR) 410-120-1380, which establishes the requirements for compliance with Section 4751 of Omnibus Budget Reconciliation Act (OBRA) 1991 and ORS 127-649, Patient Self-Determination Act.

4.2 Precedence. A requirement listed both in the main boilerplate of this contract and in an exhibit, the exhibit shall take precedence.

4.3 Subcontracts. AGENCY shall not enter into any subcontracts for any of the work scheduled under this contract without obtaining prior written approval from COUNTY.

4.4 Independent Contractor. AGENCY certifies that it is an independent contractor and not an employee or agent of COUNTY, State, or Federal Government as those terms are used in ORS 30.265. Responsibility for all taxes, assessments, and any other charges imposed upon employers shall be the sole responsibility of AGENCY.

#### **5.0 General Conditions**

5.1 Indemnification. AGENCY agrees to indemnify, save, hold harmless, and defend COUNTY, its officers, commissioners and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of actions, suits, claims or demand attributable in whole or in part to the acts or omissions of AGENCY, and AGENCY's officers, agents, and employees, in performance of this contract.

AGENCY shall defend, save, hold harmless and indemnify the State of Oregon, AMH and their officers, agents and employees from and against all claims, suits, actions, damages, liabilities, costs and expenses of whatsoever nature resulting from, arising out of, or relating to the activities or omissions of AGENCY, or its agents or employees under this contract.

If AGENCY is a public body, AGENCY's liability under this contract is subject to the limitations of the Oregon Tort Claims Act.

5.2 Insurance. During the term of this agreement, AGENCY shall maintain in force, at its own expense, each insurance noted below:

5.2.1 Commercial General Liability

Required by COUNTY       Not required by COUNTY

AGENCY shall obtain, at AGENCY's expense, and keep in effect during the term of this Agreement, Commercial General Liability Insurance covering bodily injury and property damage on an "occurrence" form in the amount of not less than \$2,000,000 per occurrence/\$4,000,000 general aggregate for the protection of COUNTY, its officers, commissioners, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute it.

5.2.2 Commercial Automobile Liability

Required by COUNTY       Not required by COUNTY

AGENCY shall also obtain at AGENCY's expense, and keep in effect during the term of the Agreement, "Symbol 1" Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$2,000,000.

5.2.3 Professional Liability

Required by COUNTY       Not required by COUNTY

AGENCY agrees to furnish COUNTY evidence of professional liability insurance in the amount of not less than \$2,000,000 combined single limit per occurrence/\$4,000,000 general annual aggregate for malpractice or errors and omissions coverage for the protection of COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this Agreement. COUNTY, at its option, may require a complete copy of the above policy.

5.2.4 Tail Coverage. If liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this contract for a duration of thirty-six (36) months or the maximum time period the AGENCY's insurer will provide "tail" coverage as subscribed, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage provided its retroactive date is on or before the effective date of this contract.

5.2.5 Additional Insured Provisions. The insurance, other than the professional liability insurance, Workers' Compensation, and Personal Automobile Liability insurance, shall include "Clackamas County, its commissioners, agents, officers, and employees" as an additional insured.

5.2.6 Notice of Cancellation. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice to COUNTY. Any failure to comply with this provision will not affect the insurance coverage provided to COUNTY. The 60 days notice of cancellation provision shall be physically endorsed on to the policy.

5.2.7 Insurance Carrier Rating. Coverages provided by AGENCY must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

5.2.8 Certificates of Insurance. As evidence of the insurance coverage required by this contract, AGENCY shall furnish a Certificate of Insurance to COUNTY. No contract shall be in effect until the required certificates have been received, approved and accepted by COUNTY. The certificate will specify that all insurance-related provisions within this contract have been complied with. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration.

5.2.9 Primary Coverage Clarification. AGENCY's coverage will be primary in the event of a loss.

5.2.10 Cross Liability Clause. A cross-liability or separation of insureds condition will be included in all general liability, professional liability, and errors and omissions policies required by this contract.

5.3 Governing Law; Consent to Jurisdiction. This agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Any claim, action, or suit between COUNTY and AGENCY that arises out of or relates to performance under this agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, State of Oregon. Provided, however, that if any such claim, action or suit may be brought only in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. AGENCY by execution of this agreement consents to the in personam jurisdiction of said courts.

5.4 Amendments. The terms of this contract shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written instrument signed by AGENCY and COUNTY.

5.5 Severability. If any term or provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

5.6 Waiver. The failure of either party to enforce any provision of this contract shall not constitute a waiver of that or any other provision.

5.7 Future Support. COUNTY makes no commitment of future support and assumes no obligation for future support of the activity contracted herein except as set forth in this contract.

5.8 Oregon Constitutional Limitations. This contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provision herein, which would conflict with such law, is deemed inoperative to that extent.

5.9 Oregon Public Contracting Requirements. Pursuant to the requirements of ORS 279B.020 and ORS 279B.220 through 279B.235 the following terms and conditions are made a part of this contract:

5.9.1 AGENCY shall:

- a. Make payments promptly, as due, to all persons supplying to AGENCY labor or materials for the prosecution of the work provided for in this contract.
- b. Pay all contributions or amounts due the Industrial Accident Fund from such agency or subcontractor incurred in performance of this contract.
- c. Not permit any lien or claim to be filed or prosecuted against COUNTY on account of any labor or material furnished.
- d. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

5.9.2 If AGENCY fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to AGENCY or a subcontractor by any person in connection with this contract as such claim becomes due, the proper officer representing COUNTY may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due AGENCY by reason of this contract.

5.9.3 No person shall be employed for more than ten (10) hours in any one day, or more than forty (40) hours in any one week, except in cases of necessity, emergency or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279A.055, the employee shall be paid at least time and one-half pay:

- a. for all overtime in excess of eight (8) hours a day or 40 hours in any one week when the work weeks five consecutive days, Monday through Friday;
- b. for all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
- c. for all work performed on Saturday and on any legal holiday specified in ORS 279B.020.

5.9.4 AGENCY shall pay employees at least time and a half for all overtime work performed under this agreement in excess of 40 hours in any one week, except for individuals under person services contracts who are excluded under ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 U.S.C. 201 to 209) from receiving overtime.

5.9.5 As required by ORS 279B.230, AGENCY shall promptly, as due, make payment to any person, copartnership, association, or corporation furnishing medical, surgical, and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of AGENCY, of all sums that AGENCY agrees to pay for the services and all moneys and sums that AGENCY collected or deducted from the wages of its employees under any law, contract or agreement for the purpose of providing or paying for the services.

5.9.6 Workers' Compensation. All subject employers working under this agreement must either maintain workers' compensation insurance as required by ORS 656.017, or qualify for an exemption under ORS 656.126. AGENCY shall maintain employer's liability insurance with limits of \$500,000 each accident, \$500,000 disease each employee, and \$500,000 each policy limit.

5.10 Ownership of Work Product. All work products of the AGENCY which result from this contract are the exclusive property of COUNTY.

5.11 Integration. This contract contains the entire agreement between COUNTY and AGENCY and supersedes all prior written or oral discussions or agreements.



5.12 Successors in Interest. The provisions of this contract shall not be binding upon or inure to the benefit of AGENCY's successors in interest without COUNTY's explicit written consent.

## **6.0 Termination**

6.1 Termination Without Cause. This contract may be terminated by mutual consent of both parties, or by either party, upon ninety (90) days' notice, in writing or delivered by certified mail or in person.

6.2 Termination With Cause. COUNTY may terminate this contract effective upon delivery of written notice to AGENCY, or at such later date as may be established by COUNTY, under any of the following conditions:

6.2.1 Terms of the 2013-2015 Community Mental Health Provider (CMHP) Intergovernmental Agreement between the COUNTY and the DEPARTMENT are modified, changed or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding authorized by this contract.

6.2.2 The termination, suspension or expiration of the 2013-2015 Community Mental Health Provider (CMHP) Intergovernmental Agreement between the COUNTY and the DEPARTMENT.

6.2.3 COUNTY funding from Federal, State, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services. The contract may be modified to accommodate a reduction in funds.

6.2.4 COUNTY has evidence that AGENCY has endangered or is endangering the health or safety of clients, staff or the public. AGENCY shall ensure the orderly and reasonable transfer of care in progress with consumers and shall work with COUNTY staff to accomplish the same.

6.2.5 The lapse, relinquishment, suspension, expiration, cancellation or termination of any required license, certification or qualification of AGENCY, or the lapse relinquishment, suspension, expiration, cancellation or termination of AGENCY's insurance as required in this contract.

6.2.6 AGENCY's filing for protection under United States Bankruptcy Code, the appointment of a receiver to manage AGENCY's affairs, or the judicial declaration that AGENCY is insolvent.

6.2.7 AGENCY fails to perform any of the other provisions of this contract, or fails to pursue the work of this contract in accordance with its terms, and after written notice from the COUNTY, fails to correct such failures within ten (10) business days or such longer period as COUNTY may authorize.

6.2.8 Debarment and Suspension. COUNTY shall not permit any person or entity to be an AGENCY if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Non-procurement Programs" in accordance with Executive Orders No. 12,549 and No. 12,689, "Debarment and Suspension". (See 45 CFR part 76). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. COUNTY shall require all AGENCYS with awards that exceed the simplified acquisition threshold to provide the required certification regarding their exclusion status and that of their principals prior to award.

6.3 Notice of Default. COUNTY may also issue a written notice of default (including breach of contract) to AGENCY and terminate the whole or any part of this contract if AGENCY substantially fails to perform the specific provisions of this contract. The rights and remedies of COUNTY related to default (including breach of contract) by AGENCY shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

6.4 Transition. Any such termination of this contract shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

**7.0 Notices**

If to AGENCY:

Cascadia Behavioral Healthcare  
847 NE 19<sup>th</sup> Suite 100 PO Box 8459  
Portland, OR 97207

If to COUNTY:


Clackamas County Behavioral Health Division  
Attention: Contract Administration  
2051 Kaen Road, # 367  
Oregon City, OR 97045

This contract consists of seven (7) sections plus the following exhibits and attachments which by this reference are incorporated herein:

Exhibit A	Definitions
Exhibit B	Scopes of Work
Exhibit C	Compensation
Exhibit D	Statement of General Conditions
Attachment 1	DSN Provider Capacity Report

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed by their duly authorized officers.

**CASCADIA BEHAVIORAL HEALTHCARE**

By:   
Derald Walker, CEO/President  
6/18/2014  
Date  
847 NE 19<sup>th</sup> Suite 100  
Street Address  
Portland, Oregon 97207  
City/State/Zip  
(503) 963-7766 / (503) 963-7711  
Phone / Fax

**CLACKAMAS COUNTY**

Commissioner: John Ludlow, Chair  
Commissioner: Jim Bernard  
Commissioner: Paul Savas  
Commissioner: Martha Schrader  
Commissioner: Tootie Smith

**Signing on Behalf of the Board:**

Cindy Becker, Director  
Health, Housing and Human Services Department

Date

## EXHIBIT A

### DEFINITIONS

Whenever used in this Agency Services Agreement, the following terms shall have the meanings set forth below:

AMH: State of Oregon, Department of Human Services, Addictions and Mental Health

AGENCY: entity contracted by COUNTY

Allowable Costs: costs described in OMB Circular A-87 except to the extent such costs are limited or excluded by other provisions of this contract

Community Mental Health Program (CMHP): a centrally organized and coordinated program of services for individuals with mental and emotional disorders and addiction dependencies operated by, or contractually affiliated with a Local Mental Health Authority (LMHA) and operated in a specific geographic area of the State of Oregon

Community Outcome Management and Performance Accountability Support System (COMPASS): the AMH project to implement a new contracts system, roll out an optional free electronic health records systems (OWITS), and enhance the collection of data through MOTS

Contract: this Agency Services Contract between COUNTY and AGENCY for the provision of services

Contract Settlement: DEPARTMENT's reconciliation, after termination of this contract, of amounts disbursed to AGENCY through the COUNTY with amounts obligated under this contract

COUNTY: Clackamas County Behavioral Health Division

Covered Services: medically appropriate services specified in OAR 410-141-3120, "Operations and Provision of Health Services" and limited in accordance with OAR 410-141-3420, "Billing and Payment" for OHP Members. The term "Covered Services" may be expanded, limited, or otherwise changed pursuant to the Clackamas County Health Share of Oregon/Clackamas Participation Agreement and OARs. Covered Services may also refer to authorized services provided to uninsured, indigent clients.

DEPARTMENT: AMH contracts with COUNTY to establish and finance community mental health and addition programs; COUNTY, in turn, subcontracts certain services to AGENCY

DHS: Department of Human Services of the State of Oregon

Federal Funds: funds paid to AGENCY under this contract that are received from an agency, instrumentality or program of the Federal government of the United States

Individual: an individual accessing publicly funded behavioral health services who is either an OHP Member or is determined eligible for services as an uninsured, indigent individual.

Local Mental Health Authority (LMHA): the county, court, or board of commissioners of one of more counties who choose to operate a CMHP

Mental Health Services: treatment services for individuals diagnosed with serious mental health illness, or other mental or emotional disturbance posing a danger to the health and safety of themselves or others.

Medicaid: Federal funds received by OHA under the Title XIX of the Social Security Act and Children's Health Insurance Program Funds administered jointly with Title XIX funds as part of State medical assistance program by OHA

Misexpenditure: money, other than an overexpenditure disbursed to AGENCY by COUNTY under this agreement and expended by AGENCY that:

- (a) is identified by the Federal government as expended contrary to applicable statutes, rules, OMB Circulars or any other authority that governs the permissible expenditure of such money, for which the Federal government has requested reimbursement by the State of Oregon and whether in the form of a Federal determination of improper use of Federal funds, a Federal notice of disallowance, or otherwise; or
- (b) is identified by the COUNTY, State of Oregon or OHA as expended in a manner other than that permitted by this agreement, including without limitation, any money expended by AGENCY, contrary to applicable statutes, rules, OMB Circulars or any other authority that governs the permissible expenditure of such money; or
- (c) is identified by the COUNTY, State of Oregon or OHA as expended on the delivery of a service that did not meet the standards and requirements of this agreement with respect to that service

Measures and Outcomes Tracking System (MOTS): the AMH data system that stores client data submitted by AGENCY and/or COUNTY

OAR: Oregon Administrative Rules duly promulgated by the Oregon Health Authority and as amended from time to time.

OHA: the State of Oregon, acting by and through its Oregon Health Authority.

OHP Member: an individual found eligible by a division of the Oregon Department of Human Services to receive services under the OHP (Oregon Health Plan) Medicaid Demonstration Project or State Children's Health Insurance Program and who is enrolled with COUNTY as Health Share of Oregon/Clackamas.

Oregon Web Infrastructure for Treatment Services (OWITS): is 1) an optional free electronic health records system available to Counties and their Providers to submit the MOTS data, and 2) a system to manage the AMH services and County Financial Assistance agreements

Overexpenditure: Money disbursed by COUNTY under this agreement and expended by AGENCY that is identified by the COUNTY, State of Oregon or OHA, through agreement settlement or any other disbursement/payment reconciliation permitted or required by this agreement, as in excess of the amount AGENCY is entitled to as determined in accordance with the financial assistance calculation methodologies set forth in the applicable Service Descriptions.

Primary Source Verification: verification from the original source of a specific credential (education, training, licensure) to determine the accuracy of the qualifications of an individual health care practitioner. Examples of primary source verification include, but are not limited to, direct correspondence, telephone verification and internet verifications.

Third Party Resources: any individual, entity, or program that is, or may be, liable to pay all or part of the cost of any Covered Service furnished to an OHP Member, including but not limited to: private health insurance or group health plan; employment-related health insurance; medical support from absent parents; workers' compensation; Medicare; automobile liability insurance; other federal programs such as Veteran's Administration, Armed Forces Retirees and Dependent Act, Armed Forces Active Duty and Dependents Military Medical Benefits Act, and Medicare Parts A and B; another state's Title XIX, Title XXI or state-funded Medical Assistance Program; and personal estates.

Valid Claim: an invoice, in the form of a CMS 1500 claim form, submitted for payment of covered health services rendered to an eligible client that is submitted within the required 90 days from the date of service or discharge and that can be processed without obtaining additional information from the provider of the service or from a third party. A valid claim is synonymous with the federal definition of a clean claim as defined in 42 CFR 447.45(b).

**EXHIBIT B**  
**SCOPE OF WORK**

**1. Outpatient Mental Health Services**

AGENCY shall provide mental health treatment services for uninsured Clackamas County residents who meet the criteria for Indigent Services Program Treatment Fund. These services are time limited unless the individual meets the diagnostic category of severe and persistent mental illness. Outpatient services are specific in targeting the symptoms or problem being treated. Services may include assessment; treatment and discharge planning; individual, family and group therapy; psychiatric evaluation; medication management; and case management. AGENCY shall provide a responsive, 24-hour, 7 days per week coverage system to ensure access to services.

**2. Outpatient Substance Abuse Services**

Treatment services provided to individuals with alcohol or other drug use disorders and their family members. Services may include assessment; treatment and discharge planning; individual, group and family therapy; pharmacotherapy; case management; peer delivered services and supports. Services and supports will be individually tailored to the needs of each client and their family and include evidence based treatment where evidence exists. AGENCY will ensure staff attendance and coordination with Treatment Courts for any clients enrolled in Drug Court.

Performance measures will be jointly developed between County and AGENCY and monitored on a quarterly basis. Reporting requirements to be determined once performance measures are developed.

**EXHIBIT C**  
**COMPENSATION**

To receive payment AGENCY shall submit a CMS 1500 claim form to COUNTY's Third Party Administrator, Performance Health Technology Ltd (PH Tech) within 120 calendar days of the date of service in accordance with OAR 410-141-3420, "Billing and Payment". Claims may be submitted to PH Tech in either paper or electronic format.

Refer to Exhibit B, paragraph 4.d. for guidance regarding encounter submissions.

## EXHIBIT D

### STATEMENT OF GENERAL CONDITIONS

#### 1. Interpretation and Administration of Agreement

AGENCY acknowledges that this agreement between COUNTY and AGENCY is subject to the underlying Intergovernmental Agreement between the Oregon Health Authority and COUNTY, the Oregon Revised Statutes concerning the Oregon Health Plan, and other applicable Oregon statutes and administrative rules concerning mental health services. If AGENCY believes that any provision of this agreement or COUNTY's interpretation thereof is in conflict with Federal and State statutes or regulations, AGENCY shall notify COUNTY in writing immediately.

AGENCY agrees to provide medically necessary services within the scope of its practice and license (hereinafter referred to as "services") to individuals assessed as having an eligible mental health condition specified in the Oregon Health Plan "Prioritized List of Mental Health Conditions", can benefit from those services, and as described below when authorized by COUNTY's treatment authorization process. AGENCY shall provide services in accordance with OAR 410-141-3120 "Operations and Provision of Health Services"; OAR 410-141-3420 "Billing and Payment"; and all DHS Rules in OAR Chapter 309 and any other administrative rules to which AGENCY is subject, as such rules may be amended from time to time. These laws, rules and regulations, are incorporated by reference herein to the extent that they are applicable to this agreement and required by law to be so incorporated. Services provided under this agreement are to be within the scope of AGENCY's licenses and certification, and the licenses, certifications and training of its employed and contracted staff providing direct services.

AGENCY agrees to comply with Clackamas County Behavioral Health Division Indigent Services Program Provider Manual and all COUNTY policies and procedures, as they may be amended, relating to the provision of mental health services.

#### 2. General Performance Standards

COUNTY shall monitor services provided by AGENCY and has the right to require AGENCY's compliance with OHA established standards and other performance requirements relative to the quantity and quality of service and care, access to care, and administrative and fiscal management, and with all obligations and conditions stated in this agreement. AGENCY will notify COUNTY immediately in writing regarding issues related to access to care or any other potential violation of the conditions stated in this agreement.

##### a. Licenses and Certifications

By signing this agreement, AGENCY assures that all licenses and certifications required by statute or administrative rule are and will remain current and valid for all of AGENCY's employees and independent contractors providing direct service and for all of AGENCY's facilities in which services are provided. AGENCY assures that it is certified under OAR 309-012-0130 – 309-012-0220 or licensed under ORS Chapter 443 by the State of Oregon to deliver specified services. AGENCY will promptly notify COUNTY of the initiation of any action against any licenses or, if applicable, against any certifications by any certifying boards or organizations as well as any changes in AGENCY's practice ownership or business address, along with any other problem or situation that may relate to the ability of AGENCY to carry out the duties and obligations of this contract.



b. Eligibility and Authorization of Services

AGENCY shall verify eligibility and enrollment of clients prior to providing and billing for service and obtain authorization for the provision of covered services as necessary and appropriate according to COUNTY policies and procedures. AGENCY shall participate in the COUNTY concurrent review process. AGENCY understands that authorization for services will be based upon this review process.

c. Quality Assurance and Utilization Review

AGENCY shall cooperate with, and participate in, COUNTY's quality assurance and utilization review programs. Further, AGENCY shall have a planned, systematic, and ongoing process for monitoring, evaluating and improving the quality and appropriateness of Covered Services provided to clients.

AGENCY shall work with COUNTY staff to ensure that authorized services provided by AGENCY to clients are the most appropriate and cost efficient, and least restrictive. AGENCY staff shall make records available to COUNTY staff on site upon reasonable notice for purposes of utilization review.

d. Contractual Compliance

AGENCY shall ensure that all providers and staff employed or contracted by AGENCY who provide services to clients or are otherwise engaged in activities under this agreement are fully aware of and in compliance with the terms and conditions of this agreement.

**3. Clinical Standards**

a. Clinical Guidelines

AGENCY shall adopt clinical guidelines that inform mental health practitioners, clients, family members and advocates with evidence-based information about mental illness and appropriate treatment options. Clinical guidelines should be based on a systematic evaluation of research evidence; be designed to assist, rather than dictate, clinical decision-making; and are to be applied on a case-by-case basis. Such guidelines should provide recommendations for appropriate care based on scientific evidence and professional consensus; support for professional standards, quality improvement activities and education; and a basis for comparing current practice to evidence-based best practices. AGENCY shall make such guidelines available to COUNTY upon request.

b. Outcome Measure

AGENCY shall adopt the use of a measure of clinical outcomes that demonstrates a change in client status following an episode of treatment. The measurement tool adopted shall identify changes in symptoms, functioning, quality of life, adverse events or satisfaction. AGENCY shall make information about outcome measures used available to COUNTY upon request.

c. Coordination of Care

(1) AGENCY shall develop, implement and participate in activities supportive of a continuum of care that integrates mental health, addiction and physical health interventions in ways that are seamless and whole to the client. Integration activities may span a continuum ranging from communication to coordination to co-management to co-location to the fully integrated, person-centered health care home.

- (2) To insure appropriate coordination of services to enrolled individuals, AGENCY shall collaborate with allied agencies in the local service area, including but not limited to primary care clinics, housing authorities, chemical dependency agencies, juvenile justice, school districts, and Department of Human Resources, Child Welfare programs. AGENCY will make every effort to obtain a signed Release of Information at the onset of treatment, notifying the service partner in writing of preliminary diagnosis and prescribed medications, notifying of any major changes or medical complications that occurred during the course of treatment and notifying upon termination of treatment.
- (2) AGENCY shall coordinate with COUNTY on referral of clients to specialty behavioral health services or to a higher intensity of service. Specifically:
  - (i) AGENCY shall coordinate with COUNTY on both admission and discharge of clients to psychiatric acute care or sub-acute psychiatric care. AGENCY shall coordinate with COUNTY and the acute or sub-acute care provider on discharge planning and the development of community resources to aid in the timely discharge and community placement of the client. AGENCY shall assure an appointment with an appropriate provider within seven (7) days of discharge from acute care, sub-acute care or psychiatric residential treatment care.
  - (ii) AGENCY shall coordinate with COUNTY on referral of clients to crisis respite services, particularly as those services are used to divert the admission of the client to acute care.
  - (iii) AGENCY shall refer clients for a Level of Service Intensity Determination Screening when a higher intensity of service appears warranted.
  - (iv) AGENCY shall coordinate with COUNTY to obtain Long Term Care Determination for appropriate clients.

d. Crisis Response

AGENCY will be responsible for twenty-four hour, seven days a week crisis response for their enrolled individuals. AGENCY shall establish and follow a system for appropriate and timely response to emergency needs of individuals. During the period of service, AGENCY shall respond to all enrolled client emergencies. "Emergency" shall mean the sudden onset of a mental health condition manifesting itself by acute symptoms and one or more of the following circumstances are present: (1) the client is in imminent or potential danger of harming himself or others as a result of an eligible condition; (2) the client shows symptoms, e.g., hallucinations, agitation, delusions, etc., resulting in impairment in judgment, functioning and/or impulse control severe enough to endanger his or her own welfare or that of another person; or (3) there is an immediate need for Services as a result of, or in conjunction with, a very serious situation such as an overdose, detoxification, potential suicide or violence. AGENCY will have a system of crisis response to individuals enrolled in their program. At a minimum, AGENCY will have a clinician available by phone for consultation at all times. This clinician shall be familiar with the case or shall have the ability to contact clinician(s) familiar with the case.

e. Standards of Care

COUNTY promotes resilience in and recovery of the clients it serves. COUNTY supports a system of care that promotes and sustains a client's recovery from a mental health condition by identifying and building upon the strengths and competencies within the person to assist them in achieving a meaningful life within their community. Consistent with these values, AGENCY shall:

- (1) Provide services in a manner that assures continuity and coordination of the health care services provided to each client;
- (2) Accept clients for treatment on the same basis that AGENCY accepts other clients and render services to clients in the same manner as provided to AGENCY's other clients. AGENCY shall not discriminate against clients because of source of payment, race, ethnicity, gender, gender identity, gender presentation, sexual orientation, national origin, ancestry, religion, creed, marital status, familial status, age, except when program eligibility is restricted to children, adults or older adults, source of income, disability and diagnosis;
- (3) Provide clients with access to services without undue delay and as soon as necessary in light of the member's mental health condition. AGENCY shall comply with access standards as set forth in OAR 410-141-3220 "Accessibility";
- (4) Conduct its practice and treat all clients using that degree of care, skill and diligence which is used by ordinarily careful providers in the same or similar circumstances in the provider's community or a similar community (see ORS 677.095);
- (5) Ensure that clients are served in the most normative, least restrictive, least intrusive and most cost effective level of care appropriate to their diagnosis and current symptoms, degree of impairment, level of functioning, treatment history, and extent of family and community supports;
- (6) Advise or advocate on behalf of clients in regard to treatment options, without restraint from COUNTY;
- (7) AGENCY shall employ a system of internal review to evaluate the care being provided within the agency, to modify service plans, adjust level of care being provided and consider duration of treatment. AGENCY will have a system of internal utilization management to assure that services are provided within the authorization maximum dollar amount, when applicable.
- (8) AGENCY shall have written policies and procedures related to consumer complaints as referenced in OAR 309-019-0125 and OAR 410-141-0260 through 410-141-0266.

#### **4. Encounter Submissions**

a. Usual and Customary Charges

AGENCY shall bill COUNTY according to their Usual and Customary fee schedule. AGENCY shall base their Usual and Customary charges on a cost study that is updated annually.

b. Compensation

AGENCY shall be reimbursed at the COUNTY reimbursement rates in effect as of the date of service or billed charges, whichever is less.

c. Third Party Resources and Coordination of Benefits

AGENCY shall bill and collect from liable third party resources prior to billing COUNTY. If both the third party resource and COUNTY reimburse AGENCY for the same service, COUNTY shall be entitled to a refund for the exact amount of duplicate payment received by AGENCY.

AGENCY shall be responsible for maintaining records in such a manner so as to ensure that all moneys collected from third-party resources on behalf of clients may be identified and reported to

COUNTY on an individual client basis. AGENCY shall make these records available for audit and review consistent with the provisions upon request.

If AGENCY has knowledge that a client has third-party health insurance or health benefits, or that either client or AGENCY is entitled to payment by a third party, AGENCY shall immediately so advise COUNTY.

Pursuant to OAR 410-141-3160, "Integration and Care Coordination", COUNTY reserves the right to coordinate benefits with other health plans, insurance carriers, and government agencies. COUNTY may release medical information to such other parties as necessary to accomplish the coordination of benefits in conformity with the Health Insurance Portability and Accountability Act (HIPAA) 45 CFR 164 and 42 CFR Part 2. Coordination of benefits shall not result in compensation in excess of the amount determined by this agreement, except where State laws or regulations require the contrary.

d. Encounter Data

AGENCY shall submit to COUNTY accurate and complete encounter data in the form of a CMS 1500 claim form for each contact with a client. To encounter data and receive payment, when applicable, AGENCY shall submit a CMS 1500 claim form to COUNTY's Third Party Administrator, Performance Health Technology Ltd (PH Tech). AGENCY shall use its best efforts to supply encounter data once a month, and shall in all cases, supply encounter data no later than 120 calendar days after a contact with a client in accordance with OAR 410-141-3420, "Billing and Payment". Each encounter claim shall meet specifications as a Valid Claim. AGENCY shall use the most current DSM Multi-Axial Classification System. DSM codes shall be reported at the highest level of specificity. Claims may be submitted to PH Tech in either paper or electronic format.

PH Tech shall pay AGENCY on behalf of COUNTY, by the 45<sup>th</sup> business day after a valid claim is received, fee-for-service payments as specified in section 1 above. COUNTY shall have no obligation to make payment to AGENCY if AGENCY fails to obtain a valid authorization to provide services, fails to verify eligibility for Covered Services and the individual is not an eligible client on the date of service, if the services provided are not Covered Services, or if AGENCY fails to submit fee-for-service bills within 90 calendar days of the date of service. The timely filing requirement is extended to 12 months when there is a Third Party Resource as the primary payor and to 12 months when Medicare is primary. To be considered for payment, claims resubmission requests submitted by AGENCY must be received by PH Tech within 120 days of the date of the first denial.

d. Non-Covered Services

AGENCY shall follow OAR 410-141-3420, "Billing and Payment", when submitting fee-for-service claims for services provided to OHP Members that are not Covered Services.

e. Payment in Full

Except as expressly provided below, payments to AGENCY made by COUNTY for services provided under the terms of this agreement shall constitute payment in full. OAR 410-141-3420, "Billing and Payment", AGENCY shall not bill, charge, seek compensation, remuneration or reimbursement from, or have any recourse against OHA or any client for services contracted hereunder, either during the term of this agreement or at any time later, even if COUNTY becomes insolvent. This provision shall not prohibit collection for non-covered services that may be the responsibility of the client or any permitted co-pays, co-insurance, deductibles or any other cost sharing, if any and as applicable. AGENCY may bill and collect separately for those costs which are lawfully the responsibility of the client. When combined with all sources of payment,

COUNTY's payment to AGENCY shall not exceed the reimbursement amount in effect as of the date of service.

f. Overpayments

Any payments made by COUNTY to which AGENCY is not entitled under the terms of this agreement shall be considered an overpayment and shall be refunded by AGENCY within thirty (30) calendar days of the discovery, in accordance with OAR-410-120-1280, "Billing" and OAR 410-120-1397, "Recovery of Overpayments to Providers – Recoupments and Refunds". AGENCY must not seek payment from clients for any covered services, except any coinsurance, co-payments, and deductibles expressly authorized by OAR-410-120 or OAR-410-141. A client cannot be billed for services or treatment that have been denied due to provider error (e.g. required documentation not submitted, prior authorization not obtained, non-covered diagnosis, etc.).

**5. Staff Standards**

COUNTY delegates to AGENCY the credentialing and recredentialing of employed and contracted staff who provide services to clients under this agreement. Pursuant to OAR 410-141-3120 "Operations and Provision of Health Services", AGENCY must, at a minimum, obtain and verify documents that provide evidence of primary source verification of credentials as follows:

- Appropriate education and academic degrees, as required;
- Licenses or certificates, as required;
- Relevant work history or qualifications, as required;
- Completion of a successful criminal history records check through the Oregon Law Enforcement Data System and compliant with ORS chapter 181 and OAR 407-007-0000 through 407-007-0370;
- Positive clearance by the National Practitioner Data Bank, as required;
- Positive clearance through the General Services Administration System for Award Management (SAM) at time of hire and monthly thereafter; and
- Positive clearance through the Office of Inspector General's List of Excluded Individuals/Entities at time of hire and monthly thereafter.

AGENCY shall not permit any person to provide services under this agreement if that person is listed on the non-procurement portion of the General Service Administration's SAM in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and Suspension" (2 CFR Part 180).

In addition, AGENCY shall not permit any person to provide services under this agreement who has been terminated from the Division of Medical Assistance Program or excluded as Medicare/Medicaid providers by the Centers for Medicare and Medicaid Services or who are subject to exclusion for any lawful conviction by a court for which the provider could be excluded under 42 CFR 1001.101 "Program Integrity – Medicare and State Health Care Programs Subpart B". AGENCY may not submit claims for services provided after the date of such exclusion, conviction or termination.

AGENCY assures that all AGENCY employees and independent contractors providing direct service under this agreement will work within the scope of their credentials and any applicable licensure or registration, or criteria for certification if not required to be licensed or registered pursuant to OAR

410-141-3120. AGENCY shall not allow services to be provided by an employee or independent contractor who does not have a valid license or certification required by state or federal law.

AGENCY ensures that all personnel providing services to clients under this agreement are properly trained and qualified to render the services they provide. AGENCY shall arrange for continuing education of personnel rendering services under this agreement as necessary to maintain such competence and satisfy all applicable licensing, certification or other regulatory requirements.

COUNTY reserves the right to review, upon reasonable notice and at AGENCY's site, the actual documents describing the credentials of AGENCY's employees and independent contractors for purposes of verification.

## **6. Recordkeeping**

### **a. Clinical Records, Access and Confidentiality**

- (1) **Clinical Records.** AGENCY shall ensure maintenance of recordkeeping consistent with OAR 410-141-3180, "Record Keeping and Use of Health Information Technology." The clinical record shall fully document the mental condition of the client and the services received by the client under this agreement. All clinical records relevant to this agreement shall be retained for at least seven (7) years after the date of clinical services for which claims are made, encounters reported, final payment is made, or all pending matters are closed, whichever time period is longer. If an audit, litigation, research and evaluation, or other action involving the records is started before the end of the seven-year-period, the records must be retained until all issues arising out of the action are resolved or until the end of the seven-year-period, whichever is later.
- (2) **Government Access to Records.** At all reasonable times, AGENCY and its subcontractors shall provide the Center for Medicare and Medicaid Services (CMS), the Comptroller General of the United States, the Oregon Secretary of State, the Oregon Department of Justice Medicaid Fraud Unit, Oregon Department of Human Services Office of Payment Accuracy and Recovery, OHA, COUNTY and all their duly authorized representatives the right of access to AGENCY's financial (including all accompanying billing records), clinical/medical, and personnel records that are directly pertinent to this agreement in order to monitor and evaluate cost, performance, compliance, quality, appropriateness and timeliness of services provided, and the capacity of AGENCY to bear the risk of potential financial losses. These records shall be made available for the purpose of making audit, examination, excerpts and transcriptions. AGENCY shall, upon request and without charge, provide a suitable work area and copying capabilities to facilitate such a review or audit.
- (3) **Confidentiality and Privacy of Records.** The confidentiality of information concerning clients is subject to State and Federal guidelines, including but not limited to State (ORS 179.505 through 179.507, ORS 192.502, ORS 411.320, ORS 433.045(3)) and Federal (42 CFR Part 2, 42 CFR Part 431, Subpart F, 45 CFR 205.50) confidentiality laws and regulations. AGENCY and COUNTY shall not use, release, or disclose any information regarding a client for any purpose not directly connected with the administration of this agreement or under Title XIX of the Social Security Act, except with the written consent of the client or, if appropriate, the client's parent or guardian, or unless otherwise authorized by law. AGENCY shall ensure that its agents, employees, officers and subcontractors with access to client records understand and comply with this confidentiality provision.
- (4) **Release of Information.** AGENCY shall assure that COUNTY and any other cooperating health service providers have access to the applicable contents of the client's clinical record when necessary for use in the diagnosis or treatment of the client, to the extent such access

is permitted by law. AGENCY shall release mental health service information requested by COUNTY or a provider involved in the care of a client within ten (10) business days of receiving a signed release. Except as provided in ORS 179.505(9), AGENCY shall provide the client or the client's legal guardian access to client's record and provide copies within ten (10) business days of any request for copies.

- (5) External Review. AGENCY shall cooperate with OHA by providing access to records and facilities for the purpose of an annual external, independent professional review of the quality outcomes and timeliness of, and access to, services under this agreement in accordance with 42 USC Section 1396a(a)(27); 42 CFR 431.107(b)(1) & (2); and 42 CFR 457.950(a)(3).
- (6) Keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving OHP assistance and shall furnish such information to any State or federal agency responsible for administering the OHP program regarding any payments claimed by such person or institution for providing OHP Services as the State or federal agency may from time to time request. 42 USC Section 1396a(a)(27); 42 CFR 431.107(b)(1) & (2); and 42 CFR 457.950(a)(3).

b. Financial Records

- (1) AGENCY shall establish and maintain policies and procedures related to financial management and financial records consistent with Generally Accepted Accounting Principles. AGENCY shall make such policies and procedures available to COUNTY upon request.
- (2) AGENCY shall maintain up-to-date accounting records that accurately reflect all revenue by source, all expenses by object of expense, and all assets, liabilities and equities consistent with Generally Accepted Accounting Principles and Oregon Administrative Rules. AGENCY shall make reports and fiscal data generated under and for this agreement available to COUNTY upon request.
- (3) COUNTY shall conduct a fiscal compliance review of AGENCY as part of compliance monitoring of this agreement. AGENCY agrees to provide, upon reasonable notice, access to all financial books, documents, papers and records of AGENCY which are pertinent to this agreement to ensure appropriate expenditure of funds under this agreement. COUNTY shall monitor compliance with COUNTY's financial reporting and accounting requirements.
- (4) AGENCY may be subject to audit requirements. AGENCY agrees that audits must be conducted by Certified Public Accountants who satisfy the Independence requirement outlined in the rules of the American Institute of Certified Public Accountants (Rule 101 of the AICPA Code of Professional Conduct), the Oregon State Board of Accountancy OAR 801-030-0005, the independence rules contained within Governmental Auditing Standards (2011 Revision), and rules promulgated by other federal, state and local government agencies with jurisdiction over AGENCY.
- (5) AGENCY shall establish and maintain systematic written procedures to assure timely and appropriate resolution of review or audit findings and recommendations. AGENCY shall make such procedures and documentation of resolution of audit findings available to COUNTY upon request.
- (6) Limited Scope and Full Audits shall be completed within nine (9) months of the close of AGENCY's fiscal year. Audit reports, including the Management Letter associated with the audit shall be submitted to COUNTY within two weeks from the date of the report. Failure to submit required audit reports and Management Letters shall be cause for withholding of contract payment until audits are submitted.

## 7. Reporting

### a. Abuse Reporting

AGENCY shall comply with all processes and procedures of child abuse (ORS 419B.005 – 419B.050), mentally ill and developmentally disabled abuse (ORS 430.731 – 430.768 and OAR 943-045-0250 through 943-045-0370) and elder abuse reporting laws (ORS 124.050 – 124.092) as if AGENCY were a mandatory abuse reporter. If AGENCY is not a mandatory reporter by statute, these reporting requirements shall apply during work hour only. AGENCY shall immediately report to the proper State or law enforcement agency circumstances (and provide such other documentation as may be relevant) supporting reasonable cause to believe that any person has abused a child, a mentally ill or developmentally disabled adult or an elderly person, or that any such person has been abused.

### b. Behavioral Health Electronic Data System

AGENCY shall participate in the Oregon Health Authority (OHA)'s Enhanced Data Capture for all clients receiving Covered Services under this agreement. AGENCY shall submit all data to OHA via formats approved by OHA. AGENCY shall submit data in accordance with OHA timelines.

### c. Delivery System Network (DSN) Provider Capacity Report

AGENCY shall submit the DSN Provider Capacity report (see Attachment 1) to COUNTY in the prescribed format within thirty (30) days of the effective date of this agreement, indentifying all staff and independent contractors who will provide services to clients under this agreement. In addition, the DSN Provider Capacity Report shall be updated and resubmitted monthly to COUNTY.

### d. Access to Care

AGENCY shall submit the online regional access report to COUNTY in the prescribed format by the 15<sup>th</sup> of the month following services delivered.

## 8. Monitoring

### a. Agreement Compliance Monitoring

COUNTY and OHA shall conduct agreement compliance and quality assurance monitoring related to this agreement. AGENCY shall cooperate with COUNTY and OHA in such monitoring. COUNTY shall provide AGENCY twenty (20) business days written notice of any agreement compliance and quality assurance monitoring activity that requires any action or cooperation by AGENCY. Notice of monitoring shall include the date the monitoring shall occur, names of individuals conducting the monitoring, and instructions and requests for information.

Should AGENCY found to be out of compliance with any requirement of this agreement, the following actions may be taken by COUNTY until the issue is resolved:

- Request a conference of the parties to determine the need for technical assistance
- Require a corrective action plan
- Disallow referral of new clients to AGENCY
- Put AGENCY on probationary status and suspend billing authority

Should the issue remain unresolved, COUNTY may consider AGENCY in breach and may terminate this agreement.



b. External Quality Review

AGENCY agrees to participate with COUNTY in any evaluation project or performance report as designed by COUNTY or applicable State or Federal agency. AGENCY shall make all information required by any such evaluation project or process available to COUNTY or COUNTY's designee within thirty (30) business days of request.

**9. Fraud and Abuse**

AGENCY shall comply with, and as indicated, cause all employees and subcontractors to comply with, the following requirements related to fraud and abuse. All elements of this Fraud and Abuse exhibit apply to services provided to uninsured, indigent individuals with the exception of reports to the Medicaid Fraud Control Unit (MFCU) which do not apply to indigent services.

a. General

- (1) AGENCY, its employees and subcontractors shall comply with all provisions of the False Claims Act established under sections 3729 through 3733 of title 31, United States Code, administrative remedies for false claims and statements established under chapter 38 of title 31, United States Code, any Oregon laws pertaining to civil or criminal penalties for false claims and statements, and whistleblower protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste, and abuse in Federal health care programs (as defined in 42 USC 1320a-7b).
- (2) AGENCY, its employees and subcontractors shall comply with Oregon laws pertaining to false claims including the following: ORS 411.670 to 411.690 (submitting wrongful claim or payment prohibited; liability of person wrongfully receiving payment; amount of recovery); ORS 646.505 to 646.656 (unlawful trade practices); ORS chapter 162 (crimes related to perjury, false swearing and unsworn falsification); ORS chapter 164 (crimes related to theft); ORS chapter 165 (crimes involving fraud or deception), including but not limited to ORS 165.080 (falsification of business records) and ORS 165.690 to 165.698 (false claims for health care payments); ORS 659A.199 to 659A.224 (whistle blowing); OAR 410-120-1395 to 410-120-1510 (program integrity, sanctions, fraud and abuse); and common law claims founded in fraud, including Fraud, Money Paid by Mistake and Money Paid by False Pretenses.
- (3) AGENCY shall include information in its employee handbooks or other appropriate documents on laws described above, regarding the rights of employees to be protected as whistleblowers.
- (4) AGENCY shall further have policies and procedures for detecting and preventing fraud, waste and abuse that shall, at a minimum, include a process for monitoring and auditing files, claims and staff performance.
- (5) Entities receiving \$5 million or more annually (under this contract and any other OHP contract) for furnishing Medicaid health care items or services shall, as a condition of receiving such payments, adopt written fraud, waste and Abuse policies and procedures and inform employees, contractors and agents about the policies and procedures in compliance with Section 6032 of the Deficit Reduction Act of 2005, 42 USC § 1396a(a)(68).
- (6) Certify when submitting any claim for the provision of OHP services that the information submitted is true, accurate and complete. AGENCY shall acknowledge AGENCY's understanding that payment of the claim will be from Federal and State funds and that any

falsification or concealment of a material fact may be prosecuted under Federal and State laws.

b. Fraudulent Billing and False Claims

- (1) AGENCY will report verified and suspected cases of fraud and abuse to the Medicaid Fraud Control Unit (MFCU) and COUNTY within five (5) business day of discovery.
- (2) If it is determined that services billed by AGENCY were fraudulently billed, or that a false claim was submitted, or that an instance of abuse has occurred, the following disciplinary actions may be taken by COUNTY:
  - If abuse is determined, consider restitution of funds based on the severity of the abuse identified.
  - If fraud is determined or a false claim verified, require restitution of funds.
  - If the action identified is determined to be non-intentional, require a corrective action plan
  - Put AGENCY on probationary status and suspend billing authority until the issue is resolved
  - Termination of this agreement
- (3) COUNTY shall promptly refer all verified cases of Medicaid fraud and abuse to the MFCU, consistent with the Memorandum of Understanding between the State of Oregon Department of Human Services and the MFCU. COUNTY shall also refer cases of suspected Medicaid fraud and abuse to the MFCU prior to verification.
- (4) Participation of Suspended or Excluded Providers

AGENCY shall ensure that Covered Services may not be provided to clients by the following persons (or their affiliates as defined in the Federal Requisition Regulations):

- Persons who are currently suspended, debarred or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in non-procurement activities under regulations issues pursuant to Executive Order 12549 or under guidelines implementing such order; and
- Persons who are currently excluded from Medicaid participation under section 1128 or section 1128A of the Act; and
- Persons who are currently excluded from providing services under the Oregon Medical Assistance Program.

c. Examples of fraud and abuse that support referral to the MFCU and COUNTY

- (1) AGENCY who consistently demonstrates a pattern of intentionally reporting encounters or services that did not occur. A pattern would be evident in any case where 20% or more of sampled or audited services are not supported by documentation in the clinical records. This would include any suspected case where it appears that the provider knowingly or intentionally did not deliver the service or goods billed;
- (2) AGENCY who consistently demonstrates a pattern of intentionally reporting overstated or up coded levels of service. A pattern would be evident by 20% or more of sampled or audited

services that are billed at a higher-level procedure code than is documented in the clinical records;

- (3) Any suspected case where the AGENCY intentionally or recklessly billed COUNTY more than the usual charge to non-Medicaid recipients or other insurance programs;
- (4) Any suspected case where the AGENCY purposefully altered, falsified, or destroyed clinical record documentation for the purpose of artificially inflating or obscuring his or her compliance rating or collecting Medicaid payments otherwise not due. This includes any deliberate misrepresentation or omission of fact that is material to the determination of benefits payable or services which are covered or should be rendered, including dates of service, charges or reimbursements from other sources, or the identity of the client or provider;
- (5) Providers who intentionally or recklessly make false statements about the credentials of persons rendering care to clients;
- (6) Providers who knowingly charge clients for services that are covered services or intentionally balance-bill a client the difference between the total fee-for-service charge and COUNTY's payment to the AGENCY, in violation of OHA rules.

d. Reporting suspected and verified cases of fraud or abuse

When a verified case of fraud or abuse exists, AGENCY will report the following information to the MFCU and COUNTY within five (5) business day of discovery of the suspected activity:

- Provider Name, Oregon Medicaid Provider Number, address and phone
- Type of provider
- Source and nature of complaint
- The approximate range of dollars involved
- The disposition of the complaint when known
- Number of complaints for the time period.

**Contact Information**

Report to: Medicaid Fraud Control Unit (MFCU)  
Phone: (971)673-1880  
Fax: (971)673-1890  
Address: 1515 SW 5th Ave., Suite 410, Portland, OR 97201

**Contact Information**

Report to: Clackamas Behavioral Health Division  
Contact: Compliance Policy Analyst  
Phone: (503)742-5335  
Fax: (503)742-5304  
Address: 2051 Kaen Road, Suite 367, Oregon City, OR 97045

**10. Compliance with Applicable Law**

AGENCY shall comply and, as indicated, cause all employees and subcontractors to comply with the following Federal requirements. For purposes of this agreement, all references to Federal and State laws are references to Federal and State laws as they may be amended from time to time.

a. Miscellaneous Federal Provisions

AGENCY shall comply and cause all subcontractors to comply with all federal laws, regulations and executive orders applicable to this Contract or to the delivery of Work. Without limiting the generality of the foregoing, AGENCY expressly agrees to comply and cause all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to this Contract: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) 45 CFR Part 84 which implements, Title V, Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Executive Order 11246, as amended, (e) the Health Insurance Portability and Accountability Act of 1996, as amended, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (j) all federal law governing operation of CMHPs, including without limitation, all federal laws requiring reporting of client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to this Contract and required by law to be so incorporated. No federal funds may be used to provide Work in violation of 42 USC 14402.

b. Equal Employment Opportunity

If this Contract, including amendments, is for more than \$10,000, then AGENCY shall comply and cause all subcontractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

c. Non-Discrimination

- (1) AGENCY shall comply with all federal and State laws and regulations including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972 (regarding education programs and activities) the Age Discrimination Act of 1975, the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA) of 1990, and all amendments to those acts and all regulations promulgated thereunder. AGENCY shall also comply with all applicable requirements of State civil rights and rehabilitation statutes and rules.
- (2) AGENCY shall comply with and cause its subcontractors to comply with the integration mandate in 28 CFR 35.130(d), Title II of the Americans with Disabilities Act and its implementing regulations published in the Code of Federal Regulations.

d. Advance Directives

AGENCY shall provide adult clients with written information on Advance Directive policies and include a description of Oregon law. The written information provided by AGENCY must reflect changes in Oregon law as soon as possible, but no later than 90 days after the effective date of any change to Oregon law. AGENCY must also provide written information to adult clients with respect to the following:

- (1) Their rights under Oregon law;
- (2) AGENCY's policies respecting the implementation of those rights, including a statement of any limitation regarding the implementation of Advance Directives as a matter of conscience.
- (3) AGENCY must inform clients that complaints concerning noncompliance with the Advance Directive requirements may be filed with OHA.

e. Drug Free Workplace

AGENCY shall maintain and cause all subcontractors to maintain a drug-free workplace and shall notify employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in AGENCY's workplace. AGENCY shall establish a drug-free awareness program and provide each employee to be engaged in the provision of services under this agreement with information about its drug-free workplace program. AGENCY will further comply with additional applicable provisions of the Health Share of Oregon Core Contract.

f. Clinical Laboratory Improvement

If applicable to Scope of Work, AGENCY shall and shall ensure that any Laboratories used by AGENCY shall comply with the Clinical Laboratory Improvement Amendments (CLIA 1988), 42 CFR Part 493 Laboratory Requirements and ORS 438 (Clinical Laboratories, which require that all laboratory testing sites providing services under this agreement shall have either a Clinical Laboratory Improvement Amendments (CLIA) certificate of waiver or a certificate of registration along with a CLIA identification number. Those Laboratories with certificates of waiver will provide only the eight types of tests permitted under the terms of their waiver. Laboratories with certificates of registration may perform a full range of laboratory tests.

g. Clean Air, Clean Water, EPA Regulations

If this agreement, including amendments, exceeds \$100,000 then AGENCY shall comply and cause all subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to OHA, DHHS and the appropriate Regional Office of the Environmental Protection Agency. AGENCY shall include and cause all subcontractors to include in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section.

h. Energy Efficiency

AGENCY shall comply and cause all subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6201 et seq. (Pub. L. 94- 163).

i. Resource Conservation and Recovery

AGENCY shall comply and cause all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 USC 6901 et. seq.). Section 6002 of that Act (codified at 42 USC 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.

j. Audits

AGENCY shall comply and, if applicable, cause a subcontractor to comply, with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations."

k. Truth in Lobbying

AGENCY certifies, to the best of the AGENCY's knowledge and belief that:

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of AGENCY, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, AGENCY shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- (3) AGENCY shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.
- (4) This certification is a material representation of fact upon which reliance was placed when this Contract was made or entered into. Submission of this certification is a prerequisite for making or entering into this agreement imposed by Section 1352, Title 31, of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

l. Conflict of Interest Safeguards

- (1) AGENCY and its subcontractors shall have in effect safeguards, including, but not limited to, policies and procedures against conflict of interest with any State of Oregon Department of Human Services employees or other agents of the State who have responsibilities relating to this agreement. These safeguards must be at least as effective as the safeguards specified in Section 27 of the Office of Federal Procurement Policy Act (41 USC 423) and must include safeguards to avoid conflicts that could be prohibited under 18 USC 207 or 208 if the Department of Human Services employee or agent was an officer or employee of the United States Government. For purposes of implementing policies and procedures required in this section, AGENCY shall apply the definitions in the State Public Ethics Law as if they applied to AGENCY for "Actual conflict of interest," ORS 244.020(1), "potential conflict of interest," ORS 244.020(14), and "client of household," ORS 244.020(12).
- (2) AGENCY shall not offer to any DHS or OHA employee (or any relative or member of their household) any gift or gifts with an aggregate value in excess of \$50 during a calendar year or any gift or payment of expenses for entertainment. "Gift" for this purpose has the meaning defined in ORS 244.020(6) and OAR 199-005-0001 to 199-005-0035.

- (3) "AGENCY" for purposes of this section includes all AGENCY's affiliates, assignees, subsidiaries, parent companies, successors and transferees, and persons under common control with the AGENCY; any officers, directors, partners, agents and employees of such person; and all others acting or claiming to act on their behalf or in concert with them.
- (4) AGENCY shall apply the definitions in the State Public Ethics Law, ORS 244.020, for "actual conflict of interest", "potential conflict of interest", "relative" and "member of household".

m. HIPAA Compliance

- (1) The parties acknowledge and agree that each of OHA and AGENCY is a "covered entity" for purposes of privacy and security provisions of the Health Insurance Portability and Accountability Act and the federal regulations implementing the Act (collectively referred to as HIPAA). OHA and AGENCY shall comply with HIPAA to the extent that any work or obligations of OHA arising under this agreement are covered by HIPAA.
- (2) AGENCY shall develop and implement such policies and procedures for maintaining the privacy and security of records and authorizing the use and disclosure of records required to comply with this agreement and with HIPAA. AGENCY shall comply and cause all subcontractors to comply with HIPAA and all the HIPAA provisions listed in the Health Share of Oregon Core Contract.
- (3) HIPAA Information Security. AGENCY shall adopt and employ reasonable administrative and physical safeguards consistent with the Security Rules in 45 CFR Part 164 to ensure that Member Information shall be used by or disclosed only to the extent necessary for the permitted use or disclosure and consistent with applicable State and federal laws and the terms and conditions of this agreement. Security incidents involving Member Information must be immediately reported to DHS' Privacy Officer.

July 10, 2014

Board of Commissioners  
Clackamas County

Members of the Board:

Approval of an Agency Service Contract with  
Cascadia Behavioral Healthcare for  
Intensive Case Management and Outpatient Mental Health Services

<b>Purpose/Outcomes</b>	To provide intensive case management and outpatient mental health services for people who are Oregon Health Plan (OHP) members' capitated to Clackamas County.
<b>Dollar Amount and Fiscal Impact</b>	The contract does not contain an upper limit; expenditures are controlled by Behavioral Health Division staff who pre-authorize and monitor services on an on-going basis.
<b>Funding Source</b>	Oregon Health Authority - no County General Funds are involved.
<b>Safety Impact</b>	None
<b>Duration</b>	Effective July 1, 2014 and terminates on June 30, 2015
<b>Previous Board Action</b>	The previous agreement was approved by the Board of County Commissioners on January 24, 2013 - agenda item 012413-A2
<b>Contact Person</b>	Jill Archer, Director – Behavioral Health Division - 742-5336
<b>Contract No.</b>	6810

**BACKGROUND:**

The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of an Agency Service Contract with Cascadia Behavioral Healthcare for intensive case management, transition age youth, home-based stabilization services/child Level D and outpatient mental health services.

- Intensive Case Management is intended for Seriously and Persistently Mentally Ill who have been unable or unwilling to adequately engage in "traditional" outpatient services and includes assertive outreach; engagement of consumers in the community; use of targeted practices and techniques to engage and motivate clients; a multidisciplinary team approach; smaller staff to client ratio's; and a focus on recovery goal.
- Outpatient mental health services include an array of treatment such as individual and group therapy, skills training, case management and psychiatric services.

Such services are provided to persons enrolled in services through Clackamas County Behavioral Health Division. The Behavioral Health Division has partnered with Cascadia Behavioral Healthcare for behavioral health services since 2005. This contract is a continuation of these services.



The contract is effective July 1, 2014 and continues through June 30, 2015. County Counsel has reviewed and approved this contract as part of the H3S contract standardization project.

**RECOMMENDATION:**

Staff recommends the Board approval of this contract and authorizes Cindy Becker, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C. Becker', with a long horizontal flourish extending to the right.

Cindy Becker, Director

# AGENCY SERVICE CONTRACT

## Contract # 6810

This Agency Service Contract is between Clackamas County acting by and through its Health, Housing and Human Services Department, Behavioral Health Division, hereinafter called "COUNTY," and CASCADIA BEHAVIORAL HEALTHCARE, hereinafter called "AGENCY." Throughout this contract and all exhibits, the term "DEPARTMENT" shall refer to and mean the State of Oregon, Oregon Health Authority.

## CONTRACT

### 1.0 Engagement

COUNTY hereby engages AGENCY to provide Intensive Case Management and Outpatient Mental Health Services as more fully described in Exhibit B, Scope of Work, attached hereto and incorporated herein.

### 2.0 Term

Services provided under the terms of this contract shall commence on **July 1, 2014** and shall terminate **June 30, 2015** unless terminated by one or both parties as provided for in paragraph 6.0 below.

### 3.0 Compensation and Fiscal Records

3.1 Compensation. COUNTY shall compensate AGENCY as specified in Exhibit C, Compensation. The payment shall be full compensation for work performed, for services rendered, and for all labor, materials, supplies, equipment, mileage, and incidentals necessary to perform the work and services.

3.2 Withholding of Contract Payments. Notwithstanding any other payment provision of this contract, should AGENCY fail to submit required reports when due, or submit reports which appear patently inaccurate or inadequate on their face, or fail to perform or document the performance of contracted services, COUNTY shall immediately withhold payments hereunder. Such withholding of payment for cause may continue until AGENCY submits required reports, performs required services, or establishes to COUNTY's satisfaction that such failure arose out of causes beyond the control, and without the fault or negligence, of AGENCY.

3.3 Financial Records. AGENCY and its subcontractors shall maintain complete and legible financial records pertaining in whole or in part to this contract. Such records shall be maintained in accordance with Generally Accepted Accounting Principles and/or other applicable accounting guidelines. Financial records and supporting documents shall be retained for at least six (6) years or such period as may be required by applicable law, following final payment is made under this agreement or until all pending matters are resolved, whichever period is longer. If an audit of financial records discloses that payments to AGENCY were in excess of the amount to which AGENCY was entitled, AGENCY shall repay the amount of the excess to COUNTY.

3.4 Access to Records and Facilities. COUNTY, DEPARTMENT, the Secretary of State's Office of the State of Oregon, the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers and records of AGENCY that are directly related to this contract, the funds paid to AGENCY hereunder, or any services delivered hereunder for the purpose of making audits, examinations, excerpts, and transcripts. In addition, AGENCY shall permit authorized representatives of COUNTY and DEPARTMENT to perform site reviews of all services delivered by AGENCY hereunder.

3.4.1 AGENCY shall maintain up-to-date accounting records that accurately reflect all revenue by source, all expenses by object of expense, and all assets, liabilities and equities consistent with Generally Accepted Accounting Principles and Oregon Administrative Rules. AGENCY shall make reports and fiscal data generated under and for this agreement available to COUNTY upon request.

3.4.2 COUNTY conduct a fiscal compliance review of AGENCY as part of compliance monitoring of this agreement. AGENCY agrees to provide, upon reasonable notice, access to all financial books, documents, papers and records of AGENCY which are pertinent to this agreement to ensure appropriate expenditure of funds under this agreement. COUNTY shall monitor compliance with COUNTY's financial reporting and accounting requirements.

3.4.3 AGENCY may be subject to audit requirements. AGENCY agrees that audits must be conducted by Certified Public Accountants who satisfy the independence requirement outlined in the rules of the American Institute of Certified Public Accountants (Rule 101 of the AICPA Code of Professional Conduct), the Oregon State Board of Accountancy, the independence rules contained within Governmental Auditing Standards (1994 Revision), and rules promulgated by other federal, state and local government agencies with jurisdiction over AGENCY.

3.4.4 AGENCY shall establish and maintain systematic written procedures to assure timely and appropriate resolution of review or audit findings and recommendations. AGENCY shall make such procedures and documentation of resolution of audit findings available to COUNTY upon request.

#### **4.0 Manner of Performance**

4.1 Compliance with Applicable Laws and Regulations and Special Federal Requirements. AGENCY shall comply with all Federal, State, local laws, rules, and regulations applicable to the work to be performed under this contract, including, but not limited to, all applicable Federal and State civil rights and rehabilitation statutes, rules and regulations, and as listed in Exhibit D, paragraph 9. Compliance with Applicable Law, attached hereto and incorporated herein by this reference. AGENCY shall comply with Oregon Administrative Rule (OAR) 410-120-1380, which establishes the requirements for compliance with Section 4751 of Omnibus Budget Reconciliation Act (OBRA) 1991 and ORS 127-649, Patient Self-Determination Act.

4.2 Precedence. A requirement listed both in the main boilerplate of this contract and in an exhibit, the exhibit shall take precedence.

4.3 Subcontracts. AGENCY shall not enter into any subcontracts for any of the work scheduled under this contract without obtaining prior written approval from COUNTY.

4.4 Independent Contractor. AGENCY certifies that it is an independent contractor and not an employee or agent of COUNTY, State, or Federal Government as those terms are used in ORS 30.265. Responsibility for all taxes, assessments, and any other charges imposed upon employers shall be the sole responsibility of AGENCY.

#### **5.0 General Conditions**

5.1 Indemnification. AGENCY agrees to indemnify, save, hold harmless, and defend COUNTY, its officers, commissioners and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of actions, suits, claims or demand attributable in whole or in part to the acts or omissions of AGENCY, and AGENCY's officers, agents, and employees, in performance of this contract.

AGENCY shall defend, save, hold harmless and indemnify the State of Oregon, AMH and their officers, agents and employees from and against all claims, suits, actions, damages, liabilities, costs and

expenses of whatsoever nature resulting from, arising out of, or relating to the activities or omissions of AGENCY, or its agents or employees under this contract.

If AGENCY is a public body, AGENCY's liability under this contract is subject to the limitations of the Oregon Tort Claims Act.

5.2 Insurance. During the term of this agreement, AGENCY shall maintain in force, at its own expense, each insurance noted below:

5.2.1 Commercial General Liability

Required by COUNTY       Not required by COUNTY

AGENCY shall obtain, at AGENCY's expense, and keep in effect during the term of this Agreement, Commercial General Liability Insurance covering bodily injury and property damage on an "occurrence" form in the amount of not less than \$2,000,000 per occurrence/\$4,000,000 general aggregate for the protection of COUNTY, its officers, commissioners, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute it.

5.2.2 Commercial Automobile Liability

Required by COUNTY       Not required by COUNTY

AGENCY shall also obtain at AGENCY's expense, and keep in effect during the term of the Agreement, "Symbol 1" Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$2,000,000.

5.2.3 Professional Liability

Required by COUNTY       Not required by COUNTY

AGENCY agrees to furnish COUNTY evidence of professional liability insurance in the amount of not less than \$2,000,000 combined single limit per occurrence/\$4,000,000 general annual aggregate for malpractice or errors and omissions coverage for the protection of COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this Agreement. COUNTY, at its option, may require a complete copy of the above policy.

5.2.4 Tail Coverage. If liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this contract for a duration of thirty-six (36) months or the maximum time period the AGENCY's insurer will provide "tail" coverage as subscribed, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage provided its retroactive date is on or before the effective date of this contract.

5.2.5 Additional Insured Provisions. The insurance, other than the professional liability insurance, Workers' Compensation, and Personal Automobile Liability insurance, shall include "Clackamas County, its commissioners, agents, officers, and employees" as an additional insured.

5.2.6 Notice of Cancellation. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice to COUNTY.

Any failure to comply with this provision will not affect the insurance coverage provided to COUNTY. The 60 days notice of cancellation provision shall be physically endorsed on to the policy.

5.2.7 Insurance Carrier Rating. Coverages provided by AGENCY must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

5.2.8 Certificates of Insurance. As evidence of the insurance coverage required by this contract, AGENCY shall furnish a Certificate of Insurance to COUNTY. No contract shall be in effect until the required certificates have been received, approved and accepted by COUNTY. The certificate will specify that all insurance-related provisions within this contract have been complied with. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration.

5.2.9 Primary Coverage Clarification. AGENCY's coverage will be primary in the event of a loss.

5.2.10 Cross Liability Clause. A cross-liability or separation of insureds condition will be included in all general liability, professional liability, and errors and omissions policies required by this contract.

5.3 Governing Law; Consent to Jurisdiction. This agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Any claim, action, or suit between COUNTY and AGENCY that arises out of or relates to performance under this agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, State of Oregon. Provided, however, that if any such claim, action or suit may be brought only in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. AGENCY by execution of this agreement consents to the in personam jurisdiction of said courts.

5.4 Amendments. The terms of this contract shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written instrument signed by AGENCY and COUNTY.

5.5 Severability. If any term or provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

5.6 Waiver. The failure of either party to enforce any provision of this contract shall not constitute a waiver of that or any other provision.

5.7 Future Support. COUNTY makes no commitment of future support and assumes no obligation for future support of the activity contracted herein except as set forth in this contract.

5.8 Oregon Constitutional Limitations. This contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provision herein, which would conflict with such law, is deemed inoperative to that extent.

5.9 Oregon Public Contracting Requirements. Pursuant to the requirements of ORS 279B.020 and ORS 279B.220 through 279B.235 the following terms and conditions are made a part of this contract:

5.9.1 AGENCY shall:

- a. Make payments promptly, as due, to all persons supplying to AGENCY labor or materials for the prosecution of the work provided for in this contract.
- b. Pay all contributions or amounts due the Industrial Accident Fund from such agency or subcontractor incurred in performance of this contract.
- c. Not permit any lien or claim to be filed or prosecuted against COUNTY on account of any labor or material furnished.
- d. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

5.9.2 If AGENCY fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to AGENCY or a subcontractor by any person in connection with this contract as such claim becomes due, the proper officer representing COUNTY may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due AGENCY by reason of this contract.

5.9.3 No person shall be employed for more than ten (10) hours in any one day, or more than forty (40) hours in any one week, except in cases of necessity, emergency or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279A.055, the employee shall be paid at least time and one-half pay:

- a. for all overtime in excess of eight (8) hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday;
- b. for all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
- c. for all work performed on Saturday and on any legal holiday specified in ORS 279B.020.

5.9.4 AGENCY shall pay employees at least time and a half for all overtime work performed under this agreement in excess of 40 hours in any one week, except for individuals under person services contracts who are excluded under ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 U.S.C. 201 to 209) from receiving overtime.

5.9.5 As required by ORS 279B.230, AGENCY shall promptly, as due, make payment to any person, copartnership, association, or corporation furnishing medical, surgical, and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of AGENCY, of all sums that AGENCY agrees to pay for the services and all moneys and sums that AGENCY collected or deducted from the wages of its employees under any law, contract or agreement for the purpose of providing or paying for the services.

5.9.6 Workers' Compensation. All subject employers working under this agreement must either maintain workers' compensation insurance as required by ORS 656.017, or qualify for an exemption under ORS 656.126. AGENCY shall maintain employer's liability insurance with limits of \$500,000 each accident, \$500,000 disease each employee, and \$500,000 each policy limit.

5.10 Ownership of Work Product. All work products of the AGENCY which result from this contract are the exclusive property of COUNTY.

5.11 Integration. This contract contains the entire agreement between COUNTY and AGENCY and supersedes all prior written or oral discussions or agreements.

5.12 Successors in Interest. The provisions of this contract shall not be binding upon or inure to the benefit of AGENCY's successors in interest without COUNTY's explicit written consent.

## **6.0 Termination**

6.1 Termination Without Cause. This contract may be terminated by mutual consent of both parties, or by either party, upon ninety (90) days' notice, in writing or delivered by certified mail or in person.

6.2 Termination With Cause. COUNTY may terminate this contract effective upon delivery of written notice to AGENCY, or at such later date as may be established by COUNTY, under any of the following conditions:

6.2.1 Terms of the HealthShare Risk Accepting Entity Agreement are modified, changed or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding authorized by this contract.

6.2.2 The termination, suspension or expiration of the HealthShare Risk Accepting Entity Agreement.

6.2.3 COUNTY funding from Federal, State, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services. The contract may be modified to accommodate a reduction in funds.

6.2.4 COUNTY has evidence that AGENCY has endangered or is endangering the health or safety of clients, staff or the public. AGENCY shall ensure the orderly and reasonable transfer of care in progress with consumers and shall work with COUNTY staff to accomplish the same.

6.2.5 The lapse, relinquishment, suspension, expiration, cancellation or termination of any required license, certification or qualification of AGENCY, or the lapse relinquishment, suspension, expiration, cancellation or termination of AGENCY's insurance as required in this contract.

6.2.6 AGENCY's filing for protection under United States Bankruptcy Code, the appointment of a receiver to manage AGENCY's affairs, or the judicial declaration that AGENCY is insolvent.

6.2.7 AGENCY fails to perform any of the other provisions of this contract, or fails to pursue the work of this contract in accordance with its terms, and after written notice from the COUNTY, fails to correct such failures within ten (10) business days or such longer period as COUNTY may authorize.

6.2.8 Debarment and Suspension. COUNTY shall not permit any person or entity to be an AGENCY if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Non-procurement Programs" in accordance with Executive Orders No. 12,549 and No. 12,689, "Debarment and Suspension". (See 45 CFR part 76). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. COUNTY shall require all AGENCYS with awards that exceed the simplified acquisition threshold to provide the required certification regarding their exclusion status and that of their principals prior to award.

6.3 Notice of Default. COUNTY may also issue a written notice of default (including breach of contract) to AGENCY and terminate the whole or any part of this contract if AGENCY substantially fails to perform the specific provisions of this contract. The rights and remedies of COUNTY related to default (including breach of contract) by AGENCY shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

6.4 Transition. Any such termination of this contract shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

**7.0 Notices**

If to AGENCY:

Cascadia Behavioral Healthcare  
847 NE 49<sup>th</sup> - Suite 100 PO BOX 8459  
Portland, OR 97207

If to COUNTY:

Clackamas County Behavioral Health Division  
Attention: Contract Administration  
2051 Kaen Road, # 367  
Oregon City, OR 97045

This contract consists of seven (7) sections plus the following exhibits and attachments which by this reference are incorporated herein:

Exhibit A	Definitions
Exhibit B	Scopes of Work
Exhibit C	Compensation
Exhibit D	Statement of General Conditions
Attachment 1	Invoice Template
Attachment 2	DSN Provider Capacity Report

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed by their duly authorized officers.

**CASCADIA BEHAVIORAL HEALTHCARE**

By:   
Derald Walker / CEO / President

Date  
847 NE 19<sup>th</sup> - Suite 100  
Street Address  
Portland, Oregon 97207  
City/State/Zip  
(503) 963-7766 / (503) 963-7711  
Phone / Fax

**CLACKAMAS COUNTY**

Commissioner: John Ludlow, Chair  
Commissioner: Jim Bernard  
Commissioner: Paul Savas  
Commissioner: Martha Schrader  
Commissioner: Tootie Smith

**Signing on Behalf of the Board:**

Cindy Becker, Director  
Health, Housing and Human Services Department

Date



**EXHIBIT A**  
**DEFINITIONS**

Whenever used in this Agency Services Agreement, the following terms shall have the meanings set forth below:

AMH: State of Oregon, Department of Human Services, Addictions and Mental Health

AGENCY: entity contracted by COUNTY

Allowable Costs: costs described in OMB Circular A-87 except to the extent such costs are limited or excluded by other provisions of this contract

CCO: Coordinated Care Organization is an entity that has been certified as meeting the criteria adopted by the Oregon Health Authority under ORS 414.625 to be accountable for care management and to provide integrated and coordinated health care services

Community Outcome Management and Performance Accountability Support System (COMPASS): the AMH project to implement a new contracts system, roll out an optional free electronic health records systems (OWITS), and enhance the collection of data through MOTs

Contract: this Agency Services Contract between COUNTY and AGENCY for the provision of services

COUNTY: Clackamas County Behavioral Health Division

Covered Services: medically appropriate services specified in OAR 410-141-3120, "Operations and Provision of Health Services" and limited in accordance with OAR 410-141-3420, "Billing and Payment" for OHP Members. The term "Covered Services" may be expanded, limited, or otherwise changed pursuant to the Clackamas County Health Share of Oregon/Clackamas Participation Agreement and OARs. Covered Services may also refer to authorized services provided to uninsured, indigent clients.

DEPARTMENT: AMH contracts with COUNTY to establish and finance community mental health and addition programs; COUNTY, in turn, subcontracts certain services to AGENCY

DHS: Department of Human Services of the State of Oregon

Federal Funds: funds paid to AGENCY under this contract that are received from an agency, instrumentality or program of the Federal government of the United States

Health Share of Oregon: a Coordinated Care Organization serving Oregon Health Plan enrollees of Clackamas, Multnomah and Washington Counties.

Individual: an individual accessing publicly funded behavioral health services who is either an OHP Member or is determined eligible for services as an uninsured, indigent individual.

Mental Health Services: treatment services for individuals diagnosed with serious mental health illness, or other mental or emotional disturbance posing a danger to the health and safety of themselves or others

Medicaid: Federal funds received by OHA under the Title XIX of the Social Security Act and Children's Health Insurance Program Funds administered jointly with Title XIX funds as part of State medical assistance program by OHA

Misexpenditure: money, other than an overexpenditure disbursed to AGENCY by COUNTY under this agreement and expended by AGENCY that:

- (a) is identified by the Federal government as expended contrary to applicable statutes, rules, OMB Circulars or any other authority that governs the permissible expenditure of such money, for which the Federal government has requested reimbursement by the State of Oregon and whether in the form of a Federal determination of improper use of Federal funds, a Federal notice of disallowance, or otherwise; or
- (b) is identified by the COUNTY, State of Oregon or OHA as expended in a manner other than that permitted by this agreement, including without limitation, any money expended by AGENCY, contrary to applicable statutes, rules, OMB Circulars or any other authority that governs the permissible expenditure of such money; or
- (c) is identified by the COUNTY, State of Oregon or OHA as expended on the delivery of a service that did not meet the standards and requirements of this agreement with respect to that service

Measures and Outcomes Tracking System (MOTS): the AMH data system that stores client data submitted by AGENCY and/or COUNTY

OAR: Oregon Administrative Rules duly promulgated by the Oregon Health Authority and as amended from time to time.

OHA: the State of Oregon, acting by and through its Oregon Health Authority.

OHP Member: an individual found eligible by a division of the Oregon Department of Human Services to receive services under the OHP (Oregon Health Plan) Medicaid Demonstration Project or State Children's Health Insurance Program and who is enrolled with COUNTY as Health Share of Oregon/Clackamas.

Oregon Web Infrastructure for Treatment Services (OWITS): is 1) an optional free electronic health records system available to Counties and their Providers to submit the MOTS data, and 2) a system to manage the AMH services

Primary Source Verification: verification from the original source of a specific credential (education, training, licensure) to determine the accuracy of the qualifications of an individual health care practitioner. Examples of primary source verification include, but are not limited to, direct correspondence, telephone verification and internet verifications.

Third Party Resources: any individual, entity, or program that is, or may be, liable to pay all or part of the cost of any Covered Service furnished to an OHP Member, including but not limited to: private health insurance or group health plan; employment-related health insurance; medical support from absent parents; workers' compensation; Medicare; automobile liability insurance; other federal programs such as Veteran's Administration, Armed Forces Retirees and Dependent Act, Armed Forces Active Duty and Dependents Military Medical Benefits Act, and Medicare Parts A and B; another state's Title XIX, Title XXI or state-funded Medical Assistance Program; and personal estates.

Valid Claim: an invoice, in the form of a CMS 1500 claim form, submitted for payment of covered health services rendered to an eligible client that is submitted within the required 90 days from the date of service or discharge and that can be processed without obtaining additional information from the provider of the service or from a third party. A valid claim is synonymous with the federal definition of a clean claim as defined in 42 CFR 447.45(b).

**EXHIBIT B**  
**SCOPE OF WORK**

**1. Intensive Case Management**

AGENCY shall follow the Medical Necessity Criteria and Utilization Guidelines for Level D Intensive Case Management (ICM) Utilization Guidelines as outlined in the Health Share of Oregon Adult Utilization Management Guidelines.

Intensive case management is intended for individuals with a diagnosis that qualifies them as Seriously and Persistently Mentally Ill diagnosis who have been unable or unwilling to adequately engage in "traditional" outpatient services yet continue to suffer significant impairment due to their mental illness.

Intensive case management includes but is not limited to: assertive outreach; engagement of consumers in the community; use of targeted practices and techniques to engage and motivate clients; a multidisciplinary team approach; smaller staff to client ratio's; and a focus on recovery goals. Caseloads are 20:1. AGENCY will ensure staff attendance and coordination with Treatment Courts for any clients enrolled in Drug Court or Mental Health Court.

AGENCY shall provide 24-hour, seven day per week telephonic crisis support coverage.

**Program Performance Measures**

At a minimum, AGENCY shall track the performance measures identified below and detailed in program instructions prepared by COUNTY and incorporated into this contract by reference.

Program Goal	Performance Measure	Target # or %	Monthly Source
Maintain required access for routine, urgent and emergent appointments	Percent of individuals receiving routine initial appointments within 14 days of request	Target: 100%	Provider access reports Secret shopper calls Anecdotal information from clients and other partners, crisis lines
Ensure adequate and timely follow-up care for consumers after discharge from a hospital for mental illness	Percent of consumers who have an ambulatory mental health visit within seven (7) days of hospital discharge	Target: 90%	HSO Claims Data

Program Goal	Performance Measure	Target # or %	Monthly Source
Global Payment Implementation Measure All consumers receiving care after April 1, 2014 dates of service will have an authorization under new regional levels of care	Percent of consumers who have a regional level of care authorization documented in CIM by April 1, 2014	Target: 100%	HSO Claims Data
	Percent of total individuals served with denied encounters for "no authorization" for service dates after April 1, 2014	Target: 0%	
Levels of Care will be assigned accurately and with inter-rater reliability	Percent inter-rater reliability on the LOC assignment based on concurrent review of 10% of total monthly new authorizations up to a maximum of 30	Target: 75%	Agency Inter-rater reliability report  HSO inter-rater reliability concurrent review
Consumers are receiving the intensity of service that's within the LOC range	Ratio of Average Encounters Per Authorization Served by Level of Care to Target Average Encounters Served by Level of Care	Target: 75%	HSO Claims Data
Improve outcomes by the use of Treat to Target tools	Percent of consumers that have reached the target number of treatment sessions with positive outcomes Percent of consumers served that are evaluated using an outcomes measurement instrument.	Target: 50%	New treat to target outcome measures developed and implemented by Health Share of Oregon.
		Target: 50%	

AGENCY shall participate with COUNTY in evaluation of contracted project/service outcomes, satisfaction surveys, or performance, and to make available all information required by such evaluation process. This includes providing COUNTY with data necessary to verify consumer counts, service provision, and outcome measures.

**2. Outpatient Mental Health Services**

AGENCY shall follow the Medical Necessity Criteria and Utilization Guidelines as outlined in the Health Share of Oregon Adult Utilization Management Guidelines and Child and Family Utilization Management Guidelines.

AGENCY shall ensure clinical staff are trained in the use of these guidelines including the service description, admission, continued stay and transition criteria

AGENCY shall ensure clinical staff are trained in the use of the Treatment Registration Form for initial and continued stay funding requests.

AGENCY shall provide a responsive, 24-hour, seven day per week coverage system to ensure access to services.

**Program Performance Measures**

At a minimum, AGENCY shall track the performance measures identified below and detailed in program instructions prepared by COUNTY and incorporated into this contract by reference.

Program Goal	Performance Measure	Target # or %	Monthly Source
Maintain required access for routine, urgent and emergent appointments	Percent of individuals receiving routine initial appointments within 14 days of request	Target: 100%	Provider access reports Secret shopper calls Anecdotal information from clients and other partners, crisis lines
Ensure adequate and timely follow-up care for consumers after discharge from a hospital for mental illness	Percent of consumers who have an ambulatory mental health visit within seven (7) days of hospital discharge	Target: 90%	HSO Claims Data
Global Payment Implementation Measure All consumers receiving care after April 1, 2014 dates of service will have an authorization under new regional levels of care	Percent of consumers who have a regional level of care authorization documented in CIM by April 1, 2014  Percent of total individuals served with denied encounters for "no authorization" for service dates after April 1, 2014	Target: 100%  Target: 0%	HSO Claims Data
Levels of Care will be assigned accurately and with inter-rater reliability	Percent inter-rater reliability on the LOC assignment based on concurrent review of 10% of total monthly new authorizations up to a maximum of 30	Target: 75%	Agency Inter-rater reliability report HSO inter-rater reliability concurrent review
Consumers are receiving the intensity of service that's within the LOC range	Ratio of Average Encounters Per Authorization Served by Level of Care to Target Average Encounters Served by Level of Care	Target: 75%	HSO Claims Data
Improve outcomes by the use of Treat to Target tools	Percent of consumers that have reached the target number of treatment sessions with positive outcomes Percent of consumers served that are evaluated using an outcomes measurement instrument.	Target: 50%  Target: 50%	New treat to target outcome measures developed and implemented by Health Share of Oregon.

AGENCY shall participate with COUNTY in evaluation of contracted project/service outcomes, satisfaction surveys, or performance, and to make available all information required by such evaluation process. This includes providing COUNTY with data necessary to verify consumer counts, service provision, and outcome measures.

**EXHIBIT C**  
**COMPENSATION**

**Global Budget / Alternate Payment Methodology**

For services provided under the alternate payment methodology:

1. Contract Funding for Level of Care A, B, C, and D Outpatient Services.

- a. The estimated requirements funding for these services is subject to the limitations and requirements detailed in this contract.

Baseline OHP Global Budgets for AGENCY were based on July 2012 through June 2013 allowed paid claims for Outpatient Services associated with Child and Adult Levels of Care A, B, C, and D.

- b. COUNTY will pay AGENCY on a monthly allocation basis using the available annual budget amount. For the time periods listed below, COUNTY will pay the AGENCY as follows:

- July 1, 2014 through December 31, 2014: AGENCY will be notified in writing of limit.

- c. Phase 2 Global Budget Payment Methodology: July through December 2014

COUNTY will continue to pay AGENCY on a monthly allocation basis. AGENCY will be notified in writing of the monthly allocation amounts as well as the methodology used in determining them.

- d. Funding and monthly allocations will be unilaterally adjusted by COUNTY as necessary to meet service level requirements and to ensure the funds are being utilized to the maximum benefit of Health Share of Oregon members.

- e. Phase 3 Global Budget Payment Methodology: January 2015 through June 2015

COUNTY will notify AGENCY of the payment methodology and rates of payment in writing prior to January 1, 2015.

2. Global Budget Payments. AGENCY will submit a monthly invoice by the 10<sup>th</sup> of the month for services provided the prior month. AGENCY may use the invoice template provided (Attachment 1). AGENCY will reference contract # **6810** on all invoices and correspondence regarding this agreement. Invoices shall be submitted electronically to:

[healthcenterap@clackamas.us](mailto:healthcenterap@clackamas.us)

When submitting electronically, designate AGENCY name and contract # **6810** in the subject of the e-mail.

## EXHIBIT D

### STATEMENT OF GENERAL CONDITIONS

#### 1. Interpretation and Administration of Agreement

AGENCY acknowledges that this agreement between COUNTY and AGENCY is subject to the underlying Health Share of Oregon/Clackamas Risk Accepting Entity Participation Agreement between Health Share of Oregon and COUNTY, the Health Plan Services Contract between the Oregon Health Authority and Health Share of Oregon, the Oregon Revised Statutes concerning the Oregon Health Plan, and other applicable Oregon statutes and administrative rules concerning mental health services. If AGENCY believes that any provision of this agreement or COUNTY's interpretation thereof is in conflict with Federal and State statutes or regulations, AGENCY shall notify COUNTY in writing immediately.

AGENCY agrees to provide medically necessary services within the scope of its practice and license (hereinafter referred to as "services") to individuals assessed as having an eligible mental health condition specified in the Oregon Health Plan "Prioritized List of Mental Health Conditions", can benefit from those services, and as described below when authorized by COUNTY's treatment authorization process. AGENCY shall provide services in accordance with OAR 410-141-3120 "Operations and Provision of Health Services"; OAR 410-141-3420 "Billing and Payment"; and all DHS Rules in OAR Chapter 309 and any other administrative rules to which AGENCY is subject, as such rules may be amended from time to time. These laws, rules and regulations, are incorporated by reference herein to the extent that they are applicable to this agreement and required by law to be so incorporated. Services provided under this agreement are to be within the scope of AGENCY's licenses and certification, and the licenses, certifications and training of its employed and contracted staff providing direct services.

#### 2. General Performance Standards

COUNTY shall monitor services provided by AGENCY and has the right to require AGENCY's compliance with OHA and Health Share of Oregon established standards and other performance requirements relative to the quantity and quality of service and care, access to care, and administrative and fiscal management, and with all obligations and conditions stated in this agreement. AGENCY will notify COUNTY immediately in writing regarding issues related to access to care or any other potential violation of the conditions stated in this agreement.

##### a. Licenses and Certifications

By signing this agreement, AGENCY assures that all licenses and certifications required by statute or administrative rule are and will remain current and valid for all of AGENCY's employees and independent contractors providing direct service and for all of AGENCY's facilities in which services are provided. AGENCY assures that it is certified under OAR 309-012-0130 – 309-012-0220 or licensed under ORS Chapter 443 by the State of Oregon to deliver specified services. AGENCY will promptly notify COUNTY of the initiation of any action against any licenses or, if applicable, against any certifications by any certifying boards or organizations as well as any changes in AGENCY's practice ownership or business address, along with any other problem or situation that may relate to the ability of AGENCY to carry out the duties and obligations of this contract.



b. Eligibility and Authorization of Services

AGENCY shall verify eligibility and enrollment of clients prior to providing and billing for service and obtain authorization for the provision of covered services as necessary and appropriate according to COUNTY policies and procedures. AGENCY shall participate in the COUNTY concurrent review process. AGENCY understands that authorization for services will be based upon this review process.

c. Quality Assurance and Utilization Review

AGENCY shall cooperate with, and participate in, COUNTY's quality assurance and utilization review programs. AGENCY shall also participate in Health Share of Oregon quality initiatives as developed. Further, AGENCY shall have a planned, systematic, and ongoing process for monitoring, evaluating and improving the quality and appropriateness of Covered Services provided to clients.

AGENCY shall work with COUNTY staff to ensure that authorized services provided by AGENCY to clients are the most appropriate and cost efficient, and least restrictive. AGENCY staff shall make records available to COUNTY staff on site upon reasonable notice for purposes of utilization review.

d. Contractual Compliance

AGENCY shall ensure that all providers and staff employed or contracted by AGENCY who provide services to clients or are otherwise engaged in activities under this agreement are fully aware of and in compliance with the terms and conditions of this agreement.

e. Provider Appeal Process

AGENCY shall have the right to appeal actions by COUNTY or decisions concerning interpretation of the Health Share of Oregon/Clackamas Risk Accepting Entity Agreement as they apply to this agreement. Appeals shall be made in writing.

Appeals related to administrative or clinical decisions and all other matters shall be made to COUNTY Administration within thirty (30) calendar days of the date of the action being appealed. A decision shall be issued within twenty-one (21) business days of receipt of the written appeal. An appeal of that decision can be made in writing to the Director of Clackamas County Behavioral Health Division within fourteen (14) business days of the date of the decision. The Director will issue a decision within twenty-one (21) business days, and that decision will be final.

**3. Clinical Standards**

a. Clinical Guidelines

AGENCY shall adopt clinical guidelines that inform mental health practitioners, clients, family members and advocates with evidence-based information about mental illness and appropriate treatment options. Clinical guidelines should be based on a systematic evaluation of research evidence; be designed to assist, rather than dictate, clinical decision-making; and are to be applied on a case-by-case basis. Such guidelines should provide recommendations for appropriate care based on scientific evidence and professional consensus; support for professional standards, quality improvement activities and education; and a basis for comparing current practice to evidence-based best practices. AGENCY shall make such guidelines available to COUNTY upon request.

b. Outcome Measure

AGENCY shall adopt the use of a measure of clinical outcomes that demonstrates a change in client status following an episode of treatment. The measurement tool adopted shall identify changes in symptoms, functioning, quality of life, adverse events or satisfaction. AGENCY shall make information about outcome measures used available to COUNTY upon request.

c. Coordination of Care

- (1) AGENCY shall develop, implement and participate in activities supportive of a continuum of care that integrates mental health, addiction and physical health interventions in ways that are seamless and whole to the client. Integration activities may span a continuum ranging from communication to coordination to co-management to co-location to the fully integrated, person-centered health care home.
- (2) To insure appropriate coordination of services to enrolled individuals, AGENCY shall collaborate with allied agencies in the local service area, including but not limited to primary care clinics, housing authorities, chemical dependency agencies, juvenile justice, school districts, and Department of Human Resources, Child Welfare programs. AGENCY will make every effort to obtain a signed Release of Information at the onset of treatment, notifying the service partner in writing of preliminary diagnosis and prescribed medications, notifying of any major changes or medical complications that occurred during the course of treatment and notifying upon termination of treatment.
- (3) AGENCY shall coordinate with COUNTY on referral of clients to specialty behavioral health services or to a higher intensity of service. Specifically:
  - (i) AGENCY shall coordinate with COUNTY on both admission and discharge of clients to psychiatric acute care or sub-acute psychiatric care. AGENCY shall coordinate with COUNTY and the acute or sub-acute care provider on discharge planning and the development of community resources to aid in the timely discharge and community placement of the client. AGENCY shall assure an appointment with an appropriate provider within seven (7) days of discharge from acute care, sub-acute care or psychiatric residential treatment care.
  - (ii) AGENCY shall coordinate with COUNTY on referral of clients to crisis respite services, particularly as those services are used to divert the admission of the client to acute care.
  - (iii) AGENCY shall refer clients for a Level of Service Intensity Determination Screening when a higher intensity of service appears warranted.
  - (iv) AGENCY shall coordinate with COUNTY to obtain Long Term Care Determination for appropriate clients.

d. Crisis Response

AGENCY will be responsible for twenty-four hour, seven days a week crisis response for their enrolled individuals. AGENCY shall establish and follow a system for appropriate and timely response to emergency needs of individuals. During the period of service, AGENCY shall respond to all enrolled client emergencies. "Emergency" shall mean the sudden onset of a mental health condition manifesting itself by acute symptoms and one or more of the following circumstances are present: (1) the client is in imminent or potential danger of harming himself or others as a result of an eligible condition; (2) the client shows symptoms, e.g., hallucinations, agitation, delusions, etc., resulting in impairment in judgment, functioning and/or impulse control severe enough to endanger his or her own welfare or that of another person; or (3) there is an

immediate need for Services as a result of, or in conjunction with, a very serious situation such as an overdose, detoxification, potential suicide or violence. AGENCY will have a system of crisis response to individuals enrolled in their program. At a minimum, AGENCY will have a clinician available by phone for consultation at all times. This clinician shall be familiar with the case or shall have the ability to contact clinician(s) familiar with the case.

e. Standards of Care

COUNTY promotes resilience in and recovery of the clients it serves. COUNTY supports a system of care that promotes and sustains a client's recovery from a mental health condition by identifying and building upon the strengths and competencies within the person to assist them in achieving a meaningful life within their community. Consistent with these values, AGENCY shall:

- (1) Provide services in a manner that assures continuity and coordination of the health care services provided to each client;
- (2) Accept clients for treatment on the same basis that AGENCY accepts other clients and render services to clients in the same manner as provided to AGENCY's other clients. AGENCY shall not discriminate against clients because of source of payment, race, ethnicity, gender, gender identity, gender presentation, sexual orientation, national origin, ancestry, religion, creed, marital status, familial status, age, except when program eligibility is restricted to children, adults or older adults, source of income, disability and diagnosis;
- (3) Provide clients with access to services without undue delay and as soon as necessary in light of the member's mental health condition. AGENCY shall comply with access standards as set forth in OAR 410-141-3220 "Accessibility";
- (4) Conduct its practice and treat all clients using that degree of care, skill and diligence which is used by ordinarily careful providers in the same or similar circumstances in the provider's community or a similar community (see ORS 677.095);
- (5) Ensure that clients are served in the most normative, least restrictive, least intrusive and most cost effective level of care appropriate to their diagnosis and current symptoms, degree of impairment, level of functioning, treatment history, and extent of family and community supports;
- (6) Advise or advocate on behalf of clients in regard to treatment options, without restraint from COUNTY;
- (7) AGENCY shall employ a system of internal review to evaluate the care being provided within the agency, to modify service plans, adjust level of care being provided and consider duration of treatment. AGENCY will have a system of internal utilization management to assure that services are provided within the authorization maximum dollar amount, when applicable.
- (8) AGENCY shall have written policies and procedures that insure individuals receive a Notice of Action when service is denied, terminated, suspended or reduced without the client's agreement.
- (9) AGENCY shall have written policies and procedures related to consumer complaints as referenced in OAR 309-019-0125 and OAR 410-141-0260 through 410-141-0266.

#### 4. Encounter Submissions

a. Usual and Customary Charges

AGENCY shall bill COUNTY according to their Usual and Customary fee schedule. AGENCY shall base their Usual and Customary charges on a cost study that is updated annually.

b. Compensation

AGENCY shall be reimbursed at the COUNTY reimbursement rates in effect as of the date of service or billed charges, whichever is less.

c. Third Party Resources and Coordination of Benefits

AGENCY shall bill and collect from liable third party resources prior to billing COUNTY. If both the third party resource and COUNTY reimburse AGENCY for the same service, COUNTY shall be entitled to a refund for the exact amount of duplicate payment received by AGENCY.

AGENCY shall be responsible for maintaining records in such a manner so as to ensure that all moneys collected from third-party resources on behalf of clients may be identified and reported to COUNTY on an individual client basis. AGENCY shall make these records available for audit and review consistent with the provisions upon request.

If AGENCY has knowledge that a client has third-party health insurance or health benefits, or that either client or AGENCY is entitled to payment by a third party, AGENCY shall immediately so advise COUNTY.

Pursuant to OAR 410-141-3160, "Integration and Care Coordination", COUNTY reserves the right to coordinate benefits with other health plans, insurance carriers, and government agencies. COUNTY may release medical information to such other parties as necessary to accomplish the coordination of benefits in conformity with the Health Insurance Portability and Accountability Act (HIPAA) 45 CFR 164 and 42 CFR Part 2. Coordination of benefits shall not result in compensation in excess of the amount determined by this agreement, except where State laws or regulations require the contrary.

d. Encounter Data

AGENCY shall submit to COUNTY accurate and complete encounter data in the form of a CMS 1500 claim form for each contact with a client. To encounter data and receive payment, when applicable, AGENCY shall submit a CMS 1500 claim form to COUNTY's Third Party Administrator, Performance Health Technology Ltd (PH Tech). AGENCY shall use its best efforts to supply encounter data once a month, and shall in all cases, supply encounter data no later than 120 calendar days after a contact with a client in accordance with OAR 410-141-3420, "Billing and Payment". Each encounter claim shall include such information as required in the Health Share of Oregon/Clackamas Risk Accepting Entity Participation Agreement and meet specifications as a Valid Claim. AGENCY shall use the most current DSM Multi-Axial Classification System. DSM codes shall be reported at the highest level of specificity. Claims may be submitted to PH Tech in either paper or electronic format.

PH Tech shall pay AGENCY on behalf of COUNTY, by the 45<sup>th</sup> business day after a valid claim is received, fee-for-service payments as specified in section 1 above. COUNTY shall have no obligation to make payment to AGENCY if AGENCY fails to obtain a valid authorization to provide services, fails to verify eligibility for Covered Services and the individual is not an eligible client on the date of service, if the services provided are not Covered Services, or if AGENCY fails to submit fee-for-service bills within 120 calendar days of the date of service. The timely filing

requirement is extended to 12 months when there is a Third Party Resource as the primary payor and to 12 months when Medicare is primary. To be considered for payment, claims resubmission requests submitted by AGENCY must be received by PH Tech within 120 days of the date of the first denial.

d. Non-Covered Services

AGENCY shall follow OAR 410-141-3420, "Billing and Payment", when submitting fee-for-service claims for services provided to OHP Members that are not Covered Services.

e. Payment in Full

Except as expressly provided below, payments to AGENCY made by COUNTY for services provided under the terms of this agreement shall constitute payment in full. OAR 410-141-3420, "Billing and Payment", AGENCY shall not bill, charge, seek compensation, remuneration or reimbursement from, or have any recourse against OHA or any client for services contracted hereunder, either during the term of this agreement or at any time later, even if COUNTY becomes insolvent. This provision shall not prohibit collection for non-covered services that may be the responsibility of the client or any permitted co-pays, co-insurance, deductibles or any other cost sharing, if any and as applicable. AGENCY may bill and collect separately for those costs which are lawfully the responsibility of the client. When combined with all sources of payment, COUNTY's payment to AGENCY shall not exceed the reimbursement amount in effect as of the date of service.

f. Overpayments

Any payments made by COUNTY to which AGENCY is not entitled under the terms of this agreement shall be considered an overpayment and shall be refunded by AGENCY within thirty (30) calendar days of the discovery, in accordance with OAR-410-120-1280, "Billing" and OAR 410-120-1397, "Recovery of Overpayments to Providers – Recoupments and Refunds". AGENCY must not seek payment from clients for any covered services, except any coinsurance, co-payments, and deductibles expressly authorized by OAR-410-120 or OAR-410-141. A client cannot be billed for services or treatment that have been denied due to provider error (e.g. required documentation not submitted, prior authorization not obtained, non-covered diagnosis, etc.).

**5. Staff Standards**

COUNTY delegates to AGENCY the credentialing and recredentialing of employed and contracted staff who provide services to clients under this agreement. Pursuant to OAR 410-141-3120 "Operations and Provision of Health Services", AGENCY must, at a minimum, obtain and verify documents that provide evidence of primary source verification of credentials as follows:

- Appropriate education and academic degrees, as required;
- Licenses or certificates, as required;
- Relevant work history or qualifications, as required;
- Completion of a successful criminal history records check through the Oregon Law Enforcement Data System and compliant with ORS chapter 181 and OAR 407-007-0000 through 407-007-0370;
- Positive clearance by the National Practitioner Data Bank, as required;

- Positive clearance through the General Services Administration System for Award Management (SAM) at time of hire and monthly thereafter; and
- Positive clearance through the Office of Inspector General's List of Excluded Individuals/Entities at time of hire and monthly thereafter.

AGENCY shall not permit any person to provide services under this agreement if that person is listed on the non-procurement portion of the General Service Administration's SAM in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and Suspension" (2 CFR Part 180).

In addition, AGENCY shall not permit any person to provide services under this agreement who has been terminated from the Division of Medical Assistance Program or excluded as Medicare/Medicaid providers by the Centers for Medicare and Medicaid Services or who are subject to exclusion for any lawful conviction by a court for which the provider could be excluded under 42 CFR 1001.101 "Program Integrity – Medicare and State Health Care Programs Subpart B". AGENCY may not submit claims for services provided after the date of such exclusion, conviction or termination.

AGENCY assures that all AGENCY employees and independent contractors providing direct service under this agreement will work within the scope of their credentials and any applicable licensure or registration, or criteria for certification if not required to be licensed or registered pursuant to OAR 410-141-3120. AGENCY shall not allow services to be provided by an employee or independent contractor who does not have a valid license or certification required by state or federal law.

AGENCY ensures that all personnel providing services to clients under this agreement are properly trained and qualified to render the services they provide. AGENCY shall arrange for continuing education of personnel rendering services under this agreement as necessary to maintain such competence and satisfy all applicable licensing, certification or other regulatory requirements.

COUNTY reserves the right to review, upon reasonable notice and at AGENCY's site, the actual documents describing the credentials of AGENCY's employees and independent contractors for purposes of verification.

## **6. Recordkeeping**

### **a. Clinical Records, Access and Confidentiality**

- (1) **Clinical Records.** AGENCY shall ensure maintenance of recordkeeping consistent with OAR 410-141-3180, "Record Keeping and Use of Health Information Technology." The clinical record shall fully document the mental condition of the client and the services received by the client under this agreement. All clinical records relevant to this agreement shall be retained for at least seven (7) years after the date of clinical services for which claims are made, encounters reported, final payment is made, or all pending matters are closed, whichever time period is longer. If an audit, litigation, research and evaluation, or other action involving the records is started before the end of the seven-year-period, the records must be retained until all issues arising out of the action are resolved or until the end of the seven-year-period, whichever is later.
- (2) **Government Access to Records.** At all reasonable times, AGENCY and its subcontractors shall provide the Center for Medicare and Medicaid Services (CMS), the Comptroller General of the United States, the Oregon Secretary of State, the Oregon Department of Justice Medicaid Fraud Unit, Oregon Department of Human Services Office of Payment Accuracy and Recovery, OHA, COUNTY and all their duly authorized representatives the right of access to AGENCY's financial (including all accompanying billing records), clinical/medical, and personnel records that are directly pertinent to this agreement in order to monitor and

evaluate cost, performance, compliance, quality, appropriateness and timeliness of services provided, and the capacity of AGENCY to bear the risk of potential financial losses. These records shall be made available for the purpose of making audit, examination, excerpts and transcriptions. AGENCY shall, upon request and without charge, provide a suitable work area and copying capabilities to facilitate such a review or audit.

- (3) **Confidentiality and Privacy of Records.** The confidentiality of information concerning clients is subject to State and Federal guidelines, including but not limited to State (ORS 179.505 through 179.507, ORS 192.502, ORS 411.320, ORS 433.045(3)) and Federal (42 CFR Part 2, 42 CFR Part 431, Subpart F, 45 CFR 205.50) confidentiality laws and regulations. AGENCY and COUNTY shall not use, release, or disclose any information regarding a client for any purpose not directly connected with the administration of this agreement or under Title XIX of the Social Security Act, except with the written consent of the client or, if appropriate, the client's parent or guardian, or unless otherwise authorized by law. AGENCY shall ensure that its agents, employees, officers and subcontractors with access to client records understand and comply with this confidentiality provision.
- (4) **Release of Information.** AGENCY shall assure that COUNTY and any other cooperating health service providers have access to the applicable contents of the client's clinical record when necessary for use in the diagnosis or treatment of the client, to the extent such access is permitted by law. AGENCY shall release mental health service information requested by COUNTY or a provider involved in the care of a client within ten (10) business days of receiving a signed release. Except as provided in ORS 179.505(9), AGENCY shall provide the client or the client's legal guardian access to client's record and provide copies within ten (10) business days of any request for copies.
- (5) **External Review.** AGENCY shall cooperate with OHA by providing access to records and facilities for the purpose of an annual external, independent professional review of the quality outcomes and timeliness of, and access to, services under this agreement in accordance with 42 USC Section 1396a(a)(27); 42 CFR 431.107(b)(1) & (2); and 42 CFR 457.950(a)(3).
- (6) **Keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving OHP assistance and shall furnish such information to any State or federal agency responsible for administering the OHP program regarding any payments claimed by such person or institution for providing OHP Services as the State or federal agency may from time to time request.** 42 USC Section 1396a(a)(27); 42 CFR 431.107(b)(1) & (2); and 42 CFR 457.950(a)(3).

b. **Financial Records**

- (1) AGENCY shall establish and maintain policies and procedures related to financial management and financial records consistent with Generally Accepted Accounting Principles. AGENCY shall make such policies and procedures available to COUNTY upon request.
- (2) AGENCY shall maintain up-to-date accounting records that accurately reflect all revenue by source, all expenses by object of expense, and all assets, liabilities and equities consistent with Generally Accepted Accounting Principles and Oregon Administrative Rules. AGENCY shall make reports and fiscal data generated under and for this agreement available to COUNTY upon request.
- (3) COUNTY shall conduct a fiscal compliance review of AGENCY as part of compliance monitoring of this agreement. AGENCY agrees to provide, upon reasonable notice, access to all financial books, documents, papers and records of AGENCY which are pertinent to this agreement to ensure appropriate expenditure of funds under this agreement. COUNTY shall monitor compliance with COUNTY's financial reporting and accounting requirements.

- (4) AGENCY may be subject to audit requirements. AGENCY agrees that audits must be conducted by Certified Public Accountants who satisfy the Independence requirement outlined in the rules of the American Institute of Certified Public Accountants (Rule 101 of the AICPA Code of Professional Conduct), the Oregon State Board of Accountancy OAR 801-030-0005, the independence rules contained within Governmental Auditing Standards (2011 Revision), and rules promulgated by other federal, state and local government agencies with jurisdiction over AGENCY.
- (5) AGENCY shall establish and maintain systematic written procedures to assure timely and appropriate resolution of review or audit findings and recommendations. AGENCY shall make such procedures and documentation of resolution of audit findings available to COUNTY upon request.
- (6) Limited Scope and Full Audits shall be completed within nine (9) months of the close of AGENCY's fiscal year. Audit reports, including the Management Letter associated with the audit shall be submitted to COUNTY within two weeks from the date of the report. Failure to submit required audit reports and Management Letters shall be cause for withholding of contract payment until audits are submitted.

## **7. Reporting**

### **a. Abuse Reporting**

AGENCY shall comply with all processes and procedures of child abuse (ORS 419B.005 – 419B.050), mentally ill and developmentally disabled abuse (ORS 430.731 – 430.768 and OAR 943-045-0250 through 943-045-0370) and elder abuse reporting laws (ORS 124.050 – 124.092) as if AGENCY were a mandatory abuse reporter. If AGENCY is not a mandatory reporter by statute, these reporting requirements shall apply during work hour only. AGENCY shall immediately report to the proper State or law enforcement agency circumstances (and provide such other documentation as may be relevant) supporting reasonable cause to believe that any person has abused a child, a mentally ill or developmentally disabled adult or an elderly person, or that any such person has been abused.

### **b. Behavioral Health Electronic Data System**

AGENCY shall participate in the Oregon Health Authority (OHA)'s Enhanced Data Capture for all clients receiving Covered Services under this agreement. AGENCY shall submit all data to OHA via formats approved by OHA. AGENCY shall submit data in accordance with OHA timelines.

### **c. Delivery System Network (DSN) Provider Capacity Report**

AGENCY shall submit the DSN Provider Capacity report (see Attachment 2) to COUNTY in the prescribed format within thirty (30) days of the effective date of this agreement, indentifying all staff and independent contractors who will provide services to clients under this agreement. In addition, the DSN Provider Capacity Report shall be updated and resubmitted monthly to COUNTY.

### **d. Access to Care for Outpatient Mental Health Services**

AGENCY shall submit the online regional access report to COUNTY in the prescribed format by the 15<sup>th</sup> of the month following services delivered.



## **8. Monitoring**

### a. Agreement Compliance Monitoring

COUNTY and OHA shall conduct agreement compliance and quality assurance monitoring related to this agreement. AGENCY shall cooperate with COUNTY and OHA in such monitoring. COUNTY shall provide AGENCY twenty (20) business days written notice of any agreement compliance and quality assurance monitoring activity that requires any action or cooperation by AGENCY. Notice of monitoring shall include the date the monitoring shall occur, names of individuals conducting the monitoring, and instructions and requests for information.

Should AGENCY found to be out of compliance with any requirement of this agreement, the following actions may be taken by COUNTY until the issue is resolved:

- Request a conference of the parties to determine the need for technical assistance
- Require a corrective action plan
- Disallow referral of new clients to AGENCY
- Put AGENCY on probationary status and suspend billing authority

Should the issue remain unresolved, COUNTY may consider AGENCY in breach and may terminate this agreement.

### b. External Quality Review

AGENCY agrees to participate with COUNTY in any evaluation project or performance report as designed by COUNTY or applicable State or Federal agency. AGENCY shall make all information required by any such evaluation project or process available to COUNTY or COUNTY's designee within thirty (30) business days of request.

## **9. Fraud and Abuse**

AGENCY shall comply with, and as indicated, cause all employees and subcontractors to comply with, the following requirements related to fraud and abuse. All elements of this Fraud and Abuse exhibit apply to services provided to uninsured, indigent individuals with the exception of reports to the Medicaid Fraud Control Unit (MFCU) which do not apply to indigent services.

### a. General

- (1) AGENCY, its employees and subcontractors shall comply with all provisions of the False Claims Act established under sections 3729 through 3733 of title 31, United States Code, administrative remedies for false claims and statements established under chapter 38 of title 31, United States Code, any Oregon laws pertaining to civil or criminal penalties for false claims and statements, and whistleblower protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste, and abuse in Federal health care programs (as defined in 42 USC 1320a-7b).
- (2) AGENCY, its employees and subcontractors shall comply with Oregon laws pertaining to false claims including the following: ORS 411.670 to 411.690 (submitting wrongful claim or payment prohibited; liability of person wrongfully receiving payment; amount of recovery); ORS 646.505 to 646.656 (unlawful trade practices); ORS chapter 162 (crimes related to perjury, false swearing and unsworn falsification); ORS chapter 164 (crimes related to theft); ORS chapter 165 (crimes involving fraud or deception), including but not limited to ORS 165.080 (falsification of business records) and ORS 165.690 to 165.698 (false claims for health care payments); ORS 659A.199 to 659A.224 (whistle blowing); OAR 410-120-1395 to 410-120-1510 (program integrity, sanctions, fraud and abuse); and common law claims

founded in fraud, including Fraud, Money Paid by Mistake and Money Paid by False Pretenses.

- (3) AGENCY shall include information in its employee handbooks or other appropriate documents on laws described above, regarding the rights of employees to be protected as whistleblowers.
- (4) AGENCY shall further have policies and procedures for detecting and preventing fraud, waste and abuse that shall, at a minimum, include a process for monitoring and auditing files, claims and staff performance.
- (5) Entities receiving \$5 million or more annually (under this contract and any other OHP contract) for furnishing Medicaid health care items or services shall, as a condition of receiving such payments, adopt written fraud, waste and Abuse policies and procedures and inform employees, contractors and agents about the policies and procedures in compliance with Section 6032 of the Deficit Reduction Act of 2005, 42 USC § 1396a(a)(68).
- (6) Certify when submitting any claim for the provision of OHP services that the information submitted is true, accurate and complete. AGENCY shall acknowledge AGENCY's understanding that payment of the claim will be from Federal and State funds and that any falsification or concealment of a material fact may be prosecuted under Federal and State laws.

b. Fraudulent Billing and False Claims

- (1) AGENCY will report verified and suspected cases of fraud and abuse to the Medicaid Fraud Control Unit (MFCU) and COUNTY within five (5) business day of discovery.
- (2) If it is determined that services billed by AGENCY were fraudulently billed, or that a false claim was submitted, or that an instance of abuse has occurred, the following disciplinary actions may be taken by COUNTY:
  - If abuse is determined, consider restitution of funds based on the severity of the abuse identified.
  - If fraud is determined or a false claim verified, require restitution of funds.
  - If the action identified is determined to be non-intentional, require a corrective action plan
  - Put AGENCY on probationary status and suspend billing authority until the issue is resolved
  - Termination of this agreement
- (3) COUNTY shall promptly refer all verified cases of Medicaid fraud and abuse to the MFCU, consistent with the Memorandum of Understanding between the State of Oregon Department of Human Services and the MFCU. COUNTY shall also refer cases of suspected Medicaid fraud and abuse to the MFCU prior to verification.
- (4) Participation of Suspended or Excluded Providers

AGENCY shall ensure that Covered Services may not be provided to clients by the following persons (or their affiliates as defined in the Federal Requisition Regulations):

- Persons who are currently suspended, debarred or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in non-procurement activities under regulations issues pursuant to Executive Order 12549 or under guidelines implementing such order; and
- Persons who are currently excluded from Medicaid participation under section 1128 or section 1128A of the Act; and
- Persons who are currently excluded from providing services under the Oregon Medical Assistance Program.

c. Examples of fraud and abuse that support referral to the MFCU and COUNTY

- (1) AGENCY who consistently demonstrates a pattern of intentionally reporting encounters or services that did not occur. A pattern would be evident in any case where 20% or more of sampled or audited services are not supported by documentation in the clinical records. This would include any suspected case where it appears that the provider knowingly or intentionally did not deliver the service or goods billed;
- (2) AGENCY who consistently demonstrates a pattern of intentionally reporting overstated or up coded levels of service. A pattern would be evident by 20% or more of sampled or audited services that are billed at a higher-level procedure code than is documented in the clinical records;
- (3) Any suspected case where the AGENCY intentionally or recklessly billed COUNTY more than the usual charge to non-Medicaid recipients or other insurance programs;
- (4) Any suspected case where the AGENCY purposefully altered, falsified, or destroyed clinical record documentation for the purpose of artificially inflating or obscuring his or her compliance rating or collecting Medicaid payments otherwise not due. This includes any deliberate misrepresentation or omission of fact that is material to the determination of benefits payable or services which are covered or should be rendered, including dates of service, charges or reimbursements from other sources, or the identity of the client or provider;
- (5) Providers who intentionally or recklessly make false statements about the credentials of persons rendering care to clients;
- (6) Providers who knowingly charge clients for services that are covered services or intentionally balance-bill a client the difference between the total fee-for-service charge and COUNTY's payment to the AGENCY, in violation of OHA rules.

d. Reporting suspected and verified cases of fraud or abuse

When a verified case of fraud or abuse exists, AGENCY will report the following information to the MFCU and COUNTY within five (5) business day of discovery of the suspected activity:

- Provider Name, Oregon Medicaid Provider Number, address and phone
- Type of provider
- Source and nature of complaint
- The approximate range of dollars involved

- The disposition of the complaint when known
- Number of complaints for the time period.

**Contact Information**

Report to: Medicaid Fraud Control Unit (MFCU)  
Phone: (971)673-1880  
Fax: (971)673-1890  
Address: 1515 SW 5th Ave., Suite 410, Portland, OR 97201

**Contact Information**

Report to: Clackamas Behavioral Health Division  
Contact: Compliance Policy Analyst  
Phone: (503)742-5335  
Fax: (503)742-5304  
Address: 2051 Kaen Road, Suite 367, Oregon City, OR 97045

**10. Compliance with Applicable Law**

AGENCY shall comply and, as indicated, cause all employees and subcontractors to comply with the following Federal requirements. For purposes of this agreement, all references to Federal and State laws are references to Federal and State laws as they may be amended from time to time.

a. Miscellaneous Federal Provisions

AGENCY shall comply and cause all subcontractors to comply with all federal laws, regulations and executive orders applicable to this Contract or to the delivery of Work. Without limiting the generality of the foregoing, AGENCY expressly agrees to comply and cause all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to this Contract: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) 45 CFR Part 84 which implements, Title V, Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Executive Order 11246, as amended, (e) the Health Insurance Portability and Accountability Act of 1996, as amended, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (j) all federal law governing operation of CMHPs, including without limitation, all federal laws requiring reporting of client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to this Contract and required by law to be so incorporated. No federal funds may be used to provide Work in violation of 42 USC 14402.

b. Equal Employment Opportunity

If this Contract, including amendments, is for more than \$10,000, then AGENCY shall comply and cause all subcontractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

c. Non-Discrimination

- (1) AGENCY shall comply with all federal and State laws and regulations including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972 (regarding education programs and activities) the Age Discrimination Act of 1975, the Rehabilitation Act of 1973,

the Americans with Disabilities Act (ADA) of 1990, and all amendments to those acts and all regulations promulgated thereunder. AGENCY shall also comply with all applicable requirements of State civil rights and rehabilitation statutes and rules.

- (2) AGENCY shall comply with and cause its subcontractors to comply with the integration mandate in 28 CFR 35.130(d), Title II of the Americans with Disabilities Act and its implementing regulations published in the Code of Federal Regulations.

d. Advance Directives

AGENCY shall provide adult clients with written information on Advance Directive policies and include a description of Oregon law. The written information provided by AGENCY must reflect changes in Oregon law as soon as possible, but no later than 90 days after the effective date of any change to Oregon law. AGENCY must also provide written information to adult clients with respect to the following:

- (1) Their rights under Oregon law;
- (2) AGENCY's policies respecting the implementation of those rights, including a statement of any limitation regarding the implementation of Advance Directives as a matter of conscience.
- (3) AGENCY must inform clients that complaints concerning noncompliance with the Advance Directive requirements may be filed with OHA.

e. Drug Free Workplace

AGENCY shall maintain and cause all subcontractors to maintain a drug-free workplace and shall notify employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in AGENCY's workplace. AGENCY shall establish a drug-free awareness program and provide each employee to be engaged in the provision of services under this agreement with information about its drug-free workplace program. AGENCY will further comply with additional applicable provisions of the Health Share of Oregon Core Contract.

f. Clinical Laboratory Improvement

If applicable to Scope of Work, AGENCY shall and shall ensure that any Laboratories used by AGENCY shall comply with the Clinical Laboratory Improvement Amendments (CLIA 1988), 42 CFR Part 493 Laboratory Requirements and ORS 438 (Clinical Laboratories, which require that all laboratory testing sites providing services under this agreement shall have either a Clinical Laboratory Improvement Amendments (CLIA) certificate of waiver or a certificate of registration along with a CLIA identification number. Those Laboratories with certificates of waiver will provide only the eight types of tests permitted under the terms of their waiver. Laboratories with certificates of registration may perform a full range of laboratory tests.

g. Clean Air, Clean Water, EPA Regulations

If this agreement, including amendments, exceeds \$100,000 then AGENCY shall comply and cause all subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to OHA, DHHS and the appropriate Regional Office of the Environmental Protection Agency. AGENCY shall include and cause all subcontractors to include

in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section.

h. Energy Efficiency

AGENCY shall comply and cause all subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6201 et seq. (Pub. L. 94- 163).

i. Resource Conservation and Recovery

AGENCY shall comply and cause all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 USC 6901 et. seq.). Section 6002 of that Act (codified at 42 USC 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.

j. Audits

AGENCY shall comply and, if applicable, cause a subcontractor to comply, with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations."

k. Truth in Lobbying

AGENCY certifies, to the best of the AGENCY's knowledge and belief that:

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of AGENCY, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, AGENCY shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- (3) AGENCY shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.
- (4) This certification is a material representation of fact upon which reliance was placed when this Contract was made or entered into. Submission of this certification is a prerequisite for making or entering into this agreement imposed by Section 1352, Title 31, of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

I. Conflict of Interest Safeguards

- (1) AGENCY and its subcontractors shall have in effect safeguards, including, but not limited to, policies and procedures against conflict of interest with any State of Oregon Department of Human Services employees or other agents of the State who have responsibilities relating to this agreement. These safeguards must be at least as effective as the safeguards specified in Section 27 of the Office of Federal Procurement Policy Act (41 USC 423) and must include safeguards to avoid conflicts that could be prohibited under 18 USC 207 or 208 if the Department of Human Services employee or agent was an officer or employee of the United States Government. For purposes of implementing policies and procedures required in this section, AGENCY shall apply the definitions in the State Public Ethics Law as if they applied to AGENCY for "Actual conflict of interest," ORS 244.020(1), "potential conflict of interest," ORS 244.020(14), and "client of household," ORS 244.020(12).
- (2) AGENCY shall not offer to any DHS or OHA employee (or any relative or member of their household) any gift or gifts with an aggregate value in excess of \$50 during a calendar year or any gift of payment of expenses for entertainment. "Gift" for this purpose has the meaning defined in ORS 244.020(6) and OAR 199-005-0001 to 199-005-0035.
- (3) "AGENCY" for purposes of this section includes all AGENCY's affiliates, assignees, subsidiaries, parent companies, successors and transferees, and persons under common control with the AGENCY; any officers, directors, partners, agents and employees of such person; and all others acting or claiming to act on their behalf or in concert with them.
- (4) AGENCY shall apply the definitions in the State Public Ethics Law, ORS 244.020, for "actual conflict of interest", "potential conflict of interest", "relative" and "member of household".

m. HIPAA Compliance

- (1) The parties acknowledge and agree that each of OHA and AGENCY is a "covered entity" for purposes of privacy and security provisions of the Health Insurance Portability and Accountability Act and the federal regulations implementing the Act (collectively referred to as HIPAA). OHA and AGENCY shall comply with HIPAA to the extent that any work or obligations of OHA arising under this agreement are covered by HIPAA.
- (2) AGENCY shall develop and implement such policies and procedures for maintaining the privacy and security of records and authorizing the use and disclosure of records required to comply with this agreement and with HIPAA. AGENCY shall comply and cause all subcontractors to comply with HIPAA and all the HIPAA provisions listed in the Health Share of Oregon Core Contract.
- (3) HIPAA Information Security. AGENCY shall adopt and employ reasonable administrative and physical safeguards consistent with the Security Rules in 45 CFR Part 164 to ensure that Member Information shall be used by or disclosed only to the extent necessary for the permitted use or disclosure and consistent with applicable State and federal laws and the terms and conditions of this agreement. Security incidents involving Member Information must be immediately reported to DHS' Privacy Officer.

July 10, 2014

Board of Commissioners  
 Clackamas County

Members of the Board:

**Approval of an Agency Service Contract with  
 Catholic Community Services of Western Washington  
 Home-Based Stabilization Services/Child Level D and Outpatient Mental Health Services**

<b>Purpose/Outcomes</b>	To provide intensive home-based stabilization services/child Level D and outpatient mental health services for people who are Oregon Health Plan (OHP) members' capitated to Clackamas County.
<b>Dollar Amount and Fiscal Impact</b>	The contract does not contain an upper limit; expenditures are controlled by Behavioral Health Division staff who pre-authorize and monitor services on an on-going basis.
<b>Funding Source</b>	Oregon Health Authority - no County General Funds are involved.
<b>Safety Impact</b>	None
<b>Duration</b>	Effective July 1, 2014 and terminates on June 30, 2015
<b>Previous Board Action</b>	The previous agreement was approved by the Board of County Commissioners on December 20, 2012 - agenda item 122012-A3
<b>Contact Person</b>	Jill Archer, Director – Behavioral Health Division - 742-5336
<b>Contract No.</b>	6792

**BACKGROUND:**

The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of an Agency Service Contract with Catholic Community Services of Western Washington for home-based stabilization services/child Level D and outpatient mental health services.

- Home-based stabilization services/child Level D provide resources intended to maintain or reintegrate children in their home to reduce out-of-home placements.
- Outpatient mental health services include an array of treatment such as individual and group therapy, skills training, case management and psychiatric services.


Such services are provided to persons enrolled in services through Clackamas County Behavioral Health Division. The Behavioral Health Division has partnered with Community Services of Western Washington for behavioral health services since 2009. This contract is a continuation of these services.

The contract is effective July 1, 2014 and continues through June 30, 2015. County Counsel has reviewed and approved this contract as part of the H3S contract standardization project.

**RECOMMENDATION:**

Staff recommends the Board approval of this contract and authorizes Cindy Becker, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,

  
 Cindy Becker, Director



# AGENCY SERVICE CONTRACT

## Contract # 6792

This Agency Service Contract is between Clackamas County acting by and through its Health, Housing and Human Services Department, Behavioral Health Division, hereinafter called "COUNTY," and **CATHOLIC COMMUNITY SERVICES OF WESTERN WASHINGTON**, hereinafter called "AGENCY." Throughout this contract and all exhibits, the term "DEPARTMENT" shall refer to and mean the State of Oregon, Oregon Health Authority.

## CONTRACT

### 1.0 Engagement

COUNTY hereby engages AGENCY to provide outpatient mental health services and home-based stabilization services/child level D as more fully described in Exhibit B, Scope of Work, attached hereto and incorporated herein.

### 2.0 Term

Services provided under the terms of this contract shall commence on **July 1, 2014** and shall terminate **June 30, 2015** unless terminated by one or both parties as provided for in paragraph 6.0 below.

### 3.0 Compensation and Fiscal Records

3.1 Compensation. COUNTY shall compensate AGENCY as specified in Exhibit C, Compensation. The payment shall be full compensation for work performed, for services rendered, and for all labor, materials, supplies, equipment, mileage, and incidentals necessary to perform the work and services.

3.2 Withholding of Contract Payments. Notwithstanding any other payment provision of this contract, should AGENCY fail to submit required reports when due, or submit reports which appear patently inaccurate or inadequate on their face, or fail to perform or document the performance of contracted services, COUNTY shall immediately withhold payments hereunder. Such withholding of payment for cause may continue until AGENCY submits required reports, performs required services, or establishes to COUNTY's satisfaction that such failure arose out of causes beyond the control, and without the fault or negligence, of AGENCY.

3.3 Financial Records. AGENCY and its subcontractors shall maintain complete and legible financial records pertaining in whole or in part to this contract. Such records shall be maintained in accordance with Generally Accepted Accounting Principles and/or other applicable accounting guidelines. Financial records and supporting documents shall be retained for at least six (6) years or such period as may be required by applicable law, following final payment is made under this agreement or until all pending matters are resolved, whichever period is longer. If an audit of financial records discloses that payments to AGENCY were in excess of the amount to which AGENCY was entitled, AGENCY shall repay the amount of the excess to COUNTY.

3.4 Access to Records and Facilities. COUNTY, DEPARTMENT, the Secretary of State's Office of the State of Oregon, the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers and records of AGENCY that are directly related to this contract, the funds paid to AGENCY hereunder, or any services delivered hereunder for the purpose of making audits, examinations, excerpts, and transcripts. In addition, AGENCY shall permit authorized representatives of COUNTY and DEPARTMENT to perform site reviews of all services delivered by AGENCY hereunder.

3.4.1 AGENCY shall maintain up-to-date accounting records that accurately reflect all revenue by source, all expenses by object of expense, and all assets, liabilities and equities consistent with Generally Accepted Accounting Principles and Oregon Administrative Rules. AGENCY shall make reports and fiscal data generated under and for this agreement available to COUNTY upon request.

3.4.2 COUNTY conduct a fiscal compliance review of AGENCY as part of compliance monitoring of this agreement. AGENCY agrees to provide, upon reasonable notice, access to all financial books, documents, papers and records of AGENCY which are pertinent to this agreement to ensure appropriate expenditure of funds under this agreement. COUNTY shall monitor compliance with COUNTY's financial reporting and accounting requirements.

3.4.3 AGENCY may be subject to audit requirements. AGENCY agrees that audits must be conducted by Certified Public Accountants who satisfy the independence requirement outlined in the rules of the American Institute of Certified Public Accountants (Rule 101 of the AICPA Code of Professional Conduct), the Oregon State Board of Accountancy, the independence rules contained within Governmental Auditing Standards (1994 Revision), and rules promulgated by other federal, state and local government agencies with jurisdiction over AGENCY.

3.4.4 AGENCY shall establish and maintain systematic written procedures to assure timely and appropriate resolution of review or audit findings and recommendations. AGENCY shall make such procedures and documentation of resolution of audit findings available to COUNTY upon request.

#### **4.0 Manner of Performance**

4.1 Compliance with Applicable Laws and Regulations and Special Federal Requirements. AGENCY shall comply with all Federal, State, local laws, rules, and regulations applicable to the work to be performed under this contract, including, but not limited to, all applicable Federal and State civil rights and rehabilitation statutes, rules and regulations, and as listed in Exhibit D, paragraph 9. Compliance with Applicable Law, attached hereto and incorporated herein by this reference. AGENCY shall comply with Oregon Administrative Rule (OAR) 410-120-1380, which establishes the requirements for compliance with Section 4751 of Omnibus Budget Reconciliation Act (OBRA) 1991 and ORS 127-649, Patient Self-Determination Act.

4.2 Precedence. A requirement listed both in the main boilerplate of this contract and in an exhibit, the exhibit shall take precedence.

4.3 Subcontracts. AGENCY shall not enter into any subcontracts for any of the work scheduled under this contract without obtaining prior written approval from COUNTY.

4.4 Independent Contractor. AGENCY certifies that it is an independent contractor and not an employee or agent of COUNTY, State, or Federal Government as those terms are used in ORS 30.265. Responsibility for all taxes, assessments, and any other charges imposed upon employers shall be the sole responsibility of AGENCY.

#### **5.0 General Conditions**

5.1 Indemnification. AGENCY agrees to indemnify, save, hold harmless, and defend COUNTY, its officers, commissioners and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of actions, suits, claims or demand attributable in whole or in part to the acts or omissions of AGENCY, and AGENCY's officers, agents, and employees, in performance of this contract.

AGENCY shall defend, save, hold harmless and indemnify the State of Oregon, AMH and their officers, agents and employees from and against all claims, suits, actions, damages, liabilities, costs and expenses of whatsoever nature resulting from, arising out of, or relating to the activities or omissions of AGENCY, or its agents or employees under this contract.

If AGENCY is a public body, AGENCY's liability under this contract is subject to the limitations of the Oregon Tort Claims Act.

5.2 Insurance. During the term of this agreement, AGENCY shall maintain in force, at its own expense, each insurance noted below:

5.2.1 Commercial General Liability

Required by COUNTY                       Not required by COUNTY

AGENCY shall obtain, at AGENCY's expense, and keep in effect during the term of this Agreement, Commercial General Liability Insurance covering bodily injury and property damage on an "occurrence" form in the amount of not less than \$2,000,000 per occurrence/\$4,000,000 general aggregate for the protection of COUNTY, its officers, commissioners, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute it.

5.2.2 Commercial Automobile Liability

Required by COUNTY                       Not required by COUNTY

AGENCY shall also obtain at AGENCY's expense, and keep in effect during the term of the Agreement, "Symbol 1" Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$2,000,000.

5.2.3 Professional Liability

Required by COUNTY                       Not required by COUNTY

AGENCY agrees to furnish COUNTY evidence of professional liability insurance in the amount of not less than \$2,000,000 combined single limit per occurrence/\$4,000,000 general annual aggregate for malpractice or errors and omissions coverage for the protection of COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this Agreement. COUNTY, at its option, may require a complete copy of the above policy.

5.2.4 Tail Coverage. If liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this contract for a duration of thirty-six (36) months or the maximum time period the AGENCY's insurer will provide "tail" coverage as subscribed, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage provided its retroactive date is on or before the effective date of this contract.

5.2.5 Additional Insured Provisions. The insurance, other than the professional liability insurance, Workers' Compensation, and Personal Automobile Liability insurance, shall include "Clackamas County, its commissioners, agents, officers, and employees" as an additional insured.

5.2.6 Notice of Cancellation. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice to COUNTY. Any failure to comply with this provision will not affect the insurance coverage provided to COUNTY. The 60 days notice of cancellation provision shall be physically endorsed on to the policy.

5.2.7 Insurance Carrier Rating. Coverages provided by AGENCY must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

5.2.8 Certificates of Insurance. As evidence of the insurance coverage required by this contract, AGENCY shall furnish a Certificate of Insurance to COUNTY. No contract shall be in effect until the required certificates have been received, approved and accepted by COUNTY. The certificate will specify that all insurance-related provisions within this contract have been complied with. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration.

5.2.9 Primary Coverage Clarification. AGENCY's coverage will be primary in the event of a loss.

5.2.10 Cross Liability Clause. A cross-liability or separation of insureds condition will be included in all general liability, professional liability, and errors and omissions policies required by this contract.

5.3 Governing Law; Consent to Jurisdiction. This agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Any claim, action, or suit between COUNTY and AGENCY that arises out of or relates to performance under this agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, State of Oregon. Provided, however, that if any such claim, action or suit may be brought only in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. AGENCY by execution of this agreement consents to the in personam jurisdiction of said courts.

5.4 Amendments. The terms of this contract shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written instrument signed by AGENCY and COUNTY.

5.5 Severability. If any term or provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

5.6 Waiver. The failure of either party to enforce any provision of this contract shall not constitute a waiver of that or any other provision.

5.7 Future Support. COUNTY makes no commitment of future support and assumes no obligation for future support of the activity contracted herein except as set forth in this contract.

5.8 Oregon Constitutional Limitations. This contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provision herein, which would conflict with such law, is deemed inoperative to that extent.

5.9 Oregon Public Contracting Requirements. Pursuant to the requirements of ORS 279B.020 and ORS 279B.220 through 279B.235 the following terms and conditions are made a part of this contract:

5.9.1 AGENCY shall:

- a. Make payments promptly, as due, to all persons supplying to AGENCY labor or materials for the prosecution of the work provided for in this contract.
- b. Pay all contributions or amounts due the Industrial Accident Fund from such agency or subcontractor incurred in performance of this contract.
- c. Not permit any lien or claim to be filed or prosecuted against COUNTY on account of any labor or material furnished.
- d. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

5.9.2 If AGENCY fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to AGENCY or a subcontractor by any person in connection with this contract as such claim becomes due, the proper officer representing COUNTY may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due AGENCY by reason of this contract.

5.9.3 No person shall be employed for more than ten (10) hours in any one day, or more than forty (40) hours in any one week, except in cases of necessity, emergency or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279A.055, the employee shall be paid at least time and one-half pay:

- a. for all overtime in excess of eight (8) hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday;
- b. for all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
- c. for all work performed on Saturday and on any legal holiday specified in ORS 279B.020.

5.9.4 AGENCY shall pay employees at least time and a half for all overtime work performed under this agreement in excess of 40 hours in any one week, except for individuals under person services contracts who are excluded under ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 U.S.C. 201 to 209) from receiving overtime.

5.9.5 As required by ORS 279B.230, AGENCY shall promptly, as due, make payment to any person, copartnership, association, or corporation furnishing medical, surgical, and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of AGENCY, of all sums that AGENCY agrees to pay for the services and all moneys and sums that AGENCY collected or deducted from the wages of its employees under any law, contract or agreement for the purpose of providing or paying for the services.

5.9.6 Workers' Compensation. All subject employers working under this agreement must either maintain workers' compensation insurance as required by ORS 656.017, or qualify for an exemption under ORS 656.126. AGENCY shall maintain employer's liability insurance with limits of \$500,000 each accident, \$500,000 disease each employee, and \$500,000 each policy limit.

5.10 Ownership of Work Product. All work products of the AGENCY which result from this contract are the exclusive property of COUNTY.

5.11 Integration. This contract contains the entire agreement between COUNTY and AGENCY and supersedes all prior written or oral discussions or agreements.

5.12 Successors in Interest. The provisions of this contract shall not be binding upon or inure to the benefit of AGENCY's successors in interest without COUNTY's explicit written consent.

## **6.0 Termination**

6.1 Termination Without Cause. This contract may be terminated by mutual consent of both parties, or by either party, upon ninety (90) days' notice, in writing or delivered by certified mail or in person.

6.2 Termination With Cause. COUNTY may terminate this contract effective upon delivery of written notice to AGENCY, or at such later date as may be established by COUNTY, under any of the following conditions:

6.2.1 Terms of the HealthShare Risk Accepting Entity Agreement are modified, changed or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding authorized by this contract.

6.2.2 The termination, suspension or expiration of the HealthShare Risk Accepting Entity Agreement.

6.2.3 COUNTY funding from Federal, State, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services. The contract may be modified to accommodate a reduction in funds.

6.2.4 COUNTY has evidence that AGENCY has endangered or is endangering the health or safety of clients, staff or the public. AGENCY shall ensure the orderly and reasonable transfer of care in progress with consumers and shall work with COUNTY staff to accomplish the same.

6.2.5 The lapse, relinquishment, suspension, expiration, cancellation or termination of any required license, certification or qualification of AGENCY, or the lapse relinquishment, suspension, expiration, cancellation or termination of AGENCY's insurance as required in this contract.

6.2.6 AGENCY's filing for protection under United States Bankruptcy Code, the appointment of a receiver to manage AGENCY's affairs, or the judicial declaration that AGENCY is insolvent.

6.2.7 AGENCY fails to perform any of the other provisions of this contract, or fails to pursue the work of this contract in accordance with its terms, and after written notice from the COUNTY, fails to correct such failures within ten (10) business days or such longer period as COUNTY may authorize.

6.2.8 Debarment and Suspension. COUNTY shall not permit any person or entity to be an AGENCY if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Non-procurement Programs" in accordance with Executive Orders No. 12,549 and No. 12,689, "Debarment and Suspension". (See 45 CFR part 76). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. COUNTY shall require all AGENCYS with awards that exceed the simplified acquisition threshold to provide the required certification regarding their exclusion status and that of their principals prior to award.

6.3 Notice of Default. COUNTY may also issue a written notice of default (including breach of contract) to AGENCY and terminate the whole or any part of this contract if AGENCY substantially fails to perform the specific provisions of this contract. The rights and remedies of COUNTY related to default (including breach of contract) by AGENCY shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

6.4 Transition. Any such termination of this contract shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

**7.0 Notices**

If to AGENCY:

Catholic Community Services  
of Western Washington  
5410 N 44<sup>th</sup> Street  
Tacoma, WA 98407-3799

If to COUNTY:


Clackamas County Behavioral Health Division  
Attention: Contract Administration  
5051 Kaen Road, # 367  
Oregon City, OR 97045

This contract consists of seven (7) sections plus the following exhibits and attachments which by this reference are incorporated herein:

Exhibit A	Definitions
Exhibit B	Statement of General Conditions
Exhibit C	Scopes of Work
Exhibit D	Compensation
Attachment 1	Invoice Template
Attachment 2	DSN Provider Capacity Report

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed by their duly authorized officers.

**CATHOLIC COMMUNITY SERVICES  
OF WESTERN WASHINGTON**

By:   
Doug Crandall / COO  
6-23-2014

Date  
5410 N 44<sup>th</sup> Street  
Street Address  
Tacoma, Washington 98407-3799  
City/State/Zip  
(253) 759-9544  
Phone / Fax

**CLACKAMAS COUNTY**

Commissioner: John Ludlow, Chair  
Commissioner: Jim Bernard  
Commissioner: Paul Savas  
Commissioner: Martha Schrader  
Commissioner: Tootie Smith

**Signing on Behalf of the Board:**

Cindy Becker, Director  
Health, Housing and Human Services Department

Date

**EXHIBIT A**  
**DEFINITIONS**

Whenever used in this Agency Services Agreement, the following terms shall have the meanings set forth below:

AMH: State of Oregon, Department of Human Services, Addictions and Mental Health

AGENCY: entity contracted by COUNTY

Allowable Costs: costs described in OMB Circular A-87 except to the extent such costs are limited or excluded by other provisions of this contract

CCO: Coordinated Care Organization is an entity that has been certified as meeting the criteria adopted by the Oregon Health Authority under ORS 414.625 to be accountable for care management and to provide integrated and coordinated health care services

Community Outcome Management and Performance Accountability Support System (COMPASS): the AMH project to implement a new contracts system, roll out an optional free electronic health records systems (OWITS), and enhance the collection of data through MOTS

Contract: this Agency Services Contract between COUNTY and AGENCY for the provision of services

COUNTY: Clackamas County Behavioral Health Division

Covered Services: medically appropriate services specified in OAR 410-141-3120, "Operations and Provision of Health Services" and limited in accordance with OAR 410-141-3420, "Billing and Payment" for OHP Members. The term "Covered Services" may be expanded, limited, or otherwise changed pursuant to the Clackamas County Health Share of Oregon/Clackamas Participation Agreement and OARs. Covered Services may also refer to authorized services provided to uninsured, indigent clients.

DEPARTMENT: AMH contracts with COUNTY to establish and finance community mental health and addition programs; COUNTY, in turn, subcontracts certain services to AGENCY

DHS: Department of Human Services of the State of Oregon

Federal Funds: funds paid to AGENCY under this contract that are received from an agency, instrumentality or program of the Federal government of the United States

Health Share of Oregon: a Coordinated Care Organization serving Oregon Health Plan enrollees of Clackamas, Multnomah and Washington Counties.

Individual: an individual accessing publicly funded behavioral health services who is either an OHP Member or is determined eligible for services as an uninsured, indigent individual.

Mental Health Services: treatment services for individuals diagnosed with serious mental health illness, or other mental or emotional disturbance posing a danger to the health and safety of themselves or others

Medicaid: Federal funds received by OHA under the Title XIX of the Social Security Act and Children's Health Insurance Program Funds administered jointly with Title XIX funds as part of State medical assistance program by OHA



Misexpenditure: money, other than an overexpenditure disbursed to AGENCY by COUNTY under this agreement and expended by AGENCY that:

- (a) is identified by the Federal government as expended contrary to applicable statutes, rules, OMB Circulars or any other authority that governs the permissible expenditure of such money, for which the Federal government has requested reimbursement by the State of Oregon and whether in the form of a Federal determination of improper use of Federal funds, a Federal notice of disallowance, or otherwise; or
- (b) is identified by the COUNTY, State of Oregon or OHA as expended in a manner other than that permitted by this agreement, including without limitation, any money expended by AGENCY, contrary to applicable statutes, rules, OMB Circulars or any other authority that governs the permissible expenditure of such money; or
- (c) is identified by the COUNTY, State of Oregon or OHA as expended on the delivery of a service that did not meet the standards and requirements of this agreement with respect to that service

Measures and Outcomes Tracking System (MOTS): the AMH data system that stores client data submitted by AGENCY and/or COUNTY

OAR: Oregon Administrative Rules duly promulgated by the Oregon Health Authority and as amended from time to time.

OHA: the State of Oregon, acting by and through its Oregon Health Authority.

OHP Member: an individual found eligible by a division of the Oregon Department of Human Services to receive services under the OHP (Oregon Health Plan) Medicaid Demonstration Project or State Children's Health Insurance Program and who is enrolled with COUNTY as Health Share of Oregon/Clackamas.

Oregon Web Infrastructure for Treatment Services (OWITS): is 1) an optional free electronic health records system available to Counties and their Providers to submit the MOTS data, and 2) a system to manage the AMH services

Primary Source Verification: verification from the original source of a specific credential (education, training, licensure) to determine the accuracy of the qualifications of an individual health care practitioner. Examples of primary source verification include, but are not limited to, direct correspondence, telephone verification and internet verifications.

Third Party Resources: any individual, entity, or program that is, or may be, liable to pay all or part of the cost of any Covered Service furnished to an OHP Member, including but not limited to: private health insurance or group health plan; employment-related health insurance; medical support from absent parents; workers' compensation; Medicare; automobile liability insurance; other federal programs such as Veteran's Administration, Armed Forces Retirees and Dependent Act, Armed Forces Active Duty and Dependents Military Medical Benefits Act, and Medicare Parts A and B; another state's Title XIX, Title XXI or state-funded Medical Assistance Program; and personal estates.

Valid Claim: an invoice, in the form of a CMS 1500 claim form, submitted for payment of covered health services rendered to an eligible client that is submitted within the required 90 days from the date of service or discharge and that can be processed without obtaining additional information from the provider of the service or from a third party. A valid claim is synonymous with the federal definition of a clean claim as defined in 42 CFR 447.45(b).

## EXHIBIT B

### SCOPE OF WORK

#### 1. Home-Based Stabilization Services/Child Level D

Home-Based Stabilization Services are a comprehensive, individualized service package that includes a mixture of professional, paraprofessional and natural supports and resources which are intended to maintain or reintegrate children and adolescents in their home and community and reduce out of home placements that are the result of mental health issues. Services are time limited with the goal of transition to a lower level of care.

Referrals will come only from the Clackamas County Children's Care Coordination Team and will be pre-authorized with utilization review to occur not less than monthly within the context of a Child and Family Team Meeting. Referrals for clients in acute care, sub-acute or residential settings will be prioritized and services will be initiated prior to discharge.

AGENCY is expected to manage utilization throughout the authorization period to ensure that the client is receiving services of the appropriate type and intensity that are clinically indicated and medically necessary.

A strengths and needs assessment will be completed for each child that includes all relevant domains of the comprehensive mental health assessment. Service planning and provision will be child and family-centered and are intended to create a comprehensive plan of care. AGENCY shall participate in Child and Family Team meetings to occur no less frequently than every 90 days. Child and family teams will include family members including involved biological family members, or foster parents, the Clackamas County Facilitator, involved providers and agencies such as Child Welfare, the child when appropriate, and any other natural, formal, and informal supports as identified by the family.

The program will demonstrate philosophy of families as equal partners and insure family involvement and participation in all phases of assessment, treatment planning and the child's treatment by documentation in the clinical record. AGENCY will have a policy and procedure on family involvement that includes specific supports to family members that address and prevent barriers to family involvement

Services and crisis intervention will be available 24 hours per day by a member of the home-based stabilization team familiar to the family. A face-to-face response will be provided when requested and when clinically indicated. Services will be primarily delivered in the home or other community-based locations during times convenient for the child and family, and will include a minimum of four contacts per week, up to daily contact. Services will be offered at times that are not only convenient for the family, but that are generally times of increased difficulty for a particularly family or youth. This may include late evenings, early mornings and weekends.

Services to be evidence-based whenever an evidence based practice exists that is appropriate for children with severe mental, emotional, or behavioral disorders. Specific services available will include: assessment, family therapy, parent education, parent coaching/skills training, after-school activities, recreational activities, case management, psychiatric evaluation and medication management, consultation, individual therapy, individual skills training, mentoring, in-home respite or child care, flexible services and supports, interpreter services, and multi-system coordination of care, linkage to natural and informal supports, coordination of services by non-traditional providers, or other services approved in the Service Coordination Plan.

Services will be flexible and tailored in frequency, intensity, type and duration to meet the individual child and family's needs. Services will be provided creatively, with attention to what is needed to safely maintain the child in the community setting, and may include flexible services such as overnight staff in a family home, skills training and support at the school, daily parent coaching, etc.

When applicable, active collaboration with Health Share of Oregon/ Clackamas completing the School Transition Protocol 60 days prior to discharge from an ISA level of care.

**Program Performance Measures**

At a minimum, AGENCY shall track the performance measures identified below and detailed in program instructions prepared by COUNTY and incorporated into this contract by reference.

Program Goal	Performance Measure	Target # or %	Monthly Source
Maintain required access for routine, urgent and emergent appointments	Percent of individuals receiving routine initial appointments within 14 days of request	Target: 100%	Provider access reports Secret shopper calls Anecdotal information from clients and other partners, crisis lines
Ensure adequate and timely follow-up care for consumers after discharge from a hospital for mental illness	Percent of consumers who have an ambulatory mental health visit within seven (7) days of hospital discharge	Target: 90%	HSO Claims Data
Global Payment Implementation Measure All consumers receiving care after April 1, 2014 dates of service will have an authorization under new regional levels of care	Percent of consumers who have a regional level of care authorization documented in CIM by April 1, 2014  Percent of total individuals served with denied encounters for "no authorization" for service dates after April 1, 2014	Target: 100%  Target: 0%	HSO Claims Data
Levels of Care will be assigned accurately and with inter-rater reliability	Percent inter-rater reliability on the LOC assignment based on concurrent review of 10% of total monthly new authorizations up to a maximum of 30	Target: 75%	AGENCY Inter-rater reliability report HSO inter-rater reliability concurrent review
Consumers are receiving the intensity of service that's within the LOC range	Ratio of Average Encounters Per Authorization Served by Level of Care to Target Average Encounters Served by Level of Care	Target: 75%	HSO Claims Data

Program Goal	Performance Measure	Target # or %	Monthly Source
Improve outcomes by the use of Treat to Target tools	Percent of consumers that have reached the target number of treatment sessions with positive outcomes Percent of consumers served that are evaluated using an outcomes measurement instrument.	Target: 50%  Target: 50%	New treat to target outcome measures developed and implemented by Health Share of Oregon.

AGENCY shall participate with COUNTY in evaluation of contracted project/service outcomes, satisfaction surveys, or performance, and to make available all information required by such evaluation process. This includes providing COUNTY with data necessary to verify consumer counts, service provision, and outcome measures.

**2. Outpatient Mental Health Services**

AGENCY shall follow the Medical Necessity Criteria and Utilization Guidelines as outlined in the Health Share of Oregon Adult Utilization Management Guidelines and Child and Family Utilization Management Guidelines.

AGENCY shall ensure clinical staff are trained in the use of these guidelines including the service description, admission, continued stay and transition criteria

AGENCY shall ensure clinical staff are trained in the use of the Treatment Registration Form for initial and continued stay funding requests.

AGENCY shall provide a responsive, 24-hour, seven day per week coverage system to ensure access to services.

**Program Performance Measures**

At a minimum, AGENCY shall track the performance measures identified below and detailed in program instructions prepared by COUNTY and incorporated into this contract by reference.

Program Goal	Performance Measure	Target # or %	Monthly Source
Maintain required access for routine, urgent and emergent appointments	Percent of individuals receiving routine initial appointments within 14 days of request	Target: 100%	Provider access reports Secret shopper calls Anecdotal information from clients and other partners, crisis lines
Ensure adequate and timely follow-up care for consumers after discharge from a hospital for mental illness	Percent of consumers who have an ambulatory mental health visit within seven (7) days of hospital discharge	Target: 90%	HSO Claims Data

Program Goal	Performance Measure	Target # or %	Monthly Source
Global Payment Implementation Measure All consumers receiving care after April 1, 2014 dates of service will have an authorization under new regional levels of care	Percent of consumers who have a regional level of care authorization documented in CIM by April 1, 2014	Target: 100%	HSO Claims Data
	Percent of total individuals served with denied encounters for "no authorization" for service dates after April 1, 2014	Target: 0%	
Levels of Care will be assigned accurately and with inter-rater reliability	Percent inter-rater reliability on the LOC assignment based on concurrent review of 10% of total monthly new authorizations up to a maximum of 30	Target: 75%	Agency Inter-rater reliability report  HSO inter-rater reliability concurrent review
Consumers are receiving the intensity of service that's within the LOC range	Ratio of Average Encounters Per Authorization Served by Level of Care to Target Average Encounters Served by Level of Care	Target: 75%	HSO Claims Data
Improve outcomes by the use of Treat to Target tools	Percent of consumers that have reached the target number of treatment sessions with positive outcomes	Target: 50%	New treat to target outcome measures developed and implemented by Health Share of Oregon.
	Percent of consumers served that are evaluated using an outcomes measurement instrument.	Target: 50%	

AGENCY shall participate with COUNTY in evaluation of contracted project/service outcomes, satisfaction surveys, or performance, and to make available all information required by such evaluation process. This includes providing COUNTY with data necessary to verify consumer counts, service provision, and outcome measures.

**EXHIBIT C**  
**COMPENSATION**

**Global Budget / Alternate Payment Methodology**

For services provided under the alternate payment methodology:

1. Contract Funding for Level of Care A, B, C, and D Outpatient Services.

- a. The estimated requirements funding for these services is subject to the limitations and requirements detailed in this contract.

Baseline OHP Global Budgets for CONTRACTOR were based on July 2012 through June 2013 allowed paid claims for Outpatient Services associated with Child and Adult Levels of Care A, B, C, and D.

- b. COUNTY will pay CONTRACTOR on a monthly allocation basis using the available annual budget amount. For the time periods listed below, COUNTY will pay the CONTRACTOR as follows:

- July 1, 2014 through December 31, 2014: CONTRACTOR will be notified in writing of limit.

c. Phase 2 Global Budget Payment Methodology: July through December 2014

COUNTY will continue to pay CONTRACTOR on a monthly allocation basis. CONTRACTOR will be notified in writing of the monthly allocation amounts as well as the methodology used in determining them.

- d. Funding and monthly allocations will be unilaterally adjusted by COUNTY as necessary to meet service level requirements and to ensure the funds are being utilized to the maximum benefit of Health Share of Oregon members.

e. Phase 3 Global Budget Payment Methodology: January 2015 through June 2015

COUNTY will notify CONTRACTOR of the payment methodology and rates of payment in writing prior to January 1, 2015.

2. Global Budget Payments. CONTRACTOR will submit a monthly invoice by the 10<sup>th</sup> of the month for services provided the prior month. CONTRACTOR may use the invoice template provided (Attachment 1). AGENCY will reference contract # **6792** on all invoices and correspondence regarding this agreement. Invoices shall be submitted electronically to:

[healthcenterap@clackamas.us](mailto:healthcenterap@clackamas.us)

When submitting electronically, designate CONTRACTOR name and contract # **6792** in the subject of the e-mail.

## EXHIBIT D

### STATEMENT OF GENERAL CONDITIONS

#### 1. Interpretation and Administration of Agreement

AGENCY acknowledges that this agreement between COUNTY and AGENCY is subject to the underlying Health Share of Oregon/Clackamas Risk Accepting Entity Participation Agreement between Health Share of Oregon and COUNTY, the Health Plan Services Contract between the Oregon Health Authority and Health Share of Oregon, the Oregon Revised Statutes concerning the Oregon Health Plan, and other applicable Oregon statutes and administrative rules concerning mental health services. If AGENCY believes that any provision of this agreement or COUNTY's interpretation thereof is in conflict with Federal and State statutes or regulations, AGENCY shall notify COUNTY in writing immediately.

AGENCY agrees to provide medically necessary services within the scope of its practice and license (hereinafter referred to as "services") to individuals assessed as having an eligible mental health condition specified in the Oregon Health Plan "Prioritized List of Mental Health Conditions", can benefit from those services, and as described below when authorized by COUNTY's treatment authorization process. AGENCY shall provide services in accordance with OAR 410-141-3120 "Operations and Provision of Health Services"; OAR 410-141-3420 "Billing and Payment"; and all DHS Rules in OAR Chapter 309 and any other administrative rules to which AGENCY is subject, as such rules may be amended from time to time. These laws, rules and regulations, are incorporated by reference herein to the extent that they are applicable to this agreement and required by law to be so incorporated. Services provided under this agreement are to be within the scope of AGENCY's licenses and certification, and the licenses, certifications and training of its employed and contracted staff providing direct services.

#### 2. General Performance Standards

COUNTY shall monitor services provided by AGENCY and has the right to require AGENCY's compliance with OHA and Health Share of Oregon established standards and other performance requirements relative to the quantity and quality of service and care, access to care, and administrative and fiscal management, and with all obligations and conditions stated in this agreement. AGENCY will notify COUNTY immediately in writing regarding issues related to access to care or any other potential violation of the conditions stated in this agreement.

##### a. Licenses and Certifications

By signing this agreement, AGENCY assures that all licenses and certifications required by statute or administrative rule are and will remain current and valid for all of AGENCY's employees and independent contractors providing direct service and for all of AGENCY's facilities in which services are provided. AGENCY assures that it is certified under OAR 309-012-0130 – 309-012-0220 or licensed under ORS Chapter 443 by the State of Oregon to deliver specified services. AGENCY will promptly notify COUNTY of the initiation of any action against any licenses or, if applicable, against any certifications by any certifying boards or organizations as well as any changes in AGENCY's practice ownership or business address, along with any other problem or situation that may relate to the ability of AGENCY to carry out the duties and obligations of this contract.

b. Eligibility and Authorization of Services

AGENCY shall verify eligibility and enrollment of clients prior to providing and billing for service and obtain authorization for the provision of covered services as necessary and appropriate according to COUNTY policies and procedures. AGENCY shall participate in the COUNTY concurrent review process. AGENCY understands that authorization for services will be based upon this review process.

c. Quality Assurance and Utilization Review

AGENCY shall cooperate with, and participate in, COUNTY's quality assurance and utilization review programs. AGENCY shall also participate in Health Share of Oregon quality initiatives as developed. Further, AGENCY shall have a planned, systematic, and ongoing process for monitoring, evaluating and improving the quality and appropriateness of Covered Services provided to clients.

AGENCY shall work with COUNTY staff to ensure that authorized services provided by AGENCY to clients are the most appropriate and cost efficient, and least restrictive. AGENCY staff shall make records available to COUNTY staff on site upon reasonable notice for purposes of utilization review.

d. Contractual Compliance

AGENCY shall ensure that all providers and staff employed or contracted by AGENCY who provide services to clients or are otherwise engaged in activities under this agreement are fully aware of and in compliance with the terms and conditions of this agreement.

e. Provider Appeal Process

AGENCY shall have the right to appeal actions by COUNTY or decisions concerning interpretation of the Health Share of Oregon/Clackamas Risk Accepting Entity Agreement as they apply to this agreement. Appeals shall be made in writing.

Appeals related to administrative or clinical decisions and all other matters shall be made to COUNTY Administration within thirty (30) calendar days of the date of the action being appealed. A decision shall be issued within twenty-one (21) business days of receipt of the written appeal. An appeal of that decision can be made in writing to the Director of Clackamas County Behavioral Health Division within fourteen (14) business days of the date of the decision. The Director will issue a decision within twenty-one (21) business days, and that decision will be final.

**3. Clinical Standards**

a. Clinical Guidelines

AGENCY shall adopt clinical guidelines that inform mental health practitioners, clients, family members and advocates with evidence-based information about mental illness and appropriate treatment options. Clinical guidelines should be based on a systematic evaluation of research evidence; be designed to assist, rather than dictate, clinical decision-making; and are to be applied on a case-by-case basis. Such guidelines should provide recommendations for appropriate care based on scientific evidence and professional consensus; support for professional standards, quality improvement activities and education; and a basis for comparing current practice to evidence-based best practices. AGENCY shall make such guidelines available to COUNTY upon request.



b. Outcome Measure

AGENCY shall adopt the use of a measure of clinical outcomes that demonstrates a change in client status following an episode of treatment. The measurement tool adopted shall identify changes in symptoms, functioning, quality of life, adverse events or satisfaction. AGENCY shall make information about outcome measures used available to COUNTY upon request.

c. Coordination of Care

- (1) AGENCY shall develop, implement and participate in activities supportive of a continuum of care that integrates mental health, addiction and physical health interventions in ways that are seamless and whole to the client. Integration activities may span a continuum ranging from communication to coordination to co-management to co-location to the fully integrated, person-centered health care home.
- (2) To insure appropriate coordination of services to enrolled individuals, AGENCY shall collaborate with allied agencies in the local service area, including but not limited to primary care clinics, housing authorities, chemical dependency agencies, juvenile justice, school districts, and Department of Human Resources, Child Welfare programs. AGENCY will make every effort to obtain a signed Release of Information at the onset of treatment, notifying the service partner in writing of preliminary diagnosis and prescribed medications, notifying of any major changes or medical complications that occurred during the course of treatment and notifying upon termination of treatment.
- (2) AGENCY shall coordinate with COUNTY on referral of clients to specialty behavioral health services or to a higher intensity of service. Specifically:
  - (i) AGENCY shall coordinate with COUNTY on both admission and discharge of clients to psychiatric acute care or sub-acute psychiatric care. AGENCY shall coordinate with COUNTY and the acute or sub-acute care provider on discharge planning and the development of community resources to aid in the timely discharge and community placement of the client. AGENCY shall assure an appointment with an appropriate provider within seven (7) days of discharge from acute care, sub-acute care or psychiatric residential treatment care.
  - (ii) AGENCY shall coordinate with COUNTY on referral of clients to crisis respite services, particularly as those services are used to divert the admission of the client to acute care.
  - (iii) AGENCY shall refer clients for a Level of Service Intensity Determination Screening when a higher intensity of service appears warranted.
  - (iv) AGENCY shall coordinate with COUNTY to obtain Long Term Care Determination for appropriate clients.

d. Crisis Response

AGENCY will be responsible for twenty-four hour, seven days a week crisis response for their enrolled individuals. AGENCY shall establish and follow a system for appropriate and timely response to emergency needs of individuals. During the period of service, AGENCY shall respond to all enrolled client emergencies. "Emergency" shall mean the sudden onset of a mental health condition manifesting itself by acute symptoms and one or more of the following circumstances are present: (1) the client is in imminent or potential danger of harming himself or others as a result of an eligible condition; (2) the client shows symptoms, e.g., hallucinations, agitation, delusions, etc., resulting in impairment in judgment, functioning and/or impulse control severe enough to endanger his or her own welfare or that of another person; or (3) there is an

immediate need for Services as a result of, or in conjunction with, a very serious situation such as an overdose, detoxification, potential suicide or violence. AGENCY will have a system of crisis response to individuals enrolled in their program. At a minimum, AGENCY will have a clinician available by phone for consultation at all times. This clinician shall be familiar with the case or shall have the ability to contact clinician(s) familiar with the case.

e. Standards of Care

COUNTY promotes resilience in and recovery of the clients it serves. COUNTY supports a system of care that promotes and sustains a client's recovery from a mental health condition by identifying and building upon the strengths and competencies within the person to assist them in achieving a meaningful life within their community. Consistent with these values, AGENCY shall:

- (1) Provide services in a manner that assures continuity and coordination of the health care services provided to each client;
- (2) Accept clients for treatment on the same basis that AGENCY accepts other clients and render services to clients in the same manner as provided to AGENCY's other clients. AGENCY shall not discriminate against clients because of source of payment, race, ethnicity, gender, gender identity, gender presentation, sexual orientation, national origin, ancestry, religion, creed, marital status, familial status, age, except when program eligibility is restricted to children, adults or older adults, source of income, disability and diagnosis;
- (3) Provide clients with access to services without undue delay and as soon as necessary in light of the member's mental health condition. AGENCY shall comply with access standards as set forth in OAR 410-141-3220 "Accessibility";
- (4) Conduct its practice and treat all clients using that degree of care, skill and diligence which is used by ordinarily careful providers in the same or similar circumstances in the provider's community or a similar community (see ORS 677.095);
- (5) Ensure that clients are served in the most normative, least restrictive, least intrusive and most cost effective level of care appropriate to their diagnosis and current symptoms, degree of impairment, level of functioning, treatment history, and extent of family and community supports;
- (6) Advise or advocate on behalf of clients in regard to treatment options, without restraint from COUNTY;
- (7) AGENCY shall employ a system of internal review to evaluate the care being provided within the agency, to modify service plans, adjust level of care being provided and consider duration of treatment. AGENCY will have a system of internal utilization management to assure that services are provided within the authorization maximum dollar amount, when applicable.
- (8) AGENCY shall have written policies and procedures that insure individuals receive a Notice of Action when service is denied, terminated, suspended or reduced without the client's agreement.
- (9) AGENCY shall have written policies and procedures related to consumer complaints as referenced in OAR 309-019-0125 and OAR 410-141-0260 through 410-141-0266.

#### **4. Encounter Submissions**

a. Usual and Customary Charges

AGENCY shall bill COUNTY according to their Usual and Customary fee schedule. AGENCY shall base their Usual and Customary charges on a cost study that is updated annually.

b. Compensation

AGENCY shall be reimbursed at the COUNTY reimbursement rates in effect as of the date of service or billed charges, whichever is less.

c. Third Party Resources and Coordination of Benefits

AGENCY shall bill and collect from liable third party resources prior to billing COUNTY. If both the third party resource and COUNTY reimburse AGENCY for the same service, COUNTY shall be entitled to a refund for the exact amount of duplicate payment received by AGENCY.

AGENCY shall be responsible for maintaining records in such a manner so as to ensure that all moneys collected from third-party resources on behalf of clients may be identified and reported to COUNTY on an individual client basis. AGENCY shall make these records available for audit and review consistent with the provisions upon request.

If AGENCY has knowledge that a client has third-party health insurance or health benefits, or that either client or AGENCY is entitled to payment by a third party, AGENCY shall immediately so advise COUNTY.

Pursuant to OAR 410-141-3160, "Integration and Care Coordination", COUNTY reserves the right to coordinate benefits with other health plans, insurance carriers, and government agencies. COUNTY may release medical information to such other parties as necessary to accomplish the coordination of benefits in conformity with the Health Insurance Portability and Accountability Act (HIPAA) 45 CFR 164 and 42 CFR Part 2. Coordination of benefits shall not result in compensation in excess of the amount determined by this agreement, except where State laws or regulations require the contrary.

d. Encounter Data

AGENCY shall submit to COUNTY accurate and complete encounter data in the form of a CMS 1500 claim form for each contact with a client. To encounter data and receive payment, when applicable, AGENCY shall submit a CMS 1500 claim form to COUNTY's Third Party Administrator, Performance Health Technology Ltd (PH Tech). AGENCY shall use its best efforts to supply encounter data once a month, and shall in all cases, supply encounter data no later than 120 calendar days after a contact with a client in accordance with OAR 410-141-3420, "Billing and Payment". Each encounter claim shall include such information as required in the Health Share of Oregon/Clackamas Risk Accepting Entity Participation Agreement and meet specifications as a Valid Claim. AGENCY shall use the most current DSM Multi-Axial Classification System. DSM codes shall be reported at the highest level of specificity. Claims may be submitted to PH Tech in either paper or electronic format.

PH Tech shall pay AGENCY on behalf of COUNTY, by the 45<sup>th</sup> business day after a valid claim is received, fee-for-service payments as specified in section 1 above. COUNTY shall have no obligation to make payment to AGENCY if AGENCY fails to obtain a valid authorization to provide services, fails to verify eligibility for Covered Services and the individual is not an eligible client on the date of service, if the services provided are not Covered Services, or if AGENCY fails to submit fee-for-service bills within 120 calendar days of the date of service. The timely filing

requirement is extended to 12 months when there is a Third Party Resource as the primary payor and to 12 months when Medicare is primary. To be considered for payment, claims resubmission requests submitted by AGENCY must be received by PH Tech within 120 days of the date of the first denial.

d. Non-Covered Services

AGENCY shall follow OAR 410-141-3420, "Billing and Payment", when submitting fee-for-service claims for services provided to OHP Members that are not Covered Services.

e. Payment in Full

Except as expressly provided below, payments to AGENCY made by COUNTY for services provided under the terms of this agreement shall constitute payment in full. OAR 410-141-3420, "Billing and Payment", AGENCY shall not bill, charge, seek compensation, remuneration or reimbursement from, or have any recourse against OHA or any client for services contracted hereunder, either during the term of this agreement or at any time later, even if COUNTY becomes insolvent. This provision shall not prohibit collection for non-covered services that may be the responsibility of the client or any permitted co-pays, co-insurance, deductibles or any other cost sharing, if any and as applicable. AGENCY may bill and collect separately for those costs which are lawfully the responsibility of the client. When combined with all sources of payment, COUNTY's payment to AGENCY shall not exceed the reimbursement amount in effect as of the date of service.

f. Overpayments

Any payments made by COUNTY to which AGENCY is not entitled under the terms of this agreement shall be considered an overpayment and shall be refunded by AGENCY within thirty (30) calendar days of the discovery, in accordance with OAR-410-120-1280, "Billing" and OAR 410-120-1397, "Recovery of Overpayments to Providers – Recoupments and Refunds". AGENCY must not seek payment from clients for any covered services, except any coinsurance, co-payments, and deductibles expressly authorized by OAR-410-120 or OAR-410-141. A client cannot be billed for services or treatment that have been denied due to provider error (e.g. required documentation not submitted, prior authorization not obtained, non-covered diagnosis, etc.).

## 5. Staff Standards

COUNTY delegates to AGENCY the credentialing and recredentialing of employed and contracted staff who provide services to clients under this agreement. Pursuant to OAR 410-141-3120 "Operations and Provision of Health Services", AGENCY must, at a minimum, obtain and verify documents that provide evidence of primary source verification of credentials as follows:

- Appropriate education and academic degrees, as required;
- Licenses or certificates, as required;
- Relevant work history or qualifications, as required;
- Completion of a successful criminal history records check through the Oregon Law Enforcement Data System and compliant with ORS chapter 181 and OAR 407-007-0000 through 407-007-0370;
- Positive clearance by the National Practitioner Data Bank, as required;

- Positive clearance through the General Services Administration System for Award Management (SAM) at time of hire and monthly thereafter; and
- Positive clearance through the Office of Inspector General's List of Excluded Individuals/Entities at time of hire and monthly thereafter.

AGENCY shall not permit any person to provide services under this agreement if that person is listed on the non-procurement portion of the General Service Administration's SAM in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and Suspension" (2 CFR Part 180).

In addition, AGENCY shall not permit any person to provide services under this agreement who has been terminated from the Division of Medical Assistance Program or excluded as Medicare/Medicaid providers by the Centers for Medicare and Medicaid Services or who are subject to exclusion for any lawful conviction by a court for which the provider could be excluded under 42 CFR 1001.101 "Program Integrity – Medicare and State Health Care Programs Subpart B". AGENCY may not submit claims for services provided after the date of such exclusion, conviction or termination.

AGENCY assures that all AGENCY employees and independent contractors providing direct service under this agreement will work within the scope of their credentials and any applicable licensure or registration, or criteria for certification if not required to be licensed or registered pursuant to OAR 410-141-3120. AGENCY shall not allow services to be provided by an employee or independent contractor who does not have a valid license or certification required by state or federal law.

AGENCY ensures that all personnel providing services to clients under this agreement are properly trained and qualified to render the services they provide. AGENCY shall arrange for continuing education of personnel rendering services under this agreement as necessary to maintain such competence and satisfy all applicable licensing, certification or other regulatory requirements.

COUNTY reserves the right to review, upon reasonable notice and at AGENCY's site, the actual documents describing the credentials of AGENCY's employees and independent contractors for purposes of verification.

## **6. Recordkeeping**

### **a. Clinical Records, Access and Confidentiality**

- (1) Clinical Records. AGENCY shall ensure maintenance of recordkeeping consistent with OAR 410-141-3180, "Record Keeping and Use of Health Information Technology." The clinical record shall fully document the mental condition of the client and the services received by the client under this agreement. All clinical records relevant to this agreement shall be retained for at least seven (7) years after the date of clinical services for which claims are made, encounters reported, final payment is made, or all pending matters are closed, whichever time period is longer. If an audit, litigation, research and evaluation, or other action involving the records is started before the end of the seven-year-period, the records must be retained until all issues arising out of the action are resolved or until the end of the seven-year-period, whichever is later.
- (2) Government Access to Records. At all reasonable times, AGENCY and its subcontractors shall provide the Center for Medicare and Medicaid Services (CMS), the Comptroller General of the United States, the Oregon Secretary of State, the Oregon Department of Justice Medicaid Fraud Unit, Oregon Department of Human Services Office of Payment Accuracy and Recovery, OHA, COUNTY and all their duly authorized representatives the right of access to AGENCY's financial (including all accompanying billing records), clinical/medical, and personnel records that are directly pertinent to this agreement in order to monitor and

evaluate cost, performance, compliance, quality, appropriateness and timeliness of services provided, and the capacity of AGENCY to bear the risk of potential financial losses. These records shall be made available for the purpose of making audit, examination, excerpts and transcriptions. AGENCY shall, upon request and without charge, provide a suitable work area and copying capabilities to facilitate such a review or audit.

- (3) Confidentiality and Privacy of Records. The confidentiality of information concerning clients is subject to State and Federal guidelines, including but not limited to State (ORS 179.505 through 179.507, ORS 192.502, ORS 411.320, ORS 433.045(3)) and Federal (42 CFR Part 2, 42 CFR Part 431, Subpart F, 45 CFR 205.50) confidentiality laws and regulations. AGENCY and COUNTY shall not use, release, or disclose any information regarding a client for any purpose not directly connected with the administration of this agreement or under Title XIX of the Social Security Act, except with the written consent of the client or, if appropriate, the client's parent or guardian, or unless otherwise authorized by law. AGENCY shall ensure that its agents, employees, officers and subcontractors with access to client records understand and comply with this confidentiality provision.
- (4) Release of Information. AGENCY shall assure that COUNTY and any other cooperating health service providers have access to the applicable contents of the client's clinical record when necessary for use in the diagnosis or treatment of the client, to the extent such access is permitted by law. AGENCY shall release mental health service information requested by COUNTY or a provider involved in the care of a client within ten (10) business days of receiving a signed release. Except as provided in ORS 179.505(9), AGENCY shall provide the client or the client's legal guardian access to client's record and provide copies within ten (10) business days of any request for copies.
- (5) External Review. AGENCY shall cooperate with OHA by providing access to records and facilities for the purpose of an annual external, independent professional review of the quality outcomes and timeliness of, and access to, services under this agreement in accordance with 42 USC Section 1396a(a)(27); 42 CFR 431.107(b)(1) & (2); and 42 CFR 457.950(a)(3).
- (6) Keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving OHP assistance and shall furnish such information to any State or federal agency responsible for administering the OHP program regarding any payments claimed by such person or institution for providing OHP Services as the State or federal agency may from time to time request. 42 USC Section 1396a(a)(27); 42 CFR 431.107(b)(1) & (2); and 42 CFR 457.950(a)(3).

b. Financial Records

- (1) AGENCY shall establish and maintain policies and procedures related to financial management and financial records consistent with Generally Accepted Accounting Principles. AGENCY shall make such policies and procedures available to COUNTY upon request.
- (2) AGENCY shall maintain up-to-date accounting records that accurately reflect all revenue by source, all expenses by object of expense, and all assets, liabilities and equities consistent with Generally Accepted Accounting Principles and Oregon Administrative Rules. AGENCY shall make reports and fiscal data generated under and for this agreement available to COUNTY upon request.
- (3) COUNTY shall conduct a fiscal compliance review of AGENCY as part of compliance monitoring of this agreement. AGENCY agrees to provide, upon reasonable notice, access to all financial books, documents, papers and records of AGENCY which are pertinent to this agreement to ensure appropriate expenditure of funds under this agreement. COUNTY shall monitor compliance with COUNTY's financial reporting and accounting requirements.

- (4) AGENCY may be subject to audit requirements. AGENCY agrees that audits must be conducted by Certified Public Accountants who satisfy the Independence requirement outlined in the rules of the American Institute of Certified Public Accountants (Rule 101 of the AICPA Code of Professional Conduct), the Oregon State Board of Accountancy OAR 801-030-0005, the independence rules contained within Governmental Auditing Standards (2011 Revision), and rules promulgated by other federal, state and local government agencies with jurisdiction over AGENCY.
- (5) AGENCY shall establish and maintain systematic written procedures to assure timely and appropriate resolution of review or audit findings and recommendations. AGENCY shall make such procedures and documentation of resolution of audit findings available to COUNTY upon request.
- (6) Limited Scope and Full Audits shall be completed within nine (9) months of the close of AGENCY's fiscal year. Audit reports, including the Management Letter associated with the audit shall be submitted to COUNTY within two weeks from the date of the report. Failure to submit required audit reports and Management Letters shall be cause for withholding of contract payment until audits are submitted.

## **7. Reporting**

### **a. Abuse Reporting**

AGENCY shall comply with all processes and procedures of child abuse (ORS 419B.005 – 419B.050), mentally ill and developmentally disabled abuse (ORS 430.731 – 430.768 and OAR 943-045-0250 through 943-045-0370) and elder abuse reporting laws (ORS 124.050 – 124.092) as if AGENCY were a mandatory abuse reporter. If AGENCY is not a mandatory reporter by statute, these reporting requirements shall apply during work hour only. AGENCY shall immediately report to the proper State or law enforcement agency circumstances (and provide such other documentation as may be relevant) supporting reasonable cause to believe that any person has abused a child, a mentally ill or developmentally disabled adult or an elderly person, or that any such person has been abused.

### **b. Behavioral Health Electronic Data System**

AGENCY shall participate in the Oregon Health Authority (OHA)'s Enhanced Data Capture for all clients receiving Covered Services under this agreement. AGENCY shall submit all data to OHA via formats approved by OHA. AGENCY shall submit data in accordance with OHA timelines.

### **c. Delivery System Network (DSN) Provider Capacity Report**

AGENCY shall submit the DSN Provider Capacity report (see Attachment 2) to COUNTY in the prescribed format within thirty (30) days of the effective date of this agreement, indentifying all staff and independent contractors who will provide services to clients under this agreement. In addition, the DSN Provider Capacity Report shall be updated and resubmitted monthly to COUNTY.

### **d. Access to Care (Outpatient Mental Health Services only)**

AGENCY shall submit the online regional access report to COUNTY in the prescribed format by the 15<sup>th</sup> of the month following services delivered.

## **8. Monitoring**

### a. Agreement Compliance Monitoring

COUNTY and OHA shall conduct agreement compliance and quality assurance monitoring related to this agreement. AGENCY shall cooperate with COUNTY and OHA in such monitoring. COUNTY shall provide AGENCY twenty (20) business days written notice of any agreement compliance and quality assurance monitoring activity that requires any action or cooperation by AGENCY. Notice of monitoring shall include the date the monitoring shall occur, names of individuals conducting the monitoring, and instructions and requests for information.

Should AGENCY found to be out of compliance with any requirement of this agreement, the following actions may be taken by COUNTY until the issue is resolved:

- Request a conference of the parties to determine the need for technical assistance
- Require a corrective action plan
- Disallow referral of new clients to AGENCY
- Put AGENCY on probationary status and suspend billing authority

Should the issue remain unresolved, COUNTY may consider AGENCY in breach and may terminate this agreement.

### b. External Quality Review

AGENCY agrees to participate with COUNTY in any evaluation project or performance report as designed by COUNTY or applicable State or Federal agency. AGENCY shall make all information required by any such evaluation project or process available to COUNTY or COUNTY's designee within thirty (30) business days of request.

## **9. Fraud and Abuse**

AGENCY shall comply with, and as indicated, cause all employees and subcontractors to comply with, the following requirements related to fraud and abuse. All elements of this Fraud and Abuse exhibit apply to services provided to uninsured, indigent individuals with the exception of reports to the Medicaid Fraud Control Unit (MFCU) which do not apply to indigent services.

### a. General

- (1) AGENCY, its employees and subcontractors shall comply with all provisions of the False Claims Act established under sections 3729 through 3733 of title 31, United States Code, administrative remedies for false claims and statements established under chapter 38 of title 31, United States Code, any Oregon laws pertaining to civil or criminal penalties for false claims and statements, and whistleblower protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste, and abuse in Federal health care programs (as defined in 42 USC 1320a-7b).
- (2) AGENCY, its employees and subcontractors shall comply with Oregon laws pertaining to false claims including the following: ORS 411.670 to 411.690 (submitting wrongful claim or payment prohibited; liability of person wrongfully receiving payment; amount of recovery); ORS 646.505 to 646.656 (unlawful trade practices); ORS chapter 162 (crimes related to perjury, false swearing and unsworn falsification); ORS chapter 164 (crimes related to theft); ORS chapter 165 (crimes involving fraud or deception), including but not limited to ORS 165.080 (falsification of business records) and ORS 165.690 to 165.698 (false claims for health care payments); ORS 659A.199 to 659A.224 (whistle blowing); OAR 410-120-1395 to 410-120-1510 (program integrity, sanctions, fraud and abuse); and common law claims



founded in fraud, including Fraud, Money Paid by Mistake and Money Paid by False Pretenses.

- (3) AGENCY shall include information in its employee handbooks or other appropriate documents on laws described above, regarding the rights of employees to be protected as whistleblowers.
- (4) AGENCY shall further have policies and procedures for detecting and preventing fraud, waste and abuse that shall, at a minimum, include a process for monitoring and auditing files, claims and staff performance.
- (5) Entities receiving \$5 million or more annually (under this contract and any other OHP contract) for furnishing Medicaid health care items or services shall, as a condition of receiving such payments, adopt written fraud, waste and Abuse policies and procedures and inform employees, contractors and agents about the policies and procedures in compliance with Section 6032 of the Deficit Reduction Act of 2005, 42 USC § 1396a(a)(68).
- (6) Certify when submitting any claim for the provision of OHP services that the information submitted is true, accurate and complete. AGENCY shall acknowledge AGENCY's understanding that payment of the claim will be from Federal and State funds and that any falsification or concealment of a material fact may be prosecuted under Federal and State laws.

b. Fraudulent Billing and False Claims

- (1) AGENCY will report verified and suspected cases of fraud and abuse to the Medicaid Fraud Control Unit (MFCU) and COUNTY within five (5) business day of discovery.
- (2) If it is determined that services billed by AGENCY were fraudulently billed, or that a false claim was submitted, or that an instance of abuse has occurred, the following disciplinary actions may be taken by COUNTY:
  - If abuse is determined, consider restitution of funds based on the severity of the abuse identified.
  - If fraud is determined or a false claim verified, require restitution of funds.
  - If the action identified is determined to be non-intentional, require a corrective action plan
  - Put AGENCY on probationary status and suspend billing authority until the issue is resolved
  - Termination of this agreement
- (3) COUNTY shall promptly refer all verified cases of Medicaid fraud and abuse to the MFCU, consistent with the Memorandum of Understanding between the State of Oregon Department of Human Services and the MFCU. COUNTY shall also refer cases of suspected Medicaid fraud and abuse to the MFCU prior to verification.
- (4) Participation of Suspended or Excluded Providers

AGENCY shall ensure that Covered Services may not be provided to clients by the following persons (or their affiliates as defined in the Federal Requisition Regulations):

- Persons who are currently suspended, debarred or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in non-procurement activities under regulations issues pursuant to Executive Order 12549 or under guidelines implementing such order; and
- Persons who are currently excluded from Medicaid participation under section 1128 or section 1128A of the Act; and
- Persons who are currently excluded from providing services under the Oregon Medical Assistance Program.

c. Examples of fraud and abuse that support referral to the MFCU and COUNTY

- (1) AGENCY who consistently demonstrates a pattern of intentionally reporting encounters or services that did not occur. A pattern would be evident in any case where 20% or more of sampled or audited services are not supported by documentation in the clinical records. This would include any suspected case where it appears that the provider knowingly or intentionally did not deliver the service or goods billed;
- (2) AGENCY who consistently demonstrates a pattern of intentionally reporting overstated or up coded levels of service. A pattern would be evident by 20% or more of sampled or audited services that are billed at a higher-level procedure code than is documented in the clinical records;
- (3) Any suspected case where the AGENCY intentionally or recklessly billed COUNTY more than the usual charge to non-Medicaid recipients or other insurance programs;
- (4) Any suspected case where the AGENCY purposefully altered, falsified, or destroyed clinical record documentation for the purpose of artificially inflating or obscuring his or her compliance rating or collecting Medicaid payments otherwise not due. This includes any deliberate misrepresentation or omission of fact that is material to the determination of benefits payable or services which are covered or should be rendered, including dates of service, charges or reimbursements from other sources, or the identity of the client or provider;
- (5) Providers who intentionally or recklessly make false statements about the credentials of persons rendering care to clients;
- (6) Providers who knowingly charge clients for services that are covered services or intentionally balance-bill a client the difference between the total fee-for-service charge and COUNTY's payment to the AGENCY, in violation of OHA rules.

d. Reporting suspected and verified cases of fraud or abuse

When a verified case of fraud or abuse exists, AGENCY will report the following information to the MFCU and COUNTY within five (5) business day of discovery of the suspected activity:

- Provider Name, Oregon Medicaid Provider Number, address and phone
- Type of provider
- Source and nature of complaint
- The approximate range of dollars involved
- The disposition of the complaint when known

- Number of complaints for the time period.

**Contact Information**

Report to: Medicaid Fraud Control Unit (MFCU)  
Phone: (971)673-1880  
Fax: (971)673-1890  
Address: 1515 SW 5th Ave., Suite 410, Portland, OR 97201

**Contact Information**

Report to: Clackamas Behavioral Health Division  
Contact: Compliance Policy Analyst  
Phone: (503)742-5335  
Fax: (503)742-5304  
Address: 2051 Kaen Road, Suite 367, Oregon City, OR 97045

**10. Compliance with Applicable Law**

AGENCY shall comply and, as indicated, cause all employees and subcontractors to comply with the following Federal requirements. For purposes of this agreement, all references to Federal and State laws are references to Federal and State laws as they may be amended from time to time.

a. Miscellaneous Federal Provisions

AGENCY shall comply and cause all subcontractors to comply with all federal laws, regulations and executive orders applicable to this Contract or to the delivery of Work. Without limiting the generality of the foregoing, AGENCY expressly agrees to comply and cause all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to this Contract: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) 45 CFR Part 84 which implements, Title V, Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Executive Order 11246, as amended, (e) the Health Insurance Portability and Accountability Act of 1996, as amended, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (j) all federal law governing operation of CMHPs, including without limitation, all federal laws requiring reporting of client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to this Contract and required by law to be so incorporated. No federal funds may be used to provide Work in violation of 42 USC 14402.

b. Equal Employment Opportunity

If this Contract, including amendments, is for more than \$10,000, then AGENCY shall comply and cause all subcontractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

c. Non-Discrimination

- (1) AGENCY shall comply with all federal and State laws and regulations including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972 (regarding education programs and activities) the Age Discrimination Act of 1975, the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA) of 1990, and all amendments to those acts and all

regulations promulgated thereunder. AGENCY shall also comply with all applicable requirements of State civil rights and rehabilitation statutes and rules.

- (2) AGENCY shall comply with and cause its subcontractors to comply with the integration mandate in 28 CFR 35.130(d), Title II of the Americans with Disabilities Act and its implementing regulations published in the Code of Federal Regulations.

d. Advance Directives

AGENCY shall provide adult clients with written information on Advance Directive policies and include a description of Oregon law. The written information provided by AGENCY must reflect changes in Oregon law as soon as possible, but no later than 90 days after the effective date of any change to Oregon law. AGENCY must also provide written information to adult clients with respect to the following:

- (1) Their rights under Oregon law;
- (2) AGENCY's policies respecting the implementation of those rights, including a statement of any limitation regarding the implementation of Advance Directives as a matter of conscience.
- (3) AGENCY must inform clients that complaints concerning noncompliance with the Advance Directive requirements may be filed with OHA.

e. Drug Free Workplace

AGENCY shall maintain and cause all subcontractors to maintain a drug-free workplace and shall notify employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in AGENCY's workplace. AGENCY shall establish a drug-free awareness program and provide each employee to be engaged in the provision of services under this agreement with information about its drug-free workplace program. AGENCY will further comply with additional applicable provisions of the Health Share of Oregon Core Contract.

f. Clinical Laboratory Improvement

If applicable to Scope of Work, AGENCY shall and shall ensure that any Laboratories used by AGENCY shall comply with the Clinical Laboratory Improvement Amendments (CLIA 1988), 42 CFR Part 493 Laboratory Requirements and ORS 438 (Clinical Laboratories, which require that all laboratory testing sites providing services under this agreement shall have either a Clinical Laboratory Improvement Amendments (CLIA) certificate of waiver or a certificate of registration along with a CLIA identification number. Those Laboratories with certificates of waiver will provide only the eight types of tests permitted under the terms of their waiver. Laboratories with certificates of registration may perform a full range of laboratory tests.

g. Clean Air, Clean Water, EPA Regulations

If this agreement, including amendments, exceeds \$100,000 then AGENCY shall comply and cause all subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to OHA, DHHS and the appropriate Regional Office of the Environmental Protection Agency. AGENCY shall include and cause all subcontractors to include

in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section.

h. Energy Efficiency

AGENCY shall comply and cause all subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6201 et seq. (Pub. L. 94- 163).

i. Resource Conservation and Recovery

AGENCY shall comply and cause all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 USC 6901 et. seq.). Section 6002 of that Act (codified at 42 USC 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.

j. Audits

AGENCY shall comply and, if applicable, cause a subcontractor to comply, with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations."

k. Truth in Lobbying

AGENCY certifies, to the best of the AGENCY's knowledge and belief that:

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of AGENCY, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, AGENCY shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- (3) AGENCY shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.
- (4) This certification is a material representation of fact upon which reliance was placed when this Contract was made or entered into. Submission of this certification is a prerequisite for making or entering into this agreement imposed by Section 1352, Title 31, of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

i. Conflict of Interest Safeguards

- (1) AGENCY and its subcontractors shall have in effect safeguards, including, but not limited to, policies and procedures against conflict of interest with any State of Oregon Department of Human Services employees or other agents of the State who have responsibilities relating to this agreement. These safeguards must be at least as effective as the safeguards specified in Section 27 of the Office of Federal Procurement Policy Act (41 USC 423) and must include safeguards to avoid conflicts that could be prohibited under 18 USC 207 or 208 if the Department of Human Services employee or agent was an officer or employee of the United States Government. For purposes of implementing policies and procedures required in this section, AGENCY shall apply the definitions in the State Public Ethics Law as if they applied to AGENCY for "Actual conflict of interest," ORS 244.020(1), "potential conflict of interest," ORS 244.020(14), and "client of household," ORS 244.020(12).
- (2) AGENCY shall not offer to any DHS or OHA employee (or any relative or member of their household) any gift or gifts with an aggregate value in excess of \$50 during a calendar year or any gift of payment of expenses for entertainment. "Gift" for this purpose has the meaning defined in ORS 244.020(6) and OAR 199-005-0001 to 199-005-0035.
- (3) "AGENCY" for purposes of this section includes all AGENCY's affiliates, assignees, subsidiaries, parent companies, successors and transferees, and persons under common control with the AGENCY; any officers, directors, partners, agents and employees of such person; and all others acting or claiming to act on their behalf or in concert with them.
- (4) AGENCY shall apply the definitions in the State Public Ethics Law, ORS 244.020, for "actual conflict of interest", "potential conflict of interest", "relative" and "member of household".

m. HIPAA Compliance

- (1) The parties acknowledge and agree that each of OHA and AGENCY is a "covered entity" for purposes of privacy and security provisions of the Health Insurance Portability and Accountability Act and the federal regulations implementing the Act (collectively referred to as HIPAA). OHA and AGENCY shall comply with HIPAA to the extent that any work or obligations of OHA arising under this agreement are covered by HIPAA.
- (2) AGENCY shall develop and implement such policies and procedures for maintaining the privacy and security of records and authorizing the use and disclosure of records required to comply with this agreement and with HIPAA. AGENCY shall comply and cause all subcontractors to comply with HIPAA and all the HIPAA provisions listed in the Health Share of Oregon Core Contract.
- (3) HIPAA Information Security. AGENCY shall adopt and employ reasonable administrative and physical safeguards consistent with the Security Rules in 45 CFR Part 164 to ensure that Member Information shall be used by or disclosed only to the extent necessary for the permitted use or disclosure and consistent with applicable State and federal laws and the terms and conditions of this agreement. Security incidents involving Member Information must be immediately reported to DHS' Privacy Officer.

COPY

10

Cindy Becker  
Director

July 10, 2014

Board of Commissioners  
Clackamas County

Members of the Board:

Approval of an Agency Service Contract with  
ColumbiaCare Services, Inc. for  
Supported Housing Services

<b>Purpose/Outcomes</b>	To provide independent living opportunities with individuals of Clackamas County who have severe and persistent mental illness.
<b>Dollar Amount and Fiscal Impact</b>	Contract maximum value is \$173,282
<b>Funding Source</b>	Oregon Health Authority - no County General Funds are involved.
<b>Safety Impact</b>	None
<b>Duration</b>	Effective July 1, 2014 and terminates on June 30, 2015
<b>Previous Board Action</b>	Last year's agreement was under \$150,000 and approved by the H3S Director.
<b>Contact Person</b>	Jill Archer, Director – Behavioral Health Division - 742-5336
<b>Contract No.</b>	6696

**BACKGROUND:**


The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of an Agency Service Agreement with ColumbiaCare Services, Inc. for supported housing services in Jennings Lodge, Oregon. Supported housing consists of mental health services that provide rehabilitative, personal care, and skills building with the outcome to integrate individuals into the community at the highest possible level of independence. The Behavioral Health Division has partnered with ColumbiaCare Services, Inc. for supported housing services since 2013. This contract is a continuation of these services.

The contract is effective July 1, 2014 and continues through June 30, 2015. County Counsel has reviewed and approved this agreement as part of the H3S contract standardization project.

**RECOMMENDATION:**

Staff recommends the Board approval of this contract and authorizes Cindy Becker, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,



Cindy Becker, Director

# AGENCY SERVICE CONTRACT

## Contract # 6696

This Agency Service Contract is between Clackamas County acting by and through its Health, Housing and Human Services Department, Behavioral Health Division, hereinafter called "COUNTY," and **COLUMBIA CARE SERVICES, INC.**, hereinafter called "AGENCY." Throughout this contract and all exhibits, the term "DEPARTMENT" shall refer to and mean the State of Oregon, Oregon Health Authority.

The services set forth under this Agency Service Contract reflect required pass-through language from the 2013-2015 Intergovernmental Agreement for the financing of Community Addictions and Mental Health Services between the COUNTY and the DEPARTMENT.

## CONTRACT

### 1.0 Engagement

COUNTY hereby engages AGENCY to provide supported housing services in Jennings Lodge, Oregon as more fully described in Exhibit B, Scope of Work, attached hereto and incorporated herein.

### 2.0 Term

Services provided under the terms of this contract shall commence on **July 1, 2014** and shall terminate **June 30, 2015** unless terminated by one or both parties as provided for in paragraph 6.0 below.

### 3.0 Compensation and Fiscal Records

3.1 Compensation. COUNTY shall compensate AGENCY as specified in Exhibit C, Compensation. The payment shall be full compensation for work performed, for services rendered, and for all labor, materials, supplies, equipment, mileage, and incidentals necessary to perform the work and services.

3.2 Withholding of Contract Payments. Notwithstanding any other payment provision of this contract, should AGENCY fail to submit required reports when due, or submit reports which appear patently inaccurate or inadequate on their face, or fail to perform or document the performance of contracted services, COUNTY shall immediately withhold payments hereunder. Such withholding of payment for cause may continue until AGENCY submits required reports, performs required services, or establishes to COUNTY's satisfaction that such failure arose out of causes beyond the control, and without the fault or negligence, of AGENCY.

3.3 Financial Records. AGENCY and its subcontractors shall maintain complete and legible financial records pertaining in whole or in part to this contract. Such records shall be maintained in accordance with Generally Accepted Accounting Principles and/or other applicable accounting guidelines. Financial records and supporting documents shall be retained for at least six (6) years or such period as may be required by applicable law, following final payment is made under this agreement or until all pending matters are resolved, whichever period is longer. If an audit of financial records discloses that payments to AGENCY were in excess of the amount to which AGENCY was entitled, AGENCY shall repay the amount of the excess to COUNTY.

3.4 Access to Records and Facilities. COUNTY, DEPARTMENT, the Secretary of State's Office of the State of Oregon, the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers and records of AGENCY that are directly related to this contract, the funds paid to AGENCY hereunder, or any services delivered hereunder for the purpose of making audits, examinations, excerpts, and transcripts. In addition, AGENCY shall permit authorized representatives of COUNTY and DEPARTMENT to perform site reviews of all services delivered by AGENCY hereunder.

3.4.1 AGENCY shall maintain up-to-date accounting records that accurately reflect all revenue by source, all expenses by object of expense, and all assets, liabilities and equities consistent with Generally Accepted



Accounting Principles and Oregon Administrative Rules. AGENCY shall make reports and fiscal data generated under and for this agreement available to COUNTY upon request.

3.4.2 COUNTY conduct a fiscal compliance review of AGENCY as part of compliance monitoring of this agreement. AGENCY agrees to provide, upon reasonable notice, access to all financial books, documents, papers and records of AGENCY which are pertinent to this agreement to ensure appropriate expenditure of funds under this agreement. COUNTY shall monitor compliance with COUNTY's financial reporting and accounting requirements.

3.4.3 AGENCY may be subject to audit requirements. AGENCY agrees that audits must be conducted by Certified Public Accountants who satisfy the independence requirement outlined in the rules of the American Institute of Certified Public Accountants (Rule 101 of the AICPA Code of Professional Conduct), the Oregon State Board of Accountancy, the independence rules contained within Governmental Auditing Standards (1994 Revision), and rules promulgated by other federal, state and local government agencies with jurisdiction over AGENCY.

3.4.4 AGENCY shall establish and maintain systematic written procedures to assure timely and appropriate resolution of review or audit findings and recommendations. AGENCY shall make such procedures and documentation of resolution of audit findings available to COUNTY upon request.

#### **4.0 Manner of Performance**

4.1 Compliance with Applicable Laws and Regulations and Special Federal Requirements. AGENCY shall comply with all Federal, State, local laws, rules, and regulations applicable to the work to be performed under this contract, including, but not limited to, all applicable Federal and State civil rights and rehabilitation statutes, rules and regulations, and as listed in Exhibit D, paragraph 9. Compliance with Applicable Law, attached hereto and incorporated herein by this reference. AGENCY shall comply with Oregon Administrative Rule (OAR) 410-120-1380, which establishes the requirements for compliance with Section 4751 of Omnibus Budget Reconciliation Act (OBRA) 1991 and ORS 127-649, Patient Self-Determination Act.

4.2 Precedence. A requirement listed both in the main boilerplate of this contract and in an exhibit, the exhibit shall take precedence.

4.3 Subcontracts. AGENCY shall not enter into any subcontracts for any of the work scheduled under this contract without obtaining prior written approval from COUNTY.

4.4 Independent Contractor. AGENCY certifies that it is an independent contractor and not an employee or agent of COUNTY, State, or Federal Government as those terms are used in ORS 30.265. Responsibility for all taxes, assessments, and any other charges imposed upon employers shall be the sole responsibility of AGENCY.

#### **5.0 General Conditions**

5.1 Indemnification. AGENCY agrees to indemnify, save, hold harmless, and defend COUNTY, its officers, commissioners and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of actions, suits, claims or demand attributable in whole or in part to the acts or omissions of AGENCY, and AGENCY's officers, agents, and employees, in performance of this contract.

AGENCY shall defend, save, hold harmless and indemnify the State of Oregon, AMH and their officers, agents and employees from and against all claims, suits, actions, damages, liabilities, costs and expenses of whatsoever nature resulting from, arising out of, or relating to the activities or omissions of AGENCY, or its agents or employees under this contract.

If AGENCY is a public body, AGENCY's liability under this contract is subject to the limitations of the Oregon Tort Claims Act.

5.2 Insurance. During the term of this agreement, AGENCY shall maintain in force, at its own expense, each insurance noted below:

5.2.1 Commercial General Liability

Required by COUNTY       Not required by COUNTY

AGENCY shall obtain, at AGENCY's expense, and keep in effect during the term of this Agreement, Commercial General Liability Insurance covering bodily injury and property damage on an "occurrence" form in the amount of not less than \$2,000,000 per occurrence/\$4,000,000 general aggregate for the protection of COUNTY, its officers, commissioners, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute it.

5.2.2 Commercial Automobile Liability

Required by COUNTY       Not required by COUNTY

AGENCY shall also obtain at AGENCY's expense, and keep in effect during the term of the Agreement, "Symbol 1" Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$2,000,000.

5.2.3 Professional Liability

Required by COUNTY       Not required by COUNTY

AGENCY agrees to furnish COUNTY evidence of professional liability insurance in the amount of not less than \$2,000,000 combined single limit per occurrence/\$4,000,000 general annual aggregate for malpractice or errors and omissions coverage for the protection of COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this Agreement. COUNTY, at its option, may require a complete copy of the above policy.

5.2.4 Tail Coverage. If liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this contract for a duration of thirty-six (36) months or the maximum time period the AGENCY's insurer will provide "tail" coverage as subscribed, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage provided its retroactive date is on or before the effective date of this contract.

5.2.5 Additional Insured Provisions. The insurance, other than the professional liability insurance, Workers' Compensation, and Personal Automobile Liability insurance, shall include "Clackamas County, its commissioners, agents, officers, and employees" as an additional insured.

5.2.6 Notice of Cancellation. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice to COUNTY. Any failure to comply with this provision will not affect the insurance coverage provided to COUNTY. The 60 days notice of cancellation provision shall be physically endorsed on to the policy.

5.2.7 Insurance Carrier Rating. Coverages provided by AGENCY must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted

to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

5.2.8 Certificates of Insurance. As evidence of the insurance coverage required by this contract, AGENCY shall furnish a Certificate of Insurance to COUNTY. No contract shall be in effect until the required certificates have been received, approved and accepted by COUNTY. The certificate will specify that all insurance-related provisions within this contract have been complied with. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration.

5.2.9 Primary Coverage Clarification. AGENCY's coverage will be primary in the event of a loss.

5.2.10 Cross Liability Clause. A cross-liability or separation of insureds condition will be included in all general liability, professional liability, and errors and omissions policies required by this contract.

5.3 Governing Law; Consent to Jurisdiction. This agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Any claim, action, or suit between COUNTY and AGENCY that arises out of or relates to performance under this agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, State of Oregon. Provided, however, that if any such claim, action or suit may be brought only in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. AGENCY by execution of this agreement consents to the in personam jurisdiction of said courts.

5.4 Amendments. The terms of this contract shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written instrument signed by AGENCY and COUNTY.

5.5 Severability. If any term or provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

5.6 Waiver. The failure of either party to enforce any provision of this contract shall not constitute a waiver of that or any other provision.

5.7 Future Support. COUNTY makes no commitment of future support and assumes no obligation for future support of the activity contracted herein except as set forth in this contract.

5.8 Oregon Constitutional Limitations. This contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provision herein, which would conflict with such law, is deemed inoperative to that extent.

5.9 Oregon Public Contracting Requirements. Pursuant to the requirements of ORS 279B.020 and ORS 279B.220 through 279B.235 the following terms and conditions are made a part of this contract:

5.9.1 AGENCY shall:

- a. Make payments promptly, as due, to all persons supplying to AGENCY labor or materials for the prosecution of the work provided for in this contract.
- b. Pay all contributions or amounts due the Industrial Accident Fund from such agency or subcontractor incurred in performance of this contract.
- c. Not permit any lien or claim to be filed or prosecuted against COUNTY on account of any labor or material furnished.

- d. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

5.9.2 If AGENCY fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to AGENCY or a subcontractor by any person in connection with this contract as such claim becomes due, the proper officer representing COUNTY may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due AGENCY by reason of this contract.

5.9.3 No person shall be employed for more than ten (10) hours in any one day, or more than forty (40) hours in any one week, except in cases of necessity, emergency or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279A.055, the employee shall be paid at least time and one-half pay:

- a. for all overtime in excess of eight (8) hours a day or 40 hours in any one week when the work weeks five consecutive days, Monday through Friday;
- b. for all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
- c. for all work performed on Saturday and on any legal holiday specified in ORS 279B.020.

5.9.4 AGENCY shall pay employees at least time and a half for all overtime work performed under this agreement in excess of 40 hours in any one week, except for individuals under person services contracts who are excluded under ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 U.S.C. 201 to 209) from receiving overtime.

5.9.5 As required by ORS 279B.230, AGENCY shall promptly, as due, make payment to any person, copartnership, association, or corporation furnishing medical, surgical, and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of AGENCY, of all sums that AGENCY agrees to pay for the services and all moneys and sums that AGENCY collected or deducted from the wages of its employees under any law, contract or agreement for the purpose of providing or paying for the services.

5.9.6 Workers' Compensation. All subject employers working under this agreement must either maintain workers' compensation insurance as required by ORS 656.017, or qualify for an exemption under ORS 656.126. AGENCY shall maintain employer's liability insurance with limits of \$500,000 each accident, \$500,000 disease each employee, and \$500,000 each policy limit.

5.10 Ownership of Work Product. All work products of the AGENCY which result from this contract are the exclusive property of COUNTY.

5.11 Integration. This contract contains the entire agreement between COUNTY and AGENCY and supersedes all prior written or oral discussions or agreements.

5.12 Successors in Interest. The provisions of this contract shall not be binding upon or inure to the benefit of AGENCY's successors in interest without COUNTY's explicit written consent.

## **6.0 Termination**

6.1 Termination Without Cause. This contract may be terminated by mutual consent of both parties, or by either party, upon ninety (90) days' notice, in writing or delivered by certified mail or in person.

6.2 Termination With Cause. COUNTY may terminate this contract effective upon delivery of written notice to AGENCY, or at such later date as may be established by COUNTY, under any of the following conditions:

6.2.1 Terms of the 2013-2015 Community Mental Health Provider (CMHP) Intergovernmental Agreement between the COUNTY and the DEPARTMENT are modified, changed or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding authorized by this contract.

6.2.2 The termination, suspension or expiration of the 2013-2015 Community Mental Health Provider (CMHP) Intergovernmental Agreement between the COUNTY and the DEPARTMENT/

6.2.3 COUNTY funding from Federal, State, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services. The contract may be modified to accommodate a reduction in funds.

6.2.4 COUNTY has evidence that AGENCY has endangered or is endangering the health or safety of clients, staff or the public. AGENCY shall ensure the orderly and reasonable transfer of care in progress with consumers and shall work with COUNTY staff to accomplish the same.

6.2.5 The lapse, relinquishment, suspension, expiration, cancellation or termination of any required license, certification or qualification of AGENCY, or the lapse relinquishment, suspension, expiration, cancellation or termination of AGENCY's insurance as required in this contract.

6.2.6 AGENCY's filing for protection under United States Bankruptcy Code, the appointment of a receiver to manage AGENCY's affairs, or the judicial declaration that AGENCY is insolvent.

6.2.7 AGENCY fails to perform any of the other provisions of this contract, or fails to pursue the work of this contract in accordance with its terms, and after written notice from the COUNTY, fails to correct such failures within ten (10) business days or such longer period as COUNTY may authorize.

6.2.8 Debarment and Suspension. COUNTY shall not permit any person or entity to be an AGENCY if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Non-procurement Programs" in accordance with Executive Orders No. 12,549 and No. 12,689, "Debarment and Suspension". (See 45 CFR part 76). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. COUNTY shall require all AGENCYs with awards that exceed the simplified acquisition threshold to provide the required certification regarding their exclusion status and that of their principals prior to award.

6.3 Notice of Default. COUNTY may also issue a written notice of default (including breach of contract) to AGENCY and terminate the whole or any part of this contract if AGENCY substantially fails to perform the specific provisions of this contract. The rights and remedies of COUNTY related to default (including breach of contract) by AGENCY shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

6.4 Transition. Any such termination of this contract shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

## 7.0 Notices

If to AGENCY:

ColumbiaCare Services, Inc.  
3587 Heathrow Way  
Medford, OR 97504

If to COUNTY:

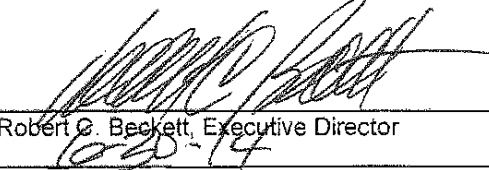
Clackamas County Behavioral Health Division  
Attention: Contract Administration  
2051 Kaen Road, # 367  
Oregon City, OR 97045

This contract consists of seven (7) sections plus the following exhibits and attachments which by this reference are incorporated herein:

Exhibit A	Definitions
Exhibit B	Scopes of Work
Exhibit C	Compensation
Exhibit D	Statement of General Conditions
Attachment 1	County Financial Report Form
Attachment 2	Invoice Template

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed by their duly authorized officers.

**COLUMBIA CARE SERVICES, INC.**

By:   
Robert G. Beckett, Executive Director

Date \_\_\_\_\_  
3587 Heathrow Way  
Street Address  
Medford, Oregon 97504  
City/State/Zip  
(541)858-8170 (541)858-8167  
Phone / Fax

**CLACKAMAS COUNTY**

Commissioner: John Ludlow, Chair  
Commissioner: Jim Bernard  
Commissioner: Paul Savas  
Commissioner: Martha Schrader  
Commissioner: Tootie Smith

**Signing on Behalf of the Board:**

\_\_\_\_\_  
Cindy Becker, Director  
Health, Housing and Human Services Department  
\_\_\_\_\_  
Date

## EXHIBIT A

### DEFINITIONS

Whenever used in this Agency Services Agreement, the following terms shall have the meanings set forth below:

AMH: State of Oregon, Department of Human Services, Addictions and Mental Health

AGENCY: entity contracted by COUNTY

Allowable Costs: costs described in OMB Circular A-87 except to the extent such costs are limited or excluded by other provisions of this contract

Community Mental Health Program (CMHP): a centrally organized and coordinated program of services for individuals with mental and emotional disorders and addiction dependencies operated by, or contractually affiliated with a Local Mental Health Authority (LMHA) and operated in a specific geographic area of the State of Oregon

Community Outcome Management and Performance Accountability Support System (COMPASS): the AMH project to implement a new contracts system, roll out an optional free electronic health records systems (OWITS), and enhance the collection of data through MOTs

Contract: this Agency Services Contract between COUNTY and CONTRACTOR for the provision of services

Contract Settlement: DEPARTMENT's reconciliation, after termination of this contract, of amounts disbursed to AGENCY through the COUNTY with amounts obligated under this contract

COUNTY: Clackamas County Behavioral Health Division

Covered Services: medically appropriate services specified in OAR 410-141-3120, "Operations and Provision of Health Services" and limited in accordance with OAR 410-141-3420, "Billing and Payment" for OHP Members. The term "Covered Services" may be expanded, limited, or otherwise changed pursuant to the Clackamas County Health Share of Oregon/Clackamas Participation Agreement and OARs. Covered Services may also refer to authorized services provided to uninsured, indigent clients.

DEPARTMENT: AMH contracts with COUNTY to establish and finance community mental health and addition programs; COUNTY, in turn, subcontracts certain services to AGENCY

DHS: Department of Human Services of the State of Oregon

Federal Funds: funds paid to AGENCY under this contract that are received from an agency, instrumentality or program of the Federal government of the United States

Individual: an individual accessing publicly funded behavioral health services who is either an OHP Member or is determined eligible for services as an uninsured, indigent individual.

Local Mental Health Authority (LMHA): the county, court, or board of commissioners of one of more counties who choose to operate a CMHP

Mental Health Services: treatment services for individuals diagnosed with serious mental health illness, or other mental or emotional disturbance posing a danger to the health and safety of themselves or others

Medicaid: Federal funds received by OHA under the Title XIX of the Social Security Act and Children's Health Insurance Program Funds administered jointly with Title XIX funds as part of State medical assistance program by OHA

Misexpenditure: money, other than an overexpenditure disbursed to AGENCY by COUNTY under this agreement and expended by AGENCY that:

- (a) is identified by the Federal government as expended contrary to applicable statutes, rules, OMB Circulars or any other authority that governs the permissible expenditure of such money, for which the Federal government has requested reimbursement by the State of Oregon and whether in the form of a Federal determination of improper use of Federal funds, a Federal notice of disallowance, or otherwise; or
- (b) is identified by the COUNTY, State of Oregon or OHA as expended in a manner other than that permitted by this agreement, including without limitation, any money expended by AGENCY, contrary to applicable statutes, rules, OMB Circulars or any other authority that governs the permissible expenditure of such money; or
- (c) is identified by the COUNTY, State of Oregon or OHA as expended on the delivery of a service that did not meet the standards and requirements of this agreement with respect to that service

Measures and Outcomes Tracking System (MOTS): the AMH data system that stores client data submitted by AGENCY and/or COUNTY

OAR: Oregon Administrative Rules duly promulgated by the Oregon Health Authority and as amended from time to time.

OHA: the State of Oregon, acting by and through its Oregon Health Authority.

Oregon Web Infrastructure for Treatment Services (OWITS): is 1) an optional free electronic health records system available to Counties and their Providers to submit the MOTS data, and 2) a system to manage the AMH services and County Financial Assistance agreements

Overexpenditure: Money disbursed by COUNTY under this agreement and expended by AGENCY that is identified by the COUNTY, State of Oregon or OHA, through agreement settlement or any other disbursement/payment reconciliation permitted or required by this agreement, as in excess of the amount AGENCY is entitled to as determined in accordance with the financial assistance calculation methodologies set forth in the applicable Service Descriptions.

Primary Source Verification: verification from the original source of a specific credential (education, training, licensure) to determine the accuracy of the qualifications of an individual health care practitioner. Examples of primary source verification include, but are not limited to, direct correspondence, telephone verification and internet verifications.

Third Party Resources: any individual, entity, or program that is, or may be, liable to pay all or part of the cost of any Covered Service furnished to an OHP Member, including but not limited to: private health insurance or group health plan; employment-related health insurance; medical support from absent parents; workers' compensation; Medicare; automobile liability insurance; other federal programs such as Veteran's Administration, Armed Forces Retirees and Dependent Act, Armed Forces Active Duty and Dependents Military Medical Benefits Act, and Medicare Parts A and B; another state's Title XIX, Title XXI or state-funded Medical Assistance Program; and personal estates.

Valid Claim: an invoice, in the form of a CMS 1500 claim form, submitted for payment of covered health services rendered to an eligible client that is submitted within the required 90 days from the date of service or discharge and that can be processed without obtaining additional information from the provider of the service



*Agency Service Contract # 6696*

**ColumbiaCare Services, Inc. – Jennings Lodge**

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or from a third party. A valid claim is synonymous with the federal definition of a clean claim as defined in 42 CFR 447.45(b).

**EXHIBIT B**  
**SCOPE OF WORK**

**A. SCOPE OF WORK**

AGENCY will:

1. Provide 24-hour Supported Housing in 18 apartments located in Jennings Lodge, Oregon. The 18 apartments consist of six one-bedroom units and twelve two bedroom units. The six one-bedroom apartments and ten two-bedroom apartments will house SPMI consumers, if clinically appropriate, in the supported housing program. Consumers will be allowed to "double-up" in the two bedroom units. One two-bedroom apartment will be converted into an office for the day/evening staff with a room to facilitate group sessions. The other two-bedroom apartment will house an on-site resident manager.
2. Provide four high needs supported housing beds on the same property. These beds would accommodate consumers who are difficult to place, i.e. currently in specialized residential treatment homes (RTHs), unable to discharge from the hospital, homeless, have failed various other housing placements, etc.). Two of these beds will be available for COUNTY placements.
3. Administer program admission. Determination of consumer approval for entry into Jennings Lodge will be a collaborative process between the COUNTY and AGENCY's Supported Housing program. COUNTY staff will prioritize referrals based on need for skills building, history of unsuccessful tenure in community independent settings, the need for ADL support, and current apartment complex consumer mix. Staff at Jennings Lodge Supported Housing will have final approval of consumer entry into the program, however, agree to work with individuals who have a history of assault, addiction, eviction, criminal backgrounds including felony offenses, non-payment of rent and inpatient psychiatric admissions. The Jennings Lodge Supported Housing program agrees to make a good faith effort to work with COUNTY staff to address any concerns by the addition of other supports and resources prior to denying any referral.

The Jennings Lodge Supported Housing program agrees to ensure COUNTY approval prior to admitting any consumer into the program.

Upon receipt of referral, staff at Jennings Lodge staff will do a consumer assessment and submit it along with a treatment plan and authorization for services to COUNTY to review and approve, as well as identify whether the consumer meets high needs or regular needs for the purpose of billing rates and compensation.

4. Provide property management Services. AGENCY shall be responsible for performing all Supportive Housing Program property management duties including processing rental applications and move-in paperwork, screening for tenancy, collection of rent and applicable deposits, ensuring consumer adherence to their signed rental agreement, property oversight, coordination of rental unit maintenance and repairs, on-call landlord assistance, scheduled apartment inspections, and noticing.

In addition, upon admission, AGENCY will schedule routine monthly meetings with each Supportive Housing Program Consumer, and COUNTY staff to discuss on-going support needs.

AGENCY will perform regular inspections of the supported housing units minimally once per year. Any identified deficiencies will be shared with the Supportive Housing Program Consumer along with a notice of correction and correction date deadline. A copy of the notices will be sent to COUNTY.

AGENCY is subject to, and will conform to, all Oregon Landlord/Tenant Laws. In the event that any section of this Contract conflicts with Oregon Landlord/Tenant Law, Oregon Landlord/Tenant Law will supersede this contract

5. Provide 24-hour, 7 days per week availability of services of a community-based interdisciplinary team to individuals with a diagnosis that qualifies them as SPMI. Services may include initial and on-going assessments, psychiatric services, case management, employment assistance, housing assistance, family support and education, skills training, medication management coordination of care and other supports and services critical to the individual's ability to live independently in the community. Service planning shall include crisis planning that utilizes professional and/or natural supports to provide 24-hour, 7 days per week flexible response.
4. Provide monthly psychiatric services for the high needs consumers and quarterly psychiatric services to the SPMI consumers. These visits will be scheduled in advance.
5. Provide a registered nurse to visit the site on a monthly basis available to all consumers.
6. Provide eight hours per day of habilitative (1915i for Medicaid-covered consumers, covered under the terms of the current Behavioral Health Services Agreement between COUNTY and AGENCY effective January 1, 2013) and/or outpatient services minimally five days per week, as appropriate and authorized by the COUNTY.

## **B. STAFFING**

AGENCY will provide:

1. A QMHA on-site daily from approximately 8 a.m. to midnight seven days per week. The on-site resident manager will be available from 8 p.m. to approximately 8 a.m. in the event of an emergency or crisis.
2. An additional full time QMHA "float" who will work afternoon and evening hours seven days per week.
3. An on-site resident manager available to tenants evenings and nights for emergencies or crisis, who will also fulfill all property management functions (execution of leases, posting of notices, etc.)
4. A QMHP on-site 40 hours per week.
5. A part-time project manager.

### EXHIBIT C

#### COMPENSATION AND PAYMENT

A. Compensation. AGENCY shall be compensated for satisfactorily performing the services as specified in Exhibit B, Scope of Work as follows:

- |   |   |
|---|---|
| 1. Service Payment for two high needs consumers | \$3,600 per consumer per month <sup>1</sup>     |
| Rent Subsidy for all COUNTY program consumers   | Up to \$395 per consumer per month <sup>2</sup> |

<sup>1</sup> Prorated for number of days per month of residency, if residency is less than an entire month.

<sup>2</sup> Consumers will be responsible for 40% of their income going toward rent, with the COUNTY paying the balance up to \$395/month per consumer.

2. Vacancies:

All consumer placements in the Supported Housing will be referred by the COUNTY. On the eleventh day after a unit is deemed available for occupancy or the eleventh day after a unit is vacated by a consumer, the unit is considered vacant. Beginning on the 11<sup>th</sup> day of vacancy, CONTRACTOR may invoice the COUNTY as follows:

Non high needs consumer units	\$15 per day <sup>3</sup>
High needs consumer units	\$120 per day <sup>3</sup>

<sup>3</sup>Maximum contract value for vacancies is \$16,740.

3. AGENCY may bill for services provided to non-Medicaid eligible consumers using the Medicaid rate chart for up to \$1,000 per month per consumer up to a maximum of three months per consumer per year.

Total payment to CONTRACTOR shall not exceed **\$ 173,282**.

Payment shall be full compensation for work performed, for services rendered, and for all labor, materials, supplies, equipment, travel expenses, mileage, and incidentals necessary to perform the work and services.

B. Method of Payment. To receive payment, CONTRACTOR shall submit invoices as follows:

CONTRACTOR shall submit invoices by the 10th of the month following the month services were performed. CONTRACTOR may use the invoice template provided in Attachment 2. The invoice shall include the contract # **6696**, dates of service and the total amount due for all service provided during the month. Invoices shall be submitted electronically to:

healthcenterap@clackamas.us

When submitting electronically, designate CONTRACTOR name and contract # **6696** in the subject of the e-mail.

Within thirty (30) days after receipt of the bill, provided COUNTY has approved the service specified on the invoice, COUNTY shall pay the amount requested to CONTRACTOR.

C. Withholding of Contract Payments. Notwithstanding any other payment provision of this agreement, should CONTRACTOR fail to perform or document the performance of contracted services, COUNTY shall immediately withhold payments hereunder. Such withholding payment for cause may continue

until CONTRACTOR performs required services or establishes to COUNTY'S satisfaction that such failure arose out of causes beyond the control, and without the fault or negligence, of CONTRACTOR.

## EXHIBIT D

### STATEMENT OF GENERAL CONDITIONS

#### 1. Interpretation and Administration of Agreement

AGENCY acknowledges that this agreement between COUNTY and AGENCY is subject to the underlying Intergovernmental Agreement between the Oregon Health Authority and COUNTY, the Oregon Revised Statutes concerning the Oregon Health Plan, and other applicable Oregon statutes and administrative rules concerning mental health services. If AGENCY believes that any provision of this agreement or COUNTY's interpretation thereof is in conflict with Federal and State statutes or regulations, AGENCY shall notify COUNTY in writing immediately.

AGENCY agrees to provide medically necessary services within the scope of its practice and license (hereinafter referred to as "services") to individuals assessed as having an eligible mental health condition specified in the Oregon Health Plan "Prioritized List of Mental Health Conditions", can benefit from those services, and as described below when authorized by COUNTY's treatment authorization process. AGENCY shall provide services in accordance with OAR 410-141-3120 "Operations and Provision of Health Services"; OAR 410-141-3420 "Billing and Payment"; and all DHS Rules in OAR Chapter 309 and any other administrative rules to which AGENCY is subject, as such rules may be amended from time to time. These laws, rules and regulations, are incorporated by reference herein to the extent that they are applicable to this agreement and required by law to be so incorporated. Services provided under this agreement are to be within the scope of AGENCY's licenses and certification, and the licenses, certifications and training of its employed and contracted staff providing direct services.

AGENCY agrees to comply with Clackamas County Behavioral Health Division Indigent Services Program Provider Manual and all COUNTY policies and procedures, as they may be amended, relating to the provision of mental health services.

#### 2. General Performance Standards

COUNTY shall monitor services provided by AGENCY and has the right to require AGENCY's compliance with OHA established standards and other performance requirements relative to the quantity and quality of service and care, access to care, and administrative and fiscal management, and with all obligations and conditions stated in this agreement. AGENCY will notify COUNTY immediately in writing regarding issues related to access to care or any other potential violation of the conditions stated in this agreement.

##### a. Licenses and Certifications

By signing this agreement, AGENCY assures that all licenses and certifications required by statute or administrative rule are and will remain current and valid for all of AGENCY's employees and independent contractors providing direct service and for all of AGENCY's facilities in which services are provided. AGENCY assures that it is certified under OAR 309-012-0130 – 309-012-0220 or licensed under ORS Chapter 443 by the State of Oregon to deliver specified services. AGENCY will promptly notify COUNTY of the initiation of any action against any licenses or, if applicable, against any certifications by any certifying boards or organizations as well as any changes in AGENCY's practice ownership or business address, along with any other problem or situation that may relate to the ability of AGENCY to carry out the duties and obligations of this contract.

##### b. Eligibility and Authorization of Services

AGENCY shall verify eligibility and enrollment of clients prior to providing and billing for service and obtain authorization for the provision of covered services as necessary and appropriate according to

COUNTY policies and procedures. AGENCY shall participate in the COUNTY concurrent review process. AGENCY understands that authorization for services will be based upon this review process.

c. Quality Assurance and Utilization Review

AGENCY shall cooperate with, and participate in, COUNTY's quality assurance and utilization review programs. Further, AGENCY shall have a planned, systematic, and ongoing process for monitoring, evaluating and improving the quality and appropriateness of Covered Services provided to clients.

AGENCY shall work with COUNTY staff to ensure that authorized services provided by AGENCY to clients are the most appropriate and cost efficient, and least restrictive. AGENCY staff shall make records available to COUNTY staff on site upon reasonable notice for purposes of utilization review.

d. Contractual Compliance

AGENCY shall ensure that all providers and staff employed or contracted by AGENCY who provide services to clients or are otherwise engaged in activities under this agreement are fully aware of and in compliance with the terms and conditions of this agreement.

**3. Clinical Standards**

a. Clinical Guidelines

AGENCY shall adopt clinical guidelines that inform mental health practitioners, clients, family members and advocates with evidence-based information about mental illness and appropriate treatment options. Clinical guidelines should be based on a systematic evaluation of research evidence; be designed to assist, rather than dictate, clinical decision-making; and are to be applied on a case-by-case basis. Such guidelines should provide recommendations for appropriate care based on scientific evidence and professional consensus; support for professional standards, quality improvement activities and education; and a basis for comparing current practice to evidence-based best practices. AGENCY shall make such guidelines available to COUNTY upon request.

b. Outcome Measure

AGENCY shall adopt the use of a measure of clinical outcomes that demonstrates a change in client status following an episode of treatment. The measurement tool adopted shall identify changes in symptoms, functioning, quality of life, adverse events or satisfaction. AGENCY shall make information about outcome measures used available to COUNTY upon request.

c. Coordination of Care

- (1) AGENCY shall develop, implement and participate in activities supportive of a continuum of care that integrates mental health, addiction and physical health interventions in ways that are seamless and whole to the client. Integration activities may span a continuum ranging from communication to coordination to co-management to co-location to the fully integrated, person-centered health care home.
- (2) To insure appropriate coordination of services to enrolled individuals, AGENCY shall collaborate with allied agencies in the local service area, including but not limited to primary care clinics, housing authorities, chemical dependency agencies, juvenile justice, school districts, and Department of Human Resources, Child Welfare programs. AGENCY will make every effort to obtain a signed Release of Information at the onset of treatment, notifying the service partner in writing of preliminary diagnosis and prescribed medications, notifying of any major changes or medical complications that occurred during the course of treatment and notifying upon termination of treatment.

(2) AGENCY shall coordinate with COUNTY on referral of clients to specialty behavioral health services or to a higher intensity of service. Specifically:

- (i) AGENCY shall coordinate with COUNTY on both admission and discharge of clients to psychiatric acute care or sub-acute psychiatric care. AGENCY shall coordinate with COUNTY and the acute or sub-acute care provider on discharge planning and the development of community resources to aid in the timely discharge and community placement of the client. AGENCY shall assure an appointment with an appropriate provider within seven (7) days of discharge from acute care, sub-acute care or psychiatric residential treatment care.
- (ii) AGENCY shall coordinate with COUNTY on referral of clients to crisis respite services, particularly as those services are used to divert the admission of the client to acute care.
- (iii) AGENCY shall refer clients for a Level of Service Intensity Determination Screening when a higher intensity of service appears warranted.
- (iv) AGENCY shall coordinate with COUNTY to obtain Long Term Care Determination for appropriate clients.

d. Crisis Response

AGENCY will be responsible for twenty-four hour, seven days a week crisis response for their enrolled individuals. AGENCY shall establish and follow a system for appropriate and timely response to emergency needs of individuals. During the period of service, AGENCY shall respond to all enrolled client emergencies. "Emergency" shall mean the sudden onset of a mental health condition manifesting itself by acute symptoms and one or more of the following circumstances are present: (1) the client is in imminent or potential danger of harming himself or others as a result of an eligible condition; (2) the client shows symptoms, e.g., hallucinations, agitation, delusions, etc., resulting in impairment in judgment, functioning and/or impulse control severe enough to endanger his or her own welfare or that of another person; or (3) there is an immediate need for Services as a result of, or in conjunction with, a very serious situation such as an overdose, detoxification, potential suicide or violence. AGENCY will have a system of crisis response to individuals enrolled in their program. At a minimum, AGENCY will have a clinician available by phone for consultation at all times. This clinician shall be familiar with the case or shall have the ability to contact clinician(s) familiar with the case.

e. Standards of Care

COUNTY promotes resilience in and recovery of the clients it serves. COUNTY supports a system of care that promotes and sustains a client's recovery from a mental health condition by identifying and building upon the strengths and competencies within the person to assist them in achieving a meaningful life within their community. Consistent with these values, AGENCY shall:

- (1) Provide services in a manner that assures continuity and coordination of the health care services provided to each client;
- (2) Accept clients for treatment on the same basis that AGENCY accepts other clients and render services to clients in the same manner as provided to AGENCY's other clients. AGENCY shall not discriminate against clients because of source of payment, race, ethnicity, gender, gender identity, gender presentation, sexual orientation, national origin, ancestry, religion, creed, marital status, familial status, age, except when program eligibility is restricted to children, adults or older adults, source of income, disability and diagnosis;



- (3) Provide clients with access to services without undue delay and as soon as necessary in light of the member's mental health condition. AGENCY shall comply with access standards as set forth in OAR 410-141-3220 "Accessibility";
- (4) Conduct its practice and treat all clients using that degree of care, skill and diligence which is used by ordinarily careful providers in the same or similar circumstances in the provider's community or a similar community (see ORS 677.095);
- (5) Ensure that clients are served in the most normative, least restrictive, least intrusive and most cost effective level of care appropriate to their diagnosis and current symptoms, degree of impairment, level of functioning, treatment history, and extent of family and community supports;
- (6) Advise or advocate on behalf of clients in regard to treatment options, without restraint from COUNTY;
- (7) AGENCY shall employ a system of internal review to evaluate the care being provided within the agency, to modify service plans, adjust level of care being provided and consider duration of treatment. AGENCY will have a system of internal utilization management to assure that services are provided within the authorization maximum dollar amount, when applicable.
- (8) AGENCY shall have written policies and procedures related to consumer complaints as referenced in OAR 309-019-0125 and OAR 410-141-0260 through 410-141-0266.

#### **4. Staff Standards**

COUNTY delegates to AGENCY the credentialing and recredentialing of employed and contracted staff who provide services to clients under this agreement. Pursuant to OAR 410-141-3120 "Operations and Provision of Health Services", AGENCY must, at a minimum, obtain and verify documents that provide evidence of primary source verification of credentials as follows:

- Appropriate education and academic degrees, as required;
- Licenses or certificates, as required;
- Relevant work history or qualifications, as required;
- Completion of a successful criminal history records check through the Oregon Law Enforcement Data System and compliant with ORS chapter 181 and OAR 407-007-0000 through 407-007-0370;
- Positive clearance by the National Practitioner Data Bank, as required;
- Positive clearance through the General Services Administration System for Award Management (SAM) at time of hire and monthly thereafter; and
- Positive clearance through the Office of Inspector General's List of Excluded Individuals/Entities at time of hire and monthly thereafter.

AGENCY shall not permit any person to provide services under this agreement if that person is listed on the non-procurement portion of the General Service Administration's SAM in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and Suspension" (2 CFR Part 180).

In addition, AGENCY shall not permit any person to provide services under this agreement who has been terminated from the Division of Medical Assistance Program or excluded as Medicare/Medicaid providers by the Centers for Medicare and Medicaid Services or who are subject to exclusion for any lawful conviction by a court for which the provider could be excluded under 42 CFR 1001.101 "Program

Integrity – Medicare and State Health Care Programs Subpart B”. AGENCY may not submit claims for services provided after the date of such exclusion, conviction or termination.

AGENCY assures that all AGENCY employees and independent contractors providing direct service under this agreement will work within the scope of their credentials and any applicable licensure or registration, or criteria for certification if not required to be licensed or registered pursuant to OAR 410-141-3120. AGENCY shall not allow services to be provided by an employee or independent contractor who does not have a valid license or certification required by state or federal law.

AGENCY ensures that all personnel providing services to clients under this agreement are properly trained and qualified to render the services they provide. AGENCY shall arrange for continuing education of personnel rendering services under this agreement as necessary to maintain such competence and satisfy all applicable licensing, certification or other regulatory requirements.

COUNTY reserves the right to review, upon reasonable notice and at AGENCY’s site, the actual documents describing the credentials of AGENCY’s employees and independent contractors for purposes of verification.

## **5. Recordkeeping**

### **a. Clinical Records, Access and Confidentiality**

- (1) **Clinical Records.** AGENCY shall ensure maintenance of recordkeeping consistent with OAR 410-141-3180, “Record Keeping and Use of Health Information Technology.” The clinical record shall fully document the mental condition of the client and the services received by the client under this agreement. All clinical records relevant to this agreement shall be retained for at least seven (7) years after the date of clinical services for which claims are made, encounters reported, final payment is made, or all pending matters are closed, whichever time period is longer. If an audit, litigation, research and evaluation, or other action involving the records is started before the end of the seven-year-period, the records must be retained until all issues arising out of the action are resolved or until the end of the seven-year-period, whichever is later.
- (2) **Government Access to Records.** At all reasonable times, AGENCY and its subcontractors shall provide the Center for Medicare and Medicaid Services (CMS), the Comptroller General of the United States, the Oregon Secretary of State, the Oregon Department of Justice Medicaid Fraud Unit, Oregon Department of Human Services Office of Payment Accuracy and Recovery, OHA, COUNTY and all their duly authorized representatives the right of access to AGENCY’s financial (including all accompanying billing records), clinical/medical, and personnel records that are directly pertinent to this agreement in order to monitor and evaluate cost, performance, compliance, quality, appropriateness and timeliness of services provided, and the capacity of AGENCY to bear the risk of potential financial losses. These records shall be made available for the purpose of making audit, examination, excerpts and transcriptions. AGENCY shall, upon request and without charge, provide a suitable work area and copying capabilities to facilitate such a review or audit.
- (3) **Confidentiality and Privacy of Records.** The confidentiality of information concerning clients is subject to State and Federal guidelines, including but not limited to State (ORS 179.505 through 179.507, ORS 192.502, ORS 411.320, ORS 433.045(3)) and Federal (42 CFR Part 2, 42 CFR Part 431, Subpart F, 45 CFR 205.50) confidentiality laws and regulations. AGENCY and COUNTY shall not use, release, or disclose any information regarding a client for any purpose not directly connected with the administration of this agreement or under Title XIX of the Social Security Act, except with the written consent of the client or, if appropriate, the client’s parent or guardian, or unless otherwise authorized by law. AGENCY shall ensure that its agents, employees, officers and subcontractors with access to client records understand and comply with this confidentiality provision.

- (4) Release of Information. AGENCY shall assure that COUNTY and any other cooperating health service providers have access to the applicable contents of the client's clinical record when necessary for use in the diagnosis or treatment of the client, to the extent such access is permitted by law. AGENCY shall release mental health service information requested by COUNTY or a provider involved in the care of a client within ten (10) business days of receiving a signed release. Except as provided in ORS 179.505(9), AGENCY shall provide the client or the client's legal guardian access to client's record and provide copies within ten (10) business days of any request for copies.
- (5) External Review. AGENCY shall cooperate with OHA by providing access to records and facilities for the purpose of an annual external, independent professional review of the quality outcomes and timeliness of, and access to, services under this agreement in accordance with 42 USC Section 1396a(a)(27); 42 CFR 431.107(b)(1) & (2); and 42 CFR 457.950(a)(3).
- (6) Keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving OHP assistance and shall furnish such information to any State or federal agency responsible for administering the OHP program regarding any payments claimed by such person or institution for providing OHP Services as the State or federal agency may from time to time request. 42 USC Section 1396a(a)(27); 42 CFR 431.107(b)(1) & (2); and 42 CFR 457.950(a)(3).

b. Financial Records

- (1) AGENCY shall establish and maintain policies and procedures related to financial management and financial records consistent with Generally Accepted Accounting Principles. AGENCY shall make such policies and procedures available to COUNTY upon request.
- (2) AGENCY shall maintain up-to-date accounting records that accurately reflect all revenue by source, all expenses by object of expense, and all assets, liabilities and equities consistent with Generally Accepted Accounting Principles and Oregon Administrative Rules. AGENCY shall make reports and fiscal data generated under and for this agreement available to COUNTY upon request.
- (3) COUNTY shall conduct a fiscal compliance review of AGENCY as part of compliance monitoring of this agreement. AGENCY agrees to provide, upon reasonable notice, access to all financial books, documents, papers and records of AGENCY which are pertinent to this agreement to ensure appropriate expenditure of funds under this agreement. COUNTY shall monitor compliance with COUNTY's financial reporting and accounting requirements.
- (4) AGENCY may be subject to audit requirements. AGENCY agrees that audits must be conducted by Certified Public Accountants who satisfy the Independence requirement outlined in the rules of the American Institute of Certified Public Accountants (Rule 101 of the AICPA Code of Professional Conduct), the Oregon State Board of Accountancy OAR 801-030-0005, the independence rules contained within Governmental Auditing Standards (2011 Revision), and rules promulgated by other federal, state and local government agencies with jurisdiction over AGENCY.
- (5) AGENCY shall establish and maintain systematic written procedures to assure timely and appropriate resolution of review or audit findings and recommendations. AGENCY shall make such procedures and documentation of resolution of audit findings available to COUNTY upon request.
- (6) Limited Scope and Full Audits shall be completed within nine (9) months of the close of AGENCY's fiscal year. Audit reports, including the Management Letter associated with the audit

shall be submitted to COUNTY within two weeks from the date of the report. Failure to submit required audit reports and Management Letters shall be cause for withholding of contract payment until audits are submitted.

## 6. Abuse Reporting

AGENCY shall comply with all processes and procedures of child abuse (ORS 419B.005 – 419B.050), mentally ill and developmentally disabled abuse (ORS 430.731 – 430.768 and OAR 943-045-0250 through 943-045-0370) and elder abuse reporting laws (ORS 124.050 – 124.092) as if AGENCY were a mandatory abuse reporter. If AGENCY is not a mandatory reporter by statute, these reporting requirements shall apply during work hour only. AGENCY shall immediately report to the proper State or law enforcement agency circumstances (and provide such other documentation as may be relevant) supporting reasonable cause to believe that any person has abused a child, a mentally ill or developmentally disabled adult or an elderly person, or that any such person has been abused.

## 7. Fiscal Reporting

- a. Annual Reports. Agency shall submit financial information including total revenue received from COUNTY for services provided and expenses related to revenue to COUNTY within ninety (90) days following the end of the each fiscal year falling within the term of this contract (by August 30, 2014). AGENCY shall use the County Financial Report Form (Attachment 1) to report this information. Such reports shall be accurate, correct in all respects, and traceable to source documents through AGENCY's accounting records.
- b. Other Payment Reports. COUNTY reserves the right to request financial reports from AGENCY on a case-by-case basis. These requests will be submitted to AGENCY in writing. AGENCY will have thirty (30) days from the date of the request to submit these reports. AGENCY shall use the County Financial Report Form (Attachment 1) to report this information. Such reports shall be accurate, correct in all respects, and traceable to source documents through AGENCY's accounting records.
- c. Fiscal Monitoring. COUNTY will monitor the fiscal performance of AGENCY under this contract and may take any and all appropriate management and legal action necessary to pursue this responsibility. Recovery of funds will be made from AGENCY as prescribed below in cases of unauthorized expenditures, non-performance of services, excess payment, contract termination or suspension, or revocation or suspension or non-issuance of approval or license involving AGENCY. However, this contract does not act as a limitation on the authority of COUNTY to pursue legal and administrative remedies pursuant to federal and state statutes, rules and regulations.

AGENCY shall permit authorized representatives of COUNTY to review the records of AGENCY in order to satisfy audit or program evaluation purposes deemed necessary and permitted under law. AGENCY shall permit authorized representatives of COUNTY to perform site reviews of all services elements covered by this contract.

AGENCY agrees to participate with COUNTY in any evaluation project or performance report, as designed by COUNTY or applicable state or federal agency, and to make available all information required by any such evaluation process.

- d. Recovery of Funds. Expenditures of AGENCY may be charged to this contract only if they (1) are incurred to provide services performed as authorized under this contract, (2) are justified by written documentation in case records and/or financial records maintained by AGENCY, (3) conform to applicable state and federal statutes, rules and regulations, (4) are in payment of an obligation incurred during the contract term, (5) conform to any payment limitations specified in this contract, and (6) are not in excess of the amount reasonable and necessary to provide quality delivery of a service contracted hereunder. Any COUNTY funds spent for purposes not authorized by this contract shall be refunded to COUNTY no later than thirty (30) days after the close of the fiscal year (June 30) or the date of any earlier termination of this contract, or within 30 days after notification of

AGENCY by COUNTY. Any amounts not so paid may be deducted from any future payments to AGENCY or otherwise recovered by COUNTY.

Any funds paid by COUNTY and expended by AGENCY under this contract for purposes not authorized hereunder shall be the responsibility of AGENCY and shall be recoverable by COUNTY from AGENCY. Any funds paid by COUNTY to be expended by AGENCY under this contract solely on the delivery of a particular service shall not be expended on the delivery of any other service during the term hereof. However, any funds paid for services which are not expended or required by this contract to be expended by AGENCY during the term hereof may be retained by AGENCY and, subject to the conditions in the preceding paragraph, expended on the delivery of any approved service after the expiration or termination of this contract.

Failure to have an independent Certified Public Accountant audit Federal Block Grant and other federal funds contracted under this contract in a manner which complies with audit requirements detailed below shall be cause for COUNTY to recover from AGENCY all federal funds paid under this contract.

If any refunds to or disallowances by the federal government result from federal audits of community mental health services, and if those refunds or disallowances result from AGENCY's performance or nonperformance of any condition of this contract, the refunds or disallowances shall be AGENCY's responsibility and be recoverable by COUNTY from AGENCY.

AGENCY shall be responsible for prior contract period excess payments and unrecovered advances provided by COUNTY. Repayment of prior period obligations shall be made by AGENCY in a manner specified by COUNTY. COUNTY shall be entitled to the legal rate of interest for late payments from the date such payments became delinquent and, in case of litigation, to reasonable attorney's fees.

## **8. Compliance Monitoring**

### **a. Agreement Compliance Monitoring**

COUNTY and OHA shall conduct agreement compliance and quality assurance monitoring related to this agreement. AGENCY shall cooperate with COUNTY and OHA in such monitoring. COUNTY shall provide AGENCY twenty (20) business days written notice of any agreement compliance and quality assurance monitoring activity that requires any action or cooperation by AGENCY. Notice of monitoring shall include the date the monitoring shall occur, names of individuals conducting the monitoring, and instructions and requests for information.

Should AGENCY found to be out of compliance with any requirement of this agreement, the following actions may be taken by COUNTY until the issue is resolved:

- Request a conference of the parties to determine the need for technical assistance
- Require a corrective action plan
- Disallow referral of new clients to AGENCY
- Put AGENCY on probationary status and suspend billing authority

Should the issue remain unresolved, COUNTY may consider AGENCY in breach and may terminate this agreement.

### **b. External Quality Review**

AGENCY agrees to participate with COUNTY in any evaluation project or performance report as designed by COUNTY or applicable State or Federal agency. AGENCY shall make all information required by any such evaluation project or process available to COUNTY or COUNTY's designee within thirty (30) business days of request.

## 9. Compliance with Applicable Law

AGENCY shall comply and, as indicated, cause all employees and subcontractors to comply with the following Federal requirements. For purposes of this agreement, all references to Federal and State laws are references to Federal and State laws as they may be amended from time to time.

### a. Miscellaneous Federal Provisions

AGENCY shall comply and cause all subcontractors to comply with all federal laws, regulations and executive orders applicable to this Contract or to the delivery of Work. Without limiting the generality of the foregoing, AGENCY expressly agrees to comply and cause all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to this Contract: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) 45 CFR Part 84 which implements, Title V, Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Executive Order 11246, as amended, (e) the Health Insurance Portability and Accountability Act of 1996, as amended, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (j) all federal law governing operation of CMHPs, including without limitation, all federal laws requiring reporting of client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to this Contract and required by law to be so incorporated. No federal funds may be used to provide Work in violation of 42 USC 14402.

### b. Equal Employment Opportunity

If this Contract, including amendments, is for more than \$10,000, then AGENCY shall comply and cause all subcontractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

### c. Non-Discrimination

- (1) AGENCY shall comply with all federal and State laws and regulations including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972 (regarding education programs and activities) the Age Discrimination Act of 1975, the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA) of 1990, and all amendments to those acts and all regulations promulgated thereunder. AGENCY shall also comply with all applicable requirements of State civil rights and rehabilitation statutes and rules.
- (2) AGENCY shall comply with and cause its subcontractors to comply with the integration mandate in 28 CFR 35.130(d), Title II of the Americans with Disabilities Act and its implementing regulations published in the Code of Federal Regulations.

### d. Advance Directives

AGENCY shall provide adult clients with written information on Advance Directive policies and include a description of Oregon law. The written information provided by AGENCY must reflect changes in Oregon law as soon as possible, but no later than 90 days after the effective date of any change to Oregon law. AGENCY must also provide written information to adult clients with respect to the following:

- (1) Their rights under Oregon law;

- (2) AGENCY's policies respecting the implementation of those rights, including a statement of any limitation regarding the implementation of Advance Directives as a matter of conscience.
- (3) AGENCY must inform clients that complaints concerning noncompliance with the Advance Directive requirements may be filed with OHA.

e. Drug Free Workplace

AGENCY shall maintain and cause all subcontractors to maintain a drug-free workplace and shall notify employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in AGENCY's workplace. AGENCY shall establish a drug-free awareness program and provide each employee to be engaged in the provision of services under this agreement with information about its drug-free workplace program. AGENCY will further comply with additional applicable provisions of the Health Share of Oregon Core Contract.

f. Clinical Laboratory Improvement

If applicable to Scope of Work, AGENCY shall and shall ensure that any Laboratories used by AGENCY shall comply with the Clinical Laboratory Improvement Amendments (CLIA 1988), 42 CFR Part 493 Laboratory Requirements and ORS 438 (Clinical Laboratories, which require that all laboratory testing sites providing services under this agreement shall have either a Clinical Laboratory Improvement Amendments (CLIA) certificate of waiver or a certificate of registration along with a CLIA identification number. Those Laboratories with certificates of waiver will provide only the eight types of tests permitted under the terms of their waiver. Laboratories with certificates of registration may perform a full range of laboratory tests.

g. Clean Air, Clean Water, EPA Regulations

If this agreement, including amendments, exceeds \$100,000 then AGENCY shall comply and cause all subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to OHA, DHHS and the appropriate Regional Office of the Environmental Protection Agency. AGENCY shall include and cause all subcontractors to include in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section.

h. Energy Efficiency

AGENCY shall comply and cause all subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6201 et seq. (Pub. L. 94- 163).

i. Resource Conservation and Recovery

AGENCY shall comply and cause all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 USC 6901 et. seq.). Section 6002 of that Act (codified at 42 USC 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.

j. Audits

AGENCY shall comply and, if applicable, cause a subcontractor to comply, with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations."

k. Truth in Lobbying

AGENCY certifies, to the best of the AGENCY's knowledge and belief that:

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of AGENCY, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, AGENCY shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- (3) AGENCY shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.
- (4) This certification is a material representation of fact upon which reliance was placed when this Contract was made or entered into. Submission of this certification is a prerequisite for making or entering into this agreement imposed by Section 1352, Title 31, of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

l. Conflict of Interest Safeguards

- (1) AGENCY and its subcontractors shall have in effect safeguards, including, but not limited to, policies and procedures against conflict of interest with any State of Oregon Department of Human Services employees or other agents of the State who have responsibilities relating to this agreement. These safeguards must be at least as effective as the safeguards specified in Section 27 of the Office of Federal Procurement Policy Act (41 USC 423) and must include safeguards to avoid conflicts that could be prohibited under 18 USC 207 or 208 if the Department of Human Services employee or agent was an officer or employee of the United States Government. For purposes of implementing policies and procedures required in this section, AGENCY shall apply the definitions in the State Public Ethics Law as if they applied to AGENCY for "Actual conflict of interest," ORS 244.020(1), "potential conflict of interest," ORS 244.020(14), and "client of household," ORS 244.020(12).
- (2) AGENCY shall not offer to any DHS or OHA employee (or any relative or member of their household) any gift or gifts with an aggregate value in excess of \$50 during a calendar year or any gift or payment of expenses for entertainment. "Gift" for this purpose has the meaning defined in ORS 244.020(6) and OAR 199-005-0001 to 199-005-0035.



- (3) "AGENCY" for purposes of this section includes all AGENCY's affiliates, assignees, subsidiaries, parent companies, successors and transferees, and persons under common control with the AGENCY; any officers, directors, partners, agents and employees of such person; and all others acting or claiming to act on their behalf or in concert with them.
- (4) AGENCY shall apply the definitions in the State Public Ethics Law, ORS 244.020, for "actual conflict of interest", "potential conflict of interest", "relative" and "member of household".

m. HIPAA Compliance

- (1) The parties acknowledge and agree that each of OHA and AGENCY is a "covered entity" for purposes of privacy and security provisions of the Health Insurance Portability and Accountability Act and the federal regulations implementing the Act (collectively referred to as HIPAA). OHA and AGENCY shall comply with HIPAA to the extent that any work or obligations of OHA arising under this agreement are covered by HIPAA.
- (2) AGENCY shall develop and implement such policies and procedures for maintaining the privacy and security of records and authorizing the use and disclosure of records required to comply with this agreement and with HIPAA. AGENCY shall comply and cause all subcontractors to comply with HIPAA and all the HIPAA provisions listed in the Health Share of Oregon Core Contract.
- (3) HIPAA Information Security. AGENCY shall adopt and employ reasonable administrative and physical safeguards consistent with the Security Rules in 45 CFR Part 164 to ensure that Member Information shall be used by or disclosed only to the extent necessary for the permitted use or disclosure and consistent with applicable State and federal laws and the terms and conditions of this agreement. Security incidents involving Member Information must be immediately reported to DHS' Privacy Officer.

COPY

11  
Cindy Becker  
Director

July 10, 2014

Board of Commissioners  
Clackamas County

Members of the Board:

Approval of an Agency Service Agreement with  
Lake Oswego Counseling Center for  
Outpatient Mental Health Services

<b>Purpose/Outcomes</b>	To provide outpatient mental health services for people who are Oregon Health Plan (OHP) members' capitated to Clackamas County.
<b>Dollar Amount and Fiscal Impact</b>	The contract does not contain an upper limit; expenditures are controlled by Behavioral Health Division staff who pre-authorize and monitor services on an on-going basis.
<b>Funding Source</b>	Oregon Health Authority - no County General Funds are involved.
<b>Safety Impact</b>	None
<b>Duration</b>	Effective July 1, 2014 and terminates on June 30, 2015
<b>Previous Board Action</b>	The previous agreement was approved by the Board of County Commissioners on March 7, 2013 - agenda item 030713-A1
<b>Contact Person</b>	Jill Archer, Director – Behavioral Health Division - 742-5336
<b>Contract No.</b>	6701

**BACKGROUND:**

The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of an Agency Service Agreement with Lake Oswego Counseling Center for outpatient mental health services. Outpatient mental health services include an array of treatment such as individual and group therapy, skills training, case management and psychiatric services for persons enrolled in services through Clackamas County Behavioral Health Division. The Behavioral Health Division has partnered with Lake Oswego Counseling Center for behavioral health services since 2011. This contract is a continuation of these services.

The contract is effective July 1, 2014 and continues through June 30, 2015. County Counsel has reviewed and approved this agreement as part of the H3S contract standardization project.

**RECOMMENDATION:**

Staff recommends the Board approval of this contract and authorizes Cindy Becker, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,



Cindy Becker, Director

# AGENCY SERVICE CONTRACT

## Contract # 6701

This Agency Service Contract is between Clackamas County acting by and through its Health, Housing and Human Services Department, Behavioral Health Division, hereinafter called "COUNTY," and LAKE OSWEGO COUNSELING CENTER, hereinafter called "AGENCY." Throughout this contract and all exhibits, the term "DEPARTMENT" shall refer to and mean the State of Oregon, Oregon Health Authority.

## CONTRACT

### 1.0 Engagement

COUNTY hereby engages AGENCY to provide outpatient mental health services as more fully described in Exhibit C, Scope of Work, attached hereto and incorporated herein.

### 2.0 Term

Services provided under the terms of this contract shall commence on **July 1, 2014** and shall terminate **June 30, 2015** unless terminated by one or both parties as provided for in paragraph 6.0 below.

### 3.0 Compensation and Fiscal Records

3.1 Compensation. COUNTY shall compensate AGENCY as specified in Exhibit D, Compensation. The payment shall be full compensation for work performed, for services rendered, and for all labor, materials, supplies, equipment, mileage, and incidentals necessary to perform the work and services.

3.2 Withholding of Contract Payments. Notwithstanding any other payment provision of this contract, should AGENCY fail to submit required reports when due, or submit reports which appear patently inaccurate or inadequate on their face, or fail to perform or document the performance of contracted services, COUNTY shall immediately withhold payments hereunder. Such withholding of payment for cause may continue until AGENCY submits required reports, performs required services, or establishes to COUNTY's satisfaction that such failure arose out of causes beyond the control, and without the fault or negligence, of AGENCY.

3.3 Financial Records. AGENCY and its subcontractors shall maintain complete and legible financial records pertaining in whole or in part to this contract. Such records shall be maintained in accordance with Generally Accepted Accounting Principles and/or other applicable accounting guidelines. Financial records and supporting documents shall be retained for at least six (6) years or such period as may be required by applicable law, following final payment is made under this agreement or until all pending matters are resolved, whichever period is longer. If an audit of financial records discloses that payments to AGENCY were in excess of the amount to which AGENCY was entitled, AGENCY shall repay the amount of the excess to COUNTY.

3.4 Access to Records and Facilities. COUNTY, DEPARTMENT, the Secretary of State's Office of the State of Oregon, the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers and records of AGENCY that are directly related to this contract, the funds paid to AGENCY hereunder, or any services delivered hereunder for the purpose of making audits, examinations, excerpts, and transcripts. In addition, AGENCY shall permit authorized representatives of COUNTY and DEPARTMENT to perform site reviews of all services delivered by AGENCY hereunder.

3.4.1 AGENCY shall maintain up-to-date accounting records that accurately reflect all revenue by source, all expenses by object of expense, and all assets, liabilities and equities consistent with

Generally Accepted Accounting Principles and Oregon Administrative Rules. AGENCY shall make reports and fiscal data generated under and for this agreement available to COUNTY upon request.

3.4.2 COUNTY conduct a fiscal compliance review of AGENCY as part of compliance monitoring of this agreement. AGENCY agrees to provide, upon reasonable notice, access to all financial books, documents, papers and records of AGENCY which are pertinent to this agreement to ensure appropriate expenditure of funds under this agreement. COUNTY shall monitor compliance with COUNTY's financial reporting and accounting requirements.

3.4.3 AGENCY may be subject to audit requirements. AGENCY agrees that audits must be conducted by Certified Public Accountants who satisfy the independence requirement outlined in the rules of the American Institute of Certified Public Accountants (Rule 101 of the AICPA Code of Professional Conduct), the Oregon State Board of Accountancy, the independence rules contained within Governmental Auditing Standards (1994 Revision), and rules promulgated by other federal, state and local government agencies with jurisdiction over AGENCY.

3.4.4 AGENCY shall establish and maintain systematic written procedures to assure timely and appropriate resolution of review or audit findings and recommendations. AGENCY shall make such procedures and documentation of resolution of audit findings available to COUNTY upon request.

#### **4.0 Manner of Performance**

4.1 Compliance with Applicable Laws and Regulations and Special Federal Requirements. AGENCY shall comply with all Federal, State, local laws, rules, and regulations applicable to the work to be performed under this contract, including, but not limited to, all applicable Federal and State civil rights and rehabilitation statutes, rules and regulations, and as listed in Exhibit B, paragraph 9. Compliance with Applicable Law, attached hereto and incorporated herein by this reference. AGENCY shall comply with Oregon Administrative Rule (OAR) 410-120-1380, which establishes the requirements for compliance with Section 4751 of Omnibus Budget Reconciliation Act (OBRA) 1991 and ORS 127-649, Patient Self-Determination Act.

4.2 Precedence. A requirement listed both in the main boilerplate of this contract and in an exhibit, the exhibit shall take precedence.

4.3 Subcontracts. AGENCY shall not enter into any subcontracts for any of the work scheduled under this contract without obtaining prior written approval from COUNTY.

4.4 Independent Contractor. AGENCY certifies that it is an independent contractor and not an employee or agent of COUNTY, State, or Federal Government as those terms are used in ORS 30.265. Responsibility for all taxes, assessments, and any other charges imposed upon employers shall be the sole responsibility of AGENCY.

#### **5.0 General Conditions**

5.1 Indemnification. AGENCY agrees to indemnify, save, hold harmless, and defend COUNTY, its officers, commissioners and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of actions, suits, claims or demand attributable in whole or in part to the acts or omissions of AGENCY, and AGENCY's officers, agents, and employees, in performance of this contract.

AGENCY shall defend, save, hold harmless and indemnify the State of Oregon, AMH and their officers, agents and employees from and against all claims, suits, actions, damages, liabilities, costs and expenses of whatsoever nature resulting from, arising out of, or relating to the activities or omissions of AGENCY, or its agents or employees under this contract.

If AGENCY is a public body, AGENCY's liability under this contract is subject to the limitations of the Oregon Tort Claims Act.

5.2 Insurance. During the term of this agreement, AGENCY shall maintain in force, at its own expense, each insurance noted below:

5.2.1 Commercial General Liability

Required by COUNTY       Not required by COUNTY

AGENCY shall obtain, at AGENCY's expense, and keep in effect during the term of this Agreement, Commercial General Liability Insurance covering bodily injury and property damage on an "occurrence" form in the amount of not less than \$2,000,000 per occurrence/\$4,000,000 general aggregate for the protection of COUNTY, its officers, commissioners, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute it.

5.2.2 Commercial Automobile Liability

Required by COUNTY       Not required by COUNTY

AGENCY shall also obtain at AGENCY's expense, and keep in effect during the term of the Agreement, "Symbol 1" Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$2,000,000.

5.2.3 Professional Liability

Required by COUNTY       Not required by COUNTY

AGENCY agrees to furnish COUNTY evidence of professional liability insurance in the amount of not less than \$2,000,000 combined single limit per occurrence/\$4,000,000 general annual aggregate for malpractice or errors and omissions coverage for the protection of COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this Agreement. COUNTY, at its option, may require a complete copy of the above policy.

5.2.4 Tail Coverage. If liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this contract for a duration of thirty-six (36) months or the maximum time period the AGENCY's insurer will provide "tail" coverage as subscribed, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage provided its retroactive date is on or before the effective date of this contract.

5.2.5 Additional Insured Provisions. The insurance, other than the professional liability insurance, Workers' Compensation, and Personal Automobile Liability insurance, shall include "Clackamas County, its commissioners, agents, officers, and employees" as an additional insured.

5.2.6 Notice of Cancellation. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice to COUNTY. Any failure to comply with this provision will not affect the insurance coverage provided to COUNTY. The 60 days notice of cancellation provision shall be physically endorsed on to the policy.

5.2.7 Insurance Carrier Rating. Coverages provided by AGENCY must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

5.2.8 Certificates of Insurance. As evidence of the insurance coverage required by this contract, AGENCY shall furnish a Certificate of Insurance to COUNTY. No contract shall be in effect until the required certificates have been received, approved and accepted by COUNTY. The certificate will specify that all insurance-related provisions within this contract have been complied with. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration.

5.2.9 Primary Coverage Clarification. AGENCY's coverage will be primary in the event of a loss.

5.2.10 Cross Liability Clause. A cross-liability or separation of insureds condition will be included in all general liability, professional liability, and errors and omissions policies required by this contract.

5.3 Governing Law; Consent to Jurisdiction. This agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Any claim, action, or suit between COUNTY and AGENCY that arises out of or relates to performance under this agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, State of Oregon. Provided, however, that if any such claim, action or suit may be brought only in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. AGENCY by execution of this agreement consents to the in personam jurisdiction of said courts.

5.4 Amendments. The terms of this contract shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written instrument signed by AGENCY and COUNTY.

5.5 Severability. If any term or provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

5.6 Waiver. The failure of either party to enforce any provision of this contract shall not constitute a waiver of that or any other provision.

5.7 Future Support. COUNTY makes no commitment of future support and assumes no obligation for future support of the activity contracted herein except as set forth in this contract.

5.8 Oregon Constitutional Limitations. This contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provision herein, which would conflict with such law, is deemed inoperative to that extent.

5.9 Oregon Public Contracting Requirements. Pursuant to the requirements of ORS 279B.020 and ORS 279B.220 through 279B.235 the following terms and conditions are made a part of this contract:

5.9.1 AGENCY shall:

- a. Make payments promptly, as due, to all persons supplying to AGENCY labor or materials for the prosecution of the work provided for in this contract.

**EXHIBIT A**

**DEFINITIONS**

Whenever used in this Agency Services Agreement, the following terms shall have the meanings set forth below:

AMH: State of Oregon, Department of Human Services, Addictions and Mental Health

AGENCY: entity contracted by COUNTY

Allowable Costs: costs described in OMB Circular A-87 except to the extent such costs are limited or excluded by other provisions of this contract

CCO: Coordinated Care Organization is an entity that has been certified as meeting the criteria adopted by the Oregon Health Authority under ORS 414.625 to be accountable for care management and to provide integrated and coordinated health care services

Community Outcome Management and Performance Accountability Support System (COMPASS): the AMH project to implement a new contracts system, roll out an optional free electronic health records systems (OWITS), and enhance the collection of data through MOTs

Contract: this Agency Services Contract between COUNTY and AGENCY for the provision of services

COUNTY: Clackamas County Behavioral Health Division

Covered Services: medically appropriate services specified in OAR 410-141-3120, "Operations and Provision of Health Services" and limited in accordance with OAR 410-141-3420, "Billing and Payment" for OHP Members. The term "Covered Services" may be expanded, limited, or otherwise changed pursuant to the Clackamas County Health Share of Oregon/Clackamas Participation Agreement and OARs. Covered Services may also refer to authorized services provided to uninsured, indigent clients.

DEPARTMENT: AMH contracts with COUNTY to establish and finance community mental health and addition programs; COUNTY, in turn, subcontracts certain services to AGENCY

DHS: Department of Human Services of the State of Oregon

Federal Funds: funds paid to AGENCY under this contract that are received from an agency, instrumentality or program of the Federal government of the United States

Health Share of Oregon: a Coordinated Care Organization serving Oregon Health Plan enrollees of Clackamas, Multnomah and Washington Counties.

Individual: an individual accessing publicly funded behavioral health services who is either an OHP Member or is determined eligible for services as an uninsured, indigent individual.

Mental Health Services: treatment services for individuals diagnosed with serious mental health illness, or other mental or emotional disturbance posing a danger to the health and safety of themselves or others

Medicaid: Federal funds received by OHA under the Title XIX of the Social Security Act and Children's Health Insurance Program Funds administered jointly with Title XIX funds as part of State medical assistance program by OHA

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**7.0 Notices**

If to AGENCY:

Lake Oswego Counseling Center  
3990 Collins Way, Suite 202  
Lake Oswego, OR 97035

If to COUNTY:

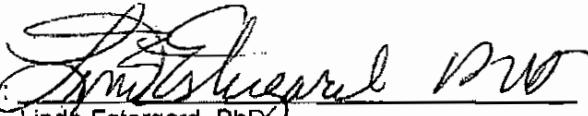
Clackamas County Behavioral Health Division  
Attention: Contract Administration  
2051 Kaen Road, # 367  
Oregon City, OR 97045

This contract consists of seven (7) sections plus the following exhibits and attachments which by this reference are incorporated herein:

- Exhibit A Definitions
- Exhibit B Statement of General Conditions
- Exhibit C Scopes of Work
- Exhibit D Compensation
- Attachment 1 DSN Provider Capacity Report

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed by their duly authorized officers.

**LAKE OSWEGO COUNSELING CENTER**

By:   
Linda Estergard, PhD  
*6-25-14*

Date  
3990 Collins Way, Suite 202  
Street Address  
Lake Oswego, Oregon 97035  
City/State/Zip  
(503) 675-2830 Ext: 111 *503 675-2852*  
Phone / Fax

**CLACKAMAS COUNTY**

- Commissioner: John Ludlow, Chair
- Commissioner: Jim Bernard
- Commissioner: Paul Savas
- Commissioner: Martha Schrader
- Commissioner: Tootie Smith

**Signing on Behalf of the Board:**

Cindy Becker, Director  
Health, Housing and Human Services Department

Date



Misexpenditure: money, other than an overexpenditure disbursed to AGENCY by COUNTY under this agreement and expended by AGENCY that:

- (a) is identified by the Federal government as expended contrary to applicable statutes, rules, OMB Circulars or any other authority that governs the permissible expenditure of such money, for which the Federal government has requested reimbursement by the State of Oregon and whether in the form of a Federal determination of improper use of Federal funds, a Federal notice of disallowance, or otherwise; or
- (b) is identified by the COUNTY, State of Oregon or OHA as expended in a manner other than that permitted by this agreement, including without limitation, any money expended by AGENCY, contrary to applicable statutes, rules, OMB Circulars or any other authority that governs the permissible expenditure of such money; or
- (c) is identified by the COUNTY, State of Oregon or OHA as expended on the delivery of a service that did not meet the standards and requirements of this agreement with respect to that service

Measures and Outcomes Tracking System (MOTS): the AMH data system that stores client data submitted by AGENCY and/or COUNTY

OAR: Oregon Administrative Rules duly promulgated by the Oregon Health Authority and as amended from time to time.

OHA: the State of Oregon, acting by and through its Oregon Health Authority.

OHP Member: an individual found eligible by a division of the Oregon Department of Human Services to receive services under the OHP (Oregon Health Plan) Medicaid Demonstration Project or State Children's Health Insurance Program and who is enrolled with COUNTY as Health Share of Oregon/Clackamas.

Oregon Web Infrastructure for Treatment Services (OWITS): is 1) an optional free electronic health records system available to Counties and their Providers to submit the MOTS data, and 2) a system to manage the AMH services

Primary Source Verification: verification from the original source of a specific credential (education, training, licensure) to determine the accuracy of the qualifications of an individual health care practitioner. Examples of primary source verification include, but are not limited to, direct correspondence, telephone verification and internet verifications.

Third Party Resources: any individual, entity, or program that is, or may be, liable to pay all or part of the cost of any Covered Service furnished to an OHP Member, including but not limited to: private health insurance or group health plan; employment-related health insurance; medical support from absent parents; workers' compensation; Medicare; automobile liability insurance; other federal programs such as Veteran's Administration; Armed Forces Retirees and Dependent Act, Armed Forces Active Duty and Dependents Military Medical Benefits Act, and Medicare Parts A and B; another state's Title XIX, Title XXI or state-funded Medical Assistance Program; and personal estates.

Valid Claim: an invoice, in the form of a CMS 1500 claim form, submitted for payment of covered health services rendered to an eligible client that is submitted within the required 90 days from the date of service or discharge and that can be processed without obtaining additional information from the provider of the service or from a third party. A valid claim is synonymous with the federal definition of a clean claim as defined in 42 CFR 447.45(b).

**EXHIBIT B**

**STATEMENT OF GENERAL CONDITIONS**

**1. Interpretation and Administration of Agreement**

AGENCY acknowledges that this agreement between COUNTY and AGENCY is subject to the underlying Health Share of Oregon/Clackamas Risk Accepting Entity Participation Agreement between Health Share of Oregon and COUNTY, the Health Plan Services Contract between the Oregon Health Authority and Health Share of Oregon, the Oregon Revised Statutes concerning the Oregon Health Plan, and other applicable Oregon statutes and administrative rules concerning mental health services. If AGENCY believes that any provision of this agreement or COUNTY's interpretation thereof is in conflict with Federal and State statutes or regulations, AGENCY shall notify COUNTY in writing immediately.

AGENCY agrees to provide medically necessary services within the scope of its practice and license (hereinafter referred to as "services") to individuals assessed as having an eligible mental health condition specified in the Oregon Health Plan "Prioritized List of Mental Health Conditions", can benefit from those services, and as described below when authorized by COUNTY's treatment authorization process. AGENCY shall provide services in accordance with OAR 410-141-3120 "Operations and Provision of Health Services"; OAR 410-141-3420 "Billing and Payment"; and all DHS Rules in OAR Chapter 309 and any other administrative rules to which AGENCY is subject, as such rules may be amended from time to time. These laws, rules and regulations, are incorporated by reference herein to the extent that they are applicable to this agreement and required by law to be so incorporated. Services provided under this agreement are to be within the scope of AGENCY's licenses and certification, and the licenses, certifications and training of its employed and contracted staff providing direct services.

**2. General Performance Standards**

COUNTY shall monitor services provided by AGENCY and has the right to require AGENCY's compliance with OHA and Health Share of Oregon established standards and other performance requirements relative to the quantity and quality of service and care, access to care, and administrative and fiscal management, and with all obligations and conditions stated in this agreement. AGENCY will notify COUNTY immediately in writing regarding issues related to access to care or any other potential violation of the conditions stated in this agreement.

**a. Licenses and Certifications**

By signing this agreement, AGENCY assures that all licenses and certifications required by statute or administrative rule are and will remain current and valid for all of AGENCY's employees and independent contractors providing direct service and for all of AGENCY's facilities in which services are provided. AGENCY assures that it is certified under OAR 309-012-0130 – 309-012-0220 or licensed under ORS Chapter 443 by the State of Oregon to deliver specified services. AGENCY will promptly notify COUNTY of the initiation of any action against any licenses or, if applicable, against any certifications by any certifying boards or organizations as well as any changes in AGENCY's practice ownership or business address, along with any other problem or situation that may relate to the ability of AGENCY to carry out the duties and obligations of this contract.

b. Eligibility and Authorization of Services

AGENCY shall verify eligibility and enrollment of clients prior to providing and billing for service and obtain authorization for the provision of covered services as necessary and appropriate according to COUNTY policies and procedures. AGENCY shall participate in the COUNTY concurrent review process. AGENCY understands that authorization for services will be based upon this review process.

c. Quality Assurance and Utilization Review

AGENCY shall cooperate with, and participate in, COUNTY's quality assurance and utilization review programs. AGENCY shall also participate in Health Share of Oregon quality initiatives as developed. Further, AGENCY shall have a planned, systematic, and ongoing process for monitoring, evaluating and improving the quality and appropriateness of Covered Services provided to clients.

AGENCY shall work with COUNTY staff to ensure that authorized services provided by AGENCY to clients are the most appropriate and cost efficient, and least restrictive. AGENCY staff shall make records available to COUNTY staff on site upon reasonable notice for purposes of utilization review.

d. Contractual Compliance

AGENCY shall ensure that all providers and staff employed or contracted by AGENCY who provide services to clients or are otherwise engaged in activities under this agreement are fully aware of and in compliance with the terms and conditions of this agreement.

e. Provider Appeal Process

AGENCY shall have the right to appeal actions by COUNTY or decisions concerning interpretation of the Health Share of Oregon/Clackamas Risk Accepting Entity Agreement as they apply to this agreement. Appeals shall be made in writing.

Appeals related to administrative or clinical decisions and all other matters shall be made to COUNTY Administration within thirty (30) calendar days of the date of the action being appealed. A decision shall be issued within twenty-one (21) business days of receipt of the written appeal. An appeal of that decision can be made in writing to the Director of Clackamas County Behavioral Health Division within fourteen (14) business days of the date of the decision. The Director will issue a decision within twenty-one (21) business days, and that decision will be final.

**3. Clinical Standards**

a. Clinical Guidelines

AGENCY shall adopt clinical guidelines that inform mental health practitioners, clients, family members and advocates with evidence-based information about mental illness and appropriate treatment options. Clinical guidelines should be based on a systematic evaluation of research evidence; be designed to assist, rather than dictate, clinical decision-making; and are to be applied on a case-by-case basis. Such guidelines should provide recommendations for appropriate care based on scientific evidence and professional consensus; support for professional standards, quality improvement activities and education; and a basis for comparing current practice to evidence-based best practices. AGENCY shall make such guidelines available to COUNTY upon request.

b. Outcome Measure

AGENCY shall adopt the use of a measure of clinical outcomes that demonstrates a change in client status following an episode of treatment. The measurement tool adopted shall identify changes in symptoms, functioning, quality of life, adverse events or satisfaction. AGENCY shall make information about outcome measures used available to COUNTY upon request.

c. Coordination of Care

- (1) AGENCY shall develop, implement and participate in activities supportive of a continuum of care that integrates mental health, addiction and physical health interventions in ways that are seamless and whole to the client. Integration activities may span a continuum ranging from communication to coordination to co-management to co-location to the fully integrated, person-centered health care home.
- (2) To insure appropriate coordination of services to enrolled individuals, AGENCY shall collaborate with allied agencies in the local service area, including but not limited to primary care clinics, housing authorities, chemical dependency agencies, juvenile justice, school districts, and Department of Human Resources, Child Welfare programs. AGENCY will make every effort to obtain a signed Release of Information at the onset of treatment, notifying the service partner in writing of preliminary diagnosis and prescribed medications, notifying of any major changes or medical complications that occurred during the course of treatment and notifying upon termination of treatment.
- (2) AGENCY shall coordinate with COUNTY on referral of clients to specialty behavioral health services or to a higher intensity of service. Specifically:
  - (i) AGENCY shall coordinate with COUNTY on both admission and discharge of clients to psychiatric acute care or sub-acute psychiatric care. AGENCY shall coordinate with COUNTY and the acute or sub-acute care provider on discharge planning and the development of community resources to aid in the timely discharge and community placement of the client. AGENCY shall assure an appointment with an appropriate provider within seven (7) days of discharge from acute care, sub-acute care or psychiatric residential treatment care.
  - (ii) AGENCY shall coordinate with COUNTY on referral of clients to crisis respite services, particularly as those services are used to divert the admission of the client to acute care.
  - (iii) AGENCY shall refer clients for a Level of Service Intensity Determination Screening when a higher intensity of service appears warranted.
  - (iv) AGENCY shall coordinate with COUNTY to obtain Long Term Care Determination for appropriate clients.

d. Crisis Response

AGENCY will be responsible for twenty-four hour, seven days a week crisis response for their enrolled individuals. AGENCY shall establish and follow a system for appropriate and timely response to emergency needs of individuals. During the period of service, AGENCY shall respond to all enrolled client emergencies. "Emergency" shall mean the sudden onset of a mental health condition manifesting itself by acute symptoms and one or more of the following circumstances are present: (1) the client is in imminent or potential danger of harming himself or others as a result of an eligible condition; (2) the client shows symptoms, e.g., hallucinations, agitation, delusions, etc., resulting in impairment in judgment, functioning and/or impulse control severe enough to endanger his or her own welfare or that of another person; or (3) there is an

immediate need for Services as a result of, or in conjunction with, a very serious situation such as an overdose, detoxification, potential suicide or violence. AGENCY will have a system of crisis response to individuals enrolled in their program. At a minimum, AGENCY will have a clinician available by phone for consultation at all times. This clinician shall be familiar with the case or shall have the ability to contact clinician(s) familiar with the case.

e. Standards of Care

COUNTY promotes resilience in and recovery of the clients it serves. COUNTY supports a system of care that promotes and sustains a client's recovery from a mental health condition by identifying and building upon the strengths and competencies within the person to assist them in achieving a meaningful life within their community. Consistent with these values, AGENCY shall:

- (1) Provide services in a manner that assures continuity and coordination of the health care services provided to each client;
- (2) Accept clients for treatment on the same basis that AGENCY accepts other clients and render services to clients in the same manner as provided to AGENCY's other clients. AGENCY shall not discriminate against clients because of source of payment, race, ethnicity, gender, gender identity, gender presentation, sexual orientation, national origin, ancestry, religion, creed, marital status, familial status, age, except when program eligibility is restricted to children, adults or older adults, source of income, disability and diagnosis;
- (3) Provide clients with access to services without undue delay and as soon as necessary in light of the member's mental health condition. AGENCY shall comply with access standards as set forth in OAR 410-141-3220 "Accessibility";
- (4) Conduct its practice and treat all clients using that degree of care, skill and diligence which is used by ordinarily careful providers in the same or similar circumstances in the provider's community or a similar community (see ORS 677.095);
- (5) Ensure that clients are served in the most normative, least restrictive, least intrusive and most cost effective level of care appropriate to their diagnosis and current symptoms, degree of impairment, level of functioning, treatment history, and extent of family and community supports;
- (6) Advise or advocate on behalf of clients in regard to treatment options, without restraint from COUNTY;
- (7) AGENCY shall employ a system of internal review to evaluate the care being provided within the agency, to modify service plans, adjust level of care being provided and consider duration of treatment. AGENCY will have a system of internal utilization management to assure that services are provided within the authorization maximum dollar amount, when applicable.
- (8) AGENCY shall have written policies and procedures that insure individuals receive a Notice of Action when service is denied, terminated, suspended or reduced without the client's agreement.
- (9) AGENCY shall have written policies and procedures related to consumer complaints as referenced in OAR 309-019-0125 and OAR 410-141-0260 through 410-141-0266.

#### **4. Encounter Submissions**

a. Usual and Customary Charges

AGENCY shall bill COUNTY according to their Usual and Customary fee schedule. AGENCY shall base their Usual and Customary charges on a cost study that is updated annually.

b. Compensation

AGENCY shall be reimbursed at the COUNTY reimbursement rates in effect as of the date of service or billed charges, whichever is less.

c. Third Party Resources and Coordination of Benefits

AGENCY shall bill and collect from liable third party resources prior to billing COUNTY. If both the third party resource and COUNTY reimburse AGENCY for the same service, COUNTY shall be entitled to a refund for the exact amount of duplicate payment received by AGENCY.

AGENCY shall be responsible for maintaining records in such a manner so as to ensure that all moneys collected from third-party resources on behalf of clients may be identified and reported to COUNTY on an individual client basis. AGENCY shall make these records available for audit and review consistent with the provisions upon request.

If AGENCY has knowledge that a client has third-party health insurance or health benefits, or that either client or AGENCY is entitled to payment by a third party, AGENCY shall immediately so advise COUNTY.

Pursuant to OAR 410-141-3160, "Integration and Care Coordination", COUNTY reserves the right to coordinate benefits with other health plans, insurance carriers, and government agencies. COUNTY may release medical information to such other parties as necessary to accomplish the coordination of benefits in conformity with the Health Insurance Portability and Accountability Act (HIPAA) 45 CFR 164 and 42 CFR Part 2. Coordination of benefits shall not result in compensation in excess of the amount determined by this agreement, except where State laws or regulations require the contrary.

d. Encounter Data

AGENCY shall submit to COUNTY accurate and complete encounter data in the form of a CMS 1500 claim form for each contact with a client. To encounter data and receive payment, when applicable, AGENCY shall submit a CMS 1500 claim form to COUNTY's Third Party Administrator, Performance Health Technology Ltd (PH Tech). AGENCY shall use its best efforts to supply encounter data once a month, and shall in all cases, supply encounter data no later than 120 calendar days after a contact with a client in accordance with OAR 410-141-3420, "Billing and Payment". Each encounter claim shall include such information as required in the Health Share of Oregon/Clackamas Risk Accepting Entity Participation Agreement and meet specifications as a Valid Claim. AGENCY shall use the most current DSM Multi-Axial Classification System. DSM codes shall be reported at the highest level of specificity. Claims may be submitted to PH Tech in either paper or electronic format.

PH Tech shall pay AGENCY on behalf of COUNTY, by the 45<sup>th</sup> business day after a valid claim is received, fee-for-service payments as specified in section 1 above. COUNTY shall have no obligation to make payment to AGENCY if AGENCY fails to obtain a valid authorization to provide services, fails to verify eligibility for Covered Services and the individual is not an eligible client on the date of service, if the services provided are not Covered Services, or if AGENCY fails to submit fee-for-service bills within 90 calendar days of the date of service. The timely filing

requirement is extended to 12 months when there is a Third Party Resource as the primary payor and to 12 months when Medicare is primary. To be considered for payment, claims resubmission requests submitted by AGENCY must be received by PH Tech within 120 days of the date of the first denial.

e. Non-Covered Services

AGENCY shall follow OAR 410-141-3420, "Billing and Payment", when submitting fee-for-service claims for services provided to OHP Members that are not Covered Services.

f. Payment in Full

Except as expressly provided below, payments to AGENCY made by COUNTY for services provided under the terms of this agreement shall constitute payment in full. OAR 410-141-3420, "Billing and Payment", AGENCY shall not bill, charge, seek compensation, remuneration or reimbursement from, or have any recourse against OHA or any client for services contracted hereunder, either during the term of this agreement or at any time later, even if COUNTY becomes insolvent. This provision shall not prohibit collection for non-covered services that may be the responsibility of the client or any permitted co-pays, co-insurance, deductibles or any other cost sharing, if any and as applicable. AGENCY may bill and collect separately for those costs which are lawfully the responsibility of the client. When combined with all sources of payment, COUNTY's payment to AGENCY shall not exceed the reimbursement amount in effect as of the date of service.

g. Overpayments

Any payments made by COUNTY to which AGENCY is not entitled under the terms of this agreement shall be considered an overpayment and shall be refunded by AGENCY within thirty (30) calendar days of the discovery, in accordance with OAR-410-120-1280, "Billing" and OAR 410-120-1397, "Recovery of Overpayments to Providers – Recoupments and Refunds". AGENCY must not seek payment from clients for any covered services, except any coinsurance, co-payments, and deductibles expressly authorized by OAR-410-120 or OAR-410-141. A client cannot be billed for services or treatment that have been denied due to provider error (e.g. required documentation not submitted, prior authorization not obtained, non-covered diagnosis, etc.).

**5. Staff Standards**

COUNTY delegates to AGENCY the credentialing and recredentialing of employed and contracted staff who provide services to clients under this agreement. Pursuant to OAR 410-141-3120 "Operations and Provision of Health Services", AGENCY must, at a minimum, obtain and verify documents that provide evidence of primary source verification of credentials as follows:

- Appropriate education and academic degrees, as required;
- Licenses or certificates, as required;
- Relevant work history or qualifications, as required;
- Completion of a successful criminal history records check through the Oregon Law Enforcement Data System and compliant with ORS chapter 181 and OAR 407-007-0000 through 407-007-0370;
- Positive clearance by the National Practitioner Data Bank, as required;

- Positive clearance through the General Services Administration System for Award Management (SAM) at time of hire and monthly thereafter; and
- Positive clearance through the Office of Inspector General's List of Excluded Individuals/Entities at time of hire and monthly thereafter.

AGENCY shall not permit any person to provide services under this agreement if that person is listed on the non-procurement portion of the General Service Administration's SAM in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and Suspension" (2 CFR Part 180).

In addition, AGENCY shall not permit any person to provide services under this agreement who has been terminated from the Division of Medical Assistance Program or excluded as Medicare/Medicaid providers by the Centers for Medicare and Medicaid Services or who are subject to exclusion for any lawful conviction by a court for which the provider could be excluded under 42 CFR 1001.101 "Program Integrity – Medicare and State Health Care Programs Subpart B". AGENCY may not submit claims for services provided after the date of such exclusion, conviction or termination.

AGENCY assures that all AGENCY employees and independent contractors providing direct service under this agreement will work within the scope of their credentials and any applicable licensure or registration, or criteria for certification if not required to be licensed or registered pursuant to OAR 410-141-3120. AGENCY shall not allow services to be provided by an employee or independent contractor who does not have a valid license or certification required by state or federal law.

AGENCY ensures that all personnel providing services to clients under this agreement are properly trained and qualified to render the services they provide. AGENCY shall arrange for continuing education of personnel rendering services under this agreement as necessary to maintain such competence and satisfy all applicable licensing, certification or other regulatory requirements.

COUNTY reserves the right to review, upon reasonable notice and at AGENCY's site, the actual documents describing the credentials of AGENCY's employees and independent contractors for purposes of verification.

## **6. Recordkeeping**

### **a. Clinical Records, Access and Confidentiality**

- (1) **Clinical Records.** AGENCY shall ensure maintenance of recordkeeping consistent with OAR 410-141-3180, "Record Keeping and Use of Health Information Technology." The clinical record shall fully document the mental condition of the client and the services received by the client under this agreement. All clinical records relevant to this agreement shall be retained for at least seven (7) years after the date of clinical services for which claims are made, encounters reported, final payment is made, or all pending matters are closed, whichever time period is longer. If an audit, litigation, research and evaluation, or other action involving the records is started before the end of the seven-year-period, the records must be retained until all issues arising out of the action are resolved or until the end of the seven-year-period, whichever is later.
- (2) **Government Access to Records.** At all reasonable times, AGENCY and its subcontractors shall provide the Center for Medicare and Medicaid Services (CMS), the Comptroller General of the United States, the Oregon Secretary of State, the Oregon Department of Justice Medicaid Fraud Unit, Oregon Department of Human Services Office of Payment Accuracy and Recovery, OHA, COUNTY and all their duly authorized representatives the right of access to AGENCY's financial (including all accompanying billing records), clinical/medical, and personnel records that are directly pertinent to this agreement in order to monitor and



evaluate cost, performance, compliance, quality, appropriateness and timeliness of services provided, and the capacity of AGENCY to bear the risk of potential financial losses. These records shall be made available for the purpose of making audit, examination, excerpts and transcriptions. AGENCY shall, upon request and without charge, provide a suitable work area and copying capabilities to facilitate such a review or audit.

- (3) Confidentiality and Privacy of Records. The confidentiality of information concerning clients is subject to State and Federal guidelines, including but not limited to State (ORS 179.505 through 179.507, ORS 192.502, ORS 411.320, ORS 433.045(3)) and Federal (42 CFR Part 2, 42 CFR Part 431, Subpart F, 45 CFR 205.50) confidentiality laws and regulations. AGENCY and COUNTY shall not use, release, or disclose any information regarding a client for any purpose not directly connected with the administration of this agreement or under Title XIX of the Social Security Act, except with the written consent of the client or, if appropriate, the client's parent or guardian, or unless otherwise authorized by law. AGENCY shall ensure that its agents, employees, officers and subcontractors with access to client records understand and comply with this confidentiality provision.
- (4) Release of Information. AGENCY shall assure that COUNTY and any other cooperating health service providers have access to the applicable contents of the client's clinical record when necessary for use in the diagnosis or treatment of the client, to the extent such access is permitted by law. AGENCY shall release mental health service information requested by COUNTY or a provider involved in the care of a client within ten (10) business days of receiving a signed release. Except as provided in ORS 179.505(9), AGENCY shall provide the client or the client's legal guardian access to client's record and provide copies within ten (10) business days of any request for copies.
- (5) External Review. AGENCY shall cooperate with OHA by providing access to records and facilities for the purpose of an annual external, independent professional review of the quality outcomes and timeliness of, and access to, services under this agreement in accordance with 42 USC Section 1396a(a)(27); 42 CFR 431.107(b)(1) & (2); and 42 CFR 457.950(a)(3).
- (6) Keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving OHP assistance and shall furnish such information to any State or federal agency responsible for administering the OHP program regarding any payments claimed by such person or institution for providing OHP Services as the State or federal agency may from time to time request. 42 USC Section 1396a(a)(27); 42 CFR 431.107(b)(1) & (2); and 42 CFR 457.950(a)(3).

b. Financial Records

- (1) AGENCY shall establish and maintain policies and procedures related to financial management and financial records consistent with Generally Accepted Accounting Principles. AGENCY shall make such policies and procedures available to COUNTY upon request.
- (2) AGENCY shall maintain up-to-date accounting records that accurately reflect all revenue by source, all expenses by object of expense, and all assets, liabilities and equities consistent with Generally Accepted Accounting Principles and Oregon Administrative Rules. AGENCY shall make reports and fiscal data generated under and for this agreement available to COUNTY upon request.
- (3) COUNTY shall conduct a fiscal compliance review of AGENCY as part of compliance monitoring of this agreement. AGENCY agrees to provide, upon reasonable notice, access to all financial books, documents, papers and records of AGENCY which are pertinent to this agreement to ensure appropriate expenditure of funds under this agreement. COUNTY shall monitor compliance with COUNTY's financial reporting and accounting requirements.

- (4) AGENCY may be subject to audit requirements. AGENCY agrees that audits must be conducted by Certified Public Accountants who satisfy the Independence requirement outlined in the rules of the American Institute of Certified Public Accountants (Rule 101 of the AICPA Code of Professional Conduct), the Oregon State Board of Accountancy OAR 801-030-0005, the independence rules contained within Governmental Auditing Standards (2011 Revision), and rules promulgated by other federal, state and local government agencies with jurisdiction over AGENCY.
- (5) AGENCY shall establish and maintain systematic written procedures to assure timely and appropriate resolution of review or audit findings and recommendations. AGENCY shall make such procedures and documentation of resolution of audit findings available to COUNTY upon request.
- (6) Limited Scope and Full Audits shall be completed within nine (9) months of the close of AGENCY's fiscal year. Audit reports, including the Management Letter associated with the audit shall be submitted to COUNTY within two weeks from the date of the report. Failure to submit required audit reports and Management Letters shall be cause for withholding of contract payment until audits are submitted.

## **7. Reporting**

### **a. Abuse Reporting**

AGENCY shall comply with all processes and procedures of child abuse (ORS 419B.005 – 419B.050), mentally ill and developmentally disabled abuse (ORS 430.731 – 430.768 and OAR 943-045-0250 through 943-045-0370) and elder abuse reporting laws (ORS 124.050 – 124.092) as if AGENCY were a mandatory abuse reporter. If AGENCY is not a mandatory reporter by statute, these reporting requirements shall apply during work hour only. AGENCY shall immediately report to the proper State or law enforcement agency circumstances (and provide such other documentation as may be relevant) supporting reasonable cause to believe that any person has abused a child, a mentally ill or developmentally disabled adult or an elderly person, or that any such person has been abused.

### **b. Behavioral Health Electronic Data System**

AGENCY shall participate in the Oregon Health Authority (OHA)'s Enhanced Data Capture for all clients receiving Covered Services under this agreement. AGENCY shall submit all data to OHA via formats approved by OHA. AGENCY shall submit data in accordance with OHA timelines.

### **c. Delivery System Network (DSN) Provider Capacity Report**

AGENCY shall submit the DSN Provider Capacity report (see Attachment 1) to COUNTY in the prescribed format within thirty (30) days of the effective date of this agreement, indentifying all staff and independent contractors who will provide services to clients under this agreement. In addition, the DSN Provider Capacity Report shall be updated and resubmitted monthly to COUNTY.

### **d. Access to Care**

AGENCY shall submit the online regional access report to COUNTY in the prescribed format by the 15<sup>th</sup> of the month following services delivered.

## **8. Monitoring**

### a. Agreement Compliance Monitoring

COUNTY and OHA shall conduct agreement compliance and quality assurance monitoring related to this agreement. AGENCY shall cooperate with COUNTY and OHA in such monitoring. COUNTY shall provide AGENCY twenty (20) business days written notice of any agreement compliance and quality assurance monitoring activity that requires any action or cooperation by AGENCY. Notice of monitoring shall include the date the monitoring shall occur, names of individuals conducting the monitoring, and instructions and requests for information.

Should AGENCY found to be out of compliance with any requirement of this agreement, the following actions may be taken by COUNTY until the issue is resolved:

- Request a conference of the parties to determine the need for technical assistance
- Require a corrective action plan
- Disallow referral of new clients to AGENCY
- Put AGENCY on probationary status and suspend billing authority

Should the issue remain unresolved, COUNTY may consider AGENCY in breach and may terminate this agreement.

### b. External Quality Review

AGENCY agrees to participate with COUNTY in any evaluation project or performance report as designed by COUNTY or applicable State or Federal agency. AGENCY shall make all information required by any such evaluation project or process available to COUNTY or COUNTY's designee within thirty (30) business days of request.

## **9. Fraud and Abuse**

AGENCY shall comply with, and as indicated, cause all employees and subcontractors to comply with, the following requirements related to fraud and abuse. All elements of this Fraud and Abuse exhibit apply to services provided to uninsured, indigent individuals with the exception of reports to the Medicaid Fraud Control Unit (MFCU) which do not apply to indigent services.

### a. General

- (1) AGENCY, its employees and subcontractors shall comply with all provisions of the False Claims Act established under sections 3729 through 3733 of title 31, United States Code, administrative remedies for false claims and statements established under chapter 38 of title 31, United States Code, any Oregon laws pertaining to civil or criminal penalties for false claims and statements, and whistleblower protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste, and abuse in Federal health care programs (as defined in 42 USC 1320a-7b).
- (2) AGENCY, its employees and subcontractors shall comply with Oregon laws pertaining to false claims including the following: ORS 411.670 to 411.690 (submitting wrongful claim or payment prohibited; liability of person wrongfully receiving payment; amount of recovery); ORS 646.505 to 646.656 (unlawful trade practices); ORS chapter 162 (crimes related to perjury, false swearing and unsworn falsification); ORS chapter 164 (crimes related to theft); ORS chapter 165 (crimes involving fraud or deception), including but not limited to ORS 165.080 (falsification of business records) and ORS 165.690 to 165.698 (false claims for health care payments); ORS 659A.199 to 659A.224 (whistle blowing); OAR 410-120-1395 to 410-120-1510 (program integrity, sanctions, fraud and abuse); and common law claims

founded in fraud, including Fraud, Money Paid by Mistake and Money Paid by False Pretenses.

- (3) AGENCY shall include information in its employee handbooks or other appropriate documents on laws described above, regarding the rights of employees to be protected as whistleblowers.
- (4) AGENCY shall further have policies and procedures for detecting and preventing fraud, waste and abuse that shall, at a minimum, include a process for monitoring and auditing files, claims and staff performance.
- (5) Entities receiving \$5 million or more annually (under this contract and any other OHP contract) for furnishing Medicaid health care items or services shall, as a condition of receiving such payments, adopt written fraud, waste and Abuse policies and procedures and inform employees, contractors and agents about the policies and procedures in compliance with Section 6032 of the Deficit Reduction Act of 2005, 42 USC § 1396a(a)(68).
- (6) Certify when submitting any claim for the provision of OHP services that the information submitted is true, accurate and complete. AGENCY shall acknowledge AGENCY's understanding that payment of the claim will be from Federal and State funds and that any falsification or concealment of a material fact may be prosecuted under Federal and State laws.

b. Fraudulent Billing and False Claims

- (1) AGENCY will report verified and suspected cases of fraud and abuse to the Medicaid Fraud Control Unit (MFCU) and COUNTY within five (5) business day of discovery.
- (2) If it is determined that services billed by AGENCY were fraudulently billed, or that a false claim was submitted, or that an instance of abuse has occurred, the following disciplinary actions may be taken by COUNTY:
  - If abuse is determined, consider restitution of funds based on the severity of the abuse identified.
  - If fraud is determined or a false claim verified, require restitution of funds.
  - If the action identified is determined to be non-intentional, require a corrective action plan
  - Put AGENCY on probationary status and suspend billing authority until the issue is resolved
  - Termination of this agreement
- (3) COUNTY shall promptly refer all verified cases of Medicaid fraud and abuse to the MFCU, consistent with the Memorandum of Understanding between the State of Oregon Department of Human Services and the MFCU. COUNTY shall also refer cases of suspected Medicaid fraud and abuse to the MFCU prior to verification.
- (4) Participation of Suspended or Excluded Providers

AGENCY shall ensure that Covered Services may not be provided to clients by the following persons (or their affiliates as defined in the Federal Requisition Regulations):

- Persons who are currently suspended, debarred or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in non-procurement activities under regulations issues pursuant to Executive Order 12549 or under guidelines implementing such order; and
- Persons who are currently excluded from Medicaid participation under section 1128 or section 1128A of the Act; and
- Persons who are currently excluded from providing services under the Oregon Medical Assistance Program.

c. Examples of fraud and abuse that support referral to the MFCU and COUNTY

- (1) AGENCY who consistently demonstrates a pattern of intentionally reporting encounters or services that did not occur. A pattern would be evident in any case where 20% or more of sampled or audited services are not supported by documentation in the clinical records. This would include any suspected case where it appears that the provider knowingly or intentionally did not deliver the service or goods billed;
- (2) AGENCY who consistently demonstrates a pattern of intentionally reporting overstated or up coded levels of service. A pattern would be evident by 20% or more of sampled or audited services that are billed at a higher-level procedure code than is documented in the clinical records;
- (3) Any suspected case where the AGENCY intentionally or recklessly billed COUNTY more than the usual charge to non-Medicaid recipients or other insurance programs;
- (4) Any suspected case where the AGENCY purposefully altered, falsified, or destroyed clinical record documentation for the purpose of artificially inflating or obscuring his or her compliance rating or collecting Medicaid payments otherwise not due. This includes any deliberate misrepresentation or omission of fact that is material to the determination of benefits payable or services which are covered or should be rendered, including dates of service, charges or reimbursements from other sources, or the identity of the client or provider;
- (5) Providers who intentionally or recklessly make false statements about the credentials of persons rendering care to clients;
- (6) Providers who knowingly charge clients for services that are covered services or intentionally balance-bill a client the difference between the total fee-for-service charge and COUNTY's payment to the AGENCY, in violation of OHA rules.

d. Reporting suspected and verified cases of fraud or abuse

When a verified case of fraud or abuse exists, AGENCY will report the following information to the MFCU and COUNTY within five (5) business day of discovery of the suspected activity:

- Provider Name, Oregon Medicaid Provider Number, address and phone
- Type of provider
- Source and nature of complaint
- The approximate range of dollars involved

- The disposition of the complaint when known
- Number of complaints for the time period.

**Contact Information**

Report to: Medicaid Fraud Control Unit (MFCU)  
Phone: (971)673-1880  
Fax: (971)673-1890  
Address: 1515 SW 5th Ave., Suite 410, Portland, OR 97201

**Contact Information**

Report to: Clackamas Behavioral Health Division  
Contact: Compliance Policy Analyst  
Phone: (503)742-5335  
Fax: (503)742-5304  
Address: 2051 Kaen Road, Suite 367, Oregon City, OR 97045

**10. Compliance with Applicable Law**

AGENCY shall comply and, as indicated, cause all employees and subcontractors to comply with the following Federal requirements. For purposes of this agreement, all references to Federal and State laws are references to Federal and State laws as they may be amended from time to time.

a. Miscellaneous Federal Provisions

AGENCY shall comply and cause all subcontractors to comply with all federal laws, regulations and executive orders applicable to this Contract or to the delivery of Work. Without limiting the generality of the foregoing, AGENCY expressly agrees to comply and cause all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to this Contract: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) 45 CFR Part 84 which implements, Title V, Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Executive Order 11246, as amended, (e) the Health Insurance Portability and Accountability Act of 1996, as amended, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (j) all federal law governing operation of CMHPs, including without limitation, all federal laws requiring reporting of client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to this Contract and required by law to be so incorporated. No federal funds may be used to provide Work in violation of 42 USC 14402.

b. Equal Employment Opportunity

If this Contract, including amendments, is for more than \$10,000, then AGENCY shall comply and cause all subcontractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

c. Non-Discrimination

- (1) AGENCY shall comply with all federal and State laws and regulations including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972 (regarding education programs and activities) the Age Discrimination Act of 1975, the Rehabilitation Act of 1973,

the Americans with Disabilities Act (ADA) of 1990, and all amendments to those acts and all regulations promulgated thereunder. AGENCY shall also comply with all applicable requirements of State civil rights and rehabilitation statutes and rules.

- (2) AGENCY shall comply with and cause its subcontractors to comply with the integration mandate in 28 CFR 35.130(d), Title II of the Americans with Disabilities Act and its implementing regulations published in the Code of Federal Regulations.

d. Advance Directives

AGENCY shall provide adult clients with written information on Advance Directive policies and include a description of Oregon law. The written information provided by AGENCY must reflect changes in Oregon law as soon as possible, but no later than 90 days after the effective date of any change to Oregon law. AGENCY must also provide written information to adult clients with respect to the following:

- (1) Their rights under Oregon law;
- (2) AGENCY's policies respecting the implementation of those rights, including a statement of any limitation regarding the implementation of Advance Directives as a matter of conscience.
- (3) AGENCY must inform clients that complaints concerning noncompliance with the Advance Directive requirements may be filed with OHA.

e. Drug Free Workplace

AGENCY shall maintain and cause all subcontractors to maintain a drug-free workplace and shall notify employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in AGENCY's workplace. AGENCY shall establish a drug-free awareness program and provide each employee to be engaged in the provision of services under this agreement with information about its drug-free workplace program. AGENCY will further comply with additional applicable provisions of the Health Share of Oregon Core Contract.

f. Clinical Laboratory Improvement

If applicable to Scope of Work, AGENCY shall and shall ensure that any Laboratories used by AGENCY shall comply with the Clinical Laboratory Improvement Amendments (CLIA 1988), 42 CFR Part 493 Laboratory Requirements and ORS 438 (Clinical Laboratories, which require that all laboratory testing sites providing services under this agreement shall have either a Clinical Laboratory Improvement Amendments (CLIA) certificate of waiver or a certificate of registration along with a CLIA identification number. Those Laboratories with certificates of waiver will provide only the eight types of tests permitted under the terms of their waiver. Laboratories with certificates of registration may perform a full range of laboratory tests.

g. Clean Air, Clean Water, EPA Regulations

If this agreement, including amendments, exceeds \$100,000 then AGENCY shall comply and cause all subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to OHA, DHHS and the appropriate Regional Office of the Environmental Protection Agency. AGENCY shall include and cause all subcontractors to include

in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section.

h. Energy Efficiency

AGENCY shall comply and cause all subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6201 et seq. (Pub. L. 94- 163).

i. Resource Conservation and Recovery

AGENCY shall comply and cause all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 USC 6901 et. seq.). Section 6002 of that Act (codified at 42 USC 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.

j. Audits

AGENCY shall comply and, if applicable, cause a subcontractor to comply, with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations."

k. Truth in Lobbying

AGENCY certifies, to the best of the AGENCY's knowledge and belief that:

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of AGENCY, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, AGENCY shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- (3) AGENCY shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.
- (4) This certification is a material representation of fact upon which reliance was placed when this Contract was made or entered into. Submission of this certification is a prerequisite for making or entering into this agreement imposed by Section 1352, Title 31, of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



l. Conflict of Interest Safeguards

- (1) AGENCY and its subcontractors shall have in effect safeguards, including, but not limited to, policies and procedures against conflict of interest with any State of Oregon Department of Human Services employees or other agents of the State who have responsibilities relating to this agreement. These safeguards must be at least as effective as the safeguards specified in Section 27 of the Office of Federal Procurement Policy Act (41 USC 423) and must include safeguards to avoid conflicts that could be prohibited under 18 USC 207 or 208 if the Department of Human Services employee or agent was an officer or employee of the United States Government. For purposes of implementing policies and procedures required in this section, AGENCY shall apply the definitions in the State Public Ethics Law as if they applied to AGENCY for "Actual conflict of interest," ORS 244.020(1), "potential conflict of interest," ORS 244.020(14), and "client of household," ORS 244.020(12).
- (2) AGENCY shall not offer to any DHS or OHA employee (or any relative or member of their household) any gift or gifts with an aggregate value in excess of \$50 during a calendar year or any gift or payment of expenses for entertainment. "Gift" for this purpose has the meaning defined in ORS 244.020(6) and OAR 199-005-0001 to 199-005-0035.
- (3) "AGENCY" for purposes of this section includes all AGENCY's affiliates, assignees, subsidiaries, parent companies, successors and transferees, and persons under common control with the AGENCY; any officers, directors, partners, agents and employees of such person; and all others acting or claiming to act on their behalf or in concert with them.
- (4) AGENCY shall apply the definitions in the State Public Ethics Law, ORS 244.020, for "actual conflict of interest", "potential conflict of interest", "relative" and "member of household".

m. HIPAA Compliance

- (1) The parties acknowledge and agree that each of OHA and AGENCY is a "covered entity" for purposes of privacy and security provisions of the Health Insurance Portability and Accountability Act and the federal regulations implementing the Act (collectively referred to as HIPAA). OHA and AGENCY shall comply with HIPAA to the extent that any work or obligations of OHA arising under this agreement are covered by HIPAA.
- (2) AGENCY shall develop and implement such policies and procedures for maintaining the privacy and security of records and authorizing the use and disclosure of records required to comply with this agreement and with HIPAA. AGENCY shall comply and cause all subcontractors to comply with HIPAA and all the HIPAA provisions listed in the Health Share of Oregon Core Contract.
- (3) HIPAA Information Security. AGENCY shall adopt and employ reasonable administrative and physical safeguards consistent with the Security Rules in 45 CFR Part 164 to ensure that Member Information shall be used by or disclosed only to the extent necessary for the permitted use or disclosure and consistent with applicable State and federal laws and the terms and conditions of this agreement. Security incidents involving Member Information must be immediately reported to DHS' Privacy Officer.

**EXHIBIT C**  
**SCOPE OF WORK**

**Outpatient Mental Health Services**

AGENCY shall follow the Medical Necessity Criteria and Utilization Guidelines as outlined in the Health Share of Oregon Adult Utilization Management Guidelines and Child and Family Utilization Management Guidelines.

AGENCY shall ensure clinical staff are trained in the use of these guidelines including the service description, admission, continued stay and transition criteria

AGENCY shall ensure clinical staff are trained in the use of the Treatment Registration Form for initial and continued stay funding requests.

AGENCY shall provide a responsive, 24-hour, seven day per week coverage system to ensure access to services.

**Program Performance Measures:**

At a minimum, AGENCY shall track the performance measures identified below and detailed in program instructions prepared by COUNTY and incorporated into this contract by reference.

Program Goal	Performance Measure	Target # or %	Monthly Source
Maintain required access for routine, urgent and emergent appointments	Percent of individuals receiving routine initial appointments within 14 days of request	Target: 100%	Provider access reports Secret shopper calls Anecdotal information from clients and other partners, crisis lines
Ensure adequate and timely follow-up care for consumers after discharge from a hospital for mental illness	Percent of consumers who have an ambulatory mental health visit within seven (7) days of hospital discharge	Target: 90%	HSO Claims Data
Global Payment Implementation Measure All consumers receiving care after April 1, 2014 dates of service will have an authorization under new regional levels of care	Percent of consumers who have a regional level of care authorization documented in CIM by April 1, 2014  Percent of total individuals served with denied encounters for "no authorization" for service dates after April 1, 2014	Target: 100%  Target: 0%	HSO Claims Data

Program Goal	Performance Measure	Target # or %	Monthly Source
Levels of Care will be assigned accurately and with inter-rater reliability	Percent inter-rater reliability on the LOC assignment based on concurrent review of 10% of total monthly new authorizations up to a maximum of 30	Target: 75%	Agency Inter-rater reliability report  HSO inter-rater reliability concurrent review
Consumers are receiving the intensity of service that's within the LOC range	Ratio of Average Encounters Per Authorization Served by Level of Care to Target Average Encounters Served by Level of Care	Target: 75%	HSO Claims Data
Improve outcomes by the use of Treat to Target tools	Percent of consumers that have reached the target number of treatment sessions with positive outcomes Percent of consumers served that are evaluated using an outcomes measurement instrument.	Target: 50%  Target: 50%	New treat to target outcome measures developed and implemented by Health Share of Oregon.

AGENCY shall participate with COUNTY in evaluation of contracted project/service outcomes, satisfaction surveys, or performance, and to make available all information required by such evaluation process. This includes providing COUNTY with data necessary to verify consumer counts, service provision, and outcome measures.

**EXHIBIT D**

**COMPENSATION**

To receive payment AGENCY shall submit a CMS 1500 claim form to COUNTY's Third Party Administrator, Performance Health Technology Ltd (PH Tech) within 120 calendar days of the date of service in accordance with OAR 410-141-3420, "Billing and Payment". Claims may be submitted to PH Tech in either paper or electronic format.

Refer to Exhibit B, paragraph 4.d. for guidance regarding encounter submissions.

COPY

12  
 Cindy Becker  
 Director

July 10, 2014

Board of Commissioners  
 Clackamas County

Members of the Board:

**Approval of an Agency Service Contract with  
 Trillium Family Services for  
Home-Based Stabilization Services/Child Level D and Outpatient Mental Health Services**

<b>Purpose/Outcomes</b>	To provide intensive home-based stabilization services/child Level D and outpatient mental health services for people who are Oregon Health Plan (OHP) members' capitated to Clackamas County.
<b>Dollar Amount and Fiscal Impact</b>	The contract does not contain an upper limit; expenditures are controlled by Behavioral Health Division staff who pre-authorize and monitor services on an on-going basis.
<b>Funding Source</b>	Oregon Health Authority - no County General Funds are involved.
<b>Safety Impact</b>	None
<b>Duration</b>	Effective July 1, 2014 and terminates on June 30, 2015
<b>Previous Board Action</b>	The previous agreement was approved by the Board of County Commissioners on January 10, 2013 - agenda item 011013-A5
<b>Contact Person</b>	Jill Archer, Director – Behavioral Health Division - 742-5336
<b>Contract No.</b>	6819

**BACKGROUND:**

The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of an Agency Service Contract with Trillium Family Services for home-based stabilization services/child Level D and outpatient mental health services.

- Home-based stabilization services/child Level D provide resources intended to maintain or reintegrate children in their home to reduce out-of-home placements.
- Outpatient mental health services include an array of treatment such as individual and group therapy, skills training, case management and psychiatric services.

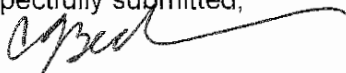
Such services are provided to persons enrolled in services through Clackamas County Behavioral Health Division. The Behavioral Health Division has partnered with Trillium Family Services for behavioral health services since 2005. This contract is a continuation of these services.

The contract is effective July 1, 2014 and continues through June 30, 2015. County Counsel has reviewed and approved this contract as part of the H3S contract standardization project.

**RECOMMENDATION:**

Staff recommends the Board approval of this contract and authorizes Cindy Becker, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,



Cindy Becker, Director

# AGENCY SERVICE CONTRACT

**Contract # 6819**

This Agency Service Contract is between Clackamas County acting by and through its Health, Housing and Human Services Department, Behavioral Health Division, hereinafter called "COUNTY," and **TRILLIUM FAMILY SERVICES**, hereinafter called "AGENCY." Throughout this contract and all exhibits, the term "DEPARTMENT" shall refer to and mean the State of Oregon, Oregon Health Authority.

## CONTRACT

### 1.0 Engagement

COUNTY hereby engages AGENCY to provide Home-Based Stabilization Services/Child Level D and Outpatient Mental Health Services as more fully described in Exhibit B, Scope of Work, attached hereto and incorporated herein.

### 2.0 Term

Services provided under the terms of this contract shall commence on **July 1, 2014** and shall terminate **June 30, 2015** unless terminated by one or both parties as provided for in paragraph 6.0 below.

### 3.0 Compensation and Fiscal Records

3.1 Compensation. COUNTY shall compensate AGENCY as specified in Exhibit C, Compensation. The payment shall be full compensation for work performed, for services rendered, and for all labor, materials, supplies, equipment, mileage, and incidentals necessary to perform the work and services.

3.2 Withholding of Contract Payments. Notwithstanding any other payment provision of this contract, should AGENCY fail to submit required reports when due, or submit reports which appear patently inaccurate or inadequate on their face, or fail to perform or document the performance of contracted services, COUNTY shall immediately withhold payments hereunder. Such withholding of payment for cause may continue until AGENCY submits required reports, performs required services, or establishes to COUNTY's satisfaction that such failure arose out of causes beyond the control, and without the fault or negligence, of AGENCY.

3.3 Financial Records. AGENCY and its subcontractors shall maintain complete and legible financial records pertaining in whole or in part to this contract. Such records shall be maintained in accordance with Generally Accepted Accounting Principles and/or other applicable accounting guidelines. Financial records and supporting documents shall be retained for at least six (6) years or such period as may be required by applicable law, following final payment is made under this agreement or until all pending matters are resolved, whichever period is longer. If an audit of financial records discloses that payments to AGENCY were in excess of the amount to which AGENCY was entitled, AGENCY shall repay the amount of the excess to COUNTY.

3.4 Access to Records and Facilities. COUNTY, DEPARTMENT, the Secretary of State's Office of the State of Oregon, the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers and records of AGENCY that are directly related to this contract, the funds paid to AGENCY hereunder, or any services delivered hereunder for the purpose of making audits, examinations, excerpts, and transcripts. In addition, AGENCY shall permit authorized representatives of COUNTY and DEPARTMENT to perform site reviews of all services delivered by AGENCY hereunder.

3.4.1 AGENCY shall maintain up-to-date accounting records that accurately reflect all revenue by source, all expenses by object of expense, and all assets, liabilities and equities consistent with Generally Accepted Accounting Principles and Oregon Administrative Rules. AGENCY shall make reports and fiscal data generated under and for this agreement available to COUNTY upon request.

3.4.2 COUNTY conduct a fiscal compliance review of AGENCY as part of compliance monitoring of this agreement. AGENCY agrees to provide, upon reasonable notice, access to all financial books, documents, papers and records of AGENCY which are pertinent to this agreement to ensure appropriate expenditure of funds under this agreement. COUNTY shall monitor compliance with COUNTY's financial reporting and accounting requirements.

3.4.3 AGENCY may be subject to audit requirements. AGENCY agrees that audits must be conducted by Certified Public Accountants who satisfy the independence requirement outlined in the rules of the American Institute of Certified Public Accountants (Rule 101 of the AICPA Code of Professional Conduct), the Oregon State Board of Accountancy, the independence rules contained within Governmental Auditing Standards (1994 Revision), and rules promulgated by other federal, state and local government agencies with jurisdiction over AGENCY.

3.4.4 AGENCY shall establish and maintain systematic written procedures to assure timely and appropriate resolution of review or audit findings and recommendations. AGENCY shall make such procedures and documentation of resolution of audit findings available to COUNTY upon request.

#### **4.0 Manner of Performance**

4.1 Compliance with Applicable Laws and Regulations and Special Federal Requirements. AGENCY shall comply with all Federal, State, local laws, rules, and regulations applicable to the work to be performed under this contract, including, but not limited to, all applicable Federal and State civil rights and rehabilitation statutes, rules and regulations, and as listed in Exhibit D, paragraph 9. Compliance with Applicable Law, attached hereto and incorporated herein by this reference. AGENCY shall comply with Oregon Administrative Rule (OAR) 410-120-1380, which establishes the requirements for compliance with Section 4751 of Omnibus Budget Reconciliation Act (OBRA) 1991 and ORS 127-649, Patient Self-Determination Act.

4.2 Precedence. A requirement listed both in the main boilerplate of this contract and in an exhibit, the exhibit shall take precedence.

4.3 Subcontracts. AGENCY shall not enter into any subcontracts for any of the work scheduled under this contract without obtaining prior written approval from COUNTY.

4.4 Independent Contractor. AGENCY certifies that it is an independent contractor and not an employee or agent of COUNTY, State, or Federal Government as those terms are used in ORS 30.265. Responsibility for all taxes, assessments, and any other charges imposed upon employers shall be the sole responsibility of AGENCY.

#### **5.0 General Conditions**

5.1 Indemnification. AGENCY agrees to indemnify, save, hold harmless, and defend COUNTY, its officers, commissioners and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of actions, suits, claims or demand attributable in whole or in part to the acts or omissions of AGENCY, and AGENCY's officers, agents, and employees, in performance of this contract.

AGENCY shall defend, save, hold harmless and indemnify the State of Oregon, AMH and their officers, agents and employees from and against all claims, suits, actions, damages, liabilities, costs and

expenses of whatsoever nature resulting from, arising out of, or relating to the activities or omissions of AGENCY, or its agents or employees under this contract.

If AGENCY is a public body, AGENCY's liability under this contract is subject to the limitations of the Oregon Tort Claims Act.

5.2 Insurance. During the term of this agreement, AGENCY shall maintain in force, at its own expense, each insurance noted below:

5.2.1 Commercial General Liability

Required by COUNTY                       Not required by COUNTY

AGENCY shall obtain, at AGENCY's expense, and keep in effect during the term of this Agreement, Commercial General Liability Insurance covering bodily injury and property damage on an "occurrence" form in the amount of not less than \$2,000,000 per occurrence/\$4,000,000 general aggregate for the protection of COUNTY, its officers, commissioners, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute it.

5.2.2 Commercial Automobile Liability

Required by COUNTY                       Not required by COUNTY

AGENCY shall also obtain at AGENCY's expense, and keep in effect during the term of the Agreement, "Symbol 1" Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$2,000,000.

5.2.3 Professional Liability

Required by COUNTY                       Not required by COUNTY

AGENCY agrees to furnish COUNTY evidence of professional liability insurance in the amount of not less than \$2,000,000 combined single limit per occurrence/\$4,000,000 general annual aggregate for malpractice or errors and omissions coverage for the protection of COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this Agreement. COUNTY, at its option, may require a complete copy of the above policy.

5.2.4 Tail Coverage. If liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this contract for a duration of thirty-six (36) months or the maximum time period the AGENCY's insurer will provide "tail" coverage as subscribed, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage provided its retroactive date is on or before the effective date of this contract.

5.2.5 Additional Insured Provisions. The insurance, other than the professional liability insurance, Workers' Compensation, and Personal Automobile Liability insurance, shall include "Clackamas County, its commissioners, agents, officers, and employees" as an additional insured.

5.2.6 Notice of Cancellation. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice to COUNTY.



Any failure to comply with this provision will not affect the insurance coverage provided to COUNTY. The 60 days notice of cancellation provision shall be physically endorsed on to the policy.

5.2.7 Insurance Carrier Rating. Coverages provided by AGENCY must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

5.2.8 Certificates of Insurance. As evidence of the insurance coverage required by this contract, AGENCY shall furnish a Certificate of Insurance to COUNTY. No contract shall be in effect until the required certificates have been received, approved and accepted by COUNTY. The certificate will specify that all insurance-related provisions within this contract have been complied with. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration.

5.2.9 Primary Coverage Clarification. AGENCY's coverage will be primary in the event of a loss.

5.2.10 Cross Liability Clause. A cross-liability or separation of insureds condition will be included in all general liability, professional liability, and errors and omissions policies required by this contract.

5.3 Governing Law; Consent to Jurisdiction. This agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Any claim, action, or suit between COUNTY and AGENCY that arises out of or relates to performance under this agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, State of Oregon. Provided, however, that if any such claim, action or suit may be brought only in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. AGENCY by execution of this agreement consents to the in personam jurisdiction of said courts.

5.4 Amendments. The terms of this contract shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written instrument signed by AGENCY and COUNTY.

5.5 Severability. If any term or provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

5.6 Waiver. The failure of either party to enforce any provision of this contract shall not constitute a waiver of that or any other provision.

5.7 Future Support. COUNTY makes no commitment of future support and assumes no obligation for future support of the activity contracted herein except as set forth in this contract.

5.8 Oregon Constitutional Limitations. This contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provision herein, which would conflict with such law, is deemed inoperative to that extent.

5.9 Oregon Public Contracting Requirements. Pursuant to the requirements of ORS 279B.020 and ORS 279B.220 through 279B.235 the following terms and conditions are made a part of this contract:

5.9.1 AGENCY shall:

- a. Make payments promptly, as due, to all persons supplying to AGENCY labor or materials for the prosecution of the work provided for in this contract.
- b. Pay all contributions or amounts due the Industrial Accident Fund from such agency or subcontractor incurred in performance of this contract.
- c. Not permit any lien or claim to be filed or prosecuted against COUNTY on account of any labor or material furnished.
- d. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

5.9.2 If AGENCY fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to AGENCY or a subcontractor by any person in connection with this contract as such claim becomes due, the proper officer representing COUNTY may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due AGENCY by reason of this contract.

5.9.3 No person shall be employed for more than ten (10) hours in any one day, or more than forty (40) hours in any one week, except in cases of necessity, emergency or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279A.055, the employee shall be paid at least time and one-half pay:

- a. for all overtime in excess of eight (8) hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday;
- b. for all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
- c. for all work performed on Saturday and on any legal holiday specified in ORS 279B.020.

5.9.4 AGENCY shall pay employees at least time and a half for all overtime work performed under this agreement in excess of 40 hours in any one week, except for individuals under person services contracts who are excluded under ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 U.S.C. 201 to 209) from receiving overtime.

5.9.5 As required by ORS 279B.230, AGENCY shall promptly, as due, make payment to any person, copartnership, association, or corporation furnishing medical, surgical, and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of AGENCY, of all sums that AGENCY agrees to pay for the services and all moneys and sums that AGENCY collected or deducted from the wages of its employees under any law, contract or agreement for the purpose of providing or paying for the services.

5.9.6 Workers' Compensation. All subject employers working under this agreement must either maintain workers' compensation insurance as required by ORS 656.017, or qualify for an exemption under ORS 656.126. AGENCY shall maintain employer's liability insurance with limits of \$500,000 each accident, \$500,000 disease each employee, and \$500,000 each policy limit.

5.10 Ownership of Work Product. All work products of the AGENCY which result from this contract are the exclusive property of COUNTY.

5.11 Integration. This contract contains the entire agreement between COUNTY and AGENCY and supersedes all prior written or oral discussions or agreements.

5.12 Successors in Interest. The provisions of this contract shall not be binding upon or inure to the benefit of AGENCY's successors in interest without COUNTY's explicit written consent.

## **6.0 Termination**

6.1 Termination Without Cause. This contract may be terminated by mutual consent of both parties, or by either party, upon ninety (90) days' notice, in writing or delivered by certified mail or in person.

6.2 Termination With Cause. COUNTY may terminate this contract effective upon delivery of written notice to AGENCY, or at such later date as may be established by COUNTY, under any of the following conditions:

6.2.1 Terms of the HealthShare Risk Accepting Entity Agreement are modified, changed or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding authorized by this contract.

6.2.2 The termination, suspension or expiration of the HealthShare Risk Accepting Entity Agreement.

6.2.3 COUNTY funding from Federal, State, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services. The contract may be modified to accommodate a reduction in funds.

6.2.4 COUNTY has evidence that AGENCY has endangered or is endangering the health or safety of clients, staff or the public. AGENCY shall ensure the orderly and reasonable transfer of care in progress with consumers and shall work with COUNTY staff to accomplish the same.

6.2.5 The lapse, relinquishment, suspension, expiration, cancellation or termination of any required license, certification or qualification of AGENCY, or the lapse relinquishment, suspension, expiration, cancellation or termination of AGENCY's insurance as required in this contract.

6.2.6 AGENCY's filing for protection under United States Bankruptcy Code, the appointment of a receiver to manage AGENCY's affairs, or the judicial declaration that AGENCY is insolvent.

6.2.7 AGENCY fails to perform any of the other provisions of this contract, or fails to pursue the work of this contract in accordance with its terms, and after written notice from the COUNTY, fails to correct such failures within ten (10) business days or such longer period as COUNTY may authorize.

6.2.8 Debarment and Suspension. COUNTY shall not permit any person or entity to be an AGENCY if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Non-procurement Programs" in accordance with Executive Orders No. 12,549 and No. 12,689, "Debarment and Suspension". (See 45 CFR part 76). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. COUNTY shall require all AGENCYs with awards that exceed the simplified acquisition threshold to provide the required certification regarding their exclusion status and that of their principals prior to award.

6.3 Notice of Default. COUNTY may also issue a written notice of default (including breach of contract) to AGENCY and terminate the whole or any part of this contract if AGENCY substantially fails to perform the specific provisions of this contract. The rights and remedies of COUNTY related to default (including breach of contract) by AGENCY shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

6.4 Transition. Any such termination of this contract shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

**7.0 Notices**

If to AGENCY:

Trillium Family Services  
3415 SE Powell Boulevard  
Portland, OR 97202-3396

If to COUNTY:

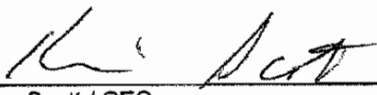
Clackamas County Behavioral Health Division  
Attention: Contract Administration  
2051 Kaen Road, # 367  
Oregon City, OR 97045

This contract consists of seven (7) sections plus the following exhibits and attachments which by this reference are incorporated herein:

Exhibit A	Definitions
Exhibit B	Scopes of Work
Exhibit C	Compensation
Exhibit D	Statement of General Conditions
Attachment 1	Invoice Template
Attachment 2	DSN Provider Capacity Report

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed by their duly authorized officers.

**TRILLIUM FAMILY SERVICES**

By:   
Kim Scott / CEO  
10-18-14  
Date  
3415 SE Powell Boulevard  
Street Address  
Portland, OR 97202-3396  
City/State/Zip  
(503) 813-7784 / (503) 205-0193  
Phone / Fax

**CLACKAMAS COUNTY**

Commissioner: John Ludlow, Chair  
Commissioner: Jim Bernard  
Commissioner: Paul Savas  
Commissioner: Martha Schrader  
Commissioner: Tootie Smith

**Signing on Behalf of the Board:**

Cindy Becker, Director  
Health, Housing and Human Services Department

Date

**EXHIBIT A**  
**DEFINITIONS**

Whenever used in this Agency Services Agreement, the following terms shall have the meanings set forth below:

AMH: State of Oregon, Department of Human Services, Addictions and Mental Health

AGENCY: entity contracted by COUNTY

Allowable Costs: costs described in OMB Circular A-87 except to the extent such costs are limited or excluded by other provisions of this contract

CCO: Coordinated Care Organization is an entity that has been certified as meeting the criteria adopted by the Oregon Health Authority under ORS 414.625 to be accountable for care management and to provide integrated and coordinated health care services

Community Outcome Management and Performance Accountability Support System (COMPASS): the AMH project to implement a new contracts system, roll out an optional free electronic health records systems (OWITS), and enhance the collection of data through MOTs

Contract: this Agency Services Contract between COUNTY and AGENCY for the provision of services

COUNTY: Clackamas County Behavioral Health Division

Covered Services: medically appropriate services specified in OAR 410-141-3120, "Operations and Provision of Health Services" and limited in accordance with OAR 410-141-3420, "Billing and Payment" for OHP Members. The term "Covered Services" may be expanded, limited, or otherwise changed pursuant to the Clackamas County Health Share of Oregon/Clackamas Participation Agreement and OARs. Covered Services may also refer to authorized services provided to uninsured, indigent clients.

DEPARTMENT: AMH contracts with COUNTY to establish and finance community mental health and addition programs; COUNTY, in turn, subcontracts certain services to AGENCY

DHS: Department of Human Services of the State of Oregon

Federal Funds: funds paid to AGENCY under this contract that are received from an agency, instrumentality or program of the Federal government of the United States

Health Share of Oregon: a Coordinated Care Organization serving Oregon Health Plan enrollees of Clackamas, Multnomah and Washington Counties.

Individual: an individual accessing publicly funded behavioral health services who is either an OHP Member or is determined eligible for services as an uninsured, indigent individual.

Mental Health Services: treatment services for individuals diagnosed with serious mental health illness, or other mental or emotional disturbance posing a danger to the health and safety of themselves or others

Medicaid: Federal funds received by OHA under the Title XIX of the Social Security Act and Children's Health Insurance Program Funds administered jointly with Title XIX funds as part of State medical assistance program by OHA

**Misexpenditure:** money, other than an overexpenditure disbursed to AGENCY by COUNTY under this agreement and expended by AGENCY that:

- (a) is identified by the Federal government as expended contrary to applicable statutes, rules, OMB Circulars or any other authority that governs the permissible expenditure of such money, for which the Federal government has requested reimbursement by the State of Oregon and whether in the form of a Federal determination of improper use of Federal funds, a Federal notice of disallowance, or otherwise; or
- (b) is identified by the COUNTY, State of Oregon or OHA as expended in a manner other than that permitted by this agreement, including without limitation, any money expended by AGENCY, contrary to applicable statutes, rules, OMB Circulars or any other authority that governs the permissible expenditure of such money; or
- (c) is identified by the COUNTY, State of Oregon or OHA as expended on the delivery of a service that did not meet the standards and requirements of this agreement with respect to that service

**Measures and Outcomes Tracking System (MOTS):** the AMH data system that stores client data submitted by AGENCY and/or COUNTY

**OAR:** Oregon Administrative Rules duly promulgated by the Oregon Health Authority and as amended from time to time.

**OHA:** the State of Oregon, acting by and through its Oregon Health Authority.

**OHP Member:** an individual found eligible by a division of the Oregon Department of Human Services to receive services under the OHP (Oregon Health Plan) Medicaid Demonstration Project or State Children's Health Insurance Program and who is enrolled with COUNTY as Health Share of Oregon/Clackamas.

**Oregon Web Infrastructure for Treatment Services (OWITS):** is 1) an optional free electronic health records system available to Counties and their Providers to submit the MOTS data, and 2) a system to manage the AMH services

**Primary Source Verification:** verification from the original source of a specific credential (education, training, licensure) to determine the accuracy of the qualifications of an individual health care practitioner. Examples of primary source verification include, but are not limited to, direct correspondence, telephone verification and internet verifications.

**Third Party Resources:** any individual, entity, or program that is, or may be, liable to pay all or part of the cost of any Covered Service furnished to an OHP Member, including but not limited to: private health insurance or group health plan; employment-related health insurance; medical support from absent parents; workers' compensation; Medicare; automobile liability insurance; other federal programs such as Veteran's Administration, Armed Forces Retirees and Dependent Act, Armed Forces Active Duty and Dependents Military Medical Benefits Act, and Medicare Parts A and B; another state's Title XIX, Title XXI or state-funded Medical Assistance Program; and personal estates.

**Valid Claim:** an invoice, in the form of a CMS 1500 claim form, submitted for payment of covered health services rendered to an eligible client that is submitted within the required 90 days from the date of service or discharge and that can be processed without obtaining additional information from the provider of the service or from a third party. A valid claim is synonymous with the federal definition of a clean claim as defined in 42 CFR 447.45(b).

## EXHIBIT B

### SCOPE OF WORK

#### 1. Home Based Stabilization Services/Child Level D

Home-Based Stabilization Services are a comprehensive, individualized service package that includes a mixture of professional, paraprofessional and natural supports and resources which are intended to maintain or reintegrate children and adolescents in their home and community and reduce out of home placements that are the result of mental health issues. Services are time limited with the goal of transition to a lower level of care.

Referrals will come only from the Clackamas County Children's Care Coordination Team and will be pre-authorized with utilization review to occur not less than monthly within the context of a Child and Family Team Meeting. Referrals for clients in acute care, sub-acute or residential settings will be prioritized and services will be initiated prior to discharge.

AGENCY is expected to manage utilization throughout the authorization period to ensure that the client is receiving services of the appropriate type and intensity that are clinically indicated and medically necessary.

A strengths and needs assessment will be completed for each child that includes all relevant domains of the comprehensive mental health assessment. Service planning and provision will be child and family-centered and are intended to create a comprehensive plan of care. AGENCY shall participate in Child and Family Team meetings to occur no less frequently than every 90 days. Child and family teams will include family members including involved biological family members, or foster parents, the Clackamas County Facilitator, involved providers and agencies such as Child Welfare, the child when appropriate, and any other natural, formal, and informal supports as identified by the family.

The program will demonstrate philosophy of families as equal partners and insure family involvement and participation in all phases of assessment, treatment planning and the child's treatment by documentation in the clinical record. AGENCY will have a policy and procedure on family involvement that includes specific supports to family members that address and prevent barriers to family involvement

Services and crisis intervention will be available 24 hours per day by a member of the home-based stabilization team familiar to the family. A face-to-face response will be provided when requested and when clinically indicated. Services will be primarily delivered in the home or other community-based locations during times convenient for the child and family, and will include a minimum of four contacts per week, up to daily contact. Services will be offered at times that are not only convenient for the family, but that are generally times of increased difficulty for a particularly family or youth. This may include late evenings, early mornings and weekends.

Services to be evidence-based whenever an evidence based practice exists that is appropriate for children with severe mental, emotional, or behavioral disorders. Specific services available will include: assessment, family therapy, parent education, parent coaching/skills training, after-school activities, recreational activities, case management, psychiatric evaluation and medication management, consultation, individual therapy, individual skills training, mentoring, in-home respite or child care, flexible services and supports, interpreter services, and multi-system coordination of care, linkage to natural and informal supports, coordination of services by non-traditional providers, or other services approved in the Service Coordination Plan.

Services will be flexible and tailored in frequency, intensity, type and duration to meet the individual child and family's needs. Services will be provided creatively, with attention to what is needed to safely maintain the child in the community setting, and may include flexible services such as overnight staff in a family home, skills training and support at the school, daily parent coaching, etc.

When applicable, active collaboration with Health Share of Oregon/ Clackamas completing the School Transition Protocol 60 days prior to discharge from an ISA level of care.

**Program Performance Measures.**

At a minimum, AGENCY shall track the performance measures identified below and detailed in program instructions prepared by COUNTY and incorporated into this contract by reference.

Program Goal	Performance Measure	Target # or %	Monthly Source
Maintain required access for routine, urgent and emergent appointments	Percent of individuals receiving routine initial appointments within 14 days of request	Target: 100%	Provider access reports Secret shopper calls Anecdotal information from clients and other partners, crisis lines
Ensure adequate and timely follow-up care for consumers after discharge from a hospital for mental illness	Percent of consumers who have an ambulatory mental health visit within seven (7) days of hospital discharge	Target: 90%	HSO Claims Data
Global Payment Implementation Measure All consumers receiving care after April 1, 2014 dates of service will have an authorization under new regional levels of care	Percent of consumers who have a regional level of care authorization documented in CIM by April 1, 2014  Percent of total individuals served with denied encounters for "no authorization" for service dates after April 1, 2014	Target: 100%  Target: 0%	HSO Claims Data
Levels of Care will be assigned accurately and with inter-rater reliability	Percent inter-rater reliability on the LOC assignment based on concurrent review of 10% of total monthly new authorizations up to a maximum of 30	Target: 75%	AGENCY Inter-rater reliability report HSO inter-rater reliability concurrent review
Consumers are receiving the intensity of service that's within the LOC range	Ratio of Average Encounters Per Authorization Served by Level of Care to Target Average Encounters Served by Level of Care	Target: 75%	HSO Claims Data



Program Goal	Performance Measure	Target # or %	Monthly Source
Improve outcomes by the use of Treat to Target tools	Percent of consumers that have reached the target number of treatment sessions with positive outcomes Percent of consumers served that are evaluated using an outcomes measurement instrument.	Target: 50%  Target: 50%	New treat to target outcome measures developed and implemented by Health Share of Oregon.

AGENCY shall participate with COUNTY in evaluation of contracted project/service outcomes, satisfaction surveys, or performance, and to make available all information required by such evaluation process. This includes providing COUNTY with data necessary to verify consumer counts, service provision, and outcome measures.

**2. Outpatient Mental Health Services:**

AGENCY shall follow the Medical Necessity Criteria and Utilization Guidelines as outlined in the Health Share of Oregon Adult Utilization Management Guidelines and Child and Family Utilization Management Guidelines.

AGENCY shall ensure clinical staff are trained in the use of these guidelines including the service description, admission, continued stay and transition criteria

AGENCY shall ensure clinical staff are trained in the use of the Treatment Registration Form for initial and continued stay funding requests.

AGENCY shall provide a responsive, 24-hour, seven day per week coverage system to ensure access to services.

**Program Performance Measures.**

At a minimum, AGENCY shall track the performance measures identified below and detailed in program instructions prepared by COUNTY and incorporated into this contract by reference.

Program Goal	Performance Measure	Target # or %	Monthly Source
Maintain required access for routine, urgent and emergent appointments	Percent of individuals receiving routine initial appointments within 14 days of request	Target: 100%	Provider access reports Secret shopper calls Anecdotal information from clients and other partners, crisis lines
Ensure adequate and timely follow-up care for consumers after discharge from a hospital for mental illness	Percent of consumers who have an ambulatory mental health visit within seven (7) days of hospital discharge	Target: 90%	HSO Claims Data

Program Goal	Performance Measure	Target # or %	Monthly Source
Global Payment Implementation Measure All consumers receiving care after April 1, 2014 dates of service will have an authorization under new regional levels of care	Percent of consumers who have a regional level of care authorization documented in CIM by April 1, 2014  Percent of total individuals served with denied encounters for "no authorization" for service dates after April 1, 2014	Target: 100%  Target: 0%	HSO Claims Data
Levels of Care will be assigned accurately and with inter-rater reliability	Percent inter-rater reliability on the LOC assignment based on concurrent review of 10% of total monthly new authorizations up to a maximum of 30	Target: 75%	Agency Inter-rater reliability report  HSO inter-rater reliability concurrent review
Consumers are receiving the intensity of service that's within the LOC range	Ratio of Average Encounters Per Authorization Served by Level of Care to Target Average Encounters Served by Level of Care	Target: 75%	HSO Claims Data
Improve outcomes by the use of Treat to Target tools	Percent of consumers that have reached the target number of treatment sessions with positive outcomes Percent of consumers served that are evaluated using an outcomes measurement instrument.	Target: 50%  Target: 50%	New treat to target outcome measures developed and implemented by Health Share of Oregon.

AGENCY shall participate with COUNTY in evaluation of contracted project/service outcomes, satisfaction surveys, or performance, and to make available all information required by such evaluation process. This includes providing COUNTY with data necessary to verify consumer counts, service provision, and outcome measures.

**EXHIBIT C**  
**COMPENSATION**

**Global Budget / Alternate Payment Methodology**

For services provided under the alternate payment methodology:

1. Contract Funding for Level of Care A, B, C, and D Outpatient Services.

- a. The estimated requirements funding for these services is subject to the limitations and requirements detailed in this contract.

Baseline OHP Global Budgets for AGENCY were based on July 2012 through June 2013 allowed paid claims for Outpatient Services associated with Child and Adult Levels of Care A, B, C, and D.

- b. COUNTY will pay AGENCY on a monthly allocation basis using the available annual budget amount. For the time periods listed below, COUNTY will pay the AGENCY as follows:

- July 1, 2014 through December 31, 2014: AGENCY will be notified in writing of limit.

- c. Phase 2 Global Budget Payment Methodology: July through December 2014

COUNTY will continue to pay AGENCY on a monthly allocation basis. AGENCY will be notified in writing of the monthly allocation amounts as well as the methodology used in determining them.

- d. Funding and monthly allocations will be unilaterally adjusted by COUNTY as necessary to meet service level requirements and to ensure the funds are being utilized to the maximum benefit of Health Share of Oregon members.

- e. Phase 3 Global Budget Payment Methodology: January 2015 through June 2015

COUNTY will notify AGENCY of the payment methodology and rates of payment in writing prior to January 1, 2015.

2. Global Budget Payments. AGENCY will submit a monthly invoice by the 10<sup>th</sup> of the month for services provided the prior month. AGENCY may use the invoice template provided (Attachment 1). AGENCY will reference contract # **6819** on all invoices and correspondence regarding this agreement. Invoices shall be submitted electronically to:

[healthcenterap@clackamas.us](mailto:healthcenterap@clackamas.us)

When submitting electronically, designate AGENCY name and contract # **6819** in the subject of the e-mail.

## EXHIBIT D

### STATEMENT OF GENERAL CONDITIONS

#### 1. Interpretation and Administration of Agreement

AGENCY acknowledges that this agreement between COUNTY and AGENCY is subject to the underlying Health Share of Oregon/Clackamas Risk Accepting Entity Participation Agreement between Health Share of Oregon and COUNTY, the Health Plan Services Contract between the Oregon Health Authority and Health Share of Oregon, the Oregon Revised Statutes concerning the Oregon Health Plan, and other applicable Oregon statutes and administrative rules concerning mental health services. If AGENCY believes that any provision of this agreement or COUNTY's interpretation thereof is in conflict with Federal and State statutes or regulations, AGENCY shall notify COUNTY in writing immediately.

AGENCY agrees to provide medically necessary services within the scope of its practice and license (hereinafter referred to as "services") to individuals assessed as having an eligible mental health condition specified in the Oregon Health Plan "Prioritized List of Mental Health Conditions", can benefit from those services, and as described below when authorized by COUNTY's treatment authorization process. AGENCY shall provide services in accordance with OAR 410-141-3120 "Operations and Provision of Health Services"; OAR 410-141-3420 "Billing and Payment"; and all DHS Rules in OAR Chapter 309 and any other administrative rules to which AGENCY is subject, as such rules may be amended from time to time. These laws, rules and regulations, are incorporated by reference herein to the extent that they are applicable to this agreement and required by law to be so incorporated. Services provided under this agreement are to be within the scope of AGENCY's licenses and certification, and the licenses, certifications and training of its employed and contracted staff providing direct services.

#### 2. General Performance Standards

COUNTY shall monitor services provided by AGENCY and has the right to require AGENCY's compliance with OHA and Health Share of Oregon established standards and other performance requirements relative to the quantity and quality of service and care, access to care, and administrative and fiscal management, and with all obligations and conditions stated in this agreement. AGENCY will notify COUNTY immediately in writing regarding issues related to access to care or any other potential violation of the conditions stated in this agreement.

##### a. Licenses and Certifications

By signing this agreement, AGENCY assures that all licenses and certifications required by statute or administrative rule are and will remain current and valid for all of AGENCY's employees and independent contractors providing direct service and for all of AGENCY's facilities in which services are provided. AGENCY assures that it is certified under OAR 309-012-0130 – 309-012-0220 or licensed under ORS Chapter 443 by the State of Oregon to deliver specified services. AGENCY will promptly notify COUNTY of the initiation of any action against any licenses or, if applicable, against any certifications by any certifying boards or organizations as well as any changes in AGENCY's practice ownership or business address, along with any other problem or situation that may relate to the ability of AGENCY to carry out the duties and obligations of this contract.

b. Eligibility and Authorization of Services

AGENCY shall verify eligibility and enrollment of clients prior to providing and billing for service and obtain authorization for the provision of covered services as necessary and appropriate according to COUNTY policies and procedures. AGENCY shall participate in the COUNTY concurrent review process. AGENCY understands that authorization for services will be based upon this review process.

c. Quality Assurance and Utilization Review

AGENCY shall cooperate with, and participate in, COUNTY's quality assurance and utilization review programs. AGENCY shall also participate in Health Share of Oregon quality initiatives as developed. Further, AGENCY shall have a planned, systematic, and ongoing process for monitoring, evaluating and improving the quality and appropriateness of Covered Services provided to clients.

AGENCY shall work with COUNTY staff to ensure that authorized services provided by AGENCY to clients are the most appropriate and cost efficient, and least restrictive. AGENCY staff shall make records available to COUNTY staff on site upon reasonable notice for purposes of utilization review.

d. Contractual Compliance

AGENCY shall ensure that all providers and staff employed or contracted by AGENCY who provide services to clients or are otherwise engaged in activities under this agreement are fully aware of and in compliance with the terms and conditions of this agreement.

e. Provider Appeal Process

AGENCY shall have the right to appeal actions by COUNTY or decisions concerning interpretation of the Health Share of Oregon/Clackamas Risk Accepting Entity Agreement as they apply to this agreement. Appeals shall be made in writing.

Appeals related to administrative or clinical decisions and all other matters shall be made to COUNTY Administration within thirty (30) calendar days of the date of the action being appealed. A decision shall be issued within twenty-one (21) business days of receipt of the written appeal. An appeal of that decision can be made in writing to the Director of Clackamas County Behavioral Health Division within fourteen (14) business days of the date of the decision. The Director will issue a decision within twenty-one (21) business days, and that decision will be final.

**3. Clinical Standards**

a. Clinical Guidelines

AGENCY shall adopt clinical guidelines that inform mental health practitioners, clients, family members and advocates with evidence-based information about mental illness and appropriate treatment options. Clinical guidelines should be based on a systematic evaluation of research evidence; be designed to assist, rather than dictate, clinical decision-making; and are to be applied on a case-by-case basis. Such guidelines should provide recommendations for appropriate care based on scientific evidence and professional consensus; support for professional standards, quality improvement activities and education; and a basis for comparing current practice to evidence-based best practices. AGENCY shall make such guidelines available to COUNTY upon request.

b. Outcome Measure

AGENCY shall adopt the use of a measure of clinical outcomes that demonstrates a change in client status following an episode of treatment. The measurement tool adopted shall identify changes in symptoms, functioning, quality of life, adverse events or satisfaction. AGENCY shall make information about outcome measures used available to COUNTY upon request.

c. Coordination of Care

- (1) AGENCY shall develop, implement and participate in activities supportive of a continuum of care that integrates mental health, addiction and physical health interventions in ways that are seamless and whole to the client. Integration activities may span a continuum ranging from communication to coordination to co-management to co-location to the fully integrated, person-centered health care home.
- (2) To insure appropriate coordination of services to enrolled individuals, AGENCY shall collaborate with allied agencies in the local service area, including but not limited to primary care clinics, housing authorities, chemical dependency agencies, juvenile justice, school districts, and Department of Human Resources, Child Welfare programs. AGENCY will make every effort to obtain a signed Release of Information at the onset of treatment, notifying the service partner in writing of preliminary diagnosis and prescribed medications, notifying of any major changes or medical complications that occurred during the course of treatment and notifying upon termination of treatment.
- (3) AGENCY shall coordinate with COUNTY on referral of clients to specialty behavioral health services or to a higher intensity of service. Specifically:
  - (i) AGENCY shall coordinate with COUNTY on both admission and discharge of clients to psychiatric acute care or sub-acute psychiatric care. AGENCY shall coordinate with COUNTY and the acute or sub-acute care provider on discharge planning and the development of community resources to aid in the timely discharge and community placement of the client. AGENCY shall assure an appointment with an appropriate provider within seven (7) days of discharge from acute care, sub-acute care or psychiatric residential treatment care.
  - (ii) AGENCY shall coordinate with COUNTY on referral of clients to crisis respite services, particularly as those services are used to divert the admission of the client to acute care.
  - (iii) AGENCY shall refer clients for a Level of Service Intensity Determination Screening when a higher intensity of service appears warranted.
  - (iv) AGENCY shall coordinate with COUNTY to obtain Long Term Care Determination for appropriate clients.

d. Crisis Response

AGENCY will be responsible for twenty-four hour, seven days a week crisis response for their enrolled individuals. AGENCY shall establish and follow a system for appropriate and timely response to emergency needs of individuals. During the period of service, AGENCY shall respond to all enrolled client emergencies. "Emergency" shall mean the sudden onset of a mental health condition manifesting itself by acute symptoms and one or more of the following circumstances are present: (1) the client is in imminent or potential danger of harming himself or others as a result of an eligible condition; (2) the client shows symptoms, e.g., hallucinations, agitation, delusions, etc., resulting in impairment in judgment, functioning and/or impulse control severe enough to endanger his or her own welfare or that of another person; or (3) there is an

immediate need for Services as a result of, or in conjunction with, a very serious situation such as an overdose, detoxification, potential suicide or violence. AGENCY will have a system of crisis response to individuals enrolled in their program. At a minimum, AGENCY will have a clinician available by phone for consultation at all times. This clinician shall be familiar with the case or shall have the ability to contact clinician(s) familiar with the case.

e. Standards of Care

COUNTY promotes resilience in and recovery of the clients it serves. COUNTY supports a system of care that promotes and sustains a client's recovery from a mental health condition by identifying and building upon the strengths and competencies within the person to assist them in achieving a meaningful life within their community. Consistent with these values, AGENCY shall:

- (1) Provide services in a manner that assures continuity and coordination of the health care services provided to each client;
- (2) Accept clients for treatment on the same basis that AGENCY accepts other clients and render services to clients in the same manner as provided to AGENCY's other clients. AGENCY shall not discriminate against clients because of source of payment, race, ethnicity, gender, gender identity, gender presentation, sexual orientation, national origin, ancestry, religion, creed, marital status, familial status, age, except when program eligibility is restricted to children, adults or older adults, source of income, disability and diagnosis;
- (3) Provide clients with access to services without undue delay and as soon as necessary in light of the member's mental health condition. AGENCY shall comply with access standards as set forth in OAR 410-141-3220 "Accessibility";
- (4) Conduct its practice and treat all clients using that degree of care, skill and diligence which is used by ordinarily careful providers in the same or similar circumstances in the provider's community or a similar community (see ORS 677.095);
- (5) Ensure that clients are served in the most normative, least restrictive, least intrusive and most cost effective level of care appropriate to their diagnosis and current symptoms, degree of impairment, level of functioning, treatment history, and extent of family and community supports;
- (6) Advise or advocate on behalf of clients in regard to treatment options, without restraint from COUNTY;
- (7) AGENCY shall employ a system of internal review to evaluate the care being provided within the agency, to modify service plans, adjust level of care being provided and consider duration of treatment. AGENCY will have a system of internal utilization management to assure that services are provided within the authorization maximum dollar amount, when applicable.
- (8) AGENCY shall have written policies and procedures that insure individuals receive a Notice of Action when service is denied, terminated, suspended or reduced without the client's agreement.
- (9) AGENCY shall have written policies and procedures related to consumer complaints as referenced in OAR 309-019-0125 and OAR 410-141-0260 through 410-141-0266.

#### **4. Encounter Submissions**

a. Usual and Customary Charges

AGENCY shall bill COUNTY according to their Usual and Customary fee schedule. AGENCY shall base their Usual and Customary charges on a cost study that is updated annually.

b. Compensation

AGENCY shall be reimbursed at the COUNTY reimbursement rates in effect as of the date of service or billed charges, whichever is less.

c. Third Party Resources and Coordination of Benefits

AGENCY shall bill and collect from liable third party resources prior to billing COUNTY. If both the third party resource and COUNTY reimburse AGENCY for the same service, COUNTY shall be entitled to a refund for the exact amount of duplicate payment received by AGENCY.

AGENCY shall be responsible for maintaining records in such a manner so as to ensure that all moneys collected from third-party resources on behalf of clients may be identified and reported to COUNTY on an individual client basis. AGENCY shall make these records available for audit and review consistent with the provisions upon request.

If AGENCY has knowledge that a client has third-party health insurance or health benefits, or that either client or AGENCY is entitled to payment by a third party, AGENCY shall immediately so advise COUNTY.

Pursuant to OAR 410-141-3160, "Integration and Care Coordination", COUNTY reserves the right to coordinate benefits with other health plans, insurance carriers, and government agencies. COUNTY may release medical information to such other parties as necessary to accomplish the coordination of benefits in conformity with the Health Insurance Portability and Accountability Act (HIPAA) 45 CFR 164 and 42 CFR Part 2. Coordination of benefits shall not result in compensation in excess of the amount determined by this agreement, except where State laws or regulations require the contrary.

d. Encounter Data

AGENCY shall submit to COUNTY accurate and complete encounter data in the form of a CMS 1500 claim form for each contact with a client. To encounter data and receive payment, when applicable, AGENCY shall submit a CMS 1500 claim form to COUNTY's Third Party Administrator, Performance Health Technology Ltd (PH Tech). AGENCY shall use its best efforts to supply encounter data once a month, and shall in all cases, supply encounter data no later than 120 calendar days after a contact with a client in accordance with OAR 410-141-3420, "Billing and Payment". Each encounter claim shall include such information as required in the Health Share of Oregon/Clackamas Risk Accepting Entity Participation Agreement and meet specifications as a Valid Claim. AGENCY shall use the most current DSM Multi-Axial Classification System. DSM codes shall be reported at the highest level of specificity. Claims may be submitted to PH Tech in either paper or electronic format.

PH Tech shall pay AGENCY on behalf of COUNTY, by the 45<sup>th</sup> business day after a valid claim is received, fee-for-service payments as specified in section 1 above. COUNTY shall have no obligation to make payment to AGENCY if AGENCY fails to obtain a valid authorization to provide services, fails to verify eligibility for Covered Services and the individual is not an eligible client on the date of service, if the services provided are not Covered Services, or if AGENCY fails to submit fee-for-service bills within 120 calendar days of the date of service. The timely filing



requirement is extended to 12 months when there is a Third Party Resource as the primary payor and to 12 months when Medicare is primary. To be considered for payment, claims resubmission requests submitted by AGENCY must be received by PH Tech within 120 days of the date of the first denial.

d. Non-Covered Services

AGENCY shall follow OAR 410-141-3420, "Billing and Payment", when submitting fee-for-service claims for services provided to OHP Members that are not Covered Services.

e. Payment in Full

Except as expressly provided below, payments to AGENCY made by COUNTY for services provided under the terms of this agreement shall constitute payment in full. OAR 410-141-3420, "Billing and Payment", AGENCY shall not bill, charge, seek compensation, remuneration or reimbursement from, or have any recourse against OHA or any client for services contracted hereunder, either during the term of this agreement or at any time later, even if COUNTY becomes insolvent. This provision shall not prohibit collection for non-covered services that may be the responsibility of the client or any permitted co-pays, co-insurance, deductibles or any other cost sharing, if any and as applicable. AGENCY may bill and collect separately for those costs which are lawfully the responsibility of the client. When combined with all sources of payment, COUNTY's payment to AGENCY shall not exceed the reimbursement amount in effect as of the date of service.

f. Overpayments

Any payments made by COUNTY to which AGENCY is not entitled under the terms of this agreement shall be considered an overpayment and shall be refunded by AGENCY within thirty (30) calendar days of the discovery, in accordance with OAR-410-120-1280, "Billing" and OAR 410-120-1397, "Recovery of Overpayments to Providers – Recoupments and Refunds". AGENCY must not seek payment from clients for any covered services, except any coinsurance, co-payments, and deductibles expressly authorized by OAR-410-120 or OAR-410-141. A client cannot be billed for services or treatment that have been denied due to provider error (e.g. required documentation not submitted, prior authorization not obtained, non-covered diagnosis, etc.).

**5. Staff Standards**

COUNTY delegates to AGENCY the credentialing and recredentialing of employed and contracted staff who provide services to clients under this agreement. Pursuant to OAR 410-141-3120 "Operations and Provision of Health Services", AGENCY must, at a minimum, obtain and verify documents that provide evidence of primary source verification of credentials as follows:

- Appropriate education and academic degrees, as required;
- Licenses or certificates, as required;
- Relevant work history or qualifications, as required;
- Completion of a successful criminal history records check through the Oregon Law Enforcement Data System and compliant with ORS chapter 181 and OAR 407-007-0000 through 407-007-0370;
- Positive clearance by the National Practitioner Data Bank, as required;

- Positive clearance through the General Services Administration System for Award Management (SAM) at time of hire and monthly thereafter; and
- Positive clearance through the Office of Inspector General's List of Excluded Individuals/Entities at time of hire and monthly thereafter.

AGENCY shall not permit any person to provide services under this agreement if that person is listed on the non-procurement portion of the General Service Administration's SAM in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and Suspension" (2 CFR Part 180).

In addition, AGENCY shall not permit any person to provide services under this agreement who has been terminated from the Division of Medical Assistance Program or excluded as Medicare/Medicaid providers by the Centers for Medicare and Medicaid Services or who are subject to exclusion for any lawful conviction by a court for which the provider could be excluded under 42 CFR 1001.101 "Program Integrity – Medicare and State Health Care Programs Subpart B". AGENCY may not submit claims for services provided after the date of such exclusion, conviction or termination.

AGENCY assures that all AGENCY employees and independent contractors providing direct service under this agreement will work within the scope of their credentials and any applicable licensure or registration, or criteria for certification if not required to be licensed or registered pursuant to OAR 410-141-3120. AGENCY shall not allow services to be provided by an employee or independent contractor who does not have a valid license or certification required by state or federal law.

AGENCY ensures that all personnel providing services to clients under this agreement are properly trained and qualified to render the services they provide. AGENCY shall arrange for continuing education of personnel rendering services under this agreement as necessary to maintain such competence and satisfy all applicable licensing, certification or other regulatory requirements.

COUNTY reserves the right to review, upon reasonable notice and at AGENCY's site, the actual documents describing the credentials of AGENCY's employees and independent contractors for purposes of verification.

## **6. Recordkeeping**

### **a. Clinical Records, Access and Confidentiality**

- (1) **Clinical Records.** AGENCY shall ensure maintenance of recordkeeping consistent with OAR 410-141-3180, "Record Keeping and Use of Health Information Technology." The clinical record shall fully document the mental condition of the client and the services received by the client under this agreement. All clinical records relevant to this agreement shall be retained for at least seven (7) years after the date of clinical services for which claims are made, encounters reported, final payment is made, or all pending matters are closed, whichever time period is longer. If an audit, litigation, research and evaluation, or other action involving the records is started before the end of the seven-year-period, the records must be retained until all issues arising out of the action are resolved or until the end of the seven-year-period, whichever is later.
- (2) **Government Access to Records.** At all reasonable times, AGENCY and its subcontractors shall provide the Center for Medicare and Medicaid Services (CMS), the Comptroller General of the United States, the Oregon Secretary of State, the Oregon Department of Justice Medicaid Fraud Unit, Oregon Department of Human Services Office of Payment Accuracy and Recovery, OHA, COUNTY and all their duly authorized representatives the right of access to AGENCY's financial (including all accompanying billing records), clinical/medical, and personnel records that are directly pertinent to this agreement in order to monitor and

evaluate cost, performance, compliance, quality, appropriateness and timeliness of services provided, and the capacity of AGENCY to bear the risk of potential financial losses. These records shall be made available for the purpose of making audit, examination, excerpts and transcriptions. AGENCY shall, upon request and without charge, provide a suitable work area and copying capabilities to facilitate such a review or audit.

- (3) Confidentiality and Privacy of Records. The confidentiality of information concerning clients is subject to State and Federal guidelines, including but not limited to State (ORS 179.505 through 179.507, ORS 192.502, ORS 411.320, ORS 433.045(3)) and Federal (42 CFR Part 2, 42 CFR Part 431, Subpart F, 45 CFR 205.50) confidentiality laws and regulations. AGENCY and COUNTY shall not use, release, or disclose any information regarding a client for any purpose not directly connected with the administration of this agreement or under Title XIX of the Social Security Act, except with the written consent of the client or, if appropriate, the client's parent or guardian, or unless otherwise authorized by law. AGENCY shall ensure that its agents, employees, officers and subcontractors with access to client records understand and comply with this confidentiality provision.
- (4) Release of Information. AGENCY shall assure that COUNTY and any other cooperating health service providers have access to the applicable contents of the client's clinical record when necessary for use in the diagnosis or treatment of the client, to the extent such access is permitted by law. AGENCY shall release mental health service information requested by COUNTY or a provider involved in the care of a client within ten (10) business days of receiving a signed release. Except as provided in ORS 179.505(9), AGENCY shall provide the client or the client's legal guardian access to client's record and provide copies within ten (10) business days of any request for copies.
- (5) External Review. AGENCY shall cooperate with OHA by providing access to records and facilities for the purpose of an annual external, independent professional review of the quality outcomes and timeliness of, and access to, services under this agreement in accordance with 42 USC Section 1396a(a)(27); 42 CFR 431.107(b)(1) & (2); and 42 CFR 457.950(a)(3).
- (6) Keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving OHP assistance and shall furnish such information to any State or federal agency responsible for administering the OHP program regarding any payments claimed by such person or institution for providing OHP Services as the State or federal agency may from time to time request. 42 USC Section 1396a(a)(27); 42 CFR 431.107(b)(1) & (2); and 42 CFR 457.950(a)(3).

b. Financial Records

- (1) AGENCY shall establish and maintain policies and procedures related to financial management and financial records consistent with Generally Accepted Accounting Principles. AGENCY shall make such policies and procedures available to COUNTY upon request.
- (2) AGENCY shall maintain up-to-date accounting records that accurately reflect all revenue by source, all expenses by object of expense, and all assets, liabilities and equities consistent with Generally Accepted Accounting Principles and Oregon Administrative Rules. AGENCY shall make reports and fiscal data generated under and for this agreement available to COUNTY upon request.
- (3) COUNTY shall conduct a fiscal compliance review of AGENCY as part of compliance monitoring of this agreement. AGENCY agrees to provide, upon reasonable notice, access to all financial books, documents, papers and records of AGENCY which are pertinent to this agreement to ensure appropriate expenditure of funds under this agreement. COUNTY shall monitor compliance with COUNTY's financial reporting and accounting requirements.

- (4) AGENCY may be subject to audit requirements. AGENCY agrees that audits must be conducted by Certified Public Accountants who satisfy the Independence requirement outlined in the rules of the American Institute of Certified Public Accountants (Rule 101 of the AICPA Code of Professional Conduct), the Oregon State Board of Accountancy OAR 801-030-0005, the independence rules contained within Governmental Auditing Standards (2011 Revision), and rules promulgated by other federal, state and local government agencies with jurisdiction over AGENCY.
- (5) AGENCY shall establish and maintain systematic written procedures to assure timely and appropriate resolution of review or audit findings and recommendations. AGENCY shall make such procedures and documentation of resolution of audit findings available to COUNTY upon request.
- (6) Limited Scope and Full Audits shall be completed within nine (9) months of the close of AGENCY's fiscal year. Audit reports, including the Management Letter associated with the audit shall be submitted to COUNTY within two weeks from the date of the report. Failure to submit required audit reports and Management Letters shall be cause for withholding of contract payment until audits are submitted.

## 7. Reporting

### a. Abuse Reporting

AGENCY shall comply with all processes and procedures of child abuse (ORS 419B.005 – 419B.050), mentally ill and developmentally disabled abuse (ORS 430.731 – 430.768 and OAR 943-045-0250 through 943-045-0370) and elder abuse reporting laws (ORS 124.050 – 124.092) as if AGENCY were a mandatory abuse reporter. If AGENCY is not a mandatory reporter by statute, these reporting requirements shall apply during work hour only. AGENCY shall immediately report to the proper State or law enforcement agency circumstances (and provide such other documentation as may be relevant) supporting reasonable cause to believe that any person has abused a child, a mentally ill or developmentally disabled adult or an elderly person, or that any such person has been abused.

### b. Behavioral Health Electronic Data System

AGENCY shall participate in the Oregon Health Authority (OHA)'s Enhanced Data Capture for all clients receiving Covered Services under this agreement. AGENCY shall submit all data to OHA via formats approved by OHA. AGENCY shall submit data in accordance with OHA timelines.

### c. Delivery System Network (DSN) Provider Capacity Report

AGENCY shall submit the DSN Provider Capacity report (see Attachment 2) to COUNTY in the prescribed format within thirty (30) days of the effective date of this agreement, indentifying all staff and independent contractors who will provide services to clients under this agreement. In addition, the DSN Provider Capacity Report shall be updated and resubmitted monthly to COUNTY.

### d. Access to Care for Outpatient Mental Health Services

AGENCY shall submit the online regional access report to COUNTY in the prescribed format by the 15<sup>th</sup> of the month following services delivered.

## **8. Monitoring**

### a. Agreement Compliance Monitoring

COUNTY and OHA shall conduct agreement compliance and quality assurance monitoring related to this agreement. AGENCY shall cooperate with COUNTY and OHA in such monitoring. COUNTY shall provide AGENCY twenty (20) business days written notice of any agreement compliance and quality assurance monitoring activity that requires any action or cooperation by AGENCY. Notice of monitoring shall include the date the monitoring shall occur, names of individuals conducting the monitoring, and instructions and requests for information.

Should AGENCY found to be out of compliance with any requirement of this agreement, the following actions may be taken by COUNTY until the issue is resolved:

- Request a conference of the parties to determine the need for technical assistance
- Require a corrective action plan
- Disallow referral of new clients to AGENCY
- Put AGENCY on probationary status and suspend billing authority

Should the issue remain unresolved, COUNTY may consider AGENCY in breach and may terminate this agreement.

### b. External Quality Review

AGENCY agrees to participate with COUNTY in any evaluation project or performance report as designed by COUNTY or applicable State or Federal agency. AGENCY shall make all information required by any such evaluation project or process available to COUNTY or COUNTY's designee within thirty (30) business days of request.

## **9. Fraud and Abuse**

AGENCY shall comply with, and as indicated, cause all employees and subcontractors to comply with, the following requirements related to fraud and abuse. All elements of this Fraud and Abuse exhibit apply to services provided to uninsured, indigent individuals with the exception of reports to the Medicaid Fraud Control Unit (MFCU) which do not apply to indigent services.

### a. General

- (1) AGENCY, its employees and subcontractors shall comply with all provisions of the False Claims Act established under sections 3729 through 3733 of title 31, United States Code, administrative remedies for false claims and statements established under chapter 38 of title 31, United States Code, any Oregon laws pertaining to civil or criminal penalties for false claims and statements, and whistleblower protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste, and abuse in Federal health care programs (as defined in 42 USC 1320a-7b).
- (2) AGENCY, its employees and subcontractors shall comply with Oregon laws pertaining to false claims including the following: ORS 411.670 to 411.690 (submitting wrongful claim or payment prohibited; liability of person wrongfully receiving payment; amount of recovery); ORS 646.505 to 646.656 (unlawful trade practices); ORS chapter 162 (crimes related to perjury, false swearing and unsworn falsification); ORS chapter 164 (crimes related to theft); ORS chapter 165 (crimes involving fraud or deception), including but not limited to ORS 165.080 (falsification of business records) and ORS 165.690 to 165.698 (false claims for health care payments); ORS 659A.199 to 659A.224 (whistle blowing); OAR 410-120-1395 to 410-120-1510 (program integrity, sanctions, fraud and abuse); and common law claims

founded in fraud, including Fraud, Money Paid by Mistake and Money Paid by False Pretenses.

- (3) AGENCY shall include information in its employee handbooks or other appropriate documents on laws described above, regarding the rights of employees to be protected as whistleblowers.
- (4) AGENCY shall further have policies and procedures for detecting and preventing fraud, waste and abuse that shall, at a minimum, include a process for monitoring and auditing files, claims and staff performance.
- (5) Entities receiving \$5 million or more annually (under this contract and any other OHP contract) for furnishing Medicaid health care items or services shall, as a condition of receiving such payments, adopt written fraud, waste and Abuse policies and procedures and inform employees, contractors and agents about the policies and procedures in compliance with Section 6032 of the Deficit Reduction Act of 2005, 42 USC § 1396a(a)(68).
- (6) Certify when submitting any claim for the provision of OHP services that the information submitted is true, accurate and complete. AGENCY shall acknowledge AGENCY's understanding that payment of the claim will be from Federal and State funds and that any falsification or concealment of a material fact may be prosecuted under Federal and State laws.

b. Fraudulent Billing and False Claims

- (1) AGENCY will report verified and suspected cases of fraud and abuse to the Medicaid Fraud Control Unit (MFCU) and COUNTY within five (5) business day of discovery.
- (2) If it is determined that services billed by AGENCY were fraudulently billed, or that a false claim was submitted, or that an instance of abuse has occurred, the following disciplinary actions may be taken by COUNTY:
  - If abuse is determined, consider restitution of funds based on the severity of the abuse identified.
  - If fraud is determined or a false claim verified, require restitution of funds.
  - If the action identified is determined to be non-intentional, require a corrective action plan
  - Put AGENCY on probationary status and suspend billing authority until the issue is resolved
  - Termination of this agreement
- (3) COUNTY shall promptly refer all verified cases of Medicaid fraud and abuse to the MFCU, consistent with the Memorandum of Understanding between the State of Oregon Department of Human Services and the MFCU. COUNTY shall also refer cases of suspected Medicaid fraud and abuse to the MFCU prior to verification.
- (4) Participation of Suspended or Excluded Providers

AGENCY shall ensure that Covered Services may not be provided to clients by the following persons (or their affiliates as defined in the Federal Requisition Regulations):

- Persons who are currently suspended, debarred or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in non-procurement activities under regulations issues pursuant to Executive Order 12549 or under guidelines implementing such order; and
- Persons who are currently excluded from Medicaid participation under section 1128 or section 1128A of the Act; and
- Persons who are currently excluded from providing services under the Oregon Medical Assistance Program.

c. Examples of fraud and abuse that support referral to the MFCU and COUNTY

- (1) AGENCY who consistently demonstrates a pattern of intentionally reporting encounters or services that did not occur. A pattern would be evident in any case where 20% or more of sampled or audited services are not supported by documentation in the clinical records. This would include any suspected case where it appears that the provider knowingly or intentionally did not deliver the service or goods billed;
- (2) AGENCY who consistently demonstrates a pattern of intentionally reporting overstated or up coded levels of service. A pattern would be evident by 20% or more of sampled or audited services that are billed at a higher-level procedure code than is documented in the clinical records;
- (3) Any suspected case where the AGENCY intentionally or recklessly billed COUNTY more than the usual charge to non-Medicaid recipients or other insurance programs;
- (4) Any suspected case where the AGENCY purposefully altered, falsified, or destroyed clinical record documentation for the purpose of artificially inflating or obscuring his or her compliance rating or collecting Medicaid payments otherwise not due. This includes any deliberate misrepresentation or omission of fact that is material to the determination of benefits payable or services which are covered or should be rendered, including dates of service, charges or reimbursements from other sources, or the identity of the client or provider;
- (5) Providers who intentionally or recklessly make false statements about the credentials of persons rendering care to clients;
- (6) Providers who knowingly charge clients for services that are covered services or intentionally balance-bill a client the difference between the total fee-for-service charge and COUNTY's payment to the AGENCY, in violation of OHA rules.

d. Reporting suspected and verified cases of fraud or abuse

When a verified case of fraud or abuse exists, AGENCY will report the following information to the MFCU and COUNTY within five (5) business day of discovery of the suspected activity:

- Provider Name, Oregon Medicaid Provider Number, address and phone
- Type of provider
- Source and nature of complaint
- The approximate range of dollars involved

- The disposition of the complaint when known
- Number of complaints for the time period.

**Contact Information**

Report to: Medicaid Fraud Control Unit (MFCU)  
Phone: (971)673-1880  
Fax: (971)673-1890  
Address: 1515 SW 5th Ave., Suite 410, Portland, OR 97201

**Contact Information**

Report to: Clackamas Behavioral Health Division  
Contact: Compliance Policy Analyst  
Phone: (503)742-5335  
Fax: (503)742-5304  
Address: 2051 Kaen Road, Suite 367, Oregon City, OR 97045

**10. Compliance with Applicable Law**

AGENCY shall comply and, as indicated, cause all employees and subcontractors to comply with the following Federal requirements. For purposes of this agreement, all references to Federal and State laws are references to Federal and State laws as they may be amended from time to time.

a. Miscellaneous Federal Provisions

AGENCY shall comply and cause all subcontractors to comply with all federal laws, regulations and executive orders applicable to this Contract or to the delivery of Work. Without limiting the generality of the foregoing, AGENCY expressly agrees to comply and cause all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to this Contract: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) 45 CFR Part 84 which implements, Title V, Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Executive Order 11246, as amended, (e) the Health Insurance Portability and Accountability Act of 1996, as amended, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (j) all federal law governing operation of CMHPs, including without limitation, all federal laws requiring reporting of client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to this Contract and required by law to be so incorporated. No federal funds may be used to provide Work in violation of 42 USC 14402.

b. Equal Employment Opportunity

If this Contract, including amendments, is for more than \$10,000, then AGENCY shall comply and cause all subcontractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

c. Non-Discrimination

- (1) AGENCY shall comply with all federal and State laws and regulations including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972 (regarding education programs and activities) the Age Discrimination Act of 1975, the Rehabilitation Act of 1973,



the Americans with Disabilities Act (ADA) of 1990, and all amendments to those acts and all regulations promulgated thereunder. AGENCY shall also comply with all applicable requirements of State civil rights and rehabilitation statutes and rules.

- (2) AGENCY shall comply with and cause its subcontractors to comply with the integration mandate in 28 CFR 35.130(d), Title II of the Americans with Disabilities Act and its implementing regulations published in the Code of Federal Regulations.

d. Advance Directives

AGENCY shall provide adult clients with written information on Advance Directive policies and include a description of Oregon law. The written information provided by AGENCY must reflect changes in Oregon law as soon as possible, but no later than 90 days after the effective date of any change to Oregon law. AGENCY must also provide written information to adult clients with respect to the following:

- (1) Their rights under Oregon law;
- (2) AGENCY's policies respecting the implementation of those rights, including a statement of any limitation regarding the implementation of Advance Directives as a matter of conscience.
- (3) AGENCY must inform clients that complaints concerning noncompliance with the Advance Directive requirements may be filed with OHA.

e. Drug Free Workplace

AGENCY shall maintain and cause all subcontractors to maintain a drug-free workplace and shall notify employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in AGENCY's workplace. AGENCY shall establish a drug-free awareness program and provide each employee to be engaged in the provision of services under this agreement with information about its drug-free workplace program. AGENCY will further comply with additional applicable provisions of the Health Share of Oregon Core Contract.

f. Clinical Laboratory Improvement

If applicable to Scope of Work, AGENCY shall and shall ensure that any Laboratories used by AGENCY shall comply with the Clinical Laboratory Improvement Amendments (CLIA 1988), 42 CFR Part 493 Laboratory Requirements and ORS 438 (Clinical Laboratories, which require that all laboratory testing sites providing services under this agreement shall have either a Clinical Laboratory Improvement Amendments (CLIA) certificate of waiver or a certificate of registration along with a CLIA identification number. Those Laboratories with certificates of waiver will provide only the eight types of tests permitted under the terms of their waiver. Laboratories with certificates of registration may perform a full range of laboratory tests.

g. Clean Air, Clean Water, EPA Regulations

If this agreement, including amendments, exceeds \$100,000 then AGENCY shall comply and cause all subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to OHA, DHHS and the appropriate Regional Office of the Environmental Protection Agency. AGENCY shall include and cause all subcontractors to include

in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section.

h. Energy Efficiency

AGENCY shall comply and cause all subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6201 et seq. (Pub. L. 94- 163).

i. Resource Conservation and Recovery

AGENCY shall comply and cause all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 USC 6901 et. seq.). Section 6002 of that Act (codified at 42 USC 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.

j. Audits

AGENCY shall comply and, if applicable, cause a subcontractor to comply, with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations."

k. Truth in Lobbying

AGENCY certifies, to the best of the AGENCY's knowledge and belief that:

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of AGENCY, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, AGENCY shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- (3) AGENCY shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.
- (4) This certification is a material representation of fact upon which reliance was placed when this Contract was made or entered into. Submission of this certification is a prerequisite for making or entering into this agreement imposed by Section 1352, Title 31, of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

i. Conflict of Interest Safeguards

- (1) AGENCY and its subcontractors shall have in effect safeguards, including, but not limited to, policies and procedures against conflict of interest with any State of Oregon Department of Human Services employees or other agents of the State who have responsibilities relating to this agreement. These safeguards must be at least as effective as the safeguards specified in Section 27 of the Office of Federal Procurement Policy Act (41 USC 423) and must include safeguards to avoid conflicts that could be prohibited under 18 USC 207 or 208 if the Department of Human Services employee or agent was an officer or employee of the United States Government. For purposes of implementing policies and procedures required in this section, AGENCY shall apply the definitions in the State Public Ethics Law as if they applied to AGENCY for "Actual conflict of interest," ORS 244.020(1), "potential conflict of interest," ORS 244.020(14), and "client of household," ORS 244.020(12).
- (2) AGENCY shall not offer to any DHS or OHA employee (or any relative or member of their household) any gift or gifts with an aggregate value in excess of \$50 during a calendar year or any gift of payment of expenses for entertainment. "Gift" for this purpose has the meaning defined in ORS 244.020(6) and OAR 199-005-0001 to 199-005-0035.
- (3) "AGENCY" for purposes of this section includes all AGENCY's affiliates, assignees, subsidiaries, parent companies, successors and transferees, and persons under common control with the AGENCY; any officers, directors, partners, agents and employees of such person; and all others acting or claiming to act on their behalf or in concert with them.
- (4) AGENCY shall apply the definitions in the State Public Ethics Law, ORS 244.020, for "actual conflict of interest", "potential conflict of interest", "relative" and "member of household".

m. HIPAA Compliance

- (1) The parties acknowledge and agree that each of OHA and AGENCY is a "covered entity" for purposes of privacy and security provisions of the Health Insurance Portability and Accountability Act and the federal regulations implementing the Act (collectively referred to as HIPAA). OHA and AGENCY shall comply with HIPAA to the extent that any work or obligations of OHA arising under this agreement are covered by HIPAA.
- (2) AGENCY shall develop and implement such policies and procedures for maintaining the privacy and security of records and authorizing the use and disclosure of records required to comply with this agreement and with HIPAA. AGENCY shall comply and cause all subcontractors to comply with HIPAA and all the HIPAA provisions listed in the Health Share of Oregon Core Contract.
- (3) HIPAA Information Security. AGENCY shall adopt and employ reasonable administrative and physical safeguards consistent with the Security Rules in 45 CFR Part 164 to ensure that Member Information shall be used by or disclosed only to the extent necessary for the permitted use or disclosure and consistent with applicable State and federal laws and the terms and conditions of this agreement. Security incidents involving Member Information must be immediately reported to DHS' Privacy Officer.

# AGENCY SERVICE CONTRACT

Contract # 6717

This Agency Service Contract is between Clackamas County acting by and through its Health, Housing and Human Services Department, Behavioral Health Division, hereinafter called "COUNTY," and **TRILLIUM FAMILY SERVICES**, hereinafter called "AGENCY." Throughout this contract and all exhibits, the term "DEPARTMENT" shall refer to and mean the State of Oregon, Oregon Health Authority.

## CONTRACT

### 1.0 Engagement

COUNTY hereby engages AGENCY to provide psychiatric day treatment services for children, psychiatric residential treatment services, and sub-acute psychiatric services for children as more fully described in Exhibit B, Scope of Work, attached hereto and incorporated herein.

### 2.0 Term

Services provided under the terms of this contract shall commence on **July 1, 2014** and shall terminate **June 30, 2015** unless terminated by one or both parties as provided for in paragraph 6.0 below.

### 3.0 Compensation and Fiscal Records

3.1 Compensation. COUNTY shall compensate AGENCY as specified in Exhibit C, Compensation. The payment shall be full compensation for work performed, for services rendered, and for all labor, materials, supplies, equipment, mileage, and incidentals necessary to perform the work and services.

3.2 Withholding of Contract Payments. Notwithstanding any other payment provision of this contract, should AGENCY fail to submit required reports when due, or submit reports which appear patently inaccurate or inadequate on their face, or fail to perform or document the performance of contracted services, COUNTY shall immediately withhold payments hereunder. Such withholding of payment for cause may continue until AGENCY submits required reports, performs required services, or establishes to COUNTY's satisfaction that such failure arose out of causes beyond the control, and without the fault or negligence, of AGENCY.

3.3 Financial Records. AGENCY and its subcontractors shall maintain complete and legible financial records pertaining in whole or in part to this contract. Such records shall be maintained in accordance with Generally Accepted Accounting Principles and/or other applicable accounting guidelines. Financial records and supporting documents shall be retained for at least six (6) years or such period as may be required by applicable law, following final payment is made under this agreement or until all pending matters are resolved, whichever period is longer. If an audit of financial records discloses that payments to AGENCY were in excess of the amount to which AGENCY was entitled, AGENCY shall repay the amount of the excess to COUNTY.

3.4 Access to Records and Facilities. COUNTY, DEPARTMENT, the Secretary of State's Office of the State of Oregon, the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers and records of AGENCY that are directly related to this contract, the funds paid to AGENCY hereunder, or any services delivered hereunder for the purpose of making audits, examinations, excerpts, and transcripts. In addition, AGENCY shall permit authorized representatives of COUNTY and DEPARTMENT to perform site reviews of all services delivered by AGENCY hereunder.

3.4.1 AGENCY shall maintain up-to-date accounting records that accurately reflect all revenue by source, all expenses by object of expense, and all assets, liabilities and equities consistent with

Generally Accepted Accounting Principles and Oregon Administrative Rules. AGENCY shall make reports and fiscal data generated under and for this agreement available to COUNTY upon request.

3.4.2 COUNTY conduct a fiscal compliance review of AGENCY as part of compliance monitoring of this agreement. AGENCY agrees to provide, upon reasonable notice, access to all financial books, documents, papers and records of AGENCY which are pertinent to this agreement to ensure appropriate expenditure of funds under this agreement. COUNTY shall monitor compliance with COUNTY's financial reporting and accounting requirements.

3.4.3 AGENCY may be subject to audit requirements. AGENCY agrees that audits must be conducted by Certified Public Accountants who satisfy the independence requirement outlined in the rules of the American Institute of Certified Public Accountants (Rule 101 of the AICPA Code of Professional Conduct), the Oregon State Board of Accountancy, the independence rules contained within Governmental Auditing Standards (1994 Revision), and rules promulgated by other federal, state and local government agencies with jurisdiction over AGENCY.

3.4.4 AGENCY shall establish and maintain systematic written procedures to assure timely and appropriate resolution of review or audit findings and recommendations. AGENCY shall make such procedures and documentation of resolution of audit findings available to COUNTY upon request.

#### **4.0 Manner of Performance**

4.1 Compliance with Applicable Laws and Regulations and Special Federal Requirements. AGENCY shall comply with all Federal, State, local laws, rules, and regulations applicable to the work to be performed under this contract, including, but not limited to, all applicable Federal and State civil rights and rehabilitation statutes, rules and regulations, and as listed in Exhibit D, paragraph 9. Compliance with Applicable Law, attached hereto and incorporated herein by this reference. AGENCY shall comply with Oregon Administrative Rule (OAR) 410-120-1380, which establishes the requirements for compliance with Section 4751 of Omnibus Budget Reconciliation Act (OBRA) 1991 and ORS 127-649, Patient Self-Determination Act.

4.2 Precedence. A requirement listed both in the main boilerplate of this contract and in an exhibit, the exhibit shall take precedence.

4.3 Subcontracts. AGENCY shall not enter into any subcontracts for any of the work scheduled under this contract without obtaining prior written approval from COUNTY.

4.4 Independent Contractor. AGENCY certifies that it is an independent contractor and not an employee or agent of COUNTY, State, or Federal Government as those terms are used in ORS 30.265. Responsibility for all taxes, assessments, and any other charges imposed upon employers shall be the sole responsibility of AGENCY.

#### **5.0 General Conditions**

5.1 Indemnification. AGENCY agrees to indemnify, save, hold harmless, and defend COUNTY, its officers, commissioners and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of actions, suits, claims or demand attributable in whole or in part to the acts or omissions of AGENCY, and AGENCY's officers, agents, and employees, in performance of this contract.

AGENCY shall defend, save, hold harmless and indemnify the State of Oregon, AMH and their officers, agents and employees from and against all claims, suits, actions, damages, liabilities, costs and expenses of whatsoever nature resulting from, arising out of, or relating to the activities or omissions of AGENCY, or its agents or employees under this contract.

If AGENCY is a public body, AGENCY's liability under this contract is subject to the limitations of the Oregon Tort Claims Act.

5.2 Insurance. During the term of this agreement, AGENCY shall maintain in force, at its own expense, each insurance noted below:

5.2.1 Commercial General Liability

Required by COUNTY       Not required by COUNTY

AGENCY shall obtain, at AGENCY's expense, and keep in effect during the term of this Agreement, Commercial General Liability Insurance covering bodily injury and property damage on an "occurrence" form in the amount of not less than \$2,000,000 per occurrence/\$4,000,000 general aggregate for the protection of COUNTY, its officers, commissioners, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute it.

5.2.2 Commercial Automobile Liability

Required by COUNTY       Not required by COUNTY

AGENCY shall also obtain at AGENCY's expense, and keep in effect during the term of the Agreement, "Symbol 1" Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$2,000,000.

5.2.3 Professional Liability

Required by COUNTY       Not required by COUNTY

AGENCY agrees to furnish COUNTY evidence of professional liability insurance in the amount of not less than \$2,000,000 combined single limit per occurrence/\$4,000,000 general annual aggregate for malpractice or errors and omissions coverage for the protection of COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this Agreement. COUNTY, at its option, may require a complete copy of the above policy.

5.2.4 Tail Coverage. If liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this contract for a duration of thirty-six (36) months or the maximum time period the AGENCY's insurer will provide "tail" coverage as subscribed, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage provided its retroactive date is on or before the effective date of this contract.

5.2.5 Additional Insured Provisions. The insurance, other than the professional liability insurance, Workers' Compensation, and Personal Automobile Liability insurance, shall include "Clackamas County, its commissioners, agents, officers, and employees" as an additional insured.

5.2.6 Notice of Cancellation. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice to COUNTY. Any failure to comply with this provision will not affect the insurance coverage provided to COUNTY. The 60 days notice of cancellation provision shall be physically endorsed on to the policy.

5.2.7 Insurance Carrier Rating. Coverages provided by AGENCY must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

5.2.8 Certificates of Insurance. As evidence of the insurance coverage required by this contract, AGENCY shall furnish a Certificate of Insurance to COUNTY. No contract shall be in effect until the required certificates have been received, approved and accepted by COUNTY. The certificate will specify that all insurance-related provisions within this contract have been complied with. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration.

5.2.9 Primary Coverage Clarification. AGENCY's coverage will be primary in the event of a loss.

5.2.10 Cross Liability Clause. A cross-liability or separation of insureds condition will be included in all general liability, professional liability, and errors and omissions policies required by this contract.

5.3 Governing Law; Consent to Jurisdiction. This agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Any claim, action, or suit between COUNTY and AGENCY that arises out of or relates to performance under this agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, State of Oregon. Provided, however, that if any such claim, action or suit may be brought only in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. AGENCY by execution of this agreement consents to the in personam jurisdiction of said courts.

5.4 Amendments. The terms of this contract shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written instrument signed by AGENCY and COUNTY.

5.5 Severability. If any term or provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

5.6 Waiver. The failure of either party to enforce any provision of this contract shall not constitute a waiver of that or any other provision.

5.7 Future Support. COUNTY makes no commitment of future support and assumes no obligation for future support of the activity contracted herein except as set forth in this contract.

5.8 Oregon Constitutional Limitations. This contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provision herein, which would conflict with such law, is deemed inoperative to that extent.

5.9 Oregon Public Contracting Requirements. Pursuant to the requirements of ORS 279B.020 and ORS 279B.220 through 279B.235 the following terms and conditions are made a part of this contract:

5.9.1 AGENCY shall:

- a. Make payments promptly, as due, to all persons supplying to AGENCY labor or materials for the prosecution of the work provided for in this contract.

- b. Pay all contributions or amounts due the Industrial Accident Fund from such agency or subcontractor incurred in performance of this contract.
- c. Not permit any lien or claim to be filed or prosecuted against COUNTY on account of any labor or material furnished.
- d. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

5.9.2 If AGENCY fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to AGENCY or a subcontractor by any person in connection with this contract as such claim becomes due, the proper officer representing COUNTY may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due AGENCY by reason of this contract.

5.9.3 No person shall be employed for more than ten (10) hours in any one day, or more than forty (40) hours in any one week, except in cases of necessity, emergency or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279A.055, the employee shall be paid at least time and one-half pay:

- a. for all overtime in excess of eight (8) hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday;
- b. for all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
- c. for all work performed on Saturday and on any legal holiday specified in ORS 279B.020.

5.9.4 AGENCY shall pay employees at least time and a half for all overtime work performed under this agreement in excess of 40 hours in any one week, except for individuals under person services contracts who are excluded under ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 U.S.C. 201 to 209) from receiving overtime.

5.9.5 As required by ORS 279B.230, AGENCY shall promptly, as due, make payment to any person, copartnership, association, or corporation furnishing medical, surgical, and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of AGENCY, of all sums that AGENCY agrees to pay for the services and all moneys and sums that AGENCY collected or deducted from the wages of its employees under any law, contract or agreement for the purpose of providing or paying for the services.

5.9.6 Workers' Compensation. All subject employers working under this agreement must either maintain workers' compensation insurance as required by ORS 656.017, or qualify for an exemption under ORS 656.126. AGENCY shall maintain employer's liability insurance with limits of \$500,000 each accident, \$500,000 disease each employee, and \$500,000 each policy limit.

5.10 Ownership of Work Product. All work products of the AGENCY which result from this contract are the exclusive property of COUNTY.

5.11 Integration. This contract contains the entire agreement between COUNTY and AGENCY and supersedes all prior written or oral discussions or agreements.

5.12 Successors in Interest. The provisions of this contract shall not be binding upon or inure to the benefit of AGENCY's successors in interest without COUNTY's explicit written consent.



## **6.0 Termination**

6.1 Termination Without Cause. This contract may be terminated by mutual consent of both parties, or by either party, upon ninety (90) days' notice, in writing or delivered by certified mail or in person.

6.2 Termination With Cause. COUNTY may terminate this contract effective upon delivery of written notice to AGENCY, or at such later date as may be established by COUNTY, under any of the following conditions:

6.2.1 Terms of the HealthShare Risk Accepting Entity Agreement are modified, changed or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding authorized by this contract.

6.2.2 The termination, suspension or expiration of the HealthShare Risk Accepting Entity Agreement.

6.2.3 COUNTY funding from Federal, State, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services. The contract may be modified to accommodate a reduction in funds.

6.2.4 COUNTY has evidence that AGENCY has endangered or is endangering the health or safety of clients, staff or the public. AGENCY shall ensure the orderly and reasonable transfer of care in progress with consumers and shall work with COUNTY staff to accomplish the same.

6.2.5 The lapse, relinquishment, suspension, expiration, cancellation or termination of any required license, certification or qualification of AGENCY, or the lapse relinquishment, suspension, expiration, cancellation or termination of AGENCY's insurance as required in this contract.

6.2.6 AGENCY's filing for protection under United States Bankruptcy Code, the appointment of a receiver to manage AGENCY's affairs, or the judicial declaration that AGENCY is insolvent.

6.2.7 AGENCY fails to perform any of the other provisions of this contract, or fails to pursue the work of this contract in accordance with its terms, and after written notice from the COUNTY, fails to correct such failures within ten (10) business days or such longer period as COUNTY may authorize.

6.2.8 Debarment and Suspension. COUNTY shall not permit any person or entity to be an AGENCY if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Non-procurement Programs" in accordance with Executive Orders No. 12,549 and No. 12,689, "Debarment and Suspension". (See 45 CFR part 76). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. COUNTY shall require all AGENCYS with awards that exceed the simplified acquisition threshold to provide the required certification regarding their exclusion status and that of their principals prior to award.

6.3 Notice of Default. COUNTY may also issue a written notice of default (including breach of contract) to AGENCY and terminate the whole or any part of this contract if AGENCY substantially fails to perform the specific provisions of this contract. The rights and remedies of COUNTY related to default (including breach of contract) by AGENCY shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

6.4 Transition. Any such termination of this contract shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

**7.0 Notices**

If to AGENCY:

Trillium Family Services  
3415 SE Powell Boulevard  
Portland, OR 97202-3396

If to COUNTY:

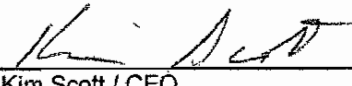
Clackamas County Behavioral Health Division  
Attention: Contract Administration  
2051 Kaen Road, # 367  
Oregon City, OR 97045

This contract consists of seven (7) sections plus the following exhibits and attachments which by this reference are incorporated herein:

Exhibit A	Definitions
Exhibit B	Scopes of Work
Exhibit C	Compensation
Exhibit D	Statement of General Conditions
Attachment 1	Invoice Template
Attachment 2	DSN Provider Capacity Report

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed by their duly authorized officers.

**TRILLIUM FAMILY SERVICES**

By:   
\_\_\_\_\_ Kim Scott / CEO  
6-17-14

Date \_\_\_\_\_  
3415 SE Powell Boulevard  
Street Address \_\_\_\_\_  
Portland, OR 97202-3396  
City/State/Zip \_\_\_\_\_  
(503) 813-7784 / (503) 205-0193  
Phone \_\_\_\_\_ / Fax \_\_\_\_\_

**CLACKAMAS COUNTY**

Commissioner: John Ludlow, Chair  
Commissioner: Jim Bernard  
Commissioner: Paul Savas  
Commissioner: Martha Schrader  
Commissioner: Tootie Smith

**Signing on Behalf of the Board:**

\_\_\_\_\_  
Cindy Becker, Director  
Health, Housing and Human Services Department

\_\_\_\_\_  
Date

**EXHIBIT A**  
**DEFINITIONS**

Whenever used in this Agency Services Agreement, the following terms shall have the meanings set forth below:

AMH: State of Oregon, Department of Human Services, Addictions and Mental Health

AGENCY: entity contracted by COUNTY

Allowable Costs: costs described in OMB Circular A-87 except to the extent such costs are limited or excluded by other provisions of this contract

CCO: Coordinated Care Organization is an entity that has been certified as meeting the criteria adopted by the Oregon Health Authority under ORS 414.625 to be accountable for care management and to provide integrated and coordinated health care services

Community Outcome Management and Performance Accountability Support System (COMPASS): the AMH project to implement a new contracts system, roll out an optional free electronic health records systems (OWITS), and enhance the collection of data through MOTS

Contract: this Agency Services Contract between COUNTY and AGENCY for the provision of services

COUNTY: Clackamas County Behavioral Health Division

Covered Services: medically appropriate services specified in OAR 410-141-3120, "Operations and Provision of Health Services" and limited in accordance with OAR 410-141-3420, "Billing and Payment" for OHP Members. The term "Covered Services" may be expanded, limited, or otherwise changed pursuant to the Clackamas County Health Share of Oregon/Clackamas Participation Agreement and OARs. Covered Services may also refer to authorized services provided to uninsured, indigent clients.

DEPARTMENT: AMH contracts with COUNTY to establish and finance community mental health and addition programs; COUNTY, in turn, subcontracts certain services to AGENCY

DHS: Department of Human Services of the State of Oregon

Federal Funds: funds paid to AGENCY under this contract that are received from an agency, instrumentality or program of the Federal government of the United States

Health Share of Oregon: a Coordinated Care Organization serving Oregon Health Plan enrollees of Clackamas, Multnomah and Washington Counties.

Individual: an individual accessing publicly funded behavioral health services who is either an OHP Member or is determined eligible for services as an uninsured, indigent individual.

Mental Health Services: treatment services for individuals diagnosed with serious mental health illness, or other mental or emotional disturbance posing a danger to the health and safety of themselves or others

Medicaid: Federal funds received by OHA under the Title XIX of the Social Security Act and Children's Health Insurance Program Funds administered jointly with Title XIX funds as part of State medical assistance program by OHA

Misexpenditure: money, other than an overexpenditure disbursed to AGENCY by COUNTY under this agreement and expended by AGENCY that:

- (a) is identified by the Federal government as expended contrary to applicable statutes, rules, OMB Circulars or any other authority that governs the permissible expenditure of such money, for which the Federal government has requested reimbursement by the State of Oregon and whether in the form of a Federal determination of improper use of Federal funds, a Federal notice of disallowance, or otherwise; or
- (b) is identified by the COUNTY, State of Oregon or OHA as expended in a manner other than that permitted by this agreement, including without limitation, any money expended by AGENCY, contrary to applicable statutes, rules, OMB Circulars or any other authority that governs the permissible expenditure of such money; or
- (c) is identified by the COUNTY, State of Oregon or OHA as expended on the delivery of a service that did not meet the standards and requirements of this agreement with respect to that service

Measures and Outcomes Tracking System (MOTS): the AMH data system that stores client data submitted by AGENCY and/or COUNTY

OAR: Oregon Administrative Rules duly promulgated by the Oregon Health Authority and as amended from time to time.

OHA: the State of Oregon, acting by and through its Oregon Health Authority.

OHP Member: an individual found eligible by a division of the Oregon Department of Human Services to receive services under the OHP (Oregon Health Plan) Medicaid Demonstration Project or State Children's Health Insurance Program and who is enrolled with COUNTY as Health Share of Oregon/Clackamas.

Oregon Web Infrastructure for Treatment Services (OWITS): is 1) an optional free electronic health records system available to Counties and their Providers to submit the MOTS data, and 2) a system to manage the AMH services

Primary Source Verification: verification from the original source of a specific credential (education, training, licensure) to determine the accuracy of the qualifications of an individual health care practitioner. Examples of primary source verification include, but are not limited to, direct correspondence, telephone verification and internet verifications.

Third Party Resources: any individual, entity, or program that is, or may be, liable to pay all or part of the cost of any Covered Service furnished to an OHP Member, including but not limited to: private health insurance or group health plan; employment-related health insurance; medical support from absent parents; workers' compensation; Medicare; automobile liability insurance; other federal programs such as Veteran's Administration, Armed Forces Retirees and Dependent Act, Armed Forces Active Duty and Dependents Military Medical Benefits Act, and Medicare Parts A and B; another state's Title XIX, Title XXI or state-funded Medical Assistance Program; and personal estates.

Valid Claim: an invoice, in the form of a CMS 1500 claim form, submitted for payment of covered health services rendered to an eligible client that is submitted within the required 90 days from the date of service or discharge and that can be processed without obtaining additional information from the provider of the service or from a third party. A valid claim is synonymous with the federal definition of a clean claim as defined in 42 CFR 447.45(b).

**EXHIBIT B**  
**SCOPE OF WORK**

**1. Psychiatric Day Treatment Services for Children**

Comprehensive, interdisciplinary, non-residential program certified under OAR 309-032-1540. Services shall consist of psychiatric treatment, family treatment and therapeutic activities integrated with an accredited education program, but are exclusive of medication management. AGENCY shall provide a responsive 24-7 coverage system for all OHP Members receiving care through AGENCY

**2. Psychiatric Residential Treatment Services for Children**

a. Certification/Licensing:

AGENCY shall hold and maintain a valid Certificate of Approval for Standards for Children's Intensive Mental Health Treatment 309-032-1500 through 309-032-1565 (Integrated Services and Supports Rule) and Medicaid Payment for Child/Adolescent Residential Psychiatric Treatment Service (OAR 309-034-0150 through 309-034-0320) issued by the Addictions and Mental Health Division and, if applicable, accreditation approved by the Division and the Health Care Financing Administration and appropriate license or certification from the State Department of Human Services Child Welfare Office and any and all other required licenses, permits or other required governmental approvals or certifications to provide Services under the terms of this Agreement. AGENCY will promptly notify County of the initiation of any action against any licenses or, if applicable, against any certifications by any certifying boards or organizations, as well as any changes in AGENCY's practice ownership or business address, along with any other problem or situation that may relate to the ability of AGENCY to carry out the duties and obligations of the Agreement.

b. Client Description

Services will be provided to children and youth, age 5 through a child's 18<sup>th</sup> birthday, and their families.

c. Admission Criteria

Children and Adolescents must meet the following criteria to be eligible for admission into PRTS:

- The client is eligible for the Integrated Service Array (ISA)
- COUNTY criteria for ISA eligibility includes:
  - Child is an OHP, Health Share/Clackamas member at the time services are delivered
  - Child has an OHP covered "above-the-line", DSM IV, non-substance use, diagnosis that is the focus of the needed mental health treatment.
  - Treatment is not directed primarily to resolve placement issues related to abuse, neglect or caregiver incapacity OR behavior, conduct, or substance use problems.
  - Treatment is likely to alleviate symptoms and/or improve functioning
  - Current, serious, functional impairment in multiple areas

- Treatment intensity at a lower level of care is insufficient to maintain functioning
- Need for service frequency/intensity consistent with this level is in addition to services provided by other agencies or education to which the child is entitled
- Service needs require the involvement of multiple components within the system of care, i.e. Child Welfare, Special Education, Juvenile Justice or OYA system involvement
- Significant risk of out-of-home placement
- Elevating or serious risk of harm to self and others
- Composite CASII score: > 19 as evaluated by the County Child Coordination Team
- Additional considerations MAY include:
  - Recent or current psychiatric hospitalization(s)
  - Recent or multiple out-of-home placements due to symptoms of a mental health disorder
- Serious emotional disturbance or mental health condition that requires active psychiatric treatment 24 hours/7 days a week for safety and stabilization or medication changes that can only occur at this level of care.
- Primary presenting problem that is considered responsive to PRTS and is: active psychosis, risk of harm to self or others, or mental health condition at a level of acuity or severity that it is impacting all areas of life and functioning;
- Treatment resources in the community are inadequate to meet the child's treatment needs;
- Mental health diagnosis covered by the Oregon Health Plan Prioritized List of Health Services and paired with PRTS that would be the focus of treatment'
- Admission is not solely for purposes of placement or at the convenience of the family, the provider or other child serving agencies;
- Level of Service Intensity Determination outcome of Level 5 or higher;
- Certificate of Need (CONS) completed prior to admission which certifies the need for this level of care;
- Preferred but not required: a written recommendation from the treating psychiatrist indicating: 1) the need and/or reason for a residential level of care; 2) why a less acute level of care would not be sufficient to address the psychiatric need; 3) the benefit to the child and family from this recommended treatment episode.
- Primary diagnoses not "paired" with PRTS on the Oregon Health Plan Prioritized List of Health Services and generally not considered for authorization:
  - Attention Deficit Hyperactivity Disorder
  - Adjustment Disorder
  - Substance Abuse
  - Developmental Disability

- In addition, the following are contraindicated for admission to PRTS:
  - Diagnoses not found responsive to or best practice to treat in PRTS:
    - Reactive Attachment Disorder
    - Oppositional Defiant Disorder
    - Conduct Disorder
  - Behaviors, independent of a covered mental health diagnosis or related to RAD or ODD, not found to be responsive to PRTS:
    - Bullying
    - Physical aggression
    - Sexual offending
    - Property destruction
    - Fire setting
    - Truancy
    - Running away
    - Pattern of defiant behavior

d. Service Description

Psychiatric Residential Treatment services are 24 hour, seven days per week structured treatment services designed to improve an eligible child's functioning and to achieve the child's reintegration back to the community at the earliest appropriate time (i.e. as soon as the child no longer meets medical necessity criteria).

All services shall be pre-authorized by the COUNTY Care Coordination team, and supported by the client's ISA Plan of Care and the CASII (Child and Adolescent Service Intensity Instrument). COUNTY will have completed the Certification of Need for Services (CONS) in accordance with the certification of need procedures set forth in CFR 441.151, the federal standards that describe the Certificate of Need process.

AGENCY shall participate in Child and Family Team meetings to occur no less frequently than every 14 days, and may occur more frequently. Individualized Plans of Care shall be developed by the child and family team, and subsequent revisions will be done at least every 14 days and as needed. Child and family teams will include: family members including involved biological family members, or foster parents, the COUNTY Care Coordinator, representatives from the school district or appropriate Education Services District, involved providers and agencies such as Child Welfare, the child when appropriate, and any other natural, formal, and informal supports as identified by the family.

A comprehensive mental health assessment will be completed for each resident that includes all relevant domains and includes strengths and needs assessment within each domain. Services shall be based on the comprehensive mental health assessment, shall be culturally and linguistically appropriate and reflect an understanding of the unique cultural background of the child and family, and shall be individually tailored in type, level and intensity to meet the individual client and family's needs. Individual treatment plans shall be developed and integrated with the Plan of Care provided by the COUNTY Care Coordinator. Treatment plans shall reflect integration of Provider's clinical model and incorporate skill development, treatment that addresses the family system, and family involvement and education.

Provider will demonstrate a philosophy of families as equal partners and include families in all phases of assessment, treatment and discharge planning, which will be evidenced by documentation in the clinical record, feedback from families and system partners, and/or

interviews with treatment team members and agency staff. Families and clients will be educated on the provider's clinical model and be provided assistance in generalizing learned skills to the home and community setting. Provider will have policies and procedures in place that support family involvement and identify, address and prevent barriers to their participation in treatment.

Active, focused discharge planning will be provided beginning at the date of admission which will link the child to appropriate community-based services delineated in the plan of care, coordinate care with pre-admission and post-admission providers and agencies, and develop and implement discharge plans. Discharge and transition planning will be done in collaboration with the COUNTY Care Coordinator. Discharge planning shall include applicable education service district or school district to coordinate and provide needed educational services for the children after discharge. School districts shall be notified in advance of all discharge planning meetings and have at least 14 day's notice of a child enrolling in their district (or as soon as length of stay permits). In the event that a child is discharged unexpectedly, Provider will make every effort to coordinate with the receiving school district to facilitate a smooth transition. Discharge instructions shall be part of the information given to the parent or guardian upon or prior to discharge. Discharge instructions include diagnosis, current medication and medical information, community treatment appointments and provider information. In addition, Provider will ensure that intervention strategies to manage the child are given to the parent or guardian at the time of discharge and in language the caretaker can understand, prior to receiving a discharge summary. Prior to discharge, Provider will ensure that family/guardian has a written safety plan developed by Provider or client's community treatment provider.

Services are to be evidence-based and include promising practices whenever evidence exists appropriate for children with severe mental, emotional, or behavioral disorders. Specific services to include: milieu treatment integrated with individual services and supports plan; psychiatric assessment; medication evaluation and management; individual, group and family therapy; multi-family treatment group; parent and child skills training; pre-vocational/vocational rehabilitation; speech, language and hearing rehabilitation services; behavior management; activity and recreational therapy; nutrition; physical health care services and coordination; interpreter services; case management; clinical services coordination; and consultation. AGENCY will ensure that admitted youth have at least weekly access to psychiatry and medication evaluation and management.

Providers will develop written agreements with DHS Child Welfare, Oregon Youth Authority and the Juvenile Department to include expectations for coordination/communication. Minimally, these communications should include monthly treatment progress reports. If a child's Service Coordination Plan indicates DHS or OYA placement is required at discharge, DHS or OYA shall be informed of the plan on admission or as soon as the placement need is identified (minimum of 30 days prior to the planned discharge date).

AGENCY shall inform COUNTY and the child's legal guardian within one working day of reportable incidents as defined in OAR 309-032-1100. COUNTY agrees to utilization review based on the following continued stay and discharge criteria:

- Continued Stay Criteria:
  - The PRTS provider has measurable indicators of whether the client's mental health symptoms that led to the admission, or as identified post-admission, are responding to the treatment plan. This may be reflected in a change in CASII or ECSII score (within a domain or overall)



- Documentation is obtained from the PRTS provider of ongoing discharge planning related to the discharge criteria in the Plan of Care.
- The client's record documents any attempts at re-entry into the community (e.g. overnight or day passes) that have resulted in exacerbation or re-emergence of symptoms of the mental illness and cannot be mitigated with community supports.
- The treatment plan documents that treatment goals cannot be achieved in a less restrictive setting.
- Continued stay is not due to the convenience of family or other entities and is not solely for placement
- The Child and Family Team determines that the child requires a secure inpatient program such as Secure Children's Inpatient Program (SCIP) or Secure Adolescent Inpatient Program (SAIP) and the client has been accepted and is on the wait list.
- Discharge Criteria:
  - The Child and Family Team determines that the child/adolescent has met treatment goals and is able to function successfully in the home, school and community; and
  - Child's mental health needs can be met at a lower level of service; or
  - The family withdraws the child from services; or
  - The family chooses not to engage in services; or
  - Child and Family Team determine that the child and/or family is not fully able to engage in services and recommends discharge.

Continued stay will be requested during child and family teams or from the UR team when applicable, and no less than 10 days prior to expiration of current authorization. When there is disagreement among the team and the guardian regarding discharge and whether medical necessity criteria is met for continued stay, and the team is not able to reach a consensus, the COUNTY Medical Director or Psychiatric Consultant may consult with the Treating Psychiatrist prior to issuing a Notice of Action. If the determination is to issue a Notice of Action, COUNTY agrees to send it at least two weeks prior to the last date of authorization for continued stay.

e. PRTS Risk-Based Contracting

AGENCY agrees to participate in risk-based contract with COUNTY, with the shared goal of reducing length of stay while providing high quality clinical interventions. This will include a quarterly meeting convened by COUNTY and including system partners, to evaluate the PRTS system, review data and identify barriers to achieving system goals.

f. Reporting Requirements:

AGENCY will submit a monthly report to COUNTY (contact information to be listed on the template). Data elements will be listed separately for each RAE and will include:

- # of admissions during the month
- # of discharges and LOS for each
- Total bed days used during the month
- Average LOS for youth discharged during the previous 2 quarters

COUNTY will report monthly on bed days authorized during the month, and provide actual bed days using claims data for the time period 60 days prior (a rolling monthly report that accounts for claims lag).

**3. Sub-Acute Psychiatric Services for Children**

Intensive 24-hour mental health services provided to children in a secure setting to assess, evaluate, stabilize or resolve the symptoms of an acute episode that occurred as the result of a diagnosed mental health condition. Services shall include an initial assessment; admitting history and physical; individual, family and group therapy; medically appropriate physical health care; activity therapy; psychosocial skill development; room and board; and nutritional care.

**EXHIBIT C**  
**COMPENSATION**

**Method of Payment**

To receive payment AGENCY shall submit a CMS 1500 claim form to COUNTY's Third Party Administrator, Performance Health Technology Ltd (PH Tech) within 120 calendar days of the date of service in accordance with OAR 410-141-3420, "Billing and Payment". Claims may be submitted to PH Tech in either paper or electronic format.

Refer to Exhibit B, paragraph 4.d. for guidance regarding encounter submissions.

## EXHIBIT D

### STATEMENT OF GENERAL CONDITIONS

#### 1. Interpretation and Administration of Agreement

AGENCY acknowledges that this agreement between COUNTY and AGENCY is subject to the underlying Health Share of Oregon/Clackamas Risk Accepting Entity Participation Agreement between Health Share of Oregon and COUNTY, the Health Plan Services Contract between the Oregon Health Authority and Health Share of Oregon, the Oregon Revised Statutes concerning the Oregon Health Plan, and other applicable Oregon statutes and administrative rules concerning mental health services. If AGENCY believes that any provision of this agreement or COUNTY's interpretation thereof is in conflict with Federal and State statutes or regulations, AGENCY shall notify COUNTY in writing immediately.

AGENCY agrees to provide medically necessary services within the scope of its practice and license (hereinafter referred to as "services") to individuals assessed as having an eligible mental health condition specified in the Oregon Health Plan "Prioritized List of Mental Health Conditions", can benefit from those services, and as described below when authorized by COUNTY's treatment authorization process. AGENCY shall provide services in accordance with OAR 410-141-3120 "Operations and Provision of Health Services"; OAR 410-141-3420 "Billing and Payment"; and all DHS Rules in OAR Chapter 309 and any other administrative rules to which AGENCY is subject, as such rules may be amended from time to time. These laws, rules and regulations, are incorporated by reference herein to the extent that they are applicable to this agreement and required by law to be so incorporated. Services provided under this agreement are to be within the scope of AGENCY's licenses and certification, and the licenses, certifications and training of its employed and contracted staff providing direct services.

#### 2. General Performance Standards

COUNTY shall monitor services provided by AGENCY and has the right to require AGENCY's compliance with OHA and Health Share of Oregon established standards and other performance requirements relative to the quantity and quality of service and care, access to care, and administrative and fiscal management, and with all obligations and conditions stated in this agreement. AGENCY will notify COUNTY immediately in writing regarding issues related to access to care or any other potential violation of the conditions stated in this agreement.

##### a. Licenses and Certifications

By signing this agreement, AGENCY assures that all licenses and certifications required by statute or administrative rule are and will remain current and valid for all of AGENCY's employees and independent contractors providing direct service and for all of AGENCY's facilities in which services are provided. AGENCY assures that it is certified under OAR 309-012-0130 – 309-012-0220 or licensed under ORS Chapter 443 by the State of Oregon to deliver specified services. AGENCY will promptly notify COUNTY of the initiation of any action against any licenses or, if applicable, against any certifications by any certifying boards or organizations as well as any changes in AGENCY's practice ownership or business address, along with any other problem or situation that may relate to the ability of AGENCY to carry out the duties and obligations of this contract.

b. Eligibility and Authorization of Services

AGENCY shall verify eligibility and enrollment of clients prior to providing and billing for service and obtain authorization for the provision of covered services as necessary and appropriate according to COUNTY policies and procedures. AGENCY shall participate in the COUNTY concurrent review process. AGENCY understands that authorization for services will be based upon this review process.

c. Quality Assurance and Utilization Review

AGENCY shall cooperate with, and participate in, COUNTY's quality assurance and utilization review programs. AGENCY shall also participate in Health Share of Oregon quality initiatives as developed. Further, AGENCY shall have a planned, systematic, and ongoing process for monitoring, evaluating and improving the quality and appropriateness of Covered Services provided to clients.

AGENCY shall work with COUNTY staff to ensure that authorized services provided by AGENCY to clients are the most appropriate and cost efficient, and least restrictive. AGENCY staff shall make records available to COUNTY staff on site upon reasonable notice for purposes of utilization review.

d. Contractual Compliance

AGENCY shall ensure that all providers and staff employed or contracted by AGENCY who provide services to clients or are otherwise engaged in activities under this agreement are fully aware of and in compliance with the terms and conditions of this agreement.

e. Provider Appeal Process

AGENCY shall have the right to appeal actions by COUNTY or decisions concerning interpretation of the Health Share of Oregon/Clackamas Risk Accepting Entity Agreement as they apply to this agreement. Appeals shall be made in writing.

Appeals related to administrative or clinical decisions and all other matters shall be made to COUNTY Administration within thirty (30) calendar days of the date of the action being appealed. A decision shall be issued within twenty-one (21) business days of receipt of the written appeal. An appeal of that decision can be made in writing to the Director of Clackamas County Behavioral Health Division within fourteen (14) business days of the date of the decision. The Director will issue a decision within twenty-one (21) business days, and that decision will be final.

**3. Clinical Standards**

a. Clinical Guidelines

AGENCY shall adopt clinical guidelines that inform mental health practitioners, clients, family members and advocates with evidence-based information about mental illness and appropriate treatment options. Clinical guidelines should be based on a systematic evaluation of research evidence; be designed to assist, rather than dictate, clinical decision-making; and are to be applied on a case-by-case basis. Such guidelines should provide recommendations for appropriate care based on scientific evidence and professional consensus; support for professional standards, quality improvement activities and education; and a basis for comparing current practice to evidence-based best practices. AGENCY shall make such guidelines available to COUNTY upon request.

b. Outcome Measure

AGENCY shall adopt the use of a measure of clinical outcomes that demonstrates a change in client status following an episode of treatment. The measurement tool adopted shall identify changes in symptoms, functioning, quality of life, adverse events or satisfaction. AGENCY shall make information about outcome measures used available to COUNTY upon request.

c. Coordination of Care

- (1) AGENCY shall develop, implement and participate in activities supportive of a continuum of care that integrates mental health, addiction and physical health interventions in ways that are seamless and whole to the client. Integration activities may span a continuum ranging from communication to coordination to co-management to co-location to the fully integrated, person-centered health care home.
- (2) To insure appropriate coordination of services to enrolled individuals, AGENCY shall collaborate with allied agencies in the local service area, including but not limited to primary care clinics, housing authorities, chemical dependency agencies, juvenile justice, school districts, and Department of Human Resources, Child Welfare programs. AGENCY will make every effort to obtain a signed Release of Information at the onset of treatment, notifying the service partner in writing of preliminary diagnosis and prescribed medications, notifying of any major changes or medical complications that occurred during the course of treatment and notifying upon termination of treatment.
- (3) AGENCY shall coordinate with COUNTY on referral of clients to specialty behavioral health services or to a higher intensity of service. Specifically:
  - (i) AGENCY shall coordinate with COUNTY on both admission and discharge of clients to psychiatric acute care or sub-acute psychiatric care. AGENCY shall coordinate with COUNTY and the acute or sub-acute care provider on discharge planning and the development of community resources to aid in the timely discharge and community placement of the client. AGENCY shall assure an appointment with an appropriate provider within seven (7) days of discharge from acute care, sub-acute care or psychiatric residential treatment care.
  - (ii) AGENCY shall coordinate with COUNTY on referral of clients to crisis respite services, particularly as those services are used to divert the admission of the client to acute care.
  - (iii) AGENCY shall refer clients for a Level of Service Intensity Determination Screening when a higher intensity of service appears warranted.
  - (iv) AGENCY shall coordinate with COUNTY to obtain Long Term Care Determination for appropriate clients.

d. Crisis Response

AGENCY will be responsible for twenty-four hour, seven days a week crisis response for their enrolled individuals. AGENCY shall establish and follow a system for appropriate and timely response to emergency needs of individuals. During the period of service, AGENCY shall respond to all enrolled client emergencies. "Emergency" shall mean the sudden onset of a mental health condition manifesting itself by acute symptoms and one or more of the following circumstances are present: (1) the client is in imminent or potential danger of harming himself or others as a result of an eligible condition; (2) the client shows symptoms, e.g., hallucinations, agitation, delusions, etc., resulting in impairment in judgment, functioning and/or impulse control severe enough to endanger his or her own welfare or that of another person; or (3) there is an

immediate need for Services as a result of, or in conjunction with, a very serious situation such as an overdose, detoxification, potential suicide or violence. AGENCY will have a system of crisis response to individuals enrolled in their program. At a minimum, AGENCY will have a clinician available by phone for consultation at all times. This clinician shall be familiar with the case or shall have the ability to contact clinician(s) familiar with the case.

e. Standards of Care

COUNTY promotes resilience in and recovery of the clients it serves. COUNTY supports a system of care that promotes and sustains a client's recovery from a mental health condition by identifying and building upon the strengths and competencies within the person to assist them in achieving a meaningful life within their community. Consistent with these values, AGENCY shall:

- (1) Provide services in a manner that assures continuity and coordination of the health care services provided to each client;
- (2) Accept clients for treatment on the same basis that AGENCY accepts other clients and render services to clients in the same manner as provided to AGENCY's other clients. AGENCY shall not discriminate against clients because of source of payment, race, ethnicity, gender, gender identity, gender presentation, sexual orientation, national origin, ancestry, religion, creed, marital status, familial status, age, except when program eligibility is restricted to children, adults or older adults, source of income, disability and diagnosis;
- (3) Provide clients with access to services without undue delay and as soon as necessary in light of the member's mental health condition. AGENCY shall comply with access standards as set forth in OAR 410-141-3220 "Accessibility";
- (4) Conduct its practice and treat all clients using that degree of care, skill and diligence which is used by ordinarily careful providers in the same or similar circumstances in the provider's community or a similar community (see ORS 677.095);
- (5) Ensure that clients are served in the most normative, least restrictive, least intrusive and most cost effective level of care appropriate to their diagnosis and current symptoms, degree of impairment, level of functioning, treatment history, and extent of family and community supports;
- (6) Advise or advocate on behalf of clients in regard to treatment options, without restraint from COUNTY;
- (7) AGENCY shall employ a system of internal review to evaluate the care being provided within the agency, to modify service plans, adjust level of care being provided and consider duration of treatment. AGENCY will have a system of internal utilization management to assure that services are provided within the authorization maximum dollar amount, when applicable.
- (8) AGENCY shall have written policies and procedures that insure individuals receive a Notice of Action when service is denied, terminated, suspended or reduced without the client's agreement.
- (9) AGENCY shall have written policies and procedures related to consumer complaints as referenced in OAR 309-019-0125 and OAR 410-141-0260 through 410-141-0266.

#### 4. Encounter Submissions

a. Usual and Customary Charges

AGENCY shall bill COUNTY according to their Usual and Customary fee schedule. AGENCY shall base their Usual and Customary charges on a cost study that is updated annually.

b. Compensation

AGENCY shall be reimbursed at the COUNTY reimbursement rates in effect as of the date of service or billed charges, whichever is less.

c. Third Party Resources and Coordination of Benefits

AGENCY shall bill and collect from liable third party resources prior to billing COUNTY. If both the third party resource and COUNTY reimburse AGENCY for the same service, COUNTY shall be entitled to a refund for the exact amount of duplicate payment received by AGENCY.

AGENCY shall be responsible for maintaining records in such a manner so as to ensure that all moneys collected from third-party resources on behalf of clients may be identified and reported to COUNTY on an individual client basis. AGENCY shall make these records available for audit and review consistent with the provisions upon request.

If AGENCY has knowledge that a client has third-party health insurance or health benefits, or that either client or AGENCY is entitled to payment by a third party, AGENCY shall immediately so advise COUNTY.

Pursuant to OAR 410-141-3160, "Integration and Care Coordination", COUNTY reserves the right to coordinate benefits with other health plans, insurance carriers, and government agencies. COUNTY may release medical information to such other parties as necessary to accomplish the coordination of benefits in conformity with the Health Insurance Portability and Accountability Act (HIPAA) 45 CFR 164 and 42 CFR Part 2. Coordination of benefits shall not result in compensation in excess of the amount determined by this agreement, except where State laws or regulations require the contrary.

d. Encounter Data

AGENCY shall submit to COUNTY accurate and complete encounter data in the form of a CMS 1500 claim form for each contact with a client. To encounter data and receive payment, when applicable, AGENCY shall submit a CMS 1500 claim form to COUNTY's Third Party Administrator, Performance Health Technology Ltd (PH Tech). AGENCY shall use its best efforts to supply encounter data once a month, and shall in all cases, supply encounter data no later than 120 calendar days after a contact with a client in accordance with OAR 410-141-3420, "Billing and Payment". Each encounter claim shall include such information as required in the Health Share of Oregon/Clackamas Risk Accepting Entity Participation Agreement and meet specifications as a Valid Claim. AGENCY shall use the most current DSM Multi-Axial Classification System. DSM codes shall be reported at the highest level of specificity. Claims may be submitted to PH Tech in either paper or electronic format.

PH Tech shall pay AGENCY on behalf of COUNTY, by the 45<sup>th</sup> business day after a valid claim is received, fee-for-service payments as specified in section 1 above. COUNTY shall have no obligation to make payment to AGENCY if AGENCY fails to obtain a valid authorization to provide services, fails to verify eligibility for Covered Services and the individual is not an eligible client on the date of service, if the services provided are not Covered Services, or if AGENCY fails to submit fee-for-service bills within 120 calendar days of the date of service. The timely filing



requirement is extended to 12 months when there is a Third Party Resource as the primary payor and to 12 months when Medicare is primary. To be considered for payment, claims resubmission requests submitted by AGENCY must be received by PH Tech within 120 days of the date of the first denial.

d. Non-Covered Services

AGENCY shall follow OAR 410-141-3420, "Billing and Payment", when submitting fee-for-service claims for services provided to OHP Members that are not Covered Services.

e. Payment in Full

Except as expressly provided below, payments to AGENCY made by COUNTY for services provided under the terms of this agreement shall constitute payment in full. OAR 410-141-3420, "Billing and Payment", AGENCY shall not bill, charge, seek compensation, remuneration or reimbursement from, or have any recourse against OHA or any client for services contracted hereunder, either during the term of this agreement or at any time later, even if COUNTY becomes insolvent. This provision shall not prohibit collection for non-covered services that may be the responsibility of the client or any permitted co-pays, co-insurance, deductibles or any other cost sharing, if any and as applicable. AGENCY may bill and collect separately for those costs which are lawfully the responsibility of the client. When combined with all sources of payment, COUNTY's payment to AGENCY shall not exceed the reimbursement amount in effect as of the date of service.

f. Overpayments

Any payments made by COUNTY to which AGENCY is not entitled under the terms of this agreement shall be considered an overpayment and shall be refunded by AGENCY within thirty (30) calendar days of the discovery, in accordance with OAR-410-120-1280, "Billing" and OAR 410-120-1397, "Recovery of Overpayments to Providers – Recoupments and Refunds". AGENCY must not seek payment from clients for any covered services, except any coinsurance, co-payments, and deductibles expressly authorized by OAR-410-120 or OAR-410-141. A client cannot be billed for services or treatment that have been denied due to provider error (e.g. required documentation not submitted, prior authorization not obtained, non-covered diagnosis, etc.).

## 5. Staff Standards

COUNTY delegates to AGENCY the credentialing and recredentialing of employed and contracted staff who provide services to clients under this agreement. Pursuant to OAR 410-141-3120 "Operations and Provision of Health Services", AGENCY must, at a minimum, obtain and verify documents that provide evidence of primary source verification of credentials as follows:

- Appropriate education and academic degrees, as required;
- Licenses or certificates, as required;
- Relevant work history or qualifications, as required;
- Completion of a successful criminal history records check through the Oregon Law Enforcement Data System and compliant with ORS chapter 181 and OAR 407-007-0000 through 407-007-0370;
- Positive clearance by the National Practitioner Data Bank, as required;

- Positive clearance through the General Services Administration System for Award Management (SAM) at time of hire and monthly thereafter; and
- Positive clearance through the Office of Inspector General's List of Excluded Individuals/Entities at time of hire and monthly thereafter.

AGENCY shall not permit any person to provide services under this agreement if that person is listed on the non-procurement portion of the General Service Administration's SAM in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and Suspension" (2 CFR Part 180).

In addition, AGENCY shall not permit any person to provide services under this agreement who has been terminated from the Division of Medical Assistance Program or excluded as Medicare/Medicaid providers by the Centers for Medicare and Medicaid Services or who are subject to exclusion for any lawful conviction by a court for which the provider could be excluded under 42 CFR 1001.101 "Program Integrity – Medicare and State Health Care Programs Subpart B". AGENCY may not submit claims for services provided after the date of such exclusion, conviction or termination.

AGENCY assures that all AGENCY employees and independent contractors providing direct service under this agreement will work within the scope of their credentials and any applicable licensure or registration, or criteria for certification if not required to be licensed or registered pursuant to OAR 410-141-3120. AGENCY shall not allow services to be provided by an employee or independent contractor who does not have a valid license or certification required by state or federal law.

AGENCY ensures that all personnel providing services to clients under this agreement are properly trained and qualified to render the services they provide. AGENCY shall arrange for continuing education of personnel rendering services under this agreement as necessary to maintain such competence and satisfy all applicable licensing, certification or other regulatory requirements.

COUNTY reserves the right to review, upon reasonable notice and at AGENCY's site, the actual documents describing the credentials of AGENCY's employees and independent contractors for purposes of verification.

## **6. Recordkeeping**

### **a. Clinical Records, Access and Confidentiality**

- (1) **Clinical Records.** AGENCY shall ensure maintenance of recordkeeping consistent with OAR 410-141-3180, "Record Keeping and Use of Health Information Technology." The clinical record shall fully document the mental condition of the client and the services received by the client under this agreement. All clinical records relevant to this agreement shall be retained for at least seven (7) years after the date of clinical services for which claims are made, encounters reported, final payment is made, or all pending matters are closed, whichever time period is longer. If an audit, litigation, research and evaluation, or other action involving the records is started before the end of the seven-year-period, the records must be retained until all issues arising out of the action are resolved or until the end of the seven-year-period, whichever is later.
- (2) **Government Access to Records.** At all reasonable times, AGENCY and its subcontractors shall provide the Center for Medicare and Medicaid Services (CMS), the Comptroller General of the United States, the Oregon Secretary of State, the Oregon Department of Justice Medicaid Fraud Unit, Oregon Department of Human Services Office of Payment Accuracy and Recovery, OHA, COUNTY and all their duly authorized representatives the right of access to AGENCY's financial (including all accompanying billing records), clinical/medical, and personnel records that are directly pertinent to this agreement in order to monitor and

evaluate cost, performance, compliance, quality, appropriateness and timeliness of services provided, and the capacity of AGENCY to bear the risk of potential financial losses. These records shall be made available for the purpose of making audit, examination, excerpts and transcriptions. AGENCY shall, upon request and without charge, provide a suitable work area and copying capabilities to facilitate such a review or audit.

- (3) Confidentiality and Privacy of Records. The confidentiality of information concerning clients is subject to State and Federal guidelines, including but not limited to State (ORS 179.505 through 179.507, ORS 192.502, ORS 411.320, ORS 433.045(3)) and Federal (42 CFR Part 2, 42 CFR Part 431, Subpart F, 45 CFR 205.50) confidentiality laws and regulations. AGENCY and COUNTY shall not use, release, or disclose any information regarding a client for any purpose not directly connected with the administration of this agreement or under Title XIX of the Social Security Act, except with the written consent of the client or, if appropriate, the client's parent or guardian, or unless otherwise authorized by law. AGENCY shall ensure that its agents, employees, officers and subcontractors with access to client records understand and comply with this confidentiality provision.
- (4) Release of Information. AGENCY shall assure that COUNTY and any other cooperating health service providers have access to the applicable contents of the client's clinical record when necessary for use in the diagnosis or treatment of the client, to the extent such access is permitted by law. AGENCY shall release mental health service information requested by COUNTY or a provider involved in the care of a client within ten (10) business days of receiving a signed release. Except as provided in ORS 179.505(9), AGENCY shall provide the client or the client's legal guardian access to client's record and provide copies within ten (10) business days of any request for copies.
- (5) External Review. AGENCY shall cooperate with OHA by providing access to records and facilities for the purpose of an annual external, independent professional review of the quality outcomes and timeliness of, and access to, services under this agreement in accordance with 42 USC Section 1396a(a)(27); 42 CFR 431.107(b)(1) & (2); and 42 CFR 457.950(a)(3).
- (6) Keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving OHP assistance and shall furnish such information to any State or federal agency responsible for administering the OHP program regarding any payments claimed by such person or institution for providing OHP Services as the State or federal agency may from time to time request. 42 USC Section 1396a(a)(27); 42 CFR 431.107(b)(1) & (2); and 42 CFR 457.950(a)(3).

b. Financial Records

- (1) AGENCY shall establish and maintain policies and procedures related to financial management and financial records consistent with Generally Accepted Accounting Principles. AGENCY shall make such policies and procedures available to COUNTY upon request.
- (2) AGENCY shall maintain up-to-date accounting records that accurately reflect all revenue by source, all expenses by object of expense, and all assets, liabilities and equities consistent with Generally Accepted Accounting Principles and Oregon Administrative Rules. AGENCY shall make reports and fiscal data generated under and for this agreement available to COUNTY upon request.
- (3) COUNTY shall conduct a fiscal compliance review of AGENCY as part of compliance monitoring of this agreement. AGENCY agrees to provide, upon reasonable notice, access to all financial books, documents, papers and records of AGENCY which are pertinent to this agreement to ensure appropriate expenditure of funds under this agreement. COUNTY shall monitor compliance with COUNTY's financial reporting and accounting requirements.

- (4) AGENCY may be subject to audit requirements. AGENCY agrees that audits must be conducted by Certified Public Accountants who satisfy the Independence requirement outlined in the rules of the American Institute of Certified Public Accountants (Rule 101 of the AICPA Code of Professional Conduct), the Oregon State Board of Accountancy OAR 801-030-0005, the independence rules contained within Governmental Auditing Standards (2011 Revision), and rules promulgated by other federal, state and local government agencies with jurisdiction over AGENCY.
- (5) AGENCY shall establish and maintain systematic written procedures to assure timely and appropriate resolution of review or audit findings and recommendations. AGENCY shall make such procedures and documentation of resolution of audit findings available to COUNTY upon request.
- (6) Limited Scope and Full Audits shall be completed within nine (9) months of the close of AGENCY's fiscal year. Audit reports, including the Management Letter associated with the audit shall be submitted to COUNTY within two weeks from the date of the report. Failure to submit required audit reports and Management Letters shall be cause for withholding of contract payment until audits are submitted.

## **7. Reporting**

### **a. Abuse Reporting**

AGENCY shall comply with all processes and procedures of child abuse (ORS 419B.005 – 419B.050), mentally ill and developmentally disabled abuse (ORS 430.731 – 430.768 and OAR 943-045-0250 through 943-045-0370) and elder abuse reporting laws (ORS 124.050 – 124.092) as if AGENCY were a mandatory abuse reporter. If AGENCY is not a mandatory reporter by statute, these reporting requirements shall apply during work hour only. AGENCY shall immediately report to the proper State or law enforcement agency circumstances (and provide such other documentation as may be relevant) supporting reasonable cause to believe that any person has abused a child, a mentally ill or developmentally disabled adult or an elderly person, or that any such person has been abused.

### **b. Behavioral Health Electronic Data System**

AGENCY shall participate in the Oregon Health Authority (OHA)'s Enhanced Data Capture for all clients receiving Covered Services under this agreement. AGENCY shall submit all data to OHA via formats approved by OHA. AGENCY shall submit data in accordance with OHA timelines.

### **c. Delivery System Network (DSN) Provider Capacity Report**

AGENCY shall submit the DSN Provider Capacity report (see Attachment 1) to COUNTY in the prescribed format within thirty (30) days of the effective date of this agreement, indentifying all staff and independent contractors who will provide services to clients under this agreement. In addition, the DSN Provider Capacity Report shall be updated and resubmitted monthly to COUNTY.

## **8. Monitoring**

### **a. Agreement Compliance Monitoring**

COUNTY and OHA shall conduct agreement compliance and quality assurance monitoring related to this agreement. AGENCY shall cooperate with COUNTY and OHA in such monitoring.

COUNTY shall provide AGENCY twenty (20) business days written notice of any agreement compliance and quality assurance monitoring activity that requires any action or cooperation by AGENCY. Notice of monitoring shall include the date the monitoring shall occur, names of individuals conducting the monitoring, and instructions and requests for information.

Should AGENCY found to be out of compliance with any requirement of this agreement, the following actions may be taken by COUNTY until the issue is resolved:

- Request a conference of the parties to determine the need for technical assistance
- Require a corrective action plan
- Disallow referral of new clients to AGENCY
- Put AGENCY on probationary status and suspend billing authority

Should the issue remain unresolved, COUNTY may consider AGENCY in breach and may terminate this agreement.

b. External Quality Review

AGENCY agrees to participate with COUNTY in any evaluation project or performance report as designed by COUNTY or applicable State or Federal agency. AGENCY shall make all information required by any such evaluation project or process available to COUNTY or COUNTY's designee within thirty (30) business days of request.

**9. Fraud and Abuse**

AGENCY shall comply with, and as indicated, cause all employees and subcontractors to comply with, the following requirements related to fraud and abuse. All elements of this Fraud and Abuse exhibit apply to services provided to uninsured, indigent individuals with the exception of reports to the Medicaid Fraud Control Unit (MFCU) which do not apply to indigent services.

a. General

- (1) AGENCY, its employees and subcontractors shall comply with all provisions of the False Claims Act established under sections 3729 through 3733 of title 31, United States Code, administrative remedies for false claims and statements established under chapter 38 of title 31, United States Code, any Oregon laws pertaining to civil or criminal penalties for false claims and statements, and whistleblower protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste, and abuse in Federal health care programs (as defined in 42 USC 1320a-7b).
- (2) AGENCY, its employees and subcontractors shall comply with Oregon laws pertaining to false claims including the following: ORS 411.670 to 411.690 (submitting wrongful claim or payment prohibited; liability of person wrongfully receiving payment; amount of recovery); ORS 646.505 to 646.656 (unlawful trade practices); ORS chapter 162 (crimes related to perjury, false swearing and unsworn falsification); ORS chapter 164 (crimes related to theft); ORS chapter 165 (crimes involving fraud or deception), including but not limited to ORS 165.080 (falsification of business records) and ORS 165.690 to 165.698 (false claims for health care payments); ORS 659A.199 to 659A.224 (whistle blowing); OAR 410-120-1395 to 410-120-1510 (program integrity, sanctions, fraud and abuse); and common law claims founded in fraud, including Fraud, Money Paid by Mistake and Money Paid by False Pretenses.
- (3) AGENCY shall include information in its employee handbooks or other appropriate documents on laws described above, regarding the rights of employees to be protected as whistleblowers.

- (4) AGENCY shall further have policies and procedures for detecting and preventing fraud, waste and abuse that shall, at a minimum, include a process for monitoring and auditing files, claims and staff performance.
- (5) Entities receiving \$5 million or more annually (under this contract and any other OHP contract) for furnishing Medicaid health care items or services shall, as a condition of receiving such payments, adopt written fraud, waste and Abuse policies and procedures and inform employees, contractors and agents about the policies and procedures in compliance with Section 6032 of the Deficit Reduction Act of 2005, 42 USC § 1396a(a)(68).
- (6) Certify when submitting any claim for the provision of OHP services that the information submitted is true, accurate and complete. AGENCY shall acknowledge AGENCY's understanding that payment of the claim will be from Federal and State funds and that any falsification or concealment of a material fact may be prosecuted under Federal and State laws.

b. Fraudulent Billing and False Claims

- (1) AGENCY will report verified and suspected cases of fraud and abuse to the Medicaid Fraud Control Unit (MFCU) and COUNTY within five (5) business day of discovery.
- (2) If it is determined that services billed by AGENCY were fraudulently billed, or that a false claim was submitted, or that an instance of abuse has occurred, the following disciplinary actions may be taken by COUNTY:
  - If abuse is determined, consider restitution of funds based on the severity of the abuse identified.
  - If fraud is determined or a false claim verified, require restitution of funds.
  - If the action identified is determined to be non-intentional, require a corrective action plan
  - Put AGENCY on probationary status and suspend billing authority until the issue is resolved
  - Termination of this agreement
- (3) COUNTY shall promptly refer all verified cases of Medicaid fraud and abuse to the MFCU, consistent with the Memorandum of Understanding between the State of Oregon Department of Human Services and the MFCU. COUNTY shall also refer cases of suspected Medicaid fraud and abuse to the MFCU prior to verification.
- (4) Participation of Suspended or Excluded Providers

AGENCY shall ensure that Covered Services may not be provided to clients by the following persons (or their affiliates as defined in the Federal Requisition Regulations):

- Persons who are currently suspended, debarred or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in non-procurement activities under regulations issues pursuant to Executive Order 12549 or under guidelines implementing such order; and
- Persons who are currently excluded from Medicaid participation under section 1128 or section 1128A of the Act; and

- Persons who are currently excluded from providing services under the Oregon Medical Assistance Program.

c. Examples of fraud and abuse that support referral to the MFCU and COUNTY

- (1) AGENCY who consistently demonstrates a pattern of intentionally reporting encounters or services that did not occur. A pattern would be evident in any case where 20% or more of sampled or audited services are not supported by documentation in the clinical records. This would include any suspected case where it appears that the provider knowingly or intentionally did not deliver the service or goods billed;
- (2) AGENCY who consistently demonstrates a pattern of intentionally reporting overstated or up coded levels of service. A pattern would be evident by 20% or more of sampled or audited services that are billed at a higher-level procedure code than is documented in the clinical records;
- (3) Any suspected case where the AGENCY intentionally or recklessly billed COUNTY more than the usual charge to non-Medicaid recipients or other insurance programs;
- (4) Any suspected case where the AGENCY purposefully altered, falsified, or destroyed clinical record documentation for the purpose of artificially inflating or obscuring his or her compliance rating or collecting Medicaid payments otherwise not due. This includes any deliberate misrepresentation or omission of fact that is material to the determination of benefits payable or services which are covered or should be rendered, including dates of service, charges or reimbursements from other sources, or the identity of the client or provider;
- (5) Providers who intentionally or recklessly make false statements about the credentials of persons rendering care to clients;
- (6) Providers who knowingly charge clients for services that are covered services or intentionally balance-bill a client the difference between the total fee-for-service charge and COUNTY's payment to the AGENCY, in violation of OHA rules.

d. Reporting suspected and verified cases of fraud or abuse

When a verified case of fraud or abuse exists, AGENCY will report the following information to the MFCU and COUNTY within five (5) business day of discovery of the suspected activity:

- Provider Name, Oregon Medicaid Provider Number, address and phone
- Type of provider
- Source and nature of complaint
- The approximate range of dollars involved
- The disposition of the complaint when known
- Number of complaints for the time period.

**Contact Information**

Report to: Medicaid Fraud Control Unit (MFCU)  
Phone: (971)673-1880  
Fax: (971)673-1890  
Address: 1515 SW 5th Ave., Suite 410, Portland, OR 97201

**Contact Information**

Report to: Clackamas Behavioral Health Division  
Contact: Compliance Policy Analyst  
Phone: (503)742-5335  
Fax: (503)742-5304  
Address: 2051 Kaen Road, Suite 367, Oregon City, OR 97045

**10. Compliance with Applicable Law**

AGENCY shall comply and, as indicated, cause all employees and subcontractors to comply with the following Federal requirements. For purposes of this agreement, all references to Federal and State laws are references to Federal and State laws as they may be amended from time to time.

a. Miscellaneous Federal Provisions

AGENCY shall comply and cause all subcontractors to comply with all federal laws, regulations and executive orders applicable to this Contract or to the delivery of Work. Without limiting the generality of the foregoing, AGENCY expressly agrees to comply and cause all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to this Contract: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) 45 CFR Part 84 which implements, Title V, Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Executive Order 11246, as amended, (e) the Health Insurance Portability and Accountability Act of 1996, as amended, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (j) all federal law governing operation of CMHPs, including without limitation, all federal laws requiring reporting of client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to this Contract and required by law to be so incorporated. No federal funds may be used to provide Work in violation of 42 USC 14402.

b. Equal Employment Opportunity

If this Contract, including amendments, is for more than \$10,000, then AGENCY shall comply and cause all subcontractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

c. Non-Discrimination

(1) AGENCY shall comply with all federal and State laws and regulations including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972 (regarding education programs and activities) the Age Discrimination Act of 1975, the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA) of 1990, and all amendments to those acts and all regulations promulgated thereunder. AGENCY shall also comply with all applicable requirements of State civil rights and rehabilitation statutes and rules.



- (2) AGENCY shall comply with and cause its subcontractors to comply with the integration mandate in 28 CFR 35.130(d), Title II of the Americans with Disabilities Act and its implementing regulations published in the Code of Federal Regulations.

d. Advance Directives

AGENCY shall provide adult clients with written information on Advance Directive policies and include a description of Oregon law. The written information provided by AGENCY must reflect changes in Oregon law as soon as possible, but no later than 90 days after the effective date of any change to Oregon law. AGENCY must also provide written information to adult clients with respect to the following:

- (1) Their rights under Oregon law;
- (2) AGENCY's policies respecting the implementation of those rights, including a statement of any limitation regarding the implementation of Advance Directives as a matter of conscience.
- (3) AGENCY must inform clients that complaints concerning noncompliance with the Advance Directive requirements may be filed with OHA.

e. Drug Free Workplace

AGENCY shall maintain and cause all subcontractors to maintain a drug-free workplace and shall notify employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in AGENCY's workplace. AGENCY shall establish a drug-free awareness program and provide each employee to be engaged in the provision of services under this agreement with information about its drug-free workplace program. AGENCY will further comply with additional applicable provisions of the Health Share of Oregon Core Contract.

f. Clinical Laboratory Improvement

If applicable to Scope of Work, AGENCY shall and shall ensure that any Laboratories used by AGENCY shall comply with the Clinical Laboratory Improvement Amendments (CLIA 1988), 42 CFR Part 493 Laboratory Requirements and ORS 438 (Clinical Laboratories, which require that all laboratory testing sites providing services under this agreement shall have either a Clinical Laboratory Improvement Amendments (CLIA) certificate of waiver or a certificate of registration along with a CLIA identification number. Those Laboratories with certificates of waiver will provide only the eight types of tests permitted under the terms of their waiver. Laboratories with certificates of registration may perform a full range of laboratory tests.

g. Clean Air, Clean Water, EPA Regulations

If this agreement, including amendments, exceeds \$100,000 then AGENCY shall comply and cause all subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to OHA, DHHS and the appropriate Regional Office of the Environmental Protection Agency. AGENCY shall include and cause all subcontractors to include in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section.

h. Energy Efficiency

AGENCY shall comply and cause all subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6201 et seq. (Pub. L. 94- 163).

i. Resource Conservation and Recovery

AGENCY shall comply and cause all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 USC 6901 et. seq.). Section 6002 of that Act (codified at 42 USC 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.

j. Audits

AGENCY shall comply and, if applicable, cause a subcontractor to comply, with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations."

k. Truth in Lobbying

AGENCY certifies, to the best of the AGENCY's knowledge and belief that:

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of AGENCY, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, AGENCY shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- (3) AGENCY shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.
- (4) This certification is a material representation of fact upon which reliance was placed when this Contract was made or entered into. Submission of this certification is a prerequisite for making or entering into this agreement imposed by Section 1352, Title 31, of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

i. Conflict of Interest Safeguards

- (1) AGENCY and its subcontractors shall have in effect safeguards, including, but not limited to, policies and procedures against conflict of interest with any State of Oregon Department of Human Services employees or other agents of the State who have responsibilities relating to this agreement. These safeguards must be at least as effective as the safeguards specified in Section 27 of the Office of Federal Procurement Policy Act (41 USC 423) and must include safeguards to avoid conflicts that could be prohibited under 18 USC 207 or 208 if the Department of Human Services employee or agent was an officer or employee of the United States Government. For purposes of implementing policies and procedures required in this section, AGENCY shall apply the definitions in the State Public Ethics Law as if they applied to AGENCY for "Actual conflict of interest," ORS 244.020(1), "potential conflict of interest," ORS 244.020(14), and "client of household," ORS 244.020(12).
- (2) AGENCY shall not offer to any DHS or OHA employee (or any relative or member of their household) any gift or gifts with an aggregate value in excess of \$50 during a calendar year or any gift of payment of expenses for entertainment. "Gift" for this purpose has the meaning defined in ORS 244.020(6) and OAR 199-005-0001 to 199-005-0035.
- (3) "AGENCY" for purposes of this section includes all AGENCY's affiliates, assignees, subsidiaries, parent companies, successors and transferees, and persons under common control with the AGENCY; any officers, directors, partners, agents and employees of such person; and all others acting or claiming to act on their behalf or in concert with them.
- (4) AGENCY shall apply the definitions in the State Public Ethics Law, ORS 244.020, for "actual conflict of interest", "potential conflict of interest", "relative" and "member of household".

m. HIPAA Compliance

- (1) The parties acknowledge and agree that each of OHA and AGENCY is a "covered entity" for purposes of privacy and security provisions of the Health Insurance Portability and Accountability Act and the federal regulations implementing the Act (collectively referred to as HIPAA). OHA and AGENCY shall comply with HIPAA to the extent that any work or obligations of OHA arising under this agreement are covered by HIPAA.
- (2) AGENCY shall develop and implement such policies and procedures for maintaining the privacy and security of records and authorizing the use and disclosure of records required to comply with this agreement and with HIPAA. AGENCY shall comply and cause all subcontractors to comply with HIPAA and all the HIPAA provisions listed in the Health Share of Oregon Core Contract.
- (3) HIPAA Information Security. AGENCY shall adopt and employ reasonable administrative and physical safeguards consistent with the Security Rules in 45 CFR Part 164 to ensure that Member Information shall be used by or disclosed only to the extent necessary for the permitted use or disclosure and consistent with applicable State and federal laws and the terms and conditions of this agreement. Security incidents involving Member Information must be immediately reported to DHS' Privacy Officer.

July 10, 2014

Board of Commissioners  
 Clackamas County

Members of the Board:

Approval of a Professional Services Agreement with  
 Cascadia Behavioral Healthcare for  
 Peer Support Services at Villebois Housing Sites

<b>Purpose/Outcomes</b>	To provide peer support services to behavioral health consumers residing at housing sites in Villebois
<b>Dollar Amount and Fiscal Impact</b>	Contract maximum value is \$151,708
<b>Funding Source</b>	Oregon Health Authority - no County General Funds are involved.
<b>Safety Impact</b>	None
<b>Duration</b>	Effective July 1, 2014 and terminates on June 30, 2015
<b>Previous Board Action</b>	Last year's agreement was under \$150,000 and approved by the H3S Director.
<b>Contact Person</b>	Jill Archer, Director – Behavioral Health Division - 742-5336
<b>Contract No.</b>	6746

**BACKGROUND:**

The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of a Professional Services Agreement with Cascadia Behavioral Healthcare to provide peer support services to behavioral health consumer residing at housing site in Villebois in Wilsonville, Oregon.

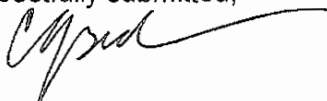
Peer support services are provided to residents at three housing units in Villebois: Renaissance Court Apartments, Rain Garden Apartments and The Charleston Apartments. Services include 1-on-1 support to residents; assist in crisis prevention; and community integration such as skills training and socialization. The Behavioral Health Division has partnered with Cascadia Behavioral Healthcare for peer services since 2012. This contract is a continuation of these services.

The contract is effective July 1, 2014 and continues through June 30, 2015. County Counsel has reviewed and approved this contract as part of the H3S contract standardization project.

**RECOMMENDATION:**

Staff recommends the Board approval of this contract and authorizes Cindy Becker, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,



Cindy Becker, Director

## PROFESSIONAL SERVICES AGREEMENT

### Contract # 6746

This Professional Services Agreement is between Clackamas County acting by and through its Health, Housing and Human Services Department, Behavioral Health Division, hereinafter called "COUNTY" and CASCADIA BEHAVIORAL HEALTHCARE, hereinafter called "CONTRACTOR".

### AGREEMENT

#### 1.0 Engagement

COUNTY hereby engages CONTRACTOR to provide peer support services to consumers residing at the Villebois Housing sites (including Renaissance Court Apartments, Rain Garden and The Charleston Apartments) in Wilsonville, Oregon as more fully described in Exhibit A, Scope of Work, attached hereto and incorporated herein.

#### 2.0 Term

Services provided under the terms of this agreement shall commence **July 1, 2014**. This agreement shall terminate **June 30, 2015** unless terminated earlier by one or both parties as provided for in paragraph 6.0. This agreement may be renewed annually and amended by mutual consent of both parties.

#### 3.0 Compensation and Fiscal Records

3.1 Compensation. COUNTY shall compensate CONTRACTOR for satisfactorily performing contracted services as specified in Exhibit A as follows:

Villebois Community Housing Sites: Total payment based on actual cost shall not exceed **\$151,708**. The total payment calculation is based on CONTRACTOR providing seven 8.5-hour day shifts per week at Villebois Community Housing Sites including Renaissance Court Apartments, Rain Garden and the Charleston Apartments.

Payment shall be full compensation for work performed, for services rendered, and for all labor, materials, supplies, equipment, travel expenses, mileage, and incidentals necessary to perform the work and services.

3.2. Method of Payment. To receive payment, CONTRACTOR shall submit invoices and accompanying progress reports as follows:

CONTRACTOR shall submit an invoice and monthly progress report by the 10<sup>th</sup> of the month following the month services were performed. CONTRACTOR may use the invoice template provided in Attachment 1. The invoice shall include the contract # **6746**, list the dates of service, the rate and the total amount due for all service provided during the month. Each invoice shall have a shift log summary for reconciliation and back up. Invoices with back-up shall be submitted electronically to:

[healthcenterap@clackamas.us](mailto:healthcenterap@clackamas.us)

When submitting electronically, designate CONTRACTOR name and contract # **6746** in the subject of the e-mail.

Within thirty (30) days after receipt of the bill, provided the Housing Development Coordinator has approved the service specified on the invoice, COUNTY shall pay the amount requested to CONTRACTOR.

3.3 Withholding of Contract Payments. Notwithstanding any other payment provision of this agreement, should CONTRACTOR fail to perform or document the performance of contracted services, COUNTY shall immediately withhold payments hereunder. Such withholding payment for cause may continue until CONTRACTOR performs required services or establishes to COUNTY'S satisfaction that such failure arose out of causes beyond the control, and without the fault or negligence, of CONTRACTOR.

3.4 Financial Records. CONTRACTOR shall maintain complete and legible financial records pertinent to payments received. Such records shall be maintained in accordance with Generally Accepted Accounting Principles. Financial records shall be retained for at least five (5) years after final payment is made under this agreement or until all pending matters are resolved, whichever period is longer. If an audit of financial records discloses that payments to CONTRACTOR were in excess of the amount to which CONTRACTOR was entitled, CONTRACTOR shall repay the amount of the excess to COUNTY.

3.4.1 CONTRACTOR shall maintain up-to-date accounting records that accurately reflect all revenue by source, all expenses by object of expense, and all assets, liabilities and equities consistent with Generally Accepted Accounting Principles and Oregon Administrative Rules. CONTRACTOR shall make reports and fiscal data generated under and for this agreement available to COUNTY upon request.

3.4.2 COUNTY shall conduct a fiscal compliance review of CONTRACTOR as part of compliance monitoring of this agreement. CONTRACTOR agrees to provide, upon reasonable notice, access to all financial books, documents, papers and records of CONTRACTOR which are pertinent to this agreement to ensure appropriate expenditure of funds under this agreement. COUNTY shall monitor compliance with COUNTY's financial reporting and accounting requirements.

3.4.3 CONTRACTOR may be subject to audit requirements. CONTRACTOR agrees that audits must be conducted by Certified Public Accountants who satisfy the independence requirement outlined in the rules of the American Institute of Certified Public Accountants (Rule 101 of the AICPA Code of Professional Conduct), the Oregon State Board of Accountancy, the independence rules contained within Governmental Auditing Standards (1994 Revision), and rules promulgated by other federal, state and local government agencies with jurisdiction over CONTRACTOR.

3.4.4 CONTRACTOR shall establish and maintain systematic written procedures to assure timely and appropriate resolution of review or audit findings and recommendations. CONTRACTOR shall make such procedures and documentation of resolution of audit findings available to COUNTY upon request.

#### **4.0 Manner of Performance**

4.1 Compliance with Applicable Laws and Regulations, and Special Federal Requirements. CONTRACTOR shall comply with all Federal and State regulations and laws, Oregon Administrative Rules, local laws and ordinances applicable to work performed under this agreement, including, but not limited to, all applicable Federal and State civil rights and rehabilitation statutes, rules and regulations, and as listed in Exhibit B, Performance Standards, attached hereto and incorporated herein.

4.2 Subcontracts. CONTRACTOR shall not enter into any subcontracts for any of the work scheduled under this agreement.

4.3 Independent Contractor. CONTRACTOR certifies that it is an independent contractor and not an employee or agent of Clackamas County, State of Oregon or Federal government. CONTRACTOR is not an officer, employee or agent of Clackamas County as those terms are used in ORS 30.265. Responsibility for all taxes, assessments, and any other charges imposed upon employers shall be the solely the responsibility of CONTRACTOR.

#### **5.0 General Conditions**

5.1 Indemnification. CONTRACTOR agrees to indemnify, save, hold harmless, and defend COUNTY, its officers, commissioners and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of actions, suits, claims or demand attributable in whole or in part to the acts or omissions of CONTRACTOR, and CONTRACTOR's officers, agents, and employees, in performance of this agreement.

**Professional Services Agreement # 6746**  
**CASCADIA BEHAVIORLA HEALTHCARE – Peer Support Services @ Villebois**  
**Page 3 of 12**

CONTRACTOR shall defend, save, hold harmless and indemnify the State of Oregon, Oregon Health Authority and their officers, agents and employees from and against all claims, suits, actions, damages, liabilities, costs and expenses of whatsoever nature resulting from, arising out of, or relating to the activities or omissions of CONTRACTOR, or its agents or employees under this agreement.

If CONTRACTOR is a public body, CONTRACTOR's liability under this agreement is subject to the limitations of the Oregon Tort Claims Act.

5.2 Insurance. During the term of this agreement, CONTRACTOR shall maintain in force at its own expense each insurance noted below:

5.2.1 Commercial General Liability

Required by COUNTY       Not required by COUNTY

CONTRACTOR shall obtain, at CONTRACTOR's expense, and keep in effect during the term of this agreement, Commercial General Liability Insurance covering bodily injury and property damage on an "occurrence" form in the amount of not less than \$1,000,000 per occurrence/ \$2,000,000 general aggregate for the protection of COUNTY, its officers, commissioners, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this agreement. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute it.

5.2.2 Commercial Automobile Liability

Required by COUNTY       Not required by COUNTY

CONTRACTOR shall obtain at CONTRACTOR's expense, and keep in effect during the term of the agreement, "Symbol 1" Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$1,000,000.

5.2.3 Professional Liability

Required by COUNTY       Not required by COUNTY

CONTRACTOR agrees to furnish COUNTY evidence of professional liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence/\$2,000,000 general annual aggregate for malpractice or errors and omissions coverage for the protection of COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this agreement. COUNTY, at its option, may require a complete copy of the above policy.

5.2.4 Tail Coverage. If liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this contract for a duration of thirty-six (36) months or the maximum time period the CONTRACTOR'S insurer will provide "tail" coverage as subscribed, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided it's retroactive date is on or before the effective date of this contract.

5.2.5 Additional Insurance Provisions. All required insurance other than Professional Liability, Workers' Compensation, and Personal Automobile Liability insurance shall include "Clackamas County, its agents, officers, and employees" as an additional insured.

5.2.6 Notice of Cancellation. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice to the COUNTY. Any failure

**Professional Services Agreement # 6746**  
**CASCADIA BEHAVIORAL HEALTHCARE – Peer Support Services @ Villebois**  
**Page 4 of 12**

to comply with this provision will not affect the insurance coverage provided to COUNTY. The 60 days notice of cancellation provision shall be physically endorsed on to the policy.

5.2.7 Insurance Carrier Rating. Coverages provided by CONTRACTOR must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

5.2.8 Certificates of Insurance. As evidence of the insurance coverage required by this agreement, CONTRACTOR shall furnish a Certificate of Insurance to COUNTY. No agreement shall be in effect until required certificates have been received, approved and accepted by COUNTY. A renewal certificate will be sent to COUNTY ten days prior to coverage expiring.

5.2.9 Primary Coverage Clarification. CONTRACTOR's coverage will be primary in the event of a loss.

5.2.10 Cross Liability Clause. A cross-liability clause or separation of insureds condition will be included in all general liability, professional liability, and errors and omissions policies required by the agreement.

5.3 Governing Law; Consent to Jurisdiction. This agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Any claim, action, or suit between COUNTY and CONTRACTOR that arises out of or relates to performance under this agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, State of Oregon. Provided, however, that if any such claim, action or suit may be brought only in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR by execution of this agreement consents to the in personam jurisdiction of said courts.

5.4 Amendments. The terms of this agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by CONTRACTOR and COUNTY.

5.5 Severability. If any term or provision of this agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain the particular term or provision held to be invalid.

5.6 Waiver. The failure of either party to enforce any provision of this agreement shall not constitute a waiver of that or any other provision.

5.7 Future Support. COUNTY makes no commitment of future support and assumes no obligation for future support for the activity contracted herein except as set forth in this agreement.

5.8 Oregon Public Contracting Requirements. Pursuant to the requirements of Oregon law, the following terms and conditions are made a part of this agreement:

5.8.1 Workers' Compensation. All subject employers working under this agreement must either maintain workers' compensation insurance as required by ORS 656.017, or qualify for an exemption under ORS 656.126. CONTRACTOR shall maintain employer's liability insurance with limits of \$500,000 each accident, \$500,000 disease each employee, and \$500,000 each policy limit.

5.8.2 Oregon Constitutional Limitations. This agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein, which would conflict with such law, are deemed inoperative to that extent.

5.8.3 Oregon Public Contracting Conditions. Pursuant to the terms of ORS 279B.220, CONTRACTOR shall:



- a. Make payments promptly, as due, to all persons supplying to CONTRACTOR labor or materials for the performance of the work provided for in this agreement.
- b. Pay all contributions or amounts due the Industrial Accident Fund from such CONTRACTOR or subcontractor incurred in performance of this agreement.
- c. Not permit any lien or claim to be filed or prosecuted against Clackamas County on account of any labor or material furnished.
- d. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

5.8.4 CONTRACTOR shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference.

5.8.5 As required by ORS 279B.230, CONTRACTOR shall promptly, as due, make payment to any person or partnership, association, or corporation furnishing medical, surgical, and hospital care or other needed care and attention incident to sickness and injury, to the employees of CONTRACTOR, of all sums that CONTRACTOR agrees to pay for the services and all monies and sums that CONTRACTOR collected or deducted from the wages of its employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

5.9 Integration. This agreement contains the entire agreement between COUNTY and CONTRACTOR and supersedes all prior written or oral discussions or agreements.

## **6.0 Termination**

6.1 Termination Without Cause. This agreement may be terminated by mutual consent of both parties, or by either party upon thirty (30) business days notice, in writing and delivered by certified mail or in person.

6.2 Termination With Cause. COUNTY, by written notice of default (including breach of contract) to CONTRACTOR, may terminate this agreement effective upon delivery of written notice to CONTRACTOR, or at such later date as may be established by COUNTY, under any of the following conditions:

- a. If COUNTY funding from Federal, State, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services, the contract may be modified to accommodate a reduction in funds.
- b. If Federal or State regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding authorized by this agreement.
- c. If any license or certificate required by law or regulation to be held by CONTRACTOR to provide the services required by this agreement is for any reason denied, revoked, or not renewed.
- d. If CONTRACTOR fails to provide services, outcomes, reports as specified by COUNTY in this agreement.
- e. If CONTRACTOR fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms, and after receipt of written notice from COUNTY, fails to correct such failures within 10 days or such longer period as COUNTY may authorize.

6.2.1 If CONTRACTOR fails to perform any of the provisions of this agreement, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms, and after receipt of written

**Professional Services Agreement # 6746**  
**CASCADIA BEHAVIORAL HEALTHCARE – Peer Support Services @ Villebois**  
**Page 6 of 12**

notice from COUNTY fails to correct such failures within 10 days or such longer period as COUNTY may authorize.

6.3 Transition. Any such termination of this agreement shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination. CONTRACTOR and COUNTY shall continue to perform all duties and obligations under this agreement with respect to individuals under care of CONTRACTOR to the date of termination.

**7.0 Notices**

Any notice under this agreement shall be deemed received the earlier of the time of delivery of two (2) business days after mailing certified and postage prepaid through the U.S. Postal Service addressed as follows:

If to CONTRACTOR:

Cascadia Behavioral Healthcare  
PO Box 8459  
Portland, OR 97207

If to COUNTY:

Clackamas County Behavioral Health Division  
2051 Kaen Road, # 367  
Oregon City, OR 97045

This agreement consists of seven (7) sections plus the following exhibits, which by this reference are incorporated herein:

Exhibit A	Scope of Work
Exhibit B	Performance Standards
Attachment 1	Invoice Template

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed by their duly authorized officers.

**CASCADIA BEHAVIORAL HEALTHCARE**

*both parties on behalf of*  
By: *Derald Walker*  
Derald Walker, CEO

Date 7/2/14  
847 NE 19<sup>th</sup> Avenue, Suite 100 / PO Box 8459  
Street Address / Mailing Address  
Portland, Oregon 97207  
City / State / Zip  
(503)963-7766 / (503)963-7711  
Phone / Fax

**CLACKAMAS COUNTY**

Commissioner: John Ludlow, Chair  
Commissioner: Jim Bernard  
Commissioner: Paul Savas  
Commissioner: Martha Schrader  
Commissioner: Tootie Smith

**Signing on Behalf of the Board:**

Cindy Becker, Director  
Health, Housing and Human Service Department

Date

EXHIBIT A

SCOPE OF WORK

- A. CONTRACTOR agrees to work in conjunction with COUNTY to promote a recovery-oriented treatment system that focuses on hope, choice, personal responsibility, and self management.
- B. CONTRACTOR agrees to provide Peer Support Services to consumers at Villebois Community Housing Site located in Wilsonville, Oregon at the following service sites:
1. Renaissance Court Apartments
  2. Rain Garden Apartments
  3. The Charleston Apartments
- C. CONTRACTOR will:
1. Provide on-the-spot, peer-to-peer 1:1 support per resident's request to:
    - a. Process feelings, anxiety, etc.
    - b. Assist in symptom management and coping with symptoms;
    - c. Aid in problem resolution;
    - d. Provide support; and
    - e. Address other issues as identified by resident.
  2. Assist in crisis prevention by encouraging residents to follow their mental health crisis plan, contact the Warm Line for support or the Crisis Line, as warranted.
  3. Report, as soon as feasible, to COUNTY liaison and clinical treatment provider when a crisis situation has occurred.
  4. Aid residents in community integration as follows:
    - a. Provide skills training 1:1 or groups on community integration through which residents will learn their tenant rights and responsibilities (if applicable), are informed about the resources in the community (social services, recreation, social, clubs, etc) and how to access them; and
    - b. Provide group outings to organizations, clubs, etc to help residents access and use resources in the community.
  5. Aid residents in understanding their title XIX benefits, their options for applying for benefits, and the impact of employment on their benefits.
  6. Provide resource referrals for discounted or free items such as computers, clothes, etc.
  7. Facilitate recovery action planning per resident request.
  8. Write a brief note per service provided to resident.
    - a. Utilizing CONTRACTOR's Electronic Medical Records system for CONTRACTOR-enrolled clients
    - b. Medicaid billing should occur as appropriate

- c. Service to non-CONTRACTOR clients will be billed through an invoicing process
- 9. Complete a Monthly Progress Report that provides the number of each occurrence and outcome of the following activities:
  - a. Eviction prevention assistance
  - b. Contacts for support, problem-solving, and/or crisis prevention through Warm Line and/or Crisis Line
  - c. Transportation inquiries
  - d. Teaching constructive ways to deal with emotions, resident related issues, and complaints
  - e. Assistance with medical paperwork, questions, or anxiety related to medical conditions
  - f. Support regarding relationship issues, boundary issues among others, and family issues or questions
  - g. Stress management activities
  - h. Assistance with work questions or school questions
  - i. Groups offered: type, attendance and outcomes
  - j. Incidents reports filed with the Property Manager
  - k. Emergency vehicles came to the site
  - l. Police came to the site
  - m. Community integration type and attendance
  - n. Volunteer or employment activities
- 10. Notify COUNTY liaison and clinical treatment provider when incident reports have been filed with the property manager.
- 11. Work in coordination with COUNTY and other contracted service providers to encourage communication and cooperation regarding the shared mission and goal of enhancing the residents' ability to maintain independent living. Support services must address the special needs of the residents served. All organizations share the goals of providing residents access to housing, assisting residents in meeting the obligations of tenancy and in maximizing the successful community integration with effective delivery of supportive services.
- 12. Write a brief log summary for each shift.
- 13. Comply with established Standard Weekly Shift Detail:

<b>Standard Weekly Shift Detail</b>							
	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Day (11:30 am-8:00 pm)	Cascadia	Cascadia	Cascadia	Cascadia	Cascadia	Cascadia	Cascadia
Evening (7:30 pm-4:30 am)	CH- Altoris					CH- Altoris	CH- Altoris

Any adjustments to the established Standard Weekly Shift Detail must be approved by the COUNTY Peer Services Coordinator (Ally Linfoot (503)742-5951) at least seventy-two (72) hours prior to shift starting.

D. Outcome Measurement

Outcome measurement for this project will include: reduction in crisis calls, reduction in psychiatric hospitalizations and emergency room visits, reduction in evictions, access to entitlements, participation with or access to a personal care physician, and community integration.

**EXHIBIT B**

**PERFORMANCE STANDARDS**

A. General Performance Standards

1. CONTRACTOR ensures that all staff employed or contracted by CONTRACTOR who provided services or are otherwise engaged in activities under this agreement are fully aware of and in compliance with the terms and conditions of this agreement.
2. CONTRACTOR assures that all of CONTRACTOR's employees and independent contractors providing services under this agreement will work within the scope of their credentials and any applicable licensure or registration. CONTRACTOR shall not allow services to be provided by an employee or independent contractor who does not have a valid license or certification required by state or federal law.

B. Staff

CONTRACTOR will provide the following for all staff who are in direct contact with COUNTY clients:

- Completion of a successful criminal history records check through the Oregon Law Enforcement Data System; and
- Appropriate education and academic degrees;
- Licenses or certificates, as required;
- Relevant work history or qualifications;

C. Monitoring

COUNTY shall monitor services provided by CONTRACTOR and has the right to require CONTRACTOR's compliance with established standards and performance requirements relative to the services provided, administrative and fiscal management, and with all obligations and conditions stated in this agreement.

COUNTY may conduct compliance monitoring related to this agreement. CONTRACTOR shall cooperate with COUNTY in such monitoring. COUNTY shall provide CONTRACTOR twenty (20) business days written notice of any agreement compliance monitoring activity that requires any action or cooperation by CONTRACTOR. Notice of monitoring shall include the date monitoring shall occur, names of individuals conducting the monitoring, and instructions and requests for information.

D. Miscellaneous Federal Provisions

CONTRACTOR shall comply with all Federal laws, regulations, and executive orders applicable to this agreement or to the delivery of Services. Without limiting the generality of the foregoing, CONTRACTOR expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to this agreement, and as they are amended from time to time: (a) Title VI and VII of the Civil Rights Act of 1964, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, (c) the Americans with Disabilities Act of 1990, (d) Executive Order 11246, (e) the Health Insurance Portability and Accountability Act of 1996, (f) the Age Discrimination in Employment Act of 1967, and the Age Discrimination Act of 1975, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of Federal civil rights and rehabilitation statutes, rules and regulations, (j) all Federal law governing operation of Community Mental Health Programs, including without limitation, all

Federal laws requiring reporting of client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the agreement and required by law to be so incorporated. No Federal funds may be used to provide Covered Services in violation of 42 USC 14402.


**E. Abuse Reporting**

CONTRACTOR shall comply with all processes and procedures of child abuse (ORS 419B.005 – 419B.050), mentally ill and developmentally disabled abuse (ORS 430.731 – 430.768 and OAR 943-045-0250 through 943-045-0370) and elder abuse reporting laws (ORS 124.050 – 124.092) as if CONTRACTOR were a mandatory abuse reporter. If CONTRACTOR is not a mandatory reporter by statute, these reporting requirements shall apply during work hours only. CONTRACTOR shall immediately report to the proper State or law enforcement agency circumstances (and provide such other documentation as may be relevant) supporting reasonable cause to believe that any person has abused a child, a mentally ill or developmentally disabled adult or an elderly person, or that any such person has been abused.

**F. Confidentiality**

CONTRACTOR agrees that CONTRACTOR, its agents and employees shall maintain the confidentiality of any client identifying information, written or otherwise, with which they may come in contact, in accordance with all applicable provisions of state and federal statutes, rules and regulations, and shall comply with the same in the event of requests for information by any person or federal, state or local agency.



15  COPY  
**M. BARBARA CARTMILL**  
 DIRECTOR

**DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT**

**DEVELOPMENT SERVICES BUILDING**  
 150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

July 10, 2014

Board of Commissioners  
 Clackamas County

Members of the Board:

**Approval of Amendment No. 1 to the Local Agency Agreement No. 29634 with Oregon Department of Transportation (ODOT) for the Sunnyside Road Adaptive Signal System Project**

<b>Purpose/Outcomes</b>	Amendment to Local Agency Agreement with ODOT for the Sunnyside Road Adaptive Signal Project.
<b>Dollar Amount and Fiscal Impact</b>	\$986,244 total \$884,939 provided through Federal Funds \$101,305 provided through County match
<b>Funding Source</b>	Surface Transportation Program (STP) County Match provided through construction cost-sharing for the Sunnyside Road at Stevens Road Intersection Improvement Project
<b>Safety Impact</b>	The Sunnyside Road Adaptive Signal System Project is expected to reduce/manage vehicular and pedestrian delays.
<b>Duration</b>	Completion of the Project or ten (10) years following the date of final execution
<b>Previous Board Action</b>	12/12/2013 – BCC Approval of Local Agency Agreement No. 29634
<b>Contact Person</b>	Bikram Raghubansh, Project Manager 503-742-4706

**BACKGROUND:**

This is an amendment to the original intergovernmental agreement between Clackamas County and the Oregon Department of Transportation (ODOT) to deploy Adaptive Signal Control Technology (ASCT) on Sunnyside Road between 82<sup>nd</sup> Avenue and 122<sup>nd</sup> Avenue. This project consists of the installation of Intelligent Transportation System (ITS) technology for up to thirteen (13) traffic signals along Sunnyside Road. Implementation of ASCT is expected to improve the operational efficiency of Sunnyside Road and access to and from the Clackamas Town Center, freeway ramps, Sunnyside Hospital, and Happy Valley area.

This amendment will transfer \$428,977 of financial plan authority (equivalent to recent de-obligation from 172<sup>nd</sup> Avenue (Sunnyside Road to Multnomah County Line) Planning Project) to the Construction phase of Sunnyside Road Adaptive Signal System Project. These additional funds will help perform full system engineering on ASCT and expand the deployment of additional ITS devices within the project limits.

This agreement has been reviewed and approved by County Counsel.



**RECOMMENDATION:**

Staff respectfully recommends that the Board of County Commissioners approve the attached Amendment No. 1 to the original Local Agency Agreement for the Sunnyside Road Adaptive Signal System Project.

Respectfully submitted,



M. Barbara Cartmill

For information on this issue or copies of attachments  
please contact Bikram Raghubansh at 503-742-4706

**AMENDMENT NUMBER 01**  
**Surface Transportation Program-Urban Local Agency Agreement**  
**Sunnyside Road Adaptive Signal System**  
**Clackamas County**

The **STATE OF OREGON**, acting by and through its Department of Transportation, hereinafter referred to as "State;" and **CLACKAMAS COUNTY**, acting by and through its elected officials, hereinafter referred to as "Agency," entered into an Agreement on January 16, 2014. Said Agreement covers Agency's upgrade of its traffic signal system by implementation of Adaptive Traffic Signal systems along SE Sunnyside Road corridor within Clackamas County.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to increase funding and update language. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

**Attachment No. 1, Special Provisions and Attachment No. 2, Federal Standard Provisions shall be deleted in their entirety and replaced with the attached Revised Attachment No. 1, Special Provisions and Revised Attachment No. 2, Federal Standard Provisions. All references to Attachment No. 1, Special Provisions and Attachment No. 2, Federal Standard Provisions shall hereinafter be referred to as Revised Attachment No. 1, Special Provisions and Revised Attachment No. 2, Federal Standard Provisions.**

**Terms of Agreement, Paragraph 2, Page 1, which reads:**

2. The Project will be conducted as a part of the Federal-Aid Surface Transportation Program (STP) under Title 23, United States Code. The total Project cost is estimated at \$558,000, which is subject to change. State Urban STP funds for this Project will be limited to \$500,000. The Project will be financed with STP funds at the maximum allowable federal participating amount, with agency providing the match and any non-participating costs, including all costs in excess of the available federal funds.

**Shall be deleted in its entirety and replaced with the following:**

2. The Project will be conducted as a part of the Federal-Aid Surface Transportation Program (STP) under Title 23, United States Code. The total Project cost is estimated at \$986,224, which is subject to change. STP urban funds for this Project will be limited to \$884,939. The Project will be financed with STP funds at the maximum allowable federal participating amount, with Agency providing the match and any non-participating costs, including all costs in excess of the available federal funds.

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This Amendment may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Amendment so executed shall constitute an original.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions:

This Project is in the 2012-2015 Statewide Transportation Improvement Program, (Key #18305) that was adopted by the Oregon Transportation Commission on March 21, 2012 (or subsequently approved by amendment to the STIP).

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**CLACKAMAS COUNTY**, by and  
through its elected officials

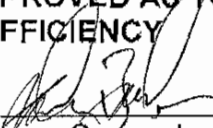
By \_\_\_\_\_  
Chair

Date \_\_\_\_\_

By \_\_\_\_\_  
Recording Secretary

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By  \_\_\_\_\_  
Agency Counsel

Date 6/30/14

**Agency Contact:**

Bikram Raghubansh, Traffic Engineer  
150 Beavercreek Road  
Oregon City, Oregon 97045  
(503) 742-4706  
bikramrag@co.clackamas.or.us

**State Contact:**

Mahasti Hastings, Local Agency Liaison  
123 NW Flanders Street  
Portland, Oregon 97209  
(503) 731-8595  
Mahasti.v.hastings@odot.state.or.us

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
Highway Division Administrator

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Technical Services Manager/Chief  
Engineer

Date \_\_\_\_\_


By \_\_\_\_\_  
State Traffic/Roadway Engineer

Date \_\_\_\_\_

By \_\_\_\_\_  
Region 1 Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By  \_\_\_\_\_  
Assistant Attorney General

Date: 6/2/2014

**REVISED ATTACHMENT NO. 1 to Agreement No. 29634  
SPECIAL PROVISIONS**

1. Agency or its consultant shall, as a federal-aid participating preliminary engineering function, conduct the necessary field surveys, environmental studies, traffic investigations, foundation explorations, and hydraulic studies, identify and obtain all required permits, assist State with acquisition of necessary right of way and/or easements, and perform all preliminary engineering and design work required to produce final plans, preliminary/final specifications and cost estimates.
2. Upon State's award of the construction contract, Agency, or its consultant, shall be responsible to perform all construction engineering, field testing of materials, technical inspection and project manager services for administration of the contract.
3. State may make available Region 1's On-Call Preliminary Engineering (PE), Design and Construction Engineering Services consultant for Local Agency Projects upon written request. If Agency chooses to use said services, Agency agrees to manage the work performed by the consultant and make funds available to the State for payment of those services. All eligible work will be a federally participating cost and included as part of the total cost of the Project.
4. Agency shall have a current Indirect Cost Allocation Plan and an approved indirect rate from its federal cognizant agency prior to invoicing indirect costs. A copy of the current approved rate from the federal cognizant agency or State must be attached to invoices with indirect costs. If Agency does not have a current approved rate, it can apply directly to its federal cognizant agency for an Indirect Cost Rate. If the Agency has no federal cognizant agency, it can submit an indirect Cost Rate proposal to State for review and approval for State invoices. Without an approved Indirect Cost Rate State will only pay Agency for Direct Costs.
5. Both Parties agree that maintenance of Project facilities shall be performed in accordance with the subsequent Agreement No. 29674.

## **REVISED ATTACHMENT NO. 2 FEDERAL STANDARD PROVISIONS**

### **PROJECT ADMINISTRATION**

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project, and Agency (i.e. county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will act for Agency in other matters pertaining to the Project. Prior to taking such action, State will confer with Agency concerning actions necessary to meet federal obligations. Agency shall, if necessary, appoint and direct the activities of a Citizen's Advisory Committee and/or Technical Advisory Committee, conduct a hearing and recommend the preferred alternative. State and Agency shall each assign a person in responsible charge "liaison" to coordinate activities and assure that the interests of both Parties are considered during all phases of the Project.
2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.
3. Non-certified agencies must contract with State or a State certified local public agency to secure services to perform plans, specifications and estimates (PS&E), construction contract advertisement, bid, award, contractor payments and contract administration. Non-certified agencies may use a State-approved consultant to perform preliminary engineering, and construction engineering services.

### **PROJECT FUNDING REQUEST**

4. State shall submit a separate written Project funding request to FHWA requesting approval of federal-aid participation for each project phase including a) Program Development (Planning), b) Preliminary Engineering (National Environmental Policy Act - NEPA, Permitting and Project Design), c) Right of Way Acquisition, d) Utilities, and e) Construction (Construction Advertising, Bid and Award). Any work performed prior to FHWA's approval of each funding request will be considered nonparticipating and paid for at Agency expense. Agency shall not proceed on any activity in which federal-aid participation is desired until such written approval for each corresponding phase is obtained by State. State shall notify Agency in writing when authorization to proceed has been received from FHWA. All work and records of such work shall be in conformance with FHWA rules and regulations.

### **FINANCE**

5. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount for the federal funds and any portion of the Project, which is not covered by federal funding, unless otherwise agreed to and specified in the intergovernmental Agreement (Project Agreement). Agency must obtain written approval from State to use in-

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kind contributions rather than cash to satisfy all or part of the matching funds requirement. If federal funds are used, State will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Project Agreement. State will also determine and clearly state in the Project Agreement if recipient is a subrecipient or vendor, using criteria in OMB CIRCULAR NO. A-133.

6. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall pay one hundred (100) percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds or allocations of State Highway Trust Funds to Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration outside the *Local Agency Guidelines Manual* that result in items being declared non-participating by FHWA, such items deemed non-participating will be negotiated between Agency and State.
7. Agency agrees that costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon by the Parties.
8. Agency's estimated share and advance deposit.
  - a) Agency shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.
  - b) Agency's construction phase deposit shall be one hundred ten (110) percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid must be received within forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is cancelled. Any balance of a cash deposit in excess of amount needed, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor's written request.
  - c) Pursuant to Oregon Revised Statutes (ORS) 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool), and an Irrevocable Limited Power of Attorney is sent to State's Active Transportation Section, Funding and Program Services Unit, or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash.
9. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear one hundred (100) percent of all costs incurred as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear one hundred (100) percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all costs, whether incurred by State or Agency, either directly or through contract services, and State shall

bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.

10. Agency shall follow requirements stated in the Single Audit Act. The requirements stated in the Single Audit Act must be followed by those local governments and non-profit organizations receiving five hundred thousand (\$500,000) or more in federal funds. The Single Audit Act of 1984, PL 98-502 as amended by PL 104-156, described in "OMB CIRCULAR NO. A-133", requires local governments and non-profit organizations to obtain an audit that includes internal controls and compliance with federal laws and regulations of all federally-funded programs in which the local agency participates. The cost of this audit can be partially prorated to the federal program.
11. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.
12. Agency shall present invoices for one hundred (100) percent of actual costs incurred by Agency on behalf of the Project directly to State's Liaison for review, approval and reimbursement to Agency. Costs will be reimbursed consistent with federal funding provisions and the Project Agreement. Such invoices shall identify the Project by the name of the Project Agreement, reference the Project Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Invoices shall be presented for periods of not less than one-month duration, based on actual expenses to date. All invoices received from Agency must be approved by State's Liaison prior to payment. Agency's actual costs eligible for federal-aid or State participation shall be those allowable under the provisions of the Federal-Aid Policy Guide (FAPG), Title 23 CFR parts 1.11, 140 and 710. Final invoices shall be submitted to State for processing within three (3) months from the end of each funding phase as follows: a) preliminary engineering, which ends at the award date of construction b) last payment for right of way acquisition and c) contract completion for construction. Partial billing (progress payment) shall be submitted to State within three (3) months from date that costs are incurred. Final invoices submitted after the three (3) months shall not be eligible for reimbursement. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the Project Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period ending on the later of six (6) years following the date of final voucher to FHWA or after resolution of any disputes under the Project Agreement. Copies of such records and accounts shall be made available upon request. For real property and equipment, the retention period starts from the date of disposition (Title 49 CFR part 18 subpart 42).
13. Agency shall, upon State's written request for reimbursement in accordance with Title 23, CFR part 630.112(c) 1 and 2, as directed by FHWA, reimburse State for federal-aid funds distributed to Agency if any of the following events occur:
  - a) Right of way acquisition is not undertaken or actual construction is not started by the close of the twentieth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized for right of way acquisition. Agency may submit a written request to State's Liaison for a time extension beyond the twenty (20) year limit with no repayment of federal



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funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.

- b) Right of way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized. Agency may submit a written request to State's Liaison for a time extension beyond the ten (10) year limit with no repayment of federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.
14. Agency shall maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that the Project is completed in conformance with approved plans and specifications.
15. State shall submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. State shall pay all reimbursable costs of the Project. Agency may request a statement of costs-to-date at any time by submitting a written request. When the actual total cost of the Project has been computed, State shall furnish Agency with an itemized statement of final costs. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal one hundred (100) percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of the Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the total cost of the Project.

## STANDARDS

16. Agency agrees that minimum design standards on all local agency jurisdictional roadway or street projects on the National Highway System (NHS) and projects on the non-NHS shall be the American Association of State Highway and Transportation Officials (AASHTO) standards and be in accordance with *State's Oregon Bicycle & Pedestrian Design Guide* (current version). Agency shall use either AASHTO's A Policy on Geometric Design of Highways and Streets (current version) or State's Resurfacing, Restoration and Rehabilitation (3R) design standards for 3R projects. Agency may use AASHTO for vertical clearance requirements on Agency's jurisdictional roadways or streets.
17. Agency agrees that if the Project is on the Oregon State Highway System or State-owned facility, that design standards shall be in compliance with standards specified in the current *ODOT Highway Design Manual* and related references. Construction plans for such projects shall be in conformance with standard practices of State and all specifications shall be in substantial compliance with the most current *Oregon Standard Specifications for Highway Construction* and current *Contract Plans Development Guide*.
18. Agency agrees that for all projects on the Oregon State Highway System or State-owned facility any design element that does not meet *ODOT Highway Design Manual* design standards must be justified and documented by means of a design exception. Agency further agrees that for all projects on the NHS, regardless of funding source; any design

element that does not meet AASHTO standards must be justified and documented by means of a design exception. State shall review any design exceptions on the Oregon State Highway System and retains authority for their approval. FHWA shall review any design exceptions for projects subject to Focused Federal Oversight and retains authority for their approval.

19. Agency agrees all traffic control devices and traffic management plans shall meet the requirements of the current edition of the *Manual on Uniform Traffic Control Devices and Oregon Supplement* as adopted in Oregon Administrative Rule (OAR) 734-020-0005. Agency must obtain the approval of the State Traffic Engineer prior to the design and construction of any traffic signal, or illumination to be installed on a state highway pursuant to OAR 734-020-0430.
20. The standard unit of measurement for all aspects of the Project shall be English Units. All Project documents and products shall be in English. This includes, but is not limited to, right of way, environmental documents, plans and specifications, and utilities.

#### **PRELIMINARY & CONSTRUCTION ENGINEERING**

21. Preliminary engineering and construction engineering may be performed by either a) State, b) Agency, c) State-approved consultant, or d) certified agency. Engineering work will be monitored by State or certified agency to ensure conformance with FHWA rules and regulations. Project plans, specifications and cost estimates shall be performed by either a) State, b) State-approved consultant or c) certified agency. State shall review and approve Project plans, specifications and cost estimates. State shall, at project expense, review, process and approve, or submit for approval to the federal regulators, all environmental statements. State or certified agency shall, if they prepare any of the documents identified in this paragraph, offer Agency the opportunity to review and approve the documents prior to advertising for bids.
22. Agency may request State's two-tiered consultant selection process as allowed by OAR 137-048-0260 to perform architectural, engineering, photogrammetry, transportation planning, land surveying and related services (A&E Services) as needed for federal-aid transportation projects. Use of the State's processes is required to ensure federal reimbursement. State will award and execute the contracts. State's personal services contracting process and resulting contract document will follow Title 23 CFR part 172, Title 49 CFR part 18, ORS 279A.055, 279C.110, 279C.125, OAR 137-048-0130, OAR 137-048-0220(4) and State Personal Services Contracting Procedures as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or the consultant prior to receiving authorization from State to proceed.
23. The party responsible for performing preliminary engineering for the Project shall, as part of its preliminary engineering costs, obtain all Project related permits necessary for the construction of said Project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.

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24. State or certified agency shall prepare construction contract and bidding documents, advertise for bid proposals, and award all construction contracts.
25. Upon State's or certified agency's award of a construction contract, State or certified agency shall perform quality assurance and independent assurance testing in accordance with the FHWA-approved Quality Assurance Program found in State's *Manual of Field Test Procedures*, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the Project.
26. State shall, as a Project expense, assign a liaison to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). State's liaison shall process reimbursement for federal participation costs.

**REQUIRED STATEMENT FOR United States Department of Transportation  
(USDOT) FINANCIAL ASSISTANCE AGREEMENT**

27. By signing the Federal-Aid Agreement to which these Federal Standard Provisions are attached, Agency agrees to adopt State's DBE Program Plan, available at [http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/pages/sbe/dbe/dbe\\_program.aspx#plan](http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/pages/sbe/dbe/dbe_program.aspx#plan). Agency shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. Agency agrees to take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. State's DBE program, as required by 49 CFR part 26 and as approved by USDOT, is incorporated by reference in this Project Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Project Agreement. Upon notification to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 United States Code (USC) 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).

**Disadvantaged Business Enterprises (DBE) Obligations**

28. State and Agency agree to incorporate by reference the requirements of 49 CFR part 26 and State's DBE Program Plan, as required by 49 CFR part 26 and as approved by USDOT, into all contracts entered into under this Project Agreement. The following required DBE assurance shall be included in all contracts:

*"The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of Title 49 CFR part 26 in the award and administration of federal-aid contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Agency deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b))."*

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29. Agency agrees to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.
30. The parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, incorporated herein by reference and made a part hereof; Title 23 CFR parts 1.11, 140, 635, 710, and 771; Title 49 CFR parts 18, 24 and 26; 2 CFR 225, and OMB CIRCULAR NO. A-133, Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended, the provisions of the FAPG and *FHWA Contract Administration Core Curriculum Participants Manual & Reference Guide*. State and Agency agree that FHWA-1273 Required Contract Provisions shall be included in all contracts and subcontracts verbatim and not by reference.

## RIGHT OF WAY

31. Agency and the consultant, if any, agree that right of way activities shall be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FAPG, CFR, and the *ODOT Right of Way Manual*, Title 23 CFR part 710 and Title 49 CFR part 24. State, at Project expense, shall review all right of way activities engaged in by Agency to ensure compliance with all laws and regulations.
32. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of projects. Agency may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project provided Agency or the consultant are qualified to do such work, as required by the *ODOT Right of Way Manual*, and Agency has obtained prior approval from State's Region Right of Way office to do such work.
33. Regardless of who acquires or performs any of the right of way activities, a right of way services agreement shall be created by State's Region Right of Way office setting forth the responsibilities and activities to be accomplished by each Party. If the Project has the potential of needing right of way, to ensure compliance in the event that right of way is unexpectedly needed, a right of way services agreement will be required. State, at Project expense, shall be responsible for requesting the obligation of project funding from FHWA. State, at Project expense, shall be responsible for coordinating certification of the right of way, and providing oversight and monitoring. Funding authorization requests for federal right of way funds must be sent through State's Liaison, who will forward the request to State's Region Right of Way office on all projects. Agency must receive written authorization to proceed from State's Right of Way Section prior to beginning right of way activities. All projects must have right of way certification coordinated through State's Region Right of Way office to declare compliance and project readiness for construction (even for projects where no federal funds were used for right of way, but federal funds were used elsewhere on a project). Agency shall contact State's Liaison, who will contact State's Region Right of Way office for additional information or clarification on behalf of Agency.

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34. Agency agrees that if any real property purchased with federal-aid participation is no longer needed for the originally authorized purpose, the disposition of such property shall be subject to applicable rules and regulations, which are in effect at the time of disposition. Reimbursement to State and FHWA of the required proportionate shares of the fair market value may be required.
35. Agency ensures that all project right of way monumentation will be conducted in conformance with ORS 209.155.
36. State and Agency grants each other authority to enter onto the other's right of way for the performance of non-construction activities such as surveying and inspection of the Project.

### **RAILROADS**

37. Agency shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through the State's Liaison, who will contact State's Railroad Liaison on behalf of Agency. Only those costs allowable under Title 23 CFR part 140 subpart I, and Title 23 part 646 subpart B shall be included in the total Project costs; all other costs associated with railroad work will be at the sole expense of Agency, or others. Agency may request State, in writing and at Project expense, to provide railroad coordination and negotiations. However, State is under no obligation to agree to perform said duties.

### **UTILITIES**

38. Agency shall follow State established statutes, policies and procedures when impacts occur to privately or publicly-owned utilities. Policy, procedures and forms are available through the State Utility Liaison or State's Liaison. Agency shall provide copies of all signed utility notifications, agreements and Utility Certification to the State Utility Liaison. Only those utility relocations, which are eligible for reimbursement under the FAPG, Title 23 CFR part 645 subparts A and B, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. Agency may send a written request to State, at Project expense, to arrange for utility relocations/adjustments lying within Agency jurisdiction. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. However, State is under no obligation to agree to perform said duties. Agency shall not perform any utility work on state highway right of way without first receiving written authorization from State.

### **GRADE CHANGE LIABILITY**

39. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.
40. Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.
41. Agency, if a City, by execution of the Project Agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent

as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the Project covered by the Project Agreement.

#### **MAINTENANCE RESPONSIBILITIES**

42. Agency shall, at its own expense, maintain operate, and provide power as needed upon Project completion at a minimum level that is consistent with normal depreciation and/or service demand and throughout the useful life of the Project. The useful life of the Project is defined in the Special Provisions. State may conduct periodic inspections during the life of the Project to verify that the Project is properly maintained and continues to serve the purpose for which federal funds were provided. Maintenance and power responsibilities shall survive any termination of the Project Agreement. In the event the Project will include or affect a state highway, this provision does not address maintenance of that state highway.

#### **CONTRIBUTION**

43. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
44. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
45. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement

amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

#### **ALTERNATIVE DISPUTE RESOLUTION**

46. The Parties shall attempt in good faith to resolve any dispute arising out of this Project Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

#### **WORKERS' COMPENSATION COVERAGE**

47. All employers, including Agency, that employ subject workers who work under this Project Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability Insurance with coverage limits of not less than five hundred thousand (\$500,000) must be included. Agency shall ensure that each of its contractors complies with these requirements.

#### **LOBBYING RESTRICTIONS – pursuant to Form FHWA-1273, Required Contract Provisions**

48. Agency certifies by signing the Project Agreement that:

- a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed one hundred thousand dollars

Agency/State  
Agreement No. 29634

(\$100,000), and that all such subrecipients shall certify and disclose accordingly.

- d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, USC Section 1352.

Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.





16  
COPY  
M. BARBARA CARTMILL  
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

July 10, 2014

Board of Commissioners  
Clackamas County

Members of the Board:

**Approval of an Intergovernmental Agreement with Oregon Department of Fish & Wildlife (ODFW) for a Full Time Fish & Wildlife Biologist Liaison for Capital Improvement and Road Maintenance Programs Technical Assistance**

<b>Purpose/Outcomes</b>	This agreement will provide the Department of Transportation & Development a full-time ODFW fish and wildlife biologist to assist in the inventory, prioritization, permitting, design and monitoring of road/stream crossings constructed by the County which affect State listed migratory fish and Federally listed threatened and endangered species.
<b>Dollar Amount and Fiscal Impact</b>	\$130,000 annual budget
<b>Funding Source</b>	County Road Fund
<b>Safety Impact</b>	N/A
<b>Duration</b>	Through June 30, 2015 with the option to amend for up to four additional years.
<b>Previous Board Action</b>	DTD has consistently had similar agreements with ODFW for a full-time fish and wildlife liaison since 2001.
<b>Contact Person</b>	Mike Bezner, Transportation Engineering Manager 503-742-4651

**BACKGROUND:**

Clackamas County has agreed to re-enter into an Intergovernmental Agreement with Oregon Department of Fish and Wildlife (ODFW) for the purpose of providing a full time Fish and Wildlife Biologist to assist in the inventory, prioritization, permitting, design and monitoring of road/stream crossings constructed by the County which affect State listed migratory fish and Federally listed threatened and endangered species.

The liaison remains a full-time employee of ODFW with 100% of direct and indirect costs paid by the County. Funds have been allocated in the 2014-15 budget, not to exceed \$130,000, and are funded by County Road Fund.

This agreement is for the period from July 1, 2014 through June 30, 2015. The agreement may be amended for future years, contingent upon the County having adequate funding. Future amendments to this agreement can be signed and approved by the Director of the Department of Transportation and Development.

This agreement has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

Staff respectfully recommends approval of this Intergovernmental Agreement with ODFW for a full-time fish and wildlife biologist.

Respectfully submitted,



M. Barbara Cartmill

For information on this issue or copies of attachments  
please contact Mike Bezner at 503-742-4651



## INTERGOVERNMENTAL AGREEMENT

### CAPITAL IMPROVEMENT AND ROAD MAINTENANCE PROGRAMS TECHNICAL ASSISTANCE

This Agreement is between **CLACKAMAS COUNTY**, acting by and through its **Department of Transportation & Development**, hereinafter referred to as "**COUNTY**," and the **STATE OF OREGON**, acting by and through its **Department of Fish and Wildlife (ODFW)**.

#### RECITALS

**1. Authorization.** The Oregon Department of Fish and Wildlife enters into this **Intergovernmental Agreement (Agreement)** under the authority of ORS 190.110 and ORS 496.146 (11). ORS 190.110 allows agencies to enter into Agreements with units of local government or other state agencies for performance of any or all functions and activities that either party to the Agreement, its officers, or agents has the authority to perform. ORS 496.146 (11) allows ODFW to enter into Agreements for development and encouragement of fish or wildlife research and management programs and projects.

**2. Objective.** The purpose of this Agreement is for the COUNTY to provide funding to ODFW for the services required for the COUNTY'S Capitol Improvement and Road Maintenance Programs related to fishery biology needs as shown in Exhibit A.

#### AGREEMENT

**1. Effective Date and Duration.** This Agreement is effective on July 1, 2014. The performance period of the first year of the project is July 1, 2014 - June 30, 2015. Unless terminated or extended, this Agreement shall expire on June 30, 2019.

**2. Statement of Work.** The Statement of Work (Work), including the delivery schedule and budget for such Work is contained in Exhibit A, which is attached and incorporated by reference into this Agreement.

**3. Agreement Documents.** This Agreement consists of the following documents, which are listed in descending order of precedence: this Agreement, Exhibit A (Statement of Work), and Exhibit B (Administrative Contact).

**4. Consideration.** The COUNTY agrees to pay ODFW an amount not to exceed \$130,000 (one hundred thirty thousand dollars) for cost incurred during the first performance period of July 1, 2014 - June 30, 2015. Funding for subsequent performance periods will be added through a written amendment signed by both parties or their respective designees. If the parties cannot agree upon a funding amount for a particular performance period prior to the effective date of that performance period, as set forth in Section V of Exhibit A, this Agreement shall automatically terminate at the end of the last performance period for which the parties have a written and signed agreement setting forth the funding amount.

**5. Funds Available and Authorized.**

COUNTY's obligations to pay ODFW for services performed under this Agreement for future years is contingent upon COUNTY receiving sufficient appropriations, limitations or other expenditure authority sufficient to allow COUNTY, in the exercise of its reasonable administrative discretion, to continue to fund ODFW under this Agreement. By May 1 of each year, ODFW shall provide the County with a proposed annual budget for the upcoming year or next performance period. By May 31 of each year, the COUNTY will either authorize the proposed annual budget, or reject the annual budget with an explanation as to why the

COUNTY will not authorize the budget. The COUNTY may provide this authorization or rejection by email or hard copy to the ODFW project manager listed in Exhibit B. In the event the COUNTY does not authorize the budget, the COUNTY shall cooperate with ODFW to amend the budget in a manner that is agreeable to both parties. In the event the parties cannot agree upon the annual budget, this Agreement shall automatically terminate at the end of the last performance period for which the parties have an authorized annual budget.

Each performance period will be for the specified performance period, and funds cannot be carried forward into any future performance periods.

**6. Payments.**

ODFW must submit invoices for payment directly to the COUNTY's project manager listed in Exhibit B on a monthly basis for actual costs incurred by ODFW. Such invoices must identify the Agreement number, description of the project, invoice number or account number or both, and shall itemize all expenses for which ODFW claims reimbursement. Upon request, ODFW shall provide further detailed explanation of expenses to the COUNTY. The COUNTY shall make payment within forty-five (45) calendar days from receipt of ODFW's invoice.

**7. Subcontracts and Assignment.** ODFW may not enter into any subcontracts for any of the Work required by this Agreement, or assign or transfer any of its interest in this Agreement, without the COUNTY's prior written consent.

**8. Amendments.** The terms of this Agreement may not be changed except by written instrument signed by both parties.

**9. Termination.** This Agreement may be terminated by mutual written consent of both parties, or by either party upon thirty (30) days notice in writing delivered to the other party by certified mail or in person, subject to the limitations set forth below. COUNTY may terminate this Agreement effective upon delivery of written notice to ODFW, or at such later date as may be established by the COUNTY, under any of the following conditions:

- a) If ODFW fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
- b) If ODFW fails to perform any of the other provisions of this Agreement or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from COUNTY, fails to correct such failures within 10 days or such longer period as COUNTY may authorize.
- c) If COUNTY fails to receive funding, appropriations, limitations or other expenditure authority at levels sufficient to pay for the work provided in the Agreement.
- d) If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if COUNTY is prohibited from paying for such work from the planned funding source.

**10. Disputes.** Both parties will try to resolve all agreement issues by mutual consent at the COUNTY's Approving Authority level, without litigation. In appropriate circumstances, before issuance of the COUNTY's decision on a claim, the COUNTY will initiate informal discussions between the parties, facilitated by individuals who have not participated substantially in the matter in dispute, to aid in resolving the differences. If the informal discussions are not successful, both parties will use arbitration or mediation to resolve the dispute.

**11. Indemnity.** ODFW must perform the services under this Agreement as an independent Contractor. ODFW is responsible for the acts, omissions, or negligence of its own officers, employees or agents. The COUNTY is responsible to the extent permitted by the Oregon Tort Claims Act (ORS 30.260 – 30.300) only for the acts, omissions, or negligence of its own officers, employees, or agents.

**12. Captions.** The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Agreement.

**13. Records Maintenance; Access.** ODFW acknowledges and agrees that the COUNTY, the Oregon Secretary of State's Office, and the federal government and their duly authorized representatives will have access to such fiscal records and other books, documents, papers, plans, and writings of ODFW that are pertinent to this Agreement to perform examinations and audits and make excerpts and transcripts.

**14. Compliance with Applicable Law.** ODFW will comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Work under this Agreement. Without limiting the generality of the foregoing, ODFW expressly agrees to comply with: (a) Executive Order 11246, Equal Employment Opportunity (b) Drug Free Workplace Act of 1988, P.L. 110-690 (c) Title VI of Civil Rights Act of 1964; (d) Section V of the Rehabilitation Act of 1973; (e) the Americans with Disabilities Act of 1990 and ORS 659.425; (f) all regulations and administrative rules established pursuant to the foregoing laws; and (g) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. ODFW's performance under this Agreement is conditioned upon compliance with the provisions of ORS 279B.220, 279B.235, 279B.230, and 279B.270, which are incorporated by reference herein.

**15. Force Majeure.** Neither ODFW nor the COUNTY will be responsible for delay or default caused by fire, riot, acts of God, or war where such cause was beyond the reasonable control of ODFW or the COUNTY, respectively. ODFW shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and will, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.

**16. Governing Law; Venue; Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between the COUNTY (and/or any other COUNTY or department of the State of Oregon) and ODFW that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this provision be construed as a waiver of the states sovereign immunity. ODFW, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

**17. Equipment Ownership.** ODFW agrees that, upon completion of this Agreement, the subsequent COUNTY Capital Improvement Program and Road Maintenance Program work and upon written request from COUNTY, the computer and any other equipment purchased with COUNTY funding will be returned to COUNTY within 30 days after receipt of written request.

**18. Merger Clause; Waiver.** This Agreement constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification, or change of terms of this Agreement will bind either party unless placed

in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, is effective only in the specific instance and for the specific purpose given. The failure of COUNTY to enforce any provision of this Agreement shall not constitute a waiver by COUNTY of that or any other provision.

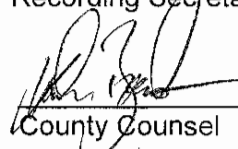
**BY EXECUTION OF THIS AGREEMENT, BOTH PARTIES, ACKNOWLEDGE THEY HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.**

**STATE OR OREGON, by and through  
its Department of Fish and Wildlife:**

By: \_\_\_\_\_  
Debbie Colbert Date  
Deputy Director for Administration

**CLACKAMAS COUNTY:**

By: \_\_\_\_\_  
Chair Date  
Board of County Commissioners

\_\_\_\_\_  
Recording Secretary Date  
 6/30/14  
County Counsel Date

**EXHIBIT A****STATEMENT OF WORK****I. PROJECT TITLE:** Capital Improvement and Road Maintenance Programs Technical Assistance**II. PROJECT BACKGROUND:**

As a result of the Oregon Plan for Salmon and Watersheds, the listing of local populations of Steelhead, Coho and Chinook Salmon as threatened and the potential for future listing of other native fish species under the Endangered Species Act, CLACKAMAS COUNTY is committed to restoring access to upstream habitat for all food and game fish and complying with related state and federal environmental laws.

These activities include: incorporate environmentally sensitive design into project development; inventory, prioritize and remediate COUNTY-owned culverts to maintain or restore fish passage; develop an informed work force in accordance with Best Management Practices (BMP's) on the needs and requirements of salmonids; and partner with federal agencies, state agencies, local governments and stakeholders to accomplish said goals.

Clackamas County is in need of technical expertise on questions that pertain to habitat needs, fish life cycles, and watershed health. In addition, COUNTY's Capital Improvement Program and Road Maintenance Programs are in need of timely review, by ODFW, of the Corps of Engineers' 404 permit applications that address maintenance and construction activities in waterways and wetlands. This need is above and beyond what current ODFW District Biologists, either statutorily, or in a timely fashion, can provide. ODFW is the state agency charged with protecting the state's fish and wildlife resources. ODFW reviews plans, permit applications and actions that improve or impact the state's fish and wildlife resources. In the past, ODFW staff has tried to provide to COUNTY the services needed to meet the agency mission and its commitment to the Oregon Plan and other related state and federal environmental laws.

This Agreement expresses COUNTY's and ODFW's commitment to continue this important work and to provide assistance to COUNTY staff.

**III. PROJECT DESCRIPTION:****A. COUNTY Responsibilities:**

The COUNTY shall:

1. Provide funding if available, as outlined under Article 4 for the term of this Agreement to ODFW for expenses connected with the Habitat Biologist.
2. Provide timely responses to ODFW on issues relating to the implementation of the goals or action items of the Capital Improvement Projects and Maintenance Programs or the Salmon Recovery Plan as requested to do so by the Habitat Biologist or agency management.
3. Develop criteria to assist ODFW in determining priorities for developing work schedules and project involvement.

**B. ODFW Responsibilities:**

ODFW shall:

1. Provide an ODFW employee to represent ODFW management in coordinating with COUNTY staff and provide technical input into COUNTY projects and activities.
2. Review and participate, as requested or appropriate, in the COUNTY project development process. Coordinate with District Biologists on any site-specific fishery issues. Provide advice on fishery needs to design staff and construction staff.
3. Coordinate with the local district biologist to provide technical, site-specific expertise to COUNTY staff and contractors during construction of mitigation or habitat improvement projects.
4. When necessary, conduct fish salvage and complete other activities needed to protect fish and wildlife resources during construction projects.
5. Assist the Capital Improvement Project managers, Engineering and Design managers and Road Maintenance managers in training COUNTY staff on fish life cycle needs and requirements, or habitat improvement opportunities.
6. Assure coordination with the ODFW - Fish and Wildlife Divisions to ensure recommendations and technical assistance provided to the COUNTY is consistent with ODFW policy, procedures, and guidance related to fish and wildlife and habitat conservation.
7. Assure coordination with ODFW District Biologists, the ODFW Fish and Wildlife Divisions, and the Division of State Lands on the timely review of COUNTY Corp of Engineers' 404/Division of State Lands Removal/Fill permits.
8. Participate in adaptive management of the COUNTY culvert remediation program with COUNTY staff and the ODFW Fish Passage Coordinator.
9. Provide technical advice on fish life cycle, habitat needs, or permit requirements to COUNTY maintenance and operations staff.
10. As time allows, perform fish presence and species surveys in rivers or streams within the COUNTY as requested.
11. As time allows, inventory riparian and wetland resources along rivers or streams that support salmonids or are water quality-limited within the COUNTY as requested.

## V. SCHEDULE

Performance Period:

July 1, 2014 - June 30, 2015  
 July 1, 2015 – June 30, 2016  
 July 1, 2016 – June 30, 2017  
 July 1, 2017 – June 30, 2018  
 July 1, 2018 – June 30, 2019



V. BUDGET

Performance Period: July 1, 2014 – June 30, 2015

PROJECT BUDGET FORM									
Funding Agency: Clackamas County									
Project Title: Capitol Improvement/Road Maintenance Program-Clackamas County						Index		Grant/Phase	
Project Status: <input type="checkbox"/> New <input checked="" type="checkbox"/> Continuing						13300		719031 10	
Project Start Date: July 1, 2014			Project End Date:			06/30/15			
<b>BUDGET</b>									
Personal Services:									
Class Title	Position Number	Salary	OPE %	Months	07/01/14-06/30/15	Months	07/01/15 forward	Total	
NRS-2	0709006	\$ 4,929	52.00%	12.00	\$ 89,905	0.00	\$ -	\$ 89,905	
				0.00	\$ -	0.00	\$ -	\$ -	
				0.00	\$ -	0.00	\$ -	\$ -	
				0.00	\$ -	0.00	\$ -	\$ -	
				0.00	\$ -	0.00	\$ -	\$ -	
				0.00	\$ -	0.00	\$ -	\$ -	
				0.00	\$ -	0.00	\$ -	\$ -	
Subtotal					\$ 89,905		\$ -	\$ 89,905	
Services & Supplies:									
Item					07/01/14-06/30/15		07/01/15 forward	Total	
Transportation/Travel					\$ 10,000		\$ -	\$ 10,000	
Office Supplies/Postage/Equip. Rental					\$ 250		\$ -	\$ 250	
Program Supplies and Services					\$ 1,750		\$ -	\$ 1,750	
Utilities					\$ 270		\$ -	\$ 270	
Communication					\$ 300		\$ -	\$ 300	
Publications					\$ 100		\$ -	\$ 100	
Employee Expenses					\$ 350		\$ -	\$ 350	
Training					\$ 250		\$ -	\$ 250	
Subtotal					\$ 13,270		\$ -	\$ 13,270	
Total P/S & S/S					\$ 103,175		\$ -	\$ 103,175	
Indirect Rate @ 26.00%					\$ 26,825		\$ -	\$ 26,825	
Capital Outlay:									
					07/01/14-06/30/15		07/01/15 forward	Total	
					\$ -		\$ -	\$ -	
					\$ -		\$ -	\$ -	
					\$ -		\$ -	\$ -	
Subtotal					\$ -		\$ -	\$ -	
Contract Services/Personal Service Contracts (items excluded from Indirect):									
					07/01/14-06/30/15		07/01/15 forward	Total	
					\$ -		\$ -	\$ -	
					\$ -		\$ -	\$ -	
					\$ -		\$ -	\$ -	
Subtotal					\$ -		\$ -	\$ -	
Total Grant					\$ 130,000		\$ -	\$ 130,000	

Funding for the next performance period will be authorized by the COUNTY through a written Amendment.

**EXHIBIT B****ADMINISTRATIVE SUMMARY****ODFW Information:**

Project Manager: Jeff Boechler, District Manager  
Address: ODFW - North Willamette Watershed  
17330 SE Evelyn St.  
Clackamas, OR. 97015  
Telephone: (971) 673-6005  
Email: [jeff.boechler@state.or.us](mailto:jeff.boechler@state.or.us)

Administrative Contact: Rhea Rodriguez, Contract and Grant Specialist  
Address: ODFW – Administrative Division  
4034 Fairview Industrial Drive SE  
Salem, OR. 97302  
Telephone: (503) 947-6197  
Email: [rhea.r.rodriquez@state.or.us](mailto:rhea.r.rodriquez@state.or.us)

**COUNTY Information:**

Project Manager: Mike Bezner, Transportation Engineering Manager  
Address: Clackamas County Dept. of Transportation &  
Development  
150 Beaver Creek Road  
Oregon City, OR 97045  
Telephone: (503) 742-4651  
Email: [mikebez@co.clackamas.or.us](mailto:mikebez@co.clackamas.or.us)

Administrative Contact: Danielle Couch, Administrative Assistant  
Address: Clackamas County Dept. of Transportation &  
Development  
150 Beaver Creek Road  
Oregon City, OR 97045  
Telephone: (503) 742-4697  
Email: [daniellecou@co.clackamas.or.us](mailto:daniellecou@co.clackamas.or.us)



17

MARC GONZALES  
DIRECTOR

DEPARTMENT OF FINANCE

PUBLIC SERVICES BUILDING  
2051 KAEN ROAD | OREGON CITY, OR 97045

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of Amendment #4 -- Renewal #2 to the Contract Documents with  
Earthworks Landscape Service, Inc. for Landscape Maintenance  
Services for Clackamas County Facilities

Purpose/Outcome	One-year renewal to the Contract with Earthworks Landscape Service, Inc., amended to include additional facilities.
Dollar Amount and fiscal Impact	\$356,475.00
Funding Source	Facilities Management Budget Line 744-0214-00-437935 with funds recovered through Cost Allocation.
Safety Impact	None.
Duration	July 1, 2014 through June 30, 2015.
Previous Board Action/Review	The original contract was approved by the Board of County Commissioners on September 20, 2012, agenda item B.1.
Contact Person	Jeff Jorgensen, Manager, Facilities Management Division 503-557-6414

**BACKGROUND:**

The contract with Earthworks Landscape Services, Inc. for landscape services for several County facilities expired on June 30, 2014. Additionally, Diversified Abilities notified the County on May 29, 2014 that it will not be renewing its contract to provide landscape maintenance services to thirteen County facilities.

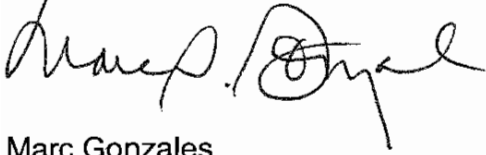
We have consulted with a current contractor, Earthworks Landscape, regarding their ability to provide service coverage for these facilities for the upcoming fiscal year. Earthworks has the resources to maintain the landscaped areas for the facilities described in the contract amendment, and has consented to provide services through the end of the 2014-15 year.

As Earthworks is familiar with these areas from its prior service to them, it is in the best interest of Clackamas County to add these additional facilities to the existing contract. If the Board approves the amendment, the contract will be increased by \$110,935.00 for Fiscal Year 2014-15. This additional amount includes a \$10,000.00 contingency for unanticipated emergencies.

**RECOMMENDATION:**

Staff respectfully recommends the Board approve Amendment #4 to the Contract Documents with Earthworks Landscape Service, Inc.

Sincerely,

A handwritten signature in black ink, appearing to read "Marc Gonzales". The signature is written in a cursive style with a large, stylized initial "M".

Marc Gonzales  
Finance Director

Placed on the Agenda of July 10<sup>th</sup>, 2014 by the Purchasing Division



LANE MILLER  
MANAGER

**PURCHASING DIVISION**

**PUBLIC SERVICES BUILDING**  
2051 KAEN ROAD | OREGON CITY, OR 97045

Board of County Commissioners  
Clackamas County

Members of the Board:

**MEMORANDUM**

Facilities Management requests approval of the Amendment to the contract with Earthworks Landscape Service, Inc., for Landscape Services for Clackamas County Facilities.

Department requests the increase due to Diversified Abilities notified the County on that it will not be renewing its contract to provide landscape maintenance services to thirteen County facilities that required the services. Earthworks Landscape Service, Inc. is the current landscape contractor for several County facilities.

The Amendment requires the amount of the contract be increased by \$100,935.00, for a total contract amount of \$356,475.00. This cost includes \$10,000.00 for unanticipated emergencies.

The Amendment complies with all LCRB rules and procedures and has had Counsel review.

Funds for this contract have been budgeted for FY 2014/2015 under line; 744-0214-00-437935.

**RECOMMENDATION**

The staff respectfully recommends that the Clackamas County Board of County Commissioners approve the Amendment.

Respectfully submitted,

Dan Nenow C. P. M.  
Purchasing Staff

(Please Return to Purchasing Department)

## **BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING MINUTES**

*A complete video copy and packet including staff reports of this meeting can be viewed at <http://www.clackamas.us/bcc/business.html>*

**Thursday, June 12, 2014 - 10:00 AM**

**Public Services Building**

**2051 Kaen Rd., Oregon City, OR 97045**

**PRESENT: Commissioner John Ludlow, Chair  
Commissioner Jim Bernard  
Commissioner Paul Savas  
Commissioner Martha Schrader  
Commissioner Tootie Smith**

### **I. CALL TO ORDER**

- Roll Call
- Pledge of Allegiance

### **II. CITIZEN COMMUNICATION**

<http://www.clackamas.us/bcc/business.html>

1. Les Poole, Gladstone – spoke regarding Gladstone Library.
2. Susan Hanson, Molalla – spoke regarding recent conduct of Commissioner.

*~Board Discussion~*

3. Ely Crawford, Damascus – member of 4-H - spoke in support of and new barn at the Clackamas Fair Grounds.

*~Board Discussion~*

### **III. PREVIOUSLY APPROVED LAND USE ISSUE** *(No public testimony on this item)*

1. Board Order No. **2014-46** Approving an Amendment to a Previously Approved Comprehensive Plan Map Amendment and Zone Change

Nathan Boderman, County Counsel presented the staff report.

Chair Ludlow asked for a motion.

#### **MOTION:**

Chair Ludlow: I move we approve the Board Order for a Comprehensive Plan Map Amendment and Zone Change for Bruce Goldson, Theta, LLC as previously approved at the March 12, 2014 Land Use Hearing.

Commissioner Bernard: Second.

*~Board Discussion~*

Commissioner Savas asked Mike McCallister to come up for some clarifying questions.

<http://www.clackamas.us/bcc/business.html>

Clerk calls the poll:

Commissioner Bernard: No.  
Commissioner Smith: Aye.  
Commissioner Schrader: No.  
Commissioner Savas: Aye.  
Chair Ludlow: Aye - the motion passes 3-2

### **IV. DISCUSSION ITEM**

The Board recess as the Board of County Commissioners and convene as the North Clackamas Parks & Recreation District for the next item.

**North Clackamas Parks & Recreation District**

1. Board Order No. **2014-47** Approving the Withdrawal or Merger and Formation Proposal of a New Parks and Recreation District

Chris Storey, County Counsel and Gary Barth, NCPRD presented the staff report.

*~Board Discussion~ comments and questions*

<http://www.clackamas.us/bcc/business.html>

Chair Ludlow asked is anyone wished to speak.

1. Les Poole, Gladstone – stated the Governance part of this should be delayed.

Chair Ludlow asked for a motion.

**MOTION:**

Commissioner Bernard: I move we approve the Board Order for the Merger and Formation Proposal of forming a new Park and Recreation District under ORS 266.

Commissioner Smith: Second.

*~Board Discussion~*

<http://www.clackamas.us/bcc/business.html>

Don Krupp, County Administrator had a suggested motion to amend the Board Order with the following language added to the 2<sup>nd</sup> to the last paragraph:

*It further appearing that this petition for formation of the New District is consistent with NCPRD's Master Plan recommendations and the District Advisory Board's recommendations, and reflects and opportunity to deliver improved parks and recreation services to all its residents in a balance and equitable manner including both growing and underserved areas;*

Commissioner Bernard and Commissioner Smith stated they will amend their motion to for the added language.

Chair Ludlow asked the Clerk to call the poll on this amended motion.

Clerk calls the poll:

Commissioner Smith: Aye.

Commissioner Schrader: Aye.

Commissioner Savas: Aye.

Commissioner Bernard: Aye.

Chair Ludlow: Aye - the motion passes 5-0

Chair Ludlow asked the Clerk to call the poll on the original motion.

Clerk calls the poll:

Commissioner Schrader: Aye.

Commissioner Savas: Aye.

Commissioner Bernard: Aye.

Commissioner Smith: Aye.

Chair Ludlow: Aye - the motion passes 5-0

**The Board adorned as the North Clackamas Parks & Recreation District and reconvene as the Board of County Commissioners for the remainder of the meeting.**

**V. PUBLIC HEARINGS**

1. Board Order No. **2014-48** for a Public Hearing to Initiate the Formation of an ORS 266 Parks and Recreation Service District and Merge with or Remove Territory from North Clackamas Parks & Recreation District (NCPRD)

Chris Storey, County Counsel and Gary Barth, NCPRD presented the staff report.

*~Board Discussion~*

Chair Ludlow opened the public hearing and asked if anyone wished to speak.

1. Bill Bersie, Happy Valley – Chair of the North Clackamas Parks District Advisory Board – spoke in support of this issue.

**MOTION:**

Commissioner Bernard: I move we approve the Board Order to Initiate the Formation of an ORS 266 Parks and Recreation Service District and Merger with North Clackamas Parks and Recreation District.

Commissioner Smith: Second.

*~Board Discussion~*

Clerk calls the poll:

Commissioner Schrader: Aye.

Commissioner Savas: Aye.

Commissioner Smith: Aye.

Commissioner Bernard: Aye.

Chair Ludlow: Aye - the motion passes 5-0

**MOTION:**

Commissioner Savas: I would like to make a motion to direct staff to bring back a package and corresponding language that reflects the needs of the underserved communities for inclusion in the ballot summary.

Commissioner Schrader: Second.

*~Board Discussion~* <http://www.clackamas.us/bcc/business.html>

**MOTION:**

Commissioner Smith: I call for the question.

Chair Ludlow: Second.

Clerk calls the poll for the call for the question.

Commissioner Bernard: Aye.

Commissioner Smith: Aye.

Commissioner Schrader: Aye.

Commissioner Savas: Aye.

Chair Ludlow: Aye - the motion passes 5-0

Clerk calls the poll for Commissioner Savas original motion:

Commissioner Savas: Aye.

Commissioner Bernard: No – with comments.

Commissioner Smith: No.

Commissioner Schrader: Aye.

Chair Ludlow: No - the motion fails 3-2

Commissioner Savas stated he did no vote on the last item.

Chair Ludlow resin the last poll and asked the Clerk to call the poll again for Commissioner Savas's motion:

Commissioner Savas re-read his motion:

Commissioner Savas: Aye.

Commissioner Bernard: No – with comments again.

Commissioner Smith: No.

Commissioner Schrader: Aye.

Chair Ludlow: No - the motion fails 3-2



2. Resolution No. **2014-49** for a Clackamas County Supplemental Budget, Greater than 10% and Budget Reduction for Fiscal Year 2013-2014

Diane Padilla, Budget Manager presented the staff report.

Chair Ludlow opened the public hearing and asked if anyone wished to speak, seeing none he asked for a motion.

**MOTION:**

Commissioner Smith: I move we approve the Resolution approving a Clackamas County Supplemental Budget Greater than 10% and Budget Reductions for Fiscal Year 2013-2014.

Commissioner Schrader: Second.

Chair Ludlow stated Commissioner Savas has stepped away temporarily.

Clerk calls the poll:

Commissioner Bernard: Aye.

Commissioner Smith: Aye.

Commissioner Schrader: Aye.

Commissioner Bernard: Aye.

Chair Ludlow: Aye - the motion passes 4-0

**VI. CONSENT AGENDA**

Chair Ludlow asked the Clerk to read the Consent Agenda by title, he then asked for a motion.

**MOTION:**

Commissioner Schrader: I move we approve the Consent Agenda.

Commissioner Bernard: Second.

Clerk calls the poll:

Commissioner Smith: Aye.

Commissioner Schrader: Aye.

Commissioner Savas: Aye.

Commissioner Bernard: Aye.

Chair Ludlow: Aye - the motion passes 5-0

**A. Health, Housing & Human Services**

1. Approval of an Agency Service Contract with Alternative Services of Oregon, Inc. for Behavioral Consultation Services and Outpatient Mental Health Services – *Behavioral Health*
2. Approval of 2 HOME Loan Agreements with Ikoi So Terrace Renewal Limited Partnership – *Housing & Community Development*
3. Approval of a Change Order No. 2 with Housing & Community Development and JWC, LLC for the River Road Head Start, Kitchen Remodel Project - *Housing & Community Development*
4. Approval of a Construction Contract with Jim Smith Excavating for the NW Gladstone Infrastructure Improvements Project - *Housing & Community Development*
5. Approval of an Agreement with Tri-County Metropolitan Transportation District of Oregon for Operations and Capital for the Mt Hood Express Bus Service – *Social Services*
6. Approval of an Intergovernmental Agreement with Oregon Department of Transportation Rail and Public Transit Division for Operations for the Mt Hood Express Bus Service - *Social Services*

**B. Department of Transportation & Development**

1. Approval of Amendment No. 1 to Intergovernmental Agreement No. 29498 with Oregon Department of Transportation for the Clackamas County Active Transportation Plan

**C. Finance Department**

1. Approval of a Fiscal Year 2014-2015 Work and Financial Plan with United States Department of Agriculture, Animal and Plant Health Inspection Services and Wildlife Services for Predator Management (County Trapper)
2. Resolution No. **2014-50** for a Clackamas County Supplemental Budget Less than 10% for Fiscal Year 2013-2014
3. Resolution No. **2014-51** for Clackamas County for Budgeting of New Specific Purposed Revenue for Fiscal Year 2013-2014
4. Resolution No. **2014-52** for Clackamas County for Transfer of Appropriations for Fiscal Year 2013-2014

**D. Elected Officials**

1. Approval of Previous Business Meeting Minutes – *BCC*
2. Approval of an Intergovernmental Agreement between North Clackamas School District and Clackamas County Sheriff's Office for a School Resource Officer for 2013-2014 - *CCSO*
3. Approval of an Intergovernmental Agreement between Colton School District and Clackamas County Sheriff's Office for a School Resource Officer for 2013-2014 - *CCSO*

**E. Community Corrections**

1. Approval of Amendment No. 1 to Intergovernmental Agreement 4800 between Clackamas County and the State of Oregon, Department of Corrections for the 2014-2015 Grant-in-Aid Funding
2. Approval of Amendment No. 1 to Intergovernmental Agreement 4855 between Clackamas County and the State of Oregon, Department of Corrections for the Measure 57 Supplemental Funds

**F. Department of Emergency Management**

1. Approval of Fiscal Year 2011 State Homeland Security Grant Program Agreement between Clackamas County and the State of Oregon

**G. County Counsel**

1. Approval of Amendments to Intergovernmental Agreements with County related Entities for Purposes of Clarifying Certain Accounting Practices

**VII. NORTH CLACKAMAS PARKS & RECREATION DISTRICT**

1. Resolution No. **2014-53** Approval for Transfer of Appropriations for Fiscal Year 2013-2014
2. Approval of Amendment to the Memorandum of Understanding with the City of Damascus for the Construction of Trillium Creek Park

3. Approval of an Amendment to the Intergovernmental Agreement between North Clackamas Parks & Recreation District and Clackamas County for Purposes of Clarifying Certain Accounting Practices

**VIII. DEVELOPMENT AGENCY**

1. Resolution No. **2014-54** Declaring a Public Necessity and Propose for Acquisition of Rights-of-Way and Easement for the Monterey Avenue Extension Project and Authorizing Negotiations and Eminent Domain Action
2. Approval of a Cost Recovery Agreement with the United States Forest Service for an Environmental Assessment of the Skibowl Waterline Extension Project in Government Camp
3. Approval of Amendments to Intergovernmental Agreements between the Development Agency and Clackamas County for Purposes of Clarifying Certain Accounting Practices

**IX. SERVICE DISTRICT NO. 5** (Street Lighting)

1. Resolution No. **2014-55** Authorizing the Transfer of Appropriations for Fiscal Year 2013-2014 for Clackamas County Service District No. 5
2. Approval of an Amendment to the Intergovernmental Agreement between Service District No. 5 and Clackamas County for Purposes of Clarifying Certain Accounting Practices

**X. WATER ENVIRONMENT SERVICES**

1. Approval of a 00500 Agreement between Clackamas County Service District No. 1 and Stettler Supply Company for the Kellogg Creek WPCP Aeration Basin Improvement Project.
2. Amendment No. 4 to the Agreement between Clackamas County Service District No.1 and the City of Johnson City for Wholesale Sanitary Sewer Services.
3. Approval of Amendments to the Intergovernmental Agreements between Clackamas County and Clackamas County Service District No. 1, Tri-City Service District and Surface Water Management of Clackamas County for Purposes of Clarifying Certain Accounting Practices

**XI. ENHANCED LAW ENFORCEMENT DISTRICT**

1. Approval of an Amendment to the Intergovernmental Agreement between the Enhanced Law Enforcement District and Clackamas County for Purposes of Clarifying Certain Accounting Practices

**XII. COUNTY ADMINISTRATOR UPDATE**

<http://www.clackamas.us/bcc/business.html>

**XIII. COMMISSIONERS COMMUNICATION**

<http://www.clackamas.us/bcc/business.html>

**MEETING ADJOURNED – 12:04 PM**



19

NANCY S. BUSH  
DIRECTOR

DEPARTMENT OF EMERGENCY MANAGEMENT

COMMUNICATIONS AND EMERGENCY OPERATIONS CENTER  
2200 KAEN ROAD | OREGON CITY, OR 97045

July 10, 2014

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of FY12 Urban Area Security Initiative (UASI) Intergovernmental Agreement (IGA) Amendment #1 between Clackamas County and the City of Portland

<b>Purpose/Outcomes</b>	Approving the FY12 UASI IGA Amendment #1 between Clackamas County and the City of Portland will extend the grant end date from May 31, 2014 to August 31, 2014. The FY12 UASI IGA provides funding for Homeland Security related regional and local law enforcement, fire, public works and emergency management projects. Extending the deadline from May to August allows Clackamas County sub-recipients to receive more than \$80,000 in training and equipment that would have not been awarded had the grant ended in May.
<b>Dollar Amount and Fiscal Impact</b>	The UASI grant is a 100% federal share grant. Clackamas County acts as the pass-through for grant funds to sub-recipients, receiving full reimbursement for any expenses incurred. Approval of this IGA Amendment #1 will allow more than \$80,000 in training and equipment to be received by Clackamas County sub-recipients.
<b>Funding Source</b>	The United States Department of Homeland Security, Federal Emergency Management Agency - no County General Funds are involved.
<b>Safety Impact</b>	Clackamas County sub-recipients will enhance emergency/disaster response equipment capability with funds from this grant.
<b>Duration</b>	The FY12 UASI grant award period is from April 1, 2013 through August 31, 2014.
<b>Previous Board Action</b>	The FY12 UASI IGA was approved by the Board of County Commissioners in a business meeting on August 29, 2013.
<b>Contact Person</b>	Nancy Bush, Director, 503-655-8665
<b>Contract No.</b>	N/A

**BACKGROUND:**

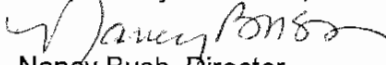
Clackamas County is a signatory to an Intergovernmental Agreement with the City of Portland that requires the County to be the sponsoring, or pass-through, agency for other county agencies and special districts that receive funding or benefit from UASI grants. Approval of the FY12 UASI IGA Amendment #1 will allow Clackamas County sub-recipients to receive grant awards that would not have been available had the grant ended at the end of May.

The agreement has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

Staff respectfully recommends approval of the FY12 UASI IGA Amendment #1 between Clackamas County and the City of Portland.

Respectfully submitted,

  
Nancy Bush, Director

AMENDMENT NO 1

CONTRACT NO. 30003611

FOR

Clackamas County

Pursuant to Ordinance No. 185989

The **Intergovernmental Agreement ("IGA")** was made and entered into by and between Clackamas County hereinafter called "Recipient", and the City of Portland, a municipal corporation of the State of Oregon, by and through its duly authorized representatives, hereinafter called "City".

RECITALS:

1. The Urban Areas Security Initiative (UASI) FY 2012 grant was awarded by the US Department of Homeland Security "Grantor" through the State "Grantee" for administration by the City of Portland "Subgrantee".
2. The disposition of the grant funds to different governmental bodies, and the City, was achieved through intergovernmental agreements "IGAs" between the City and these entities. One such IGA was entered into between the City and Recipient.
3. The City wishes to amend its IGA with the Recipient to extend the time of its operation.

NOW, THEREFORE, the Parties agree:

1. To continue to comply with all terms of the US Department of Homeland Security, Urban Area Security Initiative (UASI) Grant CFDA# 97.008, Grant No. 12-170 award including, but not limited to, obligations regarding reporting, access to records, financial tracking and procurement, and supplanting of funds.
2. Section 3 is amended to read as follows: This IGA shall be effective from date both Parties have signed and shall be terminated on August 31, 2014 unless otherwise extended in writing or this IGA is terminated due to failure of one of the Parties to perform.

All other terms and conditions shall remain unchanged and in full force and effect.

City of Portland

\_\_\_\_\_ Date \_\_\_\_\_

APPROVED AS TO FORM

\_\_\_\_\_  
Attorney Date \_\_\_\_\_

(Agency) *Clackamas County*

\_\_\_\_\_ Date \_\_\_\_\_

APPROVED AS TO FORM

*JAC*  
\_\_\_\_\_  
Attorney Date 6/25/14

3000 3611

## **INTERGOVERNMENTAL AGREEMENT**

**Between**

**THE CITY OF PORTLAND, OREGON**

**And**

**Clackamas County**

THIS IS an Intergovernmental Agreement (IGA) between the City of Portland ("City") and Clackamas County ("Agency") entered into pursuant to the authority granted in ORS Chapter 190 for the coordination of activities related to the use of the United States Department of Homeland Security's Urban Areas Security Initiative (UASI) grant program funds for addressing the unique planning, organization, equipment, training, and exercise needs of high-threat, high-density Urban Areas, to assist in building an enhanced and sustainable capacity to prevent, protect against, respond to, and recover from acts of terrorism.

### **Recitals**

WHEREAS, the United States Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA) Grant Programs Directorate, provided UASI grant funding in the amount of \$2,049,396 in Fiscal Year 2012 to the State of Oregon ("State"), acting by and through the Oregon Military Department, Office of Emergency Management (OEM) for distribution to the Portland Urban Area (PUA); and

WHEREAS, the State awarded UASI Grant #12-170 to the City of Portland, Bureau of Emergency Management (PBEM), as Grantee, for Fiscal Year 2012 in the amount of \$2,049,396, a copy of which is attached to this Agreement and incorporated herein as Exhibit A; and

WHEREAS, UASI Grant #12-170 is intended to increase the capabilities of the PUA, which includes jurisdictions in Multnomah, Clackamas, Columbia and Washington counties in Oregon and Clark County in Washington, as well as the Port of Portland and TriMet, to build an enhanced and sustainable capacity to prevent, protect against, respond to, and recover from acts of terrorism; and

WHEREAS, a list of equipment, supplies, professional services, training and exercise events to be grant funded has been developed through the application process and coordination with the State; and

WHEREAS, PBEM, as Grant Administrator, is required to oversee and coordinate the expenditure of the UASI grant funds and has developed procedures to guide the procurement, delivery, and reimbursement processes; and

WHEREAS, PBEM, as Grant Administrator, is required to make periodic reports to the State regarding the expenditure of the UASI grant funds and has developed procedures to coordinate the collection and submission of information and documents needed to support the reporting process; and

WHEREAS, the City and all other PUA jurisdictions that receive direct benefit from UASI grant purchases are required to comply with all terms of the U.S. Department of Homeland Security, UASI Grant CFDA # 97.008, Grant #12-170 award including, but not limited to, obligations regarding reporting, access to records, financial tracking and procurement, and supplanting of funds; and

WHEREAS, the City has entered into agreements with the PUA counties to secure their commitment to follow the City-developed procurement, delivery, reimbursement, and reporting procedures, to ensure their compliance with all terms of the grants, and to obligate them to coordinate with and obtain similar assurances from directly benefiting jurisdictions (i.e., "sub-recipients") within the respective counties.

NOW, THEREFORE, the Parties agree as follows:

**1. The City agrees:**

- a) That it is authorized to purchase and distribute equipment, supplies and services which have been approved by the State and, as appropriate, the City may delegate this purchasing authority to the Agency. Such authorization, however, does not guarantee payment for the Agency. The State requires documentation invoicing by the Agency, to the City, and compliance with the Agency's purchasing practices, the City's purchasing practices and any applicable state and federal rules and regulations prior to approval of payments.
- b) Because there is no IGA between the City and the sub-recipients of the Agency, the Agency will be the point of contact for all requests made by their sub-recipients. The Agency will be responsible for submitting all purchase requests on behalf of their sub-recipients to the City.
- c) When the City has purchased goods or services for the Agency or the Agency's sub-recipient arrangements for delivery will be made between the parties and the Agency or the Agency's sub-recipient shall be the Owner of said goods or services and shall be responsible for complying with all applicable requirements as outlined in Code of Federal Regulations (CFR) and Office of Management and Budget (OMB) Circulars.

## 2. The Agency agrees:

- a) That it has read the award conditions and certifications for Grant #12-170, that it understands and accepts those conditions and certifications, and that it agrees to comply with all the obligations, and be bound by any limitations applicable to the City, as grantee, under those grant documents.
- b) To comply with all City and State financial management processes, and to maintain accounting and financial records in accordance with Generally Accepted Accounting Principles (GAAP) and financial, administrative, and audit requirements as set forth in the most recent versions of the Code of Federal Regulations and Office of Management and Budget Circulars. A nonexclusive list of regulations commonly applicable to DHS grants includes:
  - i. Administrative Requirements: 44 CFR Part 13 (State and Local Governments) and 2 CFR Part 215 (Non-Profit Organizations).
  - ii. Cost Principles: 2 CFR Part 225 (State, Local, and Tribal Governments); Part 230 (Non-Profit Organizations); and Federal Acquisition Regulations (FAR) Part 31.2 (Contracts with Commercial Organizations).
  - iii. Audit Requirements: OMB Circular A-133.
- c) To comply with all City and State procurement requirements, including competitive bid processes as outlined in Portland City Code (PCC) and Oregon Revised Statutes (ORS). A nonexclusive list of code and statutes commonly applicable to procurement include:
  - i. PCC Chapter 5.33 (Goods and Services) and PCC Chapter 5.68 (Professional, Technical and Expert Service Contracts).
  - ii. ORS 279A (Public Contracting – General Provisions) and ORS 279B (Public Contracting – Public Procurements).
- d) That all equipment, supplies, and services provided by the City are as described in the approved grant budget documents.
- e) That regardless of how it is procured, all equipment and supplies purchased shall be owned by the Agency or the Agency's sub-recipient until disposition takes place. The Agency or the Agency's sub-recipient shall be responsible for inventory tracking, maintenance and storage while in possession of such equipment and supplies.



- f) That regardless of who the Owner is, all equipment purchased with grant funds will be made available to all eligible regional partners per 44 CFR 13.32(c)(2). All reasonable requests must be met when sufficient notice is given and no reasonable conflict exists. Owners may not charge "rental" fees for equipment, but may seek reimbursement for normal expendables (not already covered by grant funds) such as fuel, vehicle damage, maintenance for wear and tear, etc., when appropriate.
- g) To comply with all property and equipment tracking and monitoring processes required by the grants, this Agreement, the City and the State. To treat all single items of equipment valued over \$5,000 as fixed assets and to provide the City with a list of such equipment. **The list should include, but is not limited to, status, asset number, funding source, date of purchase, equipment description, serial number, and location where the equipment is housed or stored.** All requirements for the tracking and monitoring of fixed assets are set forth in 44 CFR Part 13 and OMB Circular A-133. An A-133 compliance supplement on transfer and disposition reporting can be found on the Whitehouse website: [http://www.whitehouse.gov/sites/default/files/omb/assets/OMB/circulars/a133\\_compliance/2011/pt3.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/OMB/circulars/a133_compliance/2011/pt3.pdf)  
The Agency or the Agency's sub-recipient shall maintain and store all equipment and supplies, provided or purchased, in the manner that will most prolong the life and keep it in good working order at all times.
- h) That any request or invoice it submits for reimbursement of costs is consistent with the items identified in the approved grant budget documents.
- i) That it understands and accepts full financial responsibility and may not be reimbursed for costs incurred which have not been approved by the State and the U.S. Department of Homeland Security, FEMA Grant Programs Directorate.
- j) That it will not deviate from the items listed in the approved grant budget documents without first securing written approval from the City.
- k) That all publications created with funding under this grant shall prominently contain the following statement: "This document was prepared under a grant from FEMA's Grant Programs Directorate, U.S. Department of Homeland Security. Points of view or opinions expressed in this document are those of the authors and do not necessarily represent the official position or policies of FEMA's Grant Programs Directorate or the U.S. Department of Homeland Security."
- l) That all financial records, supporting documentation and all other records pertinent to this grant or agreements under this grant shall be retained by

the Agency following termination, completion or expiration of this Agreement for purposes of State of Oregon or Federal examination and audit, as established by Federal, State or City retention schedules (whichever is longer). Currently, the City of Portland's retention requirement for these documents is 10 years. A nonexclusive list of code and statutes commonly applicable to retention include:

- i. City of Portland Retention Schedules, Section 4808  
<http://www.portlandonline.com/auditor/index.cfm?c=27183&a=7949>
  - ii. OAR 166-200-0050(17)
  - iii. 44 CFR Part 13.42
- m) To obtain a copy of 44 CFR Part 13 and all applicable OMB Circulars, and to apprise itself of all rules and regulations set forth.
- n) Not to supplant its local funds with federal funds but rather use the federal funds to increase the amount of funds that, in the absence of federal aid, would be made available to fund programs within the UASI grant program guidelines.
- o) To comply with National Incident Management System (NIMS) objectives identified as requirements by the State and certify that the Agency and any sub-recipients of the Agency are registered with the State as being NIMS compliant.
- p) To comply with all applicable federal, state, and local environmental and historic preservation (EHP) requirements and provide information requested to ensure compliance with applicable laws.
- q) To comply with federal guidelines concerning exclusions for vendors by verifying that a vendor is not excluded from receiving federal funds prior to any expenditure made and record of verification is maintained. Currently, verification can be made at the System for Award Management site – [www.sam.gov](http://www.sam.gov).
- r) To timely comply with all reporting obligations required by the Grant's terms and the City.
- s) To provide the City with Performance and Program Reports, Financial Reimbursement Reports and Audit Reports when required by the City and in the form required by the City.
- i. Performance Reports and Asset Inventory Reports are due to the City biannually on June 15<sup>th</sup> and December 15<sup>th</sup> during the term of

- the grant agreement. Late Performance Reports could result in the suspension and/or termination of the grant.
- ii. Results of the Agency's OMB Circular A-133 report are due to the City within six months of the Agency's receipt of the report, along with a corrective action plan (if applicable).
  - iii. Financial Reimbursement Reports are due no less frequently than quarterly during the term of the grant agreement. Late Financial Reimbursement Reports could result in the suspension and/or termination of the grant.
  - iv. Per UASI Grant #12-170, Part II, Section H.3.b., reimbursement for expenses may be withheld if Performance Reports are not submitted by the specified dates or are incomplete.
- t) To follow the travel expense and per diem guidelines as set forth by the U.S. General Services Administration (GSA) as well as the guidelines of the City and State. Per UASI Grant #12-170, Section H.3.c., reimbursement rates for travel expenses shall not exceed those allowed by the State of Oregon. Requests for reimbursement for travel must be supported with a detailed statement identifying the person who traveled, the purpose of the travel, the dates, times, and places of travel, and the actual expenses or authorized rates incurred.

GSA per diem rates can be found on the GSA website:  
<http://www.gsa.gov/portal/category/21287>.

The City's guidelines can be found on the Office of the City Auditor's website:

BCP-FIN-6.13 Travel:  
<http://www.portlandonline.com/auditor/index.cfm?c=34747&a=160271>

BCP-FIN-6.14 Non-travel Meals, Light Refreshments and Related Miscellaneous Expenses:  
<http://www.portlandonline.com/auditor/index.cfm?&a=160283&c=34747>

- u) To develop a sub-recipient monitoring plan that shall be in compliance with the requirements set forth in the most recent versions of applicable CFR and OMB Circulars.
- v) To maintain a list of all sub-recipients of the Agency, and insure that the entities on that list are in compliance with the terms of this Agreement, and Exhibit A. The list of sub-recipients shall be made available to the City by the Agency upon execution of this IGA, and the Agency shall alert the City to any changes in the list within a reasonable amount of time.

- w) To comply with all applicable laws, regulations, program guidance and guidelines of the State of Oregon, the Federal Government and OEM in the performance of this Agreement, including but not limited to those listed in Grant #12-170, Part III. Subgrantee Compliance and Certifications.
  - x) To comply with all of its obligations under this Agreement and any applicable, incorporated document or documents.
3. **Effective Date and Duration.** This Agreement shall be effective from the date both parties have signed and shall be terminated upon the end date of the agreement between the City and the State (Grant #12-170), unless otherwise extended by the parties in writing or this IGA is terminated due to failure of one of the Parties to perform.
  4. **Amendment.** This Agreement may be modified or amended only by the written agreement of both parties but must remain consistent with the requirements of the UASI program and the Agreement between the State and the City.
  5. **Termination.** Either party may terminate this Agreement in the event the other fails to comply with its obligations under the Agreement. If the Agreement is terminated due to the Agency's failure or inability to comply with the provisions of the grants or the Agreement, the Agency will be liable to the City for the full cost of any equipment, materials, or services provided by the City to the Agency, and for any penalties imposed by the State or Federal Government. Each party will notify the other, in writing, of its intention to terminate this Agreement and the reasons therefore. The other party shall have fourteen days, or such other time as the parties may agree, from the date of the notice in which to correct or otherwise address the compliance failure which is the subject of the notice.
  6. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the state of Oregon, without regard to principles of conflicts of law. Any claim, action, suit or proceeding that arises from or relates to this Agreement shall be brought and conducted exclusively within the Circuit Court of the state of Oregon for the county of Multnomah. In the event a claim is brought in a federal forum, then it shall be brought and conducted solely and exclusively in the United States District Court for the District of Oregon.
  7. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute one and the same instrument.
  8. **Survival.** The terms, conditions, representations and all warranties in this Agreement shall survive the termination or expiration of this Agreement.

9. **Force Majeure.** Neither party shall be held responsible for delay or default caused by fire, riot, acts of God, or war where such cause was beyond reasonable control. Each party shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligations under this Agreement.
10. **Indemnification.**
- a. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, the Agency shall indemnify, defend and hold harmless the City, its commissioners, employees and agents from and against any and all liability, claims, damages, losses, and expenses, including but not limited to reasonable attorneys fees arising out of or resulting from the acts of the Agency, its officers, employees and agents in the performance of this agreement. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, the City shall indemnify, defend and hold harmless the Agency from and against all liability, loss and costs arising out of or resulting from the acts of the City, its officers, employees and agents in the performance of this agreement.
  - b. The Agency shall take all reasonable steps to cause its contractor(s) or subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless OEM and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims
  - c. The Agency shall require its contractor(s) or subcontractor(s) to obtain insurance in amounts required by OEM, not to exceed OEM's limits of liability under the Oregon Tort Claims Act, and shall provide that the State of Oregon, OEM, and their officers, employees and members are named as Additional Insureds, but only with respect to the contractor's or subcontractor's services performed under this grant.

11. **Third Party Beneficiaries.** The City and the Agency are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, or is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such persons are individually identified by name herein.
12. **Successors in Interest.** The terms of this Agreement shall be binding upon the successors and assigns of each party hereto.
13. **Entire Agreement.** The parties agree and acknowledge that this Agreement is a complete, integrated agreement that supersedes any prior understandings related to implementation of the FY-12 UASI program grant and that it is the entire agreement between them relative to that grant.
14. **Workers' Compensation.** Each party shall be responsible for providing worker's compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers (contractors with one or more employees, unless exempt under ORS 656.027). Neither party shall be required to provide or show proof of any other insurance coverage.
15. **Nondiscrimination.** Each party shall comply with all requirements of federal and state civil rights and rehabilitation statutes and local non-discrimination ordinances.
16. **Human Trafficking (2 CFR Part 175).** The Agency, employees, contractors and sub-recipients under this Agreement and their respective employees may not:
  - o Engage in severe forms of trafficking in persons during the period of the time the award is in effect;
  - o Procure a commercial sex act during the period of time the award is in effect; or
  - o Use forced labor in the performance of the subgrant or subgrants under the award.

The Agency must inform the City and OEM immediately of any information the Agency receives from any source alleging a violation of any of the above prohibitions in the terms of this IGA. OEM may terminate Grant #12-170, without penalty, for violation of these provisions. OEM's right to terminate Grant #12-170 unilaterally, without penalty, is in addition to all other remedies under Grant #12-170. The Agency must include these requirements in any subgrant made to public or private entities.

17. **Access to Records.** Each party shall maintain, and shall have access to the books, documents, papers and other records of the other party which are

related to this agreement for the purpose of making audit, examination, excerpts, and transcripts. Copies of applicable records shall be made available upon request. Access to records for Oregon Emergency Management (OEM), Oregon Secretary of State, the Office of the Comptroller, the General Accounting Office (GAO), or any of their authorized representatives, shall not be limited to the required retention period but shall last as long as records are retained.

18. **Subcontracts and Assignment.** Neither party will subcontract or assign any part of this agreement without the prior written consent of the other party. Notwithstanding City approval of a subcontractor, the Agency shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the Agency hereunder.

**City of Portland**

*Cemerito*  
APPROVED AS TO FORM  
*James H. Van Dyke*  
APPROVED AS TO FORM  
CITY ATTORNEY *JH*  
Attorney

Date 9-18-13

Date 9/18/13

**Clackamas County**

*Nancy Benson*  
APPROVED AS TO FORM  
*JACi*  
Attorney

Date 9/5/13

Date 9/10/13

# Subgrantee Copy

**OREGON MILITARY DEPARTMENT  
OFFICE OF EMERGENCY MANAGEMENT  
URBAN AREA SECURITY INITIATIVE GRANT PROGRAM  
CFDA # 97.008**

## **GRANT AWARD CONDITIONS AND CERTIFICATIONS**

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PROGRAM NAME:	UASI FY 2012	GRANT NO:	# 12-170
SUBGRANTEE:	City of Portland	FEDERAL AWARD:	\$2,049,396
ADDRESS:	Bureau of Emergency Management 1001 SW 5 <sup>th</sup> Ave., Suite 650 Portland, OR 97204	AWARD PERIOD:	4/1/13 thru 5/31/14
PROGRAM CONTACT:	Carmen Merlo carmen.merlo@portlandoregon.gov	TELEPHONE:	(503) 823-2691
FISCAL CONTACT:	Shelli Tompkins shelli.tompkins@portlandoregon.gov	TELEPHONE:	(503) 823-4187

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## **BUDGET**

Equipment	
CBRNE Incident Response Vehicles	\$111,000
CBRNE Logistical Support	\$88,000
CBRNE Operational/Search and Rescue	\$598,476
Information Technology	\$217,919
Interoperable Communications	\$42,000
Other Authorized Equipment	\$31,500
Personal Protective Equipment	\$25,000
Exercises	\$50,000
Planning	\$715,216
Training (ODP-approved)	\$67,815
Administration	\$102,470
Total	<u>\$2,049,396</u>



## GRANT AWARD AGREEMENT AND PROVISIONS

### I. Provisions of Award

- A. Agreement Parties. This Agreement is between the State of Oregon, acting by and through the Oregon Military Department, Office of Emergency Management (OEM) and the Subgrantee.
- B. Effective Date. This Agreement shall become effective on the date this Agreement has been fully executed by every party. Agreement termination shall not extinguish or prejudice OEM's right to enforce this Agreement with respect to any default by Subgrantee that has not been cured.
- C. Source of Funds. Payment for this Program will be from the Fiscal Year 2012 Urban Area Security Initiative Grant Program.
- D. Merger Clause; Waiver. This Agreement and referenced documents constitute the entire Agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. No waiver, consent, modifications or change of terms of this agreement shall be binding unless agreed to in writing and signed by both the Subgrantee and OEM. Such waiver, consent, modification or change, if made shall be effective only in the specific instance and for the specific purpose given.
- E. Acknowledgment. The Subgrantee, by signature of its authorized representative, hereby acknowledges that he/she has read this agreement, understands it, and agrees to be bound by its terms and conditions (including all references to other documents). Failure to comply with this agreement and with applicable state and federal rules and guidelines may result in any or all of the withholding of reimbursement, the termination or suspension of the agreement, denial of future grants, or damages to OEM.

## TERMS AND CONDITIONS

### II. Conditions of Award

- A. The Subgrantee agrees that all allocations and use of funds under this Agreement will be in accordance with the FY2012 Homeland Security Grant Program Funding Opportunity Announcement (FOA), the requirements of which are incorporated into this Agreement by this reference, and to expend funds in accordance with the approved budget unless the Subgrantee receives prior written approval by OEM to modify the program or budget. OEM may withhold funds for any expenditure not within the approved budget or in excess of amounts approved by OEM. Failure of the Subgrantee to operate the program in accordance with the written agreed upon investment justification contained in the grant application materials and budget will be grounds for immediate suspension or termination of this Agreement.
- B. The Subgrantee agrees to cooperate with any assessments, national evaluation efforts, or information or data collection requests, including, but not limited to, the provision of any information required for the assessment or evaluation of any activities within this Agreement.
- C. By accepting FY 2012 funds, the Subgrantee certifies that it has met NIMS compliance activities outlined in the NIMS Implementation Matrix for State, Tribal, or Local Jurisdictions. Additional information on achieving compliance is available through the NIMS Resource Center at <http://www.fema.gov/emergency/nims/>.
- D. Administrative Requirements, Retention and Access to Records, and Audits.
  1. Administrative Requirements. The Subgrantee agrees to comply with all financial management and procurement requirements (Section E), to maintain accounting and financial records in accordance with Generally Accepted Accounting Principles (GAAP) and financial, administrative, and audit requirements as set forth in the most recent versions of the Code of Federal Regulations (CFR), the Office of Management and Budget (OMB) Circulars, Department of Homeland Security (DHS) program legislation, and DHS/Federal Emergency Management Agency (FEMA) regulations. A nonexclusive list of regulations commonly applicable to DHS grants includes:
    - a. Administrative Requirements. 44 CFR Part 13 (State and Local Governments).
    - b. Cost Principles. 2 CFR Part 225 (State, Local, and Tribal Governments) and 48 CFR Federal Acquisition Regulations (FAR) Part 31.2 (Contracts with Commercial Organizations).
    - c. Audit Requirements. OMB Circular A-133.

2. **Retention of Records.** All financial records, supporting documentation, and all other records pertinent to this grant or agreements under this grant shall be retained by the Subgrantee until the latest of (a) six years following termination, completion or expiration of this Agreement, (b) upon resolution of any litigation or other disputes related to this Agreement, or (c) an extended period as established under 44 CFR 13.42. It is the responsibility of the Subgrantee to obtain a copy of 44 CFR Part 13 and all applicable OMB Circulars, and to apprise itself of all rules and regulations set forth.
3. **Access to Records.** Subgrantee acknowledges and agrees, and Subgrantee will require its subrecipients, contractors, successors, transferees, and assignees to acknowledge and agree, to provide OEM, Oregon Secretary of State, Office of Inspector General (OIG), Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), or any of their authorized representatives, access to records, accounts, documents, information, facilities, and staff. Subgrantee and any subrecipients must cooperate with any compliance review or complaint investigation by any of the above listed agencies, providing them access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary. The right of access is not limited to the required retention period but shall last as long as the records are retained.
4. **Audits.** If the Subgrantee expends \$500,000 or more in Federal funds (from all sources) in its fiscal year, the Subgrantee shall have a single organization-wide audit conducted in accordance with the provisions of OMB Circular A-133. Copies of all audits must be submitted to OEM within 30 days of completion. If the Subgrantee expends less than \$500,000 in its fiscal year in Federal funds, the Subgrantee is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials as provided in Section II.D.3 herein.
5. **Audit Costs.** Audit costs for audits not required in accordance with OMB Circular A-133 are unallowable. If the Subgrantee did not expend \$500,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the grant.

**E. Procurement Requirements (44 CFR Part 13.36)**

1. The Subgrantee shall use its own procurement procedures and regulations, provided that the procurement conforms to applicable Federal and State law (including without limitation ORS chapters 279A, 279B, 279C).
2. All procurement transactions, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner that encourages fair and open competition to the maximum practical extent possible. All sole-source procurements in excess of \$100,000 must receive prior written approval from OEM in addition to any other approvals required by law applicable to the Subgrantee. Justification for sole-source procurement in excess of \$100,000 should include a description of the program and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Interagency agreements between units of government are excluded from this provision.
3. The Subgrantee shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, or Requests for Proposals (RFP) for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to OEM.
4. The Subgrantee agrees that, to the extent it uses contractors or subcontractors, such recipients shall use small, minority, women-owned or disadvantaged business concerns and contractors or subcontractors to the extent practicable.

**F. Property/Equipment Management and Records Control and Retention of Property/Equipment Records**

1. **Property/Equipment Management and Records Control.** The Subgrantee agrees to comply with all requirements set forth in 44 CFR Part 13 for the active tracking and monitoring of property/equipment. Procedures for managing property/equipment, whether acquired in whole or in part with grant funds, until disposition takes place, will, at a minimum, meet the following requirements:

- a. All property/equipment purchased under this agreement, whether by the Subgrantee or a subcontractor, will be recorded and maintained in the Subgrantee's property/equipment inventory system.
  - b. The Subgrantee shall maintain property/equipment records that include: a description of the property/equipment; the manufacturer's serial number, model number, or other identification number; the source of the property/equipment, including the Catalog of Federal Domestic Assistance (CFDA) number; who holds title; the acquisition date; the cost of the property/equipment and the percentage of Federal participation in the cost; the location, use and condition of the property/equipment; and any ultimate disposition data including the date of disposal and sale price of the property/equipment.
  - c. A physical inventory of the property/equipment must be taken and the results reconciled with the property/equipment records, at least once every two years.
  - d. A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property/equipment. Any loss, damage, or theft shall be investigated.
  - e. Adequate maintenance procedures must be developed to keep the property/equipment in good condition.
  - f. If the Subgrantee is authorized to sell the property/equipment, proper sales procedures must be established to ensure the highest possible return.
  - g. Subgrantee agrees to comply with 44 CFR Part 13.32.e when original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency.
  - h. The Subgrantee agrees that, when practicable, any property/equipment purchased with grant funding shall be prominently marked as follows: "Purchased with funds provided by the U.S. Department of Homeland Security".
  - i. The Subgrantee shall pass on property/equipment management requirements that meet or exceed the requirements outlined above for all subcontractors, consultants, and the subgrantees who receive pass-through funding from this Agreement.
2. Retention of Property/Equipment Records. Records for property/equipment shall be retained for a period of six years from the date of the disposition or replacement or transfer at the discretion of OEM. Title to all property/equipment and supplies purchased with funds made available under the Urban Area Security Initiative Grant Program shall vest in the Subgrantee agency that purchased the property/equipment, if it provides written certification to OEM that it will use the property/equipment for purposes consistent with the Urban Area Security Initiative Grant Program.

**G. Funding.**

1. Matching Funds. This Grant does not require matching funds.
2. Allowable Costs. The Subgrantee agrees that all allocations and use of funds under this Agreement will be in accordance with the Fiscal Year 2012 Homeland Security Grant Program and FOA.
3. Supplanting. The Subgrantee certifies that federal funds will not be used to supplant state or local funds, but will be used to increase the amount of funds that, in the absence of federal aid, would be made available to the Subgrantee to fund programs consistent with Urban Area Security Initiative Grant Program guidelines.

**H. Reports. Failure of the Subgrantee to submit the required program, financial, or audit reports, or to resolve program, financial, or audit issues may result in the suspension of grant payments, or termination of this Agreement, or both.**

1. Performance Reports.

The Subgrantee agrees to submit reports in a form acceptable to OEM on reporting on its progress in meeting its agreed upon strategic goals and objectives. The narrative reports will address specific information regarding the activities carried out under the FY 2012 Urban Area Security Initiative Grant Program and how they address identified project specific strategic goals and objectives.

Performance reports are due to OEM on the last day of each calendar year quarter.

Any Performance Report that is outstanding for more than one month past the due date may cause the suspension or termination of the grant. The Subgrantee must receive prior written approval from OEM to extend a performance report requirement past its due date.

2. Biannual Strategy Implementation Report.

The Subgrantee agrees to provide reports to OEM in a form acceptable to OEM to enable OEM to meet its obligation to provide to FEMA the Biannual Strategy Implementation Report (BSIR) to show progress made toward meeting strategic goals and objectives. BSIR completion is due twenty-one days after the end of each BSIR reporting period, July 21 for the reporting period January 1 through June 30; and January 20 for the reporting period of July 1 through December 31.

3. Financial Reimbursement Reports.

a. In order to receive reimbursement, the Subgrantee agrees to submit a signed Request for Reimbursement (RFR), using a form provided by OEM that includes supporting documentation for all grant expenditures. RFRs may be submitted monthly but no less frequently than quarterly during the term of this Agreement. At a minimum, RFRs must be submitted no later than one month following the end of each calendar year quarter, and a final RFR must be submitted no later than one month following the end of the grant period.

b. Reimbursements for expenses will be withheld if performance reports are not submitted by the specified dates or are incomplete.

c. Reimbursement rates for travel expenses shall not exceed those allowed by the State of Oregon. Requests for reimbursement for travel must be supported with a detailed statement identifying the person who traveled, the purpose of the travel, the dates, times, and places of travel, and the actual expenses or authorized rates incurred.

d. Reimbursements will only be made for actual expenses incurred during the grant period. The Subgrantee agrees that no grant funds may be used for expenses incurred before April 1, 2013 or after May 31, 2014.

e. The Subgrantee shall be accountable for and shall repay to OEM any overpayment, audit disallowances or any other breach of grant that results in a debt owed to the Federal Government. OEM shall apply interest, penalties, and administrative costs to a delinquent debt owed by a debtor pursuant to the Federal Claims Collection Standards and OMB Circular A-129.

4. Audit Reports. The Subgrantee shall provide OEM copies of all audit reports pertaining to this Agreement obtained by the Subgrantee, whether or not the audit is required by OMB Circular A-133 (Section II.D.4-5).

I. Contribution: Subcontractor Indemnity and Insurance.

1. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

2. With respect to a Third Party Claim for which OEM is jointly liable with the Grantee (or would be if joined in the Third Party Claim), OEM shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Grantee in such proportion as is appropriate to reflect the relative fault of OEM on the one hand and of the Grantee on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of OEM on the one hand and of the Grantee on the other hand shall be determined by reference to, among other things, the

parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. OEM's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if OEM had sole liability in the proceeding.

3. With respect to a Third Party Claim for which the Grantee is jointly liable with OEM (or would be if joined in the Third Party Claim), the Grantee shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by OEM in such proportion as is appropriate to reflect the relative fault of the Grantee on the one hand and of OEM on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Grantee on the one hand and of OEM on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Grantee's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.
  4. Subgrantee shall take all reasonable steps to cause its contractor(s) or subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless OEM and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Grantee's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims
  5. Subgrantee shall require its contractor(s) or (subcontractor(s) to obtain insurance in amounts required by OEM, not to exceed OEM's limits of liability under the Oregon Tort Claims Act, and shall provide that the State of Oregon, OEM, and their officers, employees and members are named as Additional Insureds, but only with respect to the contractor's or subcontractor's services performed under this grant.
- J. **Time is of the Essence.** The Subgrantee agrees that time is of the essence under this Agreement.
- K. **Governing Law; Venue; Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit, or proceeding (collectively, "Claim") between OEM (or any other agency or department of the State of Oregon) and the Subgrantee that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for the State of Oregon; provided, however, if the Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. This Section applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. The Subgrantee, by execution of this Agreement, hereby consents to the **In Personam Jurisdiction** of said courts, waives any objection to venue, and waives any claim that such forum is an **inconvenient forum**.
- L. **Notices.** Except as otherwise expressly provided in this Section, any communications between the parties hereto or notice to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same by registered or certified mail, postage prepaid to the Subgrantee or OEM at the address or number set forth on page 1 of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and sent by registered or certified mail shall be deemed delivered upon receipt or refusal of receipt. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. The parties also may communicate by telephone, regular mail or other means, but such communications shall not be deemed Notices under this Section unless receipt by the other party is expressly acknowledged in writing by the receiving party.

- M. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of OEM, the Subgrantee, and their respective successors and assigns, except that the Subgrantee may not assign or transfer its rights or obligations hereunder or any interest herein without the prior consent in writing of OEM.
- N. Survival. All provisions of this Agreement set forth in the following sections shall survive termination of this Agreement: Section II.D (Administrative Requirements, Retention and Access to Records, and Audits); Section II.E (Procurement Requirements); Section II.F (Property/Equipment Management and Records Control, and Retention of Records); Section II.H (Reports); and Section III (Contribution; Subcontractor Indemnity and Insurance).
- O. Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- P. Relationship of Parties. The parties agree and acknowledge that their relationship is that of independent contracting parties and neither party hereto shall be deemed an agent, partner, joint venturer or related entity of the other by reason of this Agreement.

### III. Subgrantee Compliance and Certifications

- A. Debarment, Suspension, Ineligibility and Voluntary Exclusion. The Subgrantee certifies by accepting funds under this Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this transaction by any Federal department or agency (44 CFR Part 13.35). The Subgrantee shall establish procedures to provide for effective use and dissemination of the Excluded Parties List (<http://www.epls.gov/>) to assure that their contractors are not in violation of the nonprocurement debarment and suspension common rule.
- B. Standard Assurances and Certifications Regarding Lobbying. The Subgrantee is required to comply with 44 CFR Part 18, *New Restrictions on Lobbying*. The restrictions on lobbying are enforceable via large civil penalties, with civil fines between \$10,000 and \$100,000 per expenditure. The Subgrantee understands and agrees that no funds provided under this Agreement may be expended in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government. These lobbying prohibitions can be found at 31 USC § 1352.
- C. Compliance with Applicable Law. The Subgrantee agrees to comply with all applicable laws, regulations, program guidance, and guidelines of the State of Oregon, the Federal Government and OEM in the performance of this Agreement, including but not limited to:
  1. Administrative Requirements set forth in 44 CFR Part 13.
  2. Cost Principles set forth in 2 CFR Part 225 and 48 CFR Federal Acquisition Regulation (FAR) Part 31.2.
  3. Audit Requirements set forth in OMB Circular A-133.
  4. The provisions set forth in 44 CFR Part 7; Part 9; Part 10; and Federal laws or regulations applicable to Federal assistance programs.
  5. The Freedom of Information Act (FOIA), 5. USC § 552 with consideration of State and local laws and regulations regarding the release of information and regulations governing Sensitive Security Information (49 CFR Part 1520).
  6. Award Term for Trafficking in Persons set forth in 2 CFR Part 175.
  7. Requirements for Drug-Free Workplace set forth in 2 CFR Part 3001.
  8. Animal Welfare Act of 1966, as amended, 7 USC § 2131 et seq.
  9. Clean Air Act of 1970, as amended, 42 USC § 7401-7671, and Clean Water Act of 1977, as amended, 33 USC § 1251.
  10. Protection of Human Subjects, set forth in 45 CFR Part 46.
  11. National Flood Insurance Act of 1968, as amended, 42 USC § 4013, pursuant to regulations set forth in 44 CFR Part 63.
  12. Flood Disaster Protection Act of 1973, as amended, 42 USC § 4002.
  13. Coastal Wetlands Planning, Protection, and Restoration Act of 1990, as amended, 16 USC § 3951, pursuant to regulations set forth in 44 CFR Part 9.
  14. USA Patriot Act of 2001, as amended, 8 USC § 1105, 1182, 1189.

D. Non-discrimination and Civil Rights Compliance, Equal Employment Opportunity Program, and Services to Limited English Proficient (LEP) Persons.

1. Non-discrimination and Civil Rights Compliance. The Subgrantee, and all its contractors and subcontractors, assures compliance with all applicable nondiscrimination laws, including but not limited to:
  - a. Title VI of the Civil Rights Act of 1964 as amended, and related nondiscrimination regulations in 44 CFR Part 7.
  - b. Title VIII of the Civil Rights Act of 1968, as amended:
  - c. Titles I, II, and III of the Americans with Disabilities Act of 1990, as amended, 42 USC §§ 12101 – 12189.
  - d. Age Discrimination Act of 1975, as amended, 42 USC § 6101.
  - e. Title IX of the Education Amendments of 1972, as amended, 20 USC § 1681 et seq.
  - f. Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794, as amended.

If, during the past three years, the Subgrantee has been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status, the Subgrantee must provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the OEM. In the event any court or administrative agency makes a finding of discrimination on grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status against the Subgrantee, or the Subgrantee settles a case or matter alleging such discrimination, Subgrantee must forward a copy of the complaint and findings to the OEM.

2. Equal Employment Opportunity Program. The Subgrantee, and any of its contractors and subcontractors, certifies that an equal employment opportunity program will be in effect on or before the effective date of this Agreement. The Subgrantee must maintain a current copy on file.
3. Services to Limited English Proficient (LEP) Persons. The Subgrantee, and any of its contractors and subcontractors agrees to comply with the requirements of Executive Order 13166, improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin and resulting agency guidance, national origin discrimination includes discrimination on the basis of LEP. To ensure compliance with Title VI, Subgrantee must take reasonable steps to ensure that LEP persons have meaningful access to your programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Subgrantee is encouraged to consider the need for language services for LEP persons served or encountered both in developing budgets and in conducting programs and activities. For assistance additional information regarding LEP obligations, please see <http://www.lep.gov>.

E. Environmental and Historic Preservation.

1. The Subgrantee shall comply with all applicable Federal, State, and local environmental and historic preservation (EHP) requirements and shall provide any information requested by FEMA to ensure compliance with applicable environmental and historic preservation laws including but not limited to:
  - a. National Environmental Policy Act of 1969, as amended, 42 USC 4321, and related FEMA regulations, 44 CFR Part 10.
  - b. National Historic Preservation Act, 16 USC 470 et seq.
  - c. Endangered Species Act, 16 USC 1531 et seq.
  - d. Executive Orders on Floodplains (11988), Wetlands (11990) and Environmental Justice (12898).

Failure of the Subgrantee to meet Federal, State, and local EHP requirements and obtain applicable permits may jeopardize Federal funding.

2. The Subgrantee shall not undertake any project without prior EHP approval by FEMA, including but not limited to communications towers, physical security enhancements, new construction, and modifications to buildings, structures, and objects that are 50 years old or greater. The Subgrantee must comply with all conditions placed on the project as the result of the EHP review. Any change to the approved project scope of work will require re-evaluation for compliance with these EHP requirements. If ground disturbing activities occur during project implementation, the Subgrantee must ensure monitoring of ground disturbance and if any potential archeological resources are discovered, the Subgrantee will immediately cease construction in that area and notify FEMA and the appropriate State Historic Preservation Office. Any

construction activities that have been initiated without the necessary EHP review and approval will result in a non-compliance finding and will not be eligible for FEMA funding.

3. For any of the Subgrantee's or its contractors' or subcontractors' existing programs or activities that will be funded by these grant funds, the Subgrantee, upon specific request from the U.S. DHS, agrees to cooperate with the U.S. DHS in any preparation by the U.S. DHS of a national or program environmental assessment of that funded program or activity.
- F. Drug Free Workplace Requirements (2 CFR Part 3001). The Subgrantee agrees to comply with the requirements of the Drug-Free Workplace Act of 1988, as amended, (41 USC § 701 et seq.), which requires that all organizations receiving grants (or subgrants) from any Federal agency agree to maintain a drug-free workplace. The Subgrantee must notify this office if an employee of the Subgrantee is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment.
- G. Classified National Security Information. No funding under this Agreement shall be used to support a contract, subgrant or other agreement for goods or services that will include access to classified national security information if the award recipient has not been approved for and has access to such information. Classified national security information as defined in Executive Order (EO) 12958, as amended, means information that has been determined pursuant to EO 12958 or any predecessor order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form. See award notification.
- H. Human Trafficking (2 CFR Part 175). The Subgrantee, employees, contractors and subrecipients under this Agreement and their respective employees may not:
1. Engage in severe forms of trafficking in persons during the period of the time the award is in effect;
  2. Procure a commercial sex act during the period of time the award is in effect; or
  3. Use forced labor in the performance of the subgrant or subgrants under the award.
- The Subgrantee must inform OEM immediately of any information the Subgrantee receives from any source alleging a violation of any of the above prohibitions in this award term. OEM's right to terminate this Agreement unilaterally, without penalty, is in addition to all other remedies under this Agreement. The Subgrantee must include these requirements in any subgrant made to public or private entities.
- I. Fly America Act of 1974. The Subgrantee agrees to comply with the requirements of the Preference for U.S. Flag Air Carriers: Travel supported by U.S. Government funds requirement, which states preference for the use of U.S. flag air carriers (air carriers holding certificates under 49 USC § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended (49 USC § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to the Comptroller General Decision B138942.
- J. Activities Conducted Abroad. The Subgrantee agrees to comply with the requirements that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.
- K. Acknowledgement of Federal Funding from DHS. The Subgrantee agrees to comply with requirements to acknowledge Federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds.
- L. Copyright (44 CFR Part 13.34). The Subgrantee agrees to comply with requirements that publications or other exercise of copyright for any work first produced under Federal financial assistance awards hereto related unless the work includes any information that is otherwise controlled by the Government (e.g., classified information or other information subject to national security or export control laws or regulations). For any scientific, technical, or other copyright work based on or containing data first produced under this Agreement, including those works published in academic, technical or professional journals, symposia proceedings, or similar works, the Subgrantee grants the Government a royalty-free, nonexclusive and irrevocable license to reproduce, display, distribute copies, perform, disseminate, or prepare derivative works, and to authorize others to do so, for Government purposes in all such copyrighted works. The Subgrantee shall affix the applicable copyright notices of 17 USC § 401 or 402 and an acknowledgement of Government sponsorship (including Subgrant number) to any work first produced under an award.
- M. Use of DHS Seal, Logo and Flags. Subgrantee agrees to obtain DHS's approval prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.



#### **IV. Suspension or Termination of Funding**

OEM may suspend funding in whole or in part, terminate funding, or impose another sanction on an Urban Area Security Initiative Grant Program recipient for any of the following reasons:

- A. Failure to comply substantially with the statutory and administrative requirements or objectives of the Urban Area Security Initiative Grant Program, with the Program guidelines, or with other applicable federal or state laws and regulations.
- B. Failure to make satisfactory progress toward the goals and objectives set forth in the approved Investment Justifications.
- C. Failure to adhere to the requirements of this Agreement and standard or special conditions.
- D. Proposing or implementing substantial plan changes to the extent that, if originally submitted, would not have been funded.
- E. Before imposing sanctions, OEM will provide reasonable notice to the Subgrantee of its intent to impose sanctions and will attempt to resolve the problem informally.


#### **V. Termination of Agreement**

- A. OEM may unilaterally terminate all or part of this Agreement or may reduce its scope of work if there is:
  - 1. A reduction in federal funds which are the basis for this Agreement.
  - 2. A material misrepresentation, error, or inaccuracy in Subgrantee's application.
  - 3. A change, modification or interpretation of State or Federal laws, regulations or guidelines that deprives OEM of authority to provide grant funds for the program or provide funds from the planned funding source.
  - 4. A failure by OEM to obtain sufficient funding, appropriation, limitations, allotments or other expenditure authority to allow OEM, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Agreement.
- B. OEM may terminate this Agreement, - immediately upon written notice to Subgrantee, or at such later date as OEM may establish in such notice, if Subgrantee commits any material breach or default of any covenant, warranty, obligation or certification under this Agreement. In its notice, OEM may permit Subgrantee an opportunity to cure the breach, default or failure in such time and on such terms as OEM may specify in such notice.

**VI. Subgrantee Representations and Warranties**

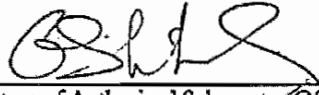
The Subgrantee represents and warrants to OEM as follows:

- A. **Existence and Power.** The Subgrantee is a political subdivision of the State of Oregon. The Subgrantee has full power and authority to transact the business in which it is engaged and full power, authority, and legal right to execute and deliver this Agreement and incur and perform its obligations hereunder.
- B. **Authority. No Contravention.** The making and performance by the Subgrantee of this Agreement (a) have been duly authorized by all necessary action of the Subgrantee, (b) do not and will not violate any provision of any applicable law, rule, or regulation or order of any court, regulatory commission, board or other administrative agency or any provision of the Subgrantee's articles of incorporation or bylaws and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which the Subgrantee is a party or by which the Subgrantee or any of its properties are bound or affected.
- C. **Binding Obligation.** This Agreement has been duly authorized, executed and delivered on behalf of the Subgrantee and constitutes the legal, valid, and binding obligation of the Subgrantee, enforceable in accordance with its terms.
- D. **Approvals.** No authorization, consent, license, approval of, filing or registration with, or notification to, any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by the Subgrantee of this Agreement.

*Paulina Layton*  


Paulina Layton, Mitigation and Recovery Section Director  
Oregon Military Department  
Office of Emergency Management  
PO Box 14370  
Salem, OR 97309-5062

*5/17/13*  
Date



Signature of Authorized Subgrantee Official

*5/8/13*  
Date

*Charlie Hales, Mayor*  
Name/Title

APPROVED AS TO FORM  
*James H. Van Dyke*  
CITY ATTORNEY *JHJ*

Approved for Legal Sufficiency:

By *Keith L. Kutler* by e-mail  
Assistant Attorney General

*March 28, 2013*  
Date

## ORDINANCE No. 185990

\*Accept and appropriate a grant in the amount of \$2,049,396 from the Department of Homeland Security, FY 2012 Urban Areas Security Initiative Grant Program for the purpose of enhancing emergency preparedness through planning, training and equipping emergency responders. (Ordinance)

The City of Portland ordains:

### Section 1. The Council Finds:

1. The Department of Homeland Security provides financial assistance to selected urban areas through the FY 2012 Urban Areas Security Initiative (UASI). The City of Portland, in cooperation with regional partners (TriMet, Port of Portland, Multnomah, Clackamas, Washington and Columbia Counties of Oregon and Clark County, Washington) applied for financial assistance to address the unique equipment, training, planning, exercise and operational needs of large urban areas.
2. The Department of Homeland Security has designated Portland, Oregon as the core urban area in the State of Oregon. The City of Portland will be eligible for a portion of the \$2,049,396 available to our regional metropolitan area
3. Funds provided under the UASI Grant Program will be granted directly to the States with no less than 80% of the total award going to selected urban areas. Funds will be used and dedicated for equipment, training, planning and exercises. The Portland Urban Area has completed a regional strategy to guide the use of federal homeland security grant funds. The City of Portland Bureau of Emergency Management (PBEM) will administer the Grant for the region.
4. There are no financial match requirements for this Grant.

NOW THEREFORE, the Council Directs:

- a. The Mayor and Portland Bureau of Emergency Management are authorized to accept the grant from the Department of Homeland Security in the amount of \$2,049,396.
- b. The Mayor is authorized to provide such information and assurances as are required for the grant period.
- c. The FY 2012/2013 budget is hereby amended as follows:

#### GRANTS FUND

Fund - 217

Business Area – EM00

Bureau Program Expenses – \$500,000

000281

- d. The OMF Grants Office is authorized to perform all administrative matters in relation to the grant application, grant agreement or amendments, requests for reimbursement from the grantor, and to submit required online grant documents on the Mayor's behalf.
- e. The Director of PBEM is authorized to accept on behalf of the City of Portland any subsequent modifications by the Department of Homeland Security for UASI Grant No. 12-170 (EM000025) provided such modifications do not increase the City of Portland's financial obligation or risk. Any modifications that increase the City of Portland's financial obligation or risk must be authorized by the Portland City Council.

Section 2. The Council declares that an emergency exists because a delay would unnecessarily delay the City's ability to perform the activities authorized by the grant. Therefore this ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council: APR 24 2013

Mayor Charlie Hales  
 Prepared by: Valentina Hellman  
 Date Prepared: 4/3/2013

LaVonne Griffin-Valade  
 Auditor of the City of Portland

By

*[Signature]*  
 Deputy

Changes from UASI 11 to 12 - Deletions from 11 crossed out and additions from 12 bolded and underlined.

## II. Conditions of Award

### *Section A unchanged*

~~B. To ensure consistency among statewide planning efforts, the Subgrantee agrees to coordinate grant funded planning projects with OEM, to include assistance with the creation of a scope of work, review and approval of service providers, and overall project direction.~~

~~C. The Subgrantee agrees that funds utilized to establish or enhance state and local fusion centers must support the development of a statewide fusion process that corresponds with the Global Justice/Homeland Security Advisory Council (HSAC) Fusion Center Guidelines and achievement of a baseline level of capability as defined by the Fusion Capability Planning Tool.~~

~~D. The Subgrantee agrees that all publications created with funding under this grant shall prominently contain the following statement: "This document was prepared under a grant from FEMA's Grant Programs Directorate, U.S. Department of Homeland Security. Points of view or opinions expressed in this document are those of the authors and do not necessarily represent the official position or policies of FEMA's Grant Programs Directorate or the U.S. Department of Homeland Security."~~

### *Section E and F become B and C but content unchanged*

#### G.D. Administrative Requirements. Retention and Access to Records. and Audits.

1. Administrative Requirements. The Subgrantee agrees to comply with all financial management and procurement requirements (Section H E), ~~including competitive bid processes and other procurement requirements,~~ and to maintain accounting and financial records in accordance with Generally Accepted Accounting Principles (GAAP) and financial, administrative, and audit requirements as set forth in the most recent versions of the Code of Federal Regulations (CFR) and the Office of Management and Budget (OMB) Circulars. A nonexclusive list of regulations commonly applicable to DHS grants includes:

- a. Administrative Requirements. 44 CFR Part 13 (State and Local Governments).
- b. Cost Principles. 2 CFR Part 225 (State, Local, and Tribal Governments) and 48 CFR Federal Acquisition Regulations (FAR) Part 31.2 (~~Federal Acquisition Regulations—Contracts with Commercial Organizations~~).
- c. Audit Requirements. OMB Circular A-133 (~~States, Local Governments, and Non-Profit Organizations~~).

2. Retention of Records. All financial records, supporting documentation, and all other records pertinent to this grant or agreements under this grant shall be retained by the Subgrantee ~~for a minimum of~~ until the latest of (a) six years following termination,

completion or expiration of this Agreement ~~for purposes of State of Oregon or Federal examination and audit~~, (b) upon resolution of any litigation or other disputes related to this Agreement, or (c) an extended period as established under 44 CFR 13.42. It is the responsibility of the Subgrantee to obtain a copy of 44 CFR Part 13 and all applicable OMB Circulars, and to apprise itself of all rules and regulations set forth.

3. Access to Records. Subgrantee acknowledges and agrees, and Subgrantee will require its subrecipients, contractors, successors, transferees, and assignees to acknowledge and agree, to provide OEM, Oregon Secretary of State, Office of Inspector General (OIG), Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of the Subgrantee and any contractors or subcontractors of the Subgrantee, which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts access to records, accounts, documents, information, facilities, and staff. Subgrantee and any subrecipients must cooperate with any compliance review or complaint investigation by any of the above listed agencies, providing them access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary. The right of access is not limited to the required retention period but shall last as long as the records are retained.

*Part 4 and 5 unchanged*

H.E. Procurement Standards.

1. The Subgrantee shall use their own procurement procedures and regulations provided that the procurement conforms to applicable Federal (~~44 CFR Part 13.36~~) and State law (including without limitations ORS chapters 279A, 279B, 279C) and standards.

~~2. The Subgrantee agrees to provide the existing state prevailing rate of wage and, if applicable, the federal prevailing rate of wage required under the federal Davis-Bacon Act (40 U.S.C. 3141 et seq.) that must be paid to workers in each trade or occupation that is used in performing all or part of this Agreement.~~

*Part 3, 4 and 5 become 2, 3 and 4 but content unchanged*

I.F. Property/Equipment Management and Records Control, and Retention of Property/Equipment Records.

1. Property/Equipment Management Records Control.

*Parts a - f unchanged*

g. Subgrantee agrees to comply with 44 CFR Part 13.32.e when original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency.

*Parts g and h become h and i but content is unchanged*

*Section J becomes section G but content is unchanged*

~~K H.~~ Reports. Failure of the Subgrantee to submit the required program, financial, or audit reports, or to resolve program, financial, or audit issues may result in the suspension of grant payments, or termination of this Agreement, or both.

#### 1. Performance Reports.

The Subgrantee agrees to submit reports in a form acceptable to OEM on reporting on its progress in meeting each of its agreed upon strategic goals and objectives. The narrative reports will address specific information regarding the activities carried out under the FY 2012 Urban Area Security Initiative Grant Program and how they address identified project specific strategic goals and objectives.

Performance reports are due to OEM ~~by the end~~ on the last day of each calendar year quarter.

Any Performance Report that is outstanding for more than one month past the due date may cause the suspension and/or termination of the grant. The Subgrantee must receive prior written approval from OEM to extend a performance report requirement past its due date.

#### 2. Biannual Strategy Implementation Report.

The Subgrantee agrees to provide reports to OEM in a form acceptable to OEM to enable OEM to meet its obligation to provide to FEMA the Biannual Strategy Implementation Report (BSIR) to show progress made toward meeting strategic goals and objectives. BSIR completion is due twenty-one days after the end of each BSIR reporting period, July 21 for the reporting period January 1 through June 30; and January 20 for the reporting period of July 1 through December 31.

*Part 2 becomes Part 3 but content is unchanged.*

*Section L becomes I and is deleted in its entirety and replaced with new language*

#### ~~L. Indemnification.~~

~~The Sub-grantee shall, to the extent permitted by the Oregon Constitution and by the Oregon Tort Claims Act, defend, save, hold harmless, and indemnify the State of Oregon, OEM, and their officers, employees, agents, and members from all claims, suits, actions, losses,~~

~~damages, liabilities, costs and expenses of any nature resulting from or arising out of, or relating to the activities of the Subgrantee, its officers, employees, subcontractors, or agents under this Agreement.~~

~~The Subgrantee shall require any of its contractors or subcontractors to defend, save, hold harmless and indemnify the State of Oregon, OEM, and their officers, employees, agents, and members, from all claims, suits or actions of whatsoever nature resulting from or arising out of the activities of subcontractor under or pursuant to this Agreement.~~

~~The Subgrantee shall, if liability insurance is required of any of its contractors or subcontractors, also require such contractors or subcontractors to provide that the State of Oregon, OEM, and their officers, employees and members are Additional Insureds, but only with respect to the contractor's or subcontractor's services performed under this Agreement.~~

#### I. Contribution: Subcontractor Indemnity and Insurance.

1. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

2. With respect to a Third Party Claim for which OEM is jointly liable with the Grantee (or would be if joined in the Third Party Claim), OEM shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Grantee in such proportion as is appropriate to reflect the relative fault of OEM on the one hand and of the Grantee on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of OEM on the one hand and of the Grantee on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. OEM's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if OEM had sole liability in the proceeding.

3. With respect to a Third Party Claim for which the Grantee is jointly liable with OEM (or would be if joined in the Third Party Claim), the Grantee shall contribute to the amount



of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by OEM in such proportion as is appropriate to reflect the relative fault of the Grantee on the one hand and of OEM on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Grantee on the one hand and of OEM on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Grantee's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

4. Subgrantee shall take all reasonable steps to cause its contractor(s) or subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless OEM and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Grantee's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims

5. Subgrantee shall require its contractor(s) or (subcontractor(s) to obtain insurance in amounts required by OEM, not to exceed OEM's limits of liability under the Oregon Tort Claims Act, and shall provide that the State of Oregon, OEM, and their officers, employees and members are named as Additional Insureds, but only with respect to the contractor's or subcontractor's services performed under this grant.

*Section M becomes Section J but content is unchanged*

*Section N is deleted in its entirety*

Ø K Governing Law; Venue; Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit, or proceeding (collectively, "Claim") between OEM (or any other agency or department of the State of Oregon) and the Subgrantee that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for the State of Oregon; provided, however, if the Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. This Section applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of

Oregon to be sued in federal court. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. The Subgrantee, by execution of this Agreement, hereby consents to the In Personam Jurisdiction of said courts, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

*Sections P - T become sections L - P but content is unchanged*

### III. Subgrantee Compliance and Certifications

A. Debarment, Suspension, Ineligibility and Voluntary Exclusion. The Subgrantee certifies by accepting funds under this Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this transaction by any Federal department or agency. ~~(This certification is required by regulations published May 26, 1988, implementing Executive Order 12549, Debarment and Suspension, 44 CFR Part 47 13.35).~~ The Subgrantee shall establish procedures to provide for effective use and/or dissemination of the Excluded Parties List ([http://www.epls.gov /](http://www.epls.gov/)) to assure that their contractors are not in violation of the nonprocurement debarment and suspension common rule.

B. Standard Assurances and Certifications Regarding Lobbying. The Subgrantee is required to comply with 44 CFR Part 18, New Restrictions on Lobbying ([http://www.access.gpo.gov/nara/cfr/waisidx\\_07/44cfr18\\_07.html](http://www.access.gpo.gov/nara/cfr/waisidx_07/44cfr18_07.html)). The restrictions on lobbying are enforceable via large civil penalties, with civil fines between \$10,000 and \$100,000 per expenditure. The Subgrantee understands and agrees that it cannot use any federal funds, either directly or indirectly, in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government, ~~without the express prior written approval of FEMA.~~ These lobbying prohibitions can be found at 31 USC § 1352.

C. Compliance with Applicable Law. The Subgrantee agrees to comply with all applicable laws, regulations, program guidance, and guidelines of the State of Oregon, the Federal Government and OEM in the performance of this Agreement, including but not limited to:

1. Administrative Requirements set forth in 44 CFR Part 13.
2. Cost Principles set forth in 2 CFR Part 225 and 48 CFR Federal Acquisition Regulation (FAR) Part 31.2.
3. Audit Requirements set forth in OMB Circular A-133.
4. The provisions set forth in 44 CFR Part 7; Part 9; Part 10; and Federal laws or regulations applicable to Federal assistance programs.
5. The Freedom of Information Act (FOIA), 5. U.S.C. §552 with consideration of State and local laws and regulations regarding the release of information and regulations governing Sensitive Security Information (49 CFR Part 1520).
6. Award Term for Trafficking in Persons set forth in 2 CFR Part 175.
7. Requirements for Drug-Free Workplace set forth in 2 CFR Part 3001.
8. Animal Welfare Act of 1966, as amended, 7 USC § 2131 et seq.
9. Clean Air Act of 1970, as amended, 42 USC§ 7401-7671, and Clean Water Act of 1977, as amended, 33 USC§ 1251.
10. Protection of Human Subjects, set forth in 45 CFR Part 46.
11. National Flood Insurance Act of 1968, as amended, 42 USC § 4013, pursuant to regulations set forth in 44 CFR Part 63.
12. Flood Disaster Protection Act of 1973, as amended, 42 USC § 4002.

13. Coastal Wetlands Planning, Protection, and Restoration Act of 1990, as amended, 16 USC§ 3951, pursuant to regulations set forth in 44 CFR Part 9.

14. USA Patriot Act of 2001, as amended, 8 USC§ 1105, 1182, 1189.

D. Non-discrimination and Civil Rights Compliance. Equal Employment Opportunity Program and Services to Limited English Proficient (LEP) Persons.

1. ~~Non-discrimination and Civil Rights Compliance. The Subgrantee, and all its contractors and subcontractors, certifies that no person shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any activity funded under this Agreement on the basis of race, color, age, religion, national origin, disability, or gender. The Subgrantee, and all its contractors and subcontractors, assures compliance with all applicable nondiscrimination laws, including but not limited to:~~

a. Title VI of the Civil Rights Act of 1964 as amended, and related Nondiscrimination Regulation s in 44 CFR Part 7;

b. Title VIII of the Civil Rights Act of 1968, as amended.

b c. Titles I, II and III of the Americans with Disabilities Act (ADA) of 1990, as amended, 42 USC §§ 12101 - 12189.

d. Age Discrimination Act of 1975, as amended, 42 USC § 6101.

e. Title IX of the Education Amendments of 1972, as amended, 20 USC§ 1681 et seq.

f. Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794, as amended.

~~In the event that a Federal or State court or administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, age, religion, national origin, disability or gender against the Subgrantee or any of its contractors or subcontractors, the Subgrantee or any of its contractors or subcontractors will forward a copy of the finding to OEM.~~

If, during the past three years, the Subgrantee has been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status, the Subgrantee must provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the OEM. In the event any court or administrative agency makes a finding of discrimination on grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status against the Subgrantee, or the Subgrantee settles a case or matter alleging such discrimination, Subgrantee must forward a copy of the complaint and findings to the OEM.

2. Equal Employment Opportunity Program. The Subgrantee, and any of its contractors and subcontractors, certifies that an equal employment opportunity program will be in effect on or before the effective date of this Agreement. The Subgrantee must maintain a current copy on file.

~~3. Services to Limited English Proficient (LEP) Persons. National origin discrimination includes discrimination on the basis of limited English proficiency. Recipients of federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important benefits, programs, information and services. For additional information, please see <http://www.lep.gov>.~~

3. Services to Limited English Proficient (LEP) Persons. The Subgrantee, and any of its contractors and subcontractors agrees to comply with the requirements of Executive Order 13166, improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin and resulting agency guidance, national origin discrimination includes discrimination on the basis of LEP. To ensure compliance with Title VI, Subgrantee must take reasonable steps to ensure that LEP persons have meaningful access to your programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Subgrantee is encouraged to consider the need for language services for LEP persons served or encountered both in developing budgets and in conducting programs and activities. For assistance additional information regarding LEP obligations, please see <http://www.lep.gov>.

*Section E is unchanged*

*Section F is deleted in its entirety and replaced*

~~F. Drug Free Workplace Requirements. The Subgrantee certifies that it will provide a drug-free workplace. There are two general requirements if you are a recipient other than an individual.~~

~~1. You must make a good faith effort, on a continuing basis, to maintain a drug-free workplace. Briefly, those measures are to:~~

- ~~a. Publish a drug-free workplace statement and establish a drug-free awareness program for your employees (see 44 CFR Part 17.6); and~~
- ~~b. Take actions concerning employees who are convicted of violating drug statutes in the workplace.~~

~~2. You must identify all known workplaces under your Federal awards.~~

~~Additional information can be referenced at:~~

~~[http://www.access.gpo.gov/nara/cfr/waisidx\\_08/44cfrv1\\_08.html](http://www.access.gpo.gov/nara/cfr/waisidx_08/44cfrv1_08.html).~~

F. Drug Free Workplace Requirements (2 CFR Part 3001). The Subgrantee agrees to comply with the requirements of the Drug-Free Workplace Act of 1988, as amended, (41 USC§ 701 et seq.), which requires that all organizations receiving grants (or subgrants) from any Federal agency agree to maintain a drug-free workplace. The Subgrantee must

notify this office if an employee of the Subgrantee is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment

*Section G was unchanged*

H. Human Trafficking (2 CER Part 175). The Subgrantee, employees, contractors and subrecipients under this Agreement and their respective employees may not:

1. Engage in severe forms of trafficking in persons during the period of the time the award is in effect;
2. Procure a commercial sex act during the period of time the award is in effect; or
3. Use forced labor in the performance of the subgrant or subgrants under the award.

The Subgrantee must inform OEM immediately of any information the Subgrantee receives from any source alleging a violation of any of the above prohibitions in this award term. OEM's right to terminate this Agreement unilaterally, without penalty, is in addition to all other remedies under this award Agreement. The Subgrantee must include these requirements in any subaward subgrant made to public or private entities.

I. Fly America Act of 1974. The Subgrantee agrees to comply with the requirements of the Preference for U.S. Flag Air Carriers: Travel supported by U.S. Government funds requirement, which states preference for the use of U.S. flag air carriers (air carriers holding certificates under 49 USC § 411 02) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended (49 USC§ 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to the Comptroller General Decision B138942.

J. Activities Conducted Abroad. The Subgrantee agrees to comply with the requirements that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

K. Acknowledgement of Federal Funding from DHS. The Subgrantee agrees to comply with requirements to acknowledge Federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds.

L. Copyright (44 CFR Part 13.34). The Subgrantee agrees to comply with requirements that publications or other exercise of copyright for any work first produced under Federal financial assistance awards hereto related unless the work includes any information that is otherwise controlled by the Government (e.g., classified information or other information subject to national security or export control laws or regulations). For any

scientific, technical, or other copyright work based on or containing data first produced under this Agreement, including those works published in academic, technical or professional journals, symposia proceedings, or similar works, the Subgrantee grants the Government a royalty-free, nonexclusive and irrevocable license to reproduce, display, distribute copies, perform, disseminate, or prepare derivative works, and to authorize others to do so, for Government purposes in all such copyrighted works. The Subgrantee shall affix the applicable copyright notices of 17 USC § 401 or 402 and an acknowledgement of Government sponsorship (including Subgrant number) to any work first produced under an award.

M. Use of DHS Seal, Logo and Flags. Subgrantee agrees to obtain DHS's approval prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.



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NANCY DRURY  
DIRECTOR

DEPARTMENT OF EMPLOYEE SERVICES

PUBLIC SERVICES BUILDING  
2051 KAEN ROAD | OREGON CITY, OR 97045

July 10, 2014

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of a Board Order for the Clackamas County Sheriff's Office  
Independent Retiree Medical Trust Fund

<b>Purpose/Outcome</b>	Approval of the Plan Document to implement the Clackamas County Sheriff's Office Independent Retiree Medical Trust Fund (IRMT) and Board Order approving the participation of the Nonrepresented employees of the Sheriff's Office in the Trust
<b>Dollar Amount and Fiscal Impact</b>	Approximate fund transfer amount will be \$2,650,000. Ongoing contributions are 3.25% of base payroll for Sheriff's Office employees (\$928,400 in FY 2013/14) as required by collective bargaining agreement.
<b>Funding Source</b>	Fund 762 – Sheriff's Office Retiree Medical Fund and ongoing contributions made by the Sheriff's Office
<b>Safety Impact</b>	None
<b>Duration</b>	Effective July 1, 2014
<b>Previous Board Action/Review</b>	Approved at study session on May 6, 2014
<b>Contact Person</b>	Nancy Drury, Employee Services Director 503/655-8812

**BACKGROUND:**

As part of the 2012/14 collective bargaining agreement with POA, the County agreed "...to form a committee to review and make a recommendation to the Board of County Commissioners about the establishment of an Independent Retiree Medical Trust..." The Committee met several times over the course of almost two years and hired a trust attorney to create a legal trust document. On May 6, 2014, the Board of County Commissioners gave unanimous approval to the trust document and directed staff to proceed with the implementation of the IRMT.

**RECOMMENDATION:**

Staff recommends the Board approve the attached Board Order for the implementation of the Clackamas County Sheriff's Office Independent Retiree Medical Trust Fund.

Respectfully submitted,

  
Nancy Drury  
Employee Services Director



**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the matter of establishing the  
Clackamas County Independent  
Retiree Medical Trust to include the  
Sheriff's Office Nonrepresented  
Employees



ORDER NO.

**Whereas**, this matter coming regularly before the Board of County Commissioners, and it appearing that an Independent Retiree Medical Trust established for the Sheriff's Office should include nonrepresented employees; and

**Whereas**, it further appearing that it is in the best interest of the County and the nonrepresented active and retired members of the Sheriff's Office to include such members in this trust.

**NOW THEREFORE, IT IS HEREBY ORDERED** that nonrepresented employees and retirees of the Sheriff's Office shall participate in the trust subject to the provisions of the plan document for the Clackamas County Independent Retiree Medical Trust.

DATED this \_\_\_\_ Day of \_\_\_\_\_, 2014.

**CLACKAMAS COUNTY BOARD OF COMMISSIONERS**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary

**CLACKAMAS COUNTY SHERIFF'S OFFICE**

**INDEPENDENT RETIREE MEDICAL TRUST**

**Effective July 1, 2014**

**© 2014**

**Joseph L. Reinhart, P.C.  
7355 SW Hermoso Way  
Tigard, Oregon 97223  
Telephone: 503-530-8384  
E-mail: [joe@nwerisalaw.com](mailto:joe@nwerisalaw.com)**

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## **PLAN INTRODUCTION**

The Parties agree to establish a jointly administered health and welfare trust, called the Clackamas County Sheriff's Office Independent Retiree Medical Trust (hereinafter referred to as "Plan"). The Plan shall be for the exclusive benefit of Retirees and their Dependents.

The Plan terms are intended to comply with Section 501(c)(9) of the Internal Revenue Code and applicable regulations in order that the Plan may qualify as a tax exempt health and welfare plan.

## **DISCLAIMER REGARDING ELIGIBILITY AND BENEFITS**

Benefits and/or coverage under this Plan are not guaranteed. Benefits and/or coverage may be changed, revised, reduced or terminated by the Board of Trustees at any time, for any reason. Eligibility for Plan participation does not guarantee benefits or result in "vesting" of benefits.

## ARTICLE I

### PLAN OBJECTIVES

The objectives and purposes of this Plan are as follows:

- 1.1 **GENERAL OBJECTIVE.** To provide health and welfare benefits for eligible Retirees and their Dependents according to sound actuarial and underwriting principals under the joint administration of Employer and Union Trustees.
- 1.2 **BENEFITS FOR COVERED RETIREES.** To provide Retirees with health insurance and other benefits in the amount and coverage determined by the Board of Trustees.
- 1.3 **BENEFITS FOR DEPENDENTS.** To make available to Retirees coverage and benefits for their Dependents, as determined by the Board of Trustees. The Board shall determine the premium cost of Dependent coverage. At discretion of the Board of Trustees, a portion of the Employer contributions may be allocated to pay for Dependent coverage.
- 1.4 **RESERVES.** To establish and maintain reserves reasonably required to provide security and stability to the Plan according to generally accepted accounting and actuarial standards and practices.
- 1.5 **EMPLOYER CONTRIBUTIONS.** To collect Employer Contributions required under: (a) the collective bargaining agreement between the Union and the Employer, with regard to represented employees; and (b) the Board Order, with regard to Command Staff.

## ARTICLE II

### DEFINITIONS

When used herein the following words shall have the following meaning unless the context clearly indicates otherwise:

- 2.1 “**Administrator**” means the person or business entity appointed by the Board of Trustees to supervise the administration of the Plan under control of the Board of Trustees.
- 2.2 “**Beneficiary**” means a Retiree entitled to receive benefits from the Plan; or a spouse or a Dependent of a Retiree who is entitled to receive benefits from the Plan.
- 2.3 “**Benefits**” means medical benefits and/or coverage provided to Retirees and their Dependents by the Trust.
- 2.4 “**Board of Trustees**” means the Board of Trustees established and designated under Article IV to administer this Plan.
- 2.5 “**Board Order**” means the order of the Clackamas County Commissions (“Board Order”) dated July 10, 2014 regarding contributions on behalf of active members of the Command Staff.
- 2.6 “**Carrier**” means any commercial insurance company or service organization issuing a contract under the terms of which benefits are provided to Retirees and their Dependents, and may include the Plan itself if the Plan self-insures benefits.
- 2.7 “**Command Staff**” means the active employees of the Clackamas County Sheriff’s Office who are not represented by the Union.
- 2.8 “**Compensable Hour**” means an hour for which a member of the bargaining unit or Command Staff is entitled to receive compensation from the Employer and on which the Employer is required to make a contribution the Plan under Section 1.5.

2.9 “**Custodian**” means the person, people, corporation or entity authorized by the Board of Trustees to hold the Trust’s assets. The Custodian shall be a corporation selected pursuant to Article V.

2.10 “**Dependent**” means a dependent of an eligible Retiree as defined in any policy or other form of coverage selected by the Board of Trustees, including the Retiree’s children. “Dependent” shall include a Retiree’s spouse and children. Coverage for Dependents under the Plan shall terminate when the Retiree is no longer an Eligible Retiree.

(a) Retiree’s Spouse. A Retiree’s “spouse” shall include an opposite sex spouse or a same-sex spouse, provided the marriage is legal in the state in which the marriage took place. A common-law spouse may be treated as a spouse only if the state in which you reside recognizes common-law marriages and you satisfy the state requirements at the time of enrollment. A spouse shall also include a domestic partner recognized by Clackamas County.

(b) Retiree’s Children. A child may be up to age 26. A Retiree’s “child” or “children” include the following:

(1) Biological children of the Retiree, the Retiree’s spouse and/or the Retiree’s domestic partner.

(2) Children adopted by the Retiree, the Retiree’s spouse and/or the Retiree’s domestic partner.

(3) Children placed for adoption with the Retiree, the Retiree’s spouse and/or the Retiree’s domestic partner.

(4) Foster children placed with the Retiree, the Retiree’s spouse and/or the Retiree’s domestic partner.

(5) Children and/or grandchildren for whom the Retiree, the Retiree’s spouse and/or the Retiree’s domestic partner has legal guardianship (provided a court order showing legal guardianship is filed with the Administrator). The child must be related to the Retiree, the Retiree’s spouse and/or the Retiree’s domestic partner by blood or marriage.

- (6) Children for whom coverage is required under a Qualified Medical Child Support Order applicable to the Retiree.
  - (7) Children who qualify as the Retiree's dependent under IRC §152.
- 2.11 **"Effective Date"** means the date on which this Trust shall be effective, which is July 1, 2014.
- 2.12 **"Employer"** means Clackamas County, Oregon.
- 2.13 **"Employer Contributions"** means contributions required to be made to this Plan under Section 1.5.
- 2.14 **"Parties"** means the Employer and the Union.
- 2.15 **"Retiree"** means a retiree of the Clackamas County Sheriff's Office who is eligible to participate in this Plan pursuant to Article 3.
- 2.16 **"Plan"** means this health and welfare Plan.
- 2.17 **"Plan Year"** means the calendar year starting on January 1<sup>st</sup> and ending on December 31<sup>st</sup> of that year.
- 2.18 **"Policy"** means an insurance policy or any contract issued pursuant to this Plan under which benefits are provided to a Retiree and/or a Dependent.
- 2.19 **"Trust"** means the Trust established for this Plan.
- 2.20 **"Union"** means the Clackamas County Peace Officers Association.



## ARTICLE III

### ELIGIBILITY AND BENEFITS

- 3.1 ELIGIBLE EMPLOYER.** The eligible Employer shall be Clackamas County, Oregon.
- 3.2 ELIGIBLE RETIREES.** The following individuals are “Eligible Retirees” and shall be eligible for benefits under this Plan:
- (a) The individual retired from the Clackamas County Sheriff’s Office with at least 10 Years of Employment at the Clackamas County Sheriff’s Office;
  - (b) The individual meets, at the time the individual retired, the minimum requirements for service or disability retirement under the rules of either the Oregon Public Employee Retirement System or the Oregon Public Employee Service Retirement Plan; and
  - (c) The individual is not eligible for Medicare.
- 3.3 YEAR OF EMPLOYMENT.** An individual shall accrue a “Year of Employment” for determining eligibility under this article by completing 12 months of employment with the Clackamas County Sheriff’s Office. The 12 month period shall start on the individual’s hire date and each subsequent anniversary of that date. An individual shall receive credit for months of employment, which may be used to establish a Year of Employment. Employment shall be counted for purposes of determining a Year of Employment only if the employment is covered by either: (a) the collective bargaining agreement between the Union and the Employer, with regard to represented employees; or (b) the Board Order, with regard to Command Staff.
- 3.4 MEDICARE ELIGIBILITY.** The Plan assumes a Retiree (or Dependent) who, at any time, becomes eligible for Medicare, has applied for and is eligible for Medicare benefits. A Retiree or Dependent who fails to apply for Medicare when he/she is eligible will be treated as having applied for and received Medicare. In that case, the

Retiree or Dependent may be responsible to repay the Plan for Plan benefits received while the Retiree or Dependent is eligible for Medicare.

**3.5 BENEFIT PERIOD.** Eligible Retirees under Section 3.2 shall be entitled to Benefits under this Plan for the following time periods.

- (a) Normal Early Retirement. An Eligible Retiree who retires before becoming eligible for Medicare by age or disability shall receive Benefits for the following periods:

<u>Years of Employment</u>	<u>Years of Retiree Benefits</u>
10 years	up to 10 years*
11 years	up to 11 years*
12 years	up to 12 years*
13 years	up to 13 years*
14 years	up to 14 years*
15 years	Until eligible for Medicare by age or disability

\* or until eligible for Medicare by age or disability, if earlier.

- (b) Disability Early Retirement. A disabled Eligible Retiree shall be eligible for Benefits for a period not to exceed 29 months (or until eligible for Medicare by age or disability, if earlier). In order to qualify for disability early retirement an Eligible Retiree must: (a) have fewer than 10 Years of Employment; and (b) retire with a disability retirement under either the Oregon Public Employee Retirement System or the Oregon Public Employee Service Retirement Plan.

**3.6 INELIGIBLE DEPENDENTS.** Coverage under this Plan is not available for the following individuals, who are ineligible dependents:

- (a) Any Dependent on active duty in the uniformed services or armed forces of any country.
- (b) A former spouse or the former spouse's dependents after a divorce, even if the divorce decree or settlement agreement requires Retiree to provide coverage under the Plan (the former spouse and/or dependents may be entitled to continue coverage under COBRA).

- (c) A former domestic partner and/or the former domestic partner's dependents after termination of the domestic partnership, even if a court order or settlement agreement requires Retiree to provide coverage under the Plan (the former domestic partner and/or dependents may be entitled to continue coverage under COBRA).
- (d) Parents, even if they are your dependents for federal income tax purposes. This rule also applies to the parents of your spouse and/or domestic partner.
- (e) The spouse and/or domestic partner of a child or grandchild.

**3.7 TERMINATION OF COVERAGE.** Coverage under this Plan for a Retiree and the Retiree's Dependents may end under the following situations.

- (a) Plan Termination. Coverage ends on the date the Plan terminates. No participant has a vested right to benefits under the Plan.
- (b) Loss of Eligibility. Coverage ends on the last day of the month in which a Retiree and/or Dependent no longer meets the Plan's eligibility requirements.
- (c) Terminated by Retiree. A Retiree may end coverage for himself/herself and/or any of the Retiree's dependents by giving the Administrator written notice of the termination. Coverage ends on the last day of the month in which the Retiree gives the termination notice. A Retiree who terminates his/her Plan coverage under this provision shall no longer be eligible to participate in the Plan.
- (d) Death. Coverage for a Retiree's Dependents ordinarily ends on the last day of the month in which the Retiree dies. However, surviving spouses and/or dependent children may be able to continue coverage under federal COBRA rules and/or Oregon law relating to survivors of retired public employees.
- (e) Divorce. Coverage ends for a spouse and the spouse's stepchildren on the last day of the month when a divorce or annulment is final, or in the case where the decree is appealed, the date the divorce or annulment would have been final but for the appeal.

- (f) Termination of Domestic Partnership. Coverage ends on the last day of the month for a domestic partner and the domestic partner's children when a domestic partnership is terminated or dissolved by court order. A nonregistered domestic partnership is considered terminated if the partnership no longer meets any of the qualifying conditions under the Affidavit of Domestic Partnership. A domestic partnership registered in Oregon is considered terminated when a decree of dissolution is ordered.

## ARTICLE IV

### BOARD OF TRUSTEES

- 4.1 MEMBERSHIP.** The Board of Trustees shall be composed of up to 8 members. The Union and the Employer shall each appoint an equal number of Trustees, not to exceed four each. Trustees appointed by the Union shall be known collectively as “Union Trustees.” Trustees appointed by the Employer shall be known collectively as “Employer Trustees.”
- 4.2 TERM OF OFFICE.** The term of office of each member of the Board of Trustees shall be for a designated period of time, or until a successor is appointed. However, any member may voluntarily resign.
- 4.3 APPOINTMENTS AND CHANGES IN BOARD OF TRUSTEES.** All appointments, removals, replacements and resignations from the Board of Trustees shall be in writing and filed in the Administrator’s office and with the Custodian. Any individual or entity, including the Custodian, dealing with the Board of Trustees shall not be required to inquire into the status or authority of any Trustee. The Custodian may rely upon the written evidence in its possession of the Trustees of the Board of Trustees and shall not be required to acknowledge a change in the Trustees until notified in writing of a change.
- 4.3.1 Vacancies. The appointing party shall select appoint a Trustee to fill a vacancy on the Board of Trustees.
- 4.3.2 Removal. A Trustee may be removed by either: (a) the party that appointed the Trustee; or (b) the Board of Trustees, by majority vote. For example, a Trustee appointed by the Union may be removed by the Union, but cannot be removed by the Employer.

- 4.4 BOOKS AND RECORDS.** A former Trustee shall, upon the Trustee's resignation or removal, or at the request by the Co-Chairs, return to the Plan all Plan records, books, documents and assets which were provided to the former Trustee.
- 4.5 CO-CHAIRS.** The officers of the Board of Trustees shall be determined as provided in this section.
- 4.5.1 Co-Chairs. The Co-Chairs of the Board of Trustees shall consist of one Employer Trustee and one Union Trustee selected by the following parties: the Employer Co-Chair shall be selected by the current Employer Trustees; and the Union Co-Chair shall be selected by the current Union Trustees. The party selecting the Co-Chair shall determine: (a) the method the party uses for selecting and/or removing the party's Co-Chair; and (b) the Co-Chair's term. A party may change the party's Co-Chair at any time. The Co-Chairs shall have authority to sign all documents relating to the Plan's operations.
- 4.5.2 Presiding Officer. The Co-Chairs shall preside at alternate meetings of the Board of Trustees. However, if a Co-Chair shall not be present at a meeting, the other Co-Chair shall preside at the meeting.
- 4.6 VOTING AND QUORUM.** Two Employer Trustees and Two Union Trustees shall constitute a quorum for the transaction of all business at any meeting of the Board of Trustees. All decisions of the Board of Trustees shall be by majority vote. If a dispute shall arise under the Plan which cannot be settled by the Board of Trustees, the Board of Trustees shall appoint an impartial temporary Chair who shall have one vote to be cast after hearing of the matter in dispute at a meeting of the Board of Trustees. If the Board of Trustees shall be unable to agree upon an impartial temporary Chair, each side shall appoint an arbitrator and the two appointed arbitrators shall select a third arbitrator to serve as the temporary Chair. The fees and expenses of the application and the services of the arbitrators and/or the impartial Chair shall be paid by the Plan.
- 4.7 BOARD OF TRUSTEE MEETINGS.** The time, place and manner of all meetings of the Board of Trustees shall be determined as provided in this section.

- 4.7.1 Regular Meetings. All regularly scheduled meetings of the Board of Trustees shall be held at the time and place, and in the manner, designated by the Board of Trustees. A “regularly scheduled meeting” shall mean a regular quarterly meeting the time, place and manner for which is designated by the Board of Trustees when adopting the Board's annual calendar. Publication of the Board's annual calendar in meeting minutes distributed to all Trustees shall serve as Notice for all regularly scheduled meetings during the year.
- 4.7.2 Special Meetings. A special meeting may be called by: (a) the Co-Chairs at any time after giving five days' Notice; or (b) any three Trustees after giving at least 10 days' Notice.
- 4.7.3 Electronic Meetings. A regular or special meeting of the Board of Trustees may be held by conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other.
- 4.7.4 Attendance. A Trustee may participate in a regular, special or electronic meeting of the Board of Trustees by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other, and the Trustee's participation in the meeting shall constitute presence in person at the meeting.
- 4.7.5 Notice. The term “Notice” shall mean advance written notice that designates the time, place, purpose and manner of the meeting and satisfies the following delivery requirements:
- (a) Notice may be delivered in one or more of the following methods: (1) by personal hand delivery; (2) by U.S. mail or private delivery service that tracks delivery, provided the postage and/or delivery costs are prepaid; or (3) by fax or email.
  - (b) Notice shall be considered delivered as follows: (1) if personal, upon delivery; (2) if mailed, when deposited in the United States mail addressed to the Trustee at the address listed in the Board's records, with first class or faster postage prepaid; (3) if by private delivery

service, when deposited with the delivery service addressed to the Trustee at the address listed in the Board's records, with delivery costs prepaid; (4) if by facsimile, when faxed to the Trustee's fax number listed in the Trust's records and upon receipt of a fax confirmation slip; (5) if by email, when sent to the email address listed in the Board's records.

4.7.6 Meeting Records. Meeting minutes shall be prepared at the direction of the Co-Chair presiding at the meeting. In the alternative, the Board of Trustees may designate a Trustee, the Board's third party administrator or other service provider to act as secretary to record the minutes of the Board's proceedings and to maintain the Board's records.

4.7.7 Action without Meeting. The Board of Trustees may act without a meeting; provided, however, that the action shall be in writing and unanimously approved by all Trustees of the Board of Trustees. Any action taken without a meeting shall be reported in the minutes of the next Board of Trustees' meeting.

**4.8 LIABILITY OF TRUSTEES.** A Trustee shall not be personally liable for any obligation to pay premiums or any expense incurred by the Board of Trustees or the Plan. A Trustee shall not be liable or responsible for the acts of commission or omission of another fiduciary unless: (a) the Trustee knowingly participated or knowingly attempted to conceal the act or omission of another fiduciary and the Trustee knew the act or omission was a breach of fiduciary responsibility by the other fiduciary; or (b) the Trustee has knowledge of a breach by the other fiduciary and shall not make reasonable efforts to remedy the breach; or (c) the Trustee's breach of the trustee's fiduciary responsibility permitted the other fiduciary to commit a breach. Except as set forth in the preceding sentence, a Trustee shall not be liable for a breach of a fiduciary responsibility, for acts or omissions committed before or after the Trustee became a Trustee, or for the acts of omission or commission of an investment manager appointed pursuant to paragraph 5.5. From the Plan's assets, the Board of Trustees may indemnify a Trustee against any and all



claims, losses, damages, expenses and liabilities arising from any act of commission or omission on behalf of the Plan if the act is determined, by either a court or neutral party, not to be a breach of fiduciary responsibility by the Trustee. The indemnification shall include reasonable attorney's fees and all other costs and expenses reasonably incurred by the trustee in defense of any action brought against the trustee arising from the act of commission or omission.

**4.9 EXPENSES AND COMPENSATION OF TRUSTEES.** A Trustee may not receive per diem compensation for attendance at meetings of the Board of Trustees, except as permitted by law. A Trustee may receive reimbursement for all reasonable expenses which are incurred for the benefit of the Plan. The expenses shall include, but shall not be limited to, attendance at Board of Trustees meetings, attendance at educational meetings and representation by an attorney because of service as a Trustee. The amount of reimbursement shall be determined by the Board of Trustees and shall be paid as a Plan expense.

**4.10 FILING LIST OF COMMITTEE TRUSTEES.** The Co-Chairs and/or Secretary of the Board of Trustees may file periodically, and as necessary, with the Carrier or Carriers and the Custodian, a list of the name and address of each member of the Board of Trustees.

## ARTICLE V

### DUTIES, POWERS AND AUTHORITY OF THE BOARD OF TRUSTEES

- 5.1 **ACTUARIAL PRINCIPLES.** The Board of Trustees shall administer the Plan according to sound actuarial and underwriting principles to provide, with available funds, benefits to Retirees.
- 5.2 **ESTABLISHMENT OF CONTRIBUTION RATE.** The Board of Trustees shall have discretionary authority to establish the rate of contribution for dependent coverage and for self-pay. The rate shall be adequate, when added to the employee contribution, if any, for dependent coverage, to pay the premium for the benefits, the reasonable allocable portion of administrative costs and a contribution to the Plan's reserve fund. The Board of Trustees shall have discretionary authority to determine the portion of the cost for dependent coverage and self-pay that may be paid from Employer contributions and/or the Plan's assets and the portion that shall be the responsibility of the dependent or Retiree.
- 5.3 **RESERVE.** The Board of Trustees shall establish and maintain from contributions and other Plan assets a reserve fund that the Board of Trustees shall, in its discretion, determine to be adequate to maintain the financial stability and security of the Plan, according to generally accepted accounting and actuarial standards and practices.
- 5.4 **INTERPRETATION.** The Board of Trustees shall have discretionary authority to interpret and construe the provisions of the Plan; to decide any disputes which may arise relative to the rights of retirees, past and present, and beneficiaries, under the terms of this Plan; to determine an individual's eligibility for benefits and the amount of any benefits; to give instructions and directions to the Custodian as necessary; and to direct the administration of the Plan. The Board of Trustees shall not, through interpretation of the Plan or action under the Plan, increase the Custodian's duties without the consent of the Custodian.

- 5.5 EMPLOYMENT OF AGENTS.** The Board of Trustees shall have the right to employ or discharge agents, the Custodian, and an investment manager and may rely upon the written opinions or certificates of the Custodian or any agent, counsel, actuary, investment manager, physician, or fiduciary. The cost of all agents, the Custodian or an investment manager shall be paid by the Plan.
- 5.6 ALLOCATION OF FIDUCIARY RESPONSIBILITIES.** The Board of Trustees may allocate fiduciary responsibilities, other than the Trustee's responsibilities, to other fiduciaries. If the Board of Trustees shall make an allocation, then the specified Trustee or fiduciary shall be responsible for the duties allocated to the Trustee or fiduciary and the other fiduciaries shall not be liable for any breach of fiduciary responsibility for the duties allocated except as set forth in section 4.8. If the Board of Trustees allocates responsibilities to other Trustees or fiduciaries, the Board shall periodically review the performance of the person performing the allocated duties.
- 5.7 DETERMINATION OF BENEFITS.** The Board of Trustees shall have discretionary authority to determine, increase, decrease or terminate, in whole or in part, the benefits and coverage provided by the Plan. The Board of Trustees shall have the right to select the Carrier providing the benefits and to exercise all rights granted to a policy holder. Any change in Plan benefits shall not change the rate of employer contributions.
- 5.8 ELIGIBILITY RULES.** The Plan eligibility rules shall conform to the eligibility provisions in the (a) the collective bargaining agreement between the Union and the Employer, with regard to represented employees; and (b) the Board Order, with regard to Command Staff. The Board of Trustees shall have discretionary authority to interpret the eligibility provisions and to establish and/or modify uniform administrative rules for applying the eligibility provisions.
- 5.9 ADMINISTRATION.** The Board of Trustees shall have the right to enter into agreements with any party to administer the Plan or to maintain all Plan records.

- 5.10 DELEGATION OF DUTIES.** The Board of Trustees shall have the right to delegate duties to a third party or a subcommittee which shall be composed of an equal number of Employer Trustees and Union Trustees. The subcommittee shall have the duties and rights delegated to it by the Board of Trustees. If the Board of Trustees delegates duties to a third-party, the Board shall periodically review the performance of the third-party performing the delegated duties.
- 5.11 COLLECTION OF PAYMENTS.** The Board of Trustees shall be responsible to collect all required payments to the Plan. To implement this responsibility, the Board of Trustees may require audits or reports in a number and a form which it deems necessary or desirable from all parties associated with the Plan. Moreover, the Board of Trustees may assign for collection or institute legal proceedings to collect any amount due to the Plan.
- 5.12 AUTHORIZATION OF EXPENSES.** The Board of Trustees shall authorize all payments for the Plan's expenses which the Board of Trustees shall determine to be reasonable, necessary or desirable. The expenses shall be expenses of the Plan.
- 5.13 PAYMENT OF BENEFITS.** The Board of Trustees may authorize payment of Benefits to which a Beneficiary is entitled to receive.
- 5.14 CLAIMS REVIEW COMMITTEE.** The Board of Trustees may appoint a Claims Review Committee to provide a full and fair review of Beneficiary claims.
- 5.15 OTHER ACTS.** The Board of Trustees shall perform all other acts, whether or not expressly described or referred to above, which may be necessary, proper and desirable to implement the objectives and provisions of the Plan.

## ARTICLE VI

### INVESTMENT MANAGER

- 6.1 SELECTION OF INVESTMENT MANAGER.** The Board of Trustees may select an investment manager or managers for all or a portion of the Plan's assets. The investment manager shall acknowledge in writing it is a fiduciary of the Plan and shall be: (a) registered as an investment advisor under the Investment Advisors Act of 1940; (b) a bank organized under federal law; or (c) an insurance company qualified to manage, acquire or dispose of assets of an employee benefit plan under the laws of more than one state. The Board of Trustees shall be furnished with a written statement that the investment manager is a qualified investment manager and the investment manager's acceptance of the appointment. An investment manager may be removed by the Board of Trustees at any time upon written notice to the investment manager. An investment manager shall have the right to resign at any time by giving the Board of Trustees sixty (60) days written notice. A retiring or terminated investment manager shall immediately file with the Board of Trustees a written account of its transactions from the date of its last account to the date of its removal or resignation.
- 6.2 INVESTMENT DECISIONS.** The Board of Trustees shall periodically advise the investment manager of additional assets available for investment. An investment manager shall exercise all investment decisions for the assets under its control pursuant to Article VII. The Board of Trustees shall not be under any duty to question any direction from an investment manager or to review any investment.
- 6.3 ORDERS FOR PURCHASE OR SALE.** An investment manager may issue orders for the purchase or sale of securities directly to a broker and the Custodian shall execute and deliver appropriate trading authorizations. Written notification of the issuance of each order shall be given promptly to the Custodian by the investment manager and the execution of each order shall be confirmed by written advice of the broker to Custodian. The notification from the investment manager shall be

authority for the Custodian to pay for the securities against the receipt or to deliver securities sold against the payment for the securities.

- 6.4 RESIGNATION OR REMOVAL OF INVESTMENT MANAGER.** If an investment manager shall resign or be removed, the Board of Trustees shall manage the investment of the Plan previously under the control of the investment manager until the Board of Trustees shall be notified of the appointment and acceptance of another investment manager.
- 6.5 MULTIPLE INVESTMENT MANAGERS.** If the Board of Trustees shall appoint more than one investment manager, each investment manager shall be responsible for the investment of the Plan's assets allocated to the investment manager. An investment manager shall not be liable for the acts or omissions of another fiduciary unless: (a) the investment manager knowingly participates in, or knowingly attempts to conceal the act or omission of another fiduciary, and the investment manager knows the act or omission is a breach of a fiduciary responsibility by the other fiduciary; or (b) the investment manager has knowledge of a breach of a fiduciary responsibility by the other fiduciary and does not make reasonable efforts to remedy the breach; or (c) the investment manager's breach of its own fiduciary responsibility permits the other fiduciary to commit a breach.
- 6.6 SEGREGATION OF ASSETS.** The Plan's books, records and accounts may reflect the segregation of the Plan's assets in separate accounts for the investment managers.

## ARTICLE VII

### INVESTMENT OF TRUST FUNDS

- 7.1 GENERAL.** Plan assets shall be invested and reinvested as a pooled fund. The Board of Trustees or the investment manager shall consider the effect of any investment upon the tax exempt status of the Plan or the income tax consequences to the Plan. The Board of Trustees or the investment manager shall invest the assets with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.
- 7.2 TYPES OF INVESTMENTS.** The Board of Trustees, or the investment manager, is and shall be authorized and empowered in its discretion, but not by way of limitation, to:
- (a) invest and reinvest the Plan's assets in bonds, insurance policies, mortgages, debentures, preferred or common stocks, stock options, mutual funds, a common trust fund maintained by a fiduciary which is a bank or an insurance company, or other real or personal property, or deposit the Plan's assets in an interest bearing account in a financial institution supervised by the United States or a state if the financial institution is a fiduciary of the Plan;
  - (b) sell, exchange, convey, transfer, or dispose of, and to grant all options with respect to, any property, real or personal, at any time held by the Plan. Any sale may be made by private contract or public auction, and for cash or upon credit; no person dealing with Plan assets shall be bound to supervise the application of the proceeds of any transaction or to inquire into the validity, expediency or propriety of the transaction;
  - (c) retain, manage, operate, repair, improve, mortgage or lease for any period, any real or personal property, and to purchase and carry insurance in such amount and against such hazards as may be desirable;

- (d) vote in person or by general or limited proxy with respect to any bonds, stocks or other securities held by the Plan; to exercise any options applicable to any bonds, stock or other securities for the conversion thereof into other securities; to exercise any rights, to subscribe for additional bonds, stocks or other securities, and to make any and all necessary payments therefore; to join in, or to dissent from, or oppose the reorganization, recapitalization, consolidation, liquidation, sale or merger of corporations or properties in which the Plan may be interested and upon the terms and conditions as may be prudent;
- (e) accept and hold any securities or other property received by the Board of Trustees under the provisions of this Article, whether or not the Board of Trustees would be authorized to invest in such securities;
- (f) make, execute, acknowledge and deliver any and all appropriate deeds, leases, assignments and other instruments;
- (g) cause any investments to be registered in, or transferred into, its name as trustee, or the name of the Board of Trustees' nominee or nominees, or to retain the investment in unregistered form or in a form permitting transfer by delivery only; however, the books and records of the Board of Trustees shall at all times show that all investments are part of the Plan's assets;
- (h) invest in all forms of insurance, including without limitation, health and dental insurance, annuity contracts or life insurance contracts on the lives of Beneficiaries, or surrender such policies for their cash value; and
- (i) perform all acts, whether or not expressly described or referred to above, which may be necessary, proper or desirable for the protection or enhancement of the Plan's assets.



## ARTICLE VIII

### ACCOUNTING PROCEDURES

- 8.1 MAINTENANCE OF RECORDS.** The Board of Trustees shall maintain accurate records and accounts of all transactions which shall be available at all reasonable times for inspection by the Board of Trustees, Participating Employers or Beneficiaries.
- 8.2 VALUATION OF PLAN'S ASSETS.** The Board of Trustees shall value the Plan's assets at least annually as of the close of the Plan Year. The account shall contain a list of all transactions since the Board of Trustees' last report, the book and market value of the Plan's assets and additional information which the Board of Trustees deems necessary to complete all disclosure and reporting requirements to all governmental agencies or Beneficiaries. The Board of Trustees may determine the fair market value of the Plan's assets from sources it deems reliable, including but not limited to, information reported in newspapers, financial publications or the records of security exchanges or brokerage firms.

## ARTICLE IX

### INTEREST IN PLAN'S ASSETS AND SPENDTHRIFT PROVISIONS

- 9.1 **INTEREST IN PLAN'S ASSETS.** A Retiree, Employer, Dependent, a party to the Plan or any other person or entity shall not have any right, title or interest in the Plan's assets.
- 9.2 **SPENDTHRIFT.** A Retiree and/or Dependent shall not have a right to assign any benefits provided by this Plan. The benefits provided by this Plan shall not be subject to seizure by legal process and shall not be in any way subject claims of a Retiree's, Employer's or Dependent's creditor(s).

## ARTICLE X

### EMPLOYER CONTRIBUTIONS AND REPORTS

- 10.1 CONTRIBUTIONS.** The Employer shall pay to the Plan an amount of money at the rate determined by: (a) the collective bargaining agreement between the Employer and the Union; and (b) the Board Order regarding Command Staff.
- 10.2 PAYMENT.** Contributions shall be paid monthly to the Plan and shall be due and payable at the place designated by the Board of Trustees not later than the twentieth day of the month following the month for which the contribution is owed.
- 10.3 PAYMENT BY MISTAKE OF FACT OR LAW.** The Board of Trustees shall have the right to return to payment to the Employer provided: (a) the Board determines that the payment was made by mistake of fact or law; and (b) the payment is returned within six months after the date of the Board's determination.
- 10.5 CONTRIBUTIONS AS DEBT OF EMPLOYER.** All payments required from Employer under this Plan shall constitute a debt payable by the Employer. However, Employer's payment shall not accrue to any Retiree or Dependent or be deemed a Plan asset until the payment shall be received by the Plan.
- 10.6 REPORTS.** The Employer, at the time of each payment, shall complete schedules and reports as required by the Board of Trustees to enable the Board of Trustees to administer the Plan.
- 10.7 FAILURE TO PAY.** If the Employer fails to pay its monthly contribution within five days after the due date, the Board of Trustees shall have the discretion to suspend the Employer from participating in the Plan. The Board of Trustees shall notify Employer that it will be suspended, as of the date specified by the Board of Trustees, unless payment is received by a specified date. The notice shall be given to the Employer by certified mail and a copy sent to the Union representing the Retirees. The Employer's suspension shall not relieve the Employer of its

continuing obligations to make contributions to the Plan, including any delinquent contributions, as required by the Employer's collective bargaining agreement with the Union and or the Board Order with regard to Command Staff.

**10.8 COLLECTIONS.** The Board of Trustees may take whatever action it deems necessary to collect arrearages. The Employer shall pay, in addition to the amount owing, interest at the rate of the lower of the prime rate plus 2 percent or the maximum permitted by law on the indebtedness from the due date until paid, liquidated damages in the amount of 20 percent of the amount of the arrearages, and all costs incurred by the Plan in the collection including court costs, reasonable attorney's fees and reasonable audit fees. The attorney's fees and audit fees shall be payable whether or not legal proceedings shall be instituted to collect the debt. Attorney's fees paid by the Plan shall be presumed to be reasonable.

**10.9 FAILURE TO REPORT.** If the Employer shall fail to file the required reports within five days after the due date, the Board of Trustees may audit all the payroll records of the Employer and prepare the report. If the Board of Trustees shall elect to suspend the Employer's participation in the Plan, the Board of Trustees shall, before the end of the month in which the default occurred, give notice to the Employer that it will be suspended as of the end of the month unless the report is filed prior thereto. The notice shall be given by certified mail and a copy sent to the Union. The Plan shall not be liable for the payment of premiums covering retirees of the employer during the period of time of the suspension. If the Board of Trustees elects to audit the payroll records and prepare the report, the Employer shall pay all of the costs of the audit in preparation of the report. Payment of the costs shall be due and payable upon demand by the Board of Trustees. If the costs shall not be paid within five days from the date of demand, the Employer shall be liable for all costs incurred by the Board of Trustees to collect the debt, including reasonable attorney's fees whether or not legal proceedings shall be instituted.

**10.10 REINSTATEMENT.** If the Employer is suspended from participating in the Plan, the Employer may be reinstated as a participating Employer upon payment of all

arrears, costs, including liquidated damages, attorney's fees and audit fees, and upon terms and conditions which the Board of Trustees may impose.

**10.11 SATISFACTION OF EMPLOYER'S FINANCIAL LIABILITY.** The Employer's payment of the contributions required by this Plan shall be a complete discharge of the Employer's financial obligations under the Plan. However, the Employer shall not be relieved of any liability to the Plan, a Retiree and/or a Dependent for failure to make timely contributions to the Plan.

**10.12 PREMIUMS FOR DELINQUENT EMPLOYERS.** The Board of Trustees, in its discretion, may pay the premiums which may be required to preserve and extend for a reasonable period of time the benefits for retirees if the Employer is delinquent.

## ARTICLE XI

### TERMINATION OF RETIREE COVERAGE

- 11.1 RETIREE COVERAGE.** The Plan shall not be responsible for the payment of premiums for Retirees, or for dependent coverage, unless the payment shall be received by the Plan. The Plan shall not be liable for the payment of claims if the Carrier refuses to accept the premiums.

## ARTICLE XII

### DISPUTES NOT SUBJECT TO COLLECTIVE BARGAINING

- 12.1 DISPUTES.** The Board of Trustees shall determine the resolution of disputes, which shall not be subject to the grievance procedure or the arbitration provisions of any collective bargaining agreement between Employer and the Union. As use in this paragraph, the term “disputes” shall mean disagreements between the Parties involving the terms and operation of the Plan, the Plan’s trust, any insurance contract issued in connection with the Plan or any claim for Benefits.

## ARTICLE XIII

### AUDITS AND REPORTS

- 13.1 ANNUAL CERTIFIED REPORT.** An annual certified audit of the Plan shall be made by a competent firm of certified accountants selected by the Board of Trustees. A statement of the results of the annual audit shall be made available to the Employer and Union and a copy shall be available for inspection at the Plan's administrative office and at such other places as the Board of Trustees may designate. The cost of the audit shall be paid by the Plan.
- 13.2 EMPLOYER RECORDS.** The Employer shall furnish, upon request, to the Board of Trustees (or its designated auditor) any and all records pertaining to Retirees, including, without limitation, records of names, Social Security numbers of Retirees, the number of Compensable Hours for which payment has been made or is payable to the Plan; federal, state and local payroll tax reports; payroll check registers and cancelled payroll checks; and such other information pertaining to the Retirees as the Board of Trustees may require in connection with the proper administration of the Plan.



## ARTICLE XIV

### FIDELITY BOND

**14.1 BOND REQUIRED.** All members of the Board of Trustees shall be bonded in an amount not less than \$50,000 and such additional amount as the Board of Trustees may determine.

## ARTICLE XV

### PLAN AMENDMENT

- 15.1 AMENDMENT PROCEDURE.** The Board of Trustees may amend this Plan from time to time, at the Board's discretion.
- 15.2 LIMITATION UPON AMENDMENTS.** The Plan shall not be amended to permit the Plan's assets, or any part thereof to revert, or be diverted, to the benefit of the Employer or the Union, or any person other than the Retirees or their dependents (to the extent contributions were made for the benefit of the dependents). An amendment, by its terms, may be retroactive.
- 15.3 DISTRIBUTION OF COPIES OF AMENDMENTS.** The Board of Trustees shall distribute to the Employer and the Union a copy of each amendment to the Plan.

## ARTICLE XVI

### SITUS, CONSTRUCTION OF PLAN AND MISCELLANEOUS

- 16.1 PRINCIPAL OFFICE.** The principal office, place of administration and situs of the Plan and Trust shall be located in the state of Oregon.
- 16.2 GOVERNING LAW.** All questions relating to the validity, construction and administration of this Plan shall be determined according to the laws of the state of Oregon, subject to applicable and controlling laws of the United States.
- 16.3 INVALIDITY OF A PROVISION.** If any provision of the Plan shall be declared invalid or unenforceable the remaining provisions shall be effective.
- 16.4 ENROLLMENT FORM.** Each Retiree, by executing an enrollment form, agrees for the Retiree and the Retiree's beneficiaries and successors, to be bound by all Plan provisions.

## ARTICLE XVII

### HIPAA

**17.1 PERMITTED USE AND DISCLOSURE.** The Trust will use Protected Health Information (“PHI”) only for administrative purposes which include the payment and operation of the Plan. Specifically, the Plan will:

- (a) not use or further disclose PHI other than as permitted by the Plan documents or as required by law;
- (b) ensure that any business associate or Trustee to whom the Plan provides PHI agrees to the same restrictions and conditions that apply to the Plan;
- (c) not use or disclose PHI for employment-related actions or in connection with any other employee benefit plan;
- (d) report to the privacy official any use or disclosure of the information that is inconsistent with the permitted uses or disclosures;
- (e) make PHI available to the Plan's participants, consider their amendments and, upon request, provide them with an accounting of PHI disclosures;
- (f) make the Plan’s internal practices and records relating to the use and disclosure of PHI available to DHHS upon request; and
- (g) require, if feasible, a Business Associate to return or destroy all PHI received from the Plan that a Business Associate maintains in any form and retain no copies of such information when no longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

**17.2 ACCESS TO PHI IS LIMITED TO TRUSTEES.** The Trust has no Retirees to which it will disclose PHI. Some, or all, of the Trustees may have access to PHI, but only when necessary. The Trustees may use and disclose to others PHI for Plan administrative functions and in performing their Trustee responsibilities. However,

the PHI disclosed will be limited to the minimum amount necessary. Individuals with access to PHI may not disclose PHI to others unless there is an authorization or the disclosure complies with the Plan and/or applicable law.

**17.3 CERTIFICATION.** The Plan will certify to the privacy official that the Plan documents have been amended to include the above restrictions.

## ARTICLE XVII

### TERMINATION OF PLAN AND TRUST

- 18.1 APPLICATION OF FUNDS.** If the Plan shall be terminated for any reason, the Board of Trustees shall apply the Plan's assets to payment of the Plan's obligations, including all costs incurred in dissolution and liquidation. The balance, if any, shall be applied to purchase benefits which the Board of Trustees may determine for individuals who are Retirees on the date of termination. The Plan's assets shall not revert to, or be used for, the benefit of Employer, Trustees of the Board of Trustees or the Union.
- 18.2 AUTHORITY OF BOARD OF TRUSTEES UNTIL FINAL LIQUIDATION.** The Board of Trustees shall continue to act for the purpose of dissolution and the execution of all instruments which may be required to dissolve and liquidate the Plan.
- 18.3 INSOLVENCY.** As used in the paragraph the term "insolvent" shall mean the day on which the Plan has insufficient funds to pay the Plan's obligations in the ordinary course of the Plan's operation. In the event the Plan shall become insolvent:
- (a) the Employer shall continue to contribute the employer contributions required under Section 1.5 and shall have no obligation to make any additional contributions or to pay Benefits directly; and
  - (b) the Board of Trustees shall exercise the Board's authority under Section 5.7 to adjust Benefits to levels that can be funded with available Plan assets.

Dated this 10<sup>th</sup> day of July, 2014

**CLACKAMAS COUNTY, OREGON**

By \_\_\_\_\_

Print Name: John Ludlow

Title: Chair, Board of County Commissioners

**CLACKAMAS COUNTY PEACE  
OFFICER'S ASSOCIATION**

By  \_\_\_\_\_

Print Name: Stephen Steinberg

Title: President, Clackamas County Peace  
Officers Association



**NORTH CLACKAMAS  
PARKS & RECREATION DISTRICT**

A city institution

150 Beaver Creek Rd  
Oregon City, OR 97045  
503-742-4429 ext. 537742-4429 for  
applications

21

July 10, 2014

The Board of Commissioners acting as the Governing Body  
of the North Clackamas Parks and Recreation District

Members of the Board:

Board Order Authorizing North Clackamas Parks and Recreation District to Apply for Oregon Parks and Recreation Department Recreational Trails Program Grant for Sunnyside Village Trail

<b>Purpose/Outcome</b>	N CPRD requests approval to apply for Oregon Parks and Recreation Department (OPRD) Recreational Trails Program (RTP) Grant funding to develop Sunnyside Village Trail – Phase 1.
<b>Dollar Amount and Fiscal Impact</b>	The grant application is seeking approximately \$40,000 in federal funding to match N CPRD's local matching funds. Total project amount is estimated to be \$50,000.
<b>Funding Source</b>	N CPRD Capital Projects, 2015/2016 FY
<b>Safety Impact</b>	RTP grant funds will allow development of several trail sections to occur, assuring a safe environment for public use.
<b>Duration</b>	If awarded, grant funds are available for two years
<b>Previous Board Action/Review</b>	Not applicable.
<b>Contact Person</b>	Jeroen Kok, N CPRD Planning, Development and Resource Manager, 503-742-4421

**BACKGROUND:**

The Sunnyside Village Trail (SVT) is identified as a linear park/trail corridor in the 2004 N CPRD Master Plan, which identifies linear parks as an opportunity to provide connections between parks, residential areas, and other uses. The Sunnyside Village Plan was originally adopted within the Clackamas County Comprehensive Plan in 1993. N CPRD and Water Environment Services (WES) have acquired property and easements that have allowed the concept of an east-west trail corridor to become a reality. Working in partnership with WES, N CPRD is seeking RTP grant funding to begin construction of Phase 1 of the SVT, which will connect several neighborhood parks within Sunnyside Village, including; Pfeifer Park, Sieben Park, and Village Green Park. The project is a priority for funding in the 2004 N CPRD Master Plan and 2007 SDC Capital Improvements Plan.

**RECOMMENDATION:**

Staff respectfully recommends that The Board of Commissioners, acting as the Governing Body of the North Clackamas Parks and Recreation District, approve the Board Order authorizing staff to proceed with the RTP grant application.

Respectfully submitted,

Gary Barth  
Director



In the Matter of Authorizing the North Clackamas Parks and Recreation District to apply for Recreational Trails Program Grant Assistance from the Oregon Parks and Recreation Department for Sunnyside Village Trail

Order No. \_\_\_\_\_

**Whereas**, the Oregon Parks and Recreation Department is accepting applications for the Recreational Trails Program Grant; and

**Whereas**, the North Clackamas Parks and Recreation District (NCPRD) desires to participate in this grant program to the greatest extent possible as a means of providing needed park and recreation improvements and enhancements; and

**Whereas**, NCPRD has identified development of Sunnyside Village Trail as a high priority need in the 2004 Master Plan; and

**Whereas**, the construction of Sunnyside Village Trail, Phase One will include development of new trail segments and improvements to existing unpaved trail segments connecting residential areas, businesses and parks in the community; and

**Whereas**, NCPRD hereby certifies that the matching share for this application is readily available in the Capital Projects Fund at this time; and

**Whereas**, estimated annual maintenance costs for Sunnyside Village Trail are approximately \$6,000 and NCPRD has dedicated adequate funding for on-going operations and maintenance of this park and recreation facility; and

**NOW, THEREFORE, IT IS HEREBY ORDERED** that the Clackamas County Board of Commissioners, acting as the Board of Directors of NCPRD, demonstrates its support for the submittal of a grant application to the Oregon Parks and Recreation Department for development of Sunnyside Village Trail, Phase One and does hereby authorize the District to apply for approximately \$40,000 for trail restoration and construction, as specified above.

**DATED** this \_\_\_\_\_ day of July, 2014

**BOARD OF COUNTY COMMISSIONERS**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary



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DAN JOHNSON  
MANAGER

**DEVELOPMENT AGENCY**

**DEVELOPMENT SERVICES BUILDING**  
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

July 10, 2014

Development Agency Board  
Clackamas County

Members of the Board:

Approval of the Second Amendment to the Ground Lease for the Laydown Yard and Streetcar Facility between Clackamas County Development Agency and Oregon Iron Works, Inc.

<b>Purpose/ Outcomes</b>	Authorization to approve a lease amendment.
<b>Dollar Amount and Fiscal Impact</b>	No funding considered as a part of this property transaction.
<b>Funding Source</b>	Not Applicable
<b>Safety Impact</b>	Not Applicable
<b>Duration</b>	Not Applicable
<b>Previous Action</b>	September 24, 2009 Business Meeting – Lease Approval
<b>Contact Person</b>	Dan Johnson, Manager – Development Agency 503-742-4325 or danjoh@co.clackamas.or.us
<b>Contract No.</b>	Not Applicable

**BACKGROUND:**

In 2005 the Clackamas County Development Agency acquired the former Northwest Pipe and Casing property, a 32.28-acre site in the Clackamas Industrial Area. On November 10, 2010 the Development Agency entered into a ground lease with Oregon Iron Works for construction of a laydown yard and streetcar facility. The lease was subsequently modified in November of 2012.

The aforementioned lease amendment included language acknowledging the future extension of Industrial Way, now known as Minuteman Way, and other local improvements necessitating the need to revise the lease at a future date to provide sufficient right-of-way to support these needed public improvements.

While this second amendment retains the terms and intent outlined in the original lease, it reduces the physical extent of the lease area providing sufficient area to construct and dedicate legal access for the Industrial Way/Minuteman Way extension, Sunrise Corridor, and supporting infrastructure.

Equally important, the amendment establishes provisions on how these differing uses can co-locate on the site while allowing for the continued economic health of a traded sector business and improved circulation for the general public.

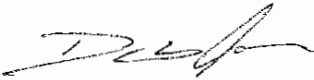
This Agreement is in a format approved by County Counsel.

**RECOMMENDATION:**

Staff respectfully recommends that the Board, as the governing body of the Clackamas County Development Agency, move by consent to:

- Approve the Lease Amendment between Oregon Iron Works and the Clackamas County Development Agency.
- Delegate authority to the Board Chair to execute the Lease and ancillary documents on behalf of the Clackamas County Development Agency.
- Record a Memorandum of the Lease at no cost to the Agency.

Respectfully submitted,



Dan Johnson  
Development Agency Manager

For information on this issue or copies of attachments, please contact  
Dan Johnson @ 503-742-4325

Accepted by Clackamas County  
Agenda Date & Number: \_\_\_\_\_  
OR  
Board Order Number: \_\_\_\_\_

**SECOND AMENDMENT  
TO  
THE GROUND LEASE FOR THE LAYDOWN YARD  
AND STREETCAR FACILITY AGREEMENT  
BETWEEN  
CLACKAMAS COUNTY DEVELOPMENT AGENCY  
AND  
OREGON IRON WORKS, INC.**

This AMENDMENT NO. 2 to the GROUND LEASE FOR THE LAYDOWN YARD AND STREETCAR FACILITY (this "Amendment No. 2") is made and entered into on June \_\_\_\_, 2014, by and between CLACKAMAS COUNTY DEVELOPMENT AGENCY, as the duly designated Urban Renewal Agency of the County of Clackamas, Oregon ("Lessor"), and OREGON IRON WORKS, INC., an Oregon corporation ("Lessee").

**RECITALS**

- A. Background.** Lessor and Lessee entered into a Ground Lease for the Laydown Yard and Streetcar Facility dated November 10, 2010, as amended on February 28, 2011 (together, the "Lease"). The Lease includes property located at 9571 SE Mather Road, as more particularly described in Lease Exhibit A, Part 2 of 4 (the "Property").

Lessor originally acquired the Property to provide right of way for the Sunrise Corridor development project (the "Sunrise Project"), including the future realignment and reconstruction of Industrial Way (the "Realignment"). As evidenced in Lease Section 1.5, both parties anticipated that the Sunrise Project would impact the Property and Lessee's interest in the future when they entered into the Lease. Further, both parties acknowledged in the Lease that if Lessor was able to identify the area required for the Sunrise Project prior to execution of the Lease, Lessor would not have conveyed that portion of the Property to Lessee. Under Lease Section 1.5.2, Lessee agreed to terminate the Lease as to the portions of the Property required for the Sunrise Project.

Lessor has acquired the funding necessary to move forward with the Sunrise Project and is in the process of developing a property agreement with Oregon Department of Transportation ("ODOT") for construction of the Sunrise Corridor improvements (the "ODOT Agreement"). Accordingly, Lessor has determined the area required for the Sunrise Project and now wishes to remove that portion of the Property from the Lease and Lessee desires to release said portion of the Property as contemplated.

- B. Realignment of Industrial Way.** As a part of the Sunrise Project, Industrial Way road is to be realigned along the western edge of the Property. Accordingly, the Realignment requires a portion of the Property to be dedicated for road right of way. Pursuant to Lease Section 1.5.2,

After Recording, Please Return to:  
Lori Phillips  
Clackamas County Development Agency  
150 Beaver Creek Road  
Oregon City, OR 97045

Accepted by Clackamas County  
Agenda Date & Number: \_\_\_\_\_  
OR  
Board Order Number: \_\_\_\_\_

this Amendment will terminate the Lease as to that portion of the Property necessary for the Realignment, identified more specifically in Exhibit A, Part 2(A), attached hereto.

- C. Sunrise Expressway.** As a part of the Sunrise Project and the ODOT Agreement, a new highway will be constructed through the Property by ODOT, called the Sunrise Expressway. Pursuant to Lease Section 1.5.2, this Amendment will terminate the Lease as to that portion of the Property necessary for the Sunrise Expressway to be constructed by ODOT, identified more specifically in Exhibit A, Part 2(B) and 2(C) (“Sunrise Expressway”), attached hereto.
- D. Storm Drainage.** Lessor desires to grant the Oregon Department of Transportation a permanent storm drainage easement on the Property as a part of the Sunrise Project. Pursuant to Lease Section 1.5.2, this Amendment will terminate the Lease as to that portion of the Property required for permanent storm drainage easement, identified more specifically in Exhibit A, Part 2(B) and 2(D) (the “Storm Drainage”).
- E. Retaining Wall.** Lessor desires to grant the Oregon Department of Transportation a permanent retaining wall easement on the Property as a part of the Sunrise Project. Pursuant to Lease Section 1.5.2, this Amendment will terminate the Lease as to that portion of the Property required for permanent retaining wall easement, identified more specifically in Exhibit A, Part 2(B) [identified as Parcel 5] and 2(E) (the “Retaining Wall”).

NOW, THEREFORE, the Parties agree as follows:

1. Pursuant to Lease Section 1.5, the Property subject to the Lease is hereby amended to exclude the portions of the Property required for the Realignment, the Sunrise Expressway, the Storm Drainage, and the Retaining Wall.
2. The legal descriptions and maps for the Realignment, Sunrise Expressway, Storm Drainage, and Retaining Wall known as Exhibit A, Part 2(a), Part 2(b), Part 2(c), Part 2(d), and Part 2(e), attached hereto, are hereby incorporated into the Lease.
3. Lease Exhibit A, Part 2 of 4 is hereby replaced in its entirety with:

Exhibit A  
Part 2 of 4  
Legal Description of the Property

The Property is as described in the legal description in Exhibit “A” of the Easement and Equitable Servitude, which is attached to this Ground Lease as Exhibit “C,” except for the Right of Way as identified in Ground Lease Exhibit A, Part 2(A); the Sunrise Expressway as identified in Ground Lease Exhibit A, Part 2(B) and Part 2(C); the Storm Drainage as identified in Ground Lease Exhibit A, Part 2(B) and 2(D); and the Retaining Wall as identified in Ground Lease Exhibit A, Part 2(B) and 2(E).

After Recording, Please Return to:  
Lori Phillips  
Clackamas County Development Agency  
150 Beaver Creek Road  
Oregon City, OR 97045

Accepted by Clackamas County  
Agenda Date & Number: \_\_\_\_\_  
OR  
Board Order Number: \_\_\_\_\_

4. To the extent reasonably practicable and consistent with the overall goal of constructing the Sunrise Project, Lessor agrees to provide Lessee with a continued mode of access across the Property to ensure no significant interference with Lessee's business operations occurs. Interference with Lessee's business operations shall be deemed significant where the access becomes impassable or ingress or egress is unreasonably impeded or curtailed. This access shall be consistent with Lessor's reserved rights from ODOT to cross beneath the highway structure, but not onto the highway, at approximate station 542.1. This access shall be expressly limited to transit use of the access road, streetcar test track, storm water facilities, installation of overhead electrical wires to the ODOT highway structure, and access required for Lessee's business operations, subject to ODOT engineering review and approval. Parking, storage, or any other use of the access beneath the highway structure is prohibited, except that parking of vehicles during a period of loading or unloading shall be permitted, provided that vehicles are manned at all times, and provided further that no cargo of explosives, inflammables, or products giving off noxious fumes, odors, or vapors shall be permitted on, under, or across the highway right of way.

Lessee's right to a continued mode of access across the Property shall be assignable to Lessor's successor entity, or an affiliated business entity owned or controlled by Lessor's principals for those uses consistent with those authorized under the Lease.

Lessee shall be liable for any damage to the highway structure incurred as a result of Lessee's use of this crossing right. Lessor shall be liable for any damage to the highway structure incurred as a result of Lessor's use of this crossing right.

5. Lessor will provide Lessee permission to access the portion of the Property covered by the Storm Drainage after construction of the required facilities is complete.
6. Except as otherwise specified above, the Lessor and Lessee ratify the remainder of the Lease and affirm that no other changes are made hereby.

*[Signature Page Follows]*

After Recording, Please Return to:  
Lori Phillips  
Clackamas County Development Agency  
150 Beaver Creek Road  
Oregon City, OR 97045

Accepted by Clackamas County  
Agenda Date & Number: \_\_\_\_\_  
OR  
Board Order Number: \_\_\_\_\_

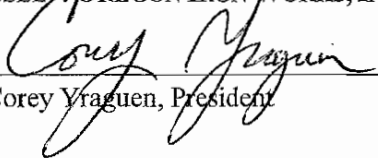
IN WITNESS THEREOF, Lessor and Lessee have duly executed this Second Amendment as of the date set forth above.

**“LESSOR”: BOARD OF COMMISSIONERS AS THE GOVERNING BODY OF THE CLACKAMAS COUNTY DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Chair

Date: \_\_\_\_\_

**“LESSEE”: OREGON IRON WORKS, INC.**

By:   
Corey Yraguen, President

Date: June 24, 2014

After Recording, Please Return to:  
Lori Phillips  
Clackamas County Development Agency  
150 Beaver Creek Road  
Oregon City, OR 97045

AMENDED - EXHIBIT A  
PART 2(A) OF 4  
LEGAL DESCRIPTION OF PROPERTY

A parcel of land lying in the NE¼ of Section 9, Township 2 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon and being a portion of that certain property described in that Statutory Bargain and Sale Deed to Clackamas County Development Agency, Recorded October 10, 2005 as Document Number 2005-100311, Clackamas County Deed Records; the said parcel being that portion of said property included in a strip of land variable in width, lying westerly and easterly of the center line of the relocated Industrial Way, which center line is described as follows:

**Beginning** at Engineer's Centerline Station 0+00.00, said point bears South 49°19'17" West, 1596.92 feet from the angle corner on the north line of the Samuel Campbell Donation Land Claim Number 64, in said Section 9; Thence North 01° 26' 23" East, 259.95 feet to Station 2+59.95 at the beginning of a 250.00 foot radius curve to the left; Thence along the arc of said curve through a central angle of 79° 48' 20" (the long chord of which bears North 38° 27' 47" West, 320.74 feet), an arc distance of 348.22 feet to Engineer's Centerline Station 6+08.17; Thence North 78° 21' 57" West, 234.94 feet to Engineer's Centerline Station 8+43.11 at the beginning of a 300.00 foot radius curve to the right; Thence along the arc of said curve, through a central angle of 58° 24' 01" (the long chord of which bears North 49° 09' 56" West, 292.72 feet), an arc distance of 305.78 feet to Engineer's Centerline Station 11+48.89; Thence North 19° 57' 56" West, 218.16 feet to Engineer's Centerline Station 13+67.05 at the beginning of a 510.00 foot radius curve to the right; Thence along the arc of said curve to the right, through a central angle of 11° 13' 28" (the long chord of which bears North 14° 21' 12" West, 99.75 feet), an arc distance of 99.91 feet to Engineer's Centerline Station 14+66.96; Thence North 08° 44' 28" West, 64.42 feet to Station 15+31.38 at the beginning of a 510.00 foot radius curve to the left; Thence along the arc of said curve, through a central angle of 11° 13' 28" (the long chord of which bears North 14° 21' 12" West, 99.75 feet); an arc distance of 99.91 feet to Engineer's Centerline Station 16+31.29; Thence North 19° 57' 56" West, 472.21 feet to Engineer's Centerline Station 21+03.50 at the beginning of a 510.00 foot radius curve to the left; Thence along the arc of said curve, through a central angle of 08° 39' 15" (the long chord of which bears North 24° 17' 34" West, 76.96 feet), an arc distance of 77.03 feet to Engineer's Centerline Station 21+80.53; Thence North 28° 37' 11" West, 135.82 feet to Engineer's Centerline Station 23+16.35 at the beginning of a 510.00 foot radius curve to the right; Thence along the arc of said curve, through a central angle of 08° 39' 15" (the long chord of which bears North 24° 17' 34" West, 76.96 feet), an arc distance of 77.03 feet to Engineer's Centerline Station 23+93.38; Thence North 19° 57' 56" West, 477.14 feet to Engineer's Centerline Station 28+70.52 at the beginning of a 120.00 foot radius curve to the right; Thence along the arc of said curve, through a central angle of 90° 59' 21" (the long chord of which bears North 25° 31' 44" East, 171.16 feet), an arc distance of 190.57 feet to Engineer's Centerline Station 30+61.09; Thence North 71° 01' 25" East, 188.91 feet to Engineer's Centerline Station 32+50.00, being the **Point of Terminus** of



AMENDED - EXHIBIT A  
 PART 2(A) OF 4  
 LEGAL DESCRIPTION OF PROPERTY

this description, said point bears South 70°56'52" West, 1547.66 feet from a 5/8" iron rod with aluminum cap marked "HHPR INC" in monument box (per SN 2012-032, Clackamas County Survey Records) at the centerline intersection of SE Lawnfield Road with SE 98<sup>th</sup> Court, said Angle Corner on the north line of the Samuel Campbell Donation Land Claim bears South 19°34'18" East, 2169.10 feet (from said centerline intersection point).

The width in feet of said strip of land is as follows:

Station	to	Station	Width on Easterly Side of Center Line
6+06.58		10+29.43	47.50 feet
10+29.43		11+49.56	47.50 feet along the arc of a 251.41 foot radius curve to the right, through a central angle of 23°26'29" (the long chord bears North 35°09'04" West, 102.14 feet), an arc distance of 102.86 feet to 40.50 feet
11+49.56		21+50.00	40.50 feet

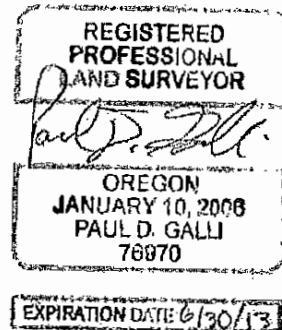
The width on the Westerly Side of Centerline is variable, being all that portion of said property lying west of said centerline of relocated Industrial Way.

Bearings are based on the northerly most northeast line of the William T Matlock Donation Land Claim Number 37, being North 19°32'23" West 4274.15 feet, between found monuments at the ends of said northerly most northeast line, as shown on SN 2012-033, Clackamas County Surveyor's office.

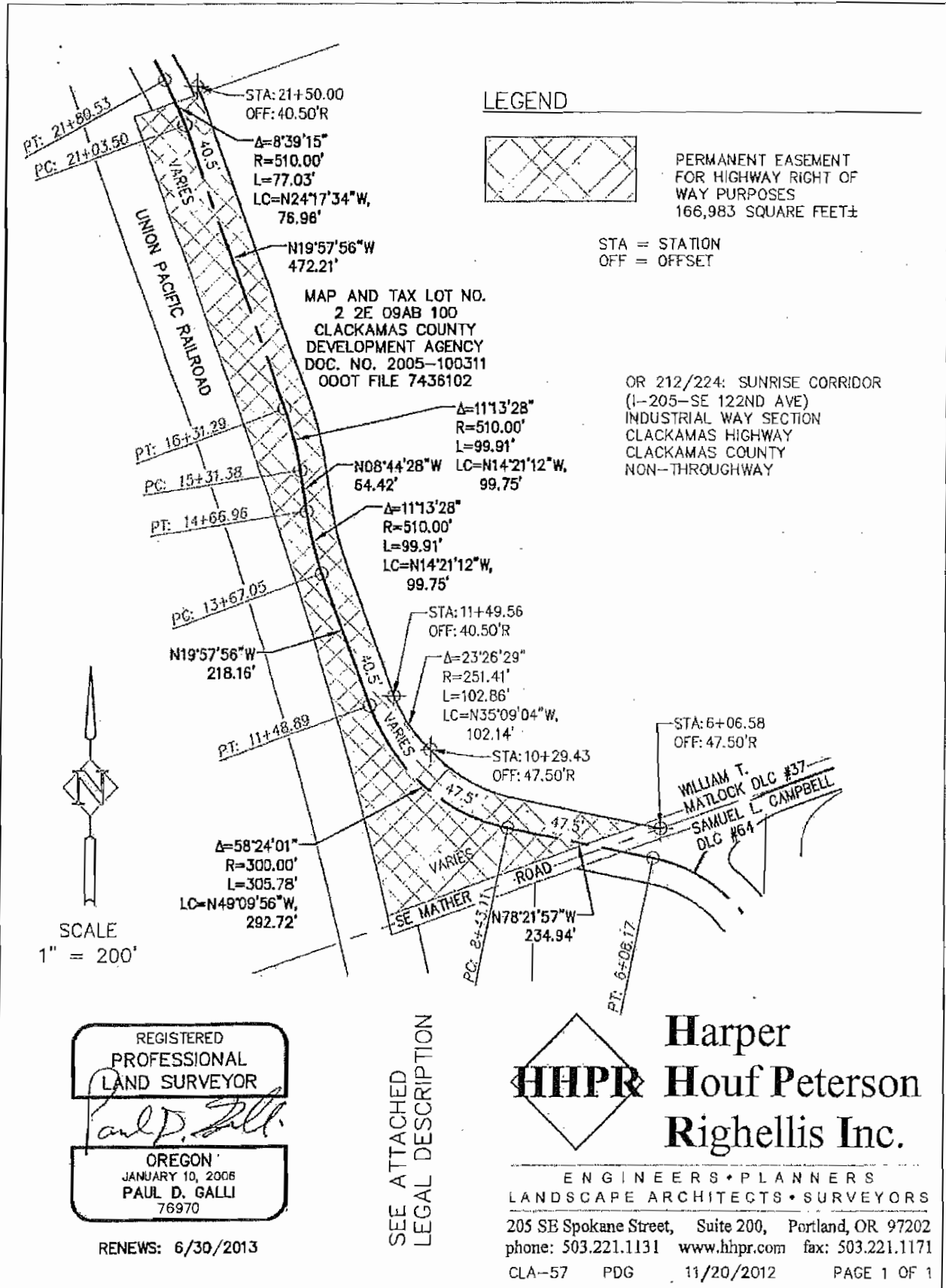
EXCEPT therefrom any portion of the above described strip of land lying within SE Mather Road.

EXCEPT therefrom any portion of the above described strip of land lying west of the east right-of-way line of the Union Pacific Railroad.

This parcel of land contains 166,983 square feet, more or less, outside the existing right of ways.



AMENDED - EXHIBIT A, PART 2(A)



LEGEND



PERMANENT EASEMENT FOR HIGHWAY RIGHT OF WAY PURPOSES  
166,983 SQUARE FEET±

STA = STATION  
OFF = OFFSET

OR 212/224: SUNRISE CORRIDOR  
(I-205-SE 122ND AVE)  
INDUSTRIAL WAY SECTION  
CLACKAMAS COUNTY  
CLACKAMAS COUNTY  
NON-THROUGHWAY

MAP AND TAX LOT NO.  
2 2E 09AB 100  
CLACKAMAS COUNTY  
DEVELOPMENT AGENCY  
DOC. NO. 2005-100311  
OOOT FILE 7436102

SCALE  
1" = 200'

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR  
*Paul D. Galli*  
OREGON  
JANUARY 10, 2006  
PAUL D. GALLI  
76970

RENEWS: 6/30/2013

SEE ATTACHED  
LEGAL DESCRIPTION

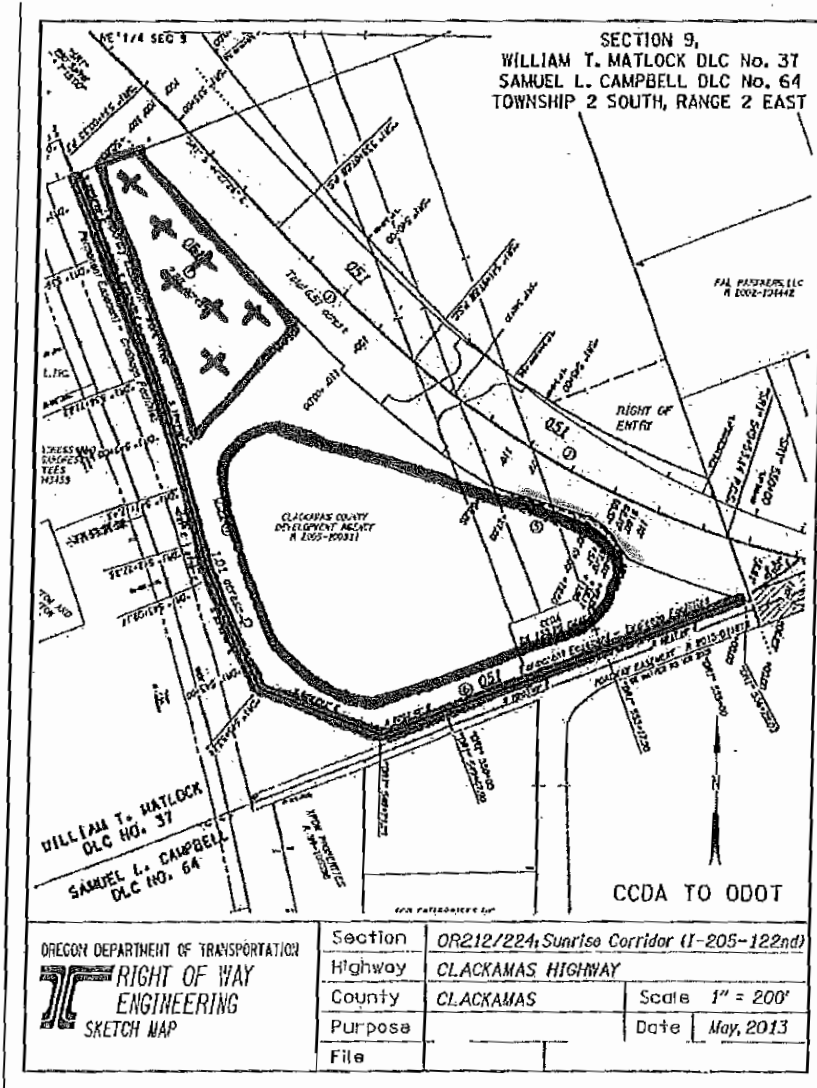


**Harper  
Houf Peterson  
Righellis Inc.**

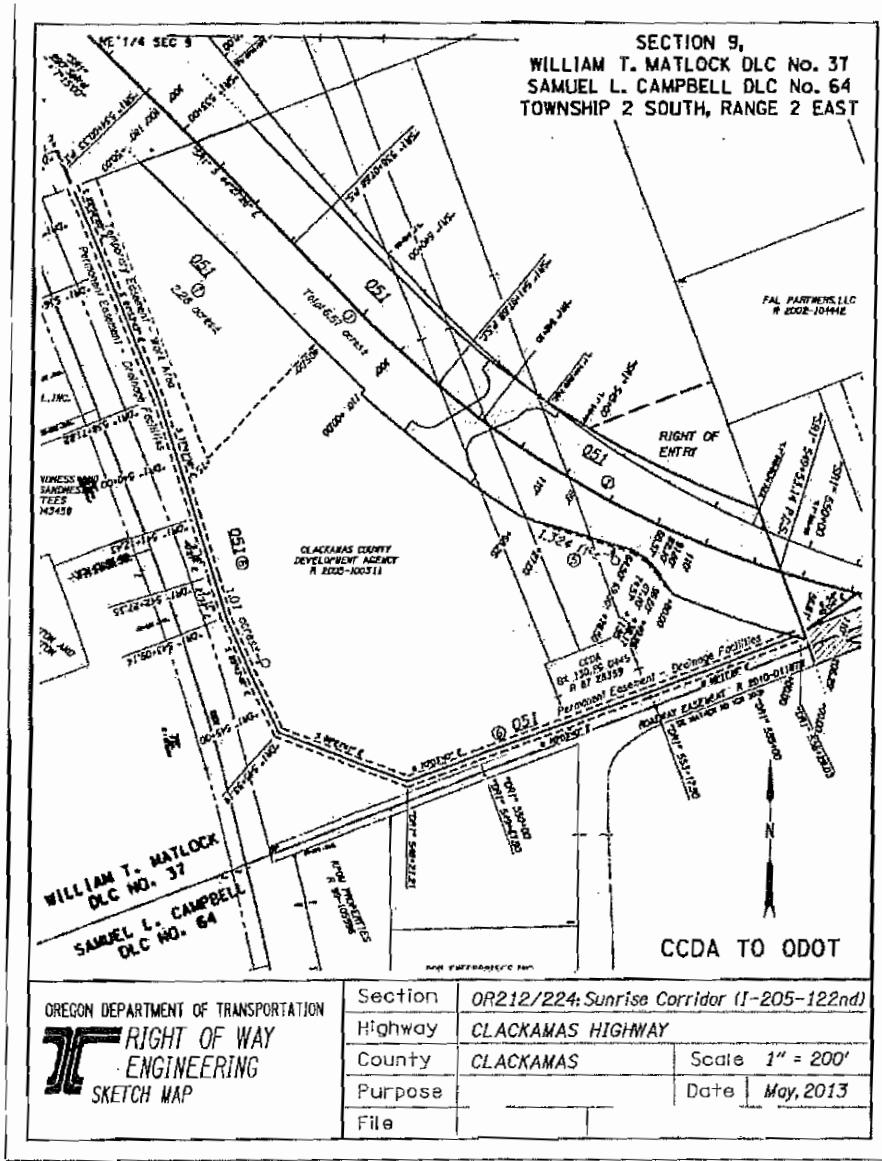
ENGINEERS • PLANNERS  
LANDSCAPE ARCHITECTS • SURVEYORS


205 SE Spokane Street, Suite 200, Portland, OR 97202  
phone: 503.221.1131 www.hhpr.com fax: 503.221.1171  
CLA-57 PDG 11/20/2012 PAGE 1 OF 1

AMENDED - EXHIBIT A  
 PART 2(B) OF 4  
 MAP OF SUNRISE EXPRESSWAY AND STORM DRAINAGE



AMENDED - EXHIBIT A  
 PART 2(B) OF 4  
 MAP OF SUNRISE EXPRESSWAY AND STORM DRAINAGE



OREGON DEPARTMENT OF TRANSPORTATION  RIGHT OF WAY ENGINEERING SKETCH MAP	Section	OR212/224 Sunrise Corridor (I-205-122nd)	
	Highway	CLACKAMAS HIGHWAY	
	County	CLACKAMAS	Scale 1" = 200'
	Purpose		Date May, 2013
	File		

AMENDED - EXHIBIT A  
 PART 2(C) of 4  
 LEGAL DESCRIPTION OF SUNRISE EXPRESSWAY

A parcel of land lying in the William T. Matlock D.L.C. No. 37, Township 2 South, Range 2 East, W.M., Clackamas County, Oregon and being a portion of that property described in that Statutory Bargain And Sale Deed to Clackamas County Development Agency, recorded October 10, 2005 as Recorder's Fee No. 2005-100311, Film Records of Clackamas County; the said parcel being that portion of said property included in a strip of land variable in width, lying on each side of the "SR1" center line, which center line is described as follows:

Beginning at Engineer's center line Station "SR1" 515+53.74 P.T., said station being 3,443.44 feet North and 835.65 feet East of the Southwest corner of the William T. Matlock D.L.C. No. 37, Township 2 South, Range 2 East, W.M.; thence South 24°38'51" East 112.68 feet; thence on a spiral curve left (the long chord of which bears South 28°59'59" East 274.37 feet) 275.00 feet; thence on a 603.11 foot radius curve left (the long chord of which bears South 54°34'41" East 350.01 feet) 355.12 feet; thence on a spiral curve left (the long chord of which bears South 75°24'17" East 124.94 feet) 125.00 feet; thence South 77°23'01" East 77.77 feet; thence on a spiral curve right (the long chord of which bears South 75°45'31" East 194.94 feet) 195.00 feet; thence on a 1,145.92 foot radius curve right (the long chord of which bears South 62°06'28" East 413.75 feet) 416.03 feet; thence on a spiral curve right (the long chord of which bears South 46°52'25" East 289.79 feet) 290.00 feet; thence South 44°27'26" East 407.35 feet; thence on a spiral curve left (the long chord of which bears South 46°24'25" East 389.82 feet) 390.00 feet; thence on a 1,909.86 foot radius curve left (the long chord of which bears South 61°38'21" East 750.55 feet) 755.47 feet; thence on a spiral curve left (the long chord of which bears South 77°28'17" East 449.72 feet) 450.00 feet; thence South 79°43'16" East 458.39 feet to Engineer's center line Station "SR1" 558+61.54, said station being 1,478.45 feet North and 123.15 feet West of the one quarter corner common to Sections 9 and 10, Township 2 South, Range 2 East, W.M.  
 The width in feet of said strip of land is as follows:

Station	to	Station	Width on Southwesterly Side of Center Line
"SR1" 534+50.00		"SR1" 541+00.00	100.00
"SR1" 541+00.00		"SR1" 544+68.26	110.00
"SR1" 544+68.26		"SR1" 546+78.50	110.00 in a straight line 64.50
"SR1" 546+78.50		"SR1" 547+11.95	64.50 in a straight line 69.57
"SR1" 547+11.95		"SR1" 547+38.17	69.57 in a straight line 82.10
"SR1" 547+38.17		"SR1" 547+49.26	82.10 in a straight line 91.60
"SR1" 547+49.26		"SR1" 547+80.00	91.60 in a straight line 110.00
"SR1" 547+80.00		"SR1" 551+00.00	110.00
Station	to	Station	Width on Northeasterly Side of Center Line
"SR1" 534+50.00		"SR1" 550+00.00	100.00

AMENDED - EXHIBIT A  
PART 2(D) OF 4  
LEGAL DESCRIPTION OF STORM DRAINAGE

A parcel of land lying in the William T. Mallock D.L.C. No. 37, Township 2 South, Range 2 East, W.M., Clackamas County, Oregon and being a portion of that property described in that Statutory Bargain And Sale Deed to Clackamas County Development Agency, recorded October 10, 2005 as Recorder's Fee No. 2005-100311, and in that Warranty Statutory Form recorded June 23, 1987 as Recorder's Fee No. 87-28359, Film Records of Clackamas County; the said parcel being that portion of said property included in a strip of land 20.00 feet in width, 10.00 feet on each side of the "DR1" center line, which center line is described as follows:

Beginning at Engineer's center line Station "DR1" 533+61.77, said station being 2,299.90 feet North and 2,097.06 feet East of the Southwest corner of the William T. Mallock D.L.C. No. 37, Township 2 South, Range 2 East, W.M.; thence S 22°52'20" E, 250.04 feet; thence S 21°33'43" E, 260.01 feet; thence S 17°41'16" E, 240.61 feet; thence S 16°40'27" E 114.92 feet; thence S 17°21'18" E, 81.79 feet; thence S 25°43'48" E, 244.00 feet; thence S 69°21'41" E, 268.08 feet; thence N 70°03'40" E, 146.69 feet; thence N 70°03'40" E, 350.00 feet; thence N 69°17'16" E, 310.13 feet; thence N 54°45'04" E, 135.49 feet to Engineer's center line Station "DR1" 557+63.33.

Bearings are based on the Oregon Coordinate Reference System, Portland Zone, NAD 83(CORS96) EPOCH 2002.

This parcel of land contains 1.01 acres, more or less.

AMENDED - EXHIBIT A  
 PART 2(E) OF 4  
 LEGAL DESCRIPTION OF RETAINING WALL

A parcel of land lying in the William T. Matlock D.L.C. No. 37, Township 2 South, Range 2 East, W.M., Clackamas County, Oregon and being a portion of that property described in that Statutory Bargain And Sale Deed to Clackamas County Development Agency, recorded October 10, 2005 as Recorder's Fee No. 2005-100311, Film Records of Clackamas County; the said parcel being that portion of said property included in a strip of land variable in width, lying on the Southwesterly side of the "SR1" center line, which center line is described in EXHIBIT A, PART 2(C)

The width in feet of said strip of land is as follows:

Station	to	Station	Width on Southwesterly Side of Center Line
"SR1" 544+68.26		"SR1" 545+27.00	110.00 in a straight line to 99.00
"SR1" 545+27.00		"SR1" 546+78.50	99.00 in a straight line to 69.50
"SR1" 546+78.50		"SR1" 547+11.95	69.50 in a straight line to 74.57
"SR1" 547+11.95		"SR1" 547+38.17	74.57 in a straight line to 87.10
"SR1" 547+38.17		"SR1" 547+49.26	87.10 in a straight line to 96.60
"SR1" 547+49.26		"SR1" 547+80.00	96.60 in a straight line to 110.00

EXCEPT therefrom THE PROPERTY DESCRIBED IN EXHIBIT A, PART 2(C)

This parcel of land contains 1,324 square feet, more or less.