

October 26, 2023

Board of County Commissioners

Approval of an Intergovernmental/Revenue Agreement with the State of Oregon for the purchase of Additional software module from FirstWatch. Agreement value is \$10,075.00 for 2 years. No County General Funds are involved.

Previous Board Action/Review	10/24/2023-Briefed at Issues		
Performance Clackamas	1. Ensure safe, healthy, and secure communities 2. Health outcome disparities identified in the Community Health Improvement Plan will be reduced.		
Counsel Review	Yes	Procurement Review	No
Contact Person	Philip Mason-Joyner	Contact Phone	503-742-5956

EXECUTIVE SUMMARY: The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of the Intergovernmental/Revenue Agreement with the State of Oregon through its Department of Public Safety Standards and Training (“DPSST”), acting fiduciary for the Oregon-Idaho High-Intensity Trafficking Area (“OR-ID HIDTA”). Oregon-Idaho High-Intensity Trafficking Area agrees to a nonrefundable reimbursement to Clackamas County to purchase an additional FirstWatch module to forward de-identified opioid data from FirstWatch to OR-ID HIDTA ODMAP software. The total contract value is \$10,075.00 for 2 years. No County General Funds are involved.

High-Intensity Drug Trafficking Areas (HIDTA) program comprises more than 900 investigative, interdiction, and intelligence-sharing initiatives nationwide. Regional HIDTAs also collaborate closely with public health partners on innovative strategies to reduce fatal and non-fatal overdoses and substance use, and providing this data to HIDTA will support a partnership to develop and support additional innovative strategies.

Clackamas County is currently utilizing the FirstWatch surveillance tool. One of the uses of this tool is to collect and monitor opioid overdoses and provide follow-up to overdose survivors, connecting them with resources.

Data sent to HIDTA will include the date/time of an overdose, a general geographic location, the outcome, and the kind of medication administered. Data will not include personal information, specific geographic information, or other data that would be a violation of applicable confidentiality laws, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”).

OR-ID HIDTA will reimburse payment in full to the County for the sum of ten thousand and seventy-five dollars (\$10,075) to purchase and enable its FirstWatch software to forward de-identified opioid data to the Agency’s ODMAP software.

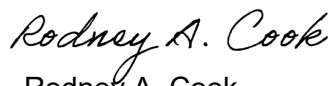
For Filing Use Only

Approval of this agreement will allow CCPHD to receive reimbursement for purchasing a module to share de-identified opioid overdose data to OR-ID HIDTA, providing additional opportunities to collaborate on innovations to reduce the number of opioid overdoses affecting community members in Clackamas County.

The Agreement period is effective upon execution through June 1, 2025. The contract term is upon signature through June 1, 2025. The total contract value is \$10,075.

RECOMMENDATION: Staff recommends the Board of County Commissioners approve the attached Intergovernmental/Revenue Agreement #11170.

Respectfully submitted,



Rodney A. Cook,
Director, Health, Housing, and Human Services

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND
Oregon Department of Public Safety Standards
and Training (DPSST)**

Agreement #11170

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("County"), a political subdivision of the State of Oregon, and The State of Oregon through its Department of Public Safety Standards and Training ("DPSST") ("Agency"), a governmental agency and acting fiduciary for the Oregon-Idaho High Intensity Trafficking Area ("OR-ID HIDTA"), collectively referred to as the "Parties" and each a "Party."

RECITALS

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

Clackamas County is currently utilizing the FirstWatch as a tool to collect and monitor certain emergency response data. This data includes information regarding opioid overdoses.

Agency is the fiduciary for the OR-ID HIDTA program. The program's mission is to facilitate, support, and enhance collaborative drug control efforts among law enforcement agencies and community-based organizations.

OR-ID HIDTA requests County permit its FirstWatch tool to automatically send de-identified opioid data from FirstWatch to OR-ID HIDTA ODMMap software. The data will include the date/time of an overdose, a general geographic location, the outcome, and the kind of medication administered. Data will not include personal information, specific geographic information, or other data that would be a violation of applicable confidentiality laws including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS

1. **Term.** This Agreement shall be effective upon execution and shall expire upon the completion of each and every obligation of the Parties set forth herein, or June 1, 2025, whichever is sooner. This Agreement may be extended upon execution of a written amendment on terms acceptable to both parties.
2. **Scope of Work.** The County agrees enable its FirstWatch software to forward de-identified opioid data to Agency's ODMMap software. To enable the data to be automatically forwarded, County will be required to purchase an additional software module from FirstWatch (the "Data Module").
3. **Consideration.** As consideration for County implementing the Data Module, the Agency will pay County a non-refundable sum of ten thousand and seventy-five dollars (\$10,075). Agency shall tender payment of the \$10,075 to County within thirty (30) days

of execution of this Agreement. The total sum of compensation represents payment in full for the work to be provided by the County for the Term of this Agreement.

4. Representations and Warranties.

- A. *Agency Representations and Warranties:* Agency represents and warrants to County that Agency has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of Agency enforceable in accordance with its terms.
- B. *County Representations and Warranties:* County represents and warrants to Agency that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.
- C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

5. Termination.

- A. Either the County or the Agency may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
- B. Either the County or the Agency may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period. Upon termination due to a party's breach of this Agreement, each Party shall have all rights and remedies available to it at law, in equity, or under this Agreement.
- C. The County or the Agency shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- D. The County may terminate this Agreement in the event the County fails to receive expenditure authority sufficient to allow the County, in the exercise of its reasonable administrative discretion, to continue to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that performance under this Agreement is prohibited.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

6. Indemnification.

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend the Agency, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the Agency agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the Agency or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the Agency has a right to control.

7. **Insurance.** Agency agrees to furnish the County with evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of Clackamas County, and their officers, elected officials, agents, 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 this Agreement. If self-insured, Agency shall provide documentation to the County. The parties acknowledge and agree that the State of Oregon Certificate of Insurance coverage, attached hereto as Exhibit A, satisfies the insurance requirements of this section.

Agency shall obtain, at contractor's expense, and keep in effect during the term of this contract, Cyber Risk insurance on an "occurrence" form. This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. Limits are \$1Million per claim/annual aggregate.

8. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

- A. William Conway or their designee will act as liaison for the County.

Contact Information:

2051 Kaen Road, #367
Oregon City, OR. 97045
503-313-9170
WConway@clackamas.us

Chris Gibson or their designee will act as liaison for the Agency.

Contact Information:

2110 Mission St. SE, Suite 210
Salem, OR 97302
503-580-7680
chris.gibson@dpsst.oregon.gov

9. General Provisions.

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and Agency that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas 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 section be construed as a waiver by the County 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. Agency, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.
- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Both Parties shall further comply with any applicable terms of use with respect to the ODMap software, the FirstWatch software, or the Data Module. Failure to comply with such obligations is a material breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.

- D. **Access to Records.** Agency shall retain, maintain, and keep accessible all records relevant to this Agreement (“Records”) for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. Agency shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, Agency shall permit the County’s authorized representatives’ access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Reserved.**
- F. **Reserved.**
- G. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- H. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- I. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. 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 shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- J. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- K. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint

venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.

- L. **No Third-Party Beneficiary.** Agency and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. 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 unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- M. **Subcontract and Assignment.** Agency shall 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 by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. County's consent to any subcontract shall not relieve Agency of any of its duties or obligations under this Agreement.
- N. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- O. **Survival.** All provisions in Sections 4, 6, and 9 (A), (C), (D), (G), (H), (I), (J), (L), (O), (Q), (R), (T), and (U) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- P. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- Q. **Time is of the Essence.** Agency agrees that time is of the essence in the performance this Agreement.
- R. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- S. **Force Majeure.** Neither Agency nor County shall be held responsible for delay or default caused by events outside of the Agency or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Agency shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- T. **Confidentiality.** Agency acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire confidential information. Any and all information of any form obtained by Agency or its employees or agents in the performance of this Agreement shall be

deemed confidential information of the County ("Confidential Information"). Agency agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Agency uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement.

- U. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

Clackamas County


**State of Oregon acting through its
Department of Public Safety Standards
and Training**

Chair, Board of County Commissioners




Paula Taylor, Business Services Manager

Date



Date

Approved as to Form:



County Counsel

09/28/2023

Date

Exhibit A



CERTIFICATE OF INSURANCE COVERAGE

ISSUED TO: All State of Oregon agencies conducting official state business.	This certificate is issued pursuant to the State of Oregon Insurance Fund, <u>ORS Chapter 278</u> , and the state self-insurance program.
---	---

COVERAGES

This is to certify that the coverage indicated below is provided to State of Oregon agencies for the period indicated. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the coverage provided as described herein is subject to all the terms, exclusions, and conditions of the policy manuals issued by DAS Risk Management to the agency.

TYPE OF COVERAGE	EFFECTIVE DATE FOR LIMITS ONLY	EXPIRATION DATE FOR LIMITS ONLY	CURRENT YEAR LIMITS OF LIABILITY DESCRIPTION EACH OCCURRENCE
GENERAL LIABILITY (Refer to <u>ORS 30.271 and 30.273</u>) XX Tort Claims Act Form XX Occurrence	July 1, 2023	June 30, 2024	Property damage Any single claimant \$ 136,200 All claimants \$ 680,900 All other Any single claimant \$ 2,490,600 All claimants \$ 4,981,300
AUTOMOBILE LIABILITY (Refer to <u>ORS 30.271 and 30.273</u>) XX Owned Autos XX Hired Autos XX Non-Owned Autos XX Uninsured/Underinsured Motorist Coverage (UM/UIM)	July 1, 2023	June 30, 2024	Property damage Any single claimant \$ 136,200 All claimants \$ 680,900 All other Any single claimant \$ 2,490,600 All claimants \$ 4,981,300 UM/UIM \$ 25,000 Bodily injury to or death of one person in any one accident \$ 50,000 Bodily injury to or death of two or more persons in any one accident
PROPERTY All Risk including Earthquake & Flood Extended Coverage	September 1, 2008	None	For most perils Deductible is: \$ 2,500

Description of certificate use:
 This certificate of insurance coverage applies to active contracts and agreements that State of Oregon agencies are utilizing to conduct official state business between the dates of July 1, 2023 through June 30, 2024.

Indemnification: The State of Oregon shall indemnify, by the Oregon Insurance Fund to the limits of the Oregon Tort Claims Act, the entity that enters into a contract/agreement with a State of Oregon Agency against liability for damage to life or property arising out of the agency's activities or operations relating to the above described event, except for any liability arising out of the wrongful acts of employees or agents of the entity.

Additional Insured: If applicable, it is agreed that entities that are entering into a contract/agreement that specify additional insured status per the terms and conditions of contract/agreement are included as Additional Insured, to the extent permitted by Article XI, Section 7 of the Oregon Constitution and by the Oregon Tort Claims Act, ORS 30.350-30.300, but only with respect to liability arising out of the activities or operations of the Agency.

Lenders Loss Payable: If applicable, lenders loss payable is per the terms and conditions of contract/agreement.

ISSUED BY: State of Oregon DAS Enterprise Goods & Services Risk Management PO Box 12009 Salem OR 97309	Anya Ivanov, Risk Analyst Authorized Representative <div style="text-align: right; margin-top: 10px;"> </div>
--	---