

During the coronavirus pandemic, Commissioners are encouraging the public to participate digitally.

AGENDA

Thursday, March 26, 2020 - 10:00 AM
BOARD OF COUNTY COMMISSIONERS

Beginning Board Order No. 2020-

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

I. PUBLIC HEARING *(The following items will be individually presented by County staff or other appropriate individuals. Persons appearing shall clearly identify themselves and the department or 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. Second Reading of **Ordinance No. 03-2020** Amending the Clackamas County Code Chapter 8.02, Transient Room Tax – *1st Reading was 3-12-2020 (Haley Fish, Finance)*

II. 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 Work Sessions. 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 for Amendment No. 6 to Agreement #646 to a Revenue Agreement with Providence Health Plan, Providence Health Assurance for the New Oregon Health Plan Compliance Provisions – *Health Centers*
2. Board Order No. _____ Designating a Clackamas County Housing and Urban Development Certifying Officer – *Community Development*
3. Board Order No. _____ Authorizing the Community Development Division Manager to sign Housing Rehabilitation Program Lan and Grant Documents – *Community Development*
4. Approval of a Federal Subrecipient Grant Agreement with Clackamas Women's Services for Emergency Shelter Services – *Social Services*
5. Approval of Amendment #07 to the Intergovernmental Agreement with the State of Oregon, acting by and through its Oregon Health Authority for Operation as the Local Public Health Authority for Clackamas County – *Public Health*
6. Approval of a Personal Services Contract with the Mental Health Association of Oregon for Zero Suicide Peer Wellness Specialist - *Procurement*

B. Department of Transportation & Development

1. Approval of a Contract with North Santiam Paving Company for the Clackamas River Drive Paving Package - *Procurement*

C. Elected Officials

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

D. Department of Human Resources

1. Approval of a Contract with Cascade Centers Inc. for the Clackamas County Employee Assistance Program (EAP) Services - *Procurement*

E. Technology Services

1. Approval to Add 19 Additional Redundant Fiber Connections to the Service Level Agreement between Clackamas Broadband eXchange and the North Clackamas School District
2. Approval of an End User License Agreement with WMWare, Procurement of Software Services from Dell Inc. for Security Compliance Requirements - *Procurement*

III. 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.)*

IV. COUNTY ADMINISTRATOR UPDATE

V. 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. You may also order copies from any library in Clackamas County or the Clackamas County Government Channel. <https://www.clackamas.us/meetings/bcc/business>



Elizabeth Comfort
Finance Director, Interim

Department of Finance

Public Services Building
2051 Kaen Road, Suite 490 | Oregon City, OR 97045

March 26, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Second Reading of Ordinance No. 03-2020, An Ordinance Amending the Clackamas County Code Chapter 8.02, Transient Room Tax

Purpose/Outcomes	To revise Chapter 8.02 of the Clackamas County Code to make the provisions therein gender neutral, permit operators to deduct 5% of the tax collected as a collection expense, to clarify the language in the Chapter regarding the incidental use exemption to imposition of the Transient Room Tax, and to make various other minor edits and fixes throughout.
Dollar Amount and Fiscal Impact	There is no additional cost associated with these changes.
Funding Source	Finance retains 2% of the Transient Room Tax collected for administrative costs.
Duration	Ongoing
Previous Board Action	Finance held a policy session before this Board on January 28, 2020. The Board approved Finance proceeding with the proposed Code amendments. The first reading took place March 12, 2020.
Strategic Plan Alignment	The proposed amendments will support the Department of Finance goal of conducting business in a transparent, financially responsible, and responsive manner. The proposed amendments will support the Department of Tourism & Cultural Affairs goals by simplifying the code to encourage compliance of online travel companies (OTC), potentially increasing transient room tax revenue.
Contact Person	Haley Fish, Finance, Deputy Director 503-742-5425 Kathryn Stewart, Finance 503-742-5462

Background:

On or about June 15, 2017 an amendment to Chapter 8.02 – *Transient Room Tax* was adopted. The purpose of this amendment, in part, was to capture tax revenues from the emerging rental market involving short-term rentals of private homes using various online platforms.



Elizabeth Comfort
Finance Director, Interim

Department of Finance

Public Services Building

2051 Kaen Road, Suite 490 | Oregon City, OR 97045

In September of 2017, the County sued AirBnB, HomeAway and TripAdvisor, seeking to enforce the amended ordinance. In August of 2018, the U.S. District Court dismissed the County's case and found the amended ordinance invalid. Following the decision, the County reverted to applying the pre-amendment version of the ordinance.

The proposed amendments implement some of the changes previously proposed that were not contested in the litigation. The proposed amendments also seek to clarify the exemption language within Chapter 8.02 which has been unclear to customers and a hindrance to entering into voluntary agreements with the online travel companies. This clarification will also allow for a simpler and more efficient assessment of whether the exemption applies.

On March 12, 2020, this Board read, by title only, the ordinance enabling the proposed amendments. No substantial changes have been made since the first reading.

Recommendation:

Staff respectfully requests that the BCC hold this public hearing and schedule a second reading, by title only, of this ordinance on March 26, 2020 at 10:00 a.m., approve the proposed amendments, and adopt the ordinance enabling the same.

Respectfully submitted,

Elizabeth Comfort

Elizabeth Comfort (Mar 17, 2020)

Elizabeth Comfort
Finance Director, Interim

ORDINANCE NO. 03-2020

**An Ordinance Amending
Clackamas County Code Chapter 8.02, Transient Room Tax.**

WHEREAS, it is necessary to amend the Code to revise the Chapter to make the provisions therein gender neutral, permit operators to deduct 5% of the tax collected as a collection expense regardless of whether payment was timely made to the County, to clarify the language in the Chapter regarding the incidental use exemption to imposition of the Transient Room Tax, and to make various other minor edits and fixes throughout;

Now, therefore, the Board of Commissioners of Clackamas County ordains as follows:

Section 1: Chapter 8.02, Transient Room Tax, of the Clackamas County Code is hereby amended as shown on Exhibit "A", attached hereto and incorporated herein by this reference.

ADOPTED this _____ day of March, 2020.

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

Chapter 8.02

8.02 TRANSIENT ROOM TAX

8.02.10 Definitions

Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter.

- A. ACCRUAL ACCOUNTING means the operator enters the rent due from a transient on the ~~his~~ records when the rent is earned, whether or not it is paid.
- B. BOARD means the Clackamas County Board of Commissioners.
- C. CASH ACCOUNTING means the operator does not enter the rent due from a transient on their ~~his~~ records until rent is paid.
- D. COUNTY means Clackamas County.
- A. HOTEL means any structure, or any portion of any structure, which is occupied or intended or designed for transient occupancy, for thirty (30) days or less, for dwelling, lodging, or sleeping purposes. This includes, but is not limited to, any hotel, motel, inn, bed and breakfast, space in mobile home or trailer parks, tourist home, condominium, hostel, studio hotel, lodging house, rooming house, apartment house, public or private dormitory, fraternity, sorority, public or private club, or similar structure or portions thereof so occupied.
- B. OCCUPANCY means the use or possession, or the right to the use or possession, for lodging or sleeping purposes, of any room or rooms in a hotel, or space in a mobile home, or trailer park, or portion thereof.
- C. OPERATOR means the person who is proprietor of the hotel in any capacity. Where the operator performs their ~~his~~ functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as their ~~his~~ principal. Compliance with the provisions of this chapter, by either the principal or the managing agent, shall be considered to be compliance by both.
- D. PERSON means any individual, firm, partnership, joint venture, association, social club, fraternal organization, fraternity, sorority, public or private dormitory, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.
- E. RENT means the consideration charged, whether or not received by the operator, for the occupancy of space in a hotel, valued in money, goods, labor, credits, property, or any other consideration valued in money, without any deduction; but does not include the sale of any goods, services, and commodities, other than the furnishing of room accommodations and parking space in mobile home parks or trailer parks.
- F. RENT PACKAGE PLAN means the consideration charged for both food and rent where a single rate is made for the total of both. The amount applicable to rent for determination of transient room tax under this chapter shall be the same charge made for rent when consideration is not a part of a package plan.
- K. TAX ADMINISTRATOR means the official appointed by the Board of County

Commissioners to carry out provisions of this chapter.

- L. TAX means either the tax payable by the transient or the aggregate amount of taxes due from an operator during the period for which the operator ~~he~~ is required to report the ~~his~~ collections.
- M. TRANSIENT means any person who exercises occupancy, or is entitled to occupancy, in a hotel for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. The day a transient checks out of the hotel shall not be included in determining the thirty (30) day period if the transient is not charged rent for that day by the operator. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) days has expired, unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy, or the tenancy actually extends more than thirty (30) consecutive days. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of this chapter, may be considered. A person who pays for lodging on a monthly basis, irrespective of the number of days in such month, shall not be deemed a transient.

[Codified by Ord. 05-2000, 7/13/00]

8.02.020 Tax Imposed

For the privilege of occupancy in any hotel, on and after the effective date of this chapter, each transient shall pay a tax in the amount of six percent (6%) of the rent charged by the operator. The tax constitutes a debt owed by the transient to the County, which is extinguished only by payment to the operator. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. The operator shall enter the tax on the ~~his~~ records when rent is collected if the operator keeps the ~~his~~ records on the cash accounting basis, and when earned if the operator keeps the ~~his~~ records on the accrual accounting basis. If rent is paid in installments, the transient shall pay a proportionate share of the tax to the operator with each installment.

[Codified by Ord. 05-2000, 7/13/00]

8.02.030 Where Tax is Imposed

The tax imposed by this chapter shall apply to all hotels located within Clackamas County. [Codified by Ord. 05-2000, 7/13/00]

8.02.40 Collections of Tax by Operator, Rules for Collection

- A. Every operator renting rooms in this County, the occupancy of which is not exempted under the terms of this chapter, shall collect a tax from the occupant. The tax collected or accrued by the operator constitutes a debt owed by the operator to the County.
- B. In all cases of credit or deferred payment of rent, the payment of tax to the operator may be deferred until the rent is paid, and the operator shall not be liable for the tax until credits are paid or deferred payments are made.
- C. For rent collected on portions of a dollar, the first one cent (\$.01) of tax shall be collected on five cents (\$.05) through twenty-one cents (\$.21) inclusive; and the second one cent (\$.01) of tax on twenty-two cents (\$.22) through thirty-eight

cents (\$38); the third one cent (\$.01) of tax on thirty-nine cents (\$39) through fifty-five cents (\$.55); the fourth one cent (\$.01) of tax on fifty-six cents (\$.56) through seventy-two cents (\$.72); the fifth one cent (\$.01) of tax on seventy-three cents (\$.73) through eighty-nine cents (\$.89); and the sixth one cent (\$.01) of tax on ninety cents (\$.90) through the next one dollar and four cents (\$1.04) of rent.
[Codified by Ord. 05-2000, 7/13/00]

8.02.050 Operator's Duties

Each operator shall collect the tax imposed by this chapter at the same time as the rent is collected from every transient. The amount of tax shall be separately stated upon the operator's records and any receipt rendered by the operator. No operator of a hotel shall advertise that the tax, or any part of the tax, will be assumed or absorbed by the operator, or that it will not be added to the rent, or that when added, any part will be refunded, except in the manner provided by this chapter. [Codified by Ord. 05-2000, 7/13/00]

8.02.60 Exemptions

No tax imposed under this chapter shall be imposed upon:

- A. Any person who rents a room or facility for more than thirty (30) successive calendar days; (a person who pays for lodging on a monthly basis, irrespective of the number of days in such month, shall not be deemed a transient);
- B. Any person whose rent is of a value less than \$15.01 per day;
- C. Any person who rents a private home, vacation cabin, or like facility from any owner who personally rents such facilities incidentally to the owner's his own use thereof. A personal rental is not incidental to an owner's own use if the private home, vacation cabin, or like facility is publicly advertised for rent by the owner or any other person or entity including, but not limited to, rental management agencies or transient lodging intermediaries, as defined by ORS 320.300. This exemption does not apply if the private home, vacation cabin, or like facility is rented for fourteen (14) days or more within a calendar year;
- D. Any occupant whose rent is paid for a hospital room or to a medical clinic, convalescent home or home for aged people, that are licensed, registered, or certified by the Oregon Department of Human Services; or
- E. Employees, officials or agents of the U. S. Government occupying a hotel in the course of official business.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 03-2005, 5-26-05; Amended by Ord. 02-2010, 2/25/10]

8.02.70 Registration of Operator, Form and Contents, Execution, Certification of Authority

Every person engaging or about to engage in, business as an operator of a hotel in this County shall register with the Tax Administrator on a form provided by the Tax Administrator, him or her. Operators engaged in business at the time this chapter is adopted, must not register later than thirty (30) calendar days after passage of this chapter. Operators starting business after this chapter is adopted must register within fifteen (15) calendar days after commencing business. The privilege of registration after the date of imposition of such tax shall not relieve any person from the obligation of

payment, or collection of tax, regardless of registration. Registration shall set forth the name under which an operator transacts or intends to transact business, the location of the ~~his~~ place or places of business and such other information to facilitate the collection of the tax as the Tax Administrator may require. The operator shall sign the registration. The Tax Administrator shall, within ten (10) days after registration, issue without charge from the occupant, a Certificate of Authority to the registrant to collect the tax, from the occupant of the hotel, together with a duplicate thereof, for each additional place of business for each registrant. Certificates shall be non-assignable and nontransferable and shall be surrendered immediately to the Tax Administrator upon the cessation of business at the location named or upon its sale or transfer. Each certificate and duplicate shall state the place of business to which it is applicable and shall be prominently displayed therein so as to be seen and come to the notice readily of all occupants and persons seeking occupancy.

Said certificate shall, among other things, state the following:

- A. The name of the operator;
- B. The address of the hotel;
- C. The date upon which the certificate was issued; and,
- D. "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Transient Room Tax Chapter of the Clackamas County Code by registration with the Tax Administrator for the purpose of collecting from transients the room tax imposed by the County and remitting the tax to the Tax Administrator."

[Codified by Ord. 05-2000, 7/13/00]

8.02.80 Due Date, Returns, and Payments

- A. The transient shall pay the tax imposed by this chapter to the operator at the time that rent is paid. All amounts of such taxes collected by any operator are due and payable to the Tax Administrator on a monthly basis on the fifteenth (15th) day of the month for the preceding month and are delinquent if received after ~~on~~ the last day of the month in which they are due.
- B. On or before the fifteenth (15th) day of the month following each month of collection a return for the preceding month's tax collections shall be filed with the Tax Administrator. The return shall be filed in such form as the Tax Administrator may prescribe by every operator liable for payment of tax.
- C. Returns shall show the amount of tax collected or otherwise due for the related period. The Tax Administrator may require returns to show the total rentals upon which tax was collected or otherwise due, gross receipts of the operator for such period, and an explanation in detail of any discrepancy between such amounts, and the amount of rents exempt, if any.
- D. The person that required to file ~~file~~ the return should deliver the return together with the remittance of the amount of the tax due to the Tax Administrator at their ~~his~~ office either by personal delivery or by mail. If the return is mailed, the postmark shall be considered the date of delivery for determining delinquencies.
- E. For good cause, the Tax Administrator may extend for up to one (1) month the time for making any return or payment of tax. No further extension shall be

granted, except by the Board. Any operator to whom an extension is granted shall pay interest at the rate of one percent (1%) per month, on the amount of tax due without proration for a fraction of a month. If a return is not filed and the tax and interest due is not paid by the end of the extension granted, then the interest shall become a part of the tax for computation of penalties described elsewhere in this chapter.

- F. ~~If the operator has complied with the terms of this chapter and particularly the provisions of this section relating to prompt payment of taxes due and payable to the Tax Administrator, the~~ AN operator shall be permitted to deduct as collection expense five percent (5%) of the amount of the taxes collected, as shown by the return mentioned in paragraph C of this section.

[Codified by Ord. 05-2000, 7/13/00]

8.02.90 Penalties and Interest

- A. Original Delinquency: Any operator who has not been granted an extension of time for remittance of tax due, and who fails to remit any tax imposed by this chapter prior to delinquency, shall pay a penalty of ten percent (10 %) of the amount of tax due in addition of the amount of the tax.
- B. Continued Delinquency: Any operator who has not been granted an extension of time for remittance of tax due, and who failed to pay any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent, shall pay a second delinquency penalty of fifteen percent (15%) of the amount of the tax due, plus the amount of the tax due, and the ten percent (10%) penalty first imposed.
- C. Fraud: If the Tax Administrator determines that the nonpayment of any remittance due under this chapter is due to fraud, or intent to evade the provisions thereof, a penalty of twenty-five percent (25%) of the amount of the tax due shall be added thereto, in addition to the penalties stated in paragraphs (1) and (2) of this section.
- D. Interest: In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one ~~half of one~~ percent (~~5~~ 1%) per month or fraction thereof without proration for portions of a month on the amount of the tax due, exclusive of penalties, for the date on which the remittance first became delinquent until paid.
- E. Penalties merged with tax: Every penalty imposed and such interest as accrues under the provisions of this chapter, shall be merged with and become a part of the tax herein required to be paid.
- F. Petition for waiver: Any operator who fails to remit the tax levied within the time stated, shall pay the penalties stated. However, the operator may petition the Board for waiver and refund of the penalty or any portion thereof, and the Board may if a good and sufficient reason is shown, waive and direct a refund of the penalty or any portion thereof.

[Codified by Ord. 05-2000, 7/13/00]

8.02.100 Deficiency Determinations, Fraud, Evasion, Operator Delay

- A. Deficiency determination: If the Tax Administrator determines that the returns are incorrect, he or she may compute and determine the amount required to be paid

upon the basis of the facts contained in the return or returns, or upon the basis of any information within his or her possession. One or more deficiency determinations may be made of the amount due for one or more than one period, and the amount so determined shall be due and payable immediately upon service of notice as herein provided, after which the amount determined is delinquent. Penalties on deficiencies shall be applied as set forth in 8.02.090.

1. In making a Determination, the Tax Administrator may offset overpayments, if any, which may have been previously made for a period or periods against any underpayment for a subsequent period or periods, or against penalties and interest on the underpayments. The interest on underpayments shall be computed in the manner set forth in 8.02.090.
 2. The Tax Administrator shall give to the operator or occupant a written notice of ~~their~~ ~~his~~ determination. The notice may be served personally or by certified mail. In the case of service by mail of any notice required by this chapter, the service is complete upon receipt by the operator or ~~the operators~~ ~~his~~ agent or employee, or if refused, the date of its refusal as shown by the United States Postal Department return receipt.
 3. Except in the case of fraud or intent to evade this chapter or authorized rules and regulations, every deficiency determination shall be made and notice thereof mailed within three (3) years after the last day of the month following the close of the monthly period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later.
 4. Any determination shall become due and payable immediately upon receipt of notice and shall become final within ten (10) days after the Tax Administrator has given notice thereof. However, the operator may petition for redemption and refund if the petition is filed before the determination becomes final as herein provided.
- B. Fraud, Refusal to Collect, Evasion. If any operator shall fail or refuse to collect said tax or to make within the time provided in this chapter any report and remittance of said tax or any portion thereof required by this chapter, or makes a fraudulent return or otherwise willfully attempts to evade this chapter, the Tax Administrator shall proceed in such manner as he/she may deem best to obtain facts and information on which to base an estimate of the tax due. As soon as the Tax Administrator has determined the tax due that is imposed by this chapter from any operator who has failed or refused to collect the same and to report and remit said tax, he/she shall proceed to determine and assess against such operator the tax, interest, and penalties provided for by this chapter. In case such determination is made, the Tax Administrator shall give a notice in the manner aforesaid of the amount so assessed. Such determination and notice shall be made and mailed within three (3) years after discovery by the Tax Administrator of any fraud, intent to evade, or failure, or refusal to collect said tax or failure to file return. Any determination shall become due and payable immediately upon receipt of notice and shall become final within ten (10) days after the Tax Administrator has given notice thereof. However, the operator may petition for redemption and refund if the petition is filed before the determination becomes

final as herein provided.

- C. Operator Delay. If the Tax Administrator believes that the collection of any tax or any amount of tax required to be collected and paid to the County, will be jeopardized by delay or if any determination will be jeopardized by delay, s/he shall thereupon make a determination of the tax or amount of tax required to be collected noting the fact upon the determination. The amount so determined as herein provided shall be immediately due and payable, and the operator shall immediately pay same determination to the Tax Administrator after service of notice thereof provided. However, the operator may petition after payment has been made for redemption and refund of such determination, if the petition is filed within ten (10) days from the date of service of notice by the Tax Administrator.

[Codified by Ord. 05-2000, 7/13/00]

8.02.110 Re-determinations

- A. Any operator against whom a determination is made under Section 8.02.100 or any person directly interested may petition for a re-determination and redemption and refund within the time required in 8.02.100, hereof. If a petition for re-determination and refund is not filed within the time required in 8.02.100, the determination becomes final at the expiration of the allowable time.
- B. If a petition for re-determination and refund is filed within the allowable period, the Tax Administrator shall reconsider the determination, and if the person has so requested in their ~~his~~ petition, shall grant the person an oral hearing, and shall give them ~~him~~ ten (10) days notice of the time and place of the hearing. The Tax Administrator may continue the hearing from time to time as may be necessary.
- C. The Tax Administrator may decrease or increase the amount of the determination as a result of the hearing, and if an increase is determined, such increase shall be payable immediately after the hearing.
- D. The order or decision of the Tax Administrator upon a petition for re-determination of redemption and refund becomes final ten (10) days after service upon the petitioner of notice thereof, unless appeal of such order or a decision is filed with the Board within ten (10) days after service of such notice.
- E. No petition for re-determination of redemption and refund or appeal there from shall be effective for any purpose unless the operator has first complied with the payment provisions hereof.

[Codified by Ord. 05-2000, 7/13/00]

8.02.120 Security, Collection of Tax

- A. The Tax Administrator, after delinquency and when he or she deems it necessary to insure compliance with this chapter, may require any operator subject thereto to deposit with him/her such security in the form of cash, bond, or other security as the Tax Administrator may determine. The amount of the security shall be fixed by the Tax Administrator but shall not be greater than twice the operator's estimated average monthly liability for the period for which they ~~he~~ files returns, determined in such manner as the Tax Administrator deems proper, or Five Thousand Dollars (\$5,000), whichever amount is the lesser. The amount of the security may be increased or decreased by the Tax Administrator subject to the

limitations herein provided.

- B. At any time within three (3) years after any tax or any amount of tax required to be collected becomes due and payable or at any time within three (3) years after any determination becomes final, the Tax Administrator may bring an action in the courts of this State, or any State, or of the United States in the name of the County to collect the amount delinquent together with penalties and interest.

[Codified by Ord. 05-2000, 7/13/00]

8.02.130 Lien

- A. The tax imposed by this chapter together with the interest and penalties herein provided and the filing fees paid to the Clerk of Clackamas County, Oregon, and advertising costs which may be incurred when same becomes delinquent as set forth in this chapter shall be and until paid remain a lien from the date of its recording with the Clerk of Clackamas County, Oregon, and superior to all subsequent recorded liens on all tangible personal property used in the hotel of an operator, which may be foreclosed on and sold as may be necessary to discharge said lien if the lien has been recorded. Notice of lien may be issued by the Tax Administrator or his or her deputy whenever the operator is in default in the payment of said tax, interest, and penalty and shall be recorded and a copy sent by certified mail to the delinquent operator. The personal property subject to such lien may be seized by any authorized deputy or employee of the Tax Administrator and may be sold at public auction after twenty- (20) days notice of sale given by two publications in a newspaper of general circulation in the County. The notices required hereunder shall be published not less than seven (7) days apart. Such seizure and sale shall be in addition to any other process to secure payment of the delinquent tax allowed by law.
- B. Any lien for taxes shall upon the payment of all taxes, penalties, and interest thereon be released by the Tax Administrator, and the operator or person making such payment shall receive a receipt therefore stating that the full amount of taxes, penalties, and interest thereon have been paid and that the lien is thereby released.

[Codified by Ord. 05-2000, 7/13/00]

8.02.140 Refunds

- A. Operators' refunds. Whenever the amount of any tax, penalty, or interest has been paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this chapter, it may be refunded provided a verified claim in writing therefore stating the specific reason upon which the claim is founded is filed with the Tax Administrator within three (3) years from the date of payment. The claim shall be made on forms provided by the Tax Administrator. If the claim is approved by the Tax Administrator, the excess amount collected or paid may be refunded or may be credited on any amounts then due and payable from the operator from whom it was collected or by whom paid, and the balance may be refunded to each such operator, their ~~his~~ administrators, executors or assignees.
- B. Transient Refunds. Whenever the tax required by this chapter has been collected by the operator and deposited by the operator with the Tax Administrator and it is

later determined that the tax was erroneously or illegally collected or received by the Tax Administrator, it may be refunded by the Tax Administrator to the transient provided a verified claim in writing therefore, the specific reason on which the claim is founded, is filed with the Tax Administrator within three (3) years from the date of payment.

[Codified by Ord. 05-2000, 7/13/00]

8.02.150 Administration

- A. Transient Room Tax Fund. The Tax Administrator shall place all monies received pursuant to this order in the Transient Room Tax Fund.
- B. Records Required from Operators. Every operator shall keep guest records of room sales and accounting books and records of room sales. The operator shall retain all records for a period of three (3) years and six (6) months after they come into being.
- C. Examination of Records, Investigations. For the purpose of enforcing 8.02.100 of this chapter, if the Tax Administrator has reason to believe that the returns are incorrect or that fraud, refusal to remit, evasion or operator delay has occurred as set forth in 8.02.100 of this chapter, then the Tax Administrator or any person authorized in writing by him or her may examine during normal business hours the books, papers, and accounting records relating to room sales of any operator after notification to the operator liable for the tax and may investigate the business of the operator in order to verify the accuracy of any return made, or if no return is made by the operator, to ascertain and determine the amount required to be paid.
- D. Confidential Character of Information Obtained, Disclosure Unlawful. It shall be unlawful for the Tax Administrator or any person having an administrative or clerical duty under the provisions of this chapter to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and equipment of any person required to obtain a Transient Occupancy Registration Certificate or pay a transient occupancy tax, or any other person visited or examined in the discharge of official duty, or the amount of source of income, profits, losses, expenditures, or any particular thereof set forth in any statement or application, or to permit any statement or application, or copy of either, or any book containing any abstract or particulars thereof to be seen or examined by any person. Nothing in this subsection shall be construed to prevent:
 - 1. The disclosure to or the examination of records and equipment by another county official, employee, or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this chapter or collecting taxes imposed hereunder;
 - 2. The disclosure after the filing of a written request to that effect to the taxpayer, himself receivers, trustees, executors, administrators' assignees, and guarantors if directly interested of information as to any paid tax, and unpaid tax or amount of tax required to be collected, or interest, and penalties; further provided, however, that the Clackamas County Counsel approves each such disclosure, and that the Tax Administrator may refuse to make any disclosure referred to in this paragraph when in his/her opinion the public interest would suffer thereby;
 - 3. The disclosure of the names and addresses of any persons to whom Transient Occupancy Registration Certificates have been issued; or

4. The disclosure of general statistics regarding taxes collected or business done in the County.

[Codified by Ord. 05-2000, 7/13/00]

8.02.160 Tax Revenue Sharing

- A. Commencing with tax revenues collected January 1, 1993, the total net transient room tax receipts after operator collection expense of 5% and County administrative costs, not to exceed 2%, have been deducted, shall be distributed by the Tax Administrator as follows:
 1. Between January 1, 1993, and June 30, 1993, an amount sufficient to bring proceeds up to a base support amount of \$250,000 per year shall be paid in equal quarterly installments to the Clackamas County Fair; this amount shall be adjusted annually to allow for inflation by an amount to be determined by the Tourism Development Council (TDC); these funds shall be used by the Fair for construction, operations and maintenance, in accordance with its annual budget approved by the Board; and,
 2. The balance placed with the County Treasurer for deposit until transferred to the TDC monthly to pay expenditures authorized as provided below.
- B. There is hereby created the Clackamas County Tourism Development Council, consisting of nine (9) members to be appointed by the Board of County Commissioners. The TDC is to oversee the development and promotion of tourism and conventions in Clackamas County.
- C. The TDC is to develop, adopt and implement, subject to Board of County Commissioners' approval, a Tourism Development and Promotion Master Plan. The Master Plan shall address at least the following elements: tourism promotion, tourism development, conventions, visitor information services, special events and festivals, and the County Fair. The Master Plan may be revised from time to time, subject to Board of County Commissioners' approval. Prior to adoption of the Master Plan, the TDC may adopt, subject to Board of County Commissioners' approval, an Interim Plan.
- D. The funds described in subsection 8.02.160 A 2 above shall be allocated to projects and programs by the TDC in accordance with the Tourism Development and Promotion Master Plan, except that revenues collected prior to final Board of County Commissioners' approval of a Master Plan may be expended pursuant to an interim Plan, if adopted.

[Codified by Ord. 05-2000, 7/13/00]

8.02.170 Appeals to the Board

Any person aggrieved by any provisions of the Tax Administrator may appeal to the Board by filing a notice of appeal with the Tax Administrator within ten (10) days of the Administrator's decision. The Tax Administrator shall transmit said notice of appeal, together with the file of said appealed matter to the Board who shall fix a time and place for hearing such appeal. The Board shall give the appellant not less than ten (10) days written notice of the time and place of hearing of said appealed matter. [Codified by Ord. 05-2000, 7/13/00]

8.02.180 Violations

It is unlawful for any operator or other person so required, to fail or refuse to register as required herein, or to furnish any return required to be made, or fail or refuse to furnish a supplemental return or other data required by the Tax Administrator, or to render a false or fraudulent return. No person required to make, render, sign, or verify any report shall make any false or fraudulent report with intent to defeat or evade the determination of any amount due, required by this chapter. Any person willfully violating any of the provisions of this chapter shall be subject to a fine in an amount set by resolution of the Board of County Commissioners. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 5-2003, 3/13/03

8.02.190 Severance Clause

If any provision of this Chapter 8.02 is adjudged or declared to be unconstitutional or otherwise held to be invalid by a court of competent jurisdiction, the remaining provisions of this chapter shall remain in full force and effect.

March 26, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval for Amendment #6 to Agreement #646 to a Revenue Agreement
with Providence Health Plan (PHP), Providence Health Assurance (PHA)
for the new Oregon Health Plan Compliance Provisions**

Purpose/Outcomes	Provides Clackamas Health Centers (CHC) reimbursement for Provider Services serving Oregon Health Plan (OHP) members treated at CHC clinics.
Dollar Amount and Fiscal Impact	CHC is eligible to receive payment for services furnished to persons enrolled in Providence Health Assurance Plans. This is a no maximum agreement. No County General Funds are involved. No matching funds required.
Funding Source	Providence Health Plan and Providence Health Assurance
Duration	Effective January 1, 2020 and no expiration.
Previous Board Action	The Board last reviewed and approved this contract on October 18, 2018, agenda item A3.
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe 2. Ensure Safe, healthy and secure communities
Counsel Review	County Counsel has reviewed and approved this document. It was approved on December 19, 2019.
Contact Person	Deborah Cockrell 503-742-5495
Contract No.	646_06

BACKGROUND:

Clackamas Health Centers (CHC) of the Health, Housing and Human Services Department requests the approval of Amendment #6 to Agreement #646 to a Revenue agreement with PHP/PHA for the purpose of providing Provider Services.

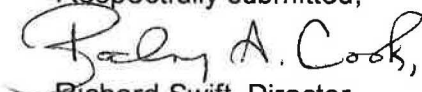
PHP/PHA and CHC desire to enter into this Professional Services Agreement under which CHC will provide medical services as a Network Provider. The current OHP Compliance Provisions will be replaced with the new OHP Compliance Provisions as regulated under OAR 410-141-3830, OAR 410-141-3825 and OAR 410-141-3820.

This is a revenue contract for CHC. The total amount of the agreement is unknown because the number of authorized patients cannot be projected with certainty. No County General Funds are involved. The Agreement is effective January 1, 2020 and will continue until terminated. This is a retro-active request due to verifying language in the agreement is supportive of services.

RECOMMENDATION:

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

Respectfully submitted,

 Rachel A. Cook, H3S deputy / FOR

Richard Swift, Director
Health, Housing, and Human Services

#646_06

**AMENDMENT
TO THE
PROVIDENCE HEALTH PLAN, PROVIDENCE HEALTH ASSURANCE AND PROVIDENCE PLAN PARTNERS
PROVIDER AGREEMENT**

Effective January 1, 2020, the Agreement between PROVIDENCE HEALTH PLAN, PROVIDENCE HEALTH ASSURANCE and PROVIDENCE PLAN PARTNERS (Health Plan) and Clackamas County Health, Housing, and Human Services Deptment, Health Centers Division is amended as follows:

Modification of the Oregon Health Plan Compliance Provisions.

The current Oregon Health Plan Compliance Provisions will be replaced with the new Oregon Health Plan Compliance Provisions, a copy of which is attached. The new Oregon Health Plan Compliance Provisions is included in the Agreement and is a part of this Amendment.

Except as specifically provided by this Amendment, the Agreement shall remain unmodified and in full force and effect.

As stated in the Amendments paragraph of the Agreement, if state or federal law, government agency regulations or accrediting agency requirements change and affect any provisions of this Agreement, then this Agreement will be deemed amended to conform with such changes effective the date such changes become effective.

**PROVIDENCE HEALTH PLAN, PROVIDENCE HEALTH ASSURANCE AND PROVIDENCE PLAN
PARTNERS
OREGON HEALTH PLAN (OHP) LINE OF BUSINESS
HEALTH PLAN OHP NETWORKS EXHIBIT**

OREGON HEALTH PLAN COMPLIANCE PROVISIONS

Adhere to Terms. Network Providers who participate in the Oregon Health Plan shall adhere to the terms and conditions outlined below.

Oregon Revised Statutes. The Oregon Revised Statutes concerning the Oregon Health Plan and Oregon Administrative Rules promulgated by Oregon Health Authority (OHA) to implement the Oregon Health Plan program take precedent over Health Plan's Agreement with OHA.

Supersede. To the extent that this Exhibit contains different terms from the existing Agreement, the terms of this Exhibit will supersede any conflicting provisions of the existing Agreement for OHP business.

OHP. Oregon Health Plan and Affiliated Programs will hereinafter be referred to as OHP.

DEFINITIONS

Coordinated Care Organization (CCO). A corporation, governmental agency, public corporation, or other legal entity that is 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 for each of the organization's members.

Medical Assistance Program (MAP). A program for payment of health services provided to eligible Oregonians, including Medicaid and CHIP services under the OHP Medicaid Demonstration Project and Medicaid and CHIP services under the State Plan.

Managed Care Entity (MCE). As stated in 42 CFR 457.10, an entity that enters into a contract to provide services in a managed care delivery system including but not limited to coordinated care organizations, dental care organizations, mental health organizations, and primary care case managers.

Member. An OHP client enrolled with an MCE.

Oregon Health Authority (OHA). The agency established in ORS Chapter 413 that administers the funds for Titles XIX and XXI of the Social Security Act. It is the single state agency for the administration of the medical assistance program under ORS chapter 414. The agencies under the authority of the Oregon Health Authority are the Public Health Division, Health Systems Division, External Relations, Health Policy and Analytics, Fiscal and Operations, Health System Division, Office of Equity and Inclusion, and the Oregon State Hospital.

Participating Network Provider. A Network Provider that has a contractual relationship with an MCE and is on their panel of Network Providers.

Patient-Centered Primary Care Home (PCPCH). Clinics that have been recognized for their commitment to quality and coordinated care. At its heart, this model of care fosters strong relationships with patients and their families. Clinics improve care by catching problems earlier, focusing on prevention, wellness and management of chronic conditions.

Prioritized List of Health Services. The listing of conditions and treatment pairs developed by the Health Evidence Review Commission for the purpose of administering OHP.

Subcontractor. Any Network Provider or any other individual, entity, facility, or organization that has entered into a subcontract to provide for any portion of work under this Agreement.

Third Party Liability (TPL), Third Party Resource (TPR), or Third Party Payer. A medical or financial resource that, under law, is available and applicable to pay for medical services and items for an Oregon Health Authority client.

DESCRIPTION OF MEDICAL SERVICES

Notification of Covered Services. Pursuant to state law, Covered Services may be expanded, limited or otherwise changed by the Oregon Health Evidence Review Commission (HERC), or by the Legislative Assembly. Any such changes shall be reflected by MAP in duly promulgated amendment(s) to the Oregon Administrative Rules pertinent to the Oregon Health Plan. MAP shall notify the CCO within 30 days of the effective date of the rule change. The rule, as amended, shall be binding upon the CCO and its health plans as of its effective date, without need for any amendment(s) to the agreement between the CCO and MAP. In turn, Health Plan shall notify Network Provider about the amendment(s) within 5 business days of CCO notification to Health Plan, and the amendment(s) in Covered Services shall be binding upon Network Provider as of the effective date of the amendment(s) in Covered Services, without need for any amendment to this Agreement.

STATEMENT OF WORK

Prioritized List. The provision of services is subject to the parameters contained in OAR 410-141-3830, OAR 410-141-3825 and OAR 410-141-3820.

Performing the Work. Network Provider, its employees, and agents are performing the work under this Agreement independent of any capacity as officers, employees, or agents of the State as those terms are used in ORS 30.265.

ADHERENCE TO CCO ADMINISTRATIVE RULES

Claim Submission. Network Provider shall submit all billings for Members to Health Plan within four (4) months of the date of service. However, Network Provider may, if necessary, submit its billings to Health Plan within twelve (12) months from the date of service under the following circumstances: (1) Billing is delayed due to retroactive deletions or enrollments; (2) Pregnancy of the Member; (3) Medicare is the primary payer, unless Health Plan is responsible for Medicare reimbursement; (4) Cases involving third-party resources; or (5) Other cases that delay the initial billing to Health Plan unless the delay was due to the Network Provider's failure to verify a Member's eligibility.

Comply With MAP Rules. Network Provider shall comply with all duly promulgated MAP Rules in OAR Chapter 410, including those rules pertaining to the provision of health care and services, OAR Chapter 410, Division 120 and 141, whether in effect at the time this Agreement is signed or as adopted or amended during the term of this Agreement.

Culturally Competent Care. Network Provider shall deliver services in a culturally competent manner to all Members, including those with limited English proficiency and diverse cultural and ethnic backgrounds, disabilities, and regardless of gender, sexual orientation or gender identity. These efforts must ensure that Members have access to covered services, available treatment options and alternatives that are delivered in a manner that meet their unique needs, preferred language and ability to understand.

Debarment and Suspension. In accordance with 42 CFR 438.808(b) neither Health Plan nor contracted Network Provider or subcontracted providers shall contract with or employ individuals 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. 12549 and No. 12689, "Debarment and Suspension". 45 CFR Part 76

Drug Free Workplace. Network Provider and all subcontracted providers shall maintain a drug-free workplace and comply with the Department of Human Services, and Division of Medical Assistance Programs rules and regulations.

Pro-Children Act. Network Provider 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.).

Requirements of 42 CFR. Network Provider must fulfill the requirements of 42 CFR Part 438 Managed Care that are appropriate to the services or activity delegated under this Agreement.

TRUTH IN LOBBYING ACT CERTIFICATION

Network Provider shall comply with 45 CFR Part 93 by certifying, to the best of Network Provider's knowledge and belief, that:

a. No federal appropriated funds have been paid or will be paid, by or on behalf of Network Provider, 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 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, Network Provider shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

c. The language of this certification shall 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.

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 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.

e. No part of any federal funds paid to Network Provider under this Contract 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 Network Provider under this Contract 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 Network Provider under this Contract 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.

Indemnify MAP. Network Provider is solely responsible for all liability arising from a failure by Network Provider to comply with the terms of this certification. Additionally, Network Provider promises to indemnify MAP for any damages suffered by MAP as a result of Network Provider's failure to comply with the terms of this certification.

ACCESS TO RECORDS AND FACILITIES

Maintain Records. Network Provider shall maintain financial, medical and other records pertinent to this Agreement to the extent necessary to clearly reflect actions taken.

Member Records. Members may request and receive a copy of his or her medical records and request that they be amended or corrected as specified in 45 CFR Part 164.

Timely Access. Network Provider shall provide timely access to records and facilities and cooperate with OHA or any of its other designees, agents or subcontractors (or any combination, or all, of them) in collection of information may include, without limitation: through consumer surveys, on-site reviews, medical chart reviews, financial reporting and financial record reviews, interviews with staff, and other information for the purposes of monitoring compliance with this Agreement, including but not limited to verification of services actually provided, and for developing and monitoring, and analyzing performance and outcomes.

External Quality Review. Network Provider in conformance with 42 CFR 438.350 and 438.358 Subpart E, and 42 CFR 457.1250 shall cooperate with OHA or its designees by providing access to records and facilities, and sufficient information for the purpose of an annual External Quality Review an independent professional review of CCO compliance with all applicable state and federal rules, the CCO contract with OHA and of the quality outcomes and timeliness of, and access to services provided under this Agreement.

Confidentiality. Subject to the requirements of 42 CFR Part 431, Subpart F, Network Provider shall not use, release, or disclose any information concerning a Member for any purpose not directly connected with the administration of MAP's, Health Plan's or Network Provider's responsibilities under this Agreement or under Title XIX of the Social Security Act, except on written consent of the Member, his or her attorney, or, if appropriate, his or her legally-responsible parent or guardian, or as required or permitted by law. Network Provider shall ensure that its agents, employees, and officers with access to Member records understand and comply with this confidentiality provision.

CONDITIONS OF PARTICIPATION

Member Rights and Responsibilities. Network Provider will comply with all Member rights and responsibilities as specified in OAR 410-141-3590 MCE Member Relations, Member Rights and Responsibilities.

Patient Centered Primary Care Home. If Network Provider is a Personal Physician/Primary Care Physician (PCP) clinic, Network Provider shall participate in Oregon's PCPCH program and shall continually strive to increase its Tier rating up to Tier 3 and above.

Care Transitions. Health Plan agrees to i. specify processes for requesting hospital admission or specialty services; and ii. establish performance expectations for communication and medical records sharing for specialty treatments at the time of hospital admission or at the time of hospital discharge for the purpose of facilitating after-hospital follow up appointments and care. If Network Provider is a patient-centered primary care provider they agree to be accountable for successful transitions of care transitioning members into the most appropriate settings, as described in the Rules and Regulations.

Compliance with Service Authorization Handbook. Network Provider agrees to comply with the policies and procedures set forth in the Service Authorization Handbook.

Coordinate Care. Network Provider/Patient Centered Primary Care Home shall coordinate Member's care for both Covered and non-covered services. Network Provider/Patient Centered Primary Care Home shall not be responsible for providing non-covered services, but shall be responsible for coordinating such care for the Member.

Quality Improvement. Network Provider shall participate in internal or external quality improvement activities of Health Plan or those of OHA if requested to do so.

Provisions That Apply. Provisions that apply to the Health Plan and its agreement with the CCO shall also apply to Network Provider.

Cooperate With. Network Provider shall cooperate with all processes and procedures of child, elder, nursing home, developmentally disabled or mentally ill abuse protective services, investigation and reporting requirements described in any of the following laws: (1) OAR 407-045-0000 through 407-045-0370 (abuse investigations by the Office of Investigations and Training); (2) ORS 430.735 through 430.765 (persons with mental illness or developmental disabilities); (3) ORS 124.005 to 124.040 (elderly persons and persons with disabilities abuse); and (4) ORS 441.650 to 441.680 (residents of long term care facilities).

Data. Network Provider shall provide to Health Plan data for reporting requirement used for the analysis of delivery system capacity, consumer satisfaction, financial solvency, encounter, utilization and quality improvement, and other requirements within the time frames requested by Health Plan in order for Health Plan to make its reporting requirements to the State.

Certify Claims Information. Network Provider shall certify that all claims submissions and/or information are true, accurate, and complete. Payment of Covered Services by Health Plan is from federal and state funds, and therefore any falsification or concealment of material fact by Network Provider when submitting claims may be prosecuted under federal and state laws.

THIRD PARTY LIABILITY

Third Party Liability. If a Member has other insurance coverage available for payment of Covered Services, such resources are primary to the coverage provided by Health Plan under this Agreement and must be exhausted prior to payment for such Covered Services by Health Plan. Member cost-sharing incurred as part of such other coverage shall be paid to such insurer by Health Plan. Network Provider shall report any other primary, third-party insurance to which a Member may be entitled within a timeframe that enables Health Plan to report such information to OHA within thirty (30) days of the Network Provider becoming aware that the applicable Member has such coverage.

Third Party Liability Records. Network Provider shall maintain records of Network Provider's action related to Third Party Liability recovery and make those records available for OHA review.

Potential Third Party Liability. Network Provider shall not refuse to provide Covered Services to a Member because of a potential Third Party Liability for payment for the Covered Service.

Reimbursing Medicare. If the Third Party has reimbursed Network Provider, or if a Member, after receiving payment from the Third Party Liability, has reimbursed Network Provider, Network Provider must reimburse Medicare up to the full amount the Network Provider received, if Medicare is unable to recover its payment from the remainder of the Third Party Liability payment.

HOLD HARMLESS

Hold Harmless. Network Provider shall not bill, charge, seek compensation, remuneration or reimbursement from, or have recourse against the State or any Member for Covered Services provided during the period for which capitation payments were made by the State through MAP to Health Plan with respect to said Member even if the Health Plan becomes insolvent. Network Provider may not bill Member for any amount greater than would be owed by the Member if the Health Plan provided the services directly (i.e., no balance billing by providers).

Continuity of Care. Network Provider shall continue to provide Covered Services during periods of Health Plan insolvency or cessation of operations through the period for which capitation payments were made to Health Plan.

DELEGATION

Delegation. If Health Plan chooses to delegate the complaint and appeal process, except the adjudication of final appeals, Network Provider shall have written policies and procedures for accepting, processing and responding to all complaints and appeals from Member. Health Plan shall monitor delegated responsibilities on an ongoing basis. Health Plan retains all its legal remedies, including rights of revocation, if the activities are not performed satisfactorily.

NON COVERED SERVICES

Fee for Service. Network Provider shall comply with OAR 410-141-1280, Billing and OAR 410-141-1340 Payment under the Oregon Health Plan when submitting Fee-For-Service claims for Oregon Health Plan services provided to Members that are not Covered Services under the Health Plan.

Billing Member. Network Provider may bill a Member for payment of non-Covered Services not within the scope of the coverage offered by the CCO, subject to requirements of the OHA about how those arrangements may be made under appropriate waiver. The Member must be informed in advance of receiving the specific service that it is not covered, the estimated cost of the service, and that the Member or Member's representative is financially responsible for payment for the specific service. Network Provider must use the designated OHP waiver form. Network Provider must be able to document in writing signed by the Member or Member's representative, that the Member was provided this information and the Member knowingly and voluntarily agreed to be responsible for payment.

WORKERS COMPENSATION

Workers Compensation. If Network Provider is a subject employer under the Oregon Workers Compensation law, Network Provider shall comply with ORS 656.017, which requires employers to provide Workers Compensation coverage for all of their employees.

FULLY QUALIFIED HEALTH CENTER / RURAL HEALTH CENTERS

Fully Qualified Health Center. When applicable, Fully Qualified Health Centers (FQHCs) and Rural Health Centers (RHCs) rate of reimbursement shall be not less than the level and amount of payment which the Health Plan would make for the same services furnished by a provider that is not a FQHC or RHC consistent with the requirements of 42 USC §1396b (m)(2)(A)(ix) and BBA 4712 (b)(2).

MISCELLANEOUS FEDERAL REQUIREMENTS

Environmental Protection. If the sums payable to Network Provider under this Agreement exceed \$100,000, Network Provider shall 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 USC. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) 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. Any violations shall be reported in writing to OHA, United States Department of Health and Human Services, and the appropriate Regional Office of the federal EPA.

Energy Policy. Network Provider shall comply with any applicable mandatory standards and policies relating to energy efficiency which 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).

Non-Discrimination. Network Provider 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. Network Provider shall also comply with all applicable requirements of State civil rights and rehabilitation statutes and rules.

OASIS. To the extent applicable, Contractor shall comply with, and shall require Subcontractors to comply with, the Outcome and Assessment Information Set reporting requirements and notice requirements for skilled services provided by Home Health Agencies, pursuant to CMS requirements published in 42 CFR 484.20, and such subsequent regulations as CMS may issue in relation to the OASIS program.

Equal Employment Opportunity. If the sums payable to Network Provider exceed \$10,000, Network Provider shall 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).

Laboratories. Laboratories contracted by Health Plan and used by Network Provider shall comply with the Clinical and 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 Improvements (CLIA) certificate of waiver or a certificate of registration along with a CLIA identification number. Those laboratories with certificates of waiver will provide only eight types of tests permitted under the terms of their waiver. Laboratories with certificates of registration may perform a full range of laboratory tests.

Patient Self-Determination. Network Provider shall comply with the requirements of 42 CFR Part 489, Subpart I "Advance Directives" and OAR 410-120-1380 which establishes, among other requirements the requirement for compliance with Section 4751 of the Omnibus Budget Reconciliation Act of 1991 (OBRA) and 127.649, Patient Self-Determination Act.

Consent Forms. Network Provider shall complete and have Members sign an accurately completed OHA Hysterectomy Consent form prior to performing hysterectomy surgeries. An accurately completed signed OHA Consent to Sterilization form must be obtained prior to performing tubal ligations and vasectomies. These OHA forms must be submitted to Health Plan upon filing of claim for these services.

Federal Provisions. Without limiting the generality of the foregoing, Network Provider agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to this agreement: (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) Section 1557 of the Patient Protection and Affordable Care Act (ACA), (e) Executive Order 11246, as amended, (f) the Health Insurance Portability and Accountability Act of 1996, as amended, (g) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (h) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (i) the Mental Health Parity and Addiction Equity Act of 2008, as amended, (j) CMS regulations (including 42 CFR Part 438, subpart K) and guidance regarding mental health parity, including 42 CFR 438.900 et. seq.; (k) all regulations and administrative rules established pursuant to the foregoing laws, (l) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (m) all federal laws requiring reporting of Member 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.

Comply with Federal Law. Network Provider and all subcontracted providers shall comply with all applicable state and federal law.

FRAUD, WASTE AND ABUSE

Fraud, Waste and Abuse. Network Provider shall comply with Health Plan's Fraud, Waste and Abuse reporting requirements and to cooperate with processes and procedures of Fraud, Waste and Abuse investigations, reporting requirements, and related activities by Health Plan, OHP, OHA/Provider Audit Unit or the Department of Justice Medicaid Fraud Control Unit.

Acknowledged and agreed to on behalf of Clackamas County, by and through its Health, Housing and Human Services Department, through its Health Centers Division.

Signing on behalf of the Board of Commissioners by:

Richard Swift - Director

Date

March 26, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Board Order
Designating a Clackamas County HUD Certifying Officer

Purpose/Outcome	Designating the Community Development Division Manager and in his/her Absence the Department of Health, Housing and Human Services Deputy Director or Director as the Certifying Officer to Approve Request for Release of Funds and Certification, and Consolidated Plan Consistency Determinations
Dollar Amount and Fiscal Impact	N/A No financial impact
Funding Source	Annual allocations of federal funds
Duration	Indefinitely
Previous Board Action/Review	Board Order No. 2008-94 signed June 26, 2008
Counsel Review	County Counsel has review and approved on March 10, 2020.
Strategic Plan Alignment	<ul style="list-style-type: none"> • Build public trust through good government
Contact Person	Mark Sirois, 503-650-5664

Clackamas County Department of Health, Housing and Human Services (H3S), through its Community Development Division, requires certain employee positions to act as a Certifying Officer under federal regulations, 24 C.F.R. Part 58, 24 C.F.R. Part 91, and other federal statutes and regulations.

A Certifying Officer is required for H3S to comply with all federal funding requirements of the Community Development Block Grants, HOME Partnerships Grants, Emergency Solutions Grants, the Continuum of Care Grants and any other grants from the Department of Housing and Urban Development (HUD).

The Certifying Officer means an official authorized to execute a Request for Release of Funds and Certification (as defined by 24 C.F.R. 58.2), make Consolidated Plan Consistency Determinations (as defined by 24 C.F.R. 91.5 and 91.510), and otherwise has the legal capacity to carry out the responsibilities of 24 CFR 58.13.

Healthy Families. Strong Communities.

The Board previously approved the Community Development Director and, in his/her absence, the Department of Human Services Director to serve as the Certifying Officer to approve a Request for Release of Funds and Certification and Consolidated Plan Consistency Determinations, as those terms are defined under applicable federal statutes and regulations.

The position titles previously approved to serve as a Certifying Officer no longer exist.

RECOMMENDATION

Staff respectfully recommends the Board approve the attached order formally designating the Community Development Division Manager and in his/her Absence the Department of Health, Housing and Human Services Deputy Director or Director as the Certifying Officer to Approve Request for Release of Funds and Certification, and Consolidated Plan Consistency Determinations, effective immediately.

Sincerely,

Handwritten signature of Richard Swift in cursive, with the text "HHS Deputy" written in the middle of the signature.

Richard Swift

Clackamas County Administrator

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

In the Matter of the Approval of Designating the Community Development Division Manager and in his/her Absence the Department of Health, Housing and Human Services Deputy Director or Director as the Certifying Officer to Approve Request for Release of Funds and Certification, and Consolidated Plan Consistency Determinations



Board Order No. _____
Page 1 of 2

Whereas, the Clackamas County Department of Health, Housing and Human Services (H3S), through its Community Development Division, requires certain employee positions to act as a Certifying Officer under federal regulations, 24 C.F.R. Part 58, 24 C.F.R. Part 91, and other federal statutes and regulations, where applicable;

Whereas, the Certifying Officer means an official authorized to execute a Request for Release of Fund and Certification (as defined by 24 C.F.R. 58.2), make Consolidated Plan Consistency Determinations (as defined by 24 C.F.R. 91.5 and 91.510), and otherwise has the legal capacity to carry out the responsibilities of 24 CFR 58.13;

Whereas, a Certifying Officer is required for H3S to comply with all federal funding requirements of the Community Development Block Grants, HOME Partnerships Grants, Emergency Solutions Grants, the Continuum of Care Grants and any other grants from the Department of Housing and Urban Development (HUD);

Whereas, the Board previously approved the Community Development Director and, in his/her absence, the Department of Human Services Director to serve as the Certifying Officer to approve a Request for Release of Funds and Certification and Consolidated Plan Consistency Determinations, as those terms are defined under applicable federal statutes and regulations;

Whereas, the position titles previously approved to serve as a Certifying Officer no longer exist;

Whereas, the Board agrees that it is necessary to authorize the H3S, Community Development Division Manager and the Director of H3S to act as a Certifying Officer;

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

In the Matter of the Approval of Designating the Community Development Division Manager and in his/her Absence the Department of Health, Housing and Human Services Deputy Director or Director as the Certifying Officer to Approve Request for Release of Funds and Certification, and Consolidated Plan Consistency Determinations



Board Order No. _____
Page 2 of 2

NOW THEREFORE, the Clackamas County Board of County Commissioners ordered as follows:

The following positions are authorized to serve as a Certifying Officer, as defined by 24 C.F.R. 58.2, for purposes of executing a Request for Release of Funds and Certification, making a Consolidated Plan Consistency Determinations, and carrying out the responsibilities set forth in 24 C.F.R. 58.13, on behalf of the Board of Clackamas County Commissioners:

1. The Clackamas County Department of Health, Housing and Human Services, Community Development Division Manager; and
2. The Deputy Director of the Clackamas County Department of Health, Housing and Human Services; and
3. The Director of the Clackamas County Department of Health, Housing and Human Services.

DATED this _____ day of _____, 2020

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

March 26, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Board Order Authorizing the Community Development Division Manager to sign Housing Rehabilitation Program loan and grant documents

Purpose/Outcome	Authorizing the Community Development Division Manager and in his/her Absence the Department of Health, Housing and Human Services Deputy Director or Director to sign all documents Related to Loans and Grants under the Housing Rehabilitation Program and the Clackamas Homebuyer Assistance Program.
Dollar Amount and Fiscal Impact	N/A Housing Rehab Program Loans and Grants between \$2,000 and \$35,000 each.
Funding Source	Department of Housing and Urban Development (HUD) and North Clackamas Renewal Area (NCRA) funds
Duration	Indefinitely
Previous Board Action/Review	Board Order No. 2006-519 signed November 30, 2006
Counsel Review	County Counsel reviewed and approved on March 11, 2020.
Strategic Plan Alignment	<ul style="list-style-type: none"> • Build public trust through good government
Contact Person	Mark Sirois, 503-650-5664

The Clackamas County Department of Health, Housing and Human Services (H3S), through its Community Development Division, requires certain employee positions to sign all documents related to loans and grants under the Housing Rehabilitation Program and the Clackamas Home Buyer Assistance Program.

The Board previously approved the Community Development Director and, in his/her absence, the Department of Human Services Director to sign all documents related to loans and grants under the Housing Rehabilitation Program and the Clackamas Home buyer Assistance Program. This signature authority has enabled the program to operate

in an efficient manner and has provided assurance to the title companies involved in the transactions.

The position titles previously approved to sign all documents related to loans and grants no longer exist.

RECOMMENDATION

Staff respectfully recommends the Board approve the attached order formally authorizing the Community Development Division Manager and in his/her Absence the Department of Health, Housing and Human Services Deputy Director or Director as the Certifying Officer to Approve Request for Release of Funds and Certification, and Consolidated Plan Consistency Determinations, effective immediately.

Sincerely,

Handwritten signature of Richard Swift in cursive, with the text "HHS Deputy / For" written in the middle of the signature.

Richard Swift

Clackamas County Administrator

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

In the Matter of the Approval of Authorizing the Community Development Division Manager and in his/her Absence the Department of Health, Housing and Human Services Deputy Director or Director to sign all documents Related to Loans and Grants under the Housing Rehabilitation Program and the Clackamas Homebuyer Assistance Program



Board Order No. _____

Page 1 of 1

Whereas, the Clackamas County Department of Health, Housing and Human Services (H3S), through its Community Development Division, requires certain employee positions to sign all documents related to loans and grants under the Housing Rehabilitation Program and the Clackamas Home Buyer Assistance Program;

Whereas, the Board previously approved the Community Development Director and, in his/her absence, the Department of Human Services Director to sign all documents related to loans and grants under the Housing Rehabilitation Program and the Clackamas Home buyer Assistance Program. This signature authority has enabled the program to operate in an efficient manner and has provided assurance to the title companies involved in the transactions;

Whereas, the position titles previously approved to sign all documents related to loans and grants no longer exist;

Whereas, the Board agrees that it is necessary to authorize the H3S, Community Development Division Manager, Deputy H3S Director and the Director of H3S to sign all related loan and grant documents to continue operating the Housing Rehabilitation Program and the Clackamas Homebuyer Assistance Program in an efficient manner;

NOW THEREFORE, the Clackamas County Board of County Commissioners ordered as follows:

The following positions are authorized to sign all documents Related to Loans and Grants under the Housing Rehabilitation Program and the Clackamas Home buyer Assistance Program, on behalf of the Board of Clackamas County Commissioners:

1. The Clackamas County Department of Health, Housing and Human Services, Community Development Division Manager; and
2. The Deputy Director of the Clackamas County Department of Health, Housing and Human Services; or
3. The Director of the Clackamas County Department of Health, Housing and Human Services.

DATED this _____ day of _____, 2020

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

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

In the Matter of the Approval of Approval
Of Authorization for the Community
Development Division Director to Sign
All Documents Related To Loans and
Grants under the Housing Rehabilitation
Program and the Clackamas
Homebuyer Assistance Program

ORDER NO. 2006-519

This matter coming on at this time to be heard, and it appearing to this Board that Gary DiCenzo, Director of Clackamas County Department of Human Services, has recommended to this Board the approval of Authorization for the Community Development Division Director to Sign All Documents Related To Loans and Grants under the Housing Rehabilitation Program and the Clackamas Homebuyer Assistance Program, and the Board being fully advised;


The Board of Commissioners has approved former CDD Directors to sign all loan and grant documents. This signature authority has enabled the program to operate in an efficient manner and has provided assurance to the title companies involved in the transactions. In the past, the CDD Director was identified by name. This request ties the signature authority to the position of CDD Director.

This Board finds that it would be in the best interest of Clackamas County to approve said authorization,

IT IS THEREFORE HEREBY ORDERED that Clackamas County approve said Community Development Director or the Director's designee to be authorized to sign all documents related to loans and grants under the Housing Rehabilitation Program and the CHAP Program on behalf of the Board of County Commissioners.

ADOPTED this 30th day of Nov, 2006.

BOARD OF COUNTY COMMISSIONERS


Chair


Recording Secretary



COPY

Gary DiCenzo
Director

DEPARTMENT OF HUMAN SERVICES

PUBLIC SERVICES BUILDING
2051 KAEN ROAD #239 | OREGON CITY, OR 97045

November 30, 2006

Board of Commissioners
Clackamas County

Members of the Board:

Board Order No. 2006 519 Approval of Authorization for the Community Development Division Director to Sign All Documents Related To Loans and Grants under the Housing Rehabilitation Program and the Clackamas Homebuyer Assistance Program

The Community Development Division (CDD) of the Department of Human Services requests approval for the CDD Director or the Director's designee to sign all documents related to loans and grants under the Housing Rehabilitation Program and the Clackamas Homebuyer Assistance Program.

The Board of Commissioners has approved former CDD Directors to sign all loan and grant documents. This signature authority has enabled the program to operate in an efficient manner and has provided assurance to the title companies involved in the transactions. In the past, the CDD Director was identified by name. This request ties the signature authority to the position of CDD Director. County Counsel has indicated that this is allowable.

CDD has operated a Housing Rehabilitation Loan Program since 1979. The Rehab Program offers loans of up to \$35,000 to low- and moderate-income homeowners to assist with needed home repairs. The program also provides grants of up to \$2,500 to low- and moderate-income residents who have physical disabilities to assist with access and safety improvements.

The Clackamas Homebuyer Assistance Program (CHAP) offers loans of up to \$10,000 to assist qualified low-income first-time homebuyers pay for downpayment and reasonable closing costs. Funds are provided in the form of zero-percent interest deferred-payment loans.

Several legally binding documents are signed and recorded as part of the loan and grant process. A lien is recorded against the property in the amount of the loan and is released when the loan is repaid. The program guidelines also allow subordination of the County's lien under certain conditions. The documents include: Loan/Grant Approval; Loan/Grant Agreement; Satisfaction of Mortgage; Request for Reconveyance; Change Orders and Amendments; Appointment of Successor Trustee; Lost Note or Trust Deed; Insurance Checks; and CHAP Commitment Letter.

Com Dev Director signature authority - cd.doc
11/20/2006 1:08 PM

1

March 26, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Federal Subrecipient Grant Agreement with
Clackamas Women's Services for
Emergency Shelter Services

Purpose/Outcomes	Agency will provide emergency shelter bednight services to serve un-housed individuals and families in Clackamas County who are survivors of domestic violence, and connect these individuals and families with permanent housing and other positive exit destinations.
Dollar Amount and Fiscal Impact	\$58,306
Funding Source	Federal Department of Homeland Security Emergency Food and Shelter Program (EFSP) grant funds, Phase 36.
Duration	July 1, 2019 to March 31, 2020
Previous Board Action	None.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. This funding aligns with the Social Services Division's strategic priority to provide housing stabilization and supportive services to people who are homeless or at risk of becoming homeless so they can obtain and maintain permanent housing. 2. This funding aligns with the County's strategic priority to ensure safe, healthy and secure communities.
Counsel Review	The grant agreement was approved in March 2020.
Contact Person	Brenda Durbin, Director – Social Services Division – (503) 655-8641
Contract No.	#20-027, H3S#9625

BACKGROUND:

The Social Services Division of the Health, Housing and Human Services Department requests approval of a Federal Subrecipient Grant Agreement with Clackamas Women's Services (CWS). A competitive Notice of Funding Opportunity (NOFO) was released in August 2019 for Emergency Shelter services, in partnership with Community Development. CWS was one of two applicants that met the requirements in the NOFO to receive an award.

Additional agreements under the NOFO award will be issued by both Social Services and Community Development using various funding sources. The Federal Department of Homeland Security, Emergency Food and Shelter Program (EFSP) is the funding source of this Social Services Grant Agreement. The NOFO allows for the award of funding from

Healthy Families. Strong Communities.

2051 Kaen Road, Oregon City, OR 97045 • Phone (503) 650-5697 • Fax (503) 655-8677

www.clackamas.us

**CLACKAMAS COUNTY, OREGON
SUBRECIPIENT GRANT AGREEMENT 20-027**

Project Name: **Emergency Food And Shelter Program Phase 36**

Project Number:

This Agreement is between Clackamas County, Oregon, acting by and through its Department of Health, Housing and Humans Services, Social Services Division ("COUNTY"), and Clackamas Women's Services ("SUBRECIPIENT"), an Oregon Nonprofit Corporation.

Clackamas County Data

Grant Accountant: **Sue Aronson**

Program Manager: **Teresa Christopherson**

Clackamas County – Finance

Clackamas County – H3S Social Services Division

2051 Kaen Road

PO Box 2950

Oregon City, OR 97045

Oregon City, OR 97045

(503)742-5421

503-650-5718

suea@clackamas.us

teresachr@co.clackamas.or.us

Subrecipient Data

Finance/Fiscal Representative: **Melissa Erlbaum**

Program Representative: **Amy Doud**

Clackamas Women's Services

Clackamas Women's Services

256 Warner Milne Rd.

256 Warner Milne Rd

Oregon City, OR 97045

Oregon City, OR 97045

503-655-8600

503-655-8600

melissae@cwsor.org

amyd@cwsor.org

DUNS: 959059759

RECITALS

1. Whereas homelessness remains a persistent problem in most of Clackamas County, including urban, rural and suburban areas;
2. Whereas homelessness affects some of the most vulnerable Clackamas County residents, with almost half of the identified homeless being children under the age of 18, and significant numbers of veterans, people with disabilities, women fleeing domestic violence and older adults suffering homelessness;
3. Whereas homeless individuals are frequent victims of crime and often experience health problems;
4. Whereas many homeless adults want to work but are not employable without a safe place to sleep at night;
5. Whereas COUNTY has received federal funding under the Emergency Food and Shelter Program ("EFSP"), authorized by the Stewart B. McKinney Homeless Assistance Act of 1987, as amended, Title 3, Section 301, Public Law 100-77, 42 U.S.C 11331-11346. The EFSP was created in 1983 to supplement and expand the work of local social service agencies, both nonprofit and governmental, in an effort to help people with economic (rather than disaster-related) emergencies.

upon written notice from one to the other upon thirty (30) business days notice. This notice may be transmitted in person, by certified mail, facsimile, or by email.

7. **Funds Available and Authorized.** COUNTY certifies that it has received an award sufficient to fund this Agreement. SUBRECIPIENT understands and agrees that payment of amounts under this Agreement is contingent on COUNTY receiving appropriations or other expenditure authority sufficient to allow COUNTY, in the exercise of its sole 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 Section 7.
9. **Administrative Requirements.** SUBRECIPIENT agrees to its status as a subrecipient, and accepts among its duties and responsibilities the following:
 - a) **Financial Management.** SUBRECIPIENT shall comply with 2 CFR Part 200, Subpart D—*Post Federal Award Requirements*, 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.
 - b) **Revenue Accounting.** Grant revenue and expenses generated under this Agreement should be recorded in compliance with generally accepted accounting principles and/or governmental accounting standards. This requires that the revenues are treated as unearned income or "deferred" until the compliance requirements and objectives of the grant have been met. Revenue may be recognized throughout the life cycle of the grant as the funds are "earned." All grant revenues not fully earned and expended in compliance with the requirements and objectives at the end of the period of performance must be returned to COUNTY within 15 days.
 - c) **Personnel.** If SUBRECIPIENT becomes aware of any likely or actual changes to key systems, or grant-funded program personnel or administration staffing changes, SUBRECIPIENT shall notify COUNTY in writing within 30 days of becoming aware of the likely or actual changes and a statement of whether or not SUBRECIPIENT will be able to maintain compliance at all times with all requirements of this Agreement.
 - d) **Cost Principles.** SUBRECIPIENT shall administer the award in conformity with 2 CFR 200, Subpart E. These cost 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 SUBRECIPIENT.
 - e) **Period of Availability.** SUBRECIPIENT may charge to the award only allowable costs resulting from obligations incurred during the funding period.
 - f) **Match.** Matching funds are not required for this Agreement.
 - g) **Budget.** SUBRECIPIENT use of funds may not exceed the amounts specified in the Exhibit B: Subrecipient Program Budget. SUBRECIPIENT may not transfer grant funds between budget lines without the prior written approval of COUNTY. At no time may budget modification change the scope of the original grant application or Agreement.
 - h) **Indirect Cost Recovery.** Indirect cost recovery is statutorily unavailable for this award.
 - i) **Research and Development.** SUBRECIPIENT certifies that this award is not for research and development purposes.

also submit a copy of the audit to COUNTY. If requested and if SUBRECIPIENT does not meet the threshold for the Single Audit requirement, SUBRECIPIENT shall submit to COUNTY a financial audit or independent review of financial statements within 9 months from the SUBRECIPIENT'S fiscal year end or 30 days after issuance of the reports, whichever is sooner.

- r) **Monitoring.** SUBRECIPIENT agrees to allow COUNTY access to conduct site visits and inspections of financial records for the purpose of monitoring in accordance with 2 CFR 200.331. 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 SUBRECIPIENT 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 COUNTY's discretion. Depending on the outcomes of the financial monitoring processes, this Agreement shall either a) continue pursuant to the original terms, b) continue pursuant to the original terms and any additional conditions or remediation deemed appropriate by COUNTY, or c) be de-obligated and terminated.
- s) **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 from the end of program date, or such longer period as may be required by the Federal agency or applicable state 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, according to 2 CFR 200.333-337.
- t) **Fiduciary Duty.** SUBRECIPIENT acknowledges that it has read the award conditions and certifications for EFSP Phase 35, 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 COUNTY, as grantee, under those grant documents.
- u) **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 grant and this Agreement. Such material breach shall give rise to COUNTY's right, but not obligation, to withhold SUBRECIPIENT grant funds until compliance is met or to terminate this relationship including the original Agreement and all associated amendments.

10. Compliance with Applicable Laws

- a) **Public Policy.** SUBRECIPIENT expressly agrees to comply with all public policy requirements, laws, regulations, and executive orders issued by the Federal government, to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, "Equal Employment Opportunity" as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) all regulations and administrative rules established pursuant to the foregoing laws; and (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and 2 CFR Part 200 as applicable to SUBRECIPIENT.
- b) **Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.).** SUBRECIPIENT agrees that if this Agreement is in excess of \$150,000, the recipient agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 7401 et seq., and the Federal Water Pollution

- 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 the Oregon Public Contracting Code and applicable Local Contract Review Board rules, which are incorporated by reference herein.
- c) SUBRECIPIENT must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. If SUBRECIPIENT has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, SUBRECIPIENT must also maintain written standards of conduct covering organizational conflicts of interest. 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 must be excluded by SUBRECIPIENT 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) 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.

12. General Agreement Provisions.

- a) **Non-appropriation Clause.** If payment for activities and programs under this Agreement extends into COUNTY's next fiscal year, COUNTY's obligation to pay for such work is subject to approval of future appropriations to fund the Agreement by the Board of County Commissioners.
- b) **Indemnification.** SUBRECIPIENT agrees to indemnify and hold COUNTY and its elected officials, officers, employees, and agents 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.
- c) **Insurance.** During the term of this Agreement, SUBRECIPIENT shall maintain in force, at its own expense, each insurance noted below:
 - 1) **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, elected officials, 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 COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute to it.
 - 2) **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, or SUBRECIPIENT shall obtain at SUBRECIPIENT expense, and keep in effect during the term of the agreement, Personal auto coverage.

- 10) **Primary Coverage Clarification.** SUBRECIPIENT coverage will be primary in the event of a loss and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above.
 - 11) **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.
 - 12) **Waiver of Subrogation.** SUBRECIPIENT agrees to waive their rights of subrogation arising from the work performed under this Agreement.
-
- d) **Assignment.** This Agreement may not be assigned in whole or in part without the prior express written approval of COUNTY.
 - e) **Independent Status.** SUBRECIPIENT is independent of 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 COUNTY excepting as set forth herein. SUBRECIPIENT shall not seek or have the power to bind COUNTY in any transaction or activity.
 - f) **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.
 - g) **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 without giving effect to the conflict of law provisions thereof. Any litigation between 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 having jurisdiction thereof, and if in the federal courts, in the United States District Court for the State of Oregon.
 - h) **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.
 - i) **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.
 - j) **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.
 - k) **Binding Effect.** This Agreement shall be binding on all parties hereto, their heirs, administrators, executors, successors and assigns.
 - l) **Integration.** This Agreement contains the entire Agreement between COUNTY and SUBRECIPIENT and supersedes all prior written or oral discussions or Agreements.

SIGNATURE PAGE TO SUBRECIPIENT GRANT AGREEMENT

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized officers.

CLACKAMAS COUNTY

Clackamas Women's Services

Commissioner: Jim Bernard, Chair
Commissioner: Sonya Fischer
Commissioner: Ken Humbertson
Commissioner: Paul Savas
Commissioner: Martha Schrader

Signing on Behalf of the Board,

By: _____
Rod Cook, Deputy Director
Health, Housing and Human Services

By:  _____
Melissa Erlbaum, Director

Dated: _____

Dated: 3/4/2020

Approved to Form

By:  _____
County Counsel

Dated: 3/3/2020

- Exhibit A: SUBRECIPIENT Statement of Program Objectives
- Exhibit B: SUBRECIPIENT Program Budget
- Exhibit C: Lobbying Certificate
- Exhibit D: Required Financial Reporting and Reimbursement Request
- Exhibit E: Award Special Terms and Conditions
- Exhibit F: EFSP Phase 35 Manual & Phase 36 Addendum

Clackamas Women's Services (9625)

Subrecipient Grant Agreement – 20-027 EFSP Phase 36

Page 13 of 25

16. SUBRECIPIENT must participate in and provide services to un-housed Individuals on the annual nights in January 2021 (to be determined by COUNTY) and (if contract is extended) January 2023 for the Point in Time homeless count.
17. If a guest has to leave due to disruption or of their own free will, SUBRECIPIENT may consult with County on whether bednight or day shelter rate is allowable. Regardless of the situation, no bednights or day shelter will be reimbursable if SUBRECIPIENT does not have complete and accurate HMIS data or equivalent for the guest.
18. SUBRECIPIENT must comply with all relevant health, fire and life safety codes from the local fire marshal and the jurisdiction with permitting authority.
19. SUBRECIPIENT must have a written harm reduction policy that addresses under what circumstances and for what conduct people may be excluded from the warming center and for what period of time. In the event a person is excluded under the harm reduction policy, shelters must document the reason for the exclusion and the duration. Shelters must make a diligent effort to ensure that the excluded person has an alternate safe place to sleep.
20. SUBRECIPIENT is required to Perform Criminal Background checks and propose for approval specific screening criteria for all staff and volunteers who will be performing direct services under this contract. Policies must be in place to disqualify any persons who have committed violent crimes, crimes against children, or other crimes that are incompatible with this project.

Policies must also be in place to ensure the safety of participants should criminal arrests and/or convictions occur during the contract term. If a volunteer or employee of SUBRECIPIENT has a break in service, and does not work for 60 days or more for SUBRECIPIENT, or SUBRECIPIENT has knowledge or information that a crime may have been committed by the staff or volunteer, then another criminal background check must be completed prior to working for SUBRECIPIENT.

21. Service Boundaries. Services must be prioritized for Clackamas County residents, as determined by the self-reported zip code or area of last residence, who meet the eligibility guidelines. Persons who are literally homeless and who may be sleeping in areas in which the County boundary is unclear will also be eligible if they are accessing services such as schools, meal sites and the like in Clackamas County. Persons currently residing in neighboring counties who were recently residing in, employed in or otherwise have strong ties to Clackamas County are also eligible. However, shelters must in no way exclude people who cannot provide "proof" of residency or tie to Clackamas County. Additionally, persons fleeing domestic violence or other forms of abuse are excluded from the Clackamas County residency prioritization.

Performance Standards

1. SUBRECIPIENT shall, and shall cause, Denial, Appeal and Fair Hearing procedures accessible to applicants upon request.
2. SUBRECIPIENT may terminate assistance to participants who violate program requirements. SUBRECIPIENT shall have in place a procedure which governs the termination and grievance process. These procedures should describe the program requirements and the termination process, as well as the grievance procedure which recognizes the rights of individuals who may be affected. Termination and grievance procedures shall be clearly communicated to and easily understood by program participants and readily available upon request, or posted in a public location.
3. SUBRECIPIENT shall assure that completed applications and household benefits are valid and correct.
4. SUBRECIPIENT shall maintain clear policies for cases where there may be a conflict of interest. This includes procedures for staff when employees, board members, friends or family members apply for program assistance services.

Reporting Requirements

Program Specific Reporting

1. SUBRECIPIENT shall comply with current Homeless Management Information System ("HMIS") Policies and procedures and adhere to all HMIS reporting requirements. HMIS is a community-wide software solution that is designed to collect client-level information on the characteristics and service needs of people experiencing homelessness. SUBRECIPIENT is required to:
 - b) Collect and enter related client demographics and service data into the electronic ServicePoint Homeless Management Information System (HMIS), except for data of victims of domestic violence clients, which must be entered into a comparable database system that meets HMIS standards. Data shall be entered into appropriate HMIS providers, which will be determined by COUNTY.
 - c) Projects serving survivors of domestic violence where the operator is not a victim services provider are required to enter data in their HMIS. SUBRECIPIENT is responsible for acquiring and documenting informed written consent from program participants, and protecting program participant's confidentiality.
 - d) Ensure that data entry into HMIS occurs in an accurate and timely manner within three (3) business days of program entry date. SUBRECIPIENT must correct data quality, missing information, and null data errors as specified by COUNTY and/or Oregon Housing & Community Services ("OHCS") prior to invoice submittals, and by the 10th of each month for services in the preceding month.
 - e) Collect, as required by COUNTY, universal data elements which include demographic information on all clients at entry.
 - f) Use COUNTY's approved, secure email system to submit invoices and backup documentation.
 - g) Collect and retain copies of invoices, sign-in sheets, and HMIS Entry and Re-Entry paper forms in a secure, locked location for required monitoring by COUNTY.
 - h) Enter into an agreement with COUNTY's Community Development Division for access to HMIS.
 - i) Ensure only authorized SUBRECIPIENT staff trained by COUNTY shall access the HMIS software.
 - j) Shall comply with current HMIS Policy and Procedures and adhere to all HMIS reporting requirements.
2. Comparable database. Victim service providers are prohibited from entering data in HMIS; however, they are required to maintain comparable databases which provide aggregate information and data consistent with HMIS data collection requirements. SUBRECIPIENT shall assure that data entry into ALICE/OSNIUM occurs in an accurate and timely manner.

Comparable Databases must have the following characteristics:

- The victim service provider controls who can access and see client information;
- Access to the database is carefully controlled by the victim service provider;
- Meets the standards for security, data quality, and privacy of the HMIS within the Continuum of Care. The Comparable Database may use more stringent standards than the Continuum of Care's HMIS;

	color are equal to or higher than those accomplished by shelter guests identifying as white	comparable
Data Entry Timeliness	At least 95% of households data is entered into HMIS within 3 business days of entry	HMIS

***Positive housing destinations include:**

- Owned by participant, no ongoing housing subsidy
- Owned by participant, with ongoing housing subsidy
- Rental by participant, no ongoing housing subsidy
- Rental by participant, with VASH housing subsidy
- Rental by participant, with other ongoing housing subsidy
- Permanent housing (other than Rapid Re-Housing) for formerly homeless persons
- Staying or living with friends, permanent tenure
- Staying or living with family, permanent tenure
- Rental by participant, with Rapid Re-Housing or equivalent subsidy

EXHIBIT C – LOBBYING CERTIFICATE

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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 the behalf of the undersigned, 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 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, contribution, 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, 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 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.

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 U.S.C. §1352. 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.

Please do not alter this form; any questions regarding the form should be directed to EFSP staff.

Clackamas Women's Services
LRO Name

708000-005
LRO ID Number (9 digits)

Melissa Erlbaum
Representative Name

[Signature]
Representative Signature

3/4/2020
Date (month/day/year)

March 26, 2020

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of Amendment #07 to the Intergovernmental Agreement with the State of Oregon, acting by and through its Oregon Health Authority for Operation as the Local Public Health Authority for Clackamas County

Purpose/Outcomes	Amendment #07 provides funding for PE-01-04 COVID-19 Response.
Dollar Amount and Fiscal Impact	Contract is increased by \$250,307. bringing the contract maximum value to \$3,777,374.
Funding Source	Funding through the State - No County General Funds are involved.
Duration	Effective upon signature and terminates on June 30, 2021
Previous Board Action	The Board previously reviewed and approved this agreement on June 20, 2019, Agenda item 062019-A1, September 5, 2019, Agenda item 090519-A1, September 26, 2019, Agenda item 092619-A5, October 24, 2019, Agenda item 102419-A5, October 31, 2019, Agenda item 103119-A3, December 12, 2019, Agenda item 121219-A2, January 8, 2020, Agenda item 010920-A8
Strategic Plan Alignment	1. Improved Community Safety and Health 2. Ensure safe, healthy and secure communities
Counsel Review	County counsel has reviewed and approved this document on March 17, 2020
Contact Person	Richard Swift, Interim Public Health Director – (503) 655-8479
Contract No.	9329-07

BACKGROUND:

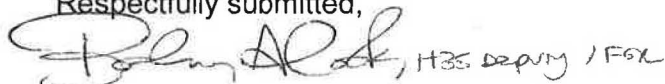
The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of Amendment #07 to the Intergovernmental Agreement with State of Oregon, Oregon Health Authority. Amendment #07 provides funding for PE-01-04 COVID-19 Response. Contract is increased by \$250,307. bringing the contract maximum value to \$3,777,374.

This contract is effective upon signature and continues through June 30, 2021.

RECOMMENDATION:

Staff recommends the Board approval of this Amendment and authorizes Richard Swift, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,



Richard Swift, Director
Health, Housing, and Human Services

** This item was signed by Chair Bernard on March 18, 2020 per Emergency Declaration - 2020-14.

Healthy Families. Strong Communities.

2051 Kaen Road, Oregon City, OR 97045 • Phone: (503) 742-5300 • Fax: (503) 742-5352
www.clackamas.us/community_health

Agreement #159803



**SEVENTH AMENDMENT TO OREGON HEALTH AUTHORITY
2019-2021 INTERGOVERNMENTAL AGREEMENT FOR THE
FINANCING OF PUBLIC HEALTH SERVICES**

In compliance with the Americans with Disabilities Act, this document is available in alternate formats such as Braille, large print, audio recordings, Web-based communications and other electronic formats. To request an alternate format, please send an e-mail to dhs-oha.publicationrequest@state.or.us or call 503-378-3486 (voice) or 503-378-3523 (TTY) to arrange for the alternative format.

This Seventh Amendment to Oregon Health Authority 2019-2021 Intergovernmental Agreement for the Financing of Public Health Services, effective July 1, 2019, (as amended the “Agreement”), is between the State of Oregon acting by and through its Oregon Health Authority (“OHA”) and Clackamas County, (“LPHA”), the entity designated, pursuant to ORS 431.003, as the Local Public Health Authority for Clackamas County.

RECITALS

WHEREAS, OHA and LPHA wish to modify the set of Program Element Descriptions set forth in Exhibit B of the Agreement

WHEREAS, OHA and LPHA wish to e.g. modify the Fiscal Year 2020 (FY20) Financial Assistance Award set forth in Exhibit C of the Agreement.

NOW, THEREFORE, in consideration of the premises, covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows

AGREEMENT

- Exhibit A “Definitions”, Section 18 “Program Element” is amended to add Program Element titles and funding source identifiers as follows:

PE NUMBER AND TITLE • SUB-ELEMENT(S)	FUND TYPE	FEDERAL AGENCY/ GRANT TITLE	CFDA#	HIPAA RELATED (Y/N)	SUB-RECIPIENT (Y/N)
PE 01-01 State Support for Public Health (SSPH)	GF	N/A	N/A	N	N
• PE 01-03 ACDP - Adult Viral Hepatitis	FF	CDC/Adult Viral Hepatitis	93.270	N	Y
• PE 01-04 LPHA COVID-19 Response	GF	N/A	N/A	N	N

- Exhibit B Program Element #01 “State Support for Public Health” is hereby superseded and replaced in its entirety by Attachment A attached hereto and incorporated herein by this reference.
- Section 1 of Exhibit C entitled “Financial Assistance Award” of the Agreement for FY20 is hereby superseded and replaced in its entirety by Attachment B attached hereto and incorporated herein by this reference. Attachment B must be read in conjunction with Section 3 of Exhibit C.
- LPHA represents and warrants to OHA that the representations and warranties of LPHA set forth in Section 2 of Exhibit E of the Agreement are true and correct on the date hereof with the same effect as if made on the date hereof.

- 5. Capitalized words and phrases used but not defined herein shall have the meanings ascribed thereto in the Agreement.
- 6. Except as amended hereby, all terms and conditions of the Agreement remain in full force and effect.
- 7. The parties expressly ratify the Agreement as herein amended.
- 8. This Amendment may be executed in any number of counterparts, 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.
- 9. This Amendment becomes effective on the date of the last signature below.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the dates set forth below their respective signatures.

10. Signatures.

STATE OF OREGON ACTING BY AND THROUGH ITS OREGON HEALTH AUTHORITY (OHA)

By: _____
 Name: /for/ Lillian Shirley, BSN, MPH, MPA
 Title: Public Health Director
 Date: _____

CLACKAMAS COUNTY LOCAL PUBLIC HEALTH AUTHORITY

By: _____
 Name: Richard Swift
 Title: Director, Health, Housing and Human Services
 Date: _____

DEPARTMENT OF JUSTICE – APPROVED FOR LEGAL SUFFICIENCY

Exempt per Executive Order 20-03, “Declaration of Emergency Due to Coronavirus (COVID-19) Outbreak in Oregon”.

REVIEWED BY OHA PUBLIC HEALTH ADMINISTRATION

By: _____
 Name: Derrick Clark (or designee)
 Title: Program Support Manager
 Date: _____

**Attachment A
Program Element Description**

Program Element #01: State Support for Public Health (SSPH)

1. **Description.** Funds provided under this Agreement for this Program Element may only be used in accordance with, and subject to, the requirements and limitations set forth below, to operate a Communicable Disease control program in LPHA's service area that includes the following components: (a) epidemiological investigations that report, monitor and control Communicable Disease, (b) diagnostic and consultative Communicable Disease services, (c) early detection, education, and prevention activities to reduce the morbidity and mortality of reportable Communicable Diseases, (d) appropriate immunizations for human and animal target populations to control and reduce the incidence of Communicable Diseases, and (e) collection and analysis of Communicable Disease and other health hazard data for program planning and management.

Communicable Diseases affect the health of individuals and communities throughout Oregon. Disparities exist for populations that are at greatest risk, while emerging Communicable Diseases pose new threats to everyone. The vision of the foundational Communicable Disease Control program is to ensure that everyone in Oregon is protected from Communicable Disease threats through Communicable Disease and Outbreak reporting, investigation, and application of public health control measures such as isolation, post-exposure prophylaxis, education, or other measures as warranted by investigative findings.

All changes to this Program Element are effective upon receipt of grant award unless otherwise noted in Exhibit C of the Financial Assistance Award.

2. **Definitions Specific to State Support for Public Health**

- a. **Case:** A person who has been diagnosed by a health care provider, as defined in OAR 333-017-0000, as having a particular disease, infection, or condition as described in OAR 333-018-0015, or whose illness meets defining criteria published in the OHA's Investigative Guidelines.
- b. **Communicable Disease:** A disease or condition, the infectious agent of which may be transmitted to and cause illness in a human being.
- c. **Outbreak:** A significant or notable increase in the number of Cases of a disease or other condition of public health importance (ORS 431A.005).
- d. **Reportable Disease:** Any of the diseases or conditions specified in Oregon Administrative Rule 333-018-0015.

3. **Program Components.** Activities and services delivered under this Program Element align with Foundational Programs and Foundational Capabilities, as defined in Oregon’s Public Health Modernization Manual, (http://www.oregon.gov/oha/PH/ABOUT/TASKFORCE/Documents/public_health_modernization_manual.pdf) as well as with public health accountability outcome and process metrics (if applicable) as follows:

a. **Foundational Programs and Capabilities** (As specified in Public Health Modernization Manual)

Program Components	Foundational Program				Foundational Capabilities						
	CD Control	Prevention and health promotion	Environmental health	Access to clinical preventive services Population Health Direct services	Leadership and organizational competencies	Health equity and cultural responsiveness	Community Partnership Development	Assessment and Epidemiology	Policy & Planning	Communications	Emergency Preparedness and Response
<i>Asterisk (*) = Primary foundational program that aligns with each component</i>					<i>X = Foundational capabilities that align with each component</i>						
<i>X = Other applicable foundational programs</i>											
Epidemiological investigations that report, monitor and control Communicable Disease (CD).	*					X		X			X
Diagnostic and consultative CD services.	*							X			
Early detection, education, and prevention activities.	*					X		X		X	
Appropriate immunizations for human and animal target populations to reduce the incidence of CD.	*			X		X					
Collection and analysis of CD and other health hazard data for program planning and management.	*					X		X	X		X

- b. **The work in this Program Element helps Oregon’s governmental public health system achieve the following Public Health Accountability Metric:**

Gonorrhea rates

- c. **The work in this Program Element helps Oregon’s governmental public health system achieve the following Public Health Modernization Process Measure:**

- (1) Percent of gonorrhea Cases that had at least one contact that received treatment; and
- (2) Percent of gonorrhea Case reports with complete “priority” fields.

4. **Procedural and Operational Requirements.** By accepting and using the Financial Assistance awarded under this Agreement and for this Program Element, LPHA agrees to conduct activities in accordance with the following requirements:

- a. LPHA must operate its Communicable Disease program in accordance with the Requirements and Standards for the Control of Communicable Disease set forth in ORS Chapters 431, 432, 433 and 437 and OAR Chapter 333, Divisions 12, 17, 18, 19 and 24, as such statutes and rules may be amended from time to time.
- b. LPHA must use all reasonable means to investigate in a timely manner all reports of Reportable Diseases, infections, or conditions. To identify possible sources of infection and to carry out appropriate control measures, the LPHA Administrator shall investigate each report following procedures outlined in OHA’s Investigative Guidelines or other procedures approved by OHA. OHA may provide assistance in these investigations, in accordance with OAR 333-019-0000. Investigative guidelines are available at:
<http://www.oregon.gov/oha/PH/DiseasesConditions/CommunicableDisease/ReportingCommunicableDisease/ReportingGuidelines/Pages/index.aspx>
- c. As part of its Communicable Disease control program, LPHA must, within its service area, investigate the Outbreaks of Communicable Diseases, institute appropriate Communicable Disease control measures, and submit required information regarding the Outbreak to OHA in Orpheus as prescribed in OHA CD Investigative Guidelines available at:
<http://www.oregon.gov/oha/PH/DiseasesConditions/CommunicableDisease/ReportingCommunicableDisease/ReportingGuidelines/Pages/index.aspx>
- d. LPHA must establish and maintain a single telephone number whereby physicians, hospitals, other health care providers, OHA and the public can report Communicable Diseases and Outbreaks to LPHA 24 hours a day, 365 days a year. LPHA may employ an answering service or 911 system, but the ten-digit number must be available to callers from outside the local emergency dispatch area, and LPHA must respond to and investigate reported Communicable Diseases and Outbreaks.
- e. LPHA must attend Communicable Disease 101 and Communicable Disease 303 training.
- f. LPHA must attend monthly Orpheus user group meetings or monthly Orpheus training webinars.

g. The following must be delivered in accordance with the indicated procedural and operational requirements:

1. **COVID-19**

LPHA must:

- Submit a budget plan and narrative within 30 days of receiving award. Refer to LPHA COVID-19 Budget Guidance document for terms and conditions.
- OHA will send “Budget Narrative Template”, “Budget Guidance” and any other applicable documents that OHA may identify.

5. **General Revenue and Expense Reporting.** LPHA must complete an “Oregon Health Authority Public Health Division Expenditure and Revenue Report” located in Exhibit C of the Agreement. These reports must be submitted to OHA each quarter on the following schedule:

Fiscal Quarter	Due Date
First: July 1 – September 30	October 30
Second: October 1 – December 31	January 30
Third: January 1 – March 31	April 30
Fourth: April 1 – June 30	August 20

6. **Reporting Requirements.** Not applicable.

7. **Performance Measures.**

LPHA must operate its Communicable Disease control program in a manner designed to make progress toward achieving the following Public Health Modernization Process Measures:

- a. Percent of gonorrhea Cases that had at least one contact that received treatment; and
- b. Percent of gonorrhea Case reports with complete “priority” fields.

**Attachment B
Financial Assistance Award (FY19)**

State of Oregon Oregon Health Authority Public Health Division				Page 1 of 4
1) Grantee Name: Clackamas County		2) Issue Date March 16, 2020	This Action AMENDMENT FY 2020	
Street: 2051 Kaen Rd., Suite 637 City: Oregon City State: OR Zip Code: 97045		3) Award Period From July 1, 2019 Through June 30, 2020		
4) OHA Public Health Funds Approved				
Program	Award Balance	Increase/ (Decrease)	New Award Bal	
PE01-01 State Support for Public Health	506,554	0	506,554	
PE01-04 COVID19 Response	0	250,307	250,307	
PE02 Cities Readiness Initiative	37,499	0	37,499	
PE07 HIV Prevention Services	128,846	0	128,846	
PE12 Public Health Emergency Preparedness and Response (PHEP)	171,924	0	171,924	
PE13-01 Tobacco Prevention and Education Prgram (TPEP)	292,768	0	292,768	
PE27-03 PDOP - Gap Funding (OSTR/PDO)	28,497	0	28,497	
PE27-04 PDOP Naloxone Project (SOR)	48,753	0	48,753	
PE27-05 PDOP Bridge (PDO/SOR)	41,665	0	41,665	
PE27-06 PDOP Planning	41,667	0	41,667	
PE40-01 WIC NSA: July - September	188,990	0	188,990	
PE40-02 WIC NSA: October - June	566,969	0	566,969	
PE40-03 BFPC: July - September	17,325	0	17,325	
PE40-04 BFPC: October - June	51,975	0	51,975	
PE40-05 Farmer's Market	2,699	0	2,699	
PE42-03 MCAH Perinatal General Funds & Title XIX	11,060	0	11,060	
PE42-04 MCAH Babies First! General Funds	35,342	0	35,342	
PE42-06 MCAH General Funds & Title XIX	20,752	0	20,752	

State of Oregon Oregon Health Authority Public Health Division			Page 2 of 4	
1) Grantee Name: Clackamas County		2) Issue Date March 16, 2020		This Action AMENDMENT FY 2020
Street: 2051 Kaen Rd., Suite 637 City: Oregon City State: OR Zip Code: 97045		3) Award Period From July 1, 2019 Through June 30, 2020		
4) OHA Public Health Funds Approved				
Program	Award Balance	Increase/ (Decrease)	New Award Bal	
PE42-07 MCAH Title V (July-Sept)	29,663	0	29,663	
PE42-08 MCAH Title V (Oct-June)	88,988	0	88,988	
PE42-09 MCAH Oregon Mothers Care Title V (July-Sept)	2,283	0	2,283	
PE42-10 MCAH Oregon Mothers Care Title V (Oct-June)	6,849	0	6,849	
PE43 Public Health Practice (PHP) - Immunization Services (Vendors)	92,462	0	92,462	
PE43-03 Hepatitis A Outbreak Prevention Project (HOPP)	29,533	0	29,533	
PE43-04 HOPP Incentives (Hepatitis A Outbreak Prevention Project)	1,000	0	1,000	
PE44-01 SBHC Base	300,000	0	300,000	
PE44-02 SBHC - Mental Health Expansion	376,500	0	376,500	
PE46-02 RH Community Participation & Assurance of Access (July - Mar)	0	0	0	
PE46-03 RH Community Participation & Access (State Funds)	41,893	0	41,893	
PE46-04 RH Community Participation & Access Federal Funds (July-Mar)	1,638	0	1,638	
PE50 Safe Drinking Water (SDW) Program (Vendors)	147,475	0	147,475	
PE51-01 LPHA Leadership, Governance and Program Implementation	215,498	0	215,498	
		3,527,066	250,307	3,777,373
5) Foot Notes:				
PE01-01	1	Initial SFY20: Award is estimated for July 1-September 30, 2019 and will be paid out at 1/3rd. Awards will be amended pending approval of the State budget.		
PE01-01	2	8/2019: SFY20 Award amended for increase for July 1, 2019-June 30, 2020. Previous footnotes are void and replaced by this one.		
PE01-04	1	3/2020: SFY20 COVID-19 Funding 1/21/2020-6/30/2020. Must submit a budget and narrative within 30 days of award using OHA-PHD provided format. Unspent funds may be eligible for carry forward from FY20 to FY21. R/E report due by August 20, 2020.		
PE13-01	1	Initial SFY20: Award is 3 months (July-September 2019) of bridge TPEP funding and will be paid out at 1/3rd		

State of Oregon Oregon Health Authority Public Health Division				Page 3 of 4
1) Grantee Name: Clackamas County		2) Issue Date March 16, 2020		This Action AMENDMENT FY 2020
Street: 2051 Kaen Rd., Suite 637 City: Oregon City State: OR Zip Code: 97045		3) Award Period From July 1, 2019 Through June 30, 2020		
4) OHA Public Health Funds Approved				
Program	Award Balance	Increase/ (Decrease)	New Award Bal	
PE13-01 2	8/2019: Award is 5 months (July-November 2019) of bridge TPEP funding and will be paid out at 1/5th, all previous footnotes are void and replaced by this one.			
PE40-05 1	7/2019: Funding available SFY2020 July - December 2019			
PE42-07 1	Initial SFY20: LPHA shall not use more than 10% of the Title V funds awarded for a particular MCAH Service on indirect costs. See PE42 language under 4. a. (3) Funding Limitations for details.			
PE42-08 1	Initial SFY20: LPHA shall not use more than 10% of the Title V funds awarded for a particular MCAH Service on indirect costs. See PE42 language under 4. a. (3) Funding Limitations for details.			
PE42-09 1	Initial SFY20: LPHA shall not use more than 10% of the Title V funds awarded for a particular MCAH Service on indirect costs. See PE42 language under 4. a. (3) Funding Limitations for details.			
PE42-10 1	Initial SFY20: LPHA shall not use more than 10% of the Title V funds awarded for a particular MCAH Service on indirect costs. See PE42 language under 4. a. (3) Funding Limitations for details.			
PE43-03 1	10/2019: Funding is for Oct. 1, 2019 – June 30, 2020 – Funds to be used on Hepatitis A Outbreak Prevention.			
PE43-04 1	10/2019: Funding is for Oct. 1, 2019 – June 30, 2020 – Funds to be used on Hepatitis A Outbreak Prevention Incentives.			
PE46-03 1	7/2019: Funding is for July 15, 2019 - June 30, 2020			
PE46-04 1	7/2019: Funding for July 1-14, 2019			
PE51-01 1	9/2019: Funding is for period of October 1, 2019-June 30, 2020			
6) Comments:				
PE01-04	3/2020: SFY20 COVID-19 Funding 1/21/2020-6/30/2020			
PE02	7/2019: Adding program element as result of Washington County relinquishing CRI lead agency status			
PE07	Initial SFY20: \$39,628 is for the period of 7/1/19 to 12/31/19 and must be spent by 12/31/19.			
PE07	7/2019: Funding period 07/01/19 - 12/31/19 - \$64,422. A minium of \$39,627 must be spent by 12/31/19. Funding period 01/01/20 - 06/30/20 - \$64,422			
PE12	11/2019: \$1,651 award increase for scholarship funding for Oregon Prepared or OR-Epi			
PE13-01	8/2019: Amending to add 2 months of funding (total award is now for July-November 2019)			
PE13-01	11/2019: Amending award total of \$292,768 for SFY20 (July 2019-June2020) All previous footnotes and comments are void and replaced by this one.			
PE27-03	Initial SFY20: \$28,496.83 in FY20 is available 7/1/19-8/31/19 ONLY. This is the balance of Gap Funding from PDO Year 4 for OSTR funded LPHA's.			
PE27-04	9/2019: \$48,753 in SFY20. Funding Period 10/1/19-6/30/20.			
PE27-05	8/2019: \$41,665 in FY20 Available 9/1/19-1/31/20.			
PE27-06	12/2019: Award of \$41,666.65 in SFY20 Available 2/1/20-6/30/20			
PE40-01	Initial SFY20: spend \$37,798 Nutrition Education, \$7,618 Breastfeeding Promotion by 9/30/19			
PE40-02	Initial SFY20: spend \$113,394 Nutrition Education, \$22,855 Breastfeeding Promotion by 6/30/20			
PE44-02	7/2019: MH Expansion funding increase			

State of Oregon Oregon Health Authority Public Health Division		Page 4 of 4	
1) Grantee Name: Clackamas County Street: 2051 Kaen Rd., Suite 637 City: Oregon City State: OR Zip Code: 97045		2) Issue Date March 16, 2020	This Action AMENDMENT FY 2020
		3) Award Period From July 1, 2019 Through June 30, 2020	
4) OHA Public Health Funds Approved			
Program	Award Balance	Increase/ (Decrease)	New Award Bal
PE46-02	7/2019: Reducing award to \$0 and re-allocating award to PE46-03 and PE46-04		
PE46-03	7/2019: State Funding for July 15, 2019 – June 30, 2020		
PE46-04	7/2019: Federal Funding for July 1 – July 14, 2019 only		
7) Capital outlay Requested in this Action: Prior approval is required for Capital Outlay. Capital Outlay is defined as an expenditure for equipment with a purchase price in excess of \$5,000 and a life expectancy greater than one year.			
PROGRAM	ITEM DESCRIPTION	COST	PROG APPROV

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Personal Services Contract with The Mental Health Association of Oregon
for Zero Suicide Peer Wellness Specialist**

Purpose/Outcome	Provides peer delivered support services in the areas of mental health and substance use.
Dollar Amount and fiscal Impact	Contract maximum payment is \$263,034.00
Funding Source	No County General Funds are involved. State of Oregon, Community Mental Health Program funds.
Duration	Contracting through June 30, 2023
Previous Board Action/Review	N/A
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. Provide coordination, assessment, outreach, and recovery services to Clackamas County residents experiencing mental health and addiction distress so they can achieve their own recovery goals 2. Ensure safe, healthy and secure communities.
Counsel Approval	Contract reviewed and approved March 17, 2020
Contact Person	Deborah Cockrell, Director –Health Centers Division 503-742-5305
Contract No.	County Contract #2314 / HC Contract #9624

BACKGROUND:

The Clackamas County Health Centers Division (CCHCD) of the Health, Housing & Human Services Department requests the approval of a Personal Service Contract with The Mental Health Association of Oregon for peer delivered support services in the areas of mental health and substance use. The overall goal and purpose of the project is to eliminate suicide attempts and deaths among patients/clients served at Clackamas County Health System (CCHS) and raise awareness of suicide prevention in the larger community.

The Mental Health Association of Oregon (MHOA) is an inclusive peer-run nonprofit organization committed to promoting self-directed recovery and wellness for all individuals.

This Contract is effective upon execution and continues through June 30, 2023, the maximum value for the term of the Contract is \$263,034.00.

PROCUREMENT PROCESS:

The RFP was published in accordance with Local Contract Review Board Rule C-047-0260 and applicable ORS, on July 15, 2019, for Peer Delivered Services. The RFP included this project along with six other options for proposers. Firms were allowed to propose on one or more projects included in the RFP. The RFP closed on August 1, 2019 and this project received three proposals. An evaluation committee scored the proposals in accordance with the RFP scoring criteria and recommended that The Mental Health Association of Oregon be awarded this contract. Notice of Intent to Award was published on ORPIN September 25, 2019, and no protests were received.

Healthy Families. Strong Communities.

RECOMMENDATION:

Staff recommends Board approval of this Contract and authorization for Richard Swift, H3S Director to sign on behalf of Clackamas County.

Respectfully Submitted,

Richard Swift, Director
Health, Housing & Human Services Department

Placed on the board agenda of _____ by the Procurement Division.



**CLACKAMAS COUNTY
PERSONAL SERVICES CONTRACT
H3S Contract #9624 / Contract #2108**

This Personal Services Contract (this “Contract”) is entered into between **The Mental Health Association of Oregon** (“Contractor”), and Clackamas County, a political subdivision of the State of Oregon (“County”) on behalf of its Health, Housing and Human Services Department.

ARTICLE I.

- 1. Effective Date and Duration.** This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on **June 30, 2023**.
- 2. Scope of Work.** Contractor shall provide the following personal services: adult delivered suicide peer wellness services, as described in Project 7 – Zero Suicide Peer Wellness Specialist of the **RFP 2019-45 Behavioral Health Peer Delivered Services** (“Work”), as described in **Exhibit A** and **Exhibit B**, Modified Scope of Work, which are attached and hereby incorporated by reference herein.
- 3. Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed Two Hundred Sixty-three thousand and thirty-four dollars (**\$263,034.00**), for accomplishing the Work required by this Contract. Consideration rates are on a cost reimbursement basis in accordance with the Contractor’s budget in **Exhibit D**, attached and hereby incorporated by reference. County shall reimburse Contractor for true and verifiable costs accrued in performance of the Work under this Contract and in accordance with the budget in Exhibit D. County will perform an annual audit, at a time and place determined by County in its sole administrative discretion, for the purpose of reviewing the Contractor’s budget in real-time.
- 4. Invoices and Payments.** Contractor will submit a budget-line itemized monthly invoice for true and verifiable expenses by the 10th day of the month following the month Work were provided. The invoice shall include:

Contract #9624,
Service details,
Date(s) of service,
Total amount due for all Work provided during the month, and
Total amount billed to date in a separate column by Contractor prior to the current invoice.

All invoices and supporting documentation shall be sent by email or mail to:
healthcenterap@clackamas.us

Clackamas Health Centers Division
Accounts Payable
2051 Kaen Road, Suite #367
Oregon City, Oregon 97045

When submitting electronically, designate Contractor name and Contract #9624 in the subject of the email.

Payments shall be made to Contractor, within thirty (30) days, following the County’s review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above.

If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Payments shall be made in accordance with ORS 293.462 to Contractor following the County’s review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not be obligated to pay, any amount in excess of the maximum compensation amount set forth above, regardless of whether additional services have already been performed. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

5. Travel and Other Expense. Authorized: Yes No (*mileage only*)

If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: <http://www.clackamas.us/bids/terms.html>. Travel expense reimbursement is not in excess of the not to exceed consideration.

6. Contract Documents. This Contract consists of the following documents, which are listed in descending order of precedence and are attached and incorporated by reference:

- This Contract
- Exhibit A – RFP 2019-45 Behavioral Health Peer Delivered Services
- Exhibit B – Modified Scope of Work
- Exhibit C – Performance Standards
- Exhibit D – Contractor’s Proposal and Budget
- Exhibit E – QSOBAA Agreement
- Exhibit F – User Agreement for Electronic Health Records

7. Contractor and County Contacts.

Contractor	County
Administrator: Sunny Brisco Phone: 503-922-2377 Email: sbrisco@mhaoforegon.org	Administrator: Egan Danehy Phone: 503-722-6318 Email: edanehy@clackamas.us

Payment information will be reported to the Internal Revenue Service (“IRS”) under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records will subject Contractor payments to backup withholding.

ARTICLE II.

1. ACCESS TO RECORDS. Contractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor, which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Contractor shall maintain such books and records 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 Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

2. AVAILABILITY OF FUTURE FUNDS. Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding

fiscal period sufficient to continue to make payments under this Contract, as determined by the County in its sole administrative discretion.

3. **CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
4. **COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time. Contractor shall further comply with any and all terms, conditions, and other obligations as may be required by applicable State and Federal agencies providing funding for performance under this Contract, whether or not specifically referenced herein.
5. **COUNTERPARTS.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
6. **GOVERNING LAW.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, 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. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.
7. **RESPONSIBILITY FOR DAMAGES; INDEMNITY.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall Contractor settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.
8. **INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; and (B) This Contract is not intended

to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits.

- 9. INSURANCE.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. Contractor shall provide proof of said insurance and name the County as an additional insured on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us.

Required - Workers Compensation: Contractor shall comply with the workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.126.
<input checked="" type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
<input checked="" type="checkbox"/> Required – Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
<input checked="" type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage.

This policy(s) shall be primary insurance as respects to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it. Any obligation that County agree to a waiver of subrogation is hereby stricken.

- 10. LIMITATION OF LIABILITIES.** 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 provisions herein which would conflict with law are deemed inoperative to that extent. Except for liability arising under or related to Article II, Section 13 or Section 20 neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms.

- 11. NOTICES.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article 1, Section 6. If notice is sent to County, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during County's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (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.

- 12. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County.

Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Notwithstanding the above, County shall have no rights in any pre-existing Contractor intellectual property provided to County by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for County use only.

- 13. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; and (E) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 14. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Sections 1, 6, 7, 11, 13, 14, 16, 21, and 27 and all other rights and obligations which by their context are intended to survive. However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.
- 15. 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 and 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.
- 16. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract 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. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Sections 1, 7, 8, 13, 16 and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- 17. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- 18. TAX COMPLIANCE CERTIFICATION.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.

19. TERMINATIONS. This Contract may be terminated for the following reasons: (A) by mutual agreement of the parties or by the County (i) for convenience upon thirty (30) days written notice to Contractor, or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County; or (B) if contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure.

Upon receipt of written notice of termination from the County, Contractor shall immediately stop performance of the Work. Upon termination of this Contract, Contractor shall deliver to County all documents, Work Product, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the Work.

20. REMEDIES. If terminated by the County due to a breach by the Contractor, then the County shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Contractor's sole remedy is payment for the goods and services delivered and accepted by the County, less any setoff to which the County is entitled.

21. NO THIRD PARTY BENEFICIARIES. County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract 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 Contract.

22. TIME IS OF THE ESSENCE. Contractor agrees that time is of the essence in the performance this Contract.

23. FOREIGN CONTRACTOR. If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

24. FORCE MAJEURE. Neither County nor Contractor shall be held responsible for delay or default caused by events outside the County or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor 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 Contract.

25. WAIVER. The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.

26. PUBLIC CONTRACTING REQUIREMENTS. Pursuant to the public contracting requirements contained in Oregon Revised Statutes ("ORS") Chapter 279B.220 through 279B.235, Contractor shall:

- a. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
- b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the 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 the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- e. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.
- f. If the Work involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.

27. NO ATTORNEY FEES. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.

28. CONFIDENTIALITY. Contractor acknowledges that it and its employees and agents may, in the course of performing their obligations under this Contract, be exposed to or acquire information that the County desires or is required to maintain as confidential. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract, including but not limited to Personal Information (as "Personal Information" is defined in ORS 646A.602(11)), shall be deemed to be confidential information of the County ("Confidential Information"). Any reports or other documents or items (including software) which result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information.

Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor 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 purposes whatsoever (other than in the performance of this Contract), and to advise each of its employees and agents of their obligations to keep Confidential Information confidential.

Contractor agrees that, except as directed by the County, Contractor will not at any time during or after the term of this Contract, disclose, directly or indirectly, any Confidential Information to any person, and that upon termination or expiration of this Contract or the County's request, Contractor will turn over to the County all documents, papers, records and other materials in Contractor's possession which embody Confidential Information. Contractor acknowledges that breach of this Contract, including disclosure of any Confidential Information, or disclosure of other information that, at law or in good conscience or equity, ought to remain confidential, will give rise to irreparable injury to the County that cannot adequately be compensated in damages. Accordingly, the County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the County and are reasonable in scope and content.

Contractor agrees to comply with all reasonable requests by the County to ensure the confidentiality and nondisclosure of the Confidential Information, including if requested and without limitation: (a) obtaining nondisclosure agreements, in a form approved by the County, from each of Contractor's employees and agents who are performing services, and providing copies of such agreements to the County; and (b) performing criminal background checks on each of Contractor's employees and agents who are performing services, and providing a copy of the results to the County.

Contractor shall report, either orally or in writing, to the County any use or disclosure of Confidential Information not authorized by this Contract or in writing by the County, including any reasonable belief that an unauthorized individual has accessed Confidential Information. Contractor shall make the report to the County immediately upon discovery of the unauthorized disclosure, but in no event more than two (2) business days after Contractor reasonably believes there has been such unauthorized use or disclosure. Contractor's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the Confidential Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by the County.

Notwithstanding any other provision in this Contract, Contractor will be responsible for all damages, fines and corrective action (including credit monitoring services) arising from disclosure of such Confidential Information caused by a breach of its data security or the confidentiality provisions hereunder.

The provisions in this Section shall operate in addition to, and not as limitation of, the confidentiality and similar requirements set forth in the rest of the Contract, as it may otherwise be amended. Contractor's obligations under this Contract shall survive the expiration or termination of the Contract, as amended, and shall be perpetual.

29. CRIMINAL BACKGROUND CHECK REQUIREMENTS. Contractor shall be required to have criminal background checks (and in certain instances fingerprint background checks) performed on all employees, agents, or subcontractors that perform services under this Contract. Only those employees, agents, or subcontractors that have met the acceptability standards of the County may perform services under this Contract or be given access to Personal Information, Confidential Information or access to County facilities.

30. HIPAA COMPLIANCE. Subject to the U.S. Health Insurance Portability and Accountability Act (HIPAA) of 1996 and its implementing regulation, the Standard of Privacy of Individuals Identifiable Health Information at 45 C.F.R. Part 160 and 164, Subpart A and E, the County is required to enter into a Qualified Service Organization Business Associate Agreement, attached hereto as **Exhibit E**, with the Contractor prior to the commencement of any work under this Contract. Contractor acknowledges and agrees that protected health information ("PHI") disclosed by County to Contractor may only be used by or disclosed to Contractor pursuant the Business Associate Agreement or pursuant to a written consent in compliance with 42 C.F.R. Part 2, as may be amended from time to time. Contractor agrees to comply with any and all applicable privacy laws including without limitation, 42 C.F.R. Part 2.

31. FURTHER ASSURANCES. Contractor agrees to take all necessary steps, and execute and deliver any and all necessary written instruments, to perform under this Contract including, but not limited to, executing all additional documentation necessary for County to comply with applicable State or Federal funding requirements.

32. MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT,

CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT, AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

SIGNATURE PAGE FOLLOWS

EXHIBIT A
RFP #2019-45 BEHAVIORAL HEALTH PEER DELIVERED SERVICES
Issued June 11, 2019

CLARIFYING QUESTIONS #1 Issued June 27, 2019

ADDENDUM #1 Issued July 15, 2019

ADDENDUM #2 Issued July 16, 2019

EXHIBIT B
MODIFIED SCOPE OF WORK FOR PROJECT 7
Adult Peer Delivered Services – Zero Suicide Peer Wellness Specialist

3.1. INTRODUCTION

Contractor will provide peer delivered support services in the areas of mental health and substance use. The overall goal and purpose of the project is to eliminate suicide attempts and deaths among patients/clients served at Clackamas County Health System (CCHS) and raise awareness of suicide prevention in the larger community. The CCHS Zero Suicide Program is a system wide initiative to eliminate suicide attempts and deaths within its patient/client population and raise awareness of suicide prevention in the larger community. Peer Wellness Specialist will help patients/clients to navigate community resources, provide follow up and outreach to individuals at risk of suicide, and model a lifestyle of recovery and resiliency.

3.2 BACKGROUND

Effective September 2018 CCHS received a Substance Abuse and Mental Health Services Administration (SAMHSA) Grant for Zero Suicide implementation at our Health Centers and crisis clinic, and one of the identified resources is offering peer delivered services to clients on a suicide care pathway. We support a system of care that promotes a family's and individual's resiliency and recovery from mental health and substance use. CCHS believes peer support is a critical element of recovery. Peer Services supports this system by ensuring individuals are empowered and drive the process of reaching and sustaining recovery, wellness, and resilience while building an inclusive community.

3.3. DEFINITIONS

“Peer” means any individual supporting an individual or the individual's family member who has similar life experience, either as a current or former recipient of mental health or substance use services, or as a family member of an individual who is a current or former recipient of substance use or mental health services.

“Peer-Delivered Services” are community-based services and supports provided by peers and peer support specialists to individuals or family members with similar lived experience. These services are intended to support individuals and families to engage individuals in ongoing treatment and to live successfully in the community.

“Peer Support Specialist” means an individual providing peer delivered services to an individual or family member with similar life experience under the supervision of a qualified clinical supervisor and a qualified peer delivered services supervisor as resources are made available. A peer support specialist shall be certified by the Authority's Office of Equity and Inclusion as required by OAR 410-180-0300 to 0380 and be:

- (a) A self-identified individual currently or formerly receiving mental health or substance use services;
- (b) A self-identified individual in recovery from a substance use disorder who meets the abstinence requirements for recovering staff in substance use disorders treatment and recovery programs;
- (c) A self-identified individual in recovery from problem gambling; or
- (d) A person who has experience parenting a child who:
 - (A) Is a current or former recipient of mental health or substance use treatment; or
 - (B) Is facing or has faced difficulties in accessing education and health and wellness services due to a mental health or behavioral health barrier.

“Peer Support and Peer Wellness Specialist Supervision” means supervision by a qualified clinical supervisor and a qualified peer delivered services supervisor as resources are available. The supports

provided include guidance in the unique discipline of peer delivered services and the roles of peer support specialists and peer wellness specialists.

“Peer Delivered Services Supervisor” means a qualified individual, with at least one year of experience as a PSS or PWS in behavioral health treatment services, to evaluate and guide PSS and PWS program staff in the delivery of peer delivered services and supports.

“Peer Wellness Specialist” means an individual who supports an individual in identifying behavioral health service and support needs through community outreach, assisting individuals with access to available services and resources, addressing barriers to services, and providing education and information about available resources and behavioral health issues in order to reduce stigma and discrimination toward consumers of behavioral health services and to provide direct services to assist individuals in creating and maintaining recovery, health, and wellness. A peer wellness specialist shall be:

- (a) A self-identified individual currently or formerly receiving mental health services;
- (b) A self-identified individual in recovery from a substance use or gambling disorder who meets the abstinence requirements for recovering staff in substance use disorders or gambling treatment programs;
- or
- (c) A family member of an individual who is a current or former recipient of mental health or substance use or problem gambling services

3.4. SCOPE AND EXPECTATIONS FOR ALL PROJECTS

3.4.1. STAFF STANDARDS

Contractor shall complete the following for all staff:

- A successful criminal history records check through the State of Oregon Background Check Unit (BCU) compliant with ORS Chapter 181 and OAR 407-007-0000 to OAR 407-007-0370
- 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 (OIG) List of Excluded Individuals/Entities at time of hire and monthly thereafter
- Review appropriate education and academic degrees;
- Review licenses or certificates, as required;
- Review relevant work history or qualifications;
- Document and certify that the staff’s education, experience, competence, and supervision are adequate to permit the staff to perform the assigned duties.

In addition, Contractor shall ensure all staff with direct one-on-one contact with Clackamas County residents:

- Complete Oregon Health Authority approved training program for Peer Delivered Services and adherence to all requirements in the Traditional Health Worker administrative rules including, OAR 410-180-0300 to OAR 410-180-0380.

County will provide technical assistance to Contractor on exclusion process through SAM and OIG, upon which time, the County will delegate to the Contractor the responsibility of exclusion checks. County may review Contractor's adherence to exclusion checks during routine contract compliance monitoring.

Contractor shall not permit any person to provide services under this Contract 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, Contractor shall not permit any person to provide services under this Contract 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".

3.4.2. REPORTING REQUIREMENTS

Clackamas County Health System Peer Delivered Services has developed the following general outcome measures that must be reported to the County on a quarterly basis.

Training, Workshops, Support Groups:

- Number of continuing education/training programs or classes attended by Peer Support Specialists during the quarter.
- Number of workshops, support groups, or presentations provided for individuals receiving peer support services.
- Number of outreach activities conducted to inform and engage community partners and potential referral sources about the role of Peer Support Specialists and the Support Services available.
- All trainings and workshops will be communicated with and pre-approved by CCHS prior to enrollment or registration.

3.5. PROJECT SPECIFIC SCOPE AND EXPECTATIONS

3.5.7. PROJECT 7: ADULT PEER DELIVERED SERVICES – ZERO SUICIDE PEER WELLNESS SPECIALIST

Target Populations:

Individuals aged twenty-five (25) years of age and older within CCHS with special priority given to veterans and individuals with severe and persistent mental illness (SPMI). Peer Support Services will be provided to support patients through individuals with lived experience in their suicide care management plans. They will help to navigate community resources, provide follow up and outreach to individuals at risk of suicide, and model a lifestyle of recovery and resiliency.

Service Components:

Contractor will provide a plan for providing the following services/supports:

- Responsible for work with patients/clients who are on a suicide care plan and need extra support on their pathway to care.

- Follow protocols of CCHS Zero Suicide Program and meet with individuals both in person and via telephone in order to offer support and promote a recovery-oriented support system that focuses on hope, choice, personal responsibility, and self-determination.
- Engage in outcome measurement development with CCHS upon request
- Peer will collaborate with service teams including but not limited to County's three (3) primary care clinics (Beavercreek, Sunnyside and Sandy Health Clinics), three (3) behavioral health clinics (Hilltop, Stewart and Sandy Behavioral Health Clinics), and urgent walk-in clinic (Clackamas Mental Health Center).
- Support individuals with lived experience in order to coordinate treatment for their clients in their suicide care management.
- Assist individuals in building natural support systems to aid in their hope and recovery.
- Provide linkages to various community services and treatment options.
- Peer Wellness Specialists will be trained in the use and understanding of the Columbia-Suicide Severity Rating Scale (CSSR).
- Meet the state standards as required for a Peer Wellness Specialist certification.

Staffing:

- .8 FTE Peer Wellness Specialist.
- Supervision of Peer Wellness Specialist to be provided by a qualified peer supervisor provided by the contractor.

EXHIBIT C PERFORMANCE STANDARDS

A. General Performance Standards

1. Contractor represents and warrants that all staff employed or contracted by Contractor who provide services or are otherwise engaged in activities under this Contract are fully aware of and in compliance with the terms and conditions of this Contract.
2. Contractor represents and warrants that all of Contractor's employees and independent contractors providing services under this Contract 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 Standards

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 Background Check Unit, a Shared Service of the Department of Human Services and the Oregon Health Authority and compliant with ORS 181A.200 and OAR 943-007-0001 to 943-007-0501;
 - Appropriate education and academic degrees;
 - Licenses or certificates, as required; and
 - 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 Contract.

County may conduct compliance monitoring related to this Contract. Contractor shall cooperate with County in such monitoring. County shall provide Contractor twenty (20) business days written notice of any Contract 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. 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.

E. 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.

**EXHIBIT D
CONTRACTOR'S PROPOSAL AND BUDGET**

EXHIBIT E
QUALIFIED SERVICE ORGANIZATION BUSINESS ASSOCIATE AGREEMENT

This Qualified Service Organization Business Associate Agreement (“Agreement”) is entered into as of the date of the final executing signature to this Agreement (“Effective Date”) by and between **Clackamas County Health, Housing and Human Services, Health Centers Division** (“Covered Entity”) and **The Mental Health Association of Oregon** (“Business Associate”) in conformance with the Health Insurance Portability and Accountability Act of 1996 and its regulations (“HIPAA”), and Confidentiality of Substance Use Disorder Patient Records, 42 CFR Part 2 (“Confidentiality Rule”).

RECITALS

Whereas, the Covered Entity has engaged the services of the Business Associate as defined under 45 CFR §160.103 for or on behalf of the Covered Entity;

Whereas, the Covered Entity may wish to disclose Individually Identifiable Health Information to the Business Associate in the performance of services for or on behalf of the Covered Entity as described in a Services Agreement (“Services Agreement”);

Whereas, such information may be Protected Health Information (“PHI”) as defined by the HIPAA Rules promulgated in accordance with the Administrative Simplification provisions of HIPAA;

Whereas, the Parties agree to establish safeguards for the protection of such information;

Whereas, the Covered Entity and Business Associate desire to enter into this Agreement to address certain requirements under the HIPAA Rules **and** the Confidentiality Rule;

Now, therefore, the parties hereby agree as follows:

SECTION I – DEFINITIONS

- 1.1 “Breach” is any unauthorized acquisition, access, use or disclosure of Unsecured PHI, unless the Covered Entity demonstrates that there is a low probability that the PHI has been compromised. The definition of Breach excludes the following uses and disclosures:
 - 1.1.1 Unintentional access by a Covered Entity or Business Associate in good faith and within a Workforce member’s course and scope of employment or placement;
 - 1.1.2 Inadvertent one time disclosure between Covered Entity or Business Associate Workforce members; and
 - 1.1.3 The Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain the information.
- 1.2 “Covered Entity” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §160.103.
- 1.3 “Designated Record Set” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §164.501.
- 1.4 “Disclose” or “disclosure” shall have the meaning given to such terms under the Confidentiality Rule, 42 CFR §2.11.
- 1.5 “Effective Date” shall be the Effective Date of this Agreement.
- 1.6 "Electronic Protected Health Information" or "Electronic PHI" shall have the meaning given to such term at 45 CFR §160.103, limited to information of the Covered Entity that the Business Associate creates, receives, accesses, maintains or transmits in electronic media on behalf of the Covered Entity under the terms and conditions of this Agreement.
- 1.7 “Health Care Operations” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §164.501.
- 1.8 “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules codified at 45 CFR Part 160 and Part 164.

- 1.9 “Individual” shall have the meaning given to such term in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- 1.10 “Individually Identifiable Health Information” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §160.103.
- 1.11 “Program” shall have the meaning given to such term under the Confidentiality Rule, 42 CFR §2.11.
- 1.12 “Protected Health Information” or “PHI” means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an Individual; the provision of health care to an Individual; or the past, present or future payment for the provision of health care to an Individual; and (ii) that identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual, and shall have the meaning given to such term under the HIPAA Rules, 45 CFR §160.103 and §164.501.
- 1.13 “Protected Information” shall mean PHI provided by the Covered Entity to Business Associate or created, maintained, transmitted or received by Business Associate on Covered Entity’s behalf.
- 1.14 “Qualified Service Organization” shall have the meaning defined under the Confidentiality Rule, 42 CFR §2.11.
- 1.15 “Required by Law” shall have the meaning given to such phrase in 45 CFR §164.103.
- 1.16 “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- 1.17 “Security Incident” shall have the meaning given to such phrase in 45 CFR §164.304.
- 1.18 “Unsecured Protected Health Information” shall mean protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in accordance with 45 CFR §164.402.
- 1.19 Workforce means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a Covered Entity or Business Associate, is under the direct control of such Covered Entity or Business Associate, whether or not they are paid by the Covered Entity or Business Associate.

SECTION II – OBLIGATIONS AND ACTIVITIES OF THE BUSINESS ASSOCIATE

The Business Associate agrees to the following:

- 2.1 Not to use or further disclose PHI other than as permitted or required by this Agreement or as Required by Law;
- 2.2 To use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Agreement;
- 2.3 To mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by the Business Associate in violation of the requirements of this Agreement;
- 2.4 To immediately report to the Covered Entity any use or disclosure of PHI not provided for by this Agreement of which it becomes aware, including any Security Incident of which it becomes aware;
- 2.5 In accordance with 45 CFR §§164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any agent, including a subcontractor, that creates, receives, maintains, or transmits PHI on behalf of the Business Associate agrees in writing to the same restrictions, conditions and requirements that apply to the Business Associate with respect to such PHI. Notwithstanding the preceding language of this subsection, Business Associate acknowledges that PHI obtained by the Business Associate relating to individuals who may have been diagnosed as needing, or who have received, substance use disorder treatment services, diagnosis or referral for treatment shall be maintained and used only for the purposes intended under this Agreement and in conformity with all applicable provisions of the Confidentiality Rule. This information received from the Covered Entity, is protected by the Confidentiality Rule and therefore the Business Associate is specifically prohibited

- from re-disclosing such information to agents or subcontractors without specific written consent of the subject Individual;
- 2.6 To provide access, at the request of the Covered Entity, and in the time and manner designated by the Covered Entity, to PHI in a Designated Record Set, to the Covered Entity or, as directed by the Covered Entity, to the Individual or the Individual's designee as necessary to meet the Covered Entity's obligations under 45 CFR §164.524; provided, however, that this Section is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
 - 2.7 To make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of the Covered Entity or an Individual, and in the time and manner designated by the Covered Entity; provided, however, that this Section is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
 - 2.8 To make internal practices, books and records, including policies and procedures on PHI, relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of, the Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary's determining the Covered Entity's and the Business Associate's compliance with the HIPAA Rules;
 - 2.9 To document such disclosures of PHI and information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
 - 2.10 To comply with the confidentiality, disclosure and re-disclosure requirements of the Confidentiality Rule as applicable;
 - 2.11 To resist any efforts in judicial proceedings any efforts to obtain access to the PHI protected by the Confidentiality Rule except as expressly provided for in the Confidentiality Rule;
 - 2.12 To provide to the Covered Entity or an Individual, in a time and manner designated by the Covered Entity, information collected in accordance with Section 2.9 of this Agreement, to permit the Covered Entity to respond to a request by an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
 - 2.13 That if it creates, receives, maintains, or transmits any Electronic PHI on behalf of the Covered Entity, it will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI, and it will ensure that any agents (including subcontractors) to whom it provides such electronic PHI agrees to implement reasonable and appropriate security measures to protect the PHI. The Business Associate will report to the Covered Entity any Security Incident of which it becomes aware;
 - 2.14 To retain records related to the PHI hereunder for a period of six (6) years unless this Agreement is terminated prior thereto. In the event of termination of this Agreement, the provisions of Section V of this Agreement shall govern record retention, return or destruction;
 - 2.15 To promptly notify the Covered Entity of a Breach of Unsecured PHI as soon as practicable, but in no case later than 10 calendar days, after the discovery of such Breach. A Breach shall be treated as discovered as of the first day on which such Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or agent of Business Associate. The notification shall include, to the extent possible, the identification of each Individual who's Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach in addition to the information required in Section V. In addition, Business Associate shall provide the Covered Entity with any other available information that the Covered Entity is required to include in the notification to the individual under 45 CFR §164.404(c); and
 - 2.16 To the extent Business Associate is to carry out one or more of the Covered Entity's obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

SECTION III – THE PARTIES AGREE TO THE FOLLOWING PERMITTED USES AND DISCLOSURES BY THE BUSINESS ASSOCIATE:

- 3.1 The Covered Entity and the Business Associate agree that this Agreement constitutes a Qualified Service Organization Agreement as required by the Confidentiality Rule. Accordingly, information obtained by the Business Associate relating to Individuals who may have been diagnosed as needing, or who have received, substance use disorder treatment services, diagnosis or referral for treatment shall be maintained and used only for the purposes intended under this Agreement and in conformity with all applicable provisions of the Confidentiality Rule.
- 3.2 Business Associate agrees to make uses and disclosures and requests for PHI consistent with the Covered Entity’s minimum necessary policies and procedures.
- 3.3 Except as otherwise limited in this Agreement, the Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, the Covered Entity as specified in the Services Agreement, provided that such use or disclosure would not violate the Confidentiality or HIPAA Rules if done by the Covered Entity; and,
- 3.4 Except as otherwise limited in this Agreement, the Business Associate may:
 - a. **Use for management and administration.** Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate so long as such use is also permitted by the Confidentiality Rule; and,
 - b. **Disclose for management and administration.** Disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are Required by Law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached. PHI that is also subject to the Confidentiality Rule cannot be disclosed to a third party except as permitted under the Confidentiality Rule.

SECTION IV – NOTICE OF PRIVACY PRACTICES

- 4.1 If requested, the Covered Entity shall provide the Business Associate with the notice of privacy practices that the Covered Entity produces in accordance with 45 CFR §164.520, as well as any changes to such notice. The Covered Entity shall (a) provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate’s permitted or required uses and disclosures; (b) notify the Business Associate of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restrictions may affect the Business Associate’s use or disclosure of PHI; and (c) not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by the Covered Entity, except as set forth in Section 3.3 above.

SECTION V – BREACH NOTIFICATION REQUIREMENTS

- 5.1 With respect to any Breach, the Covered Entity shall notify each individual whose Unsecured PHI has been, or is reasonably believed by the Covered Entity to have been, accessed, acquired, used, or disclosed as a result of such Breach, except when law enforcement requires a delay pursuant to 45 CFR §164.412. This notice shall be:
 - a. Without unreasonable delay and in no case later than 60 calendar days after discovery of a Breach.
 - b. By notice in plain language including and to the extent possible:

- 1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - 2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - 3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
 - 4) A brief description of what the Covered Entity and/or Business Associate involved is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any further Breaches; and,
 - 5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
- c. By a method of notification that meets the requirements of 45 CFR §164.404(d).
- d. Provided notice to the media when required under 45 CFR §164.406 and to the Secretary pursuant to 45 CFR §164.408.
- 5.2. Business Associate shall promptly provide any information requested by Covered Entity to provide the information described in Section 5.1.

SECTION VI – TERM AND TERMINATION

- 6.1 **Term.** The term of this Agreement shall be effective as of the date set forth above in the first paragraph and shall terminate when all of the PHI provided by the Covered Entity to the Business Associate, or created, maintained, transmitted or received by the Business Associate on behalf of the Covered Entity, is destroyed or returned to the Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- 6.2 **Termination for Cause.** Upon the Covered Entity’s knowledge of a material breach of this Agreement by the Business Associate, the Covered Entity shall provide an opportunity for the Business Associate to cure the breach or end the violation. The Covered Entity shall terminate this Agreement and the Services Agreement if the Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity, or immediately terminate this Agreement if cure is not reasonably possible.
- If the Business Associate fails to cure a breach for which cure is reasonably possible, the Covered Entity may take action to cure the breach, including but not limited to obtaining an injunction that will prevent further improper use or disclosure of PHI. Should such action be taken, the Business Associate agrees to indemnify the Covered Entity for any costs, including court costs and attorneys’ fees, associated with curing the breach.
- Upon the Business Associate’s knowledge of a material breach of this Agreement by the Covered Entity, the Business Associate shall provide an opportunity for the Covered Entity to cure the breach or end the violation. The Business Associate shall terminate this Agreement and Services Agreement if the Covered Entity does not cure the breach or end the violation within the time specified by the Business Associate, or immediately terminate this Agreement if the Covered Entity has breached a material term of this Agreement if cure is not reasonably possible.
- 6.3 **Effect of Termination.**
- a. **Return or Destruction of PHI.** Except as provided in Section 6.3(b), upon termination of this Agreement, for any reason, the Business Associate shall return, or if agreed to by the Covered Entity, destroy all PHI received from the Covered Entity, or created, maintained or received by the Business Associate on behalf of the Covered Entity and retain no copies. This provision shall apply to PHI that is in the possession of subcontractors or agents of the Business Associate.

- b. **Return or Destruction of PHI Infeasible.** In the event that the Business Associate determines that returning or destroying PHI is infeasible, the Business Associate shall provide to the Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of the PHI is infeasible, the Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the Business Associate maintains such PHI. In addition, the Business Associate shall continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI to prevent use or disclosure of the PHI, for as long as the Business Associate retains the PHI.

SECTION VII – GENERAL PROVISIONS

- 7.1 **Regulatory references.** A reference in this Agreement to the Confidentiality Rule, HIPAA Rules or a section in the HIPAA Rules means that Rule or Section as in effect or as amended from time to time.
- 7.2 **Compliance with law.** In connection with its performance under this Agreement, Business Associate shall comply with all applicable laws, including but not limited to laws protecting the privacy of personal information about Individuals.
- 7.3 **Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time. All amendments must be in writing and signed by both Parties.
- 7.4 **Indemnification by Business Associate.** Business Associate agrees to indemnify, defend and hold harmless the Covered Entity and its commissioners, employees, directors, officers, subcontractors, agents or other members of its workforce, each of the foregoing hereinafter referred to as “Indemnified Party,” against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with Business Associate’s breach of Section II and III of this Agreement. Accordingly, on demand, Business Associate shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, fines, penalties, costs or expenses (including reasonable attorneys’ fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results for Business Associate’s breach hereunder. The obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement for any reason.
- 7.5 **Survival.** The respective rights and obligations of Business Associate under Section II of this Agreement shall survive the termination of the Services Agreement and this Agreement.
- 7.6 **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit Covered Entity to first comply with the Confidentiality Rule and second to comply with the HIPAA Rules.

Signature Page for QSOBAA Follows

SIGNATURE PAGE FOR QUALIFIED SERVICE ORGANIZATION BUSINESS ASSOCIATE AGREEMENT

The Parties hereto have duly executed this Agreement as of the Effective Date as defined here above.

Business Associate

Covered Entity

The Mental Health Association of Oregon

CLACKAMAS COUNTY

Authorized Signature

Date

Richard Swift

Health, Housing and Human Services

Date

Name / Title (Printed)

EXHIBIT F
USER AGREEMENT FOR ELECTRONIC HEALTH RECORDS

1. Purpose

This Agreement defines the roles and responsibilities of Clackamas Health System (“County”) and The Mental Health Associates of Oregon (“Contractor”) for accessing County’s Electronic Health Records.

2. Term

This Agreement will be in effect upon execution through **June 30, 2023**.

3. System Access.

County will provide The Mental Health Association of Oregon approved Users with full clinical access to the Electronic Health Record Systems (“the System”) EPIC/OCHIN and CERNER on the terms and conditions specified below.

4. Internal Guidelines.

Contractor will be responsible for maintaining its own internal scope-of-practice guidelines governing use of the System. These guidelines will specify, without limitation, the scope of authority, responsibility, and oversight of Contractor’s personnel using the System. County will not be responsible for monitoring compliance with those guidelines.

5. Definitions

- a. "Access" means the ability or the means necessary to read, communicate, or otherwise use any County Information Asset.
- b. "Client Record(s)" means any individual, applicant, or participant information, regardless of the media or source, provided by County to Contractor or exchanged between the Parties.
- c. "Incident" means the attempted or successful unauthorized Access, use, disclosure, modification, or destruction of any Network and Information System or County Information Asset including, but not limited to, unauthorized disclosure of information; failure to protect User's identification (ID); or, theft of computer equipment that uses or stores any County Information Asset.
- d. "Information Asset(s)" refers to all information provided through County, regardless of the source, which requires measures for security and privacy.
- e. "Network and Information System(s)" means County’s computer infrastructure which provides personal communications, Client Records, and other sensitive Information Assets; regional, wide area, and local networks; and the internetworking of various types of networks.
- f. “Provider” means a physician or other billable provider such as a nurse practitioner or physician's assistant.
- g. "User" means any individual authorized by County on Contractor’s behalf to Access Network and Information Systems and who has an assigned unique log-on identifier.

6. County's Responsibilities

County will:

- a. Coordinate and implement clinical access permissions into County's EHR's (Electronic Health Records) system administered by EPIC/OCHIN and CERNER for Contractor's employees working on behalf of Clackamas Health System.
- b. Provide training to the Contractor's employees working on behalf of the County. Training will take place at the County's campus facilitated by the EPIC Support Team on the use of EPIC/OCHIN and CERNER.

7. Reservation of Rights/Termination

1. Access may be terminated at any time by mutual consent of the parties.
2. Access may be terminated by either party upon delivery of 30-days written notice to the other party.
3. County may terminate Access immediately upon written notice to Contractor if Access by the Contractor is no longer needed.
4. County reserves the right to immediately suspend or revoke Access granted under this Agreement for Contractor's failure to comply with the requirements of this Agreement.
5. County reserves the right to terminate or modify Access to the Network and Information System(s) or Information Assets if there are changes or revised interpretations in federal or state laws, rules or regulations, or if either party has changes in policies that require such change.
6. Contractor agrees to provide County access to Contractor's providers, agents, contractors, subcontractors, employees, facilities, and records as necessary for County to determine:
 - 1) Contractor's compliance with the terms and conditions of this Agreement;
 - 2) Whether or not to continue to grant Access, in whole or in part, under this Agreement;
 - 3) Any additional information County may require to meet any state or federal laws, rules, or regulations regarding use and disclosure; and
 - 4) Contractor's documentation of a written security risk management plan.
7. In the event Contractor fails to abide with the above requirements, County reserves the right to immediately revoke, in whole or in part, Access granted through this Agreement.

8. Indemnity/Insurance

- a. Contractor shall defend, save, hold harmless, and indemnify County and its officers, employees, and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including attorney fees, resulting from, arising out of, or relating to the activities of Contractor or its providers, officers, employees, subcontractors, or agents under this Agreement.
- b. The parties shall be responsible exclusively with respect to their own employees, for providing employment-related benefits and deductions that are required by law, including but

not limited to federal and state income tax deductions, workers' compensation coverage, and any pension or retirement benefits contributions.

9. Access Control

- a. If required for Access, County agrees to promptly review requests and will:
 - 1) Notify Contractor of the approval or denial of its request for each User for whom Access has been requested;
 - 2) Provide any unique log-on identifier(s) required for approved Access; and
 - 3) Provide to Contractor any updates to approved inquiry processes and instructions.
- b. Contractor agrees to complete any forms as County may require for each person for whom Access is requested. The original shall be kept in a secure location, and a copy of the form shall be provided to County.
- c. No User shall access data for any purposes other than those specifically authorized under this Agreement.
- d. Except as otherwise specified or approved by County, neither the Contractor nor its User(s) shall modify, alter, delete, or destroy any Information Asset(s) or Network and Information System(s).
- e. Contractor shall immediately notify County when Contractor or its Users no longer require Access, whether due to changes in their individual's duties or changes in the Contractor's programs covered under the Agreement.

10. Confidentiality of Client Records and Information

- a. All information as to personal facts and circumstances obtained by Contractor on Individuals or in Client Records shall be treated as privileged communications, shall be held confidential, and shall not be divulged without the written consent of the Individual, their guardian or the responsible parent, when the Individual is a minor child, or as required by other terms of the Agreement. Nothing prohibits the disclosure of information in summaries, statistical, or other form, which does not identify particular Individuals.
- b. The use or disclosure of information concerning clients or Client Records shall be limited to persons directly connected with the administration of the Agreement. Confidentiality policies shall be applied to all requests from outside sources.

11. Security

- a. Contractor shall have established privacy and security measures in place that meet or exceed the standards set in laws, rules, and regulations, and that are applicable to Users regarding the safeguarding, security, and privacy of Individuals and Client Records, all Information Assets regardless of the media, and all Network and Information Systems.
- b. Contractor shall prevent any unauthorized Access to the County's Network and Information Systems by its Users and shall implement safeguards to prevent unauthorized Access.

- c. Contractor shall provide the level of security and privacy protection required in accordance with the Agreement and this Agreement is documented in a written security risk management plan. Contractor shall make its written security risk management plan available to County for review , upon request
- d. Contractor shall maintain security of equipment and establish best-practices for the proper handling, storage, and disposal of all Information Assets and Client Records Accessed, obtained, or reproduced to prevent inadvertent destruction or loss, and to provide proper disposal when the authorized use of that information ends, consistent with the record retention requirements otherwise applicable to the Agreement.

12. Compliance with Laws

- a. In performing its obligations under this agreement, Contractor, its providers, 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.
- b. In addition, the Contractor acknowledges the existence of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), PL 104-191, 45 CFR Parts 160-164, and 42 CFR Part 2, and agrees that Contractor and Contractor's agents and employees will comply with all applicable requirements of HIPAA and 42 CFR Part 2 related to the confidentiality of client records or other client identifying information. Contractor agrees that use and disclosure of Protected Health Information (PHI) and Electronic Protected Health Information (EPHI) in the performance of its obligations shall be governed by this Agreement.
- c. Contractor further agrees that it shall be committed to compliance with the standards set forth in the Privacy Rule and Security Rule as amended by the HITECH Act, and 42 CFR Part 2, as they may be amended further from time to time, in the performance of Contractor's obligations related to the Agreement, and that it shall make all subcontractors and Providers comply with the same requirements.
- d. Contractor's failure to comply with these requirements shall constitute a default under this Agreement.

13. User Responsibility/Disclosure of Information

- a. Wrongful use or disclosure of Information Assets or Client Records by Contractor or its Users may cause the immediate revocation of Access, at the sole discretion of County. County may specify a reasonable opportunity for the Contractor to cure the unauthorized use or disclosure and end the violation or County may terminate Access if Contractor does not cure the violation within the time specified by County. County may also take legal action(s) for violations of applicable regulations, rules and laws.
- b. Contractor shall immediately report any Incidents involving Access addressed in this Agreement to County. Contractor shall comply, and shall cause its Providers and subcontractors to comply, with any requirements for identifying and addressing a privacy or security Incident. This requirement applies regardless of whether the Incident was accidental or otherwise.

- c. Contractor and its Users shall comply with all federal and state laws, rules, and regulations applicable to the privacy, confidentiality, or security of the Access, including HIPAA, HITECH and 42 CFR Part 2, as well as the applicable laws governing access to the Network and Information Systems. Contractor shall have established privacy and security measures in place that meet or exceed the standards set in OAR 943-014-0300 through OAR 943-014-0320 and these applicable laws.
- d. The use and disclosure of any Access or Client Record is strictly limited to the minimum information necessary to perform the required Work.
- e. Contractor shall not make any root level changes to the Network and Information System(s).

14. Subcontracting

Contractor shall require that all Providers and subcontractors are held to the same requirements as Contractor regarding Access, including the terms and conditions of this Agreement.

15. Costs

Costs related to the acquisition of any equipment, software, data lines, or connections necessary to provide Contractor or its Users with Access are the sole responsibility of Contractor, unless otherwise agreed to by written contract or agreement entered into between the parties hereto. Each party to the Agreement will bear their own cost, if any, related to obtaining or providing Access.

16. Compliance with Epic Agreement.

Contractor's use of the System must in all respects comply with the terms and conditions of the Epic Agreement, including, without limitation, covenants relating to limiting access to authorized users, exercising independent professional judgment in providing patient care, and protecting the trade secrets and other proprietary rights of Epic. Contractor will not be permitted to copy, reverse engineer, or modify code supplied by Epic, except as permitted by OCHIN and the terms of the Epic Agreement. Contractor will be required to take certain affirmative steps identified by OCHIN to assure that Contractor's users comply with the covenants set forth in the Epic Agreement. Additionally, Contractor's use of the System must comply with the terms of any agreements between Epic and OCHIN that arise out of, amend, or relate to the Epic Agreement. County will provide a copy of the Epic Agreement to Contractor upon request.

17. Contractor's Additional Implementation Responsibilities.

Contractor has the following responsibilities in connection with implementing the System: Contractor will be responsible for any other costs or responsibilities relating to implementation of the System, including, but not limited to: (a) backfill resources for staff training or practice time during implementation or upgrades, (b) training of Contractor's personnel, and (c) staff expenses owing to new roles or responsibilities, such as implementation coordination, coordination liaison, end user training, and direct user support (application and technical).

18. Contractor's Ongoing Responsibilities.

Following onset of access, Contractor will have the following responsibilities:

- a. **Security.** Because Contractor is subject to HIPAA and 42 CFR Part 2, Contractor is also independently responsible for protecting the privacy and security of PHI or substance use disorder information contained within the System. To satisfy this responsibility, Contractor must establish, within the appropriate time frame, any privacy and security policies or procedures that are necessary to ensure that its operations satisfy the requirements of HIPAA and 42 CFR Part 2. Contractor will ensure that its policies and procedures regarding access to patient information stored in the System respect the privacy and confidentiality rights of patients and maintain the integrity of the overall System. These policies and procedures should include, but are not limited to, maintaining current user lists, limiting user access, and managing typical network security processes (such as passwords). Further, Contractor agrees to implement policies and procedures consistent with any security standards or guidelines approved by the OHCA Participants.
- b. **Additional Security Responsibilities.** In addition to any other security responsibilities of Contractor under this agreement, County will enable Contractor to set security authorities for Contractor and its personnel with respect to the System, subject to limitation by County. Contractor is not permitted to give more than two individuals the right to set those security authorities. Contractor is responsible for ensuring that all actions taken by such individuals comply with the Epic Agreement and applicable laws and regulations, and Contractor will indemnify County against any misuse of security authority.
- c. **MyChart.** MyChart (Epic's patient portal) provides patients access to health information and education in addition to scheduling and a convenient communication path to their care team. MyChart is a critical component of patient engagement and the successful use of Epic by the contractor, County, providers and patients.

19. Ownership

- a. **System.**

Epic and other third-party vendors will retain ownership of any application source code or associated written materials used in the System. OCHIN will maintain complete ownership of the Technical Infrastructure hardware, with the exception of telecommunications facilities owned by County.

- b. **Ownership of Patient Information.**

County will retain ownership of its patient information. Notwithstanding the foregoing, in order to facilitate continuity of health care and quality assessment activities, the System will utilize a master patient index ("MPI") permitting aggregation of each patient's data in a central patient record accessible by authorized users of the System. As part of this agreement, Contractor agrees to certain terms relating to the establishment of an organized health care arrangement in accordance with state and federal law (the "OHCA Terms"). Contractor agrees that continued compliance with the OHCA Terms is a condition to continued access to the System and a material obligation of Contractor under this agreement.

20. Responsibility for Use.

Customer Responsible. Certain components of the System allow County to maintain patient medical records in a computerized, digital format. The System is intended to assist with the accuracy of, and improve accessibility to, medical records. The System, however, does not determine the content of medical records. As with manually kept records, records kept using the System may contain errors, whether resulting from incorrect recording of information, software errors, or other causes. Contractor and authorized users are solely responsible for ensuring that errors that may occur in medical records kept using the System are detected and corrected, and that patient care is not compromised on account of such errors.

21. Professional Judgment.

Providers and other Permitted Users should use the system as a resource in the exercise of professional medical judgment, not as a substitute for that judgment.

22. Medical Care.

Contractor and Permitted Users are solely responsible for any medical diagnosis, treatment, and advice rendered with the assistance of the System.

23. Dispute Resolution.

Disputes initiated by either Contractor or County that arise out of Contractor's use of the System or the terms of this Contract will be resolved through the following procedures: The complaining party will send a written notice to the other party describing the basis of the dispute and stating that the complaining party is initiating the dispute resolution procedures.

The party receiving the notice will be required to respond in writing or by telephone within 15 working days of receipt.

Both parties will be required to meet and negotiate within twenty (20) working days of the date on which the initial notice of the dispute was received items that remain unresolved after negotiation become elements of a bona fide dispute.

The parties may agree to binding arbitration of a bona fide dispute, which will be held in Clackamas County with an agreed-upon arbitrator.

The parties may also exercise all available legal remedies to enforce this Agreement upon breach.

24. Limitation of County's Liability

County will only be liable to Contractor for any claim arising out of this Contract for its own gross negligence in performing under this Agreement, subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution. COUNTY WILL NOT BE LIABLE FOR INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OR LOST PROFITS OR REVENUES RESULTING FROM OR IN ANY WAY RELATED TO CONTRACTOR'S USE OF THE SYSTEM, INCLUDING CLAIMS BASED ON THE NEGLIGENCE OF COUNTY, EPIC, OCHIN, OR OTHER THIRD-PARTY VENDORS. COUNTY WILL NOT BE RESPONSIBLE FOR ERRORS OR DAMAGES CAUSED BY OR RESULTING FROM INPUT ERRORS, CHANGES BY CONTRACTOR TO ANY SOFTWARE PROVIDED BY COUNTY THROUGH OCHIN, OR COMBINATIONS OF SOFTWARE PROVIDED BY OCHIN WITH OTHER SOFTWARE.

25. Assignment

Neither Contractor nor County may assign any rights or obligations under this agreement without the other party's written consent. This agreement shall be binding upon and inure to the benefit of the parties' respective successors and permitted assigns.

26. Notices

Notices and other written communications under this agreement shall be deemed effectively given when delivered in person, by fax or email with confirmation of receipt, four days after being deposited for delivery by certified mail, return receipt requested, or one business day after being deposited for delivery by overnight courier. The original of any notice sent by fax or email shall be sent promptly by certified mail or overnight courier to the recipient. Either party may change the address at which it receives notices by giving notice of the change to the other party.

27. Force Majeure

Neither party shall be held responsible because of any delay in performance or noncompliance with any provisions of this agreement that results from an unforeseeable act, event, or omission beyond its reasonable control and without its fault or negligence, including but not limited to, negotiation deadlock, strikes, walkouts, civil commotion, riots, wars, fires, explosions, floods, earthquakes, embargoes, or acts of civil or military authorities.

28. 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.

29. Amendment.

County and Contractor may amend this Agreement at any time only by written amendment executed by both parties. Any amendment to this Agreement must be in writing and signed by both parties.



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Contract with North Santiam Paving Company for the
Clackamas River Drive Paving Package**

Purpose/Outcomes	This Contract will resurface 5.0 miles of roads. It will resurface Clackamas River Drive with asphalt.
Dollar Amount and Fiscal Impact	Contract value is \$1,883,830.00
Funding Source	215-7433-02121-424423-22302 Road Fund
Duration	Contract execution through December 31, 2020
Previous Board Action	None
Strategic Plan Alignment	This project will provide strong infrastructure and ensure safe communities by maintaining the County's existing road infrastructure.
Counsel Approval	March 17, 2020
Contact Person	Vince Hall, Project Manager 503-650-3210

Background:

The Clackamas River Drive Paving Project will resurface about 5.0 miles of Clackamas River Drive with asphalt. Clackamas River Drive is classified as a minor arterial. This contract will resurface Clackamas River Drive between the boundary of City of Oregon City and Springwater Road with asphalt.

The project work is anticipated to begin immediately following contract signing. Substantial completion will be not later than August 30, 2020, with final completion no later than December 31, 2020.

Procurement Process:

This project was advertised in accordance with ORS and LCRB Rules on January 22, 2020. Bids were opened on February 20, 2020. The County received eight (8) bids: Brix Paving, \$2,184,092.00; Granite Construction Co, \$2,283,283.00; Knife River Corporation, \$2,079,148.50; Eagle-Elsner, Inc., \$1,981,944.00; Oregon Mainline Paving, \$2,667,827.77; Kerr Contractors, \$2,367,197.00; Tapani, Inc., \$2,719,915.00; and North Santiam Paving Co., \$1,883,830.00. After review of the bids, North Santiam Paving Company was determined to be lowest responsive bidder.

Recommendation:

Staff respectfully recommends that the Board approve and sign this public improvements contract with North Santiam Paving Company for the Clackamas River Drive Paving Package.

Sincerely,

Mike Bezner
Assistant Director of Transportation

Placed on the BCC Agenda _____ by Procurement



CLACKAMAS COUNTY
PUBLIC IMPROVEMENT CONTRACT
Contract #2484

This Public Improvement Contract (the “Contract”), is made by and between the Clackamas County, a political subdivision of the State of Oregon, hereinafter called “Owner,” and **North Santiam Paving Co.**, hereinafter called the “Contractor” (collectively the “Parties”), shall become effective on the date this Contract has been signed by all the Parties and all County approvals have been obtained, whichever is later.

Project Name: **#2020-05 Clackamas River Drive Paving Package**

1. Contract Price, Contract Documents and Work.

The Contractor, in consideration of the sum of **one million eight hundred eighty-three thousand eight hundred thirty Dollars (\$1,883,830.00)** (the "Contract Price"), to be paid to the Contractor by Owner in the manner and at the time hereinafter provided, and subject to the terms and conditions provided for in the Instructions to Bidders and other Contract Documents (as defined in the Clackamas County General Conditions for Public Improvement Contracts (1/1/2020) (“General Conditions”) referenced within the Instructions to Bidders), all of which are incorporated herein by reference, hereby agrees to perform all Work described and reasonably inferred from the Contract Documents. The Contract Price is the amount contemplated by the Base Bid.

Also, the following documents are incorporated by reference in this Contract and made a part hereof:

- Notice of Contract Opportunity
- Supplemental Instructions to Bidders
- Bid Form
- Performance Bond and Payment Bond
- Supplemental General Conditions
- Payroll and Certified Statement Form
- Addenda 1 & 2
- Instructions to Bidders
- Bid Bond
- Public Improvement Contract Form
- Clackamas County General Conditions
- Prevailing Wage Rates
- Plans, Specifications and Drawings

2. Representatives.

Contractor has named Pete Sipos as its Authorized Representative to act on its behalf. Owner designates, or shall designate, its Authorized Representative as indicted below (check one):

Unless otherwise specified in the Contract Documents, the Owner designates Vince Hall as its Authorized Representative in the administration of this Contract. The above-named individual shall be the initial point of contact for matters related to Contract performance, payment, authorization, and to carry out the responsibilities of the Owner.

Name of Owner’s Authorized Representative shall be submitted by Owner in a separate writing.

3. Key Persons.

The Contractor’s personnel identified below shall be considered Key Persons and shall not be replaced during the project without the written permission of Owner, which shall not be unreasonably withheld. If the Contractor intends to substitute personnel, a request must be given to Owner at least 30 days prior to the intended time of substitution. When replacements have been approved by Owner, the Contractor shall provide a transition period of at least 10 working days during which the original and replacement personnel shall be working on the project concurrently. Once a replacement for any of these staff members is authorized, further replacement shall not occur without the written permission of Owner. The Contractor’s project staff shall consist of the following personnel:

Project Executive: Pete Sipos shall be the Contractor's project executive, and will provide oversight and guidance throughout the project term.

Project Manager: Pete Sipos shall be the Contractor's project manager and will participate in all meetings throughout the project term.

Job Superintendent: Jeff Bensing shall be the Contractor's on-site job superintendent throughout the project term.

4. Contract Dates.

COMMENCEMENT DATE: Upon Issuance of Notice to Proceed

SUBSTANTIAL COMPLETION DATE: August 22, 2020

FINAL COMPLETION DATE: December 31, 2020

Time is of the essence for this Contract. It is imperative that the Work in this Contract reach Substantial Completion and Final Completion by the above specified dates.

5. Insurance Certificates.

In accordance with Section G.3.5 of the General Conditions and item 2 of the Supplemental General Conditions, Contractor shall furnish proof of the required insurance naming Clackamas County as an additional insured. Insurance certificates may be returned with the signed Contract or may be emailed to Procurement@clackamas.us.

6. Tax Compliance.

Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

7. Confidential Information.

Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is confidential to Owner. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract shall be deemed confidential information of Owner ("Confidential Information"). Contractor agrees

to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor 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 Contract.

9. Counterparts.

This Contract may be executed in several counterparts, all of which when taken together shall constitute an agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original.

10. Integration.

All provisions of state law required to be part of this Contract, whether listed in the General or Special Conditions or otherwise, are hereby integrated and adopted herein. Contractor acknowledges the obligations thereunder and that failure to comply with such terms is a material breach of this Contract.

The Contract Documents constitute the entire agreement between the parties. There are no other understandings, agreements or representations, oral or written, not specified herein regarding this Contract. Contractor, by the signature below of its authorized representative, hereby acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.

11. Liquidated Damages

The Contractor acknowledges that the Owner will sustain damages as a result of the Contractor's failure to substantially complete the Project in accordance with the Contract Documents. These damages may include, but are not limited to delays in completion, use of the Project, and costs associated with Contract administration and use of temporary facilities.

- 11.1 Liquidated Damages shall be as follows if the actual Substantial Completion exceeds the required date of Substantial Completion:
 - 11.1.1. \$1,000.00 per Calendar day past the Substantial Completion date.

12. Compliance with Applicable Law. Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Work to be done under this Contract including, but not limited to, compliance with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default.

13. Responsibility for Taxes. Contractor is solely responsible for payment of any federal, state, or local taxes required as a result of the Contract or the Work including, but not limited, to payment of the corporate activity tax imposed under enrolled HB 3427 (2019 Oregon regular legislative session). Contractor may not include its federal, state, or local tax obligations as part of the cost to perform the Work.

In witness whereof, Clackamas County executes this Contract and the Contractor does execute the same as of the day and year first above written.

Contractor DATA:
North Santiam Paving Co.
P.O. Box 516
Stayton, Oregon 97383

Contractor CCB # 53247 Expiration Date: 04/27/2021
Oregon Business Registry # 104940-11 Entity Type: DBC State of Formation: Oregon

Payment information will be reported to the IRS under the name and taxpayer ID# provided by the Contractor. Information must be provided prior to contract approval. Information not matching IRS records could subject Contractor to 28 percent backup withholding.

North Santiam Paving Co.

Clackamas County Board of County Commissioners

Authorized Signature

Date

Chair

Date

Name / Title Printed

Recording Secretary

APPROVED AS TO FORM

County Counsel

Date

DRAFT

Approval of Previous Business Meeting Minutes:

February 6, 2020

February 13, 2020

BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING MINUTES

A complete video copy and packet including staff reports of this meeting can be viewed at

<https://www.clackamas.us/meetings/bcc/business>

Thursday, February 6, 2020 – 10:00 AM

Public Services Building

2051 Kaen Rd., Oregon City, OR 97045

PRESENT: Chair Jim Bernard
Commissioner Sonya Fischer (excused after Citizen Communication)
Commissioner Ken Humberston
Commissioner Paul Savas
Commissioner Martha Schrader

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

I. PRESENTATION (Following are items of interest to the citizens of the County)

1. Presentation Regarding Hunger in our Community and announcing the results of the 2019 H3S Food Drive
Rich Swift, Health, Housing & Human Services presented the staff report.
~Board Discussion~

II. CITIZEN COMMUNICATION

<https://www.clackamas.us/meetings/bcc/business>

1. Jim Meyers, Molalla – spoke about laminated timber, mass timber and sustainable costs.
 2. Diana Worthen, Oregon City – supports Search and Rescue.
 3. Jerry King, Portland – supports Search and Rescue.
 4. Scott Ransmeier, Lake Oswego – supports Search and Rescue.
 5. Mitchell Welch, Portland – supports Search and Rescue.
 6. Russ Lawrence, Oregon City – supports Search and Rescue.
 7. Richard Hall, Portland - supports Search and Rescue.
 8. Callie Senclek, Vancouver WA - supports Search and Rescue.
 9. Marcel Rodriguez, Portland - supports Search and Rescue.
 10. Chris Nelson, Sandy - supports Search and Rescue.
 11. Bill Stephens, Happy Valley - supports Search and Rescue.
 12. Lindsey Kuipers, Portland - supports Search and Rescue.
- ~Board Discussion~ - the Board thanked all SAR volunteers for their service.
13. Brainerd Brauer, Oregon City – Redland Road Traffic safety.
 14. Kyle Hummel, Oregon Food Bank – thanked the County for their support to the Oregon Food Bank.
- ~Board Discussion~

***Commissioner Fischer excused.**

III. PUBLIC HEARINGS

1. **Board Order No. 2020-07** for Boundary Change Proposal CL 19-008 Annexation to Clackamas County Service District No. 1
Ken Martin, Boundary Change Consultant presented the staff report.
Chair Bernard opened the public hearing and asked if anyone would like to speak.
 1. Douglas Eliason, Happy Valley – spoke in support of this proposal.Chair Bernard asked if anyone else would like to speak, seeing none he closed the public hearing and asked for a motion.

MOTION:

Commissioner Savas: I move we approve the Board Order for Boundary Change Proposal CL 19-008 Annexation to Clackamas County Service District No. 1.
Commissioner Humberston: Second.
all those in favor/opposed:
Commissioner Humberston: Aye.
Commissioner Savas: Aye.
Commissioner Schrader: Aye.
Chair Bernard: Aye – the Ayes have it, the motion carries 4-0.

2. **Board Order No. 2020-08** for Boundary Change Proposal CL 19-009 Annexation to Clackamas County Service District No. 1

Ken Martin, Boundary Change Consultant presented the staff report.
Chair Bernard asked if anyone would like to speak, seeing none he closed the public hearing and asked for a motion.

MOTION:

Commissioner Humberston: I move we approve the Board Order for Boundary Change Proposal CL 19-009 Annexation to Clackamas County Service District No. 1.
Commissioner Schrader: Second.
all those in favor/opposed:
Commissioner Humberston: Aye.
Commissioner Savas: Aye.
Commissioner Schrader: Aye.
Chair Bernard: Aye – the Ayes have it, the motion carries 4-0.

3. First Reading of **Ordinance No. 02-2020** Amending County Code Chapter 2.05, Personnel Policies and Procedures for Clackamas County Employees and Declaring an Emergency

Andrew Narus, County Counsel presented the staff report.
Chair Bernard opened the public hearing and asked if anyone would like to speak, seeing none he closed the public hearing and asked for a motion.

MOTION:

Commissioner Humberston: I move we read the Ordinance by title only.
Commissioner Schrader: Second.
all those in favor/opposed:
Commissioner Humberston: Aye.
Commissioner Savas: Aye.
Commissioner Schrader: Aye.
Chair Bernard: Aye – the Ayes have it, the motion carries 4-0.

Chair Bernard asked the Clerk to read the Ordinance by title only.

The Clerk assigned **Ordinance No. 02-2020** and read the ordinance by title only.

Chair Bernard announced the second reading will be on Thursday, February 20, 2020 at our regular scheduled Business meeting at 10 AM.

IV. CONSENT AGENDA

Chair Bernard asked the Clerk to read the consent agenda by title only, then asked for a motion.

MOTION:

Commissioner Humberston: I move we approve the consent agenda.
Commissioner Savas: Second.

all those in favor/opposed:
Commissioner Humberston: Aye.
Commissioner Savas: Aye.
Commissioner Schrader: Aye.
Chair Bernard: Aye – the Ayes have it, the motion carries 4-0.

A. Health, Housing & Human Services

1. Approval for Agreement No. 9574 an Intergovernmental Agreement between Clackamas County Health Centers Division (CCHCD) and Clackamas County Housing Authority (CCHA) for a housing development partnership – *Health Centers*
2. Approval of a Revenue Grant Agreement with Oregon Department of Education, Early Learning Division for Healthy Families Oregon – *CFCC*
3. Approval of a Local Grant Agreement Amendment No.1 with Northwest Family Services to provide Evidence-based Parenting Education Classes – *CFCC*
4. Approval of a Subrecipient Agreement with the Mental Health & Addictions Association of Oregon for Alcohol and Drug Recovery Peer Delivered Services – *Behavioral Health*
5. Approval of a Subrecipient Agreement with the Mental Health & Addictions Association of Oregon for Older Adult Peer Support Services – *Behavioral Health*

B. Department of Transportation & Development

1. Approval of an Intergovernmental Agreement with University of Oregon for an AmeriCorps Member
2. Approval of an Intergovernmental Agreement with Metro to Implement the FY 19-20 Annual Waste Reduction, Recycle at Work Program, and Commercial Food Scraps Collection Requirements

C. Business & Community Services

1. Approval of a Contract with Baker & Taylor, LLC Book and Digital Media Purchasing and Processing Services - *Procurement*

D. County Counsel

1. Approval of an Assignment of Easement Agreement with Fischer's Forest Park Property Owners' Association for Lot 27 Fischer's Forest Park

E. Technology Services

1. Approval for a Service Level Agreements between Clackamas Broadband eXchange and the City of Canby

V. WATER ENVIRONMENT SERVICES

1. Approval of an Intergovernmental Agreement with the University of Washington to model Projected Changes in Precipitation Extremes due to Climate Change
2. Approval of an Assignment of Easement Agreement with Fischer's Forest Park Property Owners' Association for Lot 27 Fischer's Forest Park

VI. COUNTY ADMINISTRATOR UPDATE

www.clackamas.us/meetings/bcc/business

VII. COMMISSIONERS COMMUNICATION

www.clackamas.us/meetings/bcc/business

MEETING ADJOURNED – 11:33 AM

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. You may also order copies from any library in Clackamas County or the Clackamas County Government Channel. <https://www.clackamas.us/meetings/bcc/business>

BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING MINUTES

A complete video copy and packet including staff reports of this meeting can be viewed at

<https://www.clackamas.us/meetings/bcc/business>

Thursday, February 13, 2020 – 10:00 AM

Public Services Building

2051 Kaen Rd., Oregon City, OR 97045

PRESENT: Chair Jim Bernard
Commissioner Sonya Fischer
Commissioner Ken Humberston
Commissioner Paul Savas
Commissioner Martha Schrader

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

I. CITIZEN COMMUNICATION

1. Jon Coney, US Census – spoke about the 2020 Census.
2. Tim Lussier, Boring – spoke against the cap and trade bill and corruption in Clackamas County.
3. Les Poole, Gladstone – should be more substance during Commissioner Communication, asked how far the County is in dept.
4. Nancy Hall, Happy Valley – spoke against the carbon tax.

II. PUBLIC HEARINGS

1. **Board Order No. 2020-05** Regarding Approval to Allow Rose Villa, Inc. to Issue Revenue Bonds in an Amount Not to Exceed \$85,000,000
Elizabeth Comfort, Finance Dept. and Andrew Naylor, County Counsel presented the staff report and introduce Carol McCoog, Legal Counsel for Rose Villa.

~Board Discussion~

Chair Bernard opened the public hearing and asked if anyone would like to speak, seeing none he closed the public hearing and asked for a motion.

MOTION:

Commissioner Humberston: I move we approve the board order allowing Rose Villa, Inc. to issue revenue Bonds in the Amount not to exceed \$85,000,000.

Commissioner Fischer: Second.

all those in favor/opposed:

Commissioner Humberston: Aye.

Commissioner Fischer: Aye.

Commissioner Savas: Aye.

Commissioner Schrader: Aye.

Chair Bernard: Aye – the Ayes have it, the motion carries 5-0.

2. **CONTINUED** (from 1-30-2020)

~~First Reading of Ordinance No. _____~~ Adding Clackamas County Code Chapter 8.10, Short-Term Rentals to the Clackamas County Code, and Amending Clackamas County Code Chapter 2.07, Compliance Hearings Officer

Martha Fritize, Planning and Nate Boderman, County Counsel presented the staff report.

~Board Discussion~ <https://www.clackamas.us/meetings/bcc/business>

Chair Bernard opened the public hearing and asked folks to come up two at a time.

<https://www.clackamas.us/meetings/bcc/business>

1. Hollis Wenzel, Sandy – spoke against this ordinance.
2. Monique Farinha, Brightwood – spoke against this ordinance.
3. Ryan Tigur, Management in Government Camp.
4. Brian Chapix, Oak Grove – needs a better process.
5. Karen Bateman, Rhododendron – asked for clarification on several issues.
6. Bruce Tong, Portland – spoke against the ordinance.
7. Jeff Ackerson, Bend – spoke against the ordinance.
8. Brenda Ackerson, Bend – spoke against the ordinance.
9. Mark Douglas, Molalla – runs a successful Airbnb – how about fee per occupant.
10. Cory Lee, Oak Grove – runs a successful Airbnb.

~Board Discussion~ <https://www.clackamas.us/meetings/bcc/business> +

Chair Bernard closed the Public hearing and continued with Board discussion
The Board decided to table this issue for more staff review and discussion.

MOTION:

Commissioner Humberston: I move we table this issue for further review and discussion.
Commissioner Savas: Second.
all those in favor/opposed:
Commissioner Humberston: Aye.
Commissioner Fischer: No.
Commissioner Savas: Aye.
Commissioner Schrader: Aye.
Chair Bernard: No – the Ayes have it, the motion carries 3-2-0.

Staff will outline comments from today and schedule an upcoming meeting for 2 hours to discuss this issue.

III. CONSENT AGENDA

Chair Bernard asked the Clerk to read the consent agenda by title only, then asked for a motion.

MOTION:

Commissioner Humberston: I move we approve the consent agenda.
Commissioner Schrader: Second.
all those in favor/opposed:
Commissioner Humberston: Aye.
Commissioner Fischer: Aye.
Commissioner Savas: Aye.
Commissioner Schrader: Aye.
Chair Bernard: Aye – the Ayes have it, the motion carries 5-0.

A. Health, Housing & Human Services

1. Approval to Purchase Six Buses, Two Category B Transit Buses from Creative Bus Sales and Four Category D Buses from Creative Bus Sales for Use by the Mt. Hood Express Transit Service and Last Mile Shuttle Transit Service - *Procurement*

B. Department of Transportation & Development

1. Authorization to Purchase One 2021 114SD Freightliner Truck with Columbia Body Manufacturing Flatbed Installed for Transportation Maintenance - *Procurement*

2. Authorization to Purchase One 2021 114SD Freightliner Truck with Vactor 2100i Combo Sewer Cleaner Installed for Transportation Maintenance - *Procurement*

C. Finance Department

1. Approval of a Contract with Umpqua Roofing Company, Inc. for the Brooks Building Re-Roof Project – *Procurement*

D. Department of Communications (C-Com)

1. Approval of the 2019 updated C-COM Member Board Charter

E. Technology Services

1. Approval of a Service Level Agreements between Clackamas Broadband eXchange and Astound Broadband, LLC for Dark Fiber Connection

IV. NORTH CLACKAMAS PARKS & RECREATION DISTRICT (NCPRD)

1. Approval of Amendment No. 1 to the Interagency Agreement between North Clackamas Parks & Recreation District and Health, Housing & Human Service, to Provide Social Services for Clackamas County Residents

V. WATER ENVIRONMENT SERVICES

1. Approval of PGE 2019 Renewable Development Fund Award to Water Environment Services Biogas Component of Water Resource Recovery Expansion Project

VI. COUNTY ADMINISTRATOR UPDATE - NONE

VII. COMMISSIONERS COMMUNICATION

<https://www.clackamas.us/meetings/bcc/business>

MEETING ADJOURNED 12:26 PM

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. You may also order copies from any library in Clackamas County or the Clackamas County Government Channel. <https://www.clackamas.us/meetings/bcc/business>



Evelyn Minor-Lawrence
Director

DEPARTMENT OF HUMAN RESOURCES
PUBLIC SERVICES BUILDING
2051 Kaen Road | Oregon City, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Contract between Clackamas County, Department of Human Resources and Cascade Centers Inc.
for the Employee Assistance Program (“EAP”) Services

Purpose/Outcomes	Approval of Employee Assistance Program Contract through 12/31/2022
Dollar Amount and Fiscal Impact	Not to exceed \$215,000.00 over the life of the Contract.
Funding Source	Departments pay \$2.50 per employee per month (PEPM) EAP fee.
Duration	July 1, 2020 through December 31, 2022
Previous Board Action	No previous action
Strategic Plan Alignment	County departments and employees will benefit from increased engagement, productivity and benefit/needs alignment as evidenced by: <ul style="list-style-type: none"> ○ 80% of employees return to work within 90 days of initial non-occupational short-term disability ○ By 2025, annual alignments of wellness programs with workforce needs The EAP is a key tool for helping employees navigate personal difficulties so they can be focused at work.
Counsel Review	Approved as to form March 11, 2020
Contact Person	Kristi Durham, Benefits Manager 503-742-5470
County Contract No.	#2557

BACKGROUND:

An EAP provides a tool for emotional well-being support for employees and families to address the inevitable issues in life. By proactively addressing issues, employees can be more engaged and productive at work.

The EAP includes 6 visits per unrelated issue per year for counseling, 24/7 unlimited phone counseling, research retrieval, financial coaching, discounts for physical well-being activities, webinars, and more.

Cascade Centers provides a strong selection of counselors. Their panel includes masters-level clinicians to help support all employees and their eligible family members, and includes clinicians with specialized training related to the needs of public safety professions and employees whose work may expose them to secondary trauma.

PROCUREMENT PROCESS:

Employee Assistance Program Services is exempt from the standard procurement process under the LCRB rule C-047-0288(10).



Evelyn Minor-Lawrence
Director

DEPARTMENT OF HUMAN RESOURCES
PUBLIC SERVICES BUILDING
2051 Kaen Road | Oregon City, OR 97045

RECOMMENDATION:

Staff respectfully recommends the Board of County Commissioners approve the contract with Cascade Centers Employee Assistance Program.

Respectfully submitted,

Evelyn Minor-Lawrence, Director

Placed on the Agenda of _____ by the Procurement Division

Cascade Centers Subscription Agreement

This Subscription and License Agreement (“Agreement”), effective as of **July 1, 2020** (“Effective Date”), is between Cascade Centers Inc., an Oregon corporation, located at 7180 SW Fir Loop Suite 100, Portland, Oregon, 97223 (“Cascade Centers”) and Clackamas County, a political subdivision of the State of Oregon (“Customer” or “Employer”) (each a “Party” and collectively, the “Parties”).

This Agreement governs the provision of certain Employee Assistance Program services offered by Cascade (the “Service” or “Services”) to Customer and sets forth the terms and conditions under which those Services will be delivered.

This Agreement applies to Customer and Customer’s employees’ and eligible family member’s access to, and use of, all or part of any service of Cascade Centers.

AGREEMENT

In consideration of the mutual covenants and promises contained herein, and of other good and valid consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Services

Cascade Centers shall provide the Services listed on **Exhibit A** to Customer. Customer may opt for Additional Services as described in Exhibit A by executing an additional Order Form.

2. Term of Subscription

This Agreement will commence upon the Effective Date of **July 1, 2020** and continue for the 30 month initial term through **December 31, 2022** unless this Agreement is terminated earlier in accordance with the terms of this Agreement.

3. Fees

The subscription fees for the Term shall be calculated at the rates listed in **Exhibit A**, per employee per month (the “Subscription Fees”). Customer agrees to pay Cascade, from available an authorized funds, a sum not to exceed **\$215,000.00** for the Subscription Fees during the term of this Agreement.

4. Rate Guarantee

No later than ninety (90) days prior to the Agreement anniversary date, Cascade will provide Customer with the PEPM rate and supplemental fees applicable to the next renewal term. If Customer agrees to the PEPM rate and supplemental fees, the Parties may extend this Agreement for an additional one (1) year term by execution of an amendment to this Agreement. Cascade may not increase Subscription Fees nor decrease services during the term of this agreement.

5. Renewals

Cascade reviews the contract performance annually. If at the time of evaluation, the annualized utilization fluctuates above 12% or below 3%, Cascade and Customer may enter into discussion and reach agreement on new rates for provided EAP services. If the Parties agree to new rates, the Parties will execute an amendment to this Agreement. Such rate adjustments will apply to the billing cycle following execution of an amendment detailing the new rate structure. If the Parties are unable to agree to amended rates for provided EAP services, this Agreement will terminate.

6. Payments

Cascade Centers shall bill Customer for the Subscription Fees on a monthly basis. Unless otherwise agreed to in writing by the Parties, Customer will pay all invoiced fees within sixty (60) days of receipt of the applicable invoice.

7. Customer Commitment

Customer recognizes that the success and effectiveness of the Employee Assistance Program requires high program visibility and support throughout all organizational levels. Customer agrees to coordinate with Cascade Centers to promote the EAP to Customer employees.

Customer agrees to assist Cascade Centers in the performance of services as follows:

- a. Designate employee who will act as liaison with Cascade Centers
- b. Provide Cascade Centers with a current total number of employees eligible for EAP services on a monthly basis.
- c. To give prompt notice to Cascade Centers whenever Employer observes or otherwise becomes aware of any deficiency in the proposed delivery of services.

- d. To distribute EAP promotional materials and schedule orientation sessions/supervisory training as appropriate.
- e. To provide Cascade Centers with current health plan benefit information annually or as changes occur.

8. Suspension of Services

Cascade reserves the right to suspend or terminate access to services provided by third-party vendors upon sixty (60) days' written notice if, in Cascade's judgement, such services cease to be available or commercially reasonable terms from third party vendors. If Cascade elects to suspend or terminate any such services, the remaining provisions of this Agreement with remain in full force and effect, except that Cascade will adjust its Fees prorate to reflect the suspension or termination of these services.

9. Termination

This Agreement shall continue in effect until terminated as set forth herein. This Agreement may be terminated (a) by Cascade Centers, if Customer fails to pay Subscription fees when due; or (b) by Customer, without cause, on sixty (60) days' written notice. Cascade Centers shall have the right to recover all direct damages resulting from any breach by End User of this Agreement, including, without limitation, all unpaid fees under Section 3 (Fees) and Section 4 (Payments). End Customer's payment obligations under this Agreement are non- cancellable and non-refundable.

10. User Eligibility

Eligible employees and family members are those persons eligible for EAP benefits under Customer Employment policy.

11. Limited License

Unless otherwise indicated, the Services and all content and other materials therein, including, without limitation, the Cascade Centers trademark, logo and all designs, text, graphics, pictures, information, data, software, sound files, other files and the selection and arrangement thereof (collectively, "Materials") are the proprietary property of Cascade Centers are protected by intellectual property laws.

Upon acceptance of the Terms of Use, Privacy Policy, and compliance with all of the terms and conditions stated herein, Cascade Centers hereby grants Customer and Users a non-exclusive, non- transferable, and non-sub-licensable limited license for the term of this Agreement to use the Services and Materials. Customer will promptly discontinue

the display or use of any Materials to change the manner in which a Material is displayed or used when requested by Cascade Centers. Other than the express licenses granted by this Agreement, Cascade Centers grants no right or license to Customer, by implication, estoppel or otherwise, to the Materials or any Intellectual Property Rights of Cascade Centers.

Such license is subject to this Agreement and the Terms of Use and does not include: (a) any resale or commercial use of the Services; (b) modifying or otherwise making any derivative uses of the Services and Materials, or any portion thereof; (c) use of any data mining, robots or similar data gathering or extraction methods; (d) downloading (other than the page caching) of any portion of the Services, the Site Materials or any information contained therein, except as expressly permitted on the Services; or (e) any use of the Services or the Materials other than for its intended purpose. Any use of the Services or Materials other than as specifically authorized herein, without the prior written permission of Cascade Centers, is strictly prohibited and will terminate the license granted herein. Such unauthorized use may also violate applicable laws, including, without limitation, copyright and trademark laws and applicable communications regulations and statutes. Unless explicitly stated herein, nothing in this Agreement or the Terms of Use shall be construed as conferring in any manner, whether by implication, estoppel or otherwise, any title or ownership of, or exclusive use-rights to, any intellectual property or other right and any goodwill associated therewith.

12. Intellectual Property

Customer acknowledges that the Services and any copies that Customer and/or Users are authorized by Cascade Centers to make are the intellectual property of Cascade Centers. Cascade Centers warrants that it owns, controls, or otherwise has full rights to use all software utilized in connection with providing the Services. With regard to Cascade Centers proprietary elements of the structure, organization and code of the system used to provide the Services, such elements are the valuable intellectual property and confidential information of Cascade Centers and are protected by copyright laws, including without limitation United States Copyright Law, international treaty provisions and applicable laws in the country in which it is being used. With regard to the proprietary elements of Cascade Centers system, Customer acknowledges that Cascade Centers retains the ownership of all patent rights, copyrights, trade secrets, trademarks and other intellectual property rights to those elements as they are used in connection with the Services.

13. Trademark Information

Cascade Centers and the Cascade Centers logo are trademarks of Cascade Centers. Other product or company names referred to on the Services may be trademarks of their respective owners. Customer may not use any trademark, service mark, domain name, logo, company name, trade name or indicia of origin of Cascade Centers or any third party without permission from the owner of the applicable trademark, service mark, domain name, logo, company name, trade name or indicia of origin.

14. Confidentiality

Health Information and Protected Health Information.

Cascade Centers agrees to protect the confidentiality of participants and their individually identifiable health information ("Protected Health Information" as defined in 45 CFR §164.501) in accordance with the requirements of state and federal laws, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA). All records of participants are and will remain the property of Cascade Centers.

Both Cascade Centers and Customer shall treat individually identifiable health information as confidential and will take reasonable precautions to safeguard the privacy, security, and confidentiality of all Protected Health Information and other such individually identifiable health information.

15. WARRANTY DISCLAIMER

EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, THE PARTIES UNDERSTAND AND AGREE THAT THE SERVICES PROVIDED IN CONNECTION WITH THIS AGREEMENT ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. CASCADE CENTERS MAKES COMMERCIALY REASONABLE EFFORTS TO TRY TO KEEP THE SERVICE UP AND RUNNING, AND SAFE, BUT CUSTOMER USES IT AT CUSTOMER'S OWN RISK. CASCADE CENTERS PROVIDES THE SERVICE WITHOUT ANY REPRESENTATION OR GUARANTY THAT THE SERVICE WILL BE SAFE OR SECURE. CASCADE CENTERS IS NOT RESPONSIBLE FOR THE ACTIONS, CONTENT, INFORMATION, OR DATA OF THIRD PARTIES, AND CUSTOMER RELEASES CASCADE CENTERS, ITS DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS FROM ANY CLAIMS AND DAMAGES, KNOWN AND

UNKNOWN, ARISING OUT OF OR IN ANY WAY CONNECTED WITH ANY SUCH CLAIM THAT INVOLVES THIRD PARTIES.

16. Limitation of Liability

Cascade Centers and its officers, directors, employees, shareholders or agents shall not be liable for any indirect, punitive or consequential damages, or any other damages of any kind, including but not limited to loss of income, profits, goodwill, data, contracts, use of money, or loss or damage arising from or connected in any way to business interruption, whether in tort (including without limitation negligence), contract or otherwise, arising out of or in connection with the use of or inability to use the Services, the content or the materials contained in or accessed through the Services, including without limitation any damages caused by or resulting from reliance by a User on any information obtained from Cascade Centers, or that result from mistakes, omissions, interruptions, deletion of files or email, errors, defects, viruses, delays in operation or transmission or any failure of performance, whether or not resulting from acts of God, communications failure, theft, destruction or unauthorized access to Cascade Centers' records, programs or services. Except for claims arising from property damage, bodily injury, or breach of I Cascade Center's confidentiality obligations, including a data breach, the aggregate liability of Cascade Centers or Customer, whether in contract, warranty, tort (including negligence, whether active, passive or imputed), product liability, strict liability or other theory, arising out of or relating to the use of or inability to use the Services shall not exceed any compensation Customer pays to Cascade Centers for access to or use of the Services during the six (6) month period immediately preceding the events giving rise to the damages. Some jurisdictions do not allow the limitation of liability in contracts with consumers, so some or all of these limitations of liability may not apply to Customer.

17. Limited Liability and Warranties

Cascade warrants that it and its third-party vendors will make every effort to ensure the accuracy of the information or the appropriateness of any service or product provided to Customer's employees. Referrals given by Cascade to Customer's employees for elder or child care, legal or financial consultation services or other community services are not endorsements or recommendations for the referred programs or providers. The responsibility for selecting and engaging such providers lies solely

with the employee. Vendors and such other providers are not and shall not be deemed agents of Cascade or Employer.

18. Indemnification

Cascade Centers shall save, defend, indemnify, and hold harmless the Customer, and their officers, agents, employees, elected officials, members from all claims, suits, and actions of any nature resulting from or arising out of the negligent acts or omissions of Cascade Centers or its subcontractors, officers, agents, or employees acting under this Agreement. To the extent permitted by Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 to 30.300), Customer shall save, defend, indemnify, and hold harmless Cascade Centers, and their officers, agents, employees, and members from all claims, suits, and actions of any nature resulting from or arising out of the negligent acts or omissions of Contractor or its subcontractors, officers, agents, or employees acting under this Agreement.

19. Publicity

Cascade Centers may identify Customer as a client of Cascade Centers in marketing materials.

20. Compliance

Customer and Cascade Centers shall comply with all applicable laws in the administration of this Agreement and the operation of the employee assistance program provided by Cascade Centers for Customer, including but not limited to the Americans with Disabilities Act, the Health Insurance Portability and Accountability Act (HIPAA), the Genetic Information Nondiscrimination Act, the Health Information Technology for Economic and Clinical Health (HITECH) Act, and any and all applicable laws.

Customer agrees to be solely responsible and financially liable for any non-compliant messages sent pursuant to this Agreement. Subject to the limits of the Oregon Constitution and the Oregon Tort Claim Act, Customer agrees to defend and indemnify Cascade Centers for any claim of an alleged violation of the regulations promulgated thereunder, or any state laws covering the same subject-matter that relates to any communication made by Customer relating to Cascade Centers or this Agreement.

21. Governing Law; Venue

Access to and use of the Services and this Agreement are governed by U.S. federal law and/or the laws of the State of Oregon, without resort to conflict of law provisions.

22. Injunctive Relief

The parties acknowledge that the Services and each party's

Confidential Information are unique property, and the unauthorized use thereof may cause the injured Party irreparable harm that may not be adequately compensated by monetary damages. Accordingly, the Parties agree that the injured Party will, in addition to other remedies available to it at law or in equity, be entitled to seek injunctive relief to enforce the terms of this Agreement, including to prevent any actual or threatened unauthorized use or sublicensing of each Party's Confidential Information, the Services, or any information or data contained therein.

23. Notices and Assignment

All notices hereunder must be in writing and sent by hand delivery; or by postal service, postage prepaid; or by expedited mail courier service; or by electronic mail (e-mail); or by facsimile transmission, to the addresses listed below. Notices are deemed received and effective as follows: If hand-delivered, upon delivery; if sent by e-mail or facsimile transmission, upon sending; if mailed, upon the earlier of (i) receipt or (ii) three days after being deposited in the mail. If the addressee provided for below rejects or otherwise refuses to accept the notice, or if the notice cannot be delivered because of a change in address for which no notice was appropriately given, then notice is effective upon the rejection, refusal or inability to deliver. Either Party may change its notice address by giving written notice to the other Party in a manner prescribed above.

The terms of this Agreement shall be binding on the Parties, and all successors to the foregoing who take their rights hereunder. Neither Party will assign, transfer or delegate its rights or obligations under this Agreement (in whole or in part) without the other Party's prior written consent except pursuant to a transfer of all or substantially all of such party's business and assets, whether by merger, sale of assets, sale of stock, or otherwise. Any attempted assignment, transfer or delegation in violation of the foregoing shall be null and void.

24. Independent Contractors

Each Party shall act at all times as an independent contractor, and the Agreement shall not establish any fiduciary relationship or other relationship of partnership, joint venture, employment, franchise or agency between them. Neither Party shall have the authority to enter into any commitments on behalf of or otherwise bind the other Party without the express written consent of the other Party.

25. All Amendments in Writing

No variation, waiver, modification or amendment of this Agreement shall be binding upon either Party unless in writing executed by the duly authorized representatives of both Parties. This Agreement may not be supplemented or modified by course of dealing or performance. The waiver or

failure of either Party to exercise any right provided for herein shall not be deemed a waiver of any further right hereunder.

26. Severability

If any provision of this Agreement shall be deemed unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from this Agreement and shall not affect the validity and enforceability of any remaining provisions.

27. Taxes.

Each Party shall bear sole responsibility for their own tax liability including, but not limited to, sales and use taxes and all taxes, assessments, and other ad valorem levies on that Party's owned property.

28. Additional Terms.

Cascade Centers and Customer agree that the Additional Terms listed on **Exhibit A**, and **Exhibit B** (Clackamas County Governmental Addendum), shall apply to this Agreement.

29. General

This Agreement may be executed in two or more identical counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute the Agreement when a duly authorized representative of each Party has signed the counterpart. Facsimile or electronic signatures will be deemed original signatures for all purposes under this Agreement.

By signature below, Cascade Centers and Customer have each caused this Agreement to be executed by their duly authorized representative as of the Effective Date and such execution evidences each

Party's acceptance of and agreement with the terms and conditions set forth herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized

CASCADE CENTERS INC.

By _____

Name Anthony Brown

Title Vice President

Date: _____

CLACKAMAS COUNTY

Chair

Recording Secretary

Date

Approved as to Form:

County Counsel

Exhibit A

Cascade EAP Services Included	Cost
<p>Diagnosis and Treatment Planning: Up to six paid sessions per unrelated incident for each employee/family unit.</p> <p>24/7/365 crisis telephone coverage: Staffed by professional counselors.</p> <p>Promotional Materials: Printed materials include brochures, wallet cards, and posters with tear offs. Electronic materials include newsletter and flyers.</p> <p>EAP services:</p> <ul style="list-style-type: none"> <input type="checkbox"/> “The Line,” 24-hour anonymous advice line <input type="checkbox"/> Tax Resolution Assistance <input type="checkbox"/> Online Legal Resource Center <input type="checkbox"/> Career Development Services <input type="checkbox"/> <i>Text Connect</i> <input type="checkbox"/> Live Instant Chat <input type="checkbox"/> Life and Parent Coaching <input type="checkbox"/> Gym Membership Discounts <input type="checkbox"/> <i>E-Support</i> – Live online virtual sessions through secure video or chat <input type="checkbox"/> Discounted Pet Insurance <p>Reporting: Online utilization reporting and annual summary.</p> <p>Unlimited telephone management consultation with an EAP representative.</p> <p>Unlimited management referrals with follow-up to employer as needed.</p> <p>Work/Family/Life Balance Services: child and eldercare, legal, financial, identity theft and concierge resource retrieval, with reporting within 72 hours of initial call.</p> <ul style="list-style-type: none"> <input type="checkbox"/> <i>Legal/Mediation:</i> Each covered member is eligible for one (1) initial 30-minute office or telephone consultation per separate legal/mediation matter (limit three per year). Discount of 25% from the attorney’s/mediators normal hourly rate thereafter. <input type="checkbox"/> <i>Financial:</i> Each employee is eligible to receive telephonic financial coaching from certified financial consultants once per year. In the event the employee continues beyond the initial free 30-day period, subsequent months are paid by the employee at a monthly fee. <input type="checkbox"/> <i>Identity Theft Services:</i> 60-minute free consultation with a highly trained <i>Fraud Resolution Specialist™ (FRS)</i>. <input type="checkbox"/> <i>Free Simple Will Kit:</i> Cascade will send a Will Kit Questionnaire directly to members, and then connects members with an attorney for review and preparation of a Simple Will. Additional estate planning services are billed with a preferred rate reduction of 25% from the attorney’s normal hourly rate. <p>Cascade Personal Advantage: Interactive <i>EAP</i> Website.</p> <p>Home Ownership Program: Assistance and discounts on services associated with selling, buying, and refinancing a home.</p>	<p>7/1/20-12/31/20 \$2.60 PEPM for Active Employees</p> <p>\$2.50 PEPM for Retired Employees and COBRA members</p> <p>1/1/21-12/31/21 \$2.66 PEPM</p> <p>1/1/22-12/31/22 \$2.66 PEPM</p>

LifeBalance Wellness Program: Access to services in areas such as fitness, weight management, and stress reduction to help employees improve their overall health.	
<p>On-site EAP Services*: Included (ten) hours can be used for</p> <ul style="list-style-type: none"> • One-Hour EAP Seminars • Benefit Fairs and Open Enrollment Meetings • Employee EAP Orientations • Supervisor EAP Orientations <p>Additional EAP Services*: as needed</p> <ul style="list-style-type: none"> • Group Critical Incident Stress Debriefing: Provided 48-72 hours following a traumatic event. Includes 24/7 consultation services to management pre, post and during. 	
Substance Abuse Professional (SAP) Evaluation	\$550.00 per case

Additional Services Available	Cost
Any additional on-site EAP services beyond the allotted annual hours will be billed at	\$250.00 per hour, \$95.00 per hour travel
On-Site Legal/Financial Seminars: Specialized training facilitated by subject matter expert.	\$450.00 per seminar
On-site Organizational Development: Teambuilding, conflict resolution, and other specialized training.	\$315.00 per hour \$95.00 per hour travel
First Responder Services: Cascade will provide on-site crisis counselors within 2 – 24 hours of notification of a traumatic event. Services include informal outreach, check-in, supportive listening, problem-solving for immediate needs, assessment of mental / emotional health, and make recommendations as needed. Cascade will also conduct phone calls as needed to ascertain mental / emotional needs for those employee(s) wishing additional EAP check-ins. Face-to-face counseling or other support services will be arranged as needed.	\$300.00 per hour \$200.00 per hour travel
On-Site Individual Counseling/Grief Support: Formal on-site counseling is available.	Mon – Fri 8:00 am to 5:00 pm \$225.00 per hour \$95.00 per hour travel All other hours \$300.00 per hour \$95.00 per hour travel
Executive Coaching: Individualized assessment, 5 one-hour sessions, access to Executive Coach between sessions via email and telephone. If travel is requested, there is an additional fee.	\$1,700.00 Additional sessions beyond the initial package are \$315.00/hour. Travel \$95.00/hour.

***Notes:**

- A minimum attendance of ten employees for Orientations and EAP Seminars are required.
- A minimum attendance of five employees for CISD are required.
- On-site hours not utilized one year may not be carried over into the following year.
- A cancelation fee will apply for on-site services canceled within 24 hours of the scheduled event.

**EXHIBIT B
CLACKAMAS COUNTY
GOVERNMENTAL CONTRACTING ADDENDUM
Contract #2557**

This Oregon Governmental Contracting Addendum (“Addendum”) is entered into by Clackamas County, a political subdivision of the State of Oregon (“County”), on behalf of its Human Resources department and **Cascade Centers, Inc.** (“Contractor”). This Addendum shall be attached to, and incorporated into, the *Cascade Centers Subscription Agreement for Employee Assistance Program Services* (“Vendor Agreement”). As used below, "Contract" means this Addendum and the Vendor Agreement. To the extent there is any conflict between the Addendum and the Vendor Agreement, the terms of this Addendum shall control.

- A. Term.** This Contract shall become effective **July 1, 2020** and upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on **December 31, 2022**.
- B. County Contract Administrator.** The County Contract Administrator for this Contract is **Kristi Durham**.
- C. Invoices and Payments.** Invoices shall be submitted to: Tamra Dickinson, 503-742-5486 or email: tamradic@clackamas.us.

Payment and late fees shall only be in accordance with ORS 293.462. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor.

Per **Exhibit A** of the Cascade Centers Subscription Agreement for Employee Assistance Program Services, subscription fees are outlined per year as *Per Employee Per Month* (“PEPM”), and other additional services are outlined in the schedule of services. The total Contract Compensation shall not exceed **\$215,000.00** over the life of this Contract.

- D. Insurance.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. Contractor shall provide proof of said insurance and name the County as an additional insured on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us. —

Required - Workers Compensation: Contractor shall comply with the workers’ compensation requirements in ORS 656.017, unless exempt under ORS 656.126.
<input checked="" type="checkbox"/> Required – Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
<input checked="" type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
<input checked="" type="checkbox"/> Cyber Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence for network security (including data breach), privacy, interruption of business, media liability, and errors and omissions.
<input type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage.

The insurance described in this section shall not be cancelled or materially changed without Contractor providing at least sixty (60) days written notice to the County. This policy(s) shall be primary insurance as respects to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it. Any obligation that County agree to a waiver of subrogation is hereby stricken.

- E. Debt Limitation.** The 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 provisions herein which would conflict with law are deemed inoperative to that extent.
- F. Public Contracting Requirements.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes (“ORS”) Chapter 279B.220 through 279B.235, Contractor shall:
1. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
 2. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
 3. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.

Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
 4. As applicable, Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.
- G. Governing Law; Venue.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.
- H. Termination.** This Contract may be terminated by mutual agreement of the parties or by the County for one of the following reasons: (i) for convenience upon thirty (30) days written notice to Contractor and, upon receipt of the written notice, Contractor shall stop performance, and County shall pay Contractor for the goods or services delivered and accepted; (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County; (iii) if Contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure.
- I. Compliance.** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time. This includes, but is not limited to: (i) Titles VI and VII of Civil Rights Act of 1964; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990; (iv) Executive Order 11246; (v) The Age Discrimination in Employment Act of 1967; (vi) the Health Insurance Portability and Accountability Act of 1996; the Age Discrimination Acts of 1967 and 1975; (vii) The Vietnam Era Veterans’ Readjustment Assistance Act of 1974; (viii) ORS Chapter 659; (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; (x) all federal and state laws governing the handling, processing, packaging, storage, labeling, and delivery of food products; (xi) all regulations and administrative rules established pursuant to the foregoing laws; and (xii) County Local Contract Review Board Rules, containing language required to be in all public contracts, which is specifically incorporated by reference as if set forth herein.
- J. Tax Compliance.** Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.
- K. Indemnification.** Contractor agrees to indemnify, hold harmless and defend the County, its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the

investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of Contractor or Contractor's employees or agents. Any obligation of the County to indemnify, hold harmless and defend Contractor, its officers, elected officials, agents and employees, or any other indemnitee, shall only be to the extent provided by Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300) from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based on damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the County or the County's employee or agents.

- L. Dispute Resolution.** No attorney fees shall be paid for or awarded to either party in the course of any dispute, indemnification, or other recovery. It is the intent of the parties that each shall bear the costs of its own legal counsel. Any requirements contained in this Contract waiving a right to a jury trial or requiring binding arbitration are void.
- M. Records.** Contractor shall maintain all accounting records relating to this Contract according to GAAP and any other records relating to Contractor's performance ("Records") for six (6) years from termination or as otherwise required. Contractor shall grant County, the federal government, and their duly authorized representatives access to the Records, including reviewing, auditing, copying, and making transcripts. Any documents that are requested to be maintained as confidential by either party shall only be maintained as confidential to the extent permitted by the Oregon Public Records Law ORS 192.
- N. Subcontractors.** Contractor shall ensure that its subcontractors, if any, comply with the requirements of this Addendum.
- O. Counterparts.** This Addendum may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.
- P. Waiver.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.

By their signatures below, the parties to this Addendum agree to the terms, conditions, and content expressed herein.

Cascade Centers, Inc.

Clackamas County

Authorized Signature Date

Chair

Name/Title (Printed)

Recording Secretary

124898-11 DBC / Oregon
Oregon Business Registry

Date

Approved As To Form:

Clackamas County Counsel Date



Dave Cummings
Chief Information Officer

Technology Services

121 Library Court Oregon City, OR 97045

March 26, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval to add 19 additional redundant fiber connections to the Service Level Agreement
between Clackamas Broadband eXchange and the North Clackamas School District

Purpose/Outcomes	CBX is looking for approval to add 19 additional dark fiber connections with the North Clackamas School District to provide redundancy to all remaining schools.
Dollar Amount and Fiscal Impact	North Clackamas School District will pay a non-recurring fee of \$248,620.00 for the new fiber construction. The North Clackamas School District will pay a recurring lease fee of \$58,140.00 annually for the 19 new dark fiber connections.
Funding Source	The funding source for the expansion of the CBX fiber network will be contributed from the CBX budget and then reimbursed by the North Clackamas School District.
Duration	Effective upon signature by the board the SLA is effective until June 30, 2027.
Previous Board Action	Board previously approved CBX to build and maintain dark fiber connections for the North Clackamas School District.
Strategic Plan Alignment	<ol style="list-style-type: none">1. Build a strong infrastructure.2. This item follows the Board's Key Initiatives of making high speed internet available throughout the County.
Counsel Review	Andrew Naylor, March 2, 2020
Contact Person	Dave Devore (503)723-4996
Contract No.	N/A

BACKGROUND:

CBX is proposing to build new redundant fiber laterals to extend the CBX network so that 19 new dark fiber connections can be made for the North Clackamas School District. These 19 new connections will provide a redundant path to ensure no downtime for the schools.

This amendment agreement has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff respectfully recommends approval for this Service Level Agreement (SLA). This SLA will allow CBX to provide fast effective redundant fiber connectivity to the North Clackamas School District at an affordable cost. Staff further recommends the Board delegate authority to the Technology Services Director to sign agreements necessary in the performance of this agreement

Sincerely,

Dave Cummings
CIO Technology Services

Clackamas County

FIBER OPTIC SERVICE LEVEL AGREEMENT

North Clackamas School District
(Customer Name)

1. Recitals

WHEREAS, Clackamas County (County) desires to provide to North Clackamas School District (Customer) the services set forth in this Agreement (the "Services"), between the specified Customer sites listed in Appendix A, and at the price contained in Appendix A; and

WHEREAS, Customer desires to use the Services; and

WHEREAS, the Parties desire to set forth herein their respective rights and obligations with respect to the provision of Services,

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and promises set forth herein, intending to be legally bound, the Parties agree as follows.

2. Fiber Optic Network Description

County will provide Customer with point-to-point single mode fiber optic network connectivity, including a termination panel for the fiber optic cables, at each Customer site on a path designated by the County.

3. Service Description

Services provided to Customer by County are physical connectivity of one (or more) strands of optical fiber ("Fiber"), between sites specifically identified in Appendix A for the exclusive use of the Customer's internal communication needs. Each site listed in Appendix A will have a single mode fiber termination. The Fiber is and shall remain property of the County.

4. Construction and Installation Requirements

- a. County, when installing Fiber on the property of Customer, shall do so in a neat and professional manner. Routing and location of these cables shall be mutually agreed upon between the parties.
- b. Customer shall secure any easements, leases, permits or other agreements necessary to allow County to use existing pathways to, into and within each site to the demarcation point for service. Customer shall provide a path for the Fiber from the point of entry into the site to the termination panel that complies with all applicable building, electrical, fire and related codes.

- c. Subject to the terms of this Agreement, and at no cost to County, Customer shall provide adequate environmentally controlled space and electricity required for installation, operation, and maintenance of the Fiber used to provision the service within each site.
- d. Customer shall provide a clean, secure, relatively dry and cool location (consistent with environmental requirements for fiber optic network connectivity equipment) at each of its sites for necessary equipment, as determined by the County in its sole discretion.
- e. Customer will provide or arrange for County and its employees, agents, lessees, officers and its authorized vendors, upon reasonable notice, to have ingress and egress into and out of Customer properties and buildings in connection with the provision of Service.
- f. If the presence of asbestos or other hazardous materials exists or is detected, Customer must have such hazardous materials removed immediately at Customer's expense or notify County to install the applicable portion of the Fiber in areas of the site that do not contain hazardous material. Any additional expense incurred as a result of encountering hazardous materials, including but not limited to any additional equipment that may be required, shall be paid by Customer.
- g. County has no obligation to install, operate, or maintain Customer-provided facilities or equipment.
- h. County shall construct Fiber into each Customer building enumerated herein; splice fiber into existing County fiber optic resources; terminate County's optical fiber in each Customer building; test and certify appropriate Fiber performance at each Customer location; and provide the appropriate fiber patch panel ("hand-off's") at each location for Customer utilization. Test results for physical connection will be made available to Customer upon request.

5. Term of Agreement

Upon completion of installation and connection of the necessary facilities and equipment to provide service herein, County shall then certify and notify Customer in writing that the service is available for use, and the date of such notice shall be called the "Service Start Date". Unless terminated as herein provided, this agreement shall continue through June 30, 2027.

6. Rates

In return for County providing the Services described in Appendix A for the term indicated herein, Customer shall pay County both nonrecurring construction/installation charges and recurring charges for Services described in Appendix A, as amended from time to time.

7. Payment

County shall provide an invoice for twelve months of service (July 1 through June 30), or prorated weekly for any portion thereof, to Customer at the beginning of the service period. The annual charge shall be payable within thirty (30) days of receipt of invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. If the Customer fails to pay within sixty (60) days of receipt of an invoice it shall constitute grounds for County to terminate the Agreement upon appropriate advance written notice to Customer.

8. Fiber Maintenance

County shall maintain the structural aspects of the Fiber in good operating condition, utilizing commercially reasonable practices in accordance with Appendix B, throughout the Agreement Term. In the event the Fiber fails at any time to meet the specifications outlined in Appendix C, County shall endeavor to restore the Fiber to meet the specification standards in as timely and expedited a manner as reasonably possible.

County may subcontract for testing, maintenance, repair, restoration, relocation, or other operational and technical services it is obligated to provide hereunder.

Customer shall promptly notify County of any matters pertaining to any damage or impending damage to or loss of the use of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber. County shall promptly notify Customer of any matters pertaining to any damage or impending damage to or loss of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber and/or Customer's use thereof.

9. Confidentiality

All Customer data, voice, or video transmission using County Fiber shall be treated by County as confidential information, to the extent allowable by law. Customer expressly acknowledges and agrees that County's confidentiality obligations under this Agreement are subject to, and only enforceable to the extent permitted by, the Oregon Public Records Law, Oregon Revised Statutes ("ORS") Chapter 192 *et. seq.*, and any other applicable state or federal law

10. Content Control and Privacy

Customer shall have full and complete control of, and responsibility and liability for, the content of any and all communications transmissions sent or received using the Fiber.

11. Assignment and Successors

Either party may assign this Agreement upon prior written consent of the other party. Such consent shall not be unreasonably withheld. Upon such assignment, all rights and obligations of County and Customer under this Agreement shall pass in total without modification to any successor(s) regardless of the manner in which the

succession may occur.

12. Damage

County shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of the Customer's premises or facilities, which are damaged by the negligent acts or omissions of County. Customer shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of County's connectivity equipment or other facilities, located at Customer premises, which are damaged by Customer or its agents.

Customer will reimburse all related Costs associated with damage to the Fiber caused by the negligent acts or omissions of Customer, its affiliates, employees, agents, contractors or customers. As used herein, "Costs" includes the following: (a) labor costs, including wages, salaries, and benefits together with overhead allocable to such labor costs; and (b) other direct costs and out-of-pocket expenses on a pass-through basis (such as equipment, materials, supplies, contract services, sales, use or similar taxes, etc.).

13. Force Majeure

Neither party hereto shall be deemed to be in default of any provision of this Agreement, for any failure in performance resulting from acts or events beyond the reasonable control of such party. For purposes of this Agreement, such acts shall include, but shall not be limited to, acts of nature, civil or military authority, civil disturbance, war, strikes, fires, power failure, other catastrophes or other force majeure events beyond the parties' reasonable control, provided however that the provisions of this paragraph and article shall not preclude Customer from cancelling or terminating this Agreement as otherwise permitted hereunder, regardless of any force majeure event occurring to County.

14. Consequential Damages

NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, WHETHER FORSEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH, TRANSMISSION INTERRUPTIONS OR DEGRADATION, INCLUDING BUT NOT LIMITED TO DAMAGE OR LOSS OF PROFITS OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, COST OF REPLACEMENT SERVICES OR CLAIMS OF CUSTOMERS, WHETHER OCCASIONED BY ANY REPAIR OR MAINTENANCE PERFORMED BY OR FAILED TO BE PERFORMED BY A PARTY, OR ANY OTHER CAUSE WHATSOEVER, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR STRICT LIABILITY.

15. Public Contracting Provisions

The provisions of Oregon public contracting law, ORS 279B.020 through 279B.235,

to the extent applicable, are incorporated herein by this reference.

16. Non-Appropriation or Change in Law

Notwithstanding any other provisions of this Agreement, the parties hereby agree and understand that if County fails to receive expenditure authority sufficient to allow the County, in the exercise of its reasonable administrative discretion, to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that County is prohibited from performing under this Agreement, the Agreement shall terminate and Customer shall pay County any remaining pro rata fees for services due to the date of such termination payable pursuant to Section 7 of this Agreement.

17. Compliance with Laws

Customer shall comply with all applicable federal, state, county and city laws, ordinances and regulations, including regulations of any administrative agency thereof, heretofore or hereafter adopted or established, during the entire term of this Agreement.

18. Taxes and Assessments

- a. Customer agrees to pay any and all applicable national, federal, state, county and local taxes, fees, assessments or surcharges, and all other similar or related charges, which are imposed or levied on the Fiber, or because of Customers use of the Services under this Agreement (collectively, "Taxes), whether or not the Taxes are imposed or levied directly on the Customer, or imposed or levied on the County because of or arising out of the use of the Services either by the Customer, or its affiliates, or anyone to whom Customer has sold or otherwise granted access to the Services. Customer agrees to pay these Taxes in addition to all other fees and charges as set forth elsewhere in this Agreement.
- b. "Taxes" include, but are not limited to, business and occupation, commercial, district, excise, franchise fee, gross receipts, license, occupational, privilege, property, Public Utility Commission, right-of-ways, utility user, or other similar taxes, fees surcharges and assessments as may be levied against Customer, or against County and passed through to Customer.

19. Termination

- a. Either party may terminate this Agreement for convenience following 90 day's written notice to the other party.
- b. Pursuant to Section 20 of this Agreement, either party may terminate this Agreement in the event of default of the Agreement by the other party. Neither the County nor the Customer shall 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. If Customer terminates this Agreement for any reason other than County's default or failure to perform, County shall be entitled to 5% of the remaining contract amount for the unexpired term of this Agreement.

20. Default

1. Either of the following events shall constitute a default:
 - a. Failure to perform or comply with any material obligation or condition of this Agreement; or
 - b. Failure to pay any sums due under this Agreement.
2. Any defaulting party shall have thirty (30) days in which to cure following written notice of default by the non-defaulting party.

21. Remedies

If this Agreement is terminated by the County due to a breach by the Customer, then the County shall have any remedy available to it in law or equity. If this Agreement is terminated for any other reason, Customer's sole remedy is reimbursement of the pro rata amounts paid to County on the unexpired term of this Agreement, less any setoff to which the County is entitled.

22. Amendment

Any amendments to this Agreement shall be in writing and shall be signed by all parties.

23. No recourse Against the Grantor

Customer shall have no recourse whatsoever against County or its officials, boards, commissions, or employees for any loss, costs, expense, or damage arising out of any provision or requirement contained herein, or in the event this Agreement or any part thereof is determined to be invalid.

24. Notice

Any notice hereunder shall be in writing and shall be delivered by personal service or by United States certified or registered mail, with postage prepaid, or by electronic mail as follows:

Notice to the County

Manager, Clackamas Broadband Express
Clackamas County Technology Services
121 Library Court

Oregon City, Oregon 97045
ddexter@clackamas.us
Fax Number (503) 655-8255

with a copy to

Chief Information Officer
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
cbxinfo@co.clackamas.or.us
Fax Number: (503) 655-8255

Notice to the Customer

Patricia George
North Clackamas SD
~~14211 SE Johnson Rd~~ 12400 SE Freeman Way
Milwaukie, OR 97222

Either Party, by similar written notice, may change the address to which notices shall be sent.

25. Debt 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 County's performance is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

26. No Attorney Fees

No attorney fees shall be paid for or awarded to either party in the course of any dispute or other recovery under this Agreement. It is the intent of the parties that each shall bear the costs of its own legal counsel.

27. Governing Law

This Agreement shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between County and Customer that arises out of or relates to the performance of this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit must be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

28. Survival

All rights and obligations shall cease upon termination or expiration of this Agreement, except for the rights and obligations set forth in Sections 9, 12, 14, 21, 23, 25, 26, 27, and 28, and all other rights and obligations which by their context are intended to survive.

29. 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 the Agreement did not contain the particular term or provision held to be invalid.

30. Whole Contract

THIS CONTRACT CONSTITUTES THE COMPLETE AND EXCLUSIVE STATEMENT OF THE CONTRACT BETWEEN THE PARTIES RELEVANT TO THE PURPOSE DESCRIBED HEREIN AND SUPERSEDES ALL PRIOR AGREEMENTS OF PROPOSALS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATION BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS CONTRACT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS CONTRACT WILL BE BINDING ON EITHER PARTY EXCEPT AS A WRITTEN ADDENDUM SIGNED BY AUTHORIZED AGENTS OF BOTH PARTIES.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

Clackamas County

By (signature): _____

Name: _____

Title: _____

Date: _____

Customer

North Clackamas School District _____
(Customer Name)

By (signature): Gayellyn H. Jacobson

Name (print): Gayellyn H. Jacobson

Title: Chief Financial Officer

Date: 3/17/2020

APPENDIX A

SERVICE AND RATE SCHEDULE

1. Specified Services and Rates

The following are the sites, services, and rates agreed to by County and Customer at which Customer shall be provided services on the fiber optic network during the term of the Agreement. It is understood by both parties that service to these sites shall be provided for the rates below, subject to any rate increases otherwise applicable in accordance with terms herein. It is further understood that, during the term of the Agreement, Customer may add services to existing or new locations, or change services and/or locations, but that such changes are subject to the rates for such additional services.

2. Construction, Installation and Activation

For construction, installation and activation work and provision of fiber optic network components, the County shall charge Customer nonrecurring charge(s) as specified in Section 5 of Appendix A. All facilities constructed under this Agreement and Appendix A shall be owned, operated, and maintained by the County.

3. Service Changes and Conversions

Both parties agree that Customer may add or change services during the term of the Agreement, but that such changes are subject to applicable rates, and upgrade and downgrade charges.

4. Monthly Recurring Charges

	From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Monthly Rate (\$)
1	View Acres Elementary 4828 SE View Acres Rd. Milwaukie, Oregon 97267	Clackamas ESD 13455 SE 97 th Ave Clackamas, OR 97015 (South Backbone)	One Pair (two) dark fibers	\$255.00
2	Rex Putman High School 4950 SE Roethe Rd. Milwaukie, Oregon 97267	Clackamas ESD 13455 SE 97 th Ave Clackamas, OR 97015 (South Backbone)	One Pair (two) dark fibers	\$255.00
3	Whitcomb Elementary 7400 SE Thompson Rd. Milwaukie, Oregon 97222	Clackamas ESD 13455 SE 97 th Ave Clackamas, OR 97015 (South Backbone)	One Pair (two) dark fibers	\$255.00
4	Lewelling Elementary 5325 SE Logus Rd.	Clackamas ESD 13455 SE 97 th Ave	One Pair (two) dark	\$255.00

	Milwaukie, Oregon 97222	Clackamas, OR 97015 (South Backbone)	fibers	
5	Wichita Family Center 6031 SE King Rd. Milwaukie, Oregon 97222	Clackamas ESD 13455 SE 97 th Ave Clackamas, OR 97015 (South Backbone)	One Pair (two) dark fibers	\$255.00
6	Ardenwald Elementary 8950 SE 36th Ave. Milwaukie, Oregon 97222	Clackamas ESD 13455 SE 97 th Ave Clackamas, OR 97015 (South Backbone)	One Pair (two) dark fibers	\$255.00
7	Bilquist Elementary 15708 SE Webster Rd. Milwaukie, Oregon 97267	Clackamas ESD 13455 SE 97 th Ave Clackamas, OR 97015 (South Backbone)	One Pair (two) dark fibers	\$255.00
8	Alder Creek Middle School 13801 SE Webster Rd. Milwaukie, Oregon 97267	Clackamas ESD 13455 SE 97 th Ave Clackamas, OR 97015 (South Backbone)	One Pair (two) dark fibers	\$255.00
9	Mount Scott Elementary 11201 SE Stevens Rd. Portland, Oregon 97266	Clackamas ESD 13455 SE 97 th Ave Clackamas, OR 97015 (South Backbone)	One Pair (two) dark fibers	\$255.00
10	Spring Mountain Elementary School 11645 SE Masa Ln. Happy Valley, Oregon 97236	Clackamas ESD 13455 SE 97 th Ave Clackamas, OR 97015 (South Backbone)	One Pair (two) dark fibers	\$255.00
11	Happy Valley Middle School 13865 – A SE King Rd. Happy Valley, Oregon 97086	Clackamas ESD 13455 SE 97 th Ave Clackamas, OR 97015 (South Backbone)	One Pair (two) dark fibers	\$255.00
12	Clackamas High School 14486 SE 122nd Ave. Clackamas, Oregon 97015	Clackamas ESD 13455 SE 97 th Ave Clackamas, OR 97015 (South Backbone)	One Pair (two) dark fibers	\$255.00
13	Sunnyside Elementary 13401 SE 132nd Ave. Clackamas, Oregon 97015	Clackamas ESD 13455 SE 97 th Ave Clackamas, OR 97015 (South Backbone)	One Pair (two) dark fibers	\$255.00
14	Oregon Trail Elementary School 13895 SE 152nd Dr. Clackamas, Oregon 97015	Clackamas ESD 13455 SE 97 th Ave Clackamas, OR 97015 (South Backbone)	One Pair (two) dark fibers	\$255.00
15	Scouter's Mountain 10811 SE 172 nd Ave. Happy Valley, Oregon 97086	Clackamas ESD 13455 SE 97 th Ave Clackamas, OR 97015 (South Backbone)	One Pair (two) dark fibers	\$255.00
16	Cannady Elementary 18031 SE Vogel Rd Happy Valley, OR 97089	Clackamas ESD 13455 SE 97 th Ave Clackamas, OR 97015 (South Backbone)	One Pair (two) dark fibers	\$255.00
17	Nelson High School 14897 Parklane Dr. Damascus, Oregon 97222	Clackamas ESD 13455 SE 97 th Ave Clackamas, OR 97015 (South Backbone)	One Pair (two) dark fibers	\$255.00
18	Verne A Duncan Elementary 14898 Parklane Dr. Damascus, Oregon 97222	Clackamas ESD 13455 SE 97 th Ave Clackamas, OR 97015 (North Backbone)	One Pair (two) dark fibers	\$255.00
19	Sabin-Schellenberg Land Lab	Clackamas ESD	One Pair	

	13021 SE Hubbard Rd Clackamas, OR 97015	13455 SE 97 th Ave Clackamas, OR 97015 (South Backbone)	(two) dark fibers	\$255.00
--	--	--	----------------------	----------

5. Nonrecurring Charges

	From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Amount (\$)
1	Nelson High School 14897 Parklane Dr. Damascus, Oregon 97222	Clackamas ESD 13455 SE 97 th Ave Clackamas, OR 97015 (South Backbone)	Construction	\$242,345.00
2	Verne A Duncan Elementary 14898 Parklane Dr. Damascus, Oregon 97222	Clackamas ESD 13455 SE 97 th Ave Clackamas, OR 97015 (North Backbone)	Construction	\$6,275.00

6. Late Payment Interest

Customer will be charged interest for any payment made after its due date (thirty (30) days after receipt of invoice). Interest is charged at a rate of one and a half percent (1.5%) per month, or eighteen percent (18%) annually, on any installment not paid when due.

7. Annual Consumer Price Index (CPI) Adjustments

All fees and minimum charges are subject to Consumer Price Index (CPI) adjustments, to be applied annually. The amount of the fees and charges specified herein may increase annually by a percentage up to the change in the West Region (West City Size B/C 2.5 Million or less) Consumer Price Index of the US Dept. of Labor, Bureau of Labor Statistics (<https://www.bls.gov/regions/west/data/xg-tables/ro9xg01.htm>), based upon the rate of change as stated from the last month reported to the same month of the preceding year. In the event such Consumer Price Index (or a successor or substitute index) is not available, a reliable governmental or other nonpartisan publication evaluating the information theretofore used in determining the Consumer Price Index shall be used in lieu of such Consumer Price Index.

Remainder of this page intentionally left blank.

APPENDIX B

MAINTENANCE AND OPERATIONS SPECIFICATIONS AND PROCEDURES

1. Defined Terms

- a. "Routine Maintenance" is all preventive maintenance activities and repairs.
- b. "Non-Routine Maintenance" is all efforts and activities in response to an emergency circumstance which requires restoration of service.

2. General

- a. County shall operate and maintain a Network Control and Management Center (NCAM) staffed twenty-four (24) hours a day, seven (7) days a week, by trained and qualified personnel. County shall maintain (503) 742-4219 telephone number to contact personnel and NCAM. County's NCAM personnel shall dispatch maintenance and repair personnel along the fiber optic network to repair problems detected through the NCAM's remote surveillance equipment, by the Customer, or otherwise.
- b. In the event Customer identifies a circumstance which requires restoration of service, Customer shall provide NCAM personnel the name and address of the facility with the problem, the identification number of the Fiber circuits in question, and the name and telephone numbers of Customer's personnel to contact for site access and status updates. NCAM personnel shall immediately contact a County technician and provide the Customer contact information. County technician shall contact Customer within one (1) hour of initial call.
- c. If the County's technician cannot repair the service interruption by telephone, County shall use commercially reasonable efforts to have its first maintenance employee or contractor at the site requiring repair within five (5) hours of the initial call to the NCAM. County will then work continuously until service has been restored.
- d. County shall use commercially reasonable efforts to notify Customer seven (7) days prior to the date of any planned non-emergency maintenance activity. In the event that a County planned activity is canceled or delayed for any reason as previously notified, County shall notify Customer as soon as reasonably possible and will comply with the provisions of the previous sentence to reschedule any delayed activity.

3. Fiber Optic Network

- a. County shall maintain the fiber optic network in good and operable condition and shall repair the fiber in a manner consistent with industry standards and using commercially reasonable efforts.
- b. County shall perform appropriate routine maintenance on the fiber optic network in accordance with County's then current preventive maintenance procedures. County's maintenance procedures shall not substantially deviate from industry practice.

4. Restoration

- a. When restoring damaged fiber, the Parties agree to work together to restore all traffic as quickly as possible. County, immediately upon arriving on the site of the damage, shall determine the best course of action to be taken to restore the fiber and shall begin restoration efforts.
- b. It will be the responsibility of County and Customer to report to one another respectively any known environmental hazards which would restrict or jeopardize any maintenance work activities in shelters or right of way areas of operation.
- c. Upon notification of interruption of fiber optic network service, disrepair, impairment or other need for repair or restoration of the fiber and the location of the damaged fiber, County shall pursue commercially reasonable efforts to mobilize technicians to achieve necessary repair or restoration, including, but without limitation, having maintenance personnel at the affected site within five (5) hours after receipt of such notice with the required restoration material and equipment.
- d. In the event that Customer's use of the fiber optic network is interrupted due to an occurrence of a force majeure event, repairs and restoration shall be made as expeditiously as reasonably possible. Customer recognizes that five (5) hour response time represents optimal conditions, and may be impossible to achieve when emergency restoration of fiber optic network integrity is required or when responding to certain remote locations. Actual response times will be influenced by such factors as terrain, weather conditions present at the time the request is made and actual mileage to the fault site.
- e. For purposes of this section, "commercially reasonable efforts" means activities and performances consistent with prudent utility practice, existing contract provisions for County technicians and/or employees, practices required for preserving the integrity of the fiber optic network, and response times that do not jeopardize the health and safety of the employees, contractors and agents of County and Customer.

5. Customer shall be responsible for paying County standard maintenance fees for

any calls to County for maintenance issues related to the Fiber that County later confirms as resulting from another source other than functionality of the Fibers.

Remainder of this page intentionally left blank.

APPENDIX C

FIBER SPLICING AND TESTING STANDARDS AND PROCEDURES

1. Fiber and Connector Standards

a. **Connector Standards**

The loss value of any pigtail connector and any associated fiber jumper or pigtail with matching mode field diameters will not exceed .5dB at 1550 nm. The loss value of a connector and its associated jumper with mismatched mode field diameters should not exceed .8 dB.

b. **Field Splice Standards**

The objective for each splice is an averaged loss value of 0.1 dB or less when measured bi-directionally with an OTDR at 1550 nm. In the event of damage and subsequent restoration of the Fibers, commercially reasonable efforts will be made to restore the Fibers to this standard. If after 3 restoration splicing attempts, County is not able to produce a loss value of 0.1 dB or less bi-directionally at 1550 nm, then 0.5 dB or less bi-directionally at 1550 nm will be acceptable. Fibers not meeting the 0.1 dB or less specification will be identified as Out Of Specification (OOS). Documentation of the three attempts (re-burns) to bring the OOS fiber within specification will be provided.

c. **Span Loss**

It is County's responsibility to insure proper continuity of all fibers at the fiber level, not just the pigtail level. Any "frogs" or fibers that cross in the route will be remedied by County. The following span loss calculation will be used:

$$(A * L) + (0.1 * N) + C = \text{Acceptable Span Loss}$$

A = Attenuation per KM at 1550 nm

L = Optical length of cable measured in kilometers (from OTDR Trace)

N = Number of splices in a span

C = Connector loss. The connector loss will not exceed .5dB. The section test will have (2) pigtail connectors/splices under test, so 1.0dB will be allowed for this loss.

Remainder of this page intentionally left blank.



Dave Cummings
Chief Information Officer

Technology Services

121 Library Court Oregon City, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of End User License Agreement with VMWare / Procurement of Software Services from Dell Inc.

Purpose/ Outcomes	Provides the purchase of VMWare Software needed for supporting critical virtualized server and networking infrastructure to conduct county business and meet security compliance requirements.
Dollar Amount and Fiscal Impact	Contract total value of \$857,029.90, all encumbered on the current Fiscal Year
Funding Source	Planned Capital expense from the TS 747-0227 fund.
Duration	Total Duration of 5 years.
Previous Board Action	None
Strategic Plan Alignment	1. Build a Strong Infrastructure 2. Build public trust through good government
Counsel Review	County Counsel reviewed and approved this document on March 10, 2020.
Contact Person	Chris Fricke 503-723-4941

BACKGROUND:

Technology Services (TS) uses VMWare as the platform for the county's virtual server infrastructure. This infrastructure houses nearly all production, development, test, and utility servers across a series of physical server and storage systems. This environment is critical to County operation considering more than 90% of our servers are hosted by the virtual infrastructure. The current licensing level from VMWare provides solid functionality and performance and this project is intended to expand functionality to include virtualized networking, security, cloud integration, and system monitoring capabilities.

PROCUREMENT PROCESS:

On January 21, 2020, a Notice of Intent to Purchase from a permissive cooperative procurement was advertised in accordance with ORS 279B and LCRB Rule C-046-0440. The County did not receive any comments during the seven (7) day protest period. This contract is a Cooperative Purchasing Opportunity off the Dell Inc. Midwestern Higher Education Commission Cooperative Contract # 07012015. Procurement and Counsel have negotiated the proposed contract with VMWare that will be purchased from Dell Inc. as a distributor of the software licensing.

RECOMMENDATION:

Staff recommends the Board of County Commissioners approve both the attached Government Addendum with Dell and the End User License Agreement with VMWare and, to complete the transaction, authorize the Procurement Office to execute any other needed instruments and purchase orders in order to complete the five (5) year purchase from Dell Inc.

Respectfully submitted,

Dave Cummings, Director

Placed on the Agenda of _____ by Procurement and Contract Services

**CLACKAMAS COUNTY
GOVERNMENTAL CONTRACTING ADDENDUM
Contract #2437**

This Oregon Governmental Contracting Addendum ("Addendum") is entered into by Clackamas County, a political subdivision of the State of Oregon ("County"), on behalf of its Technology Services Department and Dell Marketing, L.P. ("Contractor"). This Addendum includes two exhibits; Dell Quote # 3000057255311.1 as "Exhibit A" and VMWare End User License Agreement ("Vendor Agreement") as "Exhibit B" hereby attached and incorporated by reference. This purchase is executed via The Midwestern Higher Education Commission Cooperative Contract # 07012015. As used below, "Contract" means: this Addendum, and Exhibits A and B. To the extent there is any conflict between the Addendum and the Vendor Agreement, the terms of this Addendum shall control. No other terms or conditions, whether from Dell Marketing, L.P., VMWare, or its partners or affiliates, including standard click through license or website terms or use of privacy policy, shall apply to the County unless such terms are included in the Contract or is formally agreed to in writing.

- A. Term.** This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on March 30, 2025.
- B. Consideration.** The total consideration paid by the County under the Contract shall not exceed eight hundred fifty-seven thousand twenty-nine dollars ninety cents (**\$857,029.90**) as identified in the attached Dell Quote # 1000467918727.1.
- C. County Contract Administrator.** The County Contract Administrator for this Contract is **Chris Fricke**.
- D. Invoices and Payments.** Invoices shall be submitted to: **Casi Potter** at cpotter@clackamas.us

Payment and late fees shall only be in accordance with ORS 293.462.
- E. Insurance.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. Contractor shall provide proof of said insurance and name the County as an additional insured on the Commercial General liability policies. Proof of insurance should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us.

Required - Workers Compensation: Contractor shall comply with the workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.126.
<input checked="" type="checkbox"/> Required – Professional Liability, including Cyber Liability of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
<input checked="" type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
<input checked="" type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage.

The Commercial General Liability policy(s) shall be primary insurance as respects to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it. Any obligation that County agree to a waiver of subrogation is hereby stricken.

- F. Debt Limitation.** The 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 provisions herein which would conflict with law are deemed inoperative to that extent.

- G. Public Contracting Requirements.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes (“ORS”) Chapter 279B.220 through 279B.235, Contractor shall:
1. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
 2. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
 3. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.
Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
 4. As applicable, Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.
- H. Governing Law; Venue.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.
- I. Termination.** This Contract may be terminated by mutual agreement of the parties or by the County for one of the following reasons: (i) for convenience upon thirty (30) days written notice to Contractor and, upon receipt of the written notice, Contractor shall stop performance, and County shall pay Contractor for the goods or services delivered and accepted; (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County; (iii) if Contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure.
- J. Compliance.** Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract.
- K. Tax Compliance.** Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all applicable tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.
- L. Indemnification.** Contractor agrees to indemnify and defend the County, its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the fault or negligence of Contractor or Contractor’s employees or agents. Any obligation of the County to indemnify, hold harmless and defend Contractor, its officers, elected officials, agents and employees, or any other indemnitee, shall only be to the extent provided by Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300) from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based on damage or injuries to persons or property caused by the fault or negligence of the County or the County’s employee or agents.
- M. Dispute Resolution.** No attorney fees shall be paid for or awarded to either party in the course of any dispute, indemnification, or other recovery. It is the intent of the parties that each shall bear the costs of its own legal counsel. Any requirements contained in this Contract waiving a right to a jury trial or requiring binding arbitration are void.
- N. Records.** Contractor shall maintain all sales records relating to this Contract according to GAAP (“Records”) for six (6) years from termination or as otherwise required. Contractor shall grant County, the federal government, and their duly authorized representatives access to the Records at County’s expense, upon advanced notice and at a mutually agreed upon time and location, including reviewing, auditing, copying, and making transcripts. Any


documents that are requested to be maintained as confidential by either party shall only be maintained as confidential to the extent permitted by the Oregon Public Records Law ORS 192.

- O. Subcontractors.** Contractor shall ensure that its subcontractors, if any, comply with the requirements of this Addendum.
- P. Counterparts.** This Addendum may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.
- Q. Waiver.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.
- R. Notices.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article 1, Section 6. If notice is sent to County, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during County's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (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.

By their signatures below, the parties to this Addendum agree to the terms, conditions, and content expressed herein.

Dell Marketing, L.P.

Clackamas County


 3/11/2020
Authorized Signature Date

Board Date

Sadie Robbins/Sr. Contract Mgr
Name/Title (Printed)

Name/Title (Printed)

Approved As To Form:

 03/11/2020
Clackamas County Counsel Date

Recording Secretary Date



A quote for your consideration.

Based on your business needs, we put the following quote together to help with your purchase decision. Below is a detailed summary of the quote we've created to help you with your purchase decision.

To proceed with this quote, you may respond to this email, order online through your **Premier page**, or, if you do not have Premier, use this **Quote to Order**.

Quote No.	3000057255311.1	Sales Rep	Chuck Starks
Total	\$857,029.90	Phone	(800) 456-3355, 7230231
Customer #	99216161	Email	Chuck_Starks@Dell.com
Quoted On	Mar. 06, 2020	Billing To	ACCOUNTS PAYABLE
Expires by	April 1, 2020		CLACKAMAS COUNTY
			TECHNOLOGY SERVICE
			121 LIBRARY COURT
			OREGON CITY, OR 97045-4039

Message from your Sales Rep

Please contact your Dell sales representative if you have any questions or when you're ready to place an order. Thank you for shopping with Dell!

Regards,
Chuck Starks

Shipping Group

Shipping To	Shipping Method
CHRIS FRICKE CLACKAMAS COUNTY 121 LIBRARY CT OREGON CITY, OR 97045-4039 (503) 723-4941	Not available

Product	Unit Price	Qty	Subtotal
VLA VMWARE-ELA	\$857,029.90	1	\$857,029.90
Subtotal:			\$857,029.90
Shipping:			\$0.00
Estimated Tax:			\$0.00
Total:			\$857,029.90

Shipping Group Details

Shipping To

CHRIS FRICKE
CLACKAMAS COUNTY
121 LIBRARY CT
OREGON CITY, OR 97045-4039
(503) 723-4941

Shipping Method

Not available

VLA VMWARE-ELA Contract # C000000181093	\$857,029.90	Qty	1	Subtotal	\$857,029.90
---	--------------	-----	---	----------	--------------

In accordance with Midwestern Higher Education Commission Contract
#MHEC-07012015

	SKU	Unit Price	Qty	Subtotal
Description - VLA VMWARE-ELA	AA942868	-	1	-

Subtotal: \$857,029.90

Shipping: \$0.00

Estimated Tax: \$0.00

Total: \$857,029.90

Important Notes

Terms of Sale

This Quote will, if Customer issues a purchase order for the quoted items that is accepted by Supplier, constitute a contract between the entity issuing this Quote ("Supplier") and the entity to whom this Quote was issued ("Customer"). Unless otherwise stated herein, pricing is valid for thirty days from the date of this Quote. All product, pricing and other information is based on the latest information available and is subject to change. Supplier reserves the right to cancel this Quote and Customer purchase orders arising from pricing errors. Taxes and/or freight charges listed on this Quote are only estimates. The final amounts shall be stated on the relevant invoice. Additional freight charges will be applied if Customer requests expedited shipping. Please indicate any tax exemption status on your purchase order and send your tax exemption certificate to Tax_Department@dell.com or ARSalesTax@emc.com, as applicable.

Governing Terms: This Quote is subject to: (a) a separate written agreement between Customer or Customer's affiliate and Supplier or a Supplier's affiliate to the extent that it expressly applies to the products and/or services in this Quote and (b) the terms referenced herein (collectively, the "Governing Terms"). Different Governing Terms may apply to different products and services on this Quote.

Supplier Software Licenses and Services Descriptions : Customer's use of any Supplier software is subject to the license terms accompanying the software.

Offer-Specific, Third Party and Program Specific Terms : Customer's use of third-party software is subject to the license terms that accompany the software. Certain Supplier-branded and third-party products and services listed on this Quote are subject to additional, specific terms.

In case of Resale only : Should Customer procure any products or services for resale, whether on standalone basis or as part of a solution, Customer shall include the applicable software license terms, services terms, and/or offer-specific terms in a written agreement with the end-user and provide written evidence of doing so upon receipt of request from Supplier.

^Dell Business Credit (DBC):

OFFER VARIES BY CREDITWORTHINESS AS DETERMINED BY LENDER. Offered by WebBank to Small and Medium Business customers with approved credit. Taxes, shipping and other charges are extra and vary. Minimum monthly payments are the greater of \$15 or 3% of account balance. Dell Business Credit is not offered to government or public entities, or business entities located and organized outside of the United States.



Exhibit B

EULA EXHIBIT

VMWARE END USER LICENSE AGREEMENT

PLEASE NOTE THAT THE TERMS OF THIS END USER LICENSE AGREEMENT SHALL GOVERN YOUR USE OF THE SOFTWARE, REGARDLESS OF ANY TERMS THAT MAY APPEAR DURING THE INSTALLATION OF THE SOFTWARE.

IMPORTANT-READ CAREFULLY: BY DOWNLOADING, INSTALLING, OR USING THE SOFTWARE, CLACKAMAS COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF OREGON ("YOU") AGREES TO BE BOUND BY THE TERMS OF THIS END USER LICENSE AGREEMENT ("EULA"). IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, YOU MUST NOT DOWNLOAD, INSTALL, OR USE THE SOFTWARE, AND YOU MUST DELETE OR RETURN THE UNUSED SOFTWARE TO THE VENDOR FROM WHICH YOU ACQUIRED IT WITHIN THIRTY (30) DAYS AND REQUEST A REFUND OF THE LICENSE FEE, IF ANY, THAT YOU PAID FOR THE SOFTWARE.

EVALUATION LICENSE. If You are licensing the Software for evaluation purposes, Your use of the Software is only permitted in a non-production environment and for the period limited by the License Key. Notwithstanding any other provision in this EULA, an Evaluation License of the Software is provided "AS-IS" without indemnification, support or warranty of any kind, expressed or implied.

1. DEFINITIONS.

1.1 "Affiliate" means, with respect to a party at a given time, an entity that then is directly or indirectly controlled by, is under common control with, or controls that party, and here "control" means an ownership, voting or similar interest representing fifty percent (50%) or more of the total interests then outstanding of that entity.

1.2 "Documentation" means that documentation that is generally provided to You by VMware with the Software, as revised by VMware from time to time, and which may include end user manuals, operation instructions, installation guides, release notes, and on-line help files regarding the use of the Software.

1.3 "Guest Operating Systems" means instances of third-party operating systems licensed by You, installed in a Virtual Machine and run using the Software.

1.4 "Intellectual Property Rights" means all worldwide intellectual property rights, including without limitation, copyrights, trademarks, service marks, trade secrets, know how, inventions, patents, patent applications, moral rights and all other proprietary rights, whether registered or unregistered.

1.5 "License" means a license granted under Section 2.1 (General License Grant).

1.6 "License Key" means a serial number that enables You to activate and use the Software.

1.7 "License Term" means the duration of a License as specified in the Order.

1.8 "License Type" means the type of License applicable to the Software, as more fully described in the Order.

1.9 "Open Source Software" or "OSS" means software components embedded in the Software and provided under separate license terms, which can be found either in the open_source_licenses.txt file (or similar file) provided within the Software or at http://www.vmware.com/download/open_source.html.

1.10 "Order" means a purchase order, enterprise license agreement, or other ordering document issued by You to VMware or a VMware authorized reseller that references and incorporates this EULA and is accepted by VMware as set forth in Section 4 (Order).

1.11 "Product Guide" means the current version of the VMware Product Guide at the time of Your Order, copies of which are found at www.vmware.com/download/eula.

1.12 "Support Services Terms" means VMware's then-current support policies, copies of which are posted at www.vmware.com/support/policies.

1.13 "Software" means the VMware Tools and the VMware computer programs listed on VMware's commercial price list to which You acquire a license under an Order, together with any software code relating to the foregoing that is provided to You pursuant to a support and subscription service contract and that is not subject to a separate license agreement.

1.14 "Territory" means the country or countries in which You have been invoiced; provided, however, that if You have been invoiced within any of the European Economic Area member states, You may deploy the corresponding Software throughout the European Economic Area.

1.15 "Third Party Agent" means a third party delivering information technology services to You pursuant to a written contract with You.

1.16 "Virtual Machine" means a software container that can run its own operating system and execute applications like a physical machine.

1.17 "VMware" means VMware, Inc., a Delaware corporation, if You are purchasing Licenses or services for use in the United States and VMware International Unlimited Company, a company organized and existing under the laws of Ireland, for all other purchases.

1.18 "VMware Tools" means the suite of utilities and drivers, Licensed by VMware under the "VMware Tools" name, that can be installed in a Guest Operating System to enhance the performance and functionality of a Guest Operating System when running in a Virtual Machine.

2. LICENSE GRANT.

2.1 **General License Grant.** VMware grants to You a non-exclusive, non-transferable (except as set forth in Section 12.1 (Transfers; Assignment) license to use the Software and the Documentation during the period of the license and within the Territory, solely for Your internal business operations, and subject to the provisions of the Product Guide. Unless otherwise indicated in the Order, licenses granted to You will be perpetual, will be for use of object code only, and will commence on either delivery of the physical media or the date You are notified of availability for electronic download.

2.2 **Third Party Agents.** Under the License granted to You in Section 2.1 (General License Grant) above, You may permit Your Third Party Agents to access, use and/or operate the Software on Your behalf for the sole purpose of delivering services to You, provided that You will be fully responsible for Your Third Party Agents' compliance with terms and conditions of this EULA and any breach of this EULA by a Third Party Agent shall be deemed to be a breach by You.

2.3 **Copying Permitted.** You may copy the Software and Documentation as necessary to install and run the quantity of copies licensed, but otherwise for archival purposes only.

2.4 **Benchmarking.** You may use the Software to conduct internal performance testing and benchmarking studies. You may only publish or otherwise distribute the results of such studies to third parties as follows: (a) if with respect to VMware's Workstation or Fusion products, only if You provide a copy of Your study to benchmark@vmware.com prior to distribution; (b) if with respect to any other Software, only if VMware has reviewed and approved of the methodology, assumptions and other parameters of the study (please contact VMware at benchmark@vmware.com to request such review and approval) prior to such publication and distribution.

2.5 **VMware Tools.** You may distribute the VMware Tools to third parties solely when installed in a Guest Operating System within a Virtual Machine. You are liable for compliance by those third parties with the terms and conditions of this EULA.

2.6 **Open Source Software.** Notwithstanding anything herein to the contrary, Open Source Software is licensed to You under such OSS's own applicable license terms, which can be found in the `open_source_licenses.txt` file, the Documentation or as applicable, the corresponding source files for the Software available at http://www.vmware.com/download/open_source.html. These OSS license terms are consistent with the license granted in Section 2 (License Grant), and may contain additional rights benefiting You. The OSS license terms shall take precedence over this EULA to the extent that this EULA imposes greater restrictions on You than the applicable OSS license terms. To the extent the license for any Open Source Software requires VMware to make available to You the corresponding source code and/or modifications (the 'Source Files'), You may obtain a copy of the applicable Source Files from VMware's website at http://www.vmware.com/download/open_source.html or by sending a written request, with Your name and address to: VMware, Inc., 3401 Hillview Avenue, Palo Alto, CA 94304, United States of

America. All requests should clearly specify: Open Source Files Request, Attention: General Counsel. This offer to obtain a copy of the Source Files is valid for three years from the date You acquired this Software.

3. RESTRICTIONS; OWNERSHIP.

3.1 **License Restrictions.** Without VMware's prior written consent, You must not, and must not allow any third party to: (a) use Software in an application services provider, service bureau, or similar capacity for third parties, except that You may use the Software to deliver hosted services to Your Affiliates; (b) disclose to any third party the results of any benchmarking testing or comparative or competitive analyses of VMware's Software done by or on behalf of You, except as specified in Section 2.4 (Benchmarking); (c) make available Software in any form to anyone other than Your employees or contractors reasonably acceptable to VMware and require access to use Software on behalf of You in a matter permitted by this EULA, except as specified in Section 2.2 (Third Party Agents); (d) transfer or sublicense Software or Documentation to an Affiliate or any third party, except as expressly permitted in Section 12.1 (Transfers; Assignment); (e) use Software in conflict with the terms and restrictions of the Software's licensing model and other requirements specified in Product Guide and/or VMware quote; (f) except to the extent permitted by applicable mandatory law, modify, translate, enhance, or create derivative works from the Software, or reverse engineer, decompile, or otherwise attempt to derive source code from the Software, except as specified in Section 3.2 (Decompilation); (g) remove any copyright or other proprietary notices on or in any copies of Software; or (h) violate or circumvent any technological restrictions within the Software or specified in this EULA, such as via software or services.

3.2 **Decompilation.** Notwithstanding the foregoing, decompiling the Software is permitted to the extent the laws of the Territory give You the express right to do so to obtain information necessary to render the Software interoperable with other software; provided, however, You must first request such information from VMware (at info@vmware.com), provide all reasonably requested information to allow VMware to assess Your claim, and VMware may, in its discretion, either provide such interoperability information to You, impose reasonable conditions, including a reasonable fee, on such use of the Software, or offer to provide alternatives to ensure that VMware's proprietary rights in the Software are protected and to reduce any adverse impact on VMware's proprietary rights.

3.3 **Ownership.** The Software and Documentation, all copies and portions thereof, and all improvements, enhancements, modifications and derivative works thereof, and all Intellectual Property Rights therein, are and shall remain the sole and exclusive property of VMware and its licensors. Your rights to use the Software and Documentation shall be limited to those expressly granted in this EULA and any applicable Order. No other rights with respect to the Software or any related Intellectual Property Rights are implied. You are not authorized to use (and shall not permit any third party to use) the Software, Documentation or any portion thereof except as expressly authorized by this EULA or the applicable Order. VMware reserves all rights not expressly granted to You. VMware does not transfer any ownership rights in any Software.

3.4 **Guest Operating Systems.** Certain Software allows Guest Operating Systems and application programs to run on a computer system. You acknowledge that You are responsible for obtaining and complying with any licenses necessary to operate any such third-party software.

4. **ORDER.** Your Order is subject to this EULA. No Orders are binding on VMware until accepted by VMware. Orders for Software are deemed to be accepted upon VMware's delivery of the Software included in such Order. Orders issued to VMware do not have to be signed to be valid and enforceable.

5. **RECORDS AND AUDIT.** During the License Term for Software and for two (2) years after its expiration or termination, You will maintain accurate records of Your use of the Software sufficient to show compliance with the terms of this EULA. During this period, VMware will have the right to audit Your use of the Software to confirm compliance with the terms of this EULA. That audit is subject to reasonable notice by VMware and will not unreasonably interfere with Your business activities. VMware may conduct no more than one (1) audit in any twelve (12) month period, and only during normal business hours. You will reasonably cooperate with VMware and any third party auditor and will, without prejudice to other rights of VMware, address any non-compliance identified by the audit by promptly paying additional fees. You will promptly reimburse VMware for all reasonable costs of the audit if the audit reveals either underpayment of more than five (5%) percent of the Software fees payable by You for the period audited, or that You have materially failed to maintain accurate records of Software use.

6. **SUPPORT AND SUBSCRIPTION SERVICES.** Except as expressly specified in the Product Guide, VMware does not provide any support or subscription services for the Software under this EULA. You have no rights to any updates, upgrades or extensions or enhancements to the Software developed by VMware unless you separately purchase VMware support or subscription services. These support or subscription services are subject to the Support Services Terms.

7. WARRANTIES.

7.1 **Software Warranty, Duration and Remedy.** VMware warrants to You that the Software will, for a period of ninety (90) days following notice of availability for electronic download or delivery ("Warranty Period"), substantially conform to the applicable Documentation, provided that the Software: (a) has been properly installed and used at all times in accordance with the applicable Documentation; and (b) has not been modified or added to by persons other than VMware or its authorized representative. VMware will, at its own expense and as its sole obligation and Your exclusive remedy for any breach of this warranty, either replace that Software or correct any reproducible error in that Software reported to VMware by You in writing during the Warranty Period. If VMware determines that it is unable to correct the error or replace the Software, VMware will refund to You the amount paid by You for that Software, in which case the License for that Software will terminate.

7.2 **Software Disclaimer of Warranty.** OTHER THAN THE WARRANTY ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VMWARE AND ITS SUPPLIERS MAKE NO OTHER EXPRESS WARRANTIES UNDER THIS EULA, AND DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE. VMWARE AND ITS LICENSORS DO NOT WARRANT THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED OR THAT IT WILL BE FREE FROM DEFECTS OR THAT IT WILL MEET YOUR REQUIREMENTS.

8. INTELLECTUAL PROPERTY INDEMNIFICATION.

8.1 **Defense and Indemnification.** Subject to the remainder of this Section 8 (Intellectual Property Indemnification), VMware shall defend You against any third party claim that the Software infringes any patent, trademark or copyright of such third party, or misappropriates a trade secret (but only to the extent that the misappropriation is not a result of Your actions) under the laws of: (a) the United States and Canada; (b) the European Economic Area; (c) Australia; (d) New Zealand; (e) Japan; or (f) the People's Republic of China, to the extent that such countries are part of the Territory for the License ("Infringement Claim") and indemnify You from the resulting costs and damages finally awarded against You to such third party by a court of competent jurisdiction or agreed to in settlement. The foregoing obligations are applicable only if You: (i) promptly notify VMware in writing of the Infringement Claim; (ii) allow VMware sole control over the defense for the claim, any settlement negotiations and any related action challenging the validity of the allegedly infringed patent, trademark, or copyright provided that VMware agrees not to enter into any settlement that obligates You to pay any amounts to the party bringing the claim, without Your prior written consent, such consent not to be unreasonably withheld, delayed or conditioned; and (iii) reasonably cooperate in response to VMware requests for assistance. You may not settle or compromise any Infringement Claim without the prior written consent of VMware.

8.2 **Remedies.** If the alleged infringing Software become, or in VMware's opinion be likely to become, the subject of an Infringement Claim, VMware will, at VMware's option and expense, do one of the following: (a) procure the rights necessary for You to make continued use of the affected Software; (b) replace or modify the affected Software to make it non-infringing; or (c) terminate the License to the affected Software and discontinue the related support services, and, upon Your certified deletion of the affected Software, refund: (i) the fees paid by You for the License to the affected Software, less straight-line depreciation over a three (3) year useful life beginning on the date such Software was delivered; and (ii) any pre-paid service fee attributable to related support services to be delivered after the date such service is stopped. Nothing in this Section 8.2 (Remedies) shall limit VMware's obligation under Section 8.1 (Defense and Indemnification) to defend and indemnify You, provided that You replace the allegedly infringing Software upon VMware's making alternate Software available to You and/or You discontinue using the allegedly infringing Software upon receiving VMware's notice terminating the affected License.

8.3 **Exclusions.** Notwithstanding the foregoing, VMware will have no obligation under this Section 8 (Intellectual Property Indemnification) or otherwise with respect to any claim based on: (a) a combination of Software with non-VMware products (other than non-VMware products that are listed on the Order and used in an unmodified form); (b) use for a purpose or in a manner for which the Software was not designed; (c) use of any older version of the Software when use of a newer VMware version would have avoided the infringement; (d) any modification to the Software made without VMware's express written approval; (e) any claim that relates to open source software or freeware technology or any derivatives or other adaptations thereof that is not embedded by VMware into Software listed on VMware's commercial price list; or (f) any Software provided on a no charge, beta or evaluation basis. THIS SECTION 8 (INTELLECTUAL PROPERTY INDEMNIFICATION) STATES YOUR SOLE AND EXCLUSIVE REMEDY AND VMWARE'S ENTIRE LIABILITY FOR ANY INFRINGEMENT CLAIMS OR ACTIONS.

9. LIMITATION OF LIABILITY.

9.1 Limitation of Liability. TO THE MAXIMUM EXTENT MANDATED BY LAW, IN NO EVENT WILL VMWARE AND ITS LICENSORS BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE, LOSS OF REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, LOSS OF DATA, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE PRECEDING LIMITATION MAY NOT APPLY TO YOU. VMWARE'S AND ITS LICENSORS' LIABILITY UNDER THIS EULA WILL NOT, IN ANY EVENT, REGARDLESS OF WHETHER THE CLAIM IS BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EXCEED THE GREATER OF THE LICENSE FEES YOU PAID FOR THE SOFTWARE GIVING RISE TO THE CLAIM OR ONE MILLION U.S. DOLLARS (\$1,000,000). THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF WHETHER VMWARE OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. The limitations of liability shall not apply to: (a) VMware's liability for death or personal injury caused by its negligence; (b) VMware's liability for any material misrepresentations made by it on which You can be shown to have relied; (c) VMware's liability arising under Section 8, above; or (d) any liability which cannot be excluded by applicable law.

9.2 Further Limitations. VMware's licensors shall have no liability of any kind under this EULA and VMware's liability with respect to any third party software embedded in the Software shall be subject to Section 9.1 (Limitation of Liability).

9.3 Clackamas County Limitations. Any requirement that Clackamas County be responsible for damages or to indemnify VMware shall be only to the extent permitted by Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260-30.300).

10. TERMINATION.

10.1 EULA Term. The term of this EULA begins on the notice of availability for electronic download or delivery of the Software and continues until this EULA is terminated in accordance with this Section 10.

10.2 Termination for Breach. VMware may terminate this EULA effective immediately upon written notice to You if: (a) You fail to pay any portion of the fees under an applicable Order within thirty (30) days after receiving written notice from VMware that payment is past due; or (b) You breach any other provision of this EULA and fail to cure within thirty (30) days after receipt of VMware's written notice thereof.

10.3 Termination for Insolvency. VMware may terminate this EULA effective immediately upon written notice to You if You: (a) terminate or suspend your business; (b) become insolvent, admit in writing Your inability to pay Your debts as they mature, make an assignment for the benefit of creditors; or become subject to control of a trustee, receiver or similar authority; or (c) become subject to any bankruptcy or insolvency proceeding.

10.4 Termination by Clackamas County. Clackamas County is acquiring the right to use the Software as part of an agreement between Clackamas County and Dell Inc. ("County Contract"), which was purchased through the Midwestern Higher Education Commission Cooperative Contract #07012015 (the "Cooperative Contract"). This Agreement will terminate upon termination of the County Contract. Upon termination of the County Contract, Clackamas County will have no further obligations to VMware except as provided in Subsection 10.5, below.

10.5 Effect of Termination. Upon VMware's termination of this EULA: (a) all Licensed rights to all Software granted to You under this EULA will immediately cease; and (b) You must cease all use of all Software, and return or certify destruction of all Software and License Keys (including copies) to VMware, and return, or if requested by VMware, destroy, any related VMware Confidential Information in Your possession or control and certify in writing to VMware that You have fully complied with these requirements. Any provision will survive any termination or expiration if by its nature and context it is intended to survive, including Sections 1 (Definitions), 2.6 (Open Source Software), 3 (Restrictions; Ownership), 5 (Records and Audit), 7.2 (Software Disclaimer of Warranty), 9 (Limitation of Liability), 10 (Termination), 11 (Confidential Information) and 12 (General).

11. CONFIDENTIAL INFORMATION.

11.1 Definition. "Confidential Information" means information or materials provided by one party ("Discloser") to the other party ("Recipient") which are in tangible form and labelled "confidential" or the like, or, information which a reasonable person knew or should have known to be confidential. The following information shall be considered Confidential Information whether or

not marked or identified as such: (a) License Keys; (b) information regarding VMware's pricing, product roadmaps or strategic marketing plans; and (c) non-public materials relating to the Software.

11.2 Protection. Recipient may use Confidential Information of Discloser; (a) to exercise its rights and perform its obligations under this EULA; or (b) in connection with the parties' ongoing business relationship. Recipient will not use any Confidential Information of Discloser for any purpose not expressly permitted by this EULA, and will disclose the Confidential Information of Discloser only to the employees or contractors of Recipient who have a need to know such Confidential Information for purposes of this EULA and who are under a duty of confidentiality no less restrictive than Recipient's duty hereunder. Recipient will protect Confidential Information from unauthorized use, access, or disclosure in the same manner as Recipient protects its own confidential or proprietary information of a similar nature but with no less than reasonable care

11.3 Exceptions. Recipient's obligations under Section 11.2 (Protection) with respect to any Confidential Information will terminate if Recipient can show by written records that such information: (a) was already known to Recipient at the time of disclosure by Discloser; (b) was disclosed to Recipient by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of Recipient has become, generally available to the public; or (d) was independently developed by Recipient without access to, or use of, Discloser's Information. In addition, Recipient will be allowed to disclose Confidential Information to the extent that such disclosure is required by law or by the order of a court of similar judicial or administrative body, provided that Recipient notifies Discloser of such required disclosure promptly and in writing and cooperates with Discloser, at Discloser's request and expense, in any lawful action to contest or limit the scope of such required disclosure.

11.4 Data Privacy. You agree that VMware may process technical and related information about Your use of the Software which may include internet protocol address, hardware identification, operating system, application software, peripheral hardware, and non-personally identifiable Software usage statistics to facilitate the provisioning of updates, support, invoicing or online services and may transfer such information to other companies in the VMware worldwide group of companies from time to time. To the extent that this information constitutes personal data, VMware shall be the controller of such personal data. To the extent that it acts as a controller, each party shall comply at all times with its obligations under applicable data protection legislation.

11.5 Public Records Law. VMware expressly agrees and understands that Clackamas County's obligations under this Agreement are subject to, and only enforceable to the extent permitted by, the Oregon Public Records Law, Oregon Revised Statutes ("ORS") Chapter 192 et. seq., and any other applicable state or federal law

12. GENERAL.

12.1 Transfers; Assignment. Except to the extent transfer may not legally be restricted or as permitted by VMware's transfer and assignment policies, in all cases following VMware's then current transfer and assignment process, You will not assign this EULA, any Order, or any right or obligation herein or delegate any performance without VMware's prior written consent, which consent will not be unreasonably withheld. Any other attempted assignment or transfer by You will be void. VMware may use its Affiliates or other sufficiently qualified subcontractors to provide services to You, provided that VMware remains responsible to You for the performance of the services.

12.2 Notices. Any notice delivered by VMware to You under this EULA will be delivered via mail, email or fax.

12.3 Waiver. Failure to enforce a provision of this EULA will not constitute a waiver.

12.4 Severability. If any part of this EULA is held unenforceable, the validity of all remaining parts will not be affected.

12.5 Compliance with Laws; Export Control; Government Regulations. Each party shall comply with all laws applicable to the actions contemplated by this EULA. You acknowledge that the Software is of United States origin, is provided subject to the U.S. Export Administration Regulations, may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. You represent that (1) you are not, and are not acting on behalf of, (a) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (b) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List; and (2) you will not permit the Software to be used for, any purposes prohibited by law, including, any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. The Software and accompanying documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFARS Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Software and documentation by or for the U.S. Government shall be governed solely by the terms and conditions of this EULA.

12.6 Construction. The headings of sections of this EULA are for convenience and are not to be used in interpreting this EULA. As used in this EULA, the word 'including' means "including but not limited to".

12.7 Governing Law. This EULA is governed by the laws of the State of Oregon, United States of America (excluding its conflict of law rules), and the federal laws of the United States.

12.8 Third Party Rights. Other than as expressly set out in this EULA, this EULA does not create any rights for any person who is not a party to it, and no person who is not a party to this EULA may enforce any of its terms or rely on any exclusion or limitation contained in it.

12.9 In the event of conflict or inconsistency among the Product Guide, Support Services Terms, the Order, or the terms of this EULA, the terms of this EULA will supersede and control over any conflicting or additional terms and conditions, including any purchase order, acknowledgment or confirmation or other document issued by You, provided however, that any terms of the Product Guide that are necessary to comply with the use of the applicable Software as intended shall take precedence and govern such Software.

1.1 Debt Limitation. The EULA 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.

1.2 Public Contracting Requirements. The provisions of Oregon public contracting law, ORS 279B.220 through 279B.235, including the tax representations and warranties under ORS 279B.045, to the extent applicable, are incorporated herein by this reference.

1.3 Entire Agreement. This EULA, including accepted Orders and any amendments hereto, and the Product Guide contain the entire agreement of the parties with respect to the subject matter of this EULA and supersede all previous or contemporaneous communications, representations, proposals, commitments, understandings and agreements, whether written or oral, between the parties regarding the subject matter hereof. This EULA may be amended only in writing signed by authorized representatives of both parties.

1.4 Dispute Resolution. No attorney fees shall be paid for or awarded to either party in the course of any dispute, indemnification, or other recovery. It is the intent of the parties that each shall bear the costs of its own legal counsel.

1.5 Contact Information. Please direct legal notices or other correspondence to VMware, Inc., 3401 Hillview Avenue, Palo Alto, California 94304, United States of America, Attention: Legal Department. If to Clackamas County, 2051 Kaen Road, Oregon City, OR 97045, Attention: Procurement & Contract Services.

1.6 Insurance. VMware shall secure at its own expense and keep in effect during the term of the performance under this EULA the insurance required and minimum coverage indicated below. VMware shall provide proof of said insurance and name Clackamas County as an additional insured on all the commercial general liability policies. Proof of insurance should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us.

Required - Workers Compensation: Contractor shall comply with the workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.126.

<input checked="" type="checkbox"/> Required – Professional Liability including cyber liability:, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.

<input checked="" type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
--

<input type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage.
--

The commercial general policy(s) shall be primary insurance as respects to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it. Any obligation that County agree to a waiver of subrogation is hereby stricken.

1.7 Compliance. VMware shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this EULA.

1.8 Counterparts. This EULA may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

VMWare, Inc.



3-10-2020

Authorized Signature

Date

Melani Powell Sr. Contract Manager

Name / Title (Printed)

626605-93

Oregon Business Registry #

FBC / DE

Entity Type / State of Formation

Clackamas County

Board Chair

Date

Approved as to Form:



03/11/2020

County Counsel

Date