

# AGENDA

**Thursday, October 26, 2017 - 10:00 AM**  
**BOARD OF COUNTY COMMISSIONERS**

Beginning Board Order No. 2017-119

**CALL TO ORDER**

- Roll Call
- Pledge of Allegiance

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

1. Recognizing the Water Environment Services Department for Receiving Certification as a Clackamas County Leader in Sustainability (Eben Polk, Office of Sustainability)

**II. 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.)*

**III. 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 of an Intergovernmental Revenue Agreement with Oregon Department of Education, Early Learning Division for Preschool Promise Capacity Building – *Children, Youth & Families*
2. Approval of an Agency Services Contract with Cascadia Behavioral Healthcare, Inc. to Provide Peer Support Services – *Behavioral Health*
3. Approval of an Agency Service Contract with Lifeworks NW for Outpatient Substance Abuse Services for Uninsured and Indigent Clackamas County Residents – *Behavioral Health*
4. Approval of an Agency Services Contract with Cascadia Behavioral Healthcare, Inc. for Supported Employment Services – *Behavioral Health*
5. Approval of Amendment No. 1 to an Intergovernmental Agreement with Multnomah County for the Reduction of Opioid Overdose and Death Program – *Public Health*
6. Approval of Amendment No. 2 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*

**B. Elected Officials**

1. Approval of an Intergovernmental Grant Agreement for the Child Abuse Multi-Disciplinary Intervention Program (CAMI) for the District Attorney's Office – *District Attorney*
2. Approval of a Contract with Mark43 for Public Safety Records Management Solution for the Clackamas County Sheriff's Office – *CCSO via Procurement*

**C. Public & Government Affairs**

1. Board Order No. \_\_\_\_\_ for an Extension of the Cable Television Franchise with Canby Telephone Association dba Canby Telcom

**D. Technology Services**

1. Approval to Enter into a Service Level Agreement between Clackamas Broadband eXchange and Marylhurst University for Dark Fiber Connection

**E. Business & Community Services**

1. Approval of Contract with CXT, Inc. for the Purchase of a Precast Concrete Restroom at Feyrer Park - *Procurement*

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



October 26, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Presentation

On Water Environment Services' Becoming a Clackamas County Leader in Sustainability

<b>Purpose/Outcomes</b>	Informational Item for the Commissioners on the Certification
<b>Dollar Amount and Fiscal Impact</b>	N/A
<b>Funding Source</b>	N/A
<b>Duration</b>	N/A
<b>Previous Board Action/Review</b>	N/A
<b>Strategic Plan Alignment</b>	This program supports the WES Strategic Plan objective that customers will continue to benefit from a well-managed utility. This program supports DTD's strategic goal of having businesses, schools, and public agencies adopt key waste reduction and sustainability practices. This program supports the County's Strategic Plan objectives of building a strong infrastructure and to honor, utilize, promote and invest in our natural resources.
<b>Contact Person</b>	Eben Polk (503) 742-4470, Ron Wierenga (503) 742-4581
<b>Contract No.</b>	N/A

**BACKGROUND:**

The Clackamas County Leaders in Sustainability (LIS) certification is administered through the County's Resource Conservation & Solid Waste Program within the Department of Transportation and Development (DTD). The LIS certification supports businesses and other workplaces seeking to adopt and strengthen sustainable best practices, enhance their triple bottom line and celebrate success. It showcases workplaces and recognizes them for achievements that eliminate waste, conserve resources, promote a healthy workplace environment, and engage their community. This process also helps workplaces internalize their conversation about sustainable practices, which inevitably leads to creative ideas and unique solutions. There are three tiers of certification depending on how many actions or policies have been adopted by the applicant: LIS Certified, Silver Certification, and Gold Certification.

Water Environment Services (WES) is the first County department to achieve LIS certification. By achieving more than 30 of the program's goals, WES qualified for certification at the "Silver" level. This achievement is significant because it encompasses all of WES' facilities. As a department that provides critical services to preserve public health and the environment for more than 165,000 customers, WES' LIS certification solidifies its role as a community leader in the practice of sustainable efforts. A group of WES employees participates in a "Green Team," which manages and provides suggestions on sustainability practices to the WES senior management. The Green Team is already working toward upgrading the WES certification to "Gold" status.

**RECOMMENDATION:**

None. This is an informational item.

Respectfully submitted,

Greg Geist  
WES Director

Barb Cartmill  
DTD Director

October 26, 2017

Board of Commissioners  
Clackamas County

Approval of Intergovernmental Revenue Agreement with Oregon Department of Education,  
Early Learning Division for Preschool Promise Capacity Building

<b>Purpose/Outcomes</b>	Funds capacity building activities that include professional development and technical assistance to improve quality ratings of providers of Preschool Promise services.
<b>Dollar Amount and Fiscal Impact</b>	\$45,000 No County General Funds are involved
<b>Funding Source</b>	Oregon Department of Education Early Learning Division State General Funds
<b>Duration</b>	From July 1, 2017 through September 30, 2019
<b>Previous Board Action</b>	N/A
<b>Strategic Plan Alignment</b>	<ul style="list-style-type: none"> <li>• Individuals and families in need are healthy and safe</li> <li>• Ensure safe, healthy and secure communities</li> </ul>
<b>Contact Person</b>	Rodney A. Cook, 503-650-5677
<b>Contract No.</b>	CYF-8534

**BACKGROUND:**

The Children, Youth & Families Division of the Health, Housing and Human Services Department requests approval of an Intergovernmental Agreement with Oregon Department of Education Early Learning Division for Preschool Promise Capacity Building. Funding will be used for professional development and technical assistance to improve quality ratings for providers of Preschool Promise services in Clackamas County.

This revenue Agreement has a maximum value of \$45,000 and no county general funds are involved. It has been reviewed and approved by County Counsel and becomes effective upon signature by all parties for services starting July 1, 2017 and terminating September 30, 2019.

**RECOMMENDATION:**

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

Respectfully submitted,

Richard Swift, Director  
Health, Housing & Human Services

## GRANT AGREEMENT

This Grant Agreement (“Grant” or “Agreement”) is made by the State of Oregon, acting by and through the Oregon Department of Education (“Agency”), and Clackamas County (“Grantee”) on behalf of the Clackamas Early Learning Hub for financing of the project described in Exhibit A (“Project”).

This Grant includes the following exhibits, listed in descending order of precedence for purposes of resolving any conflict between two or more of the parts:

- Exhibit A: Project Description
- Exhibit B: Funding Request Form
- Exhibit C: Insurance

EFFECTIVE DATE AND DURATION: When all Parties have executed this Agreement, and all necessary approvals have been obtained, this Agreement shall be effective as of July 1, 2017, and terminates on September 30, 2019, unless terminated earlier.

### SECTION 1 - DEFINITIONS

The following capitalized terms have the meanings assigned below.

“Allowable” means costs of the Project incurred or to be expended by the Grantee that are used only for the purposes set forth in Exhibit A and the completed Funding Request Form in Exhibit B.

“Costs of the Project” means the Grantee’s actual costs that are reasonable, necessary and directly related to the Project and are eligible or permitted uses of the Grant Funds under the Project.

“Default” means an event which, with notice or lapse of time or both, would become an Event of Default.

“Early Learning Division (“ELD”)” means the division of the Oregon Department of Education responsible for the administration of and outcomes for the state’s early learning system of programs and services.

“Early Learning Hub (“ELH”)” means the local coordinating entity designated by and with whom the ELD has contracted to provide early learning system programs and services.”

“Electronic Grant Management System (“EGMS”)” means the electronic payment system operated by the Agency.

“Grant Amount” means funds provided under this Grant to complete the Project which shall not exceed:

- \$20,000.00 during July 1, 2017-June 30, 2018
- \$40,000.00 aggregate through June 30, 2019
- \$5,000.00 anticipated amount during July 1, 2019-September 30, 2019
- \$45,000.00 maximum during the term of the Grant.

“Project” means the activities of Grantee to carry out the preschool education services described in Exhibit A as the purposes of the Grant Amount and the Specific Work to be Accomplished, under authority of ORS 329.172 and OAR 581-019-0036 through 581-019-0049.

“Service Delivery Area (“SDA”)” means the geographic area of Clackamas County, within which the Grantee may provide services.

“Spark” means Oregon’s quality rating and improvement system for the childhood care and early learning system.

**SECTION 2 - FINANCIAL ASSISTANCE**

The Agency shall provide the Grantee, and the Grantee shall accept from the Agency, funds provided under this Grant in an aggregate amount not to exceed the Grant Amount (“the Grant Funds”). The Grantee acknowledges the Grant Amount available under this Grant is based on the level of children enrolled and the mix of services provided, which may change during the duration of the Grant Agreement. The Grantee acknowledges the level of Grant funding for program implementation may increase or decrease corresponding to these changes. If Grant funding changes, the Parties acknowledge the Grant Agreement shall be amended to reflect actual allocated funding.

**SECTION 3 - DISBURSEMENTS**

- A. Agency shall disburse Grant Funds to Grantee for the Project activities described in Exhibit A and according to the completed Funding Request Form set forth in Exhibit B.
- B. Grantee shall provide any additional information or further detail regarding the expenditure of Grant Funds as Agency may request.
- C. Disbursements will occur only after Agency has received the completed Funding Request Form set forth in Exhibit B with an authorized signature and Agency has accepted the proposed Project activities, including any required deliverables and services, for which reimbursement is sought via properly submitted documentation. Drawn down of approved funds shall occur through the EGMS.
- D. If Agency determines that any completed Project activities or documentation are not acceptable and that any deficiencies are the responsibility of the Grantee, Agency shall prepare a detailed written description of any deficiencies within 15 days of receipt of the document or performance of the activity, and deliver such notice to Grantee. Grantee shall correct any deficiencies at no cost to Agency.

**SECTION 4 - CONDITIONS PRECEDENT**

- A. Conditions Precedent to Agency’s Obligations. Agency’s obligations are subject to the receipt of the following items, in form and substance satisfactory to the Agency:
  - (1) This Grant duly signed by an authorized officer of the Grantee.
  - (2) Such other certificates, documents, opinions and information as the Agency may reasonably require.
- B. Conditions to Disbursements. As to any disbursement, the Agency has no obligation to disburse Grant Funds unless all following conditions are met:
  - (1) There is no Default or Event of Default.
  - (2) The representations and warranties made in this Grant are true and correct on the date of disbursement as if made on such date.

- (3) The Agency, in the reasonable exercise of its administrative discretion, has sufficient moneys available to disburse the Grant Funds for use in the Project and has sufficient funding, appropriation, limitation, allotment and other expenditure authority to make the disbursement.

**SECTION 5 - USE OF FINANCIAL ASSISTANCE**

- A. Use of Funds. The Grantee shall use the Grant Funds only for the Project and according to the completed Funding Request Form in Exhibit B. The Grantee may not transfer Grant Funds among line items in the budget without the prior written consent of the Agency.
- B. Costs of the Project. The Grantee shall apply the Grant Funds only to the Allowable costs of the Project in accordance with Oregon law as applicable.
- C. Costs Paid for by Others. The Grantee may use other funds in addition to the Grant Funds to complete the Project; provided, however, the Grantee may not use any of the Grant Funds to cover costs to be paid for by other financing for the Project from another State of Oregon agency or any third party.

**SECTION 6 - REPRESENTATIONS AND WARRANTIES OF GRANTEE**

The Grantee represents and warrants to the Agency:

- A. Estimated Project Cost. A reasonable estimate of the Costs of the Project is shown in Exhibit B, together with a description of how Grant Funds and other funds in addition to Grant proceeds, if any, are expected to be used to carry out the Project.
- B. Organization and Authority.
- (1) The Grantee is a local government validly organized and existing under the laws of the State of Oregon.
  - (2) The Grantee has all necessary right, power and authority under its organizational documents and under Oregon law to (a) execute and deliver this Grant, (b) incur and perform its obligations under this Grant, and (c) receive financing for the Project.
  - (3) This Grant has been duly executed by the Grantee, and when executed by the Agency, is legal, valid and binding, and enforceable in accordance with its terms.
  - (4) If applicable and necessary, this Grant executed and delivered by the Grantee has been authorized by an ordinance, order or resolution of the Grantee's governing body, or voter approval, that was adopted in accordance with applicable law and requirements for filing public notices and holding public meetings.
- C. Full Disclosure. The Grantee has disclosed in writing to the Agency all facts that materially adversely affect the Project, or the ability of the Grantee to perform all obligations required by this Grant. The Grantee has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading. The information contained in this Grant is true and accurate in all respects.
- D. Pending Litigation. The Grantee has disclosed in writing to the Agency all proceedings pending (or to the knowledge of the Grantee, threatened) against or affecting the Grantee, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project or the ability of the Grantee to perform all obligations required by this Grant.



E. No Defaults.

- (1) No Defaults or Events of Default exist or occur upon authorization, execution or delivery of this Grant.
- (2) The Grantee has not violated, and has not received notice of any claimed violation of, any agreement or instrument to which it is a party or by which the Project or its property may be bound, that would materially adversely affect the Project or the ability of the Grantee to perform all obligations required by this Grant.

F. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Grant will not: (i) cause a breach of any agreement to which the Grantee is a party or by which the Project or any of its property or assets may be bound; (ii) violate any provision of the charter or other document pursuant to which the Grantee was organized or established; or (iii) violate any laws, regulations, ordinances, resolutions, or court orders related to the Grantee, the Project or its properties or operations.

<b>SECTION 7 - COVENANTS OF GRANTEE</b>
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The Grantee covenants as follows:

- A. Notice of Adverse Change. The Grantee shall promptly notify the Agency of any adverse change in the activities, prospects or condition (financial or otherwise) of the Grantee or the Project related to the ability of the Grantee to perform all obligations required by this Grant.
- B. Compliance with Laws. The Grantee shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Grant and the Project, in particular, but without limitation, any applicable requirements found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C. These laws, rules, regulations and orders are incorporated by reference in this Grant to the extent required by law.
- C. Project Completion Obligations. The Grantee shall:
  - (1) Complete the Project using its own fiscal resources or money from other sources to pay for any Costs of the Project in excess of the total amount of Grant Funds provided pursuant to this Grant.
  - (2) Complete the Project, including the submission of any reports satisfactory to the Agency, no later than 45 days after the end of the Grant term, unless otherwise permitted by the Agency in writing. The final report, described in Exhibit A must, at a minimum, include a description of the expenditure of the Grant Funds and any other fiscal resources or money from other sources used to carry out the Project.
- D. Inspections; Information. The Grantee shall permit the Agency and any party designated by the Agency: (i) to inspect, at any reasonable time, the property, if any, constituting the Project; and (ii) at any reasonable time, to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other related matters, and financial statements or other documents related to its financial standing. The Grantee shall supply any related reports and information as the Agency may reasonably require.
- E. Records Maintenance. The Grantee shall retain and keep accessible all books, documents, papers, and records that are directly related to this Grant, the Project or the Grant Funds for a minimum of six years, or such longer period as may be required by other provisions of this Grant or applicable law,

following the expiration of the Grant term. If there are unresolved issues at the end of such period, the Grantee shall retain the books, documents, papers and records until the issues are resolved.

- F. Disadvantaged Business Enterprises. ORS 200.090 requires all public agencies to “aggressively pursue a policy of providing opportunities for disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans owned and emerging small businesses...”

The Agency encourages the Grantee in any contracting activity to follow good faith efforts as described in ORS 200.045, available at

[https://www.oregonlegislature.gov/bills\\_laws/ors/ors200.html](https://www.oregonlegislature.gov/bills_laws/ors/ors200.html)

Additional resources are provided by the Governor’s Policy Advisor for Economic and Business Equity. Also, the Certification Office for Business Inclusion and Diversity at the Oregon Business Development Department maintains a list of certified firms and can answer questions. Search for certified MWESB firms on the web at:

<https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp>

- G. Professional Responsibility. All service providers retained by the Grantee for their professional expertise to carry out the Project must be certified, licensed, or registered, as appropriate, in the State of Oregon for their specialty.
- H. Notice of Default. The Grantee shall give the Agency prompt written notice of any Default as soon as any senior administrative or financial officer of the Grantee becomes aware of its existence or reasonably believes a Default is likely.
- I. Indemnity. To the extent authorized by law, the Grantee shall defend (subject to ORS chapter 180), indemnify, save and hold harmless the Agency and its officers, employees and agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorneys’ fees incurred related to any actual or alleged act or omission by the Grantee, or its employees, agents or contractors.
- J. Insurance. Grantee shall obtain at Grantee’s expense the insurance specified in Exhibit C prior to performing under this Agreement and shall maintain it in full force and at its own expense throughout the duration of this Agreement, as required by any extended reporting period or by tail coverage requirements, and by all applicable warranty periods.

<b>SECTION 8- DEFAULTS</b>
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Any of the following constitutes an “Event of Default”:

- A. Any false or misleading representation is made by or on behalf of the Grantee in this Grant or in any document provided by the Grantee related to the Project.
- B. (1) A petition, proceeding or case is filed by or against the Grantee under any federal or state bankruptcy or insolvency law, and in the case of a petition filed against the Grantee, the Grantee acquiesces to such petition or such petition is not dismissed within 20 calendar days after such filing, or such dismissal is not final or is subject to appeal;
- (2) The Grantee files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, dissolution, winding-up or composition or adjustment of debts;

- (3) The Grantee becomes insolvent or bankrupt or admits its inability to pay its debts as they become due, or makes an assignment for the benefit of its creditors;
  - (4) The Grantee applies for, or consents to the appointment of, or taking of possession by, a custodian (including, without limitation, a receiver, liquidator or trustee) of the Grantee, or any substantial portion of its property; or
  - (5) The Grantee takes any action for the purpose of affecting any of the above.
- C. The Grantee fails to perform any obligation required under this Grant, other than those referred to in subsections A through B of this Section 8, and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to the Grantee by the Agency. The Agency may agree in writing to an extension of time if it determines the Grantee instituted and has diligently pursued corrective action.

### SECTION 9 – REMEDIES

- A. Remedies. Upon any Event of Default, the Agency may pursue any or all remedies in this Grant and any other remedies available at law or in equity to enforce the performance of any obligation of the Grantee. Remedies may include, but are not limited to:
- (1) Terminating the Agency’s commitment and obligation to make disbursements under the Grant.
  - (2) Barring the Grantee from applying for future awards from Agency.
  - (3) Withholding amounts otherwise due to the Grantee as disbursements under this Grant.
  - (4) Requiring repayment of the Grant and all interest earned by the Grantee on those Grant Funds.
- B. Application of Moneys. Any moneys collected or withheld by the Agency pursuant to section 9.A will be applied first, to pay any attorneys’ fees and other fees and expenses incurred by the Agency; then, as applicable, to repay any Grant Funds owed to Grantee; and last, to pay any other amounts due, and payable under this Grant.
- C. No Remedy Exclusive; Waiver; Notice. No remedy available to the Agency is intended to be exclusive, and every remedy will be in addition to every other remedy. No delay or omission to exercise any right or remedy will impair or is to be construed as a waiver of such right or remedy. No single or partial exercise of any right, power, or privilege under this Grant will preclude any other, or further exercise thereof, or the exercise of any other such right, power or privilege. The Agency is not required to provide any notice in order to exercise any right or remedy, other than notice required in section 8 of this Grant.
- D. Default by Agency. In the event the Agency defaults on any obligation in this Grant, the Grantee’s remedy will be limited to injunction, special action, action for specific performance, or other available equitable remedy for performance of the Agency’s obligations.

### SECTION 10 - MISCELLANEOUS

- A. Time is of the Essence. The Grantee agrees that time is of the essence under this Grant.
- B. Relationship of Parties; Successors and Assigns; No Third Party Beneficiaries.
- (1) The parties agree that their relationship is that of independent contracting parties and that the Grantee is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265.

- (2) Nothing in this Grant gives, or is to be construed to give, directly or indirectly, to any third persons, any rights and benefits greater than those enjoyed by the general public.
- (3) This Grant will be binding upon and inure to the benefit of the Agency, the Grantee, and their respective successors and permitted assigns.
- (4) The Grantee may not assign or transfer any of its rights or obligations or any interest in this Grant without the prior written consent of the Agency. The Agency may grant, withhold or impose conditions on such consent in its sole discretion. In the event of an assignment, the Grantee shall pay, or cause to be paid to the Agency, any fees or costs incurred because of such assignment, including but not limited to attorneys' fees. Any approved assignment is not to be construed as creating any obligation of the Agency beyond those in this Grant, nor does assignment relieve the Grantee of any of its duties or obligations under this Grant.
- (5) The Grantee hereby approves and consents to any assignment, sale or transfer of this Grant that the Agency deems to be necessary.

C. Disclaimer of Warranties; Limitation of Liability. The Grantee agrees that:

- (1) The Agency makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portion of the Project, or any other warranty or representation.
- (2) In no event is the Agency or its agents liable or responsible for any direct, indirect, incidental, special, consequential or punitive damages in connection with or arising out of this Grant or the existence, furnishing, functioning or use of the Project.

D. Notices. All notices to be given under this Grant must be in writing and addressed as shown below, or to other addresses that either party may hereafter indicate pursuant to this section 10.D. Notices may only be delivered by personal delivery or mailed, postage prepaid. Any such notice is effective five calendar days after mailing, or upon actual delivery if personally delivered.

If to the Agency:                   Gwyn Bachtle  
Preschool Promise Project Coordinator  
Early Learning Division  
775 Summer Street NE, 3<sup>rd</sup> Floor  
Salem, OR 97301  
gwyn.bachtle@ode.state.or.us  
503-480-6963

If to the Grantee:                   Rod Cook  
Children, Youth & Families Division Director  
2051 Kaen Road  
Clackamas, OR 97045  
[rodcoo@co.clackamas.or.us](mailto:rodcoo@co.clackamas.or.us)  
503-650-5677

E. No Construction against Drafter. This Grant is to be construed as if the parties drafted it jointly.

F. Severability. If any term or condition of this Grant is declared by a court of competent jurisdiction as illegal, invalid or unenforceable, that holding will not invalidate or otherwise affect any other provision.

- G. Amendments, Waivers. This Grant may not be amended without the prior written consent of the Agency (and when required, the Department of Justice) and the Grantee. This Grant may not be amended in a manner that is not in compliance with the Project. No waiver or consent is effective unless in writing and executed by the party against whom such waiver or consent is sought to be enforced. Such waiver or consent will be effective only in the specific instance and for the specific purpose given.
- H. Attorneys' Fees and Other Expenses. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Grant is entitled to recover its reasonable attorneys' fees and costs at trial and on appeal. Reasonable attorneys' fees cannot exceed the rate charged to the Agency by its attorneys.
- I. Choice of Law; Designation of Forum; Federal Forum. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Grant, including, without limitation, its validity, interpretation, construction, performance, and enforcement.
- Any party bringing a legal action or proceeding against any other party arising out of or relating to this Grant shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.
- Notwithstanding the prior paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This paragraph applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This paragraph is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.
- J. Integration. This Grant (including all exhibits, schedules or attachments) constitutes the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Grant.
- K. Execution in Counterparts. This Grant may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

ODE Grant 11180 *Clackamas Co-Clackamas Early Learning Hub*

The Grantee, by its signature below, acknowledges that it has read this Grant, understands it, and agrees to be bound by its terms and conditions.

**STATE OF OREGON acting by and through its Department of Education**

By: \_\_\_\_\_  
Name, Title

\_\_\_\_\_  
Date

**CLACKAMAS COUNTY**

By: \_\_\_\_\_  
Name, Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Federal Tax ID Number

**Approved for Legal Sufficiency in accordance with ORS 291.047**

By: Marvin D Fjordbeck, Senior Assistant Attorney General

9/21/2017 via email  
Date

**EXHIBIT A - PROJECT DESCRIPTION**

**PURPOSE OF GRANT AMOUNT**

The Grant Amount will allow Grantee to identify the needs of underserved populations within the Service Delivery Area to provide financial support for the following capacity building and continuous improvement pre-school service activities: start-up activities; infrastructure development; and, training, technical assistance and professional development.

**EQUITY POLICY STATEMENT**

The Agency supports all of Oregon’s young children and families to learn and thrive. All of the Agency’s work is in service to children, families and communities.

The Agency knows that underserved communities represent Oregon’s best opportunity to improve educational outcomes. Strength-based approaches and asset-based mindsets will support the Agency’s efforts to institutionalize equity. For each and every child and family to learn and thrive, differentiated, person-centered resources and supports must be provided.

The Agency supports culturally-responsive services that are respectful of, and relevant to, the beliefs, practices, culture and linguistic needs of diverse consumer and client populations and communities. Cultural responsiveness refers to the capacity to respond to the issues of diverse communities. It thus requires knowledge and capacity at different levels of intervention: systemic, organizational, professional and individual.

**Equity Objectives**

Grantee, its subcontractors and its service providers shall ensure the following:

- Grantee’s entire organization works to build a climate that promotes acceptance, inclusion and respect of all individuals;
- Grantee’s staff understands the communities they serve, in a non-static manner, including the communities’ culture, values, norms, history, customs, and particularly types of discrimination, marginalization and exclusion they face in this country. Grantee must apply that knowledge to services it provides under this Agreement in a responsive, non-limiting and non-stereotyping manner;
- Whenever possible, Grantee must interact with service users according to the user’s preferred cultural norms including, without limitations, social greetings, family conventions, dietary preferences, welcoming culture, healing beliefs and spiritual needs;
- Grantee’s staff shall engage in continuous learning regarding their own biases, assumptions and stereotypes that may limit their ability to be culturally responsive, and to understand how these biases affect their work with service users; and
- Grantee uses data-driven needs, demographics and risks of the community in the determination of which populations to target and prioritize for services.

**SPECIFIC WORK TO BE ACCOMPLISHED**

The Grantee shall utilize and distribute awarded funds to early learning providers of related services as

described in the Request for Funding Form and approved by the Agency. The Capacity Building activities for the Grantee will depend on the specific needs of the communities in their Service Delivery Area. The following activities are eligible under this Grant Amount:

**Start-Up Activities:**

- Classroom Materials and Supplies to meet licensing and Spark top two tier rating (furniture / books / manipulatives).
- Curriculum and Assessment Materials
- Technology Equipment (hardware / computers / devices / software).
- Non-Fixed Gross Motor Equipment (tricycles / sporting equipment).
- Insurance to meet program requirements.
- Other activities as deemed appropriate, necessary, and approved by ELD program staff.

**Infrastructure:**

- Playgrounds (purchase / repair / build / recondition fixed playground equipment / storage sheds).
- Facility Health & Safety Improvements needed to meet licensing requirements.
- Technology upgrades needed to meet Preschool Promise program requirements.
- Other infrastructure purchases as deemed appropriate, necessary, and approved by ELD program staff.

**Training and Technical Assistance & Professional Development:**

- Training, mentoring, coaching for Hub and/or provider staff throughout the instructional year to increase the level of classroom instruction, child outcomes, teacher effectiveness within the classroom, and cultural responsiveness.
- Costs associated with accessing or providing training (training fees / travel expenses / substitute wages).
- Costs associated with educational obtainment to meet Preschool Promise, Spark, or licensing requirements (college tuition and credentialing fees).
- Other activities as deemed appropriate, necessary and approved by ELD program staff.

ACTIVITIES	DELIVERABLES	DUE DATES
Provide Capacity Building in accordance with specific funding request as approved by Agency	Professional Development, Technical Assistance, and Start-Up activities of the early learning providers.	Jul 1, 2017 – Sep 30, 2019
Submit quarterly financial reports to Agency	Financial report covering activities for the reporting period	Quarterly, during 45 days following each calendar quarter
Maintain Inventory List of materials purchased with this Grant Amount	Inventory list	Must be available upon request by Agency
Final written report	Written summary report to Agency submitted via this link: <a href="https://oregonearlylearning.com/preschool-promise#forms">https://oregonearlylearning.com/preschool-promise#forms</a>	Within 60 days of Grant expiration



**EXHIBIT B – FUNDING REQUEST FORM**

**Disbursement of Preschool Promise Capacity Building and Start-Up Funding  
FUNDING REQUEST FORM**

In 2017, the legislature, through Senate Bill 5516, allocated \$35.7million to continue support for Capacity Building, Professional Development, Technical Assistance, and Start-Up activities of the early learning providers. To facilitate the distribution of these funds, Early Learning Hubs need to complete the following Funding Request Form. The form must propose and justify a request for one-time spending using one of the approved expenditure categories below.

**Start-Up:**

- Classroom Materials and Supplies to meet licensing and QRIS top two tier rating (furniture / books / manipulatives).
- Curriculum and Assessment Materials
- Technology Equipment (hardware / computers / devices / software).
- Non-Fixed Gross Motor Equipment (tricycles / sporting equipment).
- Insurance to meet program requirements.
- Other as deemed appropriate and necessary.

**Infrastructure:**

- Playgrounds (purchase / repair / build / recondition fixed playground equipment / storage sheds).
- Facility Health & Safety Improvements needed to meet licensing requirements.
- Technology upgrades needed to meet Preschool Promise program requirements.
- Other as deemed appropriate and necessary.

**Training and Technical Assistance & Professional Development:**

- Training, mentoring, coaching for Hub and/or provider staff throughout the instructional year to increase the level of classroom instruction, child outcomes, teacher effectiveness within the classroom, and cultural responsiveness.
- Costs associated with accessing or providing training (training fees / travel expenses / substitute wages).
- Costs associated with educational obtainment to meet Preschool Promise, QRIS, or licensing requirements (college tuition / credentialing fees).
- Other as deemed appropriate and necessary.

### FUNDING REQUEST FORM

Requesting Early Learning Hub:

Date:

Requestor Name:

Requestor Signature:

List provider, identify cost and provide narrative justification for each below (add more rows as needed).

To whom will funds be distributed to?	Total Request	Request by Expenditure Categories			ELD Approved Amount
Name of Preschool Promise Provider, Hub or other entity.	Includes all Expenditure Categories	Start Up Amount	Infrastructure Amount	Professional Development Amount	Includes all Expenditure Categories
		Justification	Justification	Justification	
TOTAL COST OF REQUEST				TOTAL COST=\$	ELD TOTAL APPROVED AMOUNT:  \$
ELD Staff Name: _____ ELD Staff Signature: _____ Approval Date: _____					

***Please submit with this form any supporting documents for budget detail and justification.***

**EXHIBIT C – INSURANCE REQUIREMENTS**

**INSURANCE REQUIREMENTS:**

Grantee shall obtain at Grantee’s expense the insurance specified in this Exhibit C prior to performing under this Agreement and shall maintain it in full force and at its own expense throughout the duration of this Agreement, as required by any extended reporting period or tail coverage requirements, and all warranty periods that apply. Grantee shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Agency. Coverage shall be primary and non-contributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers’ Compensation. Grantee shall pay for all deductibles, self-insured retention and self-insurance, if any.

**WORKERS’ COMPENSATION & EMPLOYERS’ LIABILITY**

All employers, including Grantee, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Grantee shall require and ensure that each of its subcontractors complies with these requirements. If Grantee is a subject employer, as defined in ORS 656.023, Grantee shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If Grantee is an employer subject to any other state’s workers’ compensation law, Contactor shall provide workers’ compensation insurance coverage for its employees as required by applicable workers’ compensation laws including employers’ liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

**COMMERCIAL GENERAL LIABILITY:**

**Required**  **Not required**

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this Agreement, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000.00 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.00.

**AUTOMOBILE LIABILITY INSURANCE:**

**Required**  **Not required**

Automobile Liability Insurance covering Grantee’s business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$1,000,000.00 for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Use of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

**PROFESSIONAL LIABILITY:**

**Required**  **Not required**

**Professional Liability insurance** covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Agreement by the Grantee and Grantee's subcontractors, agents, officers or employees in an amount not less than \$1,000,000.00 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.00. If coverage is on a claims made basis, then either an extended reporting period of not less than 24 months shall be included in the Professional Liability insurance coverage, or the Grantee shall provide Tail Coverage as stated below.

**EXCESS/UMBRELLA INSURANCE:**

A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.

**ADDITIONAL INSURED:**

The Commercial General Liability insurance and Automobile liability insurance required under this Agreement must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Grantee's activities to be performed under this Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 04 13 or equivalent.

**TAIL COVERAGE:**

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, Grantee shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Agreement, for a minimum of 24 months following the later of (i) Grantee's completion and Agency's acceptance of all Services required under this Agreement, or, (ii) Agency or Grantee termination of Agreement, or, iii) The expiration of all warranty periods provided under this Agreement.

**CERTIFICATE(S) AND PROOF OF INSURANCE:**

Grantee shall provide to Agency Certificate(s) of Insurance for all required insurance before performing any Project activities under this Agreement. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance Agency has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Agreement. Grantee shall furnish acceptable insurance certificates to the **Oregon Department of Education, Attn: Amy Fowler, 255 Capitol St NE, Salem OR 97310** prior to commencing the work.

**NOTICE OF CHANGE OR CANCELLATION:**

The Grantee or its insurer must provide at least 30 days' written notice to Agency before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

**INSURANCE REQUIREMENT REVIEW:**

Grantee agrees to periodic review of insurance requirements by Agency under this Agreement and to provide updated requirements as mutually agreed upon by Grantee and Agency.

**STATE ACCEPTANCE:**

All insurance providers are subject to Agency acceptance. If requested by Agency, Grantee shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to Agency's representatives responsible for verification of the insurance coverages required under this Exhibit C.

**PHYSICAL ABUSE AND MOLESTATION INSURANCE COVERAGE:**

**Required**    **Not required**

Abuse and Molestation Insurance in a form and with coverage that are satisfactory to the State covering damages arising out of actual or threatened physical abuse, mental injury, sexual molestation, negligent: hiring, employment, supervision, investigation, reporting to proper authorities, and retention of any person for whom the Grantee is responsible including but not limited to Grantee and Grantee's employees and volunteers. Policy endorsement's definition of an insured shall include the Grantee, and the Grantee's employees and volunteers. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000.00 per occurrence. Any annual aggregate limit shall not be less than \$3,000,000.00. Coverage can be provided by a separate policy or as an endorsement to the commercial general liability or professional liability policies. The limits shall be exclusive to this required coverage. Incidents related to or arising out of physical abuse, mental injury, or sexual molestation, whether committed by one or more individuals, and irrespective of the number of incidents or injuries or the time period or area over which the incidents or injuries occur, shall be treated as a separate occurrence for each victim. Coverage shall include the cost of defense and the cost of defense shall be provided outside the coverage limit.

October 26, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of an Agency Services Contract with  
Cascadia Behavioral Healthcare, Inc. to Provide Peer Support Services

<b>Purpose/Outcomes</b>	Provides peer support service to consumers residing at the Villebois Housing sites (including Renaissance Court Apartments, Rain Garden and The Charleston Apartments) in Wilsonville, Oregon.
<b>Dollar Amount and Fiscal Impact</b>	Contract maximum payment is \$149,500.
<b>Funding Source</b>	State of Oregon (Service Element 20). No County General Funds are involved.
<b>Duration</b>	Effective July 1, 2017 and terminates on June 30, 2018
<b>Previous Board Action</b>	NA
<b>Strategic Plan Alignment</b>	1. Increase self-sufficiency for our clients. 2. Ensure safe, healthy and secure communities.
<b>Contact Person</b>	Mary Rumbaugh, Director – Behavioral Health Division (503) 742-5305
<b>Contract No.</b>	# 8119

**BACKGROUND:**

The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of Agency Services Contract with Cascadia Behavioral Healthcare, Inc. for peer support service to consumers residing at the Villebois Housing sites (including Renaissance Court Apartments, Rain Garden and The Charleston Apartments) in Wilsonville, Oregon.

The Agreement is effective July 1, 2017 and terminates on June 30, 2018 with a maximum payment of \$149,500. County Counsel has reviewed and approved this contract on August 29, 2017. This contract is retroactively effective due to awaiting signature and approval from agency.

**RECOMMENDATION:**

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

Respectfully submitted,

Richard Swift, Director  
Health, Housing & Human Services Department

## AGENCY SERVICES CONTRACT Contract # 8119

This Agency Service Contract, herein called "Contract," is between Clackamas County acting by and through its Health, Housing and Human Services Department, Behavioral Health Division, hereinafter called "COUNTY," and Cascadia Behavioral Healthcare, hereinafter called "AGENCY."

### CONTRACT

#### 1.0 Engagement

COUNTY hereby engages AGENCY to provide **peer support services to consumers residing at the Villebois Housing sites (including Renaissance Court Apartments, Rain Garden, and The Charleston Apartments) in Wilsonville, Oregon** as more fully described in **Exhibit B, Scope of Work**, attached hereto and incorporated herein.

#### 2.0 Term

Services provided under the terms of this Contract shall commence **July 1, 2017 and shall terminate June 30, 2018** unless terminated by one or both parties as provided for in paragraph 6.0 below.

#### 3.0 Compensation and Fiscal Records

3.1 Compensation. COUNTY shall compensate AGENCY for satisfactorily performing contracted services as specified in this Contract.

Maximum Contract payment shall not exceed **\$149,500.00**.

Villebois Community Housing Sites: The total payment calculation is based on AGENCY providing **seven 8.5-hour day shifts per week** at Villebois Community Housing Sites including Renaissance Court Apartments, Rain Garden, and the Charleston Apartments.

AGENCY shall **submit an itemized invoice by the 10<sup>th</sup> of the month** following the month services were performed. The invoice shall include the contract # **8119**, list the dates of service, the rate and the total amount due for all service provided during the month. Each invoice shall have a shift log summary for reconciliation and back up. Invoices with back-up shall be submitted electronically to:

BHAP@co.clackamas.or.us and  
alinfoot@clackamas.us

When submitting electronically, designate AGENCY name and contract #8119 in the subject of the e-mail.

The payment shall be full compensation for work performed, for services rendered, and for all labor, materials, supplies, equipment, mileage, and incidentals necessary to perform the work and services.

3.2 Withholding of Contract Payments. Notwithstanding any other payment provision of this Contract, should AGENCY fail to perform or document the performance of contracted services, COUNTY shall immediately withhold payments hereunder. Such withholding payment for cause may continue until AGENCY performs required services or establishes to COUNTY'S satisfaction that such failure arose out of causes beyond the control, and without the fault or negligence, of AGENCY.

3.3 Financial Records. AGENCY and its subcontractors shall maintain complete and legible financial records pertaining in whole or in part to this Contract. Such records shall be maintained in accordance with Generally Accepted Accounting Principles and/or other applicable accounting guidelines. Financial records and supporting documents shall be retained for at least six (6) years or such period as may be required by applicable law, following final payment made under this Contract or until all pending matters are resolved,

whichever period is longer. If an audit of financial records discloses that payments to AGENCY were in excess of the amount to which AGENCY was entitled, AGENCY shall repay the amount of the excess to COUNTY.

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

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

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

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

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

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

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

4.1.1 AGENCY 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 AGENCY'S warranty, in this Contract that AGENCY 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:

- i. Termination of this Contract, in whole or in part;
- ii. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to AGENCY, in an amount equal to COUNTY'S setoff right, without penalty; and
- iii. 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



AGENCY'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.

4.2 Precedence. Where there is a requirement listed both in the main boilerplate of this Contract and in an exhibit, the exhibit shall take precedence.

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

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

4.5. Tax Laws. The AGENCY represents and warrants that, for a period of no fewer than six (6) calendar years preceding the effective date of this Contract, has faithfully complied with:

- i. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
- ii. Any tax provisions imposed by a political subdivision of this state that applied to AGENCY, to AGENCY'S property, operations, receipts, or income, or to AGENCY'S performance of or compensation for any work performed by AGENCY;
- iii. Any tax provisions imposed by a political subdivision of this state that applied to AGENCY, or to goods, services, or property, whether tangible or intangible, provided by AGENCY; and
- iv. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

## 5.0 General Conditions

5.1 Indemnification. AGENCY 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 AGENCY's negligent or willful acts or those of its employees, agents, volunteers, or those under AGENCY's control. AGENCY is responsible for the actions of its own agents and employees, and COUNTY assumes no liability or responsibility with respect to AGENCY's actions, employees, agents, volunteers, or otherwise with respect to those under its control.

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

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

5.2 Insurance. COUNTY shall enforce AGENCY compliance with the insurance requirements outlined herein, and shall take all reasonable steps to enforce such compliance. Examples of reasonable steps include issuing stop work orders until the insurance is in full force, terminating the Contract as permitted herein, or pursuing legal action to enforce such requirements. During the term of this Contract, AGENCY shall maintain in force, at its own expense, each insurance noted below:

### 5.2.1 Commercial General Liability.

Required by COUNTY       Not required by COUNTY

AGENCY shall obtain, at AGENCY's expense, and keep in effect during the term of this Contract, Commercial General Liability Insurance covering bodily injury, death 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 Contract and personal injury liability, products and completed operations. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute to it.

5.2.2 Automobile Liability.

Required by COUNTY       Not required by COUNTY

AGENCY shall obtain at AGENCY expense, and keep in effect during the term of this Contract, 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 AGENCY shall obtain at AGENCY expense, and keep in effect during the term of the Contract, Personal Auto Coverage. The limits shall be no less than **\$250,000/occurrence, \$500,000/aggregate, and \$100,000** property damage.

5.2.3 Professional Liability.

Required by COUNTY       Not required by COUNTY

If this Contract involves the delivery of professional services, AGENCY shall obtain and furnish the COUNTY evidence of Professional Liability Insurance in the amount of **not less than \$1,000,000 combined single limit per occurrence/\$2,000,000 general annual aggregate** for malpractice or errors and omissions coverage for the protection of the COUNTY, its officers, elected officials and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this Contract. COUNTY, at its option, may require a complete copy of the above policy.

5.2.4 Additional Insured Provisions. All required insurance, other than Professional Liability, and Workers' Compensation, shall include "**Clackamas County, its agents, elected officials, officers, and employees**" and "**the State of Oregon and its officers, employees and agents**" as additional insureds, but only with respect to AGENCY's activities performed under this Contract.

5.2.5 Notice of Cancellation. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without thirty (30) days written notice to the COUNTY. Any failure to comply with this provision will not affect the insurance coverage provided to COUNTY. The 30 days-notice of cancellation provision shall be physically endorsed on to the policy.

5.2.6 Insurance Carrier Rating. Coverage provided by AGENCY must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

5.2.7 Certificates of Insurance. As evidence of the insurance coverage required by this Contract, AGENCY shall furnish a Certificate of Insurance to COUNTY. The COUNTY and its officers must be named as an additional insured on the Certificate of Insurance. No Contract shall be in effect until the required certificates have been received, approved, and accepted by COUNTY. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration.

Certificate holder should be:

**Clackamas County, 2051 Kaen Road, Oregon City, Oregon 97045**

Certificates of Insurance should be submitted electronically to:

**BHContracts@co.clackamas.or.us**

Or by mail to:

**Clackamas County Behavioral Health Division  
Attn: Contracts  
2051 Kaen Road, Suite 154  
Oregon City, OR 97045**

5.2.8 Primary Coverage Clarification. AGENCY 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.

5.2.9 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 Contract.

5.2.10 Waiver of Subrogation. AGENCY agrees to waive their rights of subrogation arising from the work performed under this Contract.

5.2.11 "Tail Coverage". If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the AGENCY shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the AGENCY Contract, for a minimum of twenty-four (24) months following the later of: (i) the AGENCY's completion and COUNTY's acceptance of all Services required under the Provider Contract; or (ii) the expiration of all warranty periods provided under the AGENCY Contract. Notwithstanding the foregoing 24-month requirement, if the AGENCY elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the AGENCY may request and COUNTY may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If COUNTY approval is granted, the AGENCY shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

5.3 Governing Law; Consent to Jurisdiction. This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without giving effect to the conflict of law provisions thereof. Any claim, action, or suit between COUNTY and AGENCY that arises out of or relates to performance under this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, State of Oregon. Provided, however, that if any such claim, action or suit may be brought only in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. AGENCY by execution of this Contract consents to the in personal jurisdiction of said courts.

5.4 Amendments. The terms of this Contract shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written instrument signed by AGENCY and COUNTY.

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

5.6 Waiver. The failure of either party to enforce any provision of this Contract shall not constitute a waiver of that or any other provision.

5.7 Future Support. COUNTY makes no commitment of future support and assumes no obligation for future support of the activity contracted herein except as set forth in this Contract.

5.8 Oregon Constitutional Limitations. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provision herein, which would conflict with such law, is deemed inoperative to that extent.

5.9 Oregon Public Contracting Requirements. Pursuant to the requirements of ORS 279B.020 and ORS 279B.220 through 279B.235 the following terms and conditions are made a part of this Contract:

5.9.1 AGENCY shall:

- i. Make payments promptly, as due, to all persons supplying to AGENCY labor or materials for the performance of the work provided for in this Contract.
- ii. Pay all contributions or amounts due the Industrial Accident Fund from such agency or subcontractor incurred in performance of this Contract.
- iii. Not permit any lien or claim to be filed or prosecuted against COUNTY on account of any labor or material furnished.
- iv. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

5.9.2 If AGENCY fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to AGENCY or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing COUNTY may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to AGENCY by reason of this Contract.

5.9.3 AGENCY shall pay employees at least time and a half pay as required by all applicable labor laws for all overtime work performed under this Contract in excess of **forty (40) hours** in any one week, except for individuals under personal services contracts and or those who are excluded under ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 U.S.C. 201 to 209) from receiving overtime.

5.9.4 As required by ORS 279B.230, AGENCY shall promptly, as due, make payment to any person, co-partnership, association, or corporation furnishing medical, surgical, and hospital care services or other needed care and attention incident to sickness or injury, to the employees of AGENCY, of all sums that AGENCY agrees to pay for the services and all moneys and sums that AGENCY collected or deducted from the wages of its employees under any law or contract for the purpose of providing or paying for the services.

5.9.5 Workers' Compensation. AGENCY, if it is an employer of one or more workers subject to workers' compensation coverage under ORS Chapter 656, shall qualify as an insured employer under ORS 656.017 or as an exempt employer under ORS 656.126. AGENCY shall maintain employer's liability insurance with limits of **\$500,000 each accident, \$500,000 disease each employee, and \$500,000 each policy limit.**

5.10 Ownership of Work Product. All work products of the AGENCY which result from this Contract are the exclusive property of COUNTY.

5.11 Integration. This Contract contains the entire Contract between COUNTY and AGENCY and supersedes all prior written or oral discussions or Contracts.

5.12 Successors in Interest. The provisions of this Contract shall not be binding upon or inure to the benefit of AGENCY's successors in interest without COUNTY's explicit written consent.

## 6.0 Termination

6.1 Termination Without Cause. This Contract may be terminated by mutual consent of both parties, or by either party, upon ninety (90) days' notice in writing and delivered by certified mail or in person.

6.2 **Termination With Cause.** COUNTY may terminate this Contract effective upon delivery of written notice to AGENCY, or at such later date as may be established by COUNTY, under any of the following conditions:

6.2.1 Terms of the 2017-2019 Intergovernmental Agreement for the Financing of Community Mental Health, Substance Use Disorders, and Problem Gambling Services Agreement (CMHP) #153117 are modified, changed or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding authorized by this Contract.

6.2.2 The termination, suspension or expiration of the 2017-2019 Intergovernmental Agreement for the Financing of Community Mental Health, Substance Use Disorders, and Problem Gambling Services Agreement (CMHP) #153117.

6.2.3 COUNTY funding from Federal, State, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services. The Contract may be modified to accommodate a reduction in funds.

6.2.4 COUNTY has evidence that AGENCY has endangered or is endangering the health or safety of clients, staff or the public. AGENCY shall ensure the orderly and reasonable transfer of care in progress with consumers and shall work with COUNTY staff to accomplish the same.

6.2.5 The lapse, relinquishment, suspension, expiration, cancellation or termination of any required license, certification or qualification of AGENCY, or the lapse relinquishment, suspension, expiration, cancellation or termination of AGENCY's insurance as required in this Contract.

6.2.6 AGENCY's filing for protection under United States Bankruptcy Code, the appointment of a receiver to manage AGENCY's affairs, or the judicial declaration that AGENCY is insolvent.

6.2.7 AGENCY fails to perform any of the other provisions of this Contract, or fails to pursue the work of this Contract in accordance with its terms, and after written notice from the COUNTY, fails to correct such failures within ten (10) business days or such longer period as COUNTY may authorize.

6.2.8 **Debarment and Suspension.** COUNTY shall not permit any person or entity to be an AGENCY if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Non-procurement Programs" in accordance with Executive Orders No. 12,549 and No. 12,689, "Debarment and Suspension". (See 45 CFR part 76). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. COUNTY shall require all AGENCYS with awards that exceed the simplified acquisition threshold to provide the required certification regarding their exclusion status and that of their principals prior to award.

6.3 **Notice of Default.** COUNTY may also issue a written notice of default (including breach of Contract) to AGENCY and terminate the whole or any part of this Contract if AGENCY substantially fails to perform the specific provisions of this Contract. The rights and remedies of COUNTY related to default (including breach of Contract) by AGENCY shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

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

## 7.0 Notices

IF TO AGENCY:  
Cascadia Behavioral Healthcare  
PO Box 8459  
Portland, OR 97207

IF TO COUNTY:  
Clackamas County Behavioral Health Division  
Attention: Contract Administration  
2051 Kaen Road, #154  
Oregon City, OR 97045

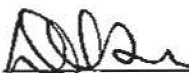
This Contract consists of seven (7) sections plus the following exhibits **which** by this reference are incorporated herein:

- Exhibit A: Definitions
- Exhibit B: Scope of Work
- Exhibit C: CMHP Service Element 20
- Exhibit D: CMHP Required Provider Contract Provisions
- Exhibit E: CMHP Required Federal Terms and Conditions

**SIGNATURE PAGE TO AGENCY SERVICES CONTRACT**

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

**CASCADIA BEHAVIORAL HEALTHCARE**

By:   
(Derald Walker, PhD / President-CEO)

10/11/2017  
Date

847 NE 19<sup>th</sup> Avenue, Suite 100 / PO Box 8459  
Street Address

Portland, Oregon 97207  
City / State / Zip

(503)963-7766 / (503)235-5049  
Phone / Fax

**CLACKAMAS COUNTY**

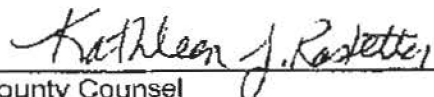
- Commissioner: Jim Bernard, Chair
- Commissioner: Sonya Fischer
- Commissioner: Ken Humberston
- Commissioner: Paul Savas
- Commissioner: Martha Schrader

**Signing on Behalf of the Board:**

Richard Swift, Director  
Health, Housing & Human Service Department

\_\_\_\_\_  
Date

**Approved to Form:**

  
County Counsel

8/30/17  
Date

October 26, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of an Agency Service Contract with Lifeworks NW for  
Outpatient Substance Abuse Services for Uninsured and Indigent Clackamas County Residents

<b>Purpose/Outcomes</b>	Provides outpatient substance abuse treatment services to uninsured or indigent Clackamas County residents.
<b>Dollar Amount and Fiscal Impact</b>	Contract maximum payment is \$45,000.
<b>Funding Source</b>	State of Oregon. No County General Funds are involved
<b>Duration</b>	Effective July 1, 2017 through June 30, 2018
<b>Previous Board Action</b>	NA
<b>Strategic Plan Alignment</b>	1. Provide coordination, assessment, outreach, and recovery services to Clackamas County residents experiencing addiction distress so they can achieve their own recovery goals 2. Ensure safe, healthy and secure communities
<b>Contact Person</b>	Mary Rumbaugh, Director – Behavioral Health Division (503) 742-5305
<b>Contract No.</b>	# 8213

**BACKGROUND:**

The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of an Agency Service Contract with Lifeworks NW for Supported Employment Services for outpatient substance abuse treatment services to uninsured and indigent residents in Clackamas County. Lifeworks NW uses clinical judgment to determine which services are appropriate, and what frequency of care is medically necessary.

The contract is effective July 1, 2017 and terminates June 30, 2018 with a maximum payment of \$45,000. This contract is retroactive due to a delayed receipt of funding from our grantor, combined with delayed contractor approval.

**RECOMMENDATION:**

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

Respectfully submitted,

Richard Swift, Director  
Health, Housing & Human Services Department

# AGENCY SERVICE CONTRACT

Contract # 8213

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

## CONTRACT

### 1.0 Engagement

COUNTY hereby engages AGENCY to provide *outpatient substance abuse services for uninsured or indigent residents of Clackamas County* as more fully described in Exhibit B, Scope of Work, attached hereto and incorporated herein.

### 2.0 Term

Services provided under the terms of this contract shall commence on **July 1, 2017** and shall terminate **June 30, 2018** unless terminated by one or both parties as provided for in paragraph 6.0 below.

### 3.0 Compensation and Fiscal Records

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

Maximum contract payment shall not exceed **\$45,000**

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

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

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

3.4.1 AGENCY shall maintain up-to-date accounting records that accurately reflect all revenue by source, all expenses by object of expense, and all assets, liabilities and equities consistent with



Generally Accepted Accounting Principles and Oregon Administrative Rules. AGENCY shall make reports and fiscal data generated under and for this agreement available to COUNTY upon request.

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

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

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

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

##### **4.1 Compliance with Applicable Laws and Regulations and Special Federal Requirements**

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

4.1.1 AGENCY 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 AGENCY'S warranty, in this Contract that AGENCY 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 AGENCY 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:

- i. Termination of this Contract, in whole or in part;
- ii. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to AGENCY, in an amount equal to COUNTY'S setoff right, without penalty; and
- iii. 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 AGENCY'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.
- iv. 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.

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

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

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

4.5 **Tax Laws.** The AGENCY 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:

- i. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
- ii. Any tax provisions imposed by a political subdivision of this state that applied to AGENCY, to AGENCY'S property, operations, receipts, or income, or to AGENCY'S performance of or compensation for any work performed by AGENCY;
- iii. Any tax provisions imposed by a political subdivision of this state that applied to AGENCY, or to goods, services, or property, whether tangible or intangible, provided by AGENCY; and
- iv. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

## 5.0 General Conditions

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

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

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

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

### 5.2.1 Commercial General Liability

Required by COUNTY       Not required by COUNTY

AGENCY shall obtain, at AGENCY's expense, and keep in effect during the term of this Agreement, Commercial General Liability Insurance covering bodily injury and property damage on an "occurrence" form in the amount of not less than \$1,000,000 per occurrence/\$3,000,000 general aggregate for the protection of COUNTY, its officers, commissioners, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute it.

5.2.2 Commercial Automobile Liability

Required by COUNTY  Not required by COUNTY

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

5.2.3 Professional Liability

Required by COUNTY  Not required by COUNTY

AGENCY agrees to furnish COUNTY evidence of professional liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence/\$3,000,000 general annual aggregate for malpractice or errors and omissions coverage for the protection of COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this Agreement. COUNTY, at its option, may require a complete copy of the above policy.

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

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

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

5.2.7 Insurance Carrier Rating. Coverages provided by AGENCY must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

5.2.8 Certificates of Insurance. As evidence of the insurance coverage required by this contract, AGENCY shall furnish a Certificate of Insurance to COUNTY. No contract shall be in effect until the required certificates have been received, approved and accepted by COUNTY. The certificate will specify that all insurance-related provisions within this contract have been complied with. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration.

5.2.9 Primary Coverage Clarification. AGENCY's coverage will be primary in the event of a loss.

5.2.10 Cross Liability Clause. A cross-liability or separation of insureds condition will be included in all general liability, professional liability, and errors and omissions policies required by this contract.

5.3 Governing Law; Consent to Jurisdiction. This agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Any claim, action, or suit between COUNTY and AGENCY that arises out of or relates to performance under this agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, State of Oregon. Provided, however, that if any such claim, action or suit may be brought only in a federal forum, it shall

be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. AGENCY by execution of this agreement consents to the in personal jurisdiction of said courts.

5.4 Amendments. The terms of this contract shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written instrument signed by AGENCY and COUNTY.

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

5.6 Waiver. The failure of either party to enforce any provision of this contract shall not constitute a waiver of that or any other provision.

5.7 Future Support. COUNTY makes no commitment of future support and assumes no obligation for future support of the activity contracted herein except as set forth in this contract.

5.8 Oregon Constitutional Limitations. This contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provision herein, which would conflict with such law, is deemed inoperative to that extent.

5.9 Oregon Public Contracting Requirements. Pursuant to the requirements of ORS 279B.020 and ORS 279B.220 through 279B.235 the following terms and conditions are made a part of this contract:

5.9.1 AGENCY shall:

- i. Make payments promptly, as due, to all persons supplying to AGENCY labor or materials for the prosecution of the work provided for in this contract.
- ii. Pay all contributions or amounts due the Industrial Accident Fund from such agency or subcontractor incurred in performance of this contract.
- iii. Not permit any lien or claim to be filed or prosecuted against COUNTY on account of any labor or material furnished.
- iv. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

5.9.2 If AGENCY fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to AGENCY or a subcontractor by any person in connection with this contract as such claim becomes due, the proper officer representing COUNTY may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due AGENCY by reason of this contract.

5.9.3 No person shall be employed for more than ten (10) hours in any one day, or more than forty (40) hours in any one week, except in cases of necessity, emergency or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279A.055, the employee shall be paid at least time and one-half pay:

- i. for all overtime in excess of eight (8) hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday;
- ii. for all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
- iii. for all work performed on Saturday and on any legal holiday specified in ORS 279B.020.

5.9.4 AGENCY shall pay employees at least time and a half for all overtime work performed under this agreement in excess of 40 hours in any one week, except for individuals under person services contracts who are excluded under ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 U.S.C. 201 to 209) from receiving overtime.

5.9.5 As required by ORS 279B.230, AGENCY shall promptly, as due, make payment to any person, copartnership, association, or corporation furnishing medical, surgical, and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of AGENCY, of all sums that AGENCY agrees to pay for the services and all moneys and sums that AGENCY collected or deducted from the wages of its employees under any law, contract or agreement for the purpose of providing or paying for the services.

5.9.6 Workers' Compensation. All subject employers working under this agreement must either maintain workers' compensation insurance as required by ORS 656.017, or qualify for an exemption under ORS 656.126. AGENCY shall maintain employer's liability insurance with limits of \$500,000 each accident, \$500,000 disease each employee, and \$500,000 each policy limit.

5.10 Ownership of Work Product. All work products of the AGENCY which result from this contract are the exclusive property of COUNTY.

5.11 Integration. This contract contains the entire agreement between COUNTY and AGENCY and supersedes all prior written or oral discussions or agreements.

5.12 Successors in Interest. The provisions of this contract shall not be binding upon or inure to the benefit of AGENCY's successors in interest without COUNTY's explicit written consent.

## 6.0 Termination

6.1 Termination Without Cause. This contract may be terminated by mutual consent of both parties, or by either party, upon ninety (90) days' notice, in writing and delivered by certified mail or in person.

6.2 Termination With Cause. COUNTY may terminate this contract effective upon delivery of written notice to AGENCY, or at such later date as may be established by COUNTY, under any of the following conditions:

6.2.1 Terms of the HealthShare Risk Accepting Entity Agreement are modified, changed or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding authorized by this contract.

6.2.2 The termination, suspension or expiration of the HealthShare Risk Accepting Entity Agreement.

6.2.3 COUNTY funding from Federal, State, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services. The contract may be modified to accommodate a reduction in funds.

6.2.4 COUNTY has evidence that AGENCY has endangered or is endangering the health or safety of clients, staff or the public. AGENCY shall ensure the orderly and reasonable transfer of care in progress with consumers and shall work with COUNTY staff to accomplish the same.

6.2.5 The lapse, relinquishment, suspension, expiration, cancellation or termination of any required license, certification or qualification of AGENCY, or the lapse relinquishment, suspension, expiration, cancellation or termination of AGENCY's insurance as required in this contract.

6.2.6 AGENCY's filing for protection under United States Bankruptcy Code, the appointment of a receiver to manage AGENCY's affairs, or the judicial declaration that AGENCY is insolvent.

6.2.7 AGENCY fails to perform any of the other provisions of this contract, or fails to pursue the work of this contract in accordance with its terms, and after written notice from the COUNTY, fails to correct such failures within ten (10) business days or such longer period as COUNTY may authorize.

6.2.8 Debarment and Suspension. COUNTY shall not permit any person or entity to be an AGENCY if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Non-procurement Programs" in accordance with Executive Orders No. 12,549 and No. 12,689, "Debarment and Suspension". (See 45 CFR part 76). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. COUNTY shall require all AGENCYs with awards that exceed the simplified acquisition threshold to provide the required certification regarding their exclusion status and that of their principals prior to award.

6.3 Notice of Default. COUNTY may also issue a written notice of default (including breach of contract) to AGENCY and terminate the whole or any part of this contract if AGENCY substantially fails to perform the specific provisions of this contract. The rights and remedies of COUNTY related to default (including breach of contract) by AGENCY shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

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

**7.0 Notices**

If to AGENCY:

Lifeworks NW  
14600 NW Cornell Road  
Portland, OR 97229

If to COUNTY:

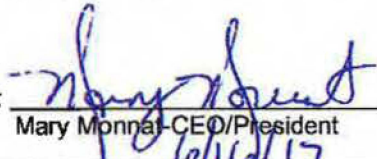
Clackamas County Behavioral Health Division  
Attention: Contract Administration  
2051 Kaen Road, # 154  
Oregon City, OR 97045

This contract consists of seven (7) sections plus the following exhibits which by this reference are incorporated herein:

Exhibit A	Definitions
Exhibit B	Scopes of Work
Exhibit C	Compensation
Exhibit D	Statement of General Conditions

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

**LIFEWORKS NW**

By:   
\_\_\_\_\_  
Mary Monnat, CEO/President

Date 6/16/17  
\_\_\_\_\_  
14600 NW Cornell Road  
Street Address  
\_\_\_\_\_  
Portland, OR 97229  
City/State/Zip  
\_\_\_\_\_  
(503) 645-3581 ext 2349  
Phone \_\_\_\_\_ email \_\_\_\_\_

**CLACKAMAS COUNTY**

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

**Signing on Behalf of the Board:**

\_\_\_\_\_  
Richard Swift, Director  
Health, Housing and Human Services Department

\_\_\_\_\_  
Date

October 26, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of an Agency Services Contract with  
Cascadia Behavioral Healthcare, Inc. for Supported Employment Services

<b>Purpose/Outcomes</b>	Provides supported employment services to Health Share Medicaid residents of Clackamas County.
<b>Dollar Amount and Fiscal Impact</b>	Contract maximum payment is \$50,000.
<b>Funding Source</b>	Oregon Health Plan (OHP) No County General Funds are involved.
<b>Duration</b>	Effective upon signature and terminates on June 30, 2018
<b>Previous Board Action</b>	NA
<b>Strategic Plan Alignment</b>	1. Efficient and effective services. 2. Ensure safe, healthy and secure communities.
<b>Contact Person</b>	Mary Rumbaugh, Director – Behavioral Health Division (503) 742-5305
<b>Contract No.</b>	# 8414

**BACKGROUND:**

The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of Agency Services Contract with Cascadia Behavioral Healthcare, Inc. for supported employment services to Health Share Medicaid residents of Clackamas County.

The Agreement is effective upon signature and terminates on June 30, 2018 with a maximum payment of \$50,000. County Counsel reviewed and approved this contract August 16, 2017.

**RECOMMENDATION:**

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

Respectfully submitted,

Richard Swift, Director  
Health, Housing & Human Services Department



## AGENCY SERVICES CONTRACT Contract # 8414

This Agency Service Contract, herein called "Contract," is between Clackamas County acting by and through its Health, Housing and Human Services Department, Behavioral Health Division, hereinafter called "COUNTY," and CASCADIA BEHAVIORAL HEALTHCARE, hereinafter called "AGENCY."

### CONTRACT

#### 1.0 Engagement

COUNTY hereby engages AGENCY to provide **supported employment services to Healthshare Medicaid residents of Clackamas County** as more fully described in **Exhibit B, Scope of Work**, attached hereto and incorporated herein. This Contract sets forth the terms under which AGENCY will contract with COUNTY to provide **supported employment services** to clients.

#### 2.0 Term

Services provided under the terms of this Contract shall commence upon signature and shall terminate June 30, 2018 unless terminated by one or both parties as provided for in paragraph 6.0 below. This Contract can be amended by mutual consent of both parties.

#### 3.0 Compensation and Fiscal Records

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

Maximum Contract payment shall not exceed **50,000**

3.2 Withholding of Contract Payments. Notwithstanding any other payment provision of this Contract, should AGENCY fail to perform or document the performance of contracted services, COUNTY shall immediately withhold payments hereunder. Such withholding payment for cause may continue until AGENCY performs required services or establishes to COUNTY'S satisfaction that such failure arose out of causes beyond the control, and without the fault or negligence, of AGENCY.

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

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

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

3.4.2 COUNTY may conduct a fiscal compliance review of AGENCY as part of compliance monitoring of this Contract. AGENCY agrees to provide, upon reasonable notice, access to all financial books, documents, papers and

records of AGENCY which are pertinent to this Contract to ensure appropriate expenditure of funds under this Contract. COUNTY shall monitor compliance with AGENCY's financial reporting and accounting requirements.

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

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

#### 4.0 Manner of Performance

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

4.1.1 AGENCY 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 AGENCY'S warranty, in this Contract that AGENCY 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:

- i. Termination of this Contract, in whole or in part;
- ii. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to AGENCY, in an amount equal to COUNTY'S setoff right, without penalty; and
- iii. 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 AGENCY'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.

4.2 Precedence. Where there is a requirement listed both in the main boilerplate of this Contract and in an exhibit, the exhibit shall take precedence.

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

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

4.5 Tax Laws. The AGENCY represents and warrants that, for a period of no fewer than six (6) calendar years preceding the effective date of this Contract, has faithfully complied with:

- i. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;

- ii. Any tax provisions imposed by a political subdivision of this state that applied to AGENCY, to AGENCY'S property, operations, receipts, or income, or to AGENCY'S performance of or compensation for any work performed by AGENCY;
- iii. Any tax provisions imposed by a political subdivision of this state that applied to AGENCY, or to goods, services, or property, whether tangible or intangible, provided by AGENCY; and
- iv. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

## 5.0 General Conditions

5.1 Indemnification. AGENCY 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 AGENCY's negligent or willful acts or those of its employees, agents or those under AGENCY's control. AGENCY is responsible for the actions of its own agents and employees, and COUNTY assumes no liability or responsibility with respect to AGENCY's actions, employees, agents, volunteers, or otherwise with respect to those under its control.

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

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

5.2 Insurance. COUNTY shall enforce AGENCY compliance with the insurance requirements outlined herein, and shall take all reasonable steps to enforce such compliance. Examples of reasonable steps include issuing stop work orders until the insurance is in full force, terminating the Contract as permitted herein, or pursuing legal action to enforce such requirements. During the term of this Contract, AGENCY shall maintain in force, at its own expense, each insurance noted below:

### 5.2.1 Commercial General Liability.

Required by COUNTY       Not required by COUNTY

AGENCY shall obtain, at AGENCY's expense, and keep in effect during the term of this Contract, Commercial General Liability Insurance covering bodily injury, death 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 Contract and personal injury liability, products and completed operations. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute to it.

### 5.2.2 Automobile Liability.

Required by COUNTY       Not required by COUNTY

AGENCY shall obtain at AGENCY expense, and keep in effect during the term of this Contract, **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 AGENCY shall obtain at AGENCY expense, and keep in effect during the term of the Contract, **Personal Auto Coverage**. The limits shall be no less than **\$250,000/occurrence, \$500,000/aggregate, and \$100,000 property damage**.

### 5.2.3 Professional Liability.

Required by COUNTY       Not required by COUNTY

If this Contract involves the delivery of professional services, AGENCY shall obtain and furnish the COUNTY evidence of Professional Liability Insurance in the amount of **not less than \$1,000,000 combined single limit per occurrence/\$2,000,000 general annual aggregate** for malpractice or errors and omissions coverage for the protection of the **COUNTY, its officers, agents, and employees** against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this Contract. COUNTY, at its option, may require a complete copy of the above policy.

5.2.4 Additional Insured Provisions. All required insurance, other than Professional Liability, Personal Automobile Insurance and Workers' Compensation, shall include "**Clackamas County, its agents, elected officials, officers, and employees**" and "**the State of Oregon and its officers, employees and agents**" as additional insureds, but only with respect to AGENCY's activities performed under this Contract.

5.2.5 Notice of Cancellation. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without **thirty (30) days** written notice to the COUNTY. Any failure to comply with this provision will not affect the insurance coverage provided to COUNTY. The 30 days-notice of cancellation provision shall be physically endorsed on to the policy.

5.2.6 Insurance Carrier Rating. Coverage provided by AGENCY must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

5.2.7 Certificates of Insurance. As evidence of the insurance coverage required by this Contract, AGENCY shall furnish a Certificate of Insurance to COUNTY. **The COUNTY and its officers must be named as an additional insured** on the Certificate of Insurance. No Contract shall be in effect until the required certificates have been received, approved, and accepted by COUNTY. A renewal certificate will be sent to COUNTY **ten (10) days** prior to coverage expiration.

Certificate holder should be:

**Clackamas County, 2051 Kaen Road, Oregon City, Oregon 97045**

Certificates of Insurance should be submitted electronically to:

**BHContracts@clackamas.us**

Or by mail to:

**Clackamas County Behavioral Health Division  
Atten: Contracts  
2051 Kaen Road, Suite 154  
Oregon City, OR 97045**

5.2.8 Primary Coverage Clarification. AGENCY 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. This must be noted on the insurance certificate.

5.2.9 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 Contract.

5.2.10 Waiver of Subrogation. AGENCY agrees to waive their rights of subrogation arising from the work performed under this Contract.

5.2.11 "Tail Coverage". If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the AGENCY shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the AGENCY Contract, for a minimum of **twenty-four (24) months** following the later of: (i) the AGENCY's completion and COUNTY's acceptance of all Services required under the Contract; or (ii) the expiration of all warranty periods provided under the AGENCY Contract. Notwithstanding the foregoing 24-month requirement, if the AGENCY elects to maintain

"tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the AGENCY may request and COUNTY may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If COUNTY approval is granted, the AGENCY shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

5.3 Governing Law; Consent to Jurisdiction. This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without giving effect to the conflict of law provisions thereof. Any claim, action, or suit between COUNTY and AGENCY that arises out of or relates to performance under this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, State of Oregon. Provided, however, that if any such claim, action or suit may be brought only in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. AGENCY by execution of this Contract consents to the in personal jurisdiction of said courts.

5.4 Amendments. The terms of this Contract shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written instrument signed by AGENCY and COUNTY.

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

5.6 Waiver. The failure of either party to enforce any provision of this Contract shall not constitute a waiver of that or any other provision.

5.7 Future Support. COUNTY makes no commitment of future support and assumes no obligation for future support of the activity contracted herein except as set forth in this Contract.

5.8 Oregon Constitutional Limitations. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provision herein, which would conflict with such law, is deemed inoperative to that extent.

5.9 Oregon Public Contracting Requirements. Pursuant to the requirements of ORS 279B.020 and ORS 279B.220 through 279B.235 the following terms and conditions are made a part of this Contract:

5.9.1 AGENCY shall:

- i. Make payments promptly, as due, to all persons supplying to AGENCY labor or materials for the performance of the work provided for in this Contract.
- ii. Pay all contributions or amounts due the Industrial Accident Fund from such agency or subcontractor incurred in performance of this Contract.
- iii. Not permit any lien or claim to be filed or prosecuted against COUNTY on account of any labor or material furnished.
- iv. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

5.9.2 If AGENCY fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to AGENCY or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing COUNTY may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to AGENCY by reason of this Contract.

5.9.3 AGENCY shall pay employees at least time and a half pay as required by all applicable labor laws for all overtime work performed under this Contract in excess of **forty (40) hours** in any one week, except for individuals under personal services contracts and or those who are excluded under ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 U.S.C. 201 to 209) from receiving overtime.

5.9.4 As required by ORS 279B.230, AGENCY shall promptly, as due, make payment to any person, co-partnership, association, or corporation furnishing medical, surgical, and hospital care services or other needed care and attention incident to sickness or injury, to the employees of AGENCY, of all sums that AGENCY agrees to pay for

the services and all moneys and sums that AGENCY collected or deducted from the wages of its employees under any law or contract for the purpose of providing or paying for the services.

5.9.5 Workers' Compensation. AGENCY, if it is an employer of one or more workers subject to workers' compensation coverage under ORS Chapter 656, shall qualify as an insured employer under ORS 656.017 or as an exempt employer under ORS 656.126. AGENCY shall maintain employer's liability insurance with limits of **\$500,000 each accident, \$500,000 disease each employee, and \$500,000 each policy** limit.

5.10 Ownership of Work Product. All work products of the AGENCY which result from this Contract are the exclusive property of COUNTY.

5.11 Integration. This Contract contains the entire Contract between COUNTY and AGENCY and supersedes all prior written or oral discussions or Contracts.

5.12 Successors in Interest. The provisions of this Contract shall not be binding upon or inure to the benefit of AGENCY's successors in interest without COUNTY's explicit written consent.

## 6.0 Termination

6.1 Termination Without Cause. This Contract may be terminated by mutual consent of both parties, or by either party, upon **ninety (90) days'** notice, in writing and delivered by certified mail or in person.

6.2 Termination With Cause. COUNTY may terminate this Contract effective upon delivery of written notice to AGENCY, or at such later date as may be established by COUNTY, under any of the following conditions:

6.2.1 Terms of the Health Share Risk Accepting Entity Contract are modified, changed or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding authorized by this Contract.

6.2.2 The termination, suspension or expiration of the Health Share Risk Accepting Entity Contract.

6.2.3 COUNTY funding from Federal, State, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services. The Contract may be modified to accommodate a reduction in funds.

6.2.4 COUNTY has evidence that AGENCY has endangered or is endangering the health or safety of clients, staff or the public. AGENCY shall ensure the orderly and reasonable transfer of care in progress with consumers and shall work with COUNTY staff to accomplish the same.

6.2.5 The lapse, relinquishment, suspension, expiration, cancellation or termination of any required license, certification or qualification of AGENCY, or the lapse relinquishment, suspension, expiration, cancellation or termination of AGENCY's insurance as required in this Contract.

6.2.6 AGENCY's filing for protection under United States Bankruptcy Code, the appointment of a receiver to manage AGENCY's affairs, or the judicial declaration that AGENCY is insolvent.

6.2.7 AGENCY fails to perform any of the other provisions of this Contract, or fails to pursue the work of this Contract in accordance with its terms, and after written notice from the COUNTY, fails to correct such failures within ten (10) business days or such longer period as COUNTY may authorize.

6.2.8 Debarment and Suspension. COUNTY shall not permit any person or entity to be an AGENCY if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Non-procurement Programs" in accordance with Executive Orders No. 12,549 and No. 12,889, "Debarment and Suspension". (See 45 CFR part 76). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. COUNTY shall require all AGENCYS with awards that exceed the simplified acquisition threshold to provide the required certification regarding their exclusion status and that of their principals prior to award.

6.3 Notice of Default. COUNTY may also issue a written notice of default (including breach of Contract) to AGENCY and terminate the whole or any part of this Contract if AGENCY substantially fails to perform the specific

provisions of this Contract. The rights and remedies of COUNTY related to default (including breach of Contract) by AGENCY shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

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

#### 7.0 Notices

**IF TO AGENCY:**

Cascadia Behavioral HealthCare  
Attention: Risk Management  
PO Box 8459  
Portland, OR 97207

**IF TO COUNTY:**

Clackamas County Behavioral Health Division  
Attention: Contract Administration  
2051 Kaen Road, #154  
Oregon City, OR 97045

This Contract consists of seven (7) sections plus the following exhibits which by this reference are incorporated herein:


Exhibit A	Definitions
Exhibit B	Scope of Work
Exhibit C	Compensation
Exhibit D	OHP Required Federal Terms and Conditions
Exhibit E	Statement of General Conditions

*(signature page follows)*

**SIGNATURE PAGE**

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

**CASCADIA BEHAVIORAL HEALTHCARE**

By:   
Derald Walker, PhD / CEO/President

10/11/2017  
Date

PO Box 8459  
Street Address

Portland, OR 97207  
City / State / Zip

(503) 963-7766 (503) 235-5049  
Phone / Fax

**CLACKAMAS COUNTY**

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

**Signing on Behalf of the Board:**

Richard Swift, Director  
Health, Housing & Human Service Department

Date



October 26, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of Amendment #1 to an Intergovernmental Agreement with  
Multnomah County for the reduction of opioid overdose and death program

<b>Purpose/Outcomes</b>	Amendment #1 adds funding for year 2 of the project. Clackamas County Public Health Division (CCPHD) will plan and conduct activities to meet the following objectives: Increase provider and public understanding of opioid risks, treatment options, and chronic pain management; Increase provider understanding and use of the State of Oregon’s Prescription Drug Monitoring Program; Increase law enforcement and public understanding of risks, treatment, and use of naloxone; Meet weekly with Multnomah County staff, as scheduled by Multnomah County to provide plans and summaries of Clackamas’s activities; Provide a written report documenting activities and related outcomes to Multnomah County at the end of the grant period.
<b>Dollar Amount and Fiscal Impact</b>	CCPHD will receive \$13,000.
<b>Funding Source</b>	Federal award passed through by Multnomah County. No County General Funds are involved.
<b>Duration</b>	Effective October 1, 2017 and terminates on September 30, 2018
<b>Strategic Plan Alignment</b>	1. Improved community safety and health 2. Ensure safe, health and secure communities
<b>Previous Board Action</b>	The Board last approved this Agreement on April 27, 2017 Agenda item – 042717-A1
<b>Contact Person</b>	Dawn Emerick, Public Health Director – 503-655-8479
<b>Contract No.</b>	8263-1

**BACKGROUND:**

The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of Amendment #1 to an Intergovernmental Agreement with Multnomah County for the reduction of opioid overdose and death program.

This allows the Clackamas County Public Health Division (CCPHD) to provide public health related services to Clackamas County residents.

This Agreement is effective October 1, 2017 and continues through September 30, 2018.  
This contract has been reviewed by County Counsel on October 16, 2017.

**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



# CONTRACT AUTHORIZATION & SIGNATURE REQUEST

This is to notify you that **Contract** 4400003112 **Amendment** 1 is ready for your signature. This contract/amendment: adds funds for work that needs to be completed.

**STEP 1:** Please print and sign the following pages, exhibits, and/or attachments from your contract:

- Contract or amendment Signature Page
- Exhibit 3 –Independent Contractor (Complete section A or B if it applies)
- Exhibit 4 – Workers’ Compensation Exemption Certificate
- Exhibit 5 – Equal Employment Opportunity Certification Statement
- Attachment 7 Criminal History Records Check Certificate
- ARRA EEO
- Other:

**STEP 2:** Return the following documents to the County:

- A complete copy of your contract or amendment (you may choose to resend the same PDF file that was emailed to you)
- Copies of your signed signature pages, exhibits, and attachments, as identified in Step 1 above.

Return the documents by one of the following methods:

Scan and email the Contract to: [centralcontracts@multco.us](mailto:centralcontracts@multco.us)

**OR**

Return the Contract to the following address by mail or hand delivery

Multnomah County Purchasing  
ATTN: Contracts  
501 SE Hawthorne Blvd., Suite 125  
Portland, Or 97214

**STEP 3:** No work can begin and no payments can be made until Multnomah County has received and executed the Contract or Amendment. You will be notified when your Contract or Amendment has been executed. If you have questions regarding Steps 1 or 2, please contact us at:

Doreen Blomé at 503-988-3888 [doreen.blome@multco.us](mailto:doreen.blome@multco.us)

If you have any questions regarding Contract language or Amendment changes, please call your Department Representative at:

Name and Phone: Anne Nguyen 503-988-7505

Email: [anne.nguyen@multco.us](mailto:anne.nguyen@multco.us)

**MULTNOMAH COUNTY**  
**INTERGOVERNMENTAL AGREEMENT AMENDMENT #1**  
*(Amendment to change Contract provisions during contract term.)*

Contract Number 4400003112

This is an amendment to Multnomah County's Contract referenced above effective October 1, 2017 between Multnomah County, Oregon, hereinafter referred to as County, and Clackamas County, hereinafter referred to as Contractor.

The parties agree:

1. The following changes are made to Contract No. 4400003112:

The renewal term of this Contract is October 1, 2017 to September 30, 2018.

This amendment increases funding in the amount of \$13,000 for Contract activities from October 1, 2017 to September 30, 2018. The maximum contract amount for the period of October 1, 2016 to September 30, 2018 is \$26,000.

An amended Attachment F is attached to this contract and replaces all previous versions of Attachment F.

2. All other terms and conditions of the contract shall remain the same.

**MULTNOMAH COUNTY, OREGON:**

**CONTRACTOR:**

County Chair or Designee: Deborah Kafany

Signature: \_\_\_\_\_

Date: 10/11/17

Print Name: \_\_\_\_\_

Dept Director or Designee: N/A

Title: \_\_\_\_\_

Date: N/A

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

**REVIEWED:**

JENNY M. MADKOUR  
COUNTY ATTORNEY FOR MULTNOMAH COUNTY

By Assistant County Attorney /s/ Bernadette Nunley

Approved as to form by: \_\_\_\_\_

Date: Via email 10/2/2017

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

ATTACHMENT F

POST FEDERAL AWARD REQUIREMENTS STANDARDS

In accordance with CFR 200, Subpart D—Post Federal Award Requirements Standards for Financial and Program Management, §200.331 – Requirements for Pass Through Entities, and based on the information provided to Multnomah County (the County) by its awarding agency, the County is providing the following federal award information:

	A	B	C
<b>Subrecipient Name</b>	Clackamas County Public Health Division	Clackamas County Public Health Division	
<b>Subrecipient DUNS #</b>	96992656	96992656	
<b>Name of Federal Awarding Agency</b>	US Department of Justice, Office of Justice Programs	US Department of Justice, Office of Justice Programs	
<b>Name of Pass-through Entity</b>	Multnomah County	Multnomah County	
<b>CFDA #</b>	16.754	16.754	
<b>Program Name</b>	Regional Approaches to Decrease Opioid Overdose and Deaths in the Portland Metropolitan Tri-County	Regional Approaches to Decrease Opioid Overdose and Deaths in the Portland Metropolitan Tri-County	
<b>Federal Award ID #</b>	2016-PM-BX-K003	2016-PM-BX-K003	
<b>Federal Award Date</b>	9/20/2016	9/20/2016	
<b>Subaward Period of Performance:</b>			
<b>Start Date</b>	10/1/2016	10/1/2016	
<b>End Date</b>	9/30/2019	9/30/2019	
<b>Amt of Federal Funds Obligated by this Action</b>	\$13,000	\$13,000	
<b>Total Amt of Federal Funds Obligated to Subrecipient</b>	\$13,000	\$26,000	
<b>Federal Awarding Contact Info</b>	Jeanne Weber 2051 Kaen Rd., Suite 367 Oregon City, OR 97045	Jeanne Weber 2051 Kaen Rd., Suite 367 Oregon City, OR 97045	
<b>Pass-through Entity Contact Info</b>	Tyler Swift (503)988-9374 tyler.swift@multco.us	Tyler Swift (503)988-9374 tyler.swift@multco.us	
<b>Research &amp; Development Award? (Yes/No)</b>	No	No	
<b>Indirect Cost Rate for Award (%)</b>	9%	9%	
<b>Is De Minimis Indirect Rate Being Charged? (Yes/No)</b>	No	No	

	D	E	F
<b>Subrecipient Name</b>			
<b>Subrecipient DUNS #</b>			
<b>Name of Federal Awarding Agency</b>			
<b>Name of Pass-through Entity</b>			
<b>CFDA #</b>			
<b>Program Name</b>			
<b>Federal Award ID #</b>			
<b>Federal Award Date</b>			
<b>Subaward Period of Performance:</b>			
<b>Start Date</b>			
<b>End Date</b>			
<b>Amt of Federal Funds Obligated by this Action</b>	Multnomah County Contract #4400003112-1		

<b>Total Amt of Federal Funds Obligated to Subrecipient</b>			
<b>Federal Awarding Contact Info</b>			
<b>Pass-through Entity Contact Info</b>			
<b>Research &amp; Development Award? (Yes/No)</b>			
<b>Indirect Cost Rate for Award (%)</b>			
<b>Is De Minimis Indirect Rate Being Charged? (Yes/No)</b>			

8/25/2015

October 26, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of Amendment #2 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

<b>Purpose/Outcomes</b>	Amendment #2 increases the funding for Program Element 01 – State Support for Public Health, Program Element 04 – Sustainable Relationships for Community Health, Program Element 27 – Oregon Prescription Drug Overdose Prevention and Program Element 44 – School Based Health Centers (SBHC)
<b>Dollar Amount and Fiscal Impact</b>	Amendment #2 increases - Program Element 01 – State Support for Public Health by \$374,369, Program Element 04 – Sustainable Relationships for Community Health by \$144,398, Program Element 27 – Oregon Prescription Drug Overdose Prevention by \$95,500 and Program Element 44 – School Based Health Centers (SBHC) by \$3,044. This amendment is for \$617,311, bringing the Contract maximum value to \$3,224,613.
<b>Funding Source</b>	Funding provided by the State of Oregon - Oregon Health Authority. No County General Funds are involved.
<b>Duration</b>	Effective July 01, 2017 and terminates on June 30, 2019
<b>Previous Board Action</b>	The Board previously reviewed and approved this agreement on June 22, 2017, Agenda item 062217-A3 and October 5, 2017, Agenda item 100517-A2
<b>Strategic Plan Alignment</b>	1. Improved Community Safety and Health 2. Ensure safe, healthy and secure communities
<b>Contact Person</b>	Dawn Emerick, Public Health Director – (503) 655-8479
<b>Contract No.</b>	8327-02

**BACKGROUND:**

The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of Amendment #02 to the Intergovernmental Agreement with State of Oregon, Oregon Health Authority. Amendment #2 increases - Program Element 01 – State Support for Public Health by \$374,369, Program Element 04 – Sustainable Relationships for Community Health by \$144,398, Program Element 27 – Oregon Prescription Drug Overdose Prevention by \$95,500 and Program Element 44 – School Based Health Centers (SBHC) by \$3,044. This amendment is for \$617,311 for a new Contract maximum value of \$3,224,613. This allows the Clackamas County Public Health Division (CCPHD) to provide public health related services to Clackamas County residents,

This contract is effective July 1, 2017 and continues through June 30, 2019. This contract has been reviewed by County Counsel on October 16, 2017.

**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



Agreement #154103



**SECOND AMENDMENT TO OREGON HEALTH AUTHORITY  
2017-2019 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](mailto:dhs-oha.publicationrequest@state.or.us) or call 503-378-3486 (voice) or 503-378-3523 (TTY) to arrange for the alternative format.

This Second Amendment to Oregon Health Authority 2017-2019 Intergovernmental Agreement for the Financing of Public Health Services, effective July 1, 2017 (as amended the “Agreement”), is between the State of Oregon acting by and through its Oregon Health Authority (“OHA”) and Clackamas County, acting by and through its Health, Housing, and Human Services (“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 add the set of Program Element Descriptions set forth in Exhibit B of the Agreement.

WHEREAS, OHA and LPHA wish to modify the Financial Assistance Award set forth in Exhibit C of the Agreement.

WHEREAS, OHA and LPHA wish to modify the Exhibit J information required by 2 CFR Subtitle B with guidance at 2 CFR Part 200;

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 16 “Program Element” is amended to add Program Element titles and funding source identifiers as follows:

<b><u>PE Number</u> and Title</b>	<b>Fund Type</b>	<b>Federal Agency/ Grant Title</b>	<b>CFDA#</b>	<b>Sub- Recipient (Y/N)</b>
<u>PE 27</u> Prescription Drug Overdose Prevention (PDOP)	FF	Center for Disease Control and Prevention / Injury Prevention and Control Research and State and Community Based Programs	93.136	N

- Exhibit B Program Element #27 “Prescription Drug Overdose Prevention (PDOP)” is hereby superseded and replaced in its entirety by Attachment A attached hereto and hereby incorporated into the Agreement by this reference.
- Section 1 of Exhibit C entitled “Financial Assistance Award” of the Agreement 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 4 of Exhibit C, entitled “Explanation of Financial Assistance Award” of the Agreement.

- 4. Exhibit J “Information required by 2 CFR Subtitle B with guidance at 2 CFR Part 200” is amended to add to the federal award information datasheet as set forth in Attachment C, attached hereto and incorporated herein by this reference.
- 5. 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.
- 6. Capitalized words and phrases used but not defined herein shall have the meanings ascribed thereto in the Agreement.
- 7. Except as amended hereby, all terms and conditions of the Agreement remain in full force and effect.
- 8. The parties expressly ratify the Agreement as herein amended.
- 9. 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.
- 10. 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.

**11. Signatures.**

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

**CLACKAMAS COUNTY LOCAL PUBLIC HEALTH AUTHORITY**

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

**DEPARTMENT OF JUSTICE – APPROVED FOR LEGAL SUFFICIENCY**

*Agreement form group-approved by D. Kevin Carlson, Assistant Attorney General, Tax and Finance Section, General Counsel Division, Oregon Department of Justice by email on July 25, 2017, copy of email approval in Agreement file.*

**REVIEWED BY OHA PUBLIC HEALTH ADMINISTRATION**

By: \_\_\_\_\_  
 Name: Mai Quach (or designee)  
 Title: Program Support Manager  
 Date: \_\_\_\_\_

**Attachment A**  
**Program Element Description**

**Program Element #27 - Prescription Drug Overdose Prevention (PDOP)**

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 implement Prescription Drug Overdose Prevention (PDOP) activities in the following areas for LPHAs in High-burden Regions.
  - a. Application of Prescription Drug Overdose Assessment and Capacity-Building Efforts. Complete remote (web-based) training on using the Oregon Prescription Drug Monitoring Program (PDMP) and PDMP guidelines.
  - b. Advance Health System Interventions. Promote prescriber enrollment and adoption of the PDMP and state opioid prescribing guidelines. Three regions will work towards a goal of enrolling 95% of the top controlled substance prescribers in the region in PDMP over the two year funding period.
  - c. Facilitation of Community Partnerships. Accomplish movement toward building or strengthening a community network within the region that contributes to reducing problematic prescribing, improving coordination of patient care for patients with opioid use disorder, increasing the use of non-opioid treatment for chronic non-cancer pain, and evolving a more interconnected community-level network of services.
  - d. Facilitate Development of Local Prescription Drug Overdose Prevention Networks and Systems. Convene or strengthen an existing Interdisciplinary Action Team (IAT), a regional (or county-level) Pain Guidance Group (PGG) and a regional summit to help adoption and promotion of PDMP and opioid prescribing guidelines and increase community level data-informed awareness of PDO.
  - e. Promote Community-Clinical Linkages to Support Prescription Drug Overdose Prevention. Disseminate local data or stories to local media outlets to promote public awareness of the burden and preventability of PDO.

2. **Definitions specific to this Program Element.**

High-burden Region: an area of 2-3 neighboring counties led by a funded LPHA. The Oregon regions with the highest burden of prescription drug overdose and problematic prescribing.

3. **Procedural and Operational Requirements.**

- a. LPHA agrees to conduct activities in accordance with the following requirements:
  - (1) Implement activities in accordance with this Program Element;
  - (2) Assure that staffing is at the appropriate level to address all sections in this Program Element. LPHA will designate or hire a lead staff person to carry out and coordinate all the activities in the High-burden Region described in this Program Element, and act as a point of contact between the LPHA and OHA;
  - (3) Use the funds awarded under this Agreement for this Program Element.
  - (4) Attend all PDO meetings reasonably required by OHA. Travel expenses shall be the responsibility of the LPHA.
- b. Each High-burden Region must identify a LPHA to act as the fiscal agent for the High-burden Region. The LPHA will provide the workspace and administrative support required to carry out the grant-funded activities outlined in this Program Element.

**4. Reporting Requirements.**

- a. LPHA must have on file with OHA an approved Community Response Work Plan no later than October 1<sup>st</sup> of each year. LPHA shall implement its PDO prevention activities in accordance with its approved Community Response Work Plan. Modifications to the plan may only be made with OHA approval.
- b. LPHA must submit quarterly progress reports.
- c. LPHA must submit quarterly Oregon Health Authority Public Health Division Expenditure and Revenue Reports.
- d. LPHA must submit quarterly PDO Expense Reports.
- e. OHA will provide the required format and current service data for use in completing the plan and progress and expense reports.

**5. Program Evaluation.** LPHA will cooperate with OHA on program evaluation throughout the duration of this Agreement period(s), as well as with final project evaluation.

Such activities may include, but are not limited to, meeting with a state level evaluator soon after execution of this Agreement to help inform the OHA evaluation plan, collecting data and maintaining documentation throughout this Agreement period, responding to evaluator's requests for information and collaborating with OHA on final reports to highlight the outcomes of the work.

**6. Performance Measures.** If LPHA completes fewer than 75% of planned activities in the description above, for two consecutive calendar quarters in one state fiscal year, will not be eligible to receive funding under this Program Element in the next state fiscal year.

**Attachment B  
Financial Assistance Award**

State of Oregon Oregon Health Authority Public Health Division		Page 1 of 3	
<b>1) Grantee</b> Name: Clackamas County Health Dept.		<b>2) Issue Date</b> September 21, 2017	<b>This Action</b> AMENDMENT FY2018
Street: 2051 Kaen Road City: Oregon City State: OR Zip Code: 97045		<b>3) Award Period</b> From July 1, 2017 Through June 30, 2018	
<b>4) OHA Public Health Funds Approved</b>			
<b>Program</b>	Previous Award	Increase/ (Decrease)	Grant Award
PE 01 State Support for Public Health	110,583	374,369	484,952
PE 03 TB Case Management	16,746	0	16,746 ( i,j )
PE 04 Sustainable Relationships for Community Health	0	144,398	144,398 ( p )
PE 07 HIV Prevention Services	106,107	0	106,107 ( m,n )
PE 12 Public Health Emergency Preparedness	164,085	0	164,085 ( d )
PE 13 Tobacco Prevention & Education	228,630	0	228,630
PE 27 Oregon Prescription Drug Overdose Prevention	0	95,500	95,500 ( g )
PE 40 Women, Infants and Children FAMILY HEALTH SERVICES	878,206	0	878,206 ( b,c,o )
PE 40 WIC -- PEER Counseling FAMILY HEALTH SERVICES	69,411	0	69,411 ( e,f )
PE 41 Reproductive Health Program FAMILY HEALTH SERVICES	34,555	0	34,555 ( a )
PE 42 MCH/Child & Adolescent Health -- General Fund FAMILY HEALTH SERVICES	21,403	0	21,403 ( k )
PE 42 MCH-TitleV -- Child & Adolescent Health FAMILY HEALTH SERVICES	36,372	0	36,372 (k,l )
<b>5) FOOTNOTES:</b>			
a) \$34,555 Award amount is estimated for FY2018. OHA/PHD has not received the Notice of Grant Award for the title X funding. Adjustment might be needed once the Notice of Award is received. b) The July-September 2017 grant is \$245,108 ; \$49,022 must be expended for Nutrition Education. \$11,040 must be expended for Breastfeeding Promotion. c) The October-June FY2018 grant is \$633,097 ; \$126,619 must be expended for Nutrition Education. \$33,119 must be expended for Breastfeeding Promotion. d) \$164,085 Award amount is estimated for FY2018. OHA/PHD has not received the Notice of Award for funding. Adjustments might be needed once Notice of Award has been received by OHA/PHD. e) \$17,353 is the July 1st -- September 30th of 2017 funding to local agencies. f) \$52,058 is the October 1st, 2017 -- June 30th 2018 funding to local agencies. g) \$95,500 is for Oregon State Targeted Response to the Opioid Crisis (OSTR) work for the period of September 1st, 2017 to April 30th, 2018.			
<b>6) Capital Outlay Requested in This Action:</b>			
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.			
<b>PROGRAM</b>	<b>ITEM DESCRIPTION</b>	<b>COST</b>	<b>PROG. APPROV</b>

State of Oregon Oregon Health Authority Public Health Division		Page 2 of 3	
<b>1) Grantee</b> Name: Clackamas County Health Dept.  Street: 2051 Kaen Road City: Oregon City State: OR Zip Code: 97045		<b>2) Issue Date</b> September 21, 2017	<b>This Action</b> AMENDMENT FY2018
		<b>3) Award Period</b> From July 1, 2017 Through June 30, 2018	
<b>4) OHA Public Health Funds Approved</b>			
<b>Program</b>	Previous Award	Increase/ (Decrease)	Grant Award
PE 42 MCH-TitleV -- Flexible Funds FAMILY HEALTH SERVICES	84,868	0	84,868 (k,l)
PE 42 MCH/Perinatal Health -- General Fund FAMILY HEALTH SERVICES	11,407	0	11,407 ( k )
PE 42 Babies First FAMILY HEALTH SERVICES	36,529	0	36,529
PE 42 MCH Title V -- Oregon MothersCare FAMILY HEALTH SERVICES	12,991	0	12,991 (k,l)
PE 43 Immunization Special Payments	90,277	0	90,277
PE 44 School Based Health Centers FAMILY HEALTH SERVICES	220,956	3,044	224,000 ( q )
PE 44 School Based Health Centers - Mental Health Expansio FAMILY HEALTH SERVICES	336,700	0	336,700
PE 50 Safe Drinking Water Program	147,476	0	147,476 ( h )
<b>5) FOOTNOTES:</b>			
h) \$147,476 Award amount is estimated for Fiscal Year 2018. OHA/PHD has not yet received the Notice of Award for the funding. Adjustments might be needed once the Notice of Award is received by OHA/PHD.			
i) \$3,276 Award amount for the period 7/1/2017 - 12/31/17 must be spent by 12/31/2017.			
j) \$3,276 Award amount for period from 1/1/2018 - 6/30/2018 is estimated. OHA/PHD has not yet received the Notice of Award for that period's funding. Adjustments might be needed once the Notice of Award is received by OHA/PHD.			
k) Funds will not be shifted between categories or fund types. The same program may be funded by more than one fund type, however, federal funds may not be used as match for other federal funds (such as Medicaid).			
l) Funds for the MCH Title V programs for the period of 7/1/17-9/30/17 must be spent by 9/30/17.			
m) \$32,855 Award is for the period from 7/1/2017 to 12/31/17 and must be spent by 12/31/2017.			
<b>6) Capital Outlay Requested in This Action:</b>			
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.			
<b>PROGRAM</b>	<b>ITEM DESCRIPTION</b>	<b>COST</b>	<b>PROG. APPROV</b>

State of Oregon Oregon Health Authority Public Health Division		Page 3 of 3	
<b>1) Grantee</b> Name: Clackamas County Health Dept.  Street: 2051 Kaen Road City: Oregon City State: OR Zip Code: 97045	<b>2) Issue Date</b> September 21, 2017	<b>This Action</b> AMENDMENT FY2018	
		<b>3) Award Period</b> From July 1, 2017 Through June 30, 2018	
<b>4) OHA Public Health Funds Approved</b>			
<b>Program</b>	Previous Award	Increase/ (Decrease)	Grant Award
TOTAL	2,607,302	617,311	3,224,613
<b>5) FOOTNOTES:</b>			
n) \$30,467 Award for period of 1/1/2018 through 6/30/2018 is estimated. OHA/PHD has not yet received the Notice of Award for that period's funding. Adjustments might be needed once the Notice of Award is received by OHA/PHD. o) The July-September portion must be spent by September 30th, 2017. \$33,572 is the year-end one-time funding adjustment. \$504 is the second fresh fruit and veggies grant adjustment. p) \$144,398 is rollover of unspent funds from FY2017 q) Change in School Based Health Clinic funding formula for those counties with more than one certified School Based Health Clinic. Increased to \$56,000/year for each certified School Based Health Clinic in the County.			
<b>6) Capital Outlay Requested in This Action:</b>			
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.			
<b>PROGRAM</b>	<b>ITEM DESCRIPTION</b>	<b>COST</b>	<b>PROG. APPROV</b>

**Attachment C**

**Information required by CFR Subtitle B with guidance at 2 CFR Part 200**

PE 27 Prescription Drug Overdose Prevention Program SFY 18 - July 1 2017 - June 30, 2018				
<b>Federal Award Identification Number(FAIN):</b>	U17CE002751	U17CE002751	1H79TI080258	
<b>Federal Award Date:</b>	3/24/2017	7/17/2017	4/21/2017	
<b>Performance Period:</b>	09/1/2016-08/31/2017	09/1/2017-08/31/2018	5/1/17-4/30/18	
<b>Federal Awarding Agency:</b>	Centers for Disease Control and Prevention	Centers for Disease Control and Prevention	Substance Abuse and Mental Health Services Administration	
<b>CFDA Number:</b>	93.136	93.136	93.788	
<b>CFDA Name:</b>	Injury Prevention and Control Research and State and Community based Programs	Injury Prevention and Control Research and State and Community based Programs	Opioid STR	
<b>Total Federal Award:</b>	\$2,183,841	\$1,768,431	\$6,564,425	
<b>Project Description:</b>	Oregon Prescription Drug Overdose Prevention	Oregon Prescription Drug Overdose Prevention	Oregon State Targeted Response to the Opioid Crisis	
<b>Awarding Official:</b>	Angie Deokar ftm4@cdc.gov	Angie Deokar ftm4@cdc.gov	Kim Thierry kim.thierry@samhsa.hhs.gov	
<b>Indirect Cost Rate:</b>	17.45%	17.45%	N/A	
<b>Research And Development(Y/N):</b>	N	N	N	
	Index=50339 PCA=52658	Index=50339 PCA=52024	Index=84002 PCA=80660	
<b>Agency/Contractors Name</b>	<b>DUNS</b>	<b>Previous Award Amount</b>	<b>September FY18 Amendment</b>	<b>Total FY18 Award</b>
CLACKAMAS	096992656	\$ -	\$ 95,500.00	\$ 95,500.00





**John S. Foote, District Attorney for Clackamas County**

Clackamas County Courthouse, 807 Main Street, Room 7, Oregon City, Oregon 97045  
503 655-8431, FAX 503 650-8943, [www.co.clackamas.or.us/da/](http://www.co.clackamas.or.us/da/)

October 26, 2017

Board of County Commissioner  
Clackamas County

Members of the Board:

Approval of  
Intergovernmental Grant Agreement CAMI-MDT-2017-ClackamasCo.DAVP-00002

<b>Purpose/Outcomes</b>	The CAMI Program’s goal is to support a multidisciplinary approach to child abuse intervention. Services include assessment, advocacy, and treatment to children who are victims or alleged victims of child abuse (ORS 419B.005 through 419B.050).		
<b>Dollar Amount and Fiscal Impact</b>	<b>Total grant award: \$815,195.38; Carry Over From 16-17: \$1,673.19</b>		
	<b>Total Budget = \$816,868.57</b>		
	Expenditure Description	MDT Approved 2017-2018 Budget:	<i>Estimated</i> 2018-2019 Budget:
	Children’s Center	\$340,000.00	\$338,300.00
	RISK Outreach	\$20,000.00	\$20,000.00
	MDT Coordinator	\$28,000.00	\$28,000.00
	Training	\$21,000.00	\$21,000.00
Supplies	\$270.88	\$297.69	
	<b>Total</b>	<b>\$409,270.88</b>	<b>\$407,597.69</b>
<b>Funding Source</b>	State of Oregon, acting by and through OR Department of Justice		
<b>Duration</b>	Effective July 1, 2017 through June 30, 2019		
<b>Previous Board Action/Review</b>	The Board approved the 2015-2017 MDT CAMI grant award on Oct 29, 2015, Item Number D.2.		
<b>Strategic Plan Alignment</b>	Ensure safe, healthy and secure communities for children.		
<b>Contact Person</b>	Bob Willson, Administrative Analyst 2 – District Attorney’s Office, 503-650-3011		

**BACKGROUND:**

Oregon law (ORS 418.746-418.796) requires that every county utilize a multidisciplinary approach to child abuse intervention. In 1989, the law specified that every county create a multidisciplinary team (MDT) that is coordinated through each county’s District Attorney’s office. The legislature recognized then, as it does still today, that identifying and responding to child abuse is complicated and thus requires complex collaboration and consistent team work in order to address child abuse situations adequately. (Grant Handbook, Page 5)

Clackamas County has received funding from the State of Oregon for Child Abuse Multi-Disciplinary Intervention (CAMI) since at least 2005. CAMI funds are intended for the ongoing support of community child abuse intervention centers (ORS 418.790 through 418.792) and for the development and maintenance of child abuse multidisciplinary teams (ORS 418.745 through 418.747).

**RECOMMENDATION:**

I respectfully recommend that the Board approve the attached 2017-2019 State Child Abuse Multidisciplinary Intervention (CAMI) Grant Program Award between Clackamas County, acting by and through its District Attorney’s Office and the State of Oregon, acting by and through its Department of Justice.

Respectfully submitted,

John S. Foote



**DEPARTMENT OF JUSTICE**  
CRIME VICTIMS' SERVICES DIVISION

**MEMORANDUM**

DATE: 10/12/17

TO: 2017-2019 Child Abuse Multidisciplinary Intervention Grant  
Recipients

FROM: Robin Reimer, CAMI Fund Coordinator  
Crime Victims' Services Division

Attached is your agency's 2017-2019 Child Abuse Multidisciplinary Intervention Grant Agreement. Please download the entire document and have your authorized official sign the final page of the Grant Agreement.

Once the Grant Agreement is signed, please **change the application status in CVSD E-Grants to "Application Accepted"** and upload a copy of the signed Grant Agreement with Exhibits in the "Grantee Signed Grant Agreement" upload field on the "Grant Agreement Upload" page in your application in E-Grants. **Please complete these steps as soon as possible.**

Once the signed Grant Agreement with exhibits has been received by CVSD, a copy of the document signed by both your authorized official and CVSD Director Shannon Sivell will be uploaded to E-Grants and the status of your application will be changed to "Grant Awarded." You will find the uploaded copy of your Grant Agreement under the "Agreement Upload" form on the Forms Menu of your application.

If you have any questions regarding this Agreement, please feel free to contact Robin Reimer at 971-673-3826.



DEPARTMENT OF JUSTICE  
Crime Victims' Services Division

**2017-2019 STATE CHILD ABUSE MULTIDISCIPLINARY  
INTERVENTION (CAMI) GRANT PROGRAM AWARD**

<p><b>1. Applicant Agency's Name and Address</b></p> <p>Clackamas County, acting by and through its District Attorney's Office 2051 Kaen Rd. Oregon City, OR 97045</p> <p>Contact Name: JoAnne Radonich Telephone: (503) 936-6267 E-mail: jprc5@comcast.net</p>	<p><b>2. Special Conditions:</b></p> <p>This grant project is approved subject to such conditions or limitations as set forth in ORS 418.746-418.793 and the grant application instructions.</p> <p><b>3. Statutory Authority for Grant:</b></p> <p>ORS 418.746</p>								
<p><b>4. Award Number:</b></p> <p>CAMI-MDT-2017-ClackamasCo.DAVAP-00002</p>	<p><b>5. Award Date:</b></p> <p>July 1, 2017</p>								
<p><b>6. Grantee Tax Identification Number:</b></p> <p>93-6002286</p>	<p><b>7. Type of Recipient:</b></p> <p>DAVAP</p>								
<p><b>8. Project Period:</b></p> <p>July 1, 2017 – June 30, 2019</p>	<p><b>9. Grant:</b></p> <p><b>Allocation Amount (Grant):</b> \$ 815,195.38 <b>Carryover in Addition Amount:</b> \$ 1,673.19 <b>Carryover in Offset Amount:</b> \$ 0.00</p> <p><b>Budget (Allocation + Carryover in Addition):</b> \$816,868.57</p>								
<p><b>10. Semi-Annual Progress Reports:</b></p> <p>January 31, 2018 July 20, 2018 January 31, 2019 July 20, 2019 (final)</p>	<p><b>11. Financial Reports Due Dates:</b></p> <table border="0"> <tr> <td>October 31, 2017</td> <td>October 31, 2018</td> </tr> <tr> <td>January 31, 2018</td> <td>January 31, 2019</td> </tr> <tr> <td>April 30, 2018</td> <td>April 30, 2019</td> </tr> <tr> <td>July 20, 2018</td> <td>July 20, 2019 (final)</td> </tr> </table>	October 31, 2017	October 31, 2018	January 31, 2018	January 31, 2019	April 30, 2018	April 30, 2019	July 20, 2018	July 20, 2019 (final)
October 31, 2017	October 31, 2018								
January 31, 2018	January 31, 2019								
April 30, 2018	April 30, 2019								
July 20, 2018	July 20, 2019 (final)								
<p>This award is contingent upon the contractor agreeing to the attached assurances and terms of award for the grant entitled "State Child Abuse Multidisciplinary Intervention (CAMI) Grant Award". This award document, the certified assurances and terms of award must be signed by an authorized official in order to validate the acceptance of this award.</p>									

**OREGON DEPARTMENT OF JUSTICE  
CHILD ABUSE MULTIDISCIPLINARY INTERVENTION ACCOUNT**

**INTERGOVERNMENTAL GRANT AGREEMENT  
CAMI-MDT-2017-CLACKAMASCO.DAVAP-00002**

**BETWEEN:** State of Oregon, acting by and through (Grantor)  
its Department of Justice,  
1162 Court St. NE  
Salem, Oregon 97301-4096  
Facsimile Number: (503) 378-5738

**AND:** Clackamas Clackamas County, acting by and through its District Attorney's Office (Grantee)  
2051 Kaen Rd.  
Oregon City, OR 97045

**PROJECT START DATE:** July 1, 2015

**GRANT AWARD PROVISIONS**

**SECTION 1  
LEGAL BASIS OF AWARD**

Section 1.01. Legal Basis for Award. Pursuant to ORS 418.746, Grantor is authorized to enter into a Grant Agreement and to make an award, from the Child Abuse Multidisciplinary Intervention (CAMI) Account, to Grantee for the purposes set forth herein.

Section 1.02. Agreement Parties. This Intergovernmental Agreement, hereafter referred to as Agreement, is between Grantor and the forenamed Grantee.

Section 1.03. Effective Date. This Agreement will become effective on the date when all required signatures have been obtained, including any necessary approvals.

Section 1.04. Agreement Documents. This Agreement includes the following documents, listed in descending order of precedence and incorporated into this Agreement: this Agreement (except Exhibits and documents incorporated herein), and Exhibits A through C. In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control.

This Agreement is also subject to the terms of the following documents,. In the event of a conflict between two or more of the following documents, the language in the document with the higher precedence shall control.

- (a) The most current version of the CAMI Grant Management Handbook available at [https://www.doj.state.or.us/wp-content/uploads/2017/06/cami\\_grant\\_management\\_handbook.pdf](https://www.doj.state.or.us/wp-content/uploads/2017/06/cami_grant_management_handbook.pdf).
- (b) 2017-2019 CAMI MDT Grant Request for Applications Application Instructions and any Amendments.

(c) Grantee's CAMI MDT 2017-19 Application.

Section 1.05. Source of Funds. Payment for the Project will be from the Child Abuse Multidisciplinary Intervention Account and monies allocated from the Oregon General Fund.

## TERMS AND CONDITIONS

### SECTION 2 GRANT AWARD

Section 2.01. Grant. In accordance with the terms and conditions of this Agreement, Grantor shall provide Grantee with a maximum of \$815,195.38 (the "Grant") from the Child Abuse Multidisciplinary Intervention Account provided however that Grantor shall deduct from the amount of said Grant the amount by which the Carryover exceeds five percent (5%) of Grantee's 2015-2017 grant allocation, to financially support and assist Grantee's implementation of the Grantee's Application submitted in E-Grants and dated as of **April 4, 2017**, as updated by supplemental information submitted by Grantee to Grantor on **July 25, 2017 & September 28, 2017**, all of which are incorporated herein by this reference and collectively referred to as the "Project." Grantee agrees and acknowledges that Grantor may need to change the amount of the Grant based upon fluctuations in revenue, assessments to the Child Abuse Multidisciplinary Intervention Account program and other factors. Changes to the Grant amount will be implemented through amendments to this Grant Agreement.

Section 2.02. Grant Award. In accordance with the terms and conditions of this Agreement, Grantee shall carry out this Agreement on behalf of the multidisciplinary team. The multidisciplinary team shall implement the Project, using CAMI grant funds only for Project purposes.

Section 2.03. Disbursement of Grant Moneys. Subject to Sections 2.04, 2.05 and 2.06, Grantor shall disburse the Grant moneys to Grantees on a quarterly basis.

(a) Additionally, grantee may retain up to \$ 1,673.19 of funds previously provided to Grantee in prior grant periods, which funds remained unexpended by Grantee on the date of this Agreement (and expend those funds in accordance with this Agreement).

Section 2.04. Conditions Precedent to Each Disbursement. Grantor's obligation to disburse Grant moneys to Grantee pursuant to Section 2.03 is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:

- (a) Moneys are available in the Child Abuse Multidisciplinary Intervention Account to finance the disbursement;
- (b) Grantor has received sufficient funding, appropriations, limitations, allotments, or other expenditure authorizations to allow Grantor, in the reasonable exercise of its administrative discretion, to make the disbursement;
- (c) Grantee is in compliance with all reporting requirements of all active or prior CAMI grants through the CAMI grant program, including, but not limited to:
  - (i) Grantor has received a completed semi-annual summary to report on the

progress of the Project Goals, Objectives and Performance Measures as described in Section 5.05(b).

- (d) No default as described in Section 6.03 has occurred;
- (e) Grantee has submitted the required information to resolve all of the conditional eligibility criteria by the deadlines set forth in the CVSD E-Grants Modification Announcement found in CVSD E-Grants;
- (f) Grantee's representations and warranties set forth in Section 4 are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.

Section 2.05. Grant Agreement Conditions. If Grantee fails to satisfy any of the following conditions, Grantor may withhold disbursement:

none

Section 2.06. Grant Availability Termination. Except for the final payment, the availability of Grant moneys under this Agreement and Grantor's obligation to disburse Grant moneys pursuant to Section 2.03 shall end on **June 30, 2019** (the "Availability Termination Date"). Grantor will disburse final Grant payment after the Availability Termination Date subject to Grantee's successful submission of final Grant financial report as provided in Section 5.05(c).

### **SECTION 3 USES OF GRANT**

Section 3.01. Eligible Uses of Grant. Grantee's use of the Grant moneys is limited to those expenditures necessary to conduct an activity or complete a project falling within a Service Area, as described in Exhibit A, and is further limited as set forth in Exhibit B. Grantee's use of Grant moneys is further limited by the following budget categories set forth in the revised budget (the "Budget") submitted to Grantor on **7/25/2017 & 9/28/2017**: Personnel, Services and Supplies, and Other Expenses (the "Budget Categories"). Grantee's use of Grant moneys in a particular Budget Category may not exceed the amount specified therefore in the Budget except as permitted by and in accordance with the procedures set forth through CVSD E-Grants with regard to budget revisions.

Section 3.02. Ineligible Uses of Grant. Notwithstanding Section 3.01, Grantee shall not use the Grant moneys to retire any debt, to reimburse any person or entity for expenditures made or expenses incurred prior to the date of this Agreement or to replace funds previously allocated by Grantee for child abuse intervention.

Section 3.03. Unexpended Grant Moneys. Any Grant moneys disbursed to Grantee, or any interest earned by Grantee on the Grant moneys, that are not expended by Grantee in accordance with this Agreement by the earlier of the Availability Termination Date or the date this Agreement is terminated shall be returned to Grantor or, with Grantor's prior written approval, carried over to another award from the Child Abuse Multidisciplinary Intervention Account. Grantee may, at its option, satisfy its obligation to return unexpended funds under this Section 3.03 by paying to Grantor the amount of unexpended funds or permitting Grantor to recover the amount of the unexpended funds from future payments to Grantee from Grantor. If Grantee fails to return the amount of the unexpended funds within fifteen (15) days after the Availability Termination Date or the date this Agreement is terminated, Grantee shall be deemed to have elected the deduction option and Grantor may deduct the amount demanded from any future

payment from Grantor to Grantee, including but not limited to, any payment to Grantee from Grantor under this agreement and any payment to Grantee from Grantor under any contract or agreement, present or future, between Grantor and Grantee.

#### **SECTION 4 GRANTEE'S REPRESENTATIONS AND WARRANTIES**

Grantee represents and warrants to Grantor as follows:

Section 4.01. Existence and Power. Grantee is a political subdivision of the State of Oregon duly organized, validly existing, and in good standing under the laws of Oregon. Grantee has full power and authority to transact the business in which it is engaged and full power, authority, and legal right to execute and deliver this Agreement and incur and perform its obligations hereunder.

Section 4.02. Authority, No Contravention. The making and performance by Grantee of this Agreement (a) have been duly authorized by all necessary action of Grantee, (b) do not and will not violate any provision of any applicable law, rule, or regulation or order of any court, regulatory commission, board or other administrative agency, any provision of Grantee's articles of incorporation or bylaws, or any provision of Grantee's charter or other organizational document and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Grantee is a party or by which Grantee or any of its properties are bound or affected.

Section 4.03. Binding Obligation. This Agreement has been duly authorized, executed and delivered on behalf of Grantee and constitutes the legal, valid, and binding obligation of Grantee, enforceable in accordance with its terms.

Section 4.04. Approvals. No authorization, consent, license, approval of, filing or registration with, or notification to, any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Grantee of this Agreement.

#### **SECTION 5 GRANTEE'S AGREEMENTS**

Section 5.01. Project Commencement. Grantee shall cause the Project to be operational no later than 60 days from the Project Start Date of this Agreement. If the Project is not operational by that date, Grantee must submit a letter to Grantor describing steps taken to initiate the Project, reasons for delay, and the expected Project Start Date. If the Project is not operational within 90 days of the date of this Agreement, the Grantee must submit a second letter explaining the additional delay in implementation, and the Grantor may, after reviewing the circumstances, consider the Grantee in default in accordance with Section 6.03 and may terminate the Agreement in accordance with Section 6.02.

Section 5.02. Project Completion. Grantee shall complete the Project no later than **June 30, 2019** provided, however, that if the full amount of the Grant is not available because one or both of the conditions set forth in Sections 2.04(a) and (b) are not satisfied, the Grantee shall not be required to complete the project.

Section 5.03. Service Area Activities. Grantee shall conduct at least one activity or complete at least one project falling within at least one of the Service Areas no later than the Availability Termination Date.

Section 5.04. Confidentiality. In order to ensure the safety of child victims and non-offending family members of child abuse, domestic violence, dating violence, sexual assault, or stalking, Grantee shall protect the confidentiality and privacy of persons receiving services. Grantee shall not disclose any personally identifying information or individual information collected in connection with services requested, utilized, or denied through Grantee's programs; or reveal individual client information without the informed, written, reasonably time-limited consent of the recipient of services or the recipient's responsible parent or guardian about whom information is sought, whether for this Project or any other Federal, State, tribal, or territorial grant program, except that consent for release may not be given by the abuser of the minor, person with disabilities, or the abuser of the other parent of the minor.

If release of information described in the previous paragraph is compelled by statutory or court mandate, Grantee shall make reasonable attempts to provide notice to victims affected by the disclosure of information; and Grantee shall take steps necessary to protect the privacy and safety of the persons affected by the release of the information.

Grantee may share (1) non-personally identifying data in the aggregate regarding services to their clients and non-personally identifying information in order to comply with Federal, State, tribal, or territorial reporting, evaluation, or data collection requirements; (2) court-generated information and law-enforcement generated information contained in secure, governmental registries for protection order enforcement purposes; and (3) law-enforcement and prosecution-generated information necessary for law enforcement and prosecution purposes.

The term "personally identifying information", "individual information", or "personal information" means individually identifying information for or about an individual victim of domestic violence, dating violence, sexual assault, or stalking, including (1) a first and last name; (2) a home or other physical address; (3) contact information (including a postal, e-mail or Internet protocol address, or telephone or facsimile number); (4) a social security number; and (5) any other information, including date of birth, racial or ethnic background, or religious affiliation, that, in combination with any other non-personally identifying information would serve to identify any individual.

Grantee shall notify the Grantor promptly after receiving a request from the media for information regarding a recipient of services funded with Grant moneys.

Section 5.05. Reporting Requirements. Grantee shall submit all reports through the CVSD E-Grant system at [www.cvsdegrants.com](http://www.cvsdegrants.com).

- (a) Quarterly Financial Reports. No later than 30 days after the end of the calendar quarters ending: September 30, December 31, March 31, and no later than July 20 for the calendar quarter ending June 30, Grantee shall provide Grantor with quarterly financial reports as described in the CVSD E-Grant system.
- (b) Semi-Annual Progress Report. Twice in each year of the grant, Grantee shall submit program progress and service information describing the activities of the Multidisciplinary Team (MDT) for that six-month period. Reports will be due no later than 30 days after the end of the calendar quarters ending December 31, and no later than July 20 for the calendar quarter ending June 30, Grantee shall prepare and submit. These reports will document grant-funded activity as listed in the Intervention Plan, described in ORS 418.746(5)(a), and will document the number of children served by the MDT, the types of services provided, and compliance with Karly's Law (ORS 419B.022 *et. seq.*).



Section 5.06. Criminal History Verification. Grantee shall obtain a criminal history record check on any employee, potential employee or volunteer working with victims of crime as follows:

- (a) By having the applicant as a condition of employment or volunteer service, apply for and receive a criminal history check from a local Oregon State Police Office and furnish a copy thereof to Grantee; or
- (b) As the employer, by contacting a local Oregon State Police office for an “Oregon only” criminal history check on the applicant/employee/volunteer; or
- (c) By use of another method of criminal history verification that is at least as comprehensive as those described in sections (a) and (b) above.

A criminal record check will indicate convictions of child abuse, offenses against persons, sexual offenses, child neglect, or any other offense bearing a substantial relation to the qualifications, functions or duties of an employee or volunteer scheduled to work with victims of crime.

Grantee shall develop a policy or procedures to review criminal arrests or convictions of employees, potential employees or volunteers. The review will examine: (1) the severity and nature of the crime; (2) the number of criminal offenses; (3) the time elapsed since commission of the crime; (4) the circumstances surrounding the crime; (5) the subject individual’s participation in counseling, therapy, education or employment evidencing rehabilitation or a change in behavior; and (6) the police or arrest report confirming the subject individual’s explanation of the crime.

Grantee shall determine after receiving the criminal history check whether the employee, potential employee or volunteer has been convicted of one of the crimes described in this Section, and whether based upon the conviction the person poses a risk to working safely with victims of crime. If Grantee intends to hire or retain the employee, potential employee or volunteer, Grantee shall confirm in writing the reasons for hiring or retaining the individual. These reasons shall address how the applicant/ employee/volunteer is presently suitable or able to work with victims of crime in a safe and trustworthy manner, based on the policy or procedure described in the preceding paragraph of this Section. Grantee will place this explanation, along with the applicant/employee/ volunteer’s criminal history check, in the employee/volunteer personnel file for permanent retention.

Section 5.07. Procurement Standards. Grantee shall follow the same policies and procedures it uses for procurement from any other State or federal funds. Grantee shall use its own procurement procedures and regulations, provided that the procurement conforms to applicable Federal and State law and standards.

Section 5.08 Meeting Documentation. MDT Administrative Business. The MDT must keep minutes from each MDT administrative meeting or any administrative discussion during any meeting. Grantee shall ensure that the MDT keeps proper minutes from each MDT administrative meeting as it occurs. Administrative discussion includes but is not limited to the changes to the grant Intervention Plan, requests to redirect grant funds, and changes to roles or personnel on the MDT. Per 5.09 below, Grantor periodically may request to review meeting minutes. Grantor will require meeting minutes as part of any budget revision discussion, indicating the MDT’s approval for any change to the MDT budget.

Section 5.09. Records and Inspection. Grantee shall keep proper books of account and records on all activities associated with the Grant including, but not limited to, books of account and records on expenditure of the Grant moneys and on the services financed with the Grant moneys. Grantee will maintain these books of account and records in accordance with generally accepted accounting principles and shall retain the books of account and records until the later of six years after the Availability Termination Date set forth in Section 2.06 or the date that all disputes, if any, arising under this Agreement have been resolved. Grantee will permit Grantor, the Secretary of State of the State of Oregon, or their duly authorized representatives to inspect its properties, all work done, labor performed and materials furnished in connection with the activities financed with Grant moneys, and to review and make excerpts and transcripts of its books of account and records with respect to the receipt and disbursement of funds received from Grantor. Access to these books of account and records is not limited to the required retention period. The authorized representatives shall have access to records at any reasonable time for as long as the records are maintained. In particular, but without limiting the generality of the foregoing, Grantee shall permit Grantor's Child Abuse Multidisciplinary Intervention Account coordinator to attend case staffings, confidential proceedings and other meetings related to services financed with Grant moneys as Grantor deems reasonably necessary to monitor Grantee's use of the Grant moneys.

Section 5.10. Compliance with Laws. Grantee shall comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances related to expenditure of the Grant moneys and the activities financed with the Grant moneys. Without limiting the generality of the foregoing, Grantee expressly agrees to comply with (a) Title VI of the Civil Rights Act of 1964, (b) Section V of the rehabilitation Act of 1973, (c) the Americans with Disabilities Act of 1990 and ORS 659A.142, (d) all regulations and administrative rules established pursuant to the foregoing laws, and (e) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

Section 5.11. Grant Management Handbook. Grantee shall comply, and cause its subgrantees to comply, with the terms of the Grant Management Handbook available at [https://www.doj.state.or.us/wp-content/uploads/2017/06/cami\\_grant\\_management\\_handbook.pdf](https://www.doj.state.or.us/wp-content/uploads/2017/06/cami_grant_management_handbook.pdf) , and incorporated herein.

## **SECTION 6 TERMINATION AND DEFAULT**

Section 6.01. Mutual Termination. This Agreement may be terminated by mutual consent of both parties.

Section 6.02. Termination for Convenience; Termination by Grantor. Either party may terminate this Agreement, for any reason, upon 30 days advance written notice to the other party. In addition, Grantor may terminate this Agreement effective immediately upon written notice to Grantee, or effective on such later date as may be established by Grantor in such notice, under any of the following circumstances: (a) Grantor fails to receive sufficient appropriations or other expenditure authorization to allow Grantor, in the reasonable exercise of its administrative discretion, to continue making payments under this Agreement, (b) there are not sufficient funds in the Child Abuse Multidisciplinary Intervention Account to permit Grantor to continue making payments under this Agreement, (c) there is a change in federal or state laws, rules, regulations or guidelines so that the Project funded by this Agreement is no longer eligible for funding, or (d) in accordance with Section 6.04.

Section 6.03. Default. Either party shall be in default if either party fails to perform, observe or discharge any of its covenants, agreements or obligations contained herein or in any exhibit attached hereto. Grantee shall be in default under this Agreement upon the occurrence of any of the following events:

- (a) Any representation, warranty or statement made by Grantee herein or in any documents or reports relied upon by Grantor to measure progress on the Project, the expenditure of Grant moneys or the performance by Grantee is untrue in any material respect when made; or
- (b) Grantee (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) is adjudicated a bankrupt or insolvent, (v) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (viii) takes any action for the purpose of effecting any of the foregoing; or
- (c) A proceeding or case is commenced, without the application or consent of Grantee, in any court of competent jurisdiction, seeking (i) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Grantee, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of Grantee or of all or any substantial part of its assets, or (iii) similar relief in respect to Grantee under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty (60) consecutive days, or an order for relief against Grantee is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

Section 6.04. Remedies Upon Default. If a party's default is not cured within fifteen (15) days of written notice thereof to the other party (or such longer period as the notifying party may authorize in its sole discretion), the notifying party may pursue any remedies available under this Agreement, at law or in equity. Such remedies include, but are not limited to, termination of this Agreement, return of all or a portion of the Grant moneys, payment of interest earned on the Grant moneys, and declaration of ineligibility for the receipt of future CAMI Account awards. If, as a result of Grantee's default, Grantor demands return of all or a portion of the Grant moneys or payment of interest earned on the Grant moneys, Grantee may, at Grantee's option, satisfy such demand by paying to Grantor the amount demanded or permitting Grantor to recover the amount demanded by deducting that amount from future payments to Grantee from Grantor. If Grantor terminates this Agreement as a result of Grantee's default, Grantee shall return all unexpended funds to Grantor. The parties shall engage in nonbinding discussions to give the alleged defaulting party an opportunity to present reasons why it believes it is not in default or that the default is not material and give the notifying party an opportunity to withdraw its notice. The parties may also negotiate an appropriate resolution of the default, including without limitation the amount of any misexpended funds.

**SECTION 7**  
**MISCELLANEOUS**

Section 7.01. No Implied Waiver, Cumulative Remedies. The failure of Grantor to exercise, and any delay in exercising any right, power, or privilege under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

Section 7.02. Governing Law; Venue; Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit, or proceeding (collectively, "Claim") between Grantor (or any other agency or department of the State of Oregon) and Grantee that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within a Circuit Court of the State of Oregon of proper jurisdiction. THE PARTIES, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

Section 7.03. Notices. Except as otherwise expressly provided in this Agreement, any communications between the parties hereto pertaining to this Agreement or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid to Grantee or Grantor at the address or number set forth on page 1 of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this section. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

Section 7.04. Amendments. This Agreement may not be waived, altered, modified, supplemented, or amended in any manner except by written instrument signed by both parties or as described and certified through CVSD E-Grants.

Section 7.05. Subcontracts, Successors and Assignments.

a. Grantee shall not enter into any subcontracts for any of the Project activities required by this Agreement without Grantor's prior written consent. Grantee shall require any subcontractors to comply in writing with the terms and conditions of this Agreement and provide the same assurances as the Grantee must in its use of Oregon Criminal Fines Account or General Funds. Grantor's consent to any subcontract shall not relieve Grantee of any of its duties or obligations under this Agreement.

b. This Agreement shall be binding upon and inure to the benefit of Grantor, Grantee, and their respective successors and assigns, except that Grantee may not assign or transfer its rights or obligations hereunder or any interest herein without the prior consent in writing of Grantor

Section 7.06. Entire Agreement. This Agreement constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

Section 7.07. Contribution and Indemnification.

- (a) If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.
- (b) With respect to a Third Party Claim for which the Grantor is jointly liable with the Grantee (or would be if joined in the Third Party Claim ), the Grantor shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Grantee in such proportion as is appropriate to reflect the relative fault of the Grantor on the one hand and of the Grantee on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Grantor on the one hand and of the Grantee on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Grantor's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the Grantor had sole liability in the proceeding.
- (c) With respect to a Third Party Claim for which the Grantee is jointly liable with the Grantor (or would be if joined in the Third Party Claim), the Grantee shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Grantor in such proportion as is appropriate to reflect the relative fault of the Grantee on the one hand and of the Grantor on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Grantee on the one hand and of the Grantor on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Grantee's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.
- (d) Alternative Dispute Resolution. The parties should attempt in good faith to resolve any dispute arising out of this agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
- (e) Indemnification by Subcontractors. Grantee shall take all reasonable steps to cause its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers,

employees and agents (“Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys’ fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Grantee’s contractor or any of the officers, agents, employees or subcontractors of the contractor( “Claims”). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.

- (f) Subcontractor Insurance Requirements. Grantee shall require its first tier contractor(s) that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS on Exhibit C, attached hereto and incorporated by reference herein, and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before the contractors perform under contracts between Grantee and the contractors (the "Subcontracts"), and ii) maintain the insurance in full force throughout the duration of the Subcontracts. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Grantor. Grantee shall not authorize contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, Grantee shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Grantee shall incorporate appropriate provisions in the Subcontracts permitting it to enforce contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Subcontracts as permitted by the Subcontracts, or pursuing legal action to enforce the insurance requirements. In no event shall Grantee permit a contractor to work under a Subcontract when the Grantee is aware that the contractor is not in compliance with the insurance requirements. As used in this section, a “first tier” contractor is a contractor with which the Grantee directly enters into a contract. It does not include a subcontractor with which the contractor enters into a contract.

Section 7.08. False Claim Act. Grantee will refer to the Grantor any credible evidence that a principal, employee, agent, sub-grantee contractor, contractor or other person has submitted a false claim under the False Claims Act (31 USC 3729-3733; ORS 180.750-180.785) or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving funds provided under this Agreement.

Section 7.09. Time is of the Essence. Grantee agrees that time is of the essence with respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.

Section 7.10. Survival. All provisions of this Agreement set forth in the following sections shall survive termination of this Agreement: Section 3.03, Unexpended Grant Moneys; Section 5.09, Records and Inspection; and Section 7, MISCELLANEOUS, and any other provisions that by their terms are intended to survive termination of this Agreement.

Section 7.11. Counterparts. This Agreement may be executed in several 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 Agreement so executed shall constitute an original.

Section 7.12. Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

Section 7.13. Relationship of Parties. The parties agree and acknowledge that their relationship is that of independent contracting parties and neither party hereto shall be deemed an agent, partner, joint venturer or related entity of the other by reason of this Agreement.

Section 7.14. Headings. The section headings in this Agreement are included for convenience only, do not give full notice of the terms of any portion of this Agreement and are not relevant to the interpretation of any provision of this Agreement.

Section 7.15. No Third Party Beneficiaries. Grantor and Grantee are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the dates set forth below their respective signatures.



**STATE OF OREGON**

Acting by and through its Department of Justice

By: \_\_\_\_\_

Name: Shannon L. Sivell

Title: Director, Crime Victims' Services Division

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

**AUTHORIZED AGENT FOR GRANTEE**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:**

By: Steve Marlowe

Title: Assistant Attorney General

Date: 10/12/17 by email



**EXHIBIT A**  
**GRANT AWARD SERVICE AREAS**

The Grant moneys are awarded solely for activities and projects falling within the following Service Areas:

**1. Assessment Services.** Assessment services are medical assessments of, intervention services to or psycho-social assessments of children in Oregon suspected of being victims of abuse or neglect. For purposes of this description, the phrases medical assessment, intervention service and psycho-social assessment have the following meanings:

**Medical Assessment** means an assessment by or under the direction of a physician who is licensed to practice medicine in Oregon and trained in the evaluation, diagnosis and treatment of child abuse and includes, but is not limited to, the taking of a thorough medical history, a complete physical examination, an interview for the purpose of making a medical diagnosis, a determination of whether or not the child has been abused or neglected, and identification of appropriate treatment or referral for follow-up for the child.

**Intervention Service** means a service provided by criminal justice or child protective services staff to intervene effectively in a case of suspected child abuse.

**Psycho-Social Assessment** means an evaluation of the child and his or her family to determine the need for services to reduce the adverse reaction to victimization and the availability of resources to meet those needs.

**2. Advocacy Services.** Advocacy services are services that reduce additional trauma to children (and their families) in Oregon suspected of being victims of abuse or neglect or that support the identification and development of therapeutic services to such children (and their families). Advocacy services include, but are not limited to, protective services, intervention advocacy, prevention advocacy and professional training and education, all as described below:

**Protective Services** means activities that are required to protect the child, prevent future abuse, and support the healing process associated with the abuse or neglect related trauma.

**Intervention Advocacy** means activities identified at the local and state level to provide more effective intervention for victims of child abuse or neglect.

**Prevention Advocacy** means activities associated with local and state fatality reviews or subsequent prevention strategies to reduce abuse or neglect related fatalities.

**Professional Training and Education** means support for professional training and education or for educational resources such as a clearinghouse, speakers bureau, or library, for professionals involved in child abuse and neglect intervention.

**3. Treatment Services.** Treatment services are information, referral or treatment for child abuse or neglect victims and their families. For purposes of this description, the words information, referral and treatment have the following meanings:

**Information** means providing information regarding treatment resources.

**Referral** means referral to therapeutic services.

**Treatment** means providing and coordinating therapeutic treatment intervention.

**Exhibit B**  
**ELIGIBLE EXPENSES**

Grant moneys may be used only for the following expenses necessarily incurred by Grantee in conducting an activity or completing a project falling within a Service Area:

1. Costs for staff, interviewers, interpreters, prosecutors (Deputy District Attorneys) and expert witnesses.
2. Costs for services, supplies, rent, and capital equipment.
3. Other operational expenses necessarily incurred in connection with a particular project or activity falling within a Service Area.

**EXHIBIT C**  
**SUBCONTRACTOR INSURANCE REQUIREMENTS**

**A. REQUIRED INSURANCE.** Subcontractor shall obtain at Subcontractor's expense the insurance specified in this section prior to performing under this Agreement and shall maintain it in full force and at its own expense throughout the duration of this Agreement. Subcontractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Grantor.

i. **WORKERS COMPENSATION.** All employers, including Subcontractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2).

ii. **EMPLOYERS' LIABILITY.**

**Required by Agency**    **Not required by Agency.**

If Subcontractor is a subject employer, as defined in ORS 656.023, Subcontractor shall obtain employers' liability insurance coverage.

iii. **PROFESSIONAL LIABILITY**

**Required by Agency**    **Not required by Agency.**

If in the conduct and implementation of the Subcontract, Subcontractor provides professional advice or services, Subcontract shall obtain and maintain Professional Liability Insurance in a form and with coverages that are satisfactory to the State covering any damages caused by an error, omission or any negligent acts related to the professional services to be provided under this Agreement.

iv. **COMMERCIAL GENERAL LIABILITY.**

**Required by Agency**    **Not required by Agency.**

Subcontractor shall obtain and maintain Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to the State. This insurance shall include personal injury liability, products, and completed operations. Coverage shall be written on an occurrence basis.

v. **AUTOMOBILE LIABILITY INSURANCE: AUTOMOBILE LIABILITY.**

**Required by Agency**    **Not required by Agency.**

If in the conduct and implementation of the Subcontract, Subcontractor provides

transportation for or transports individuals in automobiles, Subcontractor shall obtain and maintain Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability").

**B. ADDITIONAL INSURED.** The Commercial General Liability insurance and Automobile Liability insurance required under this Agreement shall include the State of Oregon, its officers, employees and agents as Additional Insureds but only with respect to Subcontractor's activities to be performed under this Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

**C. "TAIL" COVERAGE.** If any of the required professional liability insurance is on a "claims made" basis, Subcontractor shall either maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Agreement, for a minimum of 24 months following Subcontractor's completion and Grantor's acceptance of all performance required under this Agreement. Notwithstanding the foregoing 24-month requirement, if Subcontractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then Subcontractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace for the coverage required under this Agreement. Subcontractor shall provide to Grantee or Grantor, upon Grantee or Grantor's request, certification of the coverage required under this Exhibit C.

**D. CERTIFICATE(S) OF INSURANCE.** Subcontractor shall provide to Grantee Certificate(s) of Insurance for all required insurance before performance required under this Agreement. The Certificate(s) must specify all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees). Subcontractor shall pay for all deductibles, self-insured retention and self-insurance, if any. **The Subcontractor shall immediately notify the Grantee of any material change in insurance coverage.**



CRAIG ROBERTS, Sheriff

# Clackamas County Sheriff's Office

October 18, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of Contract with Mark43  
for Public Safety Records Management Solution for use by Clackamas County  
Sheriff's Office

<b>Purpose/Outcomes</b>	<b>Obtain new Records Management System (RMS)</b>
<b>Dollar Amount and Fiscal Impact</b>	<b>\$199,997.56 annually for years 1 – 4 \$208,999.40 for year 5 Estimated Total Contract Value (8 years) is \$1,800,000.00</b>
<b>Funding Source</b>	<b>216-1602-450001 Sheriff's Office Operations Budget</b>
<b>Duration</b>	<b>Five year initial contract term with three (3) additional annual renewals for a total extended contract term of eight (8) years.</b>
<b>Previous Board Action</b>	<b>N/A</b>
<b>Strategic Plan Alignment</b>	<b>The purchase of the new records management system aligns with our strategic goal of implementing new or additional information technology to improve efficiency by obtaining a records management system that has cost effective ongoing expenditures while keeping our staff equipped with the best possible technology to perform the duties assigned while maintaining industry best practices.</b>
<b>Contact Person</b>	<b>Sheriff Craig Roberts</b>
<b>Contract No.</b>	<b>N/A</b>

**BACKGROUND:**

In early 2016 the Clackamas County Sheriff's Office (CCSO) began a project to find a suitable replacement for its current Records Management System (RMS) Versaterm (Reginal Justice Information Network) which has become a hindrance in efficiency in productivity.

After hundreds of staff hours of research and multiple site visits with several potential vendors, Mark43 emerged as the industry leader. Mark43 offers an RMS solution which surpasses that of any other vendor researched. The Mark43 RMS is offered

*"Working Together to Make a Difference"*

as a Software as a Service (SaaS) cloud based platform, which offers the ability for Mark43 to expand and develop their product to keep up with the rapidly changing and evolving digital world far into the future, as well as, keep the CCSO on the most current technology available on the market. In addition Mark43 is hosted on Amazon Government Cloud, which offers security and expandability without CCSO assuming the high costs of technology infrastructure and cyber security protocols required to secure the sensitive data contained within the system.


Once Mark43 was identified as the desired vendor for CCSO, Procurement was contacted to assist in the strategic procurement planning. It was discovered that Mark43 was available to CCSO by way of a cooperative price agreement allowing CCSO to move forward in the procurement processes without the need to conduct a formal procurement from the beginning. A Notice of Intent to Purchase was posted in the Daily Journal of Commerce on May 31, 2017, identifying Insight Public Sector, U.S. Commodities Contract; Contract #4400006644 through Fairfax, Virginia. This notice allowed for comment and/or protest of the purchase. No comments or protests were received in the prescribed seven (7) days after the notice was posted. Sheriff's Office employees along with Clackamas County Procurement, Clackamas County Finance, and Clackamas County Legal has worked tirelessly to secure terms and conditions which meet the needs of the Clackamas County Sheriff's office today, as well as the foreseeable future.

This contract has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

Staff respectfully recommends approval of the Mark43 contract as the chosen Record Management System for the Clackamas County Sheriff's Office. Staff further recommends that Board delegate authority to the Clackamas County Sheriff, to sign agreements necessary in the ongoing performance of this agreement for an eight (8) year period.

Sincerely,



James Rhodes  
Captain, Clackamas County Sheriff's Office

Placed on the October 26<sup>th</sup>, 2017 agenda by Procurement

Final October 17, 2017



**CLACKAMAS COUNTY  
TECHNOLOGY SERVICES CONTRACT**

This Technology Services Contract (this "Contract") dated as of \_\_\_\_\_ is entered into between Mark43, Inc. ("Contractor"), and Clackamas County, a political subdivision of the State of Oregon ("County"). Contractor and County are each a "Party" and together the "Parties."

**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 December 31, 2022. 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.

No later than sixty calendar (60) days prior to the expiration of the Contract term, Contractor shall provide annual renewal rates, to include the number of licenses, annual cost per license and annual total cost. If accepted by the County, up to three (3) annual renewals may be memorialized by the issuance of a purchase order generated by the County finance system (each, a "Renewal Term").

**2. Statement of Work.** Contractor will provide the following technology services: Public Safety Technology Solution ("Work"), further described in **Exhibit A**.

**3. Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum of \$1,009,989.64, for accomplishing the Work required by this Contract during the initial term, not including any renewal authorized by the County or any additional licenses purchased on the rates set forth herein. Contractor shall be paid in accordance with the following fee schedule:

Contract Year	Total No. of Licenses	Cost Per License per year	Annual Total
January 1, 2018 or Acceptance Date whichever is later	218	\$917.42	\$199,997.56
January 1, 2019 – December 31, 2019	218	\$917.42	\$199,997.56
January 1, 2020 – December 31, 2020	218	\$917.42	\$199,997.56
January 1, 2021 – December 31, 2021	218	\$917.42	\$199,997.56
January 1, 2022 – December 31, 2022	218	\$963.30	\$208,999.40

The "Annual Total" for each year is due in full in advance on the first day of the applicable Contract Year. The County may order additional licenses at the rates set forth in the then current fee schedule and shall be prorated based on a monthly cost at time of order. For example, the monthly cost for Contract years one (1) through four (4) would be \$76.45. The prorated annual fee for such additional license(s) is due in full in advance within thirty (30) days after the effective date of such additional license(s). Additional licenses must be submitted in writing to Contractor and signed by a duly authorized representative of the County.

**4. Travel and Other Expense.** Authorized:  Yes  No

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.



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**5. 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 – Statement of Work, Exhibit B – Insurance, Exhibit C – Certification Statement, Exhibit D – Technical Requirements, Exhibit E – System Modifications, and Exhibit F – Insight Public Sector Price Quote. In the event of a conflict, the following order of priorities shall govern: (1) this Contract, (2) Technical Requirements, (3) Statement of Work, (4) Insight Public Sector Price Quote and associated online terms of sale, (5) Insurance, (6) Certification Statement, and (7) System Modifications. For the avoidance of doubt, all the parties agree terms of the Insight Contract with Fairfax, Virginia No. 4400006644 and associated documents are not applicable to this Contract.

**6. Contractor Data.**

**Name:** Mark43, Inc.

**Address:** 28 E. 28<sup>th</sup> Street, 12<sup>th</sup> Floor, New York, NY 10016

**Contractor Contract Administrator:** David Jochim

**Phone No.:** 646-770-0412

**Email:** dave@mark43.com

**MWESB Certification:**  DBE #       MBE #       WBE #       ESB #

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 could subject Contractor to backup withholding.

**ARTICLE II.**

**1. DEFINITIONS**

- 1.1. Defined Terms.** Defined terms have the meanings set forth in this Article 1 (Definitions) and elsewhere in this Contract when capitalized, and may be read in singular, plural or an alternative tense as the context requires.
- 1.2. "Acceptance"** Means the County has determined that a Deliverable or a product requiring Acceptance Testing has met the Acceptance Criteria and the County has provided a Certificate of Acceptance to Contractor with respect to the Deliverable or Product, as applicable.
- 1.3. "Acceptance Criteria"** The functionality, performance, and reliability requirements as set forth in the Statement of Work.
- 1.4. "Acceptance Date"** The date on which the County issues a certificate of Acceptance for the Solution or a Deliverable, as applicable.
- 1.5. "Acceptance Test"** The evaluation and testing method, procedures, or both, acceptable to each Party in its reasonable discretion that are used to determine whether or not the Solution or a Product requiring Acceptance Testing operates in accordance with the Acceptance Criteria. Acceptance Testing may occur in one or more phases, depending on the integration of contingent products, scalability, performance tuning or other measurable features or milestones.
- 1.6. "Acceptance Test Plan (ATP)"** An Acceptance Test Plan (ATP) is written document acceptable to each Party in its reasonable discretion that contains the procedures that will be used to determine the Solution's/System's conformance to the County's requirements. Acceptance Criteria.
- 1.7. "Affiliate"** means, with respect to any entity, any other entity who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such entity. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise.
- 1.8. "Amendment"** A written document required to be signed by both Parties when in any way altering the Contract or Statement of Work, or any exhibit or attachment to any of the foregoing.
- 1.9. "Applications"** means the Records Management System and Evidence Management System, as described in the Statement of Work.
- 1.10. "Authorized User"** means an Affiliate, employee or independent contractor of County (solely to the extent such contractor is providing services to County), who has been authorized by County to use the SaaS Services.
- 1.11. "Business Day"** A calendar day of twenty-four hours, excluding weekends and public state or federal holidays, beginning at midnight and ending at midnight twenty-four hours later.
- 1.12. "Certificate of Acceptance"** A written instrument by which the County notifies Contractor that the Acceptance Criteria have been met or waived, in whole or in part.
- 1.13. "Change Order"** A document, agreed and signed by both Parties, that changes an existing Statement of Work. The Change Order process is outlined in the Statement of Work.
- 1.14. "County Data"** means all data, information, content and other materials stored or transmitted by County and any Authorized User through the SaaS Services (i) in their user accounts; and (ii) on any Third Party Application, excluding any Third Party Data and any Contractor Data.
- 1.15. "Data Breach"** A security incident in which the Contractor transmits (or provides access to) data that is stored in the Services to an un-authorized person. A Data Breach does not include cases

where the County transmits or otherwise provides access to data stored in the Services to unauthorized persons.

- 1.16. **“Deliverable”** The Products, Services, Documentation, and tangible work products to be provided to the County by Contractor as described in the Contract or Statement of Work.
- 1.17. **“Documentation”** means the user guides and user manuals for the SaaS Services that Contractor provides to County.
- 1.18. **“Error”** Any defect, problem, condition, bug, or other partial or complete inability of the Solution to operate either (a) in accordance with the applicable Specifications and Documentation; or, (b) as to the Solution, in the same manner in which the Solution operated as of the Final Acceptance Date.
- 1.19. **“Final Acceptance”** Means the County has determined that every Deliverable or Product in the Solution requiring Acceptance Testing has materially met the Acceptance Criteria and the County has provided a Certificate of Acceptance to Contractor.
- 1.20. **“Integration Control Document”** means the agreement, if applicable, governing any integrations with Third Party Applications.
- 1.21. **“Intellectual Property Rights”** means all intellectual and industrial property rights, whether now existing or existing in the future, including without limitation, (i) all patent rights, including any rights in pending patent applications and any related rights; (ii) all copyrights and other related rights throughout the world in works of authorship, including all registrations and applications therefor; (iii) all trademarks, service marks, trade dress or other proprietary trade designations, including all registrations and applications therefor (iv) all rights throughout the world to proprietary know-how, trade secrets and other confidential information, whether arising by law or pursuant to any contractual obligation of non-disclosure; and (v) all other rights covering industrial or intellectual property recognized in any jurisdiction.
- 1.22. **“Maintenance Request”** A request by the County to Contractor for maintenance.
- 1.23. **“Product”** Means Software, Documentation and supplies which may include Updates, Upgrades, Customization, and training.
- 1.24. **“Production Environment”** The operation portion of the Solution that is used on a daily basis to conduct the County’s business processes.
- 1.25. **“Professional Services”** means the evaluation, consultation, implementation, customization, configuration, development of interfaces and other services provided by Contractor in connection with the SaaS Services.
- 1.26. **“Project”** The Integrated Public Safety Technology System, all as described in the Statement of Work, comprising the Applications, and the work required to implement it, including the Professional Services and SaaS Services and any activities required for delivery and support of the Solution including, without limitation, design, development, integration, testing, support and maintenance, any of which Contractor may be providing in whole or in part.
- 1.27. **“Project Manager”** Individual designated by the Clackamas County Sheriff’s Department to provide day-to-day operational oversight of the Contract.
- 1.28. **“SaaS Services”** means the Applications, Software, and related software-as-a-service, hosting, maintenance and/or support services made available by Contractor for remote access and use by County, including any Documentation thereto.
- 1.29. **“Services”** means the services provided or required to be provided by or through Contractor, including without limitation, SaaS Services and Professional Services.

- 1.30. **“Software”** means the object code version of Contractor’s computer software and all Updates made available by Contractor to County under this Contract.
- 1.31. **“Software License”** Means the license(s) of the Software provided to the County for use of the SaaS Services as authorized by this Contract.
- 1.32. **“Solution”** The complete integrated public safety technology solution to be provided by Contractor, including collectively the SaaS Services, the Professional Services, and all Products, and Software to be provided by Contractor to County under this Contract.
- 1.33. **“Source Code”** A complete copy, expressed in high-level (i.e., human readable; not machine language or object code) computer language, of the Software which, when assembled or compiled, becomes the executable object code of the Software. Source Code shall include all material including but not limited to design documentation, Software Documentation, reference manuals and documentation, libraries for the Software, and interface software (patch or whole programs), in any form (printed, electronic, or magnetic) and any other information necessary for a reasonable skilled programmer or analyst to understand, maintain, or modify the Software/Solution.
- 1.34. **“Statement of Work”** means a detailed plan of work to be agreed by the Parties in conjunction with this Contract.
- 1.35. **“System Administrator”** An Authorized User with specific administrative system configuration privileges.
- 1.36. **“Term”** means the Initial Term and any Renewal Term.
- 1.37. **“Testing Environment”** The Testing Environment is that portion of the System that is used by System Administrators to test the Solution (e.g., new version releases, problem data sets, new configuration parameters, etc.). Actions taken and transactions completed in the Testing Environment must not affect the Production Environment.
- 1.38. **“Third Party Application”** means a third-party service approved by Contractor to which County and any Authorized User facilitates Contractor’s access to, and use, of the SaaS Services, via an application programming interface or other means.
- 1.39. **“Third Party Components”** means any components of the SaaS Service from time to time that are provided by third parties (e.g., Google Maps).
- 1.40. **“Third Party Data”** means any data owned by a third party or provided by a Third Party Provider that Contractor provides to County via the SaaS Service.
- 1.41. **“Third Party Provider”** means third parties, including other vendors, state agencies and local agencies that control products and/or databases with which Contractor SaaS Services are to be interfaced.
- 1.42. **“Third Party Software”** Third Party Software means computer software or other technology in which any person or entity, other than Contractor, has any right, title, or interest, including any restrictions or obligations (such as obligations to obtain consent or approvals and restrictions that may be eliminated only by obtaining such consent or approvals) applicable to the Solution.
- 1.43. **“Updates”** means any and all new releases, new versions, patches and other updates for the SaaS Services that Contractor makes generally available without additional charge to its other County’s of the SaaS Services.
- 1.44. **“Upgrade”** A newer, better version, change, modification, or enhancement to the Software (including Third Party Software), and related Documentation, which incorporates major new features or increases the core functionality of the Software and may be considered a new version. Software Upgrades may include Error correction, bug fixes, additions to, or patches to the Software.

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- 1.45. "Vendors"** means third parties with whom Contractor contracts to provide components of the SaaS Services, and includes without limitation, Amazon Web Services (for platform hosting) and Google (for Google Maps).
- 1.46. "Website"** means any Internet website through which Contractor provides the SaaS Services under this Contract.
- 2. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs anticipated to be incurred in the performance of this Contract. Upon not less than 14 days' advance notice, Contractor, at its place of business or, at its option, electronically, shall provide to County and their duly authorized representatives 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. Such books and records shall be maintained by Contractor for a minimum of three (3) 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.
- 3. AVAILABILITY OF FUNDS.** County certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the County's reasonable administrative discretion, to continue to make payments under this Contract.
- 4. 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.
- 5. 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. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the Work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate County official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.
- 6. EXECUTION AND COUNTERPARTS.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.
- 7. GOVERNING LAW.** 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. Contractor consents to jurisdiction of the Circuit Court for Clackamas County, in the State of Oregon for any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract.

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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.

**8. HAZARD COMMUNICATION.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon County's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.

**9. INDEMNITY, RESPONSIBILITY FOR DAMAGES.**

**9.1. Indemnification by Contractor**

**9.1.1. Indemnity for Data Breach.** Contractor will indemnify, defend and hold County and its officers, elected officials, directors, employees and agents, harmless from and against any and all losses, damages, liability, costs and expenses arising out of any third party claim to the extent such claim is the result of a Data Breach resulting from Contractor's breach of its obligations in Article III, Section 2.1. For the avoidance of doubt, "third party" includes County officers, elected officials, agents, and employees but solely to the extent that such claim is made in their personal capacity.

**9.1.2. IP Indemnity.** Contractor will indemnify, defend and hold County and its officers, elected officials, employees and agents, harmless from and against any and all Losses resulting from, arising out of or relating to any third party claims that the deliverables or the System, or use thereof, infringe or violate any Intellectual Property Rights of any third party. If Contractor believes at any time that the Deliverables or the System infringe a third party's Intellectual Property Rights, Contractor may: (i) upon receipt of County's prior written consent, which County will not unreasonably withhold, replace an infringing item with a non-infringing item that meets or exceeds the performance and functionality of the replaced item; or (ii) obtain for County the right to continue to use the infringing item; or (iii) modify the infringing item to be non-infringing, provided that, following any replacement or modification made pursuant to the foregoing, the System continues to function in material conformance with the specifications set forth in this Contract. Contractor's failure or inability to accomplish any of the foregoing, within a reasonable period of time, will be deemed a material breach of this Contract, and County may pursue any rights and remedies available to it under this Contract, including termination.

**9.1.3. Damages to County Property and Employees.** Contractor shall be liable for all claims, suits, actions, losses, damages, liabilities, costs and expenses (collectively, "Damages") for personal injury, including death, damage to real property and damage to tangible personal property of the County or any of its employees proximately caused by the negligent, physical acts or omissions of Contractor, its officers, employees, subcontractors, or agents ("Contractor Personnel") under this Contract while on premises that are owned or controlled by the County ("County Premises").

**9.2. Exclusions**

**9.2.1.** Contractor shall not be liable under Section 9.1 for any claim based on the following:

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- 9.2.1.1. County's modification of the Deliverables or the SaaS Services other than as contemplated by this Contract or a Deliverable's or the specifications; or, as otherwise authorized by Contractor in writing.
  - 9.2.1.2. Use of the Deliverables or the SaaS Services in a manner other than as contemplated in this Contract or a Deliverable or the System specifications; or, as otherwise authorized by Contractor in writing.
  - 9.2.1.3. Use of the Deliverables or the SaaS Services in combination, operation, or use of with other products other than as contemplated by this Contract or a Deliverables or the specifications; or, as otherwise authorized by Contractor in writing.
  - 9.2.1.4. claims arising from the use of old versions software after receipt of modified or updated versions of software;
  - 9.2.1.5. claims arising from the use of Third Party Applications or Third Party Data; and
  - 9.2.1.6. Losses attributable to the acts or omissions of County and its officers, employees or agents or for which County owes Contractor an indemnification obligation pursuant to Section 9.4.
- 9.3. **Control of Defense and Settlement.** Contractor's obligation to indemnify County as set forth in Section 9.1 is conditioned on County providing to Contractor notification within thirty (30) days of any claim or potential claim of which County becomes aware that may be the subject of those Sections. Contractor will have control of the defense and settlement of any claim that is subject to Section 9.1; however, neither Contractor nor any attorney engaged by Contractor will defend the claim in the name of the County, nor purport to act as legal representative of the County without the approval of the County, nor will Contractor settle any claim on behalf of the County without the prior approval of the County.
- 9.4. **Indemnification by County.** To the extent permitted by Article XI Section 10 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 – 30.300), County will defend, indemnify and hold harmless Contractor and its Affiliates, and each of their officers, directors, managers, shareholders, members and employees from any and all claims, liabilities, costs and expenses in connection with (I) any third party claim arising from or relating to (i) any allegation that any data, product specifications, information or materials provided by County hereunder, including, without limitation, the County Data and Third Party Applications, when used in connection with the SaaS Services or any customization or configuration made to the SaaS Service proposed by or provided by County under a Statement of Work that: (a) infringes or misappropriates any Intellectual Property Rights of a third party, or (b) violates any Applicable Laws; (ii) the actual violation of Applicable Law by County, any Authorized User, or any Affiliate, employee, agent or independent contractor of County; or (iii) County's breach of this Agreement; provided, however, that the foregoing obligations shall be subject to Contractor promptly notifying County of the claim, (y) providing County with reasonable cooperation in the defense of the claim and (z) providing County with sole control over the defense and negotiations for a settlement or compromise; provided, however, that County shall not enter into any such settlement without Contractor's prior written consent, which consent will not be unreasonably withheld, and that Contractor shall be permitted to participate in the defense of any such claim, at its own expense, with counsel of its choosing; (II) disabling a connection to a Third Party Application at County's request; (III) County's actions or failure to

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act, resulting in any third-party claim for personal injury or death, damage to personal property or reputation, environmental damage, interference with contract or employment, or violation of privacy.

- 10. 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 (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 (except insofar as benefits are otherwise required by law if the Contractor is presently a member of the Oregon Public Employees Retirement System); and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656. (Also see Exhibit C)

At present, the Contractor certifies that he or she, if an individual is not a program, County or Federal employee. The Contractor, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

- 11. INSURANCE.** Contractor shall provide insurance as indicated on **Exhibit B**, attached hereto and by reference is incorporated herein. Insurance policies cannot be excess to a self-insurance program and are to be issued on a policy that covers claims in the State of Oregon.

**12. LIMITATION OF LIABILITIES.**

**12.1.** Except for Contractor's liability for obligations pursuant to Section 9.1.2 (Indemnity for IP Infringement) and as provided in Section 12.4, Contractor's liability for damages to the County for any cause whatsoever will not exceed the aggregate amount of the fees paid and payable to Contractor by County during the six (6) month period preceding the date on which the claim arises. Contractor shall have no liability arising out of or relating to the Third Party Components or the Third Party Data.

**12.2.** Except for Liability arising out of or related to Section 9.4, and except for any liability arising in tort, County's liability for damages to the Contractor for any cause whatsoever will not exceed the aggregate amount of the fees paid and payable to Contractor by County during the six (6) month period preceding the date on which the claim arises. For the avoidance of doubt, nothing in this section 12 shall limit the County's responsibility to pay for services provided by Contractor hereunder.

**12.3.** Except for liability to third persons arising out of or related to Section 9.1.2 (Indemnity for IP Infringement) or Section 9.4, neither party will be liable to the other for any lost profits, lost savings, punitive, indirect, exemplary, consequential or incidental damages.

**12.4.** Notwithstanding the provisions of 12.1 through 12.3, Contractor's aggregate liability pursuant to Section 9.1.1 will not exceed: (a) \$5,000,000 during the initial five-year term and (b) \$1,000,000 during any Contract Year. A "Contract Year" means each twelve-month period



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commencing on the effective date (or any anniversary of the effective date) of this Agreement during the term.

**13. NOTICES.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email, or mailing the same, postage prepaid, to the County at: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or [procurement@clackamas.us](mailto:procurement@clackamas.us), or to Contractor or at the address or number set forth in Section 1 of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

**14. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (1) Contractor has the power and authority to enter into and perform this Contract; (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (3) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

**14.1. Service Warranty.** For Professional Services, Contractor warrants that the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with applicable industry standards. Except as provided for herein, Contractor's liability and County's remedy under this Section 14.1 are limited to Contractor's prompt correction of such services, provided that written notice of such alleged defective services shall have been given by the County to Contractor. The County agrees to provide Contractor reasonable access to its facilities and third party vendor software for purposes of repair or replacement under this services warranty.

**14.2. Warranty Against Infringement.**

Contractor warrants that to its knowledge, the Deliverables will be free of the rightful claim of any third party by way of infringement or misappropriation of patent, copyright, trade secret, trademark or other rights arising under the laws of the United States. Contractor further warrants that to its knowledge, no act or omission of the Contractor will result in a third party holding a claim that interferes with the County's use and enjoyment of the Deliverables. Contractor warrants that it owns or possesses the necessary rights, title and licenses necessary to perform its obligations hereunder. Notwithstanding the forgoing, the forgoing warranty does not extend to: (i) use of the SaaS Services, Software, Services or Products in combination with modules, apparatus, hardware, software, or services not authorized by the Contractor or contemplated for use with the Software, Services or Products; (ii) use of the SaaS Services, Software, Services or Products in a manner that is not in accordance with this Contract or (iii) the alteration or modification of the SaaS Services, Software, Services or Products by a party other than the Contractor, unless such alterations and modifications were authorized by the Contractor or contemplated for use with the SaaS Services, Software, Services or Products.

**14.3. No Other Warranties.**

Contractor cannot guarantee that every error in the SaaS Services or problem raised by County will be resolved. THE SERVICES, THE THIRD PARTY COMPONENTS, AND THE THIRD PARTY DATA ARE PROVIDED "AS IS." EXCEPT AS EXPRESSLY SET FORTH IN THIS CONTRACT NEITHER PARTY MAKES ANY WARRANTY IN CONNECTION WITH THE SERVICES, THE THIRD PARTY COMPONENTS, THE THIRD PARTY DATA OR THIS CONTRACT AND HEREBY DISCLAIMS ANY AND ALL IMPLIED OR STATUTORY WARRANTIES, INCLUDING ALL IMPLIED WARRANTIES OF TITLE,

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MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, ERROR-FREE OR UNINTERRUPTED OPERATION AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. To the extent that a party may not as a matter of Applicable Law disclaim any implied warranty, the scope and duration of such warranty will be the minimum permitted under such law.

**14.4. Responsibility for Correction.**

Except with respect to any Third-Party Application, Contractor shall make any correction, replacement, or modification necessary to bring the Software, Services, Products and Equipment into compliance with the Statement of Work, the documentation, and applicable law, solely to the extent detailed in the service level provisions contained in Sections 1.3.1 and 1.3.2 of Article IV below. Contractor's responsibilities for any corrections, replacements, modifications or repairs relating to any Third Party Application are outlined in Section 1.3.3 of Article IV below.

**14.5. Liens.**

Contractor shall hold the County harmless from claimants supplying labor or materials to the Contractor or its subcontractors in the performance of the Work required under this Contract.

- 15. 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, Paragraphs 1, 7, 9, 12, 13, 14, 15, 16, 18, 21, 22, 23, 24, 28, 30.
- 16. 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.
- 17. 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. 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, Paragraphs 1, 8, 13, 15, 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. For the avoidance of doubt, the use of Vendors shall not be subject to this Section.
- 18. 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.
- 19. TAX COMPLIANCE CERTIFICATION.** 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

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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, Contractor 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.

**20. TERMINATIONS.** This Contract may be terminated for the following reasons:

- 20.1.** This Contract may be terminated at any time by mutual consent of the parties, or by either party upon written notice to the other party, if the other party breaches a material term of this Agreement and such breach remains uncured for thirty (30) days after the other party's receipt of such notice.
- 20.2.** County may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the County, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the Work under this Contract is prohibited or the County is prohibited from paying for such Work from the planned funding source; or (ii) any material license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed.
- 20.3.** This Contract may also be immediately terminated by the County for default (including breach of Contract) if (i) Contractor materially fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor materially fails to perform any of the other provisions of this Contract or so fails to pursue the Work as to endanger performance of this Contract in accordance with its terms, (iii) and after receipt of notice from the County, materially fails to correct such failure within thirty (30) business days.
- 20.4.** If sufficient funds are not provided in future approved budgets of the County (or from applicable federal, state, or other sources) to permit the County in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, County may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.
- 20.5.** If Contractor reasonably determines that County's use of the Services either: (i) fails to comply with the Restrictions on Use in Article III, Section 1.5; (ii) poses a security risk to the Services or any third party, (iii) creates or is likely to create an adverse impact on Contractor's systems, the Services, or the systems or content of any other subscriber; or (iv) subjects Contractor or its Affiliates to possible liability, then Contractor may immediately upon notice temporarily suspend County's and any Authorized User's right to access any portion or all of the Services, pending remedial action by County, or after a period of 30 days, terminate the Services.

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**21. EFFECT OF TERMINATION.** In the event of any termination or expiration of this Contract:

- 21.1. County will pay all Contractor invoices for Services that were provided up to the termination date. The termination date is the later of (a) the date when Contractor receives a written termination notice from the County or (b) the date on which the County stops using the Services.
- 21.2. All rights and licenses granted hereunder to County (as well as all rights granted to any Authorized Users of County) will immediately cease, including but not limited to all use of the SaaS Services;
- 21.3. Contractor will provide records to County in accordance with its transition assistance services (“**Transition Assistance**”) as set forth in Section 23 below; and
- 21.4. The Parties will, upon written request of the other Party, either return to the requesting Party or destroy any information of requesting Party that are in other Parties possession or control.

**22. REMEDIES.**

- 22.1. In the event of termination pursuant to Article II Sections 20.2(i) or 20.4, Contractor’s sole remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by the County, less previous amounts paid and any claim(s) which the County has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section 21.1, Contractor shall pay any excess to County on demand.
- 22.2. In the event of termination for any other reason, each party shall have any remedy available to it in law or equity.
- 22.3. Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless County expressly directs otherwise in such notice of termination or as required for Transition Assistance.

**23. TRANSITION ASSISTANCE.**

Upon termination of the Agreement for any reason, and subject to all Fees due being paid in full, Contractor will return County’s data in a CSV, PDF or other mutually agreeable format for each record (“**Record**”) and provide them to the County for download. Records can be uploaded to County’s new records management system by the County or its new vendor.

Transition Assistance as outlined in this Section 23 is included in the Fees charged to County for the Services. Fees are due and payable up to the Cutoff Date. In the event that any Fees, not contested by the County, have not been paid as required in this Contract, Contractor may retain all Records and decline to provide the support outlined in this Section 23 until such uncontested Fees are paid in full.

**23.1. Preparation.**

- 23.1.1. The County will provide the desired cutoff date of the SaaS Services (the “**Cutoff Date**”), at which time all existing user accounts will be terminated.
- 23.1.2. Contractor will provide one (1) account for the County to access a web-based storage platform to retrieve County documents and Records (the “**Transition Account**”). The

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Transition Account will be available to County for thirty (30) days prior to the Cutoff Date.

**23.2. Content.**

**23.2.1.** Each Record in the RMS will be submitted to the County in a CSV format or other mutually agreed to format as described above.

**23.2.2.** All archive files will be accessible via the internet on the Cutoff Date.

**23.3. Support.**

**23.3.1.** Contractor will maintain County data in the RMS for up to 1 year following the Cutoff Date.

**23.3.2.** Contractor will maintain County archives for up to 2 years following the Cutoff Date.

**23.3.3.** Contractor will resolve any issues deemed to be the result of errors in the RMS platform or export process for a period of six (6) months after the Cutoff Date.

**23.3.4.** At County's written request, no less than 2 years after the Cutoff Date, and upon the County's receipt of all County Data, Contractor will delete County Data from all Contractor online systems (e.g. primary database, replica databases, search databases, application caches, etc.) other than database backups, audit logs and server system logs.

**23.3.5.** Within 6 months from the date of deletion of County Data from all Contractor online systems, all County Data will be erased from database backups.

**23.3.6.** Notwithstanding the foregoing, Contractor reserves the right to retain County Data on audit logs and server system logs and in support tickets, support requests and direct communications with Contractor.

**24. 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.

**25. [Reserved].**

**26. 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.

**27. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, County's or Contractor's reasonable control. Contractor shall, however, make 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.

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- 28. WAIVER.** The failure of a Party to enforce any provision of this Contract shall not constitute a waiver by such Party of that or any other provision.
- 29. COMPLIANCE.** Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract:
- 29.1.** Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the Work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished.
- 29.2.** If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to the Contractor by reason of this Contract.
- 29.3.** The Contractor shall pay employees for Work in accordance with ORS 279B.020 and ORS 279B.235, which by reference is incorporated herein. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- 29.4.** The Contractor shall promptly, as due, make payment to any person or co-partnership, association or corporation furnishing medical, surgical and hospital care, or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

**30. CONFIDENTIALITY.**

**30.1. Definition of Confidential Information.** For the purposes of this Contract, “**Confidential Information**” means:

- 30.1.1.** With respect to Contractor, the Product and SaaS Services and any and all Source Code relating thereto as well as Documentation and non-public information or material regarding Contractor’s legal or business affairs, financing, customers, properties or data, and;
- 30.1.2.** With respect to the County, any non-public information or material regarding the County’s legal or business affairs, financing, customers, property or data. Notwithstanding any of the forgoing, Confidential Information does not include information which: (i) is or becomes public knowledge without any action by or involvement of, the party to which the Confidential Information is disclosed (the “Receiving Party”); (ii) is documented as being known to the Receiving Party prior to its disclosure by the other party (the “Disclosing Party”); (iii) is independently developed by the Receiving Party without reference or access to the Confidential Information of the Disclosing Party and is so documented; or (iv) is obtained by the Receiving Party without restrictions on use or disclosure from a third person who did not receive it, directly or indirectly, from the Disclosing Party.

- 30.2 Use and Disclosure of Confidential Information.** The Receiving Party will, with respect to any Confidential Information disclosed by the Disclosing Party before or after the effective date: (i) use such Confidential Information only in connection with the Receiving Party's performance of this Contract; (ii) subject to Section 30.4 below, restrict disclosure of such Confidential Information within the Receiving Party's organization to only those of the Receiving Party's employees and independent contractors who have a need to know such Confidential Information in connection with the Receiving Party's performance of this Contract; and (iii) except as provided herein, not disclose such Confidential Information to any third party unless authorized in writing by the Disclosing Party to do so.
- 30.3 Protection of Confidential Information.** The Receiving Party will protect the confidentiality of any Confidential Information disclosed by the Disclosing Party using at least the degree of care that it uses to protect its own confidential information (but no less than a reasonable degree of care). Each Party shall notify the other Party as soon as reasonably practicable in the event that Confidential Information of the Party is believed to have been compromised.
- 30.4 Employee and Independent Contractor Compliance.** The Receiving Party will, prior to providing any employee or independent contractor access to any Confidential Information of the Disclosing Party, inform such employee or independent contractor of the confidential nature of such Confidential Information and require such employee or independent contractor to comply with the Receiving Party's obligations under this Contract with respect to such Confidential Information.
- 30.5 Required Disclosures.** In the event that either Party is requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or similar process or by any law, rule or regulation of any governmental agency or regulatory authority) (for the purposes of this paragraph, each, a "Request") to disclose any of the Confidential Information of the other Party, such Party shall provide the other Party with prompt written notice of any such request or requirement so that such other Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Contract. If, in the absence of a protective order or other remedy or the receipt of a waiver, and if one Party is nonetheless, legally compelled to disclose Confidential Information, such Party may, without liability hereunder, disclose to such tribunal only that portion of the Confidential Information which such counsel advises it is legally required to be disclosed, provided that such Party shall use its best efforts to preserve the confidentiality of the Confidential Information, including, without limitation, by cooperating with the other Party to obtain an appropriate protective order or other reliable assurance that confidential treatment will be afforded the Confidential Information by such tribunal.
- 30.6 Contractor acknowledges and agrees that Oregon Public Record Law may apply to certain information disclosed hereunder and that County will promptly comply with such disclosures. County acknowledges that certain exemptions to the Oregon Public Record Law may apply to information disclosed hereunder. Accordingly, County will contact Contractor within 3 business days after County receives a public records request for Contractor records. Once the County identifies records it is prepared to release in response to the request, the County will notify the Contractor and provide copies of the documents the County plans to release. The County will provide the Contractor with an opportunity to object to the release of the Contractor information, providing sufficient time to review the documents in light of the volume of responsive documents. If County chooses to release the Contractor's information over the objection of the Contractor, then County will provide written notice to the Contractor.**

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The written notice must be received by the Contractor at least ten calendar days before the date the County intends to release the Contractor's records.

- 30.7 The Parties agree that a violation of this Section 30 shall be deemed to cause irreparable harm justifying injunctive relief in court, without waiving any additional rights or remedies available at law or in equity or by statute.

### **31. CRIMINAL BACKGROUND CHECK REQUIREMENTS.**

31.1. Contractor personnel requiring physical access to any County facility or remote access to any criminal justice information processing systems shall complete a background check conducted by the Clackamas County Sheriff's Office, which will include a local and notational fingerprint check (remote personnel may obtain fingerprints at their local law enforcement agency and mail or electronically transmit them to the representative identified by the County). Personnel not meeting Clackamas County Sheriff's Office standards will be removed from the project. Contractor further agrees that all workers and subcontractors (collectively "Contract Worker(s)") that Contractor furnishes to the County pursuant to this Contract shall be subject to a background and security checks and screening (collectively "Background Screening") at Contractor's sole cost and expense.

#### **31.2 Terms Applicable to All Contractor's Contracts and Subcontracts.**

Contractor shall include the terms of this Section 31 for Contract Worker background screening in all contacts and subcontracts for services furnished under this Contract including, but not limited to, supervision and oversight services.

#### **31.3 Materiality of Background Screening Requirements.**

The Background Screening requirements of this Section 31 are material to the County's entry into this Contract and any breach by Contractor shall be a material Breach of this Contract.

#### **31.4 Continuing Duty; Audit.**

Contractor's obligations and requirements that Contract Workers satisfy this Background Screening Section 31 shall continue throughout the entire term of this Contract. Contractor shall notify the County immediately of any change to a Background Screening of a Contract Worker previously approved by the County. Contractor shall maintain all records and documents related to all Background Screenings and the County reserves the right to audit Contractor's compliance with all Background Screenings and requirements of Section 31.

#### **31.5 Criminal Justice Information/CLETS Training.**

The County shall be responsible for providing CJI or CLETS – related training to Contractor personnel and/or obtaining any certifications for Contractor personnel who may have access to CJI data of the County.

31.6 Contractor shall be required to have criminal background checks (and in certain instances specified by the County, 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.

32 **KEY PERSONS.** Contractor acknowledges and agrees that a significant reason the County is entering into this Contract is because of the special qualifications of certain key persons set forth in the Contract. Under this Contract, the County is engaging the expertise, experience, judgment, and



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personal attention of such Key Persons. Neither Contractor nor any of the Key Persons shall delegate performance of the management powers and responsibilities each such Key Person is required to provide under this Contract to any other employee or agent of the Contractor unless the County provides prior written consent to such delegation. Contractor shall not reassign or transfer a Key Person to other duties or positions such that the Key Person is no longer available to provide the County with such Key Person's services unless the Contractor provides prior written notice of such reassignment or transfer.

**33 THIRD PARTY PROVIDERS.** The County understands that it is responsible for establishing any required agreement(s) and/or statement(s) of work with Third Party Providers, and for paying any Third Party Provider costs and expenses in connection with the interfaces to be developed by Contractor.

**34 Acceptance Testing.** Prior to accepting the Solution, the County and Contractor shall perform Acceptance Testing in accordance with the Statement of Work. Acceptance by County shall not relieve Contractor from its responsibility under any warranty. Payment for Products, Services, or the Solution does not constitute Acceptance, nor does it constitute a waiver of any applicable warranty.

**35 Changes to Services.** Contractor may make changes and Updates to its Services, provided that it does not materially derogate the overall quality of the Services. Unless otherwise specified in the Scope of Work, Contractor does not guarantee that the Services are or will remain compatible with any particular third party software or equipment, and may, upon written notice, terminate its support for, any software or equipment of County that Contractor determines are incompatible with the operation of the Services.

## ARTICLE III.

### 1. SOFTWARE LICENSE PROVISIONS

**1.1. License.** During the Term of this Contract, Contractor hereby grants a non-exclusive, non-transferable, non-sublicensable license to County and its Authorized Users to access and use the SaaS Services through the Website for County's business purposes and in accordance with the terms and conditions of this Contract. Contractor will be responsible for hosting the Website, and County and its Authorized Users will be responsible for obtaining internet connections and other third party software and services necessary for it to access the Website. County will be responsible to Contractor for compliance with the restrictions on use and other terms and conditions of this Contract by any of its Authorized Users.

**1.2. Professional Services.** Contractor offers Professional Services in connection with the SaaS Services as further described in the Statement of Work. To the extent any Professional Services involve the development of any Customization to the SaaS Services, all Intellectual Property Rights to such Customization to the SaaS Services, all Intellectual Property Rights to such Customization will be solely owned by Contractor and will be deemed to be included in the definition of SaaS Services and licensed to County on the terms set forth herein.

**1.3. Copies of Documentation.** Contractor will provide County via the Website or other means with access to the Documentation, as may be updated from time to time. The County may reproduce the Documentation, and any web-based or computer-based training materials, if applicable, provided that each copy thereby produced shall be marked with Contractor's proprietary markings as delivered to the County. County may use the Documentation solely in connection with the use of the SaaS Services.

- 1.4. Title.** As between Contractor and County, Contractor retains title to and ownership of the SaaS Services, Software, Source Code, Services, Products, and Documentation, including all Intellectual Property Rights relating thereto (collectively, "Contractor Intellectual Property"). Contractor's licensors retain title to and ownership of the Third-Party Data and the Third-Party Components, including all copyrights and other Intellectual Property relating thereto. County will have no rights with respect to the SaaS Services, Software, Source Code, Services, Products, and Documentation, the Third-Party Data or the Third-Party Components other than those expressly granted under this Contract. Any suggestions for changes or improvements to Services that County provides to Contractor, whether solicited by Contractor or not, shall be owned by Contractor and Contractor hereby irrevocably assigns, and shall assign, to Contractor all right, title, and interest in and to such suggestions. Contractor shall have no obligation to incorporate such suggestion into its products or Services.
- 1.5. Restrictions on Use.** County and its Authorized Users will not (and will not permit any third party to), (i) share County's or any Authorized User's login credentials; (ii) reverse engineer, decompile, disassemble, or otherwise attempt to discern the Source Code, underlying ideas, algorithms, file formats, or interface protocols of the SaaS Services, Software, Services or Products or of any files contained in or generated by the SaaS Services; (iii) copy, modify adapt or translate the SaaS Services, Software, Services or Products, or otherwise make any use, resell, distribution or sublicense the Software, Services, Third-Party Data, or Products other than in connection with this Contract; (iv) make the SaaS Services, Software, Services, or Products available on a "service bureau" basis or allow any third party to use the Software, Services or Products; (v) disclose the SaaS Services, Software, Services or Products or any of its components to third parties; (vi) remove or modify any proprietary marking or restrictive legends placed on the SaaS Services, Software, Services, Third-Party Data, or Products; (vii) use the SaaS Services or the Third Party Data in violation of any Applicable Law; (viii) create or augment any mapping-related dataset including a mapping or navigation dataset, business listings database, mailing list, or telemarketing list) for use in an implementation that is not connected to the Services; (ix) use the SaaS Services or the Third Party Data in violation of any Applicable Law; (x) introduce into the Services any viruses, worms, defects, Trojan horses, malware, or any items of a destructive nature; (xi) use the Services to post advertising or listings; (xii) use the Services to defame, abuse, harass, stalk, or threaten others; (xiii) permit access or use of the Services by any individual outside the United States; (xiv) hide or obscure any Authorized User's location; (xv) permit access or use of the Services, for any activities other than to enhance County's own services, where reliance solely on, or failure to use, the Services could lead to death, personal injury, or property damages. County and its Authorized Users will not access the SaaS Services if in direct competition with Mark 43, and will not allow access to the SaaS Services by any party who is in direct competition with Contractor, except with Contractor's prior written consent.
- 1.6. Third Party Applications.** If County installs or enables a Third Party Application for use with the SaaS Services, Software, Services or Products, County grants Contractor permission to access County Data stored on that Third Party Application as required for the interoperation of that Third Party Application with the SaaS Services, Software, Services or Products. In no event will Contractor be responsible for any Third Party Application, or any failure of a Third Party Application to properly interoperate with the Software, Services or Products. If Contractor receives information that a Third Party Application may violate any applicable laws or third-party rights, County will, promptly upon receiving notice of the foregoing from Contractor, disable any connection between such Third Party Application and the Software, Services or Products to resolve the potential violation (and if County fails to promptly disable such connection, Contractor shall have the right to do so). In addition, in the event that County fails to properly obtain the grant of rights to Contractor to access and use Third-Party Data as

required for the interoperation of that Third-Party Application, County shall defend, indemnify, and hold harmless Contractor from any and all claims based on Contractor's use of such Third-Party Application. County, and not Contractor, is solely responsible for establishing any required agreement(s) and/or statement(s) of work with Third Party Providers in connection with the interfaces, and for paying all fees, costs and expenses of Third Party Providers.

**1.7. Third Party Components.**

**1.7.1. Usage of Third-Party Components.** If any of the licensors of the Third-Party Components require Contractor to flow down any terms and conditions to County ("Additional Terms"), County's use of such Third-Party Components, as incorporated into the SaaS Services, shall be subject to such Additional Terms, which Contractor shall provide to County in writing. In the event of any inconsistency or conflict between the Additional Terms and the terms of this Contract, such Additional Terms shall govern with respect to the County's use of the applicable Third-Party Component.

**1.7.2. DISCLAIMER REGARDING THIRD-PARTY COMPONENTS.** CONTRACTOR NOT BEING THE PROVIDER OR MANUFACTURER OF THE THIRD-PARTY COMPONENTS, NOR THE PROVIDERS; OR MANUFACTURERS' AGENT, MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO THE THIRD-PARTY COMPONENTS AND DISCLAIMS ANY SUCH WARRANTIES THAT MIGHT OTHERWISE EXIST.

**1.8. Third-Party Data.** County shall access and use the Third-Party Data in accordance with the terms and conditions of the agreement between the County and the provider of such Third-Party Data. CONTRACTOR, NOT BEING THE PROVIDER OR MANUFACTURER OF THE THIRD-PARTY DATA, NOR THE PROVIDERS OR MANUFACTURES' AGENT, MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO THE THIRD-PARTY DATA AND DISCLAIMS ANY SUCH WARRANTIES THAT MIGHT OTHERWISE EXIST.

**1.9. County Data.** As between Contractor and County, County owns and shall retain all rights, title, and interest, including, without limitation, all Intellectual Property Rights, in and to County Data. County shall have the sole responsibility for the accuracy, quality, and legality of the County Data, including obtaining all rights and consents necessary to share the County Data with Contractor as set forth in this Contract. Contractor shall not access County user accounts or County data, except; (i) in the course of data center operations, (ii) in response to services or technical issues, (iii) as required by the express terms of this Contact, (iv) at County written request. Contractor shall not collect, access, or use user-specific County information except as strictly necessary to provide the Services to the County. Notwithstanding anything to the contrary contained herein, County hereby grants to Contractor an irrevocable, worldwide, royalty free, non-exclusive license to use the County Data to: provide the SaaS Services to County and other Contractor subscribers; analyze the County Data in anonymized and/or aggregate form in order to operate, maintain, manage, and improve the SaaS Services, create new products and services; and for Contractor's internal purposes to improve the Applications, Software, and related services.

**1.10. Export of County Data.** The County will have ability to directly query a near-live copy of their database in order to extract County Data stored in the Applications. Furthermore, the County will have the ability to export common datasets directly from the Contractor user interface.

Final October 17, 2017

## 2. SECURITY

- 2.1. Data Protection.** Protection of personal privacy and data shall be an integral part of the business activities of the Contractor, who shall use reasonable commercial efforts to ensure there is no inappropriate or unauthorized use of County information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of County information by complying with the following conditions:
- 2.1.1.** The Contractor shall implement and maintain appropriate administrative, technical and organizational security measures designed to safeguard against unauthorized access, disclosure or theft of CJI and non-public data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the Contractor applies to its own CJI and non-public data of similar kind.
  - 2.1.2.** All County Data obtained by the Contractor in the performance of the Contract shall become and remain the property of the County.
  - 2.1.3.** All County Data (including CJI) stored in the Applications shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Contractor is responsible for encryption of the personal data. Any stipulation of responsibilities will identify specific roles and responsibilities and shall be included in the Statement of Work, or otherwise made a part of the Contract.
  - 2.1.4.** Unless otherwise stipulated, the Contractor shall encrypt all non-public data at rest and in transit. The County shall identify data it deems as non-public data to Contractor.
  - 2.1.5.** Except as otherwise provided herein, Contractor shall not use any information collected in connection with the services issued from this Contract for any purpose other than fulfilling the services; provided, however, County understands and agrees that when it uses certain features of the SaaS Services, certain information and data may be collected from Authorized Users, including monitoring and recording activity, and tracking physical location, which may include personal identifying information. County agrees that Contractor may use such information to (i) provide more effective Services, or (ii) to develop and test its Services.
- 2.2. Data Location.** Contractor shall store County Data in data centers in the U.S. Contractor shall permit its personnel and contractors to access County Data remotely from the U.S. as required to perform services or provide technical support.
- 2.3. Security Incident or Data Breach Notification.**
- 2.3.1.** County agrees it and its Authorized Users shall securely manage their respective password(s) for access to the SaaS Service. County agrees it shall notify Contractor promptly in the event it becomes aware of any unauthorized access or use of the SaaS Service, or of any of its or its Authorized Users passwords or accounts. Unless expressly stated otherwise in this Agreement, a single username or password may not be used by more than one (1) Authorized User. County shall comply with all applicable local, state, federal and regional or other laws and regulations applicable in connection with use of the SaaS Service, including all those related to data privacy and the transmission of technical or personal data. County agrees to (a) provide true, accurate, current and complete registration data for each account it creates via the SaaS Service,

and (b) maintain and promptly update the registration data to keep it true, accurate, current and complete.

**2.3.2. Incident Response.** Contractor may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law, contained in the contract or as otherwise determined by the Contractor. Discussing security incidents with the County should be handled on an urgent as needed basis, as part of Contractor's communication and mitigation processes as mutually agreed upon, defined by law or contained in the Contract or as otherwise determined by the Contractor.

**2.3.3. Security Incident Reporting Requirements.** Each Party shall report a security incident to the other Party's identified contact immediately, as soon as possible, or promptly without out reasonable delay, or as defined in the Contract.

**2.3.4. Breach Reporting Requirements.**

**2.3.4.1.** Each Party shall promptly notify the other Party of any such security breach that materially compromises the County systems and/or data. Both Parties agree to cooperate in any investigation of such a security breach.

**2.3.4.2.** Contractor shall promptly notify County of any unauthorized access or unauthorized disclosure or use by a third party of the CJI collected or obtained by the Contractor under this Contract. Contractor shall provide such notice following discovery and without unreasonable delay.

**2.4. Criminal Justice Information Data Breach Responsibilities.**

This section only applies when a Data Breach occurs with respect to CJI data within the possession or control of the Contractor.

**2.4.1.** Contractor, unless stipulated otherwise, shall immediately notify the appropriate County identified contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a Data Breach with respect to CJI data.

**2.4.2.** Contractor, unless stipulated otherwise, shall promptly notify the appropriate County identified contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it has confirmed that there is, or reasonably believes that there has been a Data Breach. Contractor shall (i) cooperate with the County as reasonably requested by the County to investigate and resolve the Data Breach, (ii) promptly implement necessary remedial measures, if necessary, and (iii) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

**2.4.3.** Unless otherwise stipulated, if a Data Breach is a direct result of Contractor's breach of its contractual obligation to encrypt CJI data, the Contractor shall bear the costs associated with (1) the investigation and resolution of the Data Breach; (2) notifications to individuals, regulators or others required by federal and state laws or as otherwise agreed to; (3) a credit monitoring service required by state (or federal) law or as otherwise agreed to; (4) a website or a toll-free number and call center for affected

individuals required by federal and state laws — all not to exceed the average per record per person cost calculated for Data Breaches in the United States in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the Data Breach; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause.

**2.5. Security Precautions.**

- 2.5.1. CJJ, whether in electronic format or hard copy, must be secured and protected in a manner that complies with the most recent version of the FBI's Criminal Justice Information Systems (CJIS) Security Policy.
- 2.5.2. When CJJ, regardless of format, is subject to permanent deletion under Article II, Section 22, the information must be redacted or destroyed through appropriate and secure methods that are designed to ensure the information cannot be viewed, accessed, or reconstructed.
- 2.5.3. As requested by the County, the Contractor shall disclose its non-proprietary system security plans (SSP) or security processes and technical limitations to the County such that adequate protection and flexibility can be attained between the County and Contractor. For example: virus checking and port sniffing.
- 2.5.4. Contractor agrees that it will use commercially reasonable efforts to ensure that the requirements of this Section 2.5 shall be incorporated into all subcontractor contract/agreements entered into by the Contractor. It is further agreed that a violation of this Section 2.5 shall be deemed to cause irreparable harm justifying injunctive relief in court.

**2.6. Access to Security Logs and Reports.**

Contractor shall provide security reports upon County's reasonable written request. Reports shall include latency statistics, user access, user access IP address, user access history and security logs for all public jurisdiction files related to this Contract.

**2.7. Encryption of Data at Rest.**

Contractor shall ensure hard drive encryption consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all personal data, unless the County approves in writing for the storage of CJJ on a Contractor portable device in order to accomplish work as defined in the Statement of Work.

**ARTICLE IV.**

**1. SERVICE LEVEL AGREEMENT**

The following provisions shall apply to all maintenance and repairs to the System, including any software, equipment, and Product(s). Should any ambiguities or conflicts arise between this section and the balance of the Contract, this section shall prevail over all other in matters of maintenance and repair.

**1.1. Maintenance Requests.**

- 1.1.1. **Coverage Hours.** Email support shall be available twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year.

**1.1.2. Telephone Helpline/Staffing.** Between 7:00 AM and 7:00 PM PT, Contractor shall maintain a telephone hotline at no cost to the County. Contractor shall staff the hotline with competent technical consultants who shall be trained in and thoroughly familiar with the Solution and with the County’s applicable configuration. Telephone support and all communication shall be delivered in English from within the United States.

**1.1.3. Response.** Contractor’s support specialists shall respond to a Maintenance Request from the County within the times specified in this Contract. Such response times shall be measured from the time the County contact requests support in writing or by phone.

**1.2. Training.** Contractor shall offer, in its sole discretion, written instructions or telephone training in connection with Upgrades or major repairs that change the functional operation of the Solution/system or any custom software or component whether repair or alteration is a permanent or interim modification. Training may be offered to a subset of Authorized Users who can then go on to train additional Authorized Users.

**1.3. Service Levels for RMS.**

**1.3.1. RMS Availability.**

During any calendar month of a Regular Usage Period, the RMS shall be available to users no less than 99.9% of the time on a 24x7 basis, excluding scheduled maintenance of the RMS (“RMS Scheduled Downtime”); provided, however, that Contractor is not responsible for any downtime of the RMS caused by Third Party Data services (e.g. Department of Motor Vehicles license plate database), or Third Party Components, and such Third Party downtime will not count against the service levels promised herein; provided, further, that Contractor shall be responsible for any downtime of RMS caused by Integrated Third Party Software (as defined below) solely to the extent specified in Section 1.3.3 below (“Service Levels for Integrated Third Party Software”). Contractor shall provide County with prompt notification as soon as it becomes aware of any actual or potential unscheduled downtime (defined below) of the RMS, as well as continual periodic updates during the unscheduled downtime regarding Contractor’s progress in remedying the unavailability and the estimated time at which the RMS shall be available.

**1.3.2. RMS Service Credits.**

In the event that Contractor fails to make the RMS available at least 99.9% of the time in any given month during the Regular Usage Period due to RMS Unavailability (as defined below), Contractor will credit the County’s account for the unavailable RMS as follows:

RMS Availability (Monthly)	Credit Percentage
Above 99.9%	0%
99.8 – 99.0%	10%
98.9 – 98.0%	20%
Below 97.9%	30%

“RMS Unavailability” is defined as the percentage of minutes per month in which the RMS is completely and generally unavailable for County’s use (but not the use of any one Authorized User), provided that RMS Unavailability does not include any unavailability attributable to: (a) RMS Scheduled Downtime for maintenance (whether by Contractor, by a vendor, or by County); (b) acts or omissions of County or any County user of the RMS; (c) server downtime related to connectivity issues resulting

from Third Party-managed VPN access to hosted server or County internal network problems; (d) defects or bugs in the Applications or Software caused by County, any Authorized User, or any Affiliate, employee, agent or independent contractor of County; or (e) any other cause(s) beyond Contractor's reasonable control, including but not limited to those caused by Third Party Data services (e.g. Department of Motor Vehicles license plate database), Third Party Components, overall internet congestion or a force majeure. County will be responsible for immediately notifying Contractor of all Third Party-managed VPN access and internal or external (e.g. internet service provider) network problems that arise.

**"Credit Percentage"** means the applicable percentage of the portion of the Fees attributable to Services in the calendar month in which the RMS Unavailability occurs. For example, if County has paid Contractor \$1,000 for one year of a Regular Usage Period, and the RMS Availability falls to 99.5% during any calendar month in that year, then Contractor will owe County a 10% credit on that month's portion of the Fee, or:  $\$1,000/12 = \$83.33$  per month, and  $10\% \text{ of } \$83.33 = \$8.33$ . In this example, Contractor would owe County \$8.33 in credit for the month in which RMS Availability fell to 99.5%.

In order to receive this credit, County must notify Contractor in writing within fifteen (15) days following the end of the month the RMS Unavailability occurred. All claims are subject to review and verification by Contractor prior to any credits being granted. Contractor will acknowledge credit requests within fifteen (15) business days of receipt and will inform County whether such claim request is approved or denied. The issuance of RMS Service Credit by Contractor hereunder is the County's sole and exclusive remedy for any failure by Contractor to satisfy the service levels set forth in this Section 1.3.2.

**1.3.3. Service Levels for Integrated Third Party Software.** Notwithstanding anything else to the contrary contained herein, Contractor shall be responsible for any downtime of or related to the Applications or Integrated Third Party Software (as defined below) that is caused by Integrated Third Party Software solely to the extent specified in this Section 1.3.3. Credit Percentages Service Credits referenced elsewhere in this Contract shall not apply to downtime caused by Integrated Third Party Software or the integrations or connections to Integrated Third Party Software.

**1.3.3.1. Availability of Third Party Applications.** The Statement of Work will outline specific Third Party Application integrations (the **"Integrated Third Party Software"**) to be performed by Contractor during the Professional Services Period, and the County's and Contractor's respective rights regarding acceptance of those Services. During the Regular Usage Period, the Integrated Third Party Software shall be operational no less than 99.9% of the time on a 24x7 basis, excluding any scheduled maintenance of the Integrated Third Party Software (whether scheduled by Contractor or by the third party provider, the **"Integration Scheduled Downtime"**); provided, however, that Contractor shall not be responsible for downtime caused by upgrades or updates to Integrated Third Party Software of which Contractor does not receive the requisite advance notice, and such downtime will not count against the service levels promised herein. Contractor agrees that it shall schedule any Integration Scheduled Downtime on minimal traffic days whenever possible. The Parties further agree that Contractor shall not schedule in excess of 90 minutes of Integration Scheduled Downtime in



during any 30-day period. Contractor shall provide County with immediate telephone notification to the point of contact set forth in the Contract as soon as it becomes aware of any actual or potential unavailability of an Integration other than Integration Scheduled Downtime (“**Integration Unscheduled Downtime**”), as well as continual periodic updates during the Integration Unscheduled Downtime regarding Contractor’s progress in remedying the unavailability and the estimated time at which the Integration shall be available.

**1.3.3.2. Responsibilities for Planned Updates.** County shall provide Contractor with prompt notice, and in no case fewer than forty-five (45) days’ advance notice, of any update by the Third Party provider of Integrated Third Party Software. Contractor shall undertake commercially reasonable efforts to patch, repair or update the Software in order to integrate it with the updated Integrated Third Party Software.

**1.3.3.3. Responsibilities for Planned Upgrades.** The County shall provide Contractor with prompt notice, and in no case fewer than ninety (90) days’ advance notice, of any planned upgrade by the Third Party provider of Integrated Third Party Software. The Contractor shall evaluate the time and resources required to patch, repair or update the Software in order to integrate it with the upgraded Integrated Third Party Software. The Parties shall engage in good faith negotiations to agree on the terms (including, without limitation, schedule and price) on which Contractor would develop a patch, repair, update or Upgrade to integrate the Software with the Integrated Third Party Software.

**1.3.4. Access to County Facilities.**

Contractor agrees that Contractor’s physical or remote access to the County facilities shall be subject to the security interests and controls necessary to protect public property.

**2. 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.**

Final October 17, 2017

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

Mark43, Inc.

Clackamas County

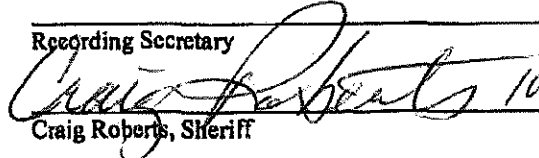
  
\_\_\_\_\_  
Authorized Signature                      Date

\_\_\_\_\_  
Jim Bernard, County Chair                      Date

David John VP, Deployments  
\_\_\_\_\_  
Name / Title (Printed)

\_\_\_\_\_  
Recording Secretary

1370582-93  
\_\_\_\_\_  
Oregon Business Registry #

  
\_\_\_\_\_  
Craig Roberts, Sheriff

FBC - Delaware  
\_\_\_\_\_  
Entity Type / State of Formation

Approved as to Form:  
  
\_\_\_\_\_  
County Counsel                      Date

**EXHIBIT A  
STATEMENT OF WORK**

**CLACKAMAS COUNTY  
LAW ENFORCEMENT AGENCIES (CCLEA)**

**STATEMENT OF WORK**



October 26, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Board Order in the Matter of an Extension of the Cable Television Franchise with  
Canby Telephone Association (dba Canby Telcom)

<b>Purpose/Outcome</b>	Extend current cable television franchise to allow time for evaluation and negotiations.
<b>Dollar Amount and Fiscal Impact</b>	N/A
<b>Funding Source</b>	N/A
<b>Duration</b>	Effective November 1, 2017 through October 31, 2018
<b>Previous Board Action/Review</b>	The franchise was approved by the BCC in January 2006, and extended in January 2016 for five months, June 2016 for three months, and October 2016 and April 2017 for six month extensions per period.
<b>Strategic Plan Alignment</b>	Building public trust through good government.
<b>Contact Person</b>	Gary Schmidt, Public and Government Affairs, 503-742-5908
<b>Contract No.</b>	N/A

**BACKGROUND:**

Canby Telephone Association (dba Canby Telcom) Cable Franchise Permit will expire on October 31, 2017. As the County and Canby Telephone Association will need additional time to evaluate and negotiate a new cable franchise agreement, it is desirable to continue the current contract under the same terms and conditions pursuant to applicable law unless and until the County issues a termination of franchise notice. Canby Telephone Association currently serves over 350 subscribers in the unincorporated area of Clackamas County.

This extension, if granted, would not affect either party's rights in the renewal process and includes a provision to preserve the County's right to retroactive PEG funding negotiated in the renewal. The County will evaluate Canby Telephone Association's legal, technical and financial qualifications to operate the cable system, as well as the community's needs, in its determination of whether to renew the franchise and on what terms and conditions.

This cable franchise agreement extension has been reviewed and approved by County Counsel.

Page 2  
Staff Report – Canby Telephone Association  
October 26, 2017

**RECOMMENDATION:**

Staff respectfully recommends the Board approve the extension of the franchise permit agreement to assure that the terms of the current franchise agreement continue to be met through October 31, 2018.

Respectfully submitted,

Gary Schmidt, Director  
Public and Government Affairs

In the Matter of Approving an  
Extension of the Cable Television  
Franchise with Canby Telephone Association  
(dba Canby Telcom)

ORDER NO.

This matter coming before the Clackamas County Board of Commissioners at its regularly scheduled public meeting on October 26, 2017 to consider approving an extension of the cable television franchise with Canby Telephone Association (dba Canby Telcom).

**WHEREAS**, Canby Telephone Association holds a cable television franchise with Clackamas County, which will expire on October 31, 2017; and

**WHEREAS**, County staff and representatives of Canby Telephone Association began meeting in the winter of 2015 to evaluate and negotiate terms regarding the renewal of the applicable franchise; and

**WHEREAS**, the amount of time required to conclude negotiations and allow for public review of a new franchise agreement will extend beyond the current expiration date; and

**WHEREAS**, it is in the public interest to extend the current franchise for an additional period of time under the same terms and conditions pursuant to applicable law to accommodate the renewal process and avoid a potentially unnecessary disruption of service to affected residents.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT** the franchise granted to Canby Telephone Association shall be extended until and including October 31, 2018, and that all rights and obligations provided the parties under the franchise agreement shall remain in full force and effect during that period, including the rights of the parties under the Cable Communications Policy Act of 1992 and the Telecommunications Act of 1996. Neither Canby Telephone Association nor the County shall assert any claim, denial or defense based upon the original expiration date of the Franchise Agreement, excepting therefrom that the County may assert in negotiations that any increase in PEG funding included in the new franchise agreement shall include the time period covered by this extension. This extension of the franchise is explicitly conditioned upon written acceptance thereof by the Franchisee.

DATED this \_\_\_\_\_ day of October, 2017

**CLACKAMAS COUNTY BOARD OF COMMISSIONERS**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary



Dave Cummings  
Chief Information Officer

## Technology Services

121 Library Court Oregon City, OR 97045

October 26, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval for a Service Level Agreement between  
Clackamas Broadband eXchange and Marylhurst University

<b>Purpose/Outcomes</b>	Clackamas Broadband eXchange (CBX) is looking for approval to enter into a Service Level Agreement (SLA) with Marylhurst University for dark fiber connections to Clackamas ESD.
<b>Dollar Amount and Fiscal Impact</b>	Marylhurst University will pay a non-recurring fee of \$34,255.00 for the new fiber construction. Marylhurst University will pay a recurring lease fee of \$3,060.00 annually per fiber connection.
<b>Funding Source</b>	The funding source for the expansion of the CBX fiber network will be contributed from the CBX budget and then reimbursed by Marylhurst University.
<b>Duration</b>	Effective upon signature by the board and the SLA can be renewed on a year to year basis.
<b>Previous Board Action</b>	Board previously approved CBX to build and maintain a dark fiber connection for the Summit Learning Charter.
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. Build a strong infrastructure.</li> <li>2. Build public trust through good government.</li> </ol>
<b>Contact Person</b>	Dave Devore (503)723-4996

**BACKGROUND:**

CBX is proposing to build a new fiber lateral to extend the CBX network to Marylhurst University.

**RECOMMENDATION:**

Staff respectfully recommends approval to enter into this Service Level Agreements. Staff further recommends the Board delegate authority to the Technology Services Director to sign agreements necessary in the performance of this agreement.

This Service Level Agreement has been reviewed and approved by County Counsel.

Sincerely,

Dave Cummings  
CIO Technology Services

*Dave Devore for Dave Cummings*

# Clackamas County

## FIBER OPTIC SERVICE LEVEL AGREEMENT

Marylhurst University

(Customer Name)

### 1. Recitals

**WHEREAS**, Clackamas County (County) desires to provide to Marylhurst University (Customer) the Services set forth in this Agreement, 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 premises on a path designated by the County.

### 3. Service Description

Service provided to Customer by County is 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.

### 4. Construction and Installation Requirements

- a. County, when installing fiber optic cables 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 optic cable 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 County's fiber optic cables 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 premises for necessary equipment.
- e. Customer will provide or arrange for County and its employees, agents, lessees, officers and its authorized vendors, upon reasonable notice, to have reasonable 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 optic network in areas of any such site not containing such hazardous material. Any additional expense incurred as a result of encountering hazardous materials, including but not limited to, any additional equipment shall be borne by Customer.
- g. County shall have 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 "hand-off's" at each location for Customer utilization. Test results for physical connection will be made available upon request.

**5. Term of Agreement**

At such time as County completes 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 with 30 days notice as herein provided, this agreement shall continue to July 1 following the date of commencement, and shall be automatically renewed on July 1 of each subsequent year, for a term of one year, at the County's then-current rate schedule.

**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 as specified in Appendix A as it shall be amended from time to time.

**7. Payment Options**

**a. Annual Payments**

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.

b. **Alternative Payment Frequency**

If Customer demonstrates that prepaid billings present a hardship, Customer may prepay semi-annually, quarterly, and in extreme circumstances may pay monthly. County shall provide an invoice for one quarter or month of service, or prorated weekly for any portion thereof, to Customer at the beginning of the service period. The quarterly or monthly 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 sound engineering practices and 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 optic facilities shall be treated by County as confidential information, to the extent allowable by law. County agrees that this information shall not be made available, in any form, to any party other than County or its agents or contractors as may be necessary to conduct maintenance or repair activity, without written permission of Customer, except as required by 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 County or its agents. 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 negligence or willful misconduct of Customer, its affiliates, employees, agents, contractors or customers, except to the extent caused by the gross negligence or willful misconduct of County, its affiliates, employees, contractors or agents. "Cost(s)", as used herein include 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

INCONNECTION 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**

Notwithstanding any other provisions of this Agreement, the parties hereby agree and understand that any obligation of Customer to obtain services as provided herein is subject to fund availability and appropriation by Customer for such services through its adoption of an annual budget. Should funds not be appropriated or be available from Customer during the term of 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. This Agreement shall terminate ninety (90) days following written notice by either party.
- b. In the event Customer terminates this Agreement based upon County's default or failure to perform as described in this Agreement, County shall reimburse to Customer the pro rata amounts paid on the unexpired term of this Agreement.
- c. If Customer terminates this Agreement for any reason other than that based on non-appropriation or on 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 by any party; 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. Amendment**

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

**22. 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.

**23. 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 facsimile addressed as follows:

**Notice to the County**

Manager, Clackamas Broadband Express  
Clackamas County Technology Services  
121 Library Court  
Oregon City, Oregon 97045  
Fax Number (503) 655-8255

with a copy to

Chief Information Officer  
Clackamas County Technology Services  
121 Library Court  
Oregon City, Oregon 97045  
Fax Number: (503) 655-8255

**Notice to the Customer**

[Name or Title of Individual] Vice President for Finance and Administration  
[Customer] Marylhurst University  
[Address] 17600 Pacific Highway  
[City and Zip Code] Marylhurst, OR 97036-0261  
[Fax Number] 503-534-4086

with a copy to

[Name or Title of Individual] Chief Information Officer  
[Customer] Marylhurst University  
[Address] 17600 Pacific Highway  
[City and Zip Code] Marylhurst, OR 97036-0261  
[Fax Number] 503-534-4086

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

**24. 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**

Marylhurst University  
(Customer Name)

By (signature): Jennifer Chambers

Name (print): Jennifer Chambers

Title: VP for Finance & Admin

Date: 10-11-17



Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of Contract with CXT, Inc. for the Purchase  
Of a Precast Concrete Restroom at Feyrer Park**

<b>Purpose / Outcome</b>	Oregon Parks & Recreation Department awarded a County Opportunity Grant to County Parks for the purchase and installation of a pre-cast concrete restroom to replace the current restroom at Feyrer Park which has deteriorated beyond useful life.
<b>Fiscal Impact</b>	\$ 214,923.82 for the purchase, delivery and install of the CXT unit.
<b>Funding Source</b>	BCS/County Parks capital construction funds (50%); OPRD County Opportunity Grant funds (50%).
<b>Duration</b>	Upon approval through January 30, 2018
<b>Strategic Plan Alignment</b>	1. Build Public Trust Through Good Government 2. Honor, Utilize, Promote and Invest in our Natural Resources
<b>Previous Board Action</b>	BCC approval to accept County Opportunity Grant COG17-003 for the Feyrer Park Campground Restroom Replacement Project Room from Oregon Parks and Recreation Department on March 16, 2017.
<b>Contact Person</b>	Rick Gruen, County Parks Manager, 503-742-4345

**Background:**

Clackamas County's Feyrer Park is located just outside the City of Molalla. The 23 acre site has 20 overnight camp sites, 4 day use picnic shelters, and access to the Molalla River. The existing restroom is in a deteriorated condition and needs ADA compliance upgrades. Replacement of the restroom will provide ADA compliant, safe and modern amenities. Oregon Parks and Recreation Department awarded a County Opportunity Grant to County Parks for the purpose of constructing or purchasing a new restroom, which included consideration of CXT, Inc. as the provider of a pre-cast concrete restroom building.

**Procurement Process:**

The purchase of this CXT Precast Concrete Restroom will be through the State of Oregon Cooperative Contract #1542.

County Counsel has reviewed and approved this contract.

**Recommendation:**

Staff respectfully recommends the Board approve the contract with CXT, Inc. for the purchase, delivery and installation of a pre-cast concrete restroom building.

Sincerely,

Laura Zentner, Deputy Director  
Business and Community Services

Placed on the October 26, 2018 Agenda by the Procurement Division.





## CLACKAMAS COUNTY GOODS AND SERVICES CONTRACT

This Goods and Services Contract (this "Contract") is entered into between **CXT Incorporated** ("Contractor"), and Clackamas County, a political subdivisions of the State of Oregon ("County") for the purposes of providing a **precast concrete restroom delivered to Feyrer Park.**

### **I. TERM**

This Contract shall become effective upon signature of both parties and shall remain in effect until **February 28, 2018.** This Contract and any amendments to this Contract will not be effective until approved in writing by an authorized representative of the Board of County Commissioners of Clackamas County. This Contract supersedes and cancels any prior contracts between the parties hereto for similar services.

### **II. SCOPE OF WORK**

This Contract covers the Scope of Work as described in Scope of Work, attached and hereby incorporated by reference as Attachment "A." This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Attachment "A." Work shall be performed in accordance with a schedule approved by the County. The Contractor shall meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services. The County's Representative for this contract is: Rick Gruen.

### **III. COMPENSATION**

- 1. PAYMENT.** The County agrees to compensate the Contractor on a fixed fee basis as detailed in this Contract. The Contract compensation is **Two Hundred and Fourteen Thousand, Nine Hundred Twenty-Three Dollars and Eighty-Two Cents (\$214,923.82).**
- 2. TRAVEL EXPENSE REIMBURSEMENT.** Authorized:  Yes  No  
If travel expense reimbursement is authorized in this Contract, such expenses shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference, in effect at the time of the expense is incurred.
- 3. INVOICES.** Invoices submitted for payment in connection with this Contract shall be properly documented and shall indicate pertinent County contract and/or purchase order numbers. All charges shall be billed monthly (unless a different payment period is outlined in Attachment A) and will be paid net thirty (30) days from receipt of invoice and shall be subject to Oregon Revised Statute ("ORS") 293.462. Invoices shall be submitted to the County Representative at: 150 Beavercreek Road, Oregon City Oregon or via email at [rgruen@clackamas.us](mailto:rgruen@clackamas.us).

### **IV. CONTRACT PROVISIONS**

- 1. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and 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. Such books and records shall be maintained by Contractor for a minimum of three (3) 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 FUNDS.** County certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the County's reasonable administrative discretion, to continue to make payments under this Contract.

**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 federal, state, county, and local laws, ordinances, and regulations applicable to the work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate County official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.

**5. EXECUTION AND COUNTERPARTS.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

**6. GOVERNING LAW.** 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.

**7. HAZARD COMMUNICATION.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon County's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.

**8. INDEMNITY, RESPONSIBILITY FOR DAMAGES.** 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 their 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.

**9. 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; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to the 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 (except insofar as benefits are otherwise required by law if the Contractor is presently a member of the Oregon Public Employees Retirement System); and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656.

At present, the Contractor certifies that he or she, if an individual is not a program, County or Federal employee. The Contractor, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

**10. INSURANCE.** Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon. Contractor shall provide insurance as indicated below:

**A. COMMERCIAL GENERAL LIABILITY**

The Contractor agrees to furnish the County evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Contract. The general aggregate shall apply separately to this project / location. The County, at its option, may require a complete copy of the above policy.

**B. AUTOMOBILE LIABILITY**

The Contractor agrees to furnish the County evidence of business automobile liability insurance with a combined single limit of not less than \$1,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, agents, and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Contract. The County, at its option, may require a complete copy of the above policy.

**C.** Contractor shall provide County a certificate of insurance naming the Clackamas County and its officers, elected officials, agents, and employees as an additional insured. If Contractor's insurance policy does not include a blanket endorsement for additional insured status when/where required by written contract (as required in this Contract), the insurance, shall include Clackamas County and its officers, elected officials, agents, and employees as expressly scheduled additional insured. Use CG 20 10 or its equivalent. Such insurance shall provide sixty (60) days written notice to the County in the event of a cancellation or material change and include a statement that

no act on the part of the insured shall affect the coverage afforded to the County under this insurance. This policy(s) shall be primary insurance with respect to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

**D.** If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor agrees to qualify and remain qualified for the term of this Contract as an insured employer under ORS 656. The Contractor shall maintain employer's liability insurance with limits of \$100,000 for each accident, \$100,000 per disease for each employee, and \$500,000 each minimum policy limit.

**E.** If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of thirty-six (36) months or the maximum time period the Contractor's insurer will provide "tail" coverage as subscribed, whichever is greater, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided it's retroactive date is on or before the effective date of this Contract.

**F.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by the Contractor to the County. This policy(s) shall be primary insurance with respect to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

**G.** Contractor shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the Contractor under this Contract, unless this requirement is expressly modified or waived by the County.

**11. LIMITATION OF LIABILITIES.** Except for liability arising under or related to Section 14 or 21(B), 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. 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.

**12. NOTICES.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or County at the address or number set forth on the signature page of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any such communication or notice delivered by facsimile shall be deemed to be given when receipt of transmission is generated by the transmitting machine. To be effective against County, such facsimile transmission must be confirmed by telephone notice to County's supervising representative. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

**13. 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 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.

**14. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (1) Contractor has the power and authority to enter into and perform this Contract; (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (3) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (4) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

- a. **Performance Warranty.** Contractor warrants that the goods provided to the County shall consistently perform according to the performance characteristics described in the Scope of Work.
- b. **Service Warranty.** Contractor warrants that the services provided herein to the County, if any, will be performed in a workmanlike manner and in accordance with the highest professional standards. Contractor's liability and County's remedy under this services warranty are limited to Contractor's prompt correction of such services, provided that written notice of such alleged defective services shall have been given by the County to Contractor. The County agrees to provide Contractor reasonable access to the goods for purposes of repair or replacement under this services warranty. Failure of Contractor to promptly correct problems pursuant to this Service Warrant shall be deemed a material breach of this Contract.

**15. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Sections of Section IV: 1, 6, 8, 11, 13, 14, 15, and 21.

**16. 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.

**17. 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. 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 section and Sections 1, 8, 13, 15, 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.

**18. 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.

**19. TAX COMPLIANCE CERTIFICATION.** 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.

**20. TERMINATION.** This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the County for convenience upon thirty (30) days' written notice to the Contractor; (B) County may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the County, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the work under this Contract is prohibited or the County are prohibited from paying for such work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the County for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the County, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the County (or from applicable federal, state, or other sources) to permit the County in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, County may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

**21. REMEDIES.** (A) In the event of termination pursuant to Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the work multiplied by the percentage of work completed and accepted by the County, less previous amounts paid and any claim(s) which the County has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to County on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the County shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless County expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to County all documents, 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 or objects or other tangible things needed to complete the work.

**22. 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.

**23. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence under this Contract.

**24. 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.

**25. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, County's or Contractor's reasonable control. Contractor shall, however, 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.

**26. 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.

**27. COMPLIANCE.** Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract: (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished. (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this Contract. (C) The Contractor shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. (D) The Contractor shall promptly, as due, make payment to any person or copartnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

**28. DELIVERY.** All deliveries shall be F.O.B. destination with all transportation and handing charges paid by the Contractor, unless specified otherwise in this Contract. Responsibility and liability for loss or

damage shall remain with the Contractor until final inspection and acceptance, when responsibility shall pass to the County except as to latent defects, fraud and Contractor’s warranty obligations.

**29. INSPECTIONS.** Goods and services furnished under this Contract will be subject to inspection and test by the County at times and places determined by the County. If the County finds goods and services furnished to be incomplete or not in compliance with the Contract, the County, at its sole discretion, may either reject the goods and services, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the goods and services to the County at a reduced price, whichever the County deems equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the County, the County may reject the goods and services and cancel the Contract in whole or in part. Nothing in this paragraph shall in any way affect or limit the County’s rights as a Buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

**30. 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, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.**

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

CXT Incorporated  
3808 North Sullivan Road, Bldg #7  
Spokane, WA 99216

Clackamas County Board of County  
Commissioners

\_\_\_\_\_  
Authorized Signature                      Date

\_\_\_\_\_  
Chair    Date

\_\_\_\_\_  
Name / Title (Printed)

\_\_\_\_\_  
Recording Secretary

360312-84  
Oregon Business Registry #

Approved as to Form:

FBC/Delaware  
Entity Type / State of Formation

\_\_\_\_\_  
County Counsel                              Date



**ATTACHMENT A  
SCOPE OF WORK**