

January 23, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Revenue Contract and Business Associate Agreement with
CareOregon, Inc. for Behavioral Health Services

Purpose/Outcomes	This contract provides the funding for certain behavioral health services.
Dollar Amount and Fiscal Impact	Contract maximum payment is \$3,580,095.00.
Funding Source	No County General Funds are involved. State of Oregon, Oregon Health Plan (OHP) provided through CareOregon.
Duration	Effective January 1, 2020 and terminates on December 31, 2020
Previous Board Action	None
Counsel Review	Contract reviewed and approved January 8, 2020.
Strategic Plan Alignment	1. Provide coordination, assessment, outreach, and recovery services to Clackamas County residents experiencing mental health and addiction distress so they can achieve their own recovery goals. 2. Ensure safe, healthy and secure communities.
Contact Person	Mary Rumbaugh, Director – Behavioral Health Division 503-742-5305
Contract No.	9605

BACKGROUND:

The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of revenue contract with CareOregon, Inc. for the funding for certain behavioral health services. This Contract provides the funds for Intensive Care Coordination for adults and children, Substance Use Disorder Care Coordination, Wraparound Services, Choice Services, and administrative support. The Contract supports 23.25 FTE.

This Contract is effective January 1, 2020 and continues through December 31, 2020. Maximum compensation is \$3,580,095.00. County Counsel reviewed and approved this Contract on January 8, 2020.

Healthy Families. Strong Communities.


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

Clackamas.us/h3s

RECOMMENDATION:

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

Respectfully submitted,

 Bob Alcott, H3S DEPUTY FOR

Richard Swift, Director
Health, Housing & Human Services Department

CAREOREGON

CLACKAMAS COUNTY AGREEMENT

This Agreement (“Agreement”) is made and entered into as of January 1, 2020 (“Effective Date”), by and between CareOregon, an Oregon nonprofit corporation (“CareOregon”), and Clackamas County (“County”).

RECITALS

A. CareOregon is a nonprofit organization that provides management services for and operates as a coordinated care organization as such term is defined under Oregon law (“CCO”), and as such, CareOregon coordinates health care coverage for enrollees of the Oregon Health Plan (“OHP”) or otherwise;

B. As a CCO or subcontractor of a CCO, CareOregon desires to provide Members with a broad network of high quality, efficient and convenient health care facilities, professionals, and other provider types from which Members may receive covered services;

C. County provides distinct services that CareOregon Members may be eligible for; and

D. CareOregon desires, in support of developing a network, to contract with County to become a participating provider in CareOregon’s network; and County wishes to so participate in CareOregon’s network all in accordance with the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the above Recitals and the mutual covenants and promises contained herein, CareOregon and County agree as follows:

ARTICLE I DEFINITIONS

“**Contracted Services**” has the meaning given to that term in Section 2.1.

“**Covered Service**” means health care services and supplies that are Medically Necessary and for which benefits are available under a Member’s Plan.

“**Medically Necessary**” means services and medical supplies required for prevention, diagnosis or treatment of a health condition that encompasses physical or mental conditions, or injuries and are (a) consistent with the symptoms of a health condition or treatment of a health condition; (b) appropriate with regard to standards of good medical practice and generally recognized by the relevant scientific community and professional standards of care as effective; (c) not solely for the convenience of a Member or a provider of the service or medical supplies, and; (d) the most cost effective of the alternative levels of medical services or medical supplies that can be safely provided to a Member.

“Member” means a person who is enrolled in a Plan with CareOregon, generally identifiable through a CareOregon identification card issued to the person, and who is eligible to receive Covered Services.

“PHI” has the meaning given to that term in Section 2.1.

“Plan” means the contract or arrangement that has been established with CareOregon, including contracts or arrangements established by federal and state governmental programs, that entitles Members to receive specific Covered Services through CareOregon.

“Practitioners” has the meaning given to that term in Section 2.3.

“Provider Qualifications” has the meaning given to that term in Section 2.9.

“Records” has the meaning given to that term in Section 2.13.

“Plan Partner” means the individual entities that have entered into an Agreement with CareOregon in exchange for a per member per-month payment described in the same agreement. The entities defined as Plan Partners, which may change from time-to-time, are listed in Exhibit A. CareOregon Members will be assigned to a particular Plan Partner.

ARTICLE II OBLIGATIONS AND REPRESENTATIONS OF COUNTY

2.1 Covered Services. County will accept Members as patients and provide to Members the Covered Services listed in the Exhibits attached and incorporated herein Covered Services and Compensation Addendum(s) of this Agreement that are Medically Necessary (the “Contracted Services”). County will provide those Contracted Services to Members in an amount, duration and scope that is not less than the amount, duration and scope for the same services provided by County to other individuals who receive services equivalent to those Contracted Services at locations approved by CareOregon. County will ensure that Contracted Services rendered by County: (i) are within the scope of, and in accord with, the County’s and Practitioner’s license and certifications, (ii) are within the scope of privileges granted by CareOregon or the applicable Plan Partner, and (iii) meet the community professional standards relevant to the services provided. County acknowledges that the rights of Members to receive particular services is governed by the terms of the relevant Plan covering the Members.

2.2 Plan Partner Access to Provider Services. County acknowledges and agrees that under the requirements of this Agreement, County will provide Contracted Services on behalf of either CareOregon or the applicable Plan Partner to which a Member is assigned. County will cooperate in good faith with CareOregon and each Plan Partner in providing the Contracted Services to Members under this Agreement.

2.3 Practitioners. County will ensure that all of County's employed and contracted professionals who provide Contracted Services to Members (the "Practitioners"): (i) comply with all of the terms and conditions of this Agreement (unless the context requires otherwise), (ii) are credentialed by County prior to providing services to Members and meet CareOregon's credentialing and recredentialing requirements as applicable, and (iii) comply with all requests for information from CareOregon related to Practitioners' qualifications. County will not bill for or be entitled to receive any compensation for providing any services that are inconsistent with the privileges granted to a particular Practitioner. County will be solely responsible for payment of all wages, salary, compensation, payroll and withholding taxes, unemployment insurance, workers' compensation coverage and all other compensation, insurance and benefits with respect to its employees.

2.4 Hours of Operation. County will arrange for provision of Contracted Services during normal office hours that are not less than the hours of operation offered to County's other clients.

2.5 Care Integration and Coordination. County will support CareOregon and Plan Partner in the implementation of care integration and coordination activities to develop, support and promote CareOregon's and Plan Partner's efforts to integrate and coordinate care among providers to create a continuum of care that integrates mental health, addiction treatment, dental health, physical health and community-based interventions seamlessly and holistically. County will also participate with CareOregon and Plan Partner in the implementation of evidence based clinical practice guidelines. County will consult with and comply with the Provider Manual related to the referral of Members to other providers for services.

2.6 Compliance with CareOregon Policies. . County agrees to comply with relevant policies and procedures necessary to meet the obligations under this Agreement.

2.7 Reporting Responsibilities. County agrees to provide any reports, information, or documents reasonably requested by CareOregon or Plan Partner in the form and format requested by CareOregon or Plan Partner within a reasonable period of time. Such reports may include without limitation, reports regarding access, capacity to serve Members, utilization, performance measures, quality metrics, Member satisfaction, coordination, expenses and savings. Provider represents and warrants that any reports and data provided pursuant to this Section 2.8 shall be accurate.

2.8 Qualifications. At all times during the term of this Agreement, County shall meet each of the following qualifications (“**Provider Qualifications**”) and ensure that all Practitioners meet those qualifications:

2.8.1 It’s Practitioners have and maintain in good standing all required or appropriate state and federal licenses, permits, registrations, certifications, approvals and authorizations to provide Covered Services under this Agreement consistent with state licensure requirements, Medicaid certification and other professional qualifications. County shall furnish evidence of the same to CareOregon on request;

2.8.2 Has never been (unless appropriately reinstated), and is not currently, suspended, debarred, or excluded from any federal or state funded health care program or from participating in any government procurement or non-procurement contract;

2.8.3 If compliance with any provision of this Agreement would result in the County’s or Practitioner’s loss of license, County agrees to notify CareOregon within thirty (30) days of discovery of such conflict. County shall promptly notify CareOregon of any action against County or any Practitioner’s professional license to practice, including but not limited to suspension, revocation or probation. County shall also promptly notify CareOregon if a Practitioner is convicted of a felony or County is expelled or suspended from the Medicaid program.

2.9 Representations and Warranties. County represents and warrants to CareOregon the following, which warranties are in addition to, and not in lieu of, any other warranties provided herein:

2.9.1 County has the power and authority to enter into and perform the obligations described in this Agreement;

2.9.2 This Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms;

2.9.3 County has the skill and knowledge possessed by well-informed members of its industry, trade or profession and County will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in County's industry, trade or profession; and

2.9.4 County's Practitioners shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the Covered Services.

2.10 External Quality Review; Access to Records and Facilities. County shall cooperate by providing access to records and facilities for the purpose of an annual external, independent professional review of the quality outcomes and timeliness of, and access to, Covered Services provided under this Agreement. If copies of such records are required, County shall provide those copies at no charge. County shall provide timely access to records and facilities and cooperate with CareOregon in the collection of information through consumer surveys, on-site reviews, medical chart reviews, financial reporting and financial record reviews, interviews with staff, and other information for the purposes of monitoring compliance with this Agreement, including but not limited to verification of services actually provided, and for developing and monitoring performance and outcomes. County and CareOregon agree to cooperate to ensure that the confidentiality restrictions in 42 C.F.R. Part 2-Confidentiality of Alcohol and Drug Abuse Patient Records, as may be amended from time to time ("42 C.F.R. Part 2"), are complied with prior to any review. The requirements described in this Section 2.10 shall survive termination of the Agreement.

2.11 Medical Records. County shall develop and maintain a medical record keeping system that:

2.11.1 Includes sufficient detail and clarity to permit internal and external review to validate encounter submissions and to assure Medically Necessary services are provided consistent with the documented needs of the Member;

2.11.2 Conforms to accepted professional practice; and

2.11.3 Allows CareOregon and Plan Partners to ensure that data received from County is accurate and complete by: (i) verifying the accuracy and timeliness of reported data; (ii) screening the data for completeness, logic, and consistency; and (iii) collecting service information in standardized formats to the extent feasible and appropriate.

2.12 Record Retention.

2.12.1 County shall retain, and shall cause its personnel to retain, clinical records for ten (10) years after the date of service for which claims are made. If an audit, litigation, research and evaluation, or other action involving the records is started before the end of the ten-year period, County shall retain, and shall cause its personnel to retain, the clinical records until all issues arising out of the action are resolved.

2.12.2 County shall maintain all financial records related to this Contract in accordance with generally accepted accounting principles. In addition, County shall maintain any other records, books, documents, papers, plans, records of shipment and payments and writings of County, whether in paper, electronic or other form, that are pertinent to this Contract in such a manner to clearly document County's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of County whether in paper, electronic or other form, that are pertinent to this Contract, are collectively referred to as "**Records.**" County acknowledges and agrees that OHA, the Secretary of State's Office, CMS, the Comptroller General of the United States, the Oregon Department of Justice Medicaid Fraud Control Unit and their duly authorized representatives shall have access to all Records to perform examinations and audits and make excerpts and transcripts. County shall retain and keep accessible all Records for the longer of: (i) ten (10) years following final payment and termination of this Agreement; (ii) the retention period specified in this Agreement for certain kinds of records; (iii) the period as may be required by applicable law, including the records retention schedules set forth in OAR Chapters 410 and 166; or (iv) until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement.

2.13 Business Associate Agreement; Consent to Disclose, Rediscover. County acknowledges and agrees that protected health information ("PHI") disclosed by County to CareOregon may be used by or disclosed to Plan Partner pursuant to a business associate agreement between those parties when permissible by law or pursuant to a written consent in compliance with 42 C.F.R. Part 2, as may be amended from time to time. Notwithstanding the foregoing, CareOregon and County agree to comply with any and all applicable privacy laws including without limitation, 42 C.F.R. Part 2.

2.131 County will obtain Member's written consent, as required by 42 C.F.R. Part 2 and as may be specified by CareOregon, to allow Member's patient identifying information to be disclosed by County to the Plan Partners and to CareOregon and the State of Oregon, only as such disclosure is allowed by Federal law..

2.14 Subrogation. County agrees to subrogate to CareOregon any and all claims related to County's provision of Services hereunder that County has or may have against any third parties related to the Contracted Services provided to Members, but only to the extent CareOregon has incurred damages. If the County also incurs damages, then this provision shall not prevent the County from pursuing its own claims.

2.15 Compliance with Applicable Law. County shall comply and cause all its personnel to comply with all applicable Federal, State and local laws, regulations, executive orders and ordinances.

2.16 Informed Consent; Dignity and Respect. County shall inform Members about available treatment options and alternatives. County shall ensure that its personnel treat Members with respect and with due consideration for their dignity and privacy to the same extent as all of County's other patients who receive services equivalent to Covered Services.

prior authorization. County will comply with policies and procedures related to prior authorization included in the Provider Manual and will not be entitled to receive any compensation if the County fails to comply with those policies and procedures.

2.17 Nondiscrimination. County will not discriminate in the provision of services to Members on the basis of enrollment in the Plan, race, color, national origin, ethnicity, ancestry, religion, sex, marital status, sexual orientation, mental or physical disability, medical condition or history, age or any other category protected under state or federal law.

2.18 Compliance with Health Care Programs. County and County's Practitioners agree to cooperate with the Medical Directors of CareOregon and the Plan Partners in the Medical Directors' review of, and in the establishment of programs, policies and procedures to, improve the quality of care delivered to Members.

2.19 Regulatory Updates. All terms and conditions of this Agreement are subject to federal and state Laws regulating Medicaid and Medicare . Any term, condition or provision now or hereafter required to be included in this Agreement by Laws shall supersede previous terms and conditions and

be deemed incorporated herein and binding upon and enforceable against the Parties, regardless of whether or not the term, condition or provision is expressly stated in this Agreement.

ARTICLE III COMPENSATION AND BILLING

3.1 Compensation. In consideration of all the work to be performed under this Agreement, CareOregon shall pay County per the schedule outlined in Exhibit _____. Such payment will be made via electronic funds transfer and shall be paid monthly on a date agreed upon by CareOregon and County.. County shall be entitled to the amounts and types of compensation described in that Exhibit for furnishing Covered Services to Members in accordance with the terms and conditions of this Agreement. County agrees to accept as payment in full for Covered Services furnished to Members the compensation described in this Agreement.

3.2 Billing. County will be solely responsible to bill and collect for the provision of Covered Services under this Agreement. The primary payer for any compensation owed to County is CareOregon. County shall bill and collect for Covered Services in accordance with the following:

3.2.1 County shall comply with all relevant policies and procedures regarding billing, coding, claim submission, clean claims, overpayment recovery, audits, documentation, and any other matter related to claims for compensation as described in the Provider Manual.

3.2.2 County shall submit claims for Covered Services including all the fields and information needed to allow the claim to be processed without further information from County, and within time frames that assure all corrections have been made within one hundred twenty (120) days of the date of service.

3.2.3 Except as specifically permitted by this Agreement, including Third Party Resource recovery, County and its personnel may not be compensated for Covered Services performed under this Agreement from any other department of the State, nor from any other source including the federal government.

3.2.4 County and County's Practitioners will seek only to obtain compensation for Covered Services from the Members' applicable Plan Partner, and at no time will seek compensation from Members other than for those items set forth in the Plan, such as applicable copayments, coinsurance and deductible amounts. In the event of non-payment by CareOregon or the applicable Plan Partner for any reason, County and County's Practitioners will not bill or otherwise attempt to collect any amounts owed.

3.2.5 County will bill and make reasonable efforts to collect any copayments, coinsurance and deductibles, if applicable, from Members in accord with the terms of the Plan.

3.3 Coordination of Benefits. County agrees to abide by policies and procedures for coordination of benefits, duplicate coverage and third-party liability policies as described in Exhibit C: Oregon Health Plan Addendum, attached hereto and the Provider Manual. If any services to which Members are entitled are also covered under any other group or non-group health plan, prepaid medical plan, insurance policy or Workers' Compensation, County and the applicable Plan Partner

shall cooperate in the investigation of all such benefits so that CareOregon or Plan Partner shall bear no more of the total cost than is required by this Agreement. Except as otherwise set forth herein, County agrees to accept the negotiated amount as payment in full, whether that amount is paid in whole or in part by the Member, Plan Partner or CareOregon, or by any combination of payers, including other payers which may pay before CareOregon or Plan Partner in the order of benefit determination.

ARTICLE IV RELATIONSHIP OF THE PARTIES

4.1 Independent Parties. The parties to this Agreement are independent parties, and nothing in this Agreement shall be construed or be deemed to create between them any relationship of principal and agent, partnership, joint venture, or any relationship other than that of independent parties. No party hereto, nor the respective agents or employees of either party, shall be required to assume or bear any responsibility for the acts or omissions, or any consequences thereof of the other party under this Agreement. No party hereto, nor the respective agents or employees of either party, shall be liable to other persons for any act or omission of the other party in performance of their respective responsibilities under this Agreement.

4.2 Tax Obligations. County shall be responsible for appropriate management of all federal and state obligations applicable to compensation or payments paid to County under this Agreement.

ARTICLE V TERM AND TERMINATION

5.1 Term of Agreement. When executed by both parties, this Agreement shall become effective as of the Effective Date and shall continue in effect until December 31, 2020 unless otherwise terminated pursuant to this Agreement

5.2 Termination on Default. In the event CareOregon or County should materially default in the performance of any obligation imposed on it by this Agreement, the non-defaulting party shall elect to provide the defaulting party with written notice describing the facts and circumstances of the default. After providing such notice, the non-defaulting party may elect, by written notice to the defaulting party, to terminate this Agreement if the defaulting party has not cured any default within thirty (30) days following the defaulting party's receipt of the applicable default notice; provided, however that with respect to any default covered by this subsection which reasonably requires additional time to cure, such failure shall not result in a termination of the Agreement so long as the defaulting party has commenced performance of a cure within the stated cure period and diligently pursues such cure to completion.

5.3 Immediate Termination by CareOregon. Notwithstanding any other term herein to the contrary, CareOregon may immediately terminate this Agreement or the participation of any individual health care provider providing services for County pursuant to this Agreement on delivery of written notice to County if any of the following occurs:

5.3.1 County Practitioner does not fully meet all County Qualifications set forth in Section

2.9 of this Agreement at the time the relevant services are provided under this Agreement;

532 Any of County's contracted or employed personnel providing or assisting in the provision of Covered Services is excluded, debarred, suspended or declared ineligible to participate in any federal health care program, or in any federal procurement or non-procurement program and is not removed by County from providing Covered Services under this Agreement;

533 If County: (i) voluntarily files a petition in or for bankruptcy or reorganization; (ii) makes a general assignment or another arrangement for the benefit of creditors; (iii) is adjudged bankrupt; (iv) has a trustee, receiver or other custodian appointed on its behalf; or (v) has any other case or proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding commenced against it.

534 Professional liability insurance covering County, as required by this Agreement, is terminated without replacement coverage being obtained in amounts required by this Agreement.

535 County's knowing or deliberate submission of false billing information to CareOregon or any Plan Partner.

536 County is found to be in violation of or has failed to comply with any of the requirements of this Agreement that are not curable by County due to their nature.

5.4 Termination without Cause. The parties agree that they are contracting at will. Either CareOregon or County may terminate this Agreement without cause upon ninety (90) days' advance written notice to the other party. However, such termination shall not relieve either party of any contractual obligation(s) incurred prior to the Effective Date of the termination.

5.5 Change in Law. In the event state or federal laws are enacted, or state or federal regulations are promulgated which make this Agreement illegal under such laws or regulations, or this Agreement is otherwise deemed by appropriate state or federal governmental authorities to violate such laws or regulations, this Agreement shall be immediately amended to comply with such laws or regulations or be terminated.

5.6 Continuity of Care. In the event of termination of this Agreement, the following provisions shall apply to ensure continuity of the Covered Services to Members. County shall ensure:

5.6.1 Continuation of Covered Services to Member for the period during which Plan Partner has paid Compensation to County, including inpatient admissions up until discharge;

5.6.2 Notification to Members of the effective date of the termination and ensure orderly and reasonable transfer of Member care in progress, whether or not those Members are hospitalized;

5.6.3 Timely submission of information, reports and records, including encounter data, required to be provided to CareOregon and Plan Partners during the term of this Agreement;

5.6.4 Timely payment of valid claims for services to Members for dates of service included within the term of the Agreement; and

5.6.5 If County continues to provide services to a Member after the date of termination of this Agreement and continuity of care is no longer required as determined by CareOregon, CareOregon shall have no responsibility to pay for such services unless otherwise agreed to by CareOregon to allow for an orderly and reasonable transfer of Member care in process; (ii) to notify Members of the termination of this Agreement, and (iii) to direct Members to other participating providers.

ARTICLE VI INDEMNIFICATION

6.1 Indemnification by CareOregon. CareOregon hereby covenants and agrees to indemnify, protect, defend and hold County, County Commissioners, and its officers, employees affiliates and agents (collectively, "Provider Parties") harmless from and against all claims, suits, actions, losses, liabilities, settlements, damages, costs, and expenses of any nature whatsoever (including attorneys' fees and expenses at trial, at mediation, on appeal, and in connection with any petition for review) resulting from, arising out of, or relating to the activities of County or its officers, employees, subcontractors, agents, and insurers under this Agreement. ,

6.2 Indemnification by County. To the extent permitted by Article XI, Section 7 of the Oregon Constitution and by Oregon Tort Claims Act, County shall defend, indemnify and hold harmless Health Share and its directors, officers, employees, affiliates and agents from and against all claims, suits, actions, losses, damages, liabilities, settlements, costs and expenses of any nature whatsoever (including reasonable attorneys' fees and expenses at trial, at mediation, on appeal, and in connection with any petition for review) resulting from, arising out of, or relating to the activities of County or its officers, employees, subcontractors, agents, insurers, and attorneys (or any combination of them) under this Agreement.

ARTICLE VII INSURANCE

7.1 Insurance. County shall maintain, at County's sole expense, and keep in force, insurance policies, providing comprehensive general liability and professional liability or any other insurance as may be necessary to insure County and its officers, directors, agents and employees against any claim or claims for damages arising out of the providing of, or failure to provide, Covered Services pursuant to this Agreement. Evidence of insurance coverage required under this Section will be made available to CareOregon on request. County will provide CareOregon at least fifteen (15) days' advance written notice of revocation, suspension, reduction, limitation, probationary or other disciplinary action taken on any of County's required insurance coverage. A fully funded program of self-insurance shall address the above insurance requirements.

7.2 Claims, Incidents, Suits and Disciplinary Actions. County agrees to promptly report to CareOregon any claim made, suit filed, or disciplinary action commenced against County or its personnel relating to the provision of Covered Services under this Agreement.

7.3 Workers' Compensation. If County employs subject workers, as defined in ORS § 656.027, County 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).

ARTICLE VIII DISPUTES AND COMPLAINTS

81 Arbitration. Except as otherwise provided in Section 8.2, any dispute, controversy, or claim arising out of the subject matter of this Agreement will be settled by arbitration before a single arbitrator in Portland, Oregon. If the parties agree on an arbitrator, the arbitration will be held before the arbitrator selected by the parties. If the parties do not agree on an arbitrator, each party will designate an arbitrator and the arbitration will be held before a third arbitrator selected by the designated arbitrators. Each arbitrator will be an attorney knowledgeable in the area of business and healthcare law. The arbitration will be initiated by filing a claim with Arbitration Service of Portland and will be conducted in accordance with the then-current rules of Arbitration Service of Portland. The resolution of any dispute, controversy, or claim as determined by the arbitrator will be binding on the parties. Judgment on the award of the arbitrator may be entered by any party in any court having jurisdiction.

82 Compelling Arbitration. A party may seek from a court an order to compel arbitration, or any other interim relief or provisional remedies pending an arbitrator's resolution of any dispute, controversy, or claim. Any such action, suit, or proceeding will be litigated in courts located in Multnomah County, Oregon. For the purposes of the preceding sentence, each party consents and submits to the jurisdiction of any local, state, or federal court located in Multnomah County, Oregon. If a claim must be brought in a federal forum, then it shall be conducted solely and exclusively within the United States District Court for the District of Oregon.

83 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.

84 Dispute Resolution. Before a Party initiates arbitration regarding a claim or dispute under this Agreement (a “Dispute”), the Parties shall meet and confer in good faith to seek resolution of the Dispute. If a Party desires to initiate the procedures under this paragraph, the Party shall give notice (a “Dispute Initiation Notice”) to the other Party providing a brief description of the nature of the Dispute, explaining the initiating Party’s claim or position in connection with the Dispute, including relevant documentation, and naming an individual with authority to settle the Dispute on such Party’s behalf. Within 20 days after receipt of a Dispute Initiation Notice, the receiving Party shall give a written reply (a “Dispute Reply”) to the initiating Party providing a brief description of the receiving Party’s position in connection with the Dispute, including relevant documentation, and naming an individual with the authority to settle the Dispute on behalf of the receiving Party. The Parties shall promptly make an investigation of the Dispute, and commence discussions concerning resolution of the Dispute within 20 days after the date of the Dispute Reply. If a Dispute has not been resolved within 30 days after the Parties have commenced discussions regarding the Dispute, either Party may submit the dispute to arbitration subject to the terms and conditions herein. Failure to comply with this paragraph shall not bar a party from submitting the Dispute to arbitration; however, a Party’s failure to take advantage of this informal process may be considered by the arbitrator in making any award of attorneys’ fees hereunder.

ARTICLE IX GENERAL PROVISIONS

9.1 Amendments.

9.1.1 Mutual Amendment. The terms of this Agreement may be amended from time to time in a writing signed by CareOregon and County.

9.1.2 Amendments Required by Law. CareOregon may modify this Agreement immediately to comply with changes in state or federal laws or regulations, as described in Section 5.5 of this Agreement.. While CareOregon will strive to give advance notice of such Amendments to County, advance notice may not be possible if CareOregon is required to immediately amend this Agreement to comply with changes in Applicable Laws.

9.2 Notices and Communications between the Parties.

9.2.1 Certain Notices Required Under This Agreement. The following notices must be sent via overnight delivery with delivery confirmation or certified mail, return receipt requested:

- (a) All notices for termination of this Agreement; and
- (b) All requests for mediation and/or arbitration.

9.2.2 All Other Notices and Communications. All other notices and communications between the parties which are necessary for the proper administration of this Agreement (including notices required within this Agreement which are not included in Section 9.2.1 above) may be communicated via regular U.S. mail, confirmed facsimile or confirmed electronic mail.

9.2.3 Confidential and Protected Health Information. If a notice or communication includes information which is confidential or proprietary to either or both parties and/or which includes PHI as defined under HIPAA, then the following restrictions must be observed when communicating such information:

- (a) U.S. Mail/Certified Mail/Overnight Delivery: no additional requirements.
- (b) Facsimile Transmission: The information must be prefaced by a formal cover sheet noting the confidentiality of such information.
- (c) Web Site: Not a permitted method of notice or communication for confidential information and PHI, unless the Web Site is secured or the information appropriately encrypted.
- (d) Electronic Mail: Not a permitted method of notice or communication for confidential information and PHI, unless the electronic mail is secured or the information is appropriately encrypted.

9.2.4 Address for Notices. Notices to County shall be sent to: (i) the facsimile or postal address of County's billing service location or any other revised postal address or facsimile provided by County to CareOregon in writing; or (ii) the electronic mail address designated by County for electronic notices. Notices to CareOregon shall be sent to:

CareOregon, Inc.
315 SW 5th Avenue
Portland, Oregon 97204
Attention: Contract Department

Or any revised address provided to County in writing. The facsimile, postal address or electronic mail address for notice may be changes on prior written notice to the other party.

9.2.5 When Made. For notices described under Section 9.2.1 above, the notice will be deemed to have been made on the date it was delivered. For notices and communications described under Section 9.2.2, the notice or communication will be deemed to have been made when the facimile or email is confirmed.

9.3 Assignment of Contract, Successors in Interest.

9.3.1 CareOregon shall be permitted to assign or transfer its interest in this Agreement without prior consent of County.

9.3.2 County shall not assign or transfer its interest in this Agreement, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or in any other manner, without prior written consent of CareOregon. Any such assignment or transfer, if approved, is subject to such conditions and provisions as CareOregon may deem necessary. No approval by CareOregon of any assignment or transfer of interest shall be deemed to create any obligation of CareOregon in addition to those set forth in this Agreement. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties, their respective successors and permitted assigns.

9.4 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.

9.5 Entire Agreement; Amendments. This Agreement and Exhibits constitute the full and complete expression of the rights and obligations of the parties with respect to the subject matter and supersedes all prior understandings and agreements, whether oral or written. This Agreement may only be amended pursuant to the provisions described in Section 9.1.

9.6 Trade Secrets. Except as otherwise required by law, County agrees not to disclose to any third party any trade secrets that are disclosed to it as a result of its participation in this Agreement. "Trade Secrets" shall mean information that is defined as a trade secret under ORS 192.345(2) CareOregon considers this Agreement to be a trade secret. County agrees that it will not make use of, disseminate, disclose or in any way circulate any trade secrets. Trade secrets may be used as necessary to perform the services required under this Agreement and may be disclosed by a party to this Agreement to its own employees that require access to such information for the purposes of this Agreement. This paragraph does not prevent disclosure in connection with an audit or survey in the normal course of business by regulatory authorities, certified public accountants, accrediting institutions and the like; provided the recipient is under a duty to protect the confidentiality of the information disclosed.

9.7 Waiver. The waiver of any provision of this Agreement shall only be effective if set forth in writing and signed by the waiving party. Any such or other waiver shall not operate as, or be deemed to be, a continuing waiver of the same or of any other provision of this Agreement.

9.8 Third-Party Rights. The parties do not intend the benefits of this Agreement to inure to any third person not a signatory to this Agreement. The Agreement shall not be construed as creating any right, claim, or cause of action against any party by any person or entity not a party to this Agreement except as otherwise described in this Agreement.

9.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all counterparts together shall constitute one and the same instrument. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission will be deemed to have the same legal effect as delivery of an original signed copy of the Agreement.

[Signature Page Follows]

The foregoing terms are agreed to by the parties.

CareOregon, Inc.

By: _____

Name: Eric C. Hunter _____

Title: Chief Executive Officer _____

Date Signed: _____

Clackamas County

By: _____

Name: _____

Title: _____

Date Signed: _____

TIN: _____

BUSINESS ASSOCIATE AGREEMENT

CareOregon, Inc.
315 SW Fifth Avenue
Portland, Oregon 97204

THE COMPANIES

Clackamas County
2051 Kaen Road
Oregon City, OR 97045

BUSINESS ASSOCIATE

This Business Associate Agreement (“BAA”) is between the Companies and Business Associate.

Business Associate and the Companies have entered into an CareOregon Clackamas County Agreement effective January 1, 2020 (“Agreement”). The parties’ activities pursuant to the Agreement sometimes may involve (i) the disclosure of PHI by the Companies (or another business associate of the Companies) to Business Associate, (ii) the use or disclosure by Business Associate of PHI received from the Companies and (iii) the transmission by Electronic Media or the maintenance in Electronic Media of Individually Identifiable Health Information by Business Associate. Accordingly, the relationship between the Companies and Business Associate is subject to provisions of the HIPAA Rules. The Companies and Business Associate intend to protect the privacy of PHI and the security of electronic PHI held by Business Associate in connection with the Agreement in compliance with this BAA, the HIPAA Rules and other applicable laws.

1. Definitions

Capitalized terms used, but not otherwise defined, in this BAA shall have the same meaning as those terms in the HIPAA Rules.

- (a) “Agent” means an agent as used and defined under the HIPAA Rules and federal common law.
- (b) “Breach” has the same meaning as in 45.C.F.R. § 164.402.
- (c) “Designated Record Set” has the same meaning as in 45 C.F.R. 164.501.
- (d) “Discovery” means the first day on which a Breach is known, or reasonably should have been known, to Business Associate (including any person, other than the individual committing the Breach, who is an employee or officer of Business Associate) or any Agent or Subcontractor of Business Associate.

- (e) “Effective Date” means the date first written above.
- (f) “Electronic Media” means the same as in 45 C.F.R. § 160.103.
- (g) “Electronic Protected Health Information” or “EPHI” means the same as in 45 C.F.R. § 160.103, limited for purposes of this BAA to EPHI received by Business Associate from, or received or created by Business Associate on behalf of, the Companies.
- (h) “Electronic Transactions Rules” means 45 CFR Part 162.
- (i) “Fundraising” means raising funds for the Business Associate’s own benefit as governed by 45 CFR § 164.514.
- (j) “HIPAA Rules” means the Privacy Rules, the Security Rules, and the Electronic Transactions Rules.
- (k) “Individual” means a person to which specific PHI applies.
- (l) “Marketing” means the same as in 45 CFR § 164.501.
- (m) “PHI” or “Protected Health Information” means the same as in 45 CFR § 160.103, limited for purposes of this BAA to PHI received by Business Associate or its Agent or Subcontractor from, or received or created by Business Associate, its Agent or Subcontractor on behalf of, the Companies.
- (n) “Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information in 45 CFR Part 160 and Part 164, Subparts A and E.
- (o) “Required by Law” means the same as in 45 C.F.R. § 164.103.
- (p) “Secretary” means the Secretary of the United States Department of Health and Human Services or the Secretary’s designee.
- (q) “Security Incident” means the same as in 45 CFR § 164.304.
- (r) “Security Rule” means the Security Standards for the Protection of Electronic Protected Health Information in 45 CFR Part 164, Subpart C.
- (s) “Subcontractor” means the same as in 45 C.F.R. § 160.103.
- (t) “Unsecured PHI” means the same as the term “unsecured protected health information” in 45 C.F.R. § 164.402.

2. Obligations and Activities of Business Associate

- (a) Business Associate agrees to not use or disclose PHI other than as permitted or required by this BAA or as Required by Law.

- (b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this BAA.
- (c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or a Subcontractor or Agent of Business Associate in violation of the requirements of this BAA.
- (d) Business Associate agrees to report to the Companies any use or disclosure of PHI by Business Associate or a Subcontractor or Agent of Business Associate not permitted under this BAA within five business days after Business Associate becomes aware of such disclosure.
- (e) Business Associate agrees to report to the Companies any Security Incident, Breach of Unsecured PHI or any use or disclosure of PHI that is not authorized by this BAA of which Business Associate becomes aware.
- (f) Business Associate will ensure that any Subcontractor or Agent of Business Associate using or disclosing PHI has executed a business associate agreement containing substantially the same terms as this BAA, including the same restrictions and conditions that apply through this BAA to Business Associate with respect to such PHI. Business Associate will ensure that any Agent to whom Business Associate provides PHI received from, or created or received by Business Associate on behalf of, the Companies has executed an agreement containing substantially the same restrictions and conditions that apply through this BAA to Business Associate with respect to such PHI. Business Associate will provide, upon written request by the Companies, a list of any such Subcontractors of Business Associate and any Agents of Business Associate using or disclosing PHI.
- (g) Business Associate will ensure that any permitted disclosure will be only as minimally necessary for the purpose of the disclosure.
- (h) Business Associate agrees to provide access, at the reasonable request of, and in the time and manner designated by, the Companies to PHI in a Designated Record Set, to the Companies or, as directed by the Companies, to an Individual in order to meet the requirements under 45 CFR § 164.524. If the Companies request an electronic copy of PHI that is maintained electronically in a Designated Record Set in Business Associate's custody or control or the custody or control of a Subcontractor or Agent of Business Associate, Business Associate will provide such PHI in the electronic format requested by the Companies unless the PHI is not readily produced in such format, in which case Business Associate will provide another reasonable electronic format as agreed to by the parties and the Individual requesting such PHI.
- (i) Within 30 days of receiving a request by the Companies, Business Associate will document disclosures of PHI and information related to such disclosures in such form as would be required for the Companies to respond to a request by an Individual for an accounting of disclosures in accordance with 45 C.F.R. § 164.528.
- (j) Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set as directed or agreed to by the Companies pursuant to 45 CFR § 164.526, at the request of the Companies or of the Individual concerned.

(k) Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, the Companies available to the Companies or, at the request of the Companies, to the Secretary or other regulatory official as directed by the Companies, in a time and manner requested by the Companies or such official for the purpose of determining the Companies' or Business Associate's compliance with the HIPAA Regulations.

(l) Business Associate agrees to implement administrative, physical, and technical safeguards (including written policies and procedures) that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that it receives from, or creates or receives on behalf of, the Companies as required by the Security Rule. Business Associate will ensure that any Agent or Subcontractor to whom Business Associate provides EPHI agrees to implement reasonable and appropriate administrative, physical and technical safeguards to reasonably and appropriately protect the confidentiality, integrity and availability of such EPHI. Business Associate agrees to comply with Sections 164.306, 164.308, 164.310, 164.312, and 164.316 of Title 45, Code of Federal Regulations with respect to all EPHI.

(m) In conducting any electronic transaction that is subject to the Electronic Transactions Rule on behalf of the Companies, Business Associate agrees to comply with all requirements of the Electronic Transactions Rule that would apply to the Companies if the Companies were conducting the transaction itself. Business Associate agrees to ensure that any Agent or Subcontractor of Business Associate that conducts standard transactions with PHI of the Companies will comply with all of the requirements of the Electronic Transactions Rule that would apply to the Companies if the Companies were conducting the transaction itself.

(n) Business Associate shall not disclose PHI to any member of its workforce unless Business Associate has advised such person of Business Associate's privacy and security obligations under this BAA, including the consequences for violation of such obligations. Business Associate shall take appropriate disciplinary action against any member of its workforce who uses or discloses PHI in violation of this BAA or applicable law.

(o) Business Associate shall notify the Companies of any Breach without unreasonable delay, and in no case later than five business days after Discovery of the Breach. Business Associate will require its Subcontractors and Agents to notify the Companies of a Discovery of a Breach at the same time its Subcontractors and Agents notify the Business Associate and the following shall apply:

(1) Notice to the Companies shall include, to the extent possible: (i) the names of the Individual(s) affected by the Breach; (ii) a brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known; (iii) a description of the types of Unsecured PHI that were involved in the Breach; (iv) any steps affected Individuals should take to protect themselves from potential harm resulting from the Breach; (v) a description of what Business Associate is doing to investigate the Breach, to mitigate harm to the affected Individual(s), and to protect against further Breaches; (vi) any notice Business Associate has given pursuant to 45 CFR § 164.404 and (vii) any other information that the Companies reasonably requests.

(2) After receipt of notice, from any source, of a Breach involving PHI used, disclosed, maintained, or otherwise possessed by Business Associate or any Subcontractor or Agent of Business Associate, the Companies may: (i) require Business Associate, at Business Associate's sole expense, to use a mutually agreed upon written notice to notify, on the Companies' behalf, the affected Individual(s), in accordance with the notification requirements set forth in 45 CFR § 164.404, without unreasonable delay, but in no case later than sixty (60) days after discovery of the Breach; or (ii) elect to itself provide such notice. Business Associate shall indemnify, hold harmless, and defend the Companies from and against any and all costs (including mailing, labor, administrative costs, vendor charges, and any other costs determined to be reasonable by the Companies), losses, penalties, fines, and liabilities arising from or associated with the Breach, including without limitation, the costs of the Companies' actions taken to: (i) notify the affected Individual(s) of and to respond to the Breach; (ii) mitigate harm to the affected Individual(s); (iii) respond to questions or requests for information about the Breach; and (iv) fines, damages or penalties assessed against the Companies on account of the Breach of Unsecured PHI.

(p) Business Associate shall not use or disclose PHI that is genetic information, or sell (or directly or indirectly receive remuneration in exchange for), any PHI in violation of 45 CFR §164.502(a)(5).

(q) Business Associate shall not use or disclose PHI for Marketing or Fundraising purposes without prior written consent from the Companies, subject to any conditions of such consent.

3. **Permitted Uses and Disclosures by Business Associate**

(a) Subject to this BAA and applicable law, Business Associate may use or disclose PHI in connection with functions, activities or services for, or on behalf of, the Companies under the Agreement, provided that such use or disclosure would not violate the HIPAA Rules or the Companies' own policies and procedures concerning compliance with the "minimum necessary" standard under 45 CFR § 164.502(b) if performed by the Companies.

(b) Business Associate may use and disclose PHI for the proper management and administration of Business Associate or to carry out the legal obligations of Business Associate, but only if:

(1) The disclosure is required by Law; or

(2) Business Associate receives reasonable assurances from any party to whom the PHI is disclosed that: (i) the PHI will be held confidentially by that party; (ii) the PHI will be used or further disclosed by that party only as required by law or for the purpose for which it was disclosed to that party; and (iii) the party agrees to notify Business Associate of any Breaches of which the party becomes aware.

4. Obligations of the Companies

(a) The Companies shall provide Business Associate with its notice of privacy practices produced in accordance with 45 CFR § 164.520 and any changes to such notice while this BAA is in effect.

(b) The Companies shall provide Business Associate with any changes in or revocation of permission by any Individual for use or disclosure of PHI if such change or revocation affects Business Associate's permitted or required uses and disclosures of the PHI.

(c) The Companies shall notify Business Associate of any restrictions on the use or disclosure of PHI that the Companies have agreed to in accordance with 45 CFR § 164.522 to the extent that such restrictions affect Business Associate's use or disclosure of PHI.

5. Term and Termination

(a) This BAA shall be effective as of the Effective Date and shall terminate when all PHI provided is destroyed or returned to the Companies, or, if it is infeasible to return or destroy PHI, as long as protections are extended to such PHI in accordance with (c)(2).

(b) Upon the Companies obtaining knowledge of a material breach or violation of this BAA by Business Associate, the Companies shall take one of the following actions:

(1) If the Companies determine that the breach or violation is curable, the Companies shall provide an opportunity for Business Associate to cure the breach or end the violation within a reasonable time period set by the Companies, which shall not exceed 90 days. If the breach or violation is not cured or ended within the time set by the Companies, the Companies may: (i) immediately terminate this BAA and the Agreement; or (ii) suspend performance by the Companies under the Agreement until such breach or violation is cured.

(2) If the Companies determine that the breach or violation is not curable, The Companies immediately terminate this BAA and the Agreement.

(3) If the Companies determine that neither a termination of this BAA and the Agreement nor a cure of a breach or violation is feasible, the Companies may take such other appropriate actions to remedy, correct or mitigate the breach or violation as the Companies shall determine.

(4) In addition to the forgoing, the Companies may immediately terminate this BAA and the Agreement if the Companies determine that Business Associate has violated a material term of this BAA concerning the Security Rule.

(c) Effect of Termination.

(1) Except as provided in paragraph (c) (2), upon termination of this BAA for any reason, Business Associate shall return or destroy all PHI in possession of Business Associate, its Agents or Subcontractors. Business Associate, its Agents and Subcontractors shall retain no copies of the PHI.

(2) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to the Companies notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this BAA to such PHI (including PHI held by Agents or Subcontractors of Business Associate) and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate, its Agents or Subcontractors maintain such PHI.

6. Indemnification

Business Associate agrees to indemnify and hold harmless the Companies from direct losses and damages suffered as a result of Business Associate's breach of its obligations under this BAA, including but not limited to direct losses and damages relating to third party claims. The obligations under this Section 6 regarding indemnification will survive any expiration or termination of this BAA.

7. Miscellaneous

(a) A reference in this BAA to a section in the HIPAA Rules means the section as in effect or as amended, and for which compliance is required.

(b) The Parties agree to take such action as is necessary to amend this BAA from time to time for the Companies to comply with the requirements of the HIPAA Rules and the Health Insurance Portability and Accountability Act, Public Law 104-191, as amended.

(c) The respective rights and obligations of Business Associate under Section 5 of this BAA shall survive the termination of this BAA.

(d) Any ambiguity in this BAA shall be resolved in favor of a meaning that permits the Companies to comply with the HIPAA Rules and other applicable law. The section and paragraph headings of this BAA are for the convenience of the reader only, and are not intended to act as a limitation of the scope or meaning of the sections and paragraphs themselves.

(e) Subject to the following, this BAA shall not be assigned or otherwise transferred by a party without the prior written consent of the other party, which consent shall not be unreasonably withheld. However no such consent shall be required for either party's assignment or transfer of this BAA in connection with a merger, sale or transfer of all or substantially all of the business or assets of the assigning party.

(f) The invalidity of any term or provision of this BAA will not affect the validity of any other provision. Waiver by any party of strict performance of any provision of this BAA will not be a waiver of or prejudice any party's right to require strict performance of the same provision in the future or of any other provision on the same or any other occasion.

(g) Any notices permitted or required by this BAA will be addressed to the receiving party at the address shown at the top of this BAA or at such other address as either party may provide to the other.

(h) This BAA may be executed in multiple counterparts, all of which together will constitute one agreement, even though all parties do not sign the same counterpart.

(i) To the extent of any inconsistency between any other agreement between the parties and this BAA, the provisions of this BAA shall prevail.

(j) This BAA supersedes any other business associate agreement in effect among or between the parties to this BAA.

IN WITNESS WHEREOF, the parties have caused this Business Associate Agreement to be executed on their behalf by their duly authorized representatives' signatures as of the dates set forth below.

THE COMPANIES

CareOregon, Inc.

By _____

Title: _____

Date: _____

BUSINESS ASSOCIATE

Clackamas County

By _____
NAME:

Title: _____

Date: _____

January 23, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement with Clackamas Community College for
HB2017 State Transportation Improvement Fund Regional Coordination Program Funds
for Expansion of the CCC Xpress Shuttle

Purpose/Outcomes	The purpose of this grant is to pass through funding to Clackamas Community College to fund expansion of their existing shuttle service CCC Xpress
Dollar Amount and Fiscal Impact	The maximum agreement amount is \$273,083.24. The agreement is funded through HB 2017 funds received under agreement with TriMet
Funding Source	HB 2017 State Transportation Improvement Fund (STIF) Discretionary Funds.
Duration	Upon signature of both parties until June 30, 2021
Previous Board Action	062719-A10 Intergovernmental Agreement with Tri-County Metropolitan District of Oregon for HB 2017 transportation funding
Strategic Plan Alignment	1. This aligns with the Social Service Division's strategic priority to provide services that allow individuals and families to remain in their own homes and communities. 2. This funding aligns with the County's strategic priority to ensure safe, healthy and secure communities.
Counsel Review	County Counsel approved the agreement on 1/2/2020
Contact Person	Brenda Durbin, Director – Social Services Division – (503) 655-8641
Contract No.	H3S9612

BACKGROUND:

The Social Services Division of the Department of Health, Housing, and Human Services requests approval of an intergovernmental agreement with Clackamas Community College (CCC) for Special Transportation Improvement Fund (STIF) for expansion of the CCC Xpress Shuttle to provide transit service between Oregon City and Clackamas.

House Bill 2017 (HB 2017), titled Keep Oregon Moving, implemented a new 0.1% employee payroll tax to fund public transportation. This tax went into effect July 1, 2018 and provides a dedicated source of funding for expanding public transportation service in Oregon. This new funding source is called the Statewide Transportation Improvement Fund (STIF).

Under the STIF program rules, TriMet is the Qualified Entity (direct recipient) of funds for Washington, Multnomah, and Clackamas Counties. The funds generated within each transit/transportation district's boundaries will go directly to that transit provider.

Healthy Families. Strong Communities.

This agreement also includes funds generated within the TriMet Service district for the Regional Coordination Program. TriMet has set aside funds as part of their plan to fund projects in Clackamas County that enhance transit access opportunities. Clackamas County has received funds on behalf of Clackamas Community College to expand their existing CCC Xpress Shuttle project. CCC Xpress provides bus service between the CCC Oregon City campus and the Harmony Road campus in Clackamas, as well as Clackamas Town Center. This service is for students attending CCC but is also open to general public. These funds will allow CCC to provide service during summer term as well as evening service.

This agreement is effective upon execution and continues until June 30, 2021. County Counsel approved the agreement on 1/2/2020. No county general funds are involved.

RECOMMENDATION:

Staff recommends the Board approval of this agreement and that Richard Swift, H3S Director, be authorized to sign on behalf of Clackamas County.

Respectfully submitted,



Richard Swift, H3S Deputy 1/2020

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

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND CLACKAMAS COMMUNITY COLLEGE**

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("County"), a political subdivision of the State of Oregon, and Clackamas Community College ("Agency"), a unit of local government, collectively referred to as the "Parties" and each a "Party."

RECITALS

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

1. ORS 184.751 establishes the Statewide Transportation Improvement Fund ("STIF"), which appropriates funds to the Oregon Department of Transportation to finance investments and improvements in public transportation services.
2. The STIF Formula Fund is intended to improve Public Transportation Services for current and potential future Oregon transit users by distributing moneys to Qualified Entities. STIF Formula Funds are not intended to supplant local funding sources to maintain existing services.
3. The Commission has approved TriMet's multi-year plan for use of STIF Formula Funds through the end of Fiscal Year 2021. TriMet is a recipient of STIF Formula Funds as it is authorized to receive STIF Formula Funds directly from the Oregon Department of Transportation. TriMet's STIF plan consists of numerous projects to provide public transportation services in TriMet's area of responsibility based on anticipated STIF Formula Funds.
4. County is authorized to receive STIF Formula Funds and provide public transportation services in and around Clackamas County, Oregon. County provides public transportation services in TriMet's "Area of Responsibility," as that phrase is defined by OAR 732-040-0005(5). County may disburse STIF Formula Funds to transportation service providers as outlined in the subrecipient agreement entered into by and between County and TriMet (GP200809EV) (the "Subrecipient Agreement"), attached hereto as Exhibit C and incorporated by this reference herein.
5. TriMet's STIF Plan anticipates sufficient future STIF Formula Funds for Clackamas County for a project or projects that provide Public Transportation Services as specified in this Agreement.
6. Pursuant to ORS Chapter 184 and OAR Chapter 732, Divisions 40 and 42, Clackamas County and CCC enter into this Agreement for the sole purpose of disbursing the approved STIF Formula Funds to Agency in order for Agency to complete one or more tasks specified in TriMet's STIF plan. **Funds shall be used solely for the project(s) identified in the STIF Plan and shall not be used for any other purpose.**

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

TERMS

1. **Term.** This Agreement shall be effective upon execution, and shall expire upon the completion of each and every obligation of the Parties set forth herein, or June 30, 2021, whichever is sooner.

The parties acknowledge that Work has been performed pursuant to this Agreement prior to its execution and hereby ratify the Work performed beginning on June 1, 2019, through execution of this agreement, in accordance with the terms of this Agreement.

2. **Scope of Work.** The Agency agrees to provide the services further identified in the Scope of Work attached hereto as Exhibit A and incorporated herein ("Work").
3. **Consideration.** The County agrees to pay Agency, from available and authorized funds, a sum not to exceed \$273,083.24, for accomplishing the Work required by this Agreement.
4. **Payment.** Unless otherwise specified, the Agency shall submit monthly invoices for Work performed and shall include the total amount billed to date by the Agency prior to the current invoice. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. Payments shall be made to Agency following the County's review and approval of invoices submitted by Agency. Agency shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above.
5. **Representations and Warranties.**
 - A. *Agency Representations and Warranties:* Agency represents and warrants to County that Agency has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of Agency enforceable in accordance with its terms.
 - B. *County Representations and Warranties:* County represents and warrants to Agency that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.
 - C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
6. **Termination.**
 - A. Either the County or the Agency may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
 - B. Either the County or the Agency may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the

Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.

- C. The County or the Agency shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
 - D. Either party may terminate this Agreement in the event that party fails to receive expenditure authority, including but not limited to receipt of state or federal funds, including STIF Formula Funds, sufficient to allow the party, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either party is prohibited from paying for such work from the planned funding source.
 - E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
7. **Indemnification.** The Agency 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 Agency, its subcontractors, agents, or employees. The Agency agrees to indemnify, hold harmless and defend Clackamas 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 Agency or the Agency's employees, subcontractors, or agents.

However, neither Agency nor any attorney engaged by Agency shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall Agency settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.

- 8. **Insurance** Agency shall maintain insurance, or self-insurance, in the amounts provided in Exhibit B of the Subrecipient Agreement .
- 9. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon

receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

A. Teresa Christopherson or their designee will act as liaison for the County.

Contact Information:

Teresa Christopherson
Administrative Services Manager
Clackamas County
2051 Kaen Road Oregon City, OR 97045
P: 503-650-5718

Ray Atkinson or their designee will act as liaison for the Agency.

Contact Information:

Ray Atkinson
Transportation Systems Analyst
Clackamas Community College
19600 Molalla Ave, Oregon City, OR 97045
P: 503-594-0989

10. General Provisions.

A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and Agency that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Agency, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.

B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein.

Agency shall comply with ORS 184.751 through 184.766 and the provisions of OAR Chapter 732, Divisions 40 and 42, as may be amended, and the terms of the of the Subrecipient Agreement, as if Agency were the subrecipient under the Subrecipient Agreement.

Agency shall further comply with any and all terms, conditions, and other obligations as may be required by the applicable State or Federal agencies providing funding for performance under this Agreement, whether or not specifically referenced herein.

Failure to comply with such obligations is a material breach of this Agreement.

- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **Access to Records.** Agency shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. Agency shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, Agency shall permit the County's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Work Product.** All work performed under this Agreement shall be considered work made for hire and shall be the sole and exclusive property of the District. The District shall own any and all data, documents, plans, copyrights, specifications, working papers and any other materials produced in connection with this Agreement. On completion or termination of the Agreement, the Agency shall promptly deliver these materials to the District's Project Manager.
- F. **Hazard Communication.** Agency shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed, which includes any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by Oregon Administrative Rules, Chapter 137, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon

County's request, Agency shall immediately provide Material Safety Data Sheets for the products subject to this provision.

- G. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- H. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- I. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- J. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- K. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- L. **No Third-Party Beneficiary.** Agency and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- M. **Subcontract and Assignment.** Agency shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written

approval from the County, which shall be granted or denied in the County's sole discretion. County's consent to any subcontract shall not relieve Agency of any of its duties or obligations under this Agreement. Agency shall not be relieved of any responsibility for performance of Agency's duties under this Agreement, regardless of any subcontract entered into. Agency shall require any subcontractor performing services under this Agreement to enter into a written agreement with Agency before the commencement of services, which shall require the subcontractor to comply with ORS 184.751 through 184.766 and the provisions of OAR Chapter 732, Divisions 40 and 42, as may be amended, and the terms of this Agreement. Agency shall specifically include in all subcontracts a requirement that the subcontractor shall be bound as provided in this Agreement and exhibits thereto.

- N. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- O. **Survival.** All provisions in Sections 5, 7, and 10 (A), (B), (C), (D), (G), (H), (I), (J), (L), (P), (Q), (T), and (U) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- P. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement. This includes, but is not limited to, Agency's obligation to take all necessary steps, and execute and deliver any and all necessary written instruments, necessary for County to comply with applicable State or Federal funding requirements.
- Q. **Time is of the Essence.** Agency agrees that time is of the essence in the performance this Agreement.
- R. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- S. **Force Majeure.** Neither Agency nor County shall be held responsible for delay or default caused by events outside of the Agency or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Agency shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- T. **Confidentiality.** Agency acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire confidential information. Any and all information of any form obtained by Agency or its employees or agents in the performance of this Agreement shall be deemed confidential information of the County ("Confidential Information"). Agency agrees to hold Confidential Information in strict confidence, using at least the same

degree of care that Agency uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement.

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

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

Clackamas County

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

Clackamas Community College

Signing on Behalf of the Board:

Richard Swift, Director
Health, Housing & Human Services Dept

Date



Alissa Mahar
VP of College Services

1-9-2020
Date