

May 20, 2021

Board of County Commissioners  
Clackamas County

Members of the Board:

Rent Assistance Program Update and Request for Expedited Approval of an  
Inter-Governmental Agreement with the State of Oregon, Housing & Community Services Department  
to Provide the Next Round of Rent Assistance Services

<b>Purpose/Outcomes</b>	Update Board on Rent Assistance Program and request expedited approval of an Inter-Governmental Agreement to provide rent assistance to eligible households impacted by the COVID-19 crisis.
<b>Dollar Amount and Fiscal Impact</b>	Not To Exceed amount of \$10,192,438 of COVID rental assistance funds. \$8,493,698 amount available
<b>Funding Source</b>	U.S. Treasury Consolidated Appropriations Act Federal pass-through funding from the State of Oregon – Oregon Housing and Community Services Department (OHCS). No County General Funds are involved.
<b>Duration</b>	Grant effective upon signature to Sept 30, 2022 with a specific eligible expenditure period.
<b>Previous Board Action</b>	On March 9, 2021, the Board approved the process to distribute \$12,478,950 in federal rent assistance funds directly awarded to the County and \$2,347,249 in state rent assistance funds from OHCS.
<b>Counsel Review</b>	The agreement was approved by Counsel on May 18, 2021 AN
<b>Procurement Review</b>	Was the item processed through Procurement? N/A- This is a revenue agreement.
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. This funding aligns with the Social Services Division’s strategic priority to provide housing stabilization and supportive services to people who are homeless or at risk of becoming homeless so they can obtain and maintain permanent housing.</li> <li>2. Ensure safe, healthy and secure communities.</li> </ol>
<b>Contact Person</b>	Brenda Durbin – Social Services Division - 503 655-8641
<b>Contract No.</b>	State Grant #6183, H3S#10117

## **BACKGROUND:**

### Previous Rent Assistance Funding

On March 9, 2021, the Board approved the recommended process to distribute \$14,829,199 in state and federal rent assistance funding. Three agencies, Ant Farm, Clackamas Women's Services, and NW Family Services, are currently under contract to expend these funds. The Social Services Rent Assistance team will also process these funds.

To date, over 75% of the state rent assistance funds have been distributed to Clackamas County households, and we are on track to fully expend all state funds by June 30, 2021.

### New Rent Assistance Funding

Because Clackamas County's population is greater than 200,000, the County received a direct allocation from the Federal Treasury for rent assistance in the amount of \$12,478,950. The State of Oregon also received an allocation from the same Treasury funds and will distribute those dollars via a formula to Community Action Agencies across the state. Clackamas County will receive \$8,493,698 from the state allocation.

The State will require awardees to process rent assistance requests exclusively via the Allita system. Allita is an on-line portal where renters will input personal data and upload various documents, including tax returns. The system will prioritize applications, and then forward them to local agencies. The local agency, Social Services, will be responsible for ensuring that all required information is included, and will then process rent and utility payments for eligible households.

Clackamas County residents will have the option of applying through the Allita system, or through the existing Coordinated Housing Access (CHA) line that is being used to process applications from the direct-from-Treasury allocation. Social Services will work with PGA to inform County residents about the different ways that they can access rent assistance. Communications will also focus on providing information on the anticipated wait time between application, approval, and the receipt of the actual assistance. Social Services expects a tremendous demand for rent assistance. We are in the process of increasing staff capacity, but expect some delays as new staff are hired and trained.

While many County residents will be able to access the Allita portal, we expect that some County residents, especially those without access to computer technology, may struggle to use the system. The CHA access point will be an important option for these households.

Social Services is also in the process of securing agreements with one or more organizations who will assist members of the public on how to use the Allita system. This will provide more access to communities of color, and other groups who experience barriers to accessing rent assistance.

Another round of Federal rent assistance is expected. The American Rescue Plan allocated \$21.6 billion nationwide for rent assistance. Clackamas County expects to receive \$9.9 million in direct funding from the Treasury, and an additional pass through amount from the state. We will keep the Board updated as we receive more information on the next round of funding.

The Allita system is scheduled to go live on Wednesday, May 19<sup>th</sup>. We therefore request expedited approval of the agreement with the State so that County residents have access to these funds as soon as possible.

**RECOMMENDATION:**

Staff recommends the Board approve the process described above, and that Tootie Smith, Board Chair, or her designee, be authorized to sign the Agreement on behalf of the Clackamas County Board of Commissioners.

Respectfully submitted,

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

**STATE OF OREGON  
OREGON HOUSING AND COMMUNITY SERVICES**

**GRANT AGREEMENT #6183**

***Oregon Emergency Rental Assistance Program***

This Grant Agreement (this "Agreement") is entered into by and between the State of Oregon, acting by and through its **Housing and Community Services Department**, together with its successors and assigns hereinafter referred to collectively as "OHCS" or "Agency," and **Clackamas County** acting by and through its Health, Housing and Human Services Department, hereinafter referred to as "Subgrantee".

**Recitals**

- A.** Agency has been granted authority under subsection (a) of Section 501 of Division N, Title V, Subtitle A ("Emergency Rental Assistance" or "ERA") of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260 (Dec. 27, 2020) by the United States' Department of the Treasury ("U.S. Treasury") to make payments to certain recipients to provide emergency rental assistance (the "Program").
- B.** Subgrantee is willing to execute this Agreement obligating itself to comply with the terms and conditions hereof, including but not limited to satisfaction of its obligations arising hereunder in exchange for receipt of the funds described herein.

**Agreement**

NOW THEREFORE, for good and sufficient consideration, including the terms and conditions herein, it is agreed by and between the parties hereto as follows:

**1. Incorporation; Definitions.**

- 1.1. Incorporation.** The foregoing Recitals, the Community Plan (as later defined), the Notice or Notices of Allocation (NOAs) (as later defined), and the Exhibits hereto are incorporated into this Agreement by reference, except that the Recitals, the Community Plan, the NOAs, and the Exhibits do not modify this Agreement's express provisions.
- 1.2. Definitions.** The words and phrases used in this Agreement have the meanings given herein or as used in the Program Requirements (as later defined).

**2. Authority.**

Pursuant to Oregon Revised Statutes (ORS) 456.559(1)(g) and ORS 456.625(17), Agency is authorized to enter into a grant agreement and provide funding for the purposes described in this Agreement.

**3. Term of Agreement.**

When all Parties have executed this Agreement, and all necessary approvals have been obtained (the "Executed Date"), this Agreement is effective and has a funding start date as of March 13, 2020 (the "Effective Date"), and, unless extended or terminated earlier in accordance with its terms, will expire on **September 30, 2022** (the "Termination Date").

**4. Grant Managers and Program Coordinators.**

- 4.1.** Agency's Grant Manager is:

Laura Lien, Assistant Director of Homeless Services  
725 Summer Street NE, Suite B  
Salem, OR 97301  
(503) 580-9335  
Laura.L.Lien@oregon.gov

**4.2.** Agency's Program Coordinator is:  
Samuel Kenney, Homeless Services Program Analyst  
725 Summer Street NE, Suite B  
Salem, OR 97301  
(503) 986-2136  
Samuel.Kenney@oregon.gov

**4.3.** Subgrantee's Grant Manager is:

Teresa Christopherson  
2051 Kaen Rd, #135  
Oregon City, OR 97045  
503-650-5718  
[teresachr@clackamas.us](mailto:teresachr@clackamas.us)

**4.4.** A Party may designate a new Grant Manager by written notice to the other party.

## **5. Project Activities; Program Requirements.**

**5.1. Project Activities.** Subgrantee must perform the project activities set forth in Exhibit A, Emergency Rental Assistance Program Element (the "Work"), attached hereto and incorporated into this Agreement by this reference, for the period beginning on the Effective Date and ending on the Termination Date (the "Performance Period").

**5.2. Program Requirements.** Subgrantee agrees to timely satisfy, to the satisfaction of Agency, all requirements of this Agreement, including all applicable Agency administrative rules, all applicable Agency program guidance (including but not limited to handbooks, manuals, and frequently asked questions), all related Agency directives and other orders (including, but not limited to corrective action notices), the Emergency Rental Assistance Program Element attached in Exhibit A hereto, and all other applicable federal, state, and local statutes, rules, regulations, ordinances, and orders (all of the foregoing, as amended from time to time, collectively, the "Program Requirements").

**5.3. Updates to Federal Guidance.** In the event U.S. Treasury, or other applicable federal agency, issues guidance that conflicts with or changes the terms and conditions of this Agreement or the Program Requirements, Agency shall have a reasonable time to make any adjustments to or otherwise cure any conflicts with this Agreement and the Program Requirements.

## **6. Grant Funds.**

In accordance with the terms and conditions of this Agreement, Agency will provide Subgrantee up to \$10,192,438.00 (the "Grant Funds") for the Work. Agency will pay the Grant Funds from monies allocated from the U.S. Treasury for this Program (the "Funding Source").

## 7. Disbursement of Grant Funds; Allowable Costs.

### 7.1. Disbursement.

- 7.1.1. **Funding Availability.** Subject to the availability of sufficient monies in and from the Funding Source based on Agency's reasonable projections of monies accruing to the Funding Source, Agency will disburse Grant Funds to Subgrantee for the Work that is undertaken during the Performance Period.
- 7.1.2. **Community Plan.** Agency's disbursement of Grant Funds to Subgrantee are contingent upon Subgrantee's prior submission to Agency and Agency's review and acceptance of Subgrantee's plan to execute the Work in accordance with the Program Requirements (the "Community Plan").
- 7.1.3. **Notices of Allocation (NOAs).** Upon its acceptance of Subgrantee's Community Plan, Agency will issue by email or mail one or more Notices of Allocation (NOAs) to Subgrantee to indicate approval of the Community Plan. Subgrantee is subject to, and will comply with, all such NOA terms and conditions, including this Agreement and the Program Requirements. Any NOA issued as described herein is immediately effective, is incorporated into and constitutes a part of this Agreement. Subgrantee accepts a NOA, including modifications thereto, upon undertaking performance of the Work funded by a NOA. Agency reserves the right in its sole discretion to modify, correct, adjust, or terminate any NOAs. Agency's modification or termination of a NOA does not terminate Agency's remedies with respect to Subgrantee's performance or non-performance of obligations due under this Agreement.
- 7.1.4. **Federal Funding Terms.** Grant funds are derived from U.S. Treasury and are subject to the terms under which they are received. Subject to the availability of Program funds, Agency having continued funding, appropriation, limitation, allotment, or other expenditure authority sufficient to allow it, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement, and conditioned upon the terms and conditions of this Agreement, Agency will make the Grant Funds to Subgrantee up to the maximum principal amount stated above and perform under this Agreement. Agency will provide Grant Funds to Subgrantee only upon approved reimbursement requests for allowable costs incurred or, if allowed by Agency, to be incurred by Subgrantee consistent with the terms and conditions of this Agreement, including the Program Requirements.
- 7.1.5. **Backup Documentation; Substantiation.**
  - 7.1.5.1. Subgrantee must provide to Agency any information or detail regarding the expenditure of Grant Funds required under Exhibit A prior to disbursement or as Agency may request.
  - 7.1.5.2. Subgrantee's requests for Grant Funds must be supported by documentation satisfactory to Agency, including but not limited to: properly executed payroll and time records, invoices, contracts, vouchers, orders, canceled checks and/or any other accounting documents pertaining in whole or in part to the Agreement (or in the case of subrecipients, under their respective contracts with Subgrantee) in accordance with generally accepted accounting principles and applicable state and federal requirements, including as specified herein. Agency may require such other information or clarification as it deems necessary or appropriate.
- 7.1.6. **Approval by Agency.** Agency will only disburse Grant Funds to Subgrantee for activities completed or materials produced, that, if required by Exhibit A, are approved by Agency. If Agency determines any completed Work is not acceptable and any deficiencies are the responsibility of Subgrantee, Agency will prepare a detailed written description of the

deficiencies within fifteen (15) days of receipt of the materials or performance of the activity, and will deliver such notice to Subgrantee. Subgrantee must correct any deficiencies at no additional cost to Agency within fifteen (15) days. Subgrantee may resubmit a request for disbursement that includes evidence satisfactory to Agency demonstrating deficiencies were corrected.

**7.2. Conditions Precedent to Disbursement.** Agency's obligation to disburse Grant Funds to Subgrantee under this Agreement is subject to satisfaction of each of the following conditions precedent:

- 7.2.1. Agency has received sufficient funding, appropriations, expenditure limitation, allotments, or other necessary expenditure authorizations to allow Agency, in the exercise of its reasonable administrative discretion, to make the disbursement from the Funding Source;
- 7.2.2. No default as described in Section 16 has occurred; and
- 7.2.3. Grantee's representations and warranties set forth in Section 12 are true and correct on the date of disbursement(s) with the same effect as though made on the date of disbursement.

**7.3. Advances and Reimbursement of Grant Funds.**

- 7.3.1. **Generally.** Subgrantee must request Grant Funds in such form and manner as is satisfactory to or required by Agency. Further, in accordance with U.S. Treasury Regulations, 31 CFR Part 205, implementing the Cash Management Improvement Act, Subgrantee must limit any request for Grant Funds to the minimum amount needed to accomplish its described purposes and to time the request in accordance with the actual, immediate cash requirements of the Subgrantee in performing the Work. Submission of proper account records showing revenue and expenditures for the reporting period must be submitted as documentation to support the amounts being requested. The foregoing requirements apply to all Grant Funds requested under this Agreement.
- 7.3.2. **Advance of Funds (Projected).** Subgrantee may request and be paid in advance, provided it maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement, and financial management systems that meet the standards for fund control and accountability as established in this part. Advance payments to the Subgrantee must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the Subgrantee in carrying out the purposes of the grant as described in this Agreement. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the Subgrantee for allowable grant direct costs and the proportionate share of any allowable indirect costs. Subgrantee must make timely payment to contractors in accordance with the contract provisions. Advance grant fund payments are at Agency's sole discretion and will be made only as close as is administratively feasible to the actual use by the Subgrantee for applicable direct or indirect Work costs and only up to the proportionate share of such allowable costs as is permitted under the Agreement, including applicable Program Requirements.
- 7.3.3. **Reimbursement of Funds.** When the Subgrantee requests payment by reimbursement, reimbursement is the preferred method when the requirements in Section 7.3.2. above cannot be met. Agency will make payment within thirty (30) calendar days upon receipt of the reimbursement request and all adequate backup documentation (to the Agency's satisfaction, in its discretion), unless Agency reasonably believes the request to be improper.

**7.4. Disallowance of Costs.**

- 7.4.1. Agency is not responsible nor shall it pay for any costs disallowed either upon a request for funds or as a result of any audit, review, site visit, or other disallowance action by Agency, except for costs incurred by Subgrantee solely due to the willful misconduct or gross negligence of Agency, its employees, officers, or agents. If a cost is disallowed by Agency after reimbursement has occurred, Subgrantee shall repay all disallowed costs to Agency upon written notice within the time frame specified by Agency, which in no event shall exceed thirty (30) days.
- 7.4.2. If Subgrantee is a county, such disallowed costs may be recovered by Agency only through repayment, withholding, or by other means authorized by this Agreement or as allowed at law not inconsistent with the Oregon Constitution, and particularly Article XI, Section 10 and consistent with the Program Requirements and specifically requirements set forth by the federal government.
- 7.4.3. If Subgrantee is other than a county, Agency may recover such disallowed costs through repayment, withholding, offset, or other means permitted under this Agreement, by law or otherwise but consistent with the Program Requirements and specifically requirements set forth by the federal government.
- 7.4.4. Subgrantee will, and will cause its subrecipients to, cooperate with Agency and all appropriate investigative agencies and will assist in recovering invalid payments.
- 7.5. Unallowable Costs and Lobbying Activities.** Subgrantee will review and comply with the Program Requirements and adhere to provisions on allowable costs and expenditures. Subgrantee will, among other obligations, comply with the provisions prohibiting the expenditure of funds for lobbying and related activities, whether in 2 CFR Part 230, 2 CFR Part 225, or otherwise, as such provisions may be modified from time to time. If Subgrantee makes expenditures or incurs costs for purposes or amounts inconsistent with the allowable costs of the Grant Funds as described in Exhibit A or elsewhere in this Agreement, such funds are subject to recapture and Agency may exercise any and all remedies under this Agreement or otherwise available at law.
- 7.6. No Duplicate Payments.** Subgrantee may use other funds in addition to the Grant Funds to complete the Work; provided, however, the Subgrantee may not credit or pay any Grant Funds for Work costs that are paid for with other funds and would result in duplicate funding. Subgrantee is provided thirty (30) days to return the duplicative payments. After thirty (30) days, if a duplicate payment has not been returned or applied to a debt not already covered by Program funding, reimbursement of the duplicate payment must be made to Agency and shall include the entire amount of duplicate payment funds received regardless of Agency reimbursement amounts.
- 7.7. Suspension of Funding and Project.** Agency may by written notice to Subgrantee, temporarily cease funding and require Subgrantee to stop all, or any part, of the Work for a period of up to 180 days after the date of the notice, if Agency has or reasonably projects that it will have insufficient funds from the Funding Source to disburse the full amount of the Grant Funds. Upon receipt of the notice, Subgrantee must immediately cease all Work, or if that is impossible, must take all necessary steps to minimize the Work.

If Agency subsequently projects that it will have sufficient funds, Agency will notify Subgrantee that it may resume activities. If sufficient funds do not become available, Subgrantee and Agency will work together to amend this Agreement and any applicable NOAs to revise the amount of Grant Funds and Work to reflect the available funds. If sufficient funding does not become available or an amendment is not agreed to within a period of 180 days after issuance of the notice, Agency will either (i) cancel or modify its cessation order by a supplemental written



notice, or (ii) terminate this Agreement as permitted by either the termination at Agency's discretion or for cause provisions of this Agreement.

## **8. Nonexclusive Remedies Related to Funding.**

**8.1. Spend Down and Reallocation Policy.** All Grant Funds, with the exception of administrative allocations, will be spent proportionally to the expenditure period at the rate prescribed below (as tracked through the OPUS "Award Summary" report).

### **8.1.1. Minimum Spending Target.**

Subgrantee has committed to certain spending targets in its time-bound expenditure plan, as approved by and on file with Agency. Notably, and at a minimum, Subgrantee's spending targets are the following:

- By September 30, 2021 (as may be extended pursuant to updates by U.S. Treasury), at least 65% of the funding must be spent.
- By September 30, 2022, all 100% of the funding must be spent.

Subgrantee's spending below the target(s) will be evaluated against the Subgrantee's time-bound expenditure plan (which outlines the Subgrantee's flexible spend rate) as approved by and on file with Agency. Any spending below the stated rate(s) is subject to rescission of Grant Funds. Any amount of funding greater than 10% of a funding sources total allocation or a combined total of \$100,000 that is subject to rescission will trigger Community Action Agency (CAA) Board Notification.

**8.2. Agency and Subgrantee Collaboration to Cure.** When spending is below the thresholds described above, and prior to funding rescission, Agency and Subgrantee agree to collaborate to find solutions that resolve the issues, provided it is within Agency's control (in its sole discretion) to adjust to meet Subgrantee's needs and does not conflict with federal law. Agency will allow proposals from Subgrantee to cure spending issues and prevent funding rescission. Subgrantee will have ten (10) days to modify its Community Plan and update the flexible spend rate in its time-bound expenditure plans to demonstrate how compliance with spending targets will be achieved. If Subgrantee continues to be unable to meet the spending targets and prior to a rescission of Subgrantee's funding, Agency may take further action, including but not limited to notifying the Subgrantee's executive leadership (e.g., Executive Director) and governing body (e.g., Board Chair) and reporting to the Housing Stability Council.

### **8.3. Withholding, Retention, and Redistribution of Grant Funds.**

#### **8.3.1. Withholding.**

Agency may withhold any and all undisbursed Grant Funds from Subgrantee if Agency determines that Subgrantee has failed to timely satisfy any material obligation arising under this Agreement, including but not limited to compliance with the Program Requirements, providing complete, accurate, and timely reports in a form satisfactory to Agency, or if Agency determines that the rate or scale of requests for Grant Funds in any expenditure category materially deviates from an applicable NOA or is unsubstantiated by related documentation.

#### **8.3.2. Redistribution or Retention of Grant Funds.**

**8.3.2.1. Due to Non-Timely Use.** If Agency determines that Grant Funds are not obligated

for reimbursement by Subgrantee in a timely manner Agency may reduce Subgrantee's Grant funding and redistribute Grant Funds to other subgrantees or retain such funds for other Agency use, within applicable state and federal law. Agency may implement adjustments pursuant to this subsection by modifying the applicable NOA(s). This remedy is in addition to any other remedies available to Agency under this Agreement or otherwise.

8.3.2.2. **Due to Substantial Difference.** If Agency determines the rate of request for any expenditure or cost category is substantially different than in Agency-approved budget submissions, including applicable NOAs, Agency has sole discretion to reduce and redistribute or retain any and all funds otherwise available to Subgrantee under this Agreement. Agency may implement adjustments pursuant to this subsection by modifying the applicable NOA. This remedy is in addition to any other remedies available to Agency under this Agreement.

8.3.3. **Repayment of Excess Disbursed Funds.**

8.3.3.1. **Due to Modified NOA.** If Grant Funds previously disbursed by Agency to Subgrantee exceed a relevant modified NOA amount and remain unexpended by Subgrantee, Subgrantee shall not expend any such excess Grant Funds. Subgrantee, instead, shall return any remaining unexpended Grant Funds in excess of the modified NOA to Agency within 30 calendar days of the modified NOA unless another use of such funds is authorized in writing by Agency. This remedy is in addition to any other remedies available to Agency under this Agreement or otherwise.

8.3.3.2. **Due to Overpayment.** If Agency makes an overpayment of Grant Funds to Subgrantee in response to one or more funds requests, whether or not the underlying request(s) were inaccurate, Subgrantee shall repay such overpayment within thirty (30) calendar days of its discovery by Subgrantee or upon notice by Agency, unless Agency in writing designates an earlier time for repayment or authorizes another use by Subgrantee of such overpayment. This remedy is in addition to any other remedies available to Agency under this Agreement or otherwise.

8.3.4. **Return of Unexpended Funds.**

Within thirty (30) days following the end of the Performance Period or Termination of this Agreement, Subgrantee must return to Agency all unexpended Grant Funds, unless required earlier by U.S. Treasury guidance or in accordance with the Program Requirements.

9. **Online Systems.**

9.1. Subgrantee and its subrecipients must enter all appropriate and necessary data into OPUS (a web-based application developed by Agency), Allita HSM, or other Agency-approved system (the "Sites") at the time of client intake for this Program. Exceptions are only allowed with prior written approval by Agency.

9.2. **Sites' Terms and Conditions.** As a condition of use of the Sites, Subgrantee and its subrecipients ("User") agrees to all Agency terms and conditions contained in this Agreement, notices on the Sites, or as otherwise directed by Agency. User agrees to not use the Sites for any unlawful purpose. Agency reserves the right, at its discretion, to update or revise the Sites' terms of use. Continued use of the Sites constitutes acceptance of the Sites' terms and conditions.

9.3. **Local Data Collection.** Use of the Sites for additional reported "local" program data is at the entity's own risk. Agency will not modify or otherwise create any screen, report, or tool in the Sites to meet needs related to this local data.

- 9.4. Data Rights.** Subgrantee hereby grants and will require and cause any subrecipient to grant Agency the right to reproduce, use, display, adapt, modify, distribute, and promote the content in any form and disclose, as allowed by law, any or all of the information or data furnished to or received by Agency directly or indirectly resulting for this Agreement. Subgrantee also shall use and shall require and cause its subrecipients to use Client Release forms and Privacy Policy forms (samples provided by Agency) in connection with obtaining and transmitting client data.
- 9.5. Disclaimer of Warranties.** Subgrantee understands and agrees, and shall require its subrecipients to agree, that all materials, information, software, products, and services included in or available through the Sites (the “**Content**”) are provided “as is” and “as available” for use. The Content is provided without warranties of any kind, either express or implied, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, or non-infringement. Agency does not warrant that: (1) the content is accurate, reliable, or correct; (2) the Sites will be available at any particular time or location; (3) any defects or errors will be corrected; or (4) the content is free of viruses or other harmful components. Use of the Sites is solely at the User’s risk. User hereby accepts the risk of its use of the Sites, and of the use of the Sites by its subrecipients, and expressly waives any claims and causes of action against the State and Agency.
- 9.6. Limitation of Liability.** Subgrantee agrees that under no circumstances will Agency be liable for any direct, indirect, punitive, incidental, special, or consequential damages that result from the use of, or inability to use the Sites. This limitation applies whether the alleged liability is based on contract, tort, negligence, strict liability, or any other basis, even if Agency has been informed of the possibility of such damage.
- 9.7. Indemnification.** Subject to applicable law, Subgrantee agrees, and shall take all reasonable steps to cause its subrecipients and 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 attorney’s 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 of omissions of Subgrantee’s subrecipients and contractors or any of the officers, agents, employees or subcontractors of the subrecipient or 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 subrecipient or contract from and against any and all Claims.

**10. Contribution.**

- 10.1.** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (a “Third Party Claim”) against a Party (the “Notified Party”) with respect to the other Party (the “Other Party”) may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this Section and a 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 contribution under this Section 10 with respect to Third Party Claim.

**10.2.** With respect to a Third Party Claim for which Agency is jointly liable with Subgrantee (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable to Subgrantee in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of Subgrantee on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of the Subgrantee on the other hand shall be determined by reference to, and among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

**10.3.** With respect to a Third Party Claim for which Subgrantee is jointly liable with Agency ( or would be if joined in the Third Party Claim), Subgrantee shall contribute to the amount of expenses (including attorneys' fees), judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Subgrantee on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Subgrantee's contribution amount in any instance is capped to the same extend it would have been capped under Oregon law if it had sole liability in the proceeding.

**11. Fixed Assets.** If applicable, Subgrantee shall, and shall cause its subrecipients to, maintain policies and procedures for the management of property and equipment that comply with all requirements of the applicable Code of Federal Regulations, 2 CFR Subtitle B with guidance at 2 CFR Part 200, and specific requirements of the source of funds. These regulations shall apply to all equipment purchased with Agency funding, regardless of source of funds. The following practices are in addition to those otherwise required:

**11.1. High Risk Items.** Fixed assets with a value greater than \$5,000 will include all computer equipment, electronic equipment, photography equipment, hand tools and other items.

**11.2. Equipment.** The title to all equipment as defined in 2 CFR Part 200, purchased in whole or in part with funds provided under this Agreement, shall rest with the Subgrantee. Property and equipment purchased with Agency grant funds shall not be used for collateral or to secure financing.

**11.3. Insurance.** Subgrantee shall, at a minimum, provide the insurance coverage required by Oregon Revised Statute for automobiles and or equipment registration through Oregon Department of Transportation, Department of Motor Vehicles, that has been acquired in whole or in part with funds provided under this Agreement owned by Subgrantee. In its agreements with its subrecipients, Subgrantee shall require and cause its subrecipients to comply with the requirements of this Section, including adding Agency named as an additional insured party in all such motor vehicles and or equipment.

**11.4. Loaned Equipment / Property Disposition.** All fixed assets owned by Agency and loaned to Subgrantee under a standard agreement will remain the property of Agency, regardless of their value. The disposition of all loaned equipment shall be readily available.

**11.5. Disposal Requiring Prior Approval.** When Subgrantee, or its subrecipients, wishes to dispose of equipment having an original cost of more than \$5,000, and which has a current per-unit, fair-

market value of more than \$5,000, Subgrantee shall submit a written notification to the appropriate Agency's Program coordinator with a copy to the Agency's Financial Compliance Monitor. If Agency consents, Agency will provide instructions regarding the method of disposition. Agency reserves the right to refuse to consent to such disposal and the right to object to the timing of each disposition. Such disposition, if permitted, shall be done in a manner consistent with the property management standards for equipment of the Agency from which the original funding was received. In the case of mixed funding sources, the most restrictive standards shall apply.

11.5.1. Items of equipment with a current per-unit, fair-market value of \$5,000 or less may be retained, sold, or otherwise disposed of upon written notification to the appropriate Agency's Program coordinator with a copy to Agency's Financial Compliance Monitor with no further obligation. The Agency's Program coordinator shall be notified of all title transfers, sales, and other methods of disposition. Agency may review disposition records upon notification of Subgrantee.

## **12. Compliance and Monitoring.**

### **12.1. Compliance.**

12.1.1. Subgrantee will comply and will require and cause (including by contract) all subrecipients, vendors, contractors, agents, and assigns to comply with this Agreement, including applicable Program Requirements.

12.1.2. Without limiting the generality of the foregoing, Subgrantee will comply and will require and cause its subrecipients, vendors, contractors, agents, and assigns to comply with all federal requirements, including but not limited to the Federal Funding Accounting and Transparency Act (FFATA) of 2006 (P.L. 109-282), provisions of which include, but are not limited to a requirement for Subgrantees to have a Data Universal Numbering system (DUNS) number and to maintain a current registration in the SAMs (System for Awards Management) database.

12.1.3. Without limiting the generality of the foregoing, Subgrantee expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. Subgrantee shall, to the maximum extent economically feasible in performance of this Agreement, use recycled paper (as defined in ORS 279A.010(gg)), recycled PETE products (as defined in ORS 279A.010(hh)), and other recycled products (as "recycled product" is defined in ORS 279A.010(ii)).

### **12.2. Agency to Monitor Subgrantee.**

12.2.1. Agency, including its authorized representatives and authorized third parties, may monitor the activities and records of each Subgrantee and Subgrantee's subrecipients and

vendors as it deems necessary or appropriate for, among other things, to ensure: (1) Subgrantee and its subrecipients comply with the terms of this Agreement, including but not limited to the Program Requirements, and that Grant Funds are used properly for authorized purposes hereunder; and (2) that performance goals are achieved as specified in this Agreement, including without limitation in the Community Plan, NOAs, and the Program Requirements, and that performance is to the satisfaction of Agency.

12.2.2. Agency's monitoring activities may include any action deemed necessary or appropriate by Agency, to the extent permitted by Agency's authority, including, but not limited to the following: (1) the review (including copying) from time to time of any and all Subgrantee, subrecipient, and Vendor files, records, and other information of every type arising from or related to performance under this Agreement; (2) arranging for, performing, and evaluating general and limited scope audits; (3) conducting or arranging for on-site and field visits and inspections; (4) review of Subgrantee fiscal and program reports, and requiring appropriate Request for Funds documentation as well as such other information and clarification as it deems appropriate, prior to providing a Request for Funding approval, whether in whole, in part, or otherwise; and (5) evaluating, training, providing technical assistance and enforcing compliance of Subgrantee, subrecipients, vendors, and their officers, employees, agents, contractors and other staff.

12.2.3. Agency monitoring and enforcement activities may be conducted in-person, by telephone, and by other means deemed appropriate by Agency. Monitoring will be done through contractors, agents, or other authorized representatives.

12.2.4. Agency may, in its sole and absolute discretion, request assistance in monitoring from outside parties, including but not limited to the Oregon Secretary of State, the Oregon Attorney General, the federal government, and law enforcement agencies.

12.2.5. Agency (or the State or its agents) may require Subgrantee to perform some level of random audit of Program applications and Subgrantee will perform to the best of its ability.

**12.3. Subgrantee To Fully Cooperate.** Subgrantee agrees to fully and timely cooperate with Agency in the performance of any and all monitoring and enforcement activities, including causing its subrecipients, vendors, and contractors to so cooperate by agreement. Failure by Subgrantee or any of its subrecipients or vendors to comply with this requirement is sufficient cause for Agency to require special conditions, take such other action (including the exercise of available remedies) as it deems appropriate, and may be deemed by Agency as a material failure by the Subgrantee to perform its obligations under this Agreement.

**12.4. Subgrantee To Monitor Its Subrecipients.**

12.4.1. At least once during the term of this Agreement and as otherwise directed by Agency, Subgrantee will monitor the activities and expenditures of its subrecipients as is reasonable to ensure: (1) compliance with this Agreement, including the Program Requirements; and (2) achievement of this Agreement's performance goals, in Agency's sole discretion.

12.4.2. Subgrantee's monitoring of its subrecipients must include: (1) an evaluation of each subrecipient's risk of non-compliance with federal statutes, regulations, and terms and conditions of any applicable subaward for purposes of determining the appropriate level and type of subrecipient monitoring; (2) a review of financial and performance reports; and (3) follow-up on all deficiencies pertaining to any involved federal funding in accordance with 2 CFR 200.331 and other applicable federal regulations, including the U.S. Treasury's Program guidance as updated from time to time.

**12.5. Agency Findings and Reports.**

- 12.5.1. **Monitoring Visits; Reports.** During the term of this Agreement, Agency may conduct monitoring visits, including review of Subgrantee and subrecipient files, records, and other information related to performance under this Agreement. Agency generally will advise the Subgrantee as to its observations and findings generated by any monitoring visit, usually through an exit interview. Within sixty (60) days after an inspection, Agency will provide Subgrantee with a written report of its findings from the inspection and may proscribe corrective action, which Subgrantee must timely satisfy.
- 12.5.2. **Ongoing Monitoring.** Agency may continue to track and follow-up its monitoring findings and corrective actions with Subgrantee or its subrecipients through a tracking record. The tracking record may include, without limitation: findings, corrective actions, deliverables, due dates, responsible parties, actions taken, and final resolution. Subgrantees must resolve findings and other required corrective actions within reasonable timeframes provided by Agency.

### **13. Representations and Warranties.**

#### **13.1. Organization/Authority.** Subgrantee represents and warrants to Agency that:

- 13.1.1. Subgrantee is duly organized and validly existing in the State of Oregon;
- 13.1.2. Subgrantee has all necessary rights, powers and authority under any organizational documents and under Oregon Law to (i) execute this Agreement, (ii) incur and perform its obligations under this Agreement, and (iii) receive financing, including the Grant Funds, for the Work;
- 13.1.3. This Agreement has been duly executed by Subgrantee and when executed by Agency, constitutes a legal, valid, and binding obligation of Subgrantee enforceable in accordance with its terms;
- 13.1.4. If applicable and necessary, the execution and delivery of this Agreement by Subgrantee has been authorized by an ordinance, order, or resolution of its governing body, or voter approval, that was adopted in accordance with applicable law and requirements for filing public notices and holding public meetings; and
- 13.1.5. There is no proceeding pending or threatened against Subgrantee before any court or governmental authority that if adversely determined would materially adversely affect the Work or the ability of Subgrantee to carry out the Work.

#### **13.2. False Claims Act.** Subgrantee acknowledges the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any "claim" (as defined by ORS 180.750) made by (or caused by) Subgrantee that pertains to this Agreement or to the Work. Subgrantee certifies that no claim described in the previous sentence is or will be a "false claim" (as defined by ORS 180.750) or an act prohibited by ORS 180.755. Subgrantee further acknowledges in addition to the remedies available to Agency under this Agreement, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the Subgrantee.

#### **13.3. No Limitation.** The representations and warranties set forth in this Section 13 are in addition to, and not in lieu of, any other representations or warranties provided by Subgrantee.

### **14. Confidential Information.**

#### **14.1. Confidential Information Definition.** Subgrantee acknowledges it and its employees and agents may, in the course of performing its responsibilities, be exposed to or acquire information

that is: (i) confidential to Agency or Project participants or (ii) the disclosure of which is restricted under federal or state law, including without limitation: (a) personal information, as that term is used in ORS 646A.602(12), (b) social security numbers, and (c) information related to domestic violence: (1) as described in Section 501(g)(4)(A)(iii) of the ERA, (2) as described in the Violence Against Women Act, 34 USC Subtitle I, Chapter 121, Subchapter III, Part I “Privacy Protections for Victims of Domestic Violence, Dating Violence, Sexual Violence and Stalking”, and (3) is afforded state law protection from public disclosure under ORS 192.355(38), (items (i) and (ii) hereof separately and collectively “Confidential Information”).

**14.2. Nondisclosure.** Subgrantee agrees to hold Confidential Information as required by any applicable law and in all cases in strict confidence, using at least the same degree of care Subgrantee uses in maintaining the confidentiality of its own confidential information. Subgrantee may not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties, or use Confidential Information except as is allowed by law and for the Project activities and Subgrantee must advise each of its employees and agents of these restrictions. Subgrantee must assist Agency in identifying and preventing any unauthorized use or disclosure of Confidential Information. Subgrantee must advise Agency immediately if Subgrantee learns or has reason to believe any Confidential Information has been, or may be, used or disclosed in violation of the restrictions in this Section. Subgrantee must, at its expense, cooperate with Agency in seeking injunctive or other equitable relief, in the name of Agency or Grantee, to stop or prevent any use or disclosure of Confidential Information. At Agency’s request, Subgrantee must submit, return, or destroy any Confidential Information in the manner requested by Agency, including but not limited to upon satisfaction of the business purposes of such Confidential Information as used in the Allita HSM system. If Agency requests Subgrantee to destroy any Confidential Information, Subgrantee must provide Agency with written assurance indicating how, when and what information was destroyed.

**14.3. Identify Protection Law.** Subgrantee must have and maintain a formal written information security program that provides safeguards to protect Confidential Information from loss, theft, and disclosure to authorized persons, as required by Oregon Consumer Information Protection Act, ORS 646A.600-628. If Subgrantee or its agents discover or are notified of a potential or actual “Breach of Security”, as defined by ORS 646A.602(1)(a), or a failure to comply with the requirements of ORS 646A.600-628, (collectively, “Breach”) with respect to Confidential Information, Subgrantee must promptly but in any event within two (2) business days (i) notify the Agency’s Grant Manager of such Breach and (ii) if the applicable Confidential Information was in the possession of Subgrantee or its agents at the time of such Breach, Subgrantee must (a) investigate and remedy, to the extent practicable, the technical causes and technical effects of the Breach and (b) provide Agency with a written root cause analysis of the Breach and the specific steps Subgrantee will take to prevent the recurrence of the Breach or to ensure the potential Breach will not recur. For the avoidance of doubt, if Agency determines notice is required of any such Breach to any individual(s) or entity(ies), agency will have sole control over the timing, content, and method of such notice, subject to Subgrantee’s obligations under applicable law.

**14.4. Subgrants/Contracts.** Subgrantee must require any subrecipients, contractors or subcontractors under this Agreement who are exposed to or acquire Confidential Information to treat and maintain such information in the same manner as is required of Subgrantee under subsections 14.1 and 14.2 of this Section.

**14.5. Background Check.** If requested by Agency and permitted by law, Subgrantee’s employees, agents, contractors, subcontractors, and volunteers that perform Project activities must agree to



submit to a criminal background check prior to performance of any Project activities or receipt of Confidential Information. Background checks will be performed at Subgrantee's expense. Based on the results of the background check, Subgrantee or Agency may refuse or limit (i) the participation of any Subgrantee employee, agent, contractor, subrecipient, or volunteer, in Project activities or (ii) access to Agency Personal Information or Subgrantee premises.

**15. Insurance Requirements.** Subgrantee shall insure, or self-insure, and be independently responsible for the risk of its own liability for claims within the scope of the Oregon Tort Claims Act (ORS 30.260 through 30.300)..

**16. Subgrantee Status and Certifications.**

**16.1.** Subgrantee shall perform all work under this Agreement as an independent contractor. Subgrantee is not an officer, employee or agent of the Agency or State, as those entities are respectively defined in ORS chapter 456 and in ORS 30.265, with respect to work performed under this Agreement.

**16.2.** Subgrantee agrees that insurance coverage, whether purchased or by self-insurance, for Subgrantee's agents, employees, officers and/or subcontractors is the sole responsibility of Subgrantee.

**16.3.** Subgrantee certifies that it is not employed by or contracting with the federal government for the Work covered by the Grant Funds under this Agreement.

**16.4.** Subgrantee certifies that it has established or before starting the Work will establish a formal statement of nondiscrimination in its employment policy and that it enforces such policy.

**16.5.** Subgrantee certifies to the best of its knowledge and belief that neither the Subgrantee nor any of its principals, officers, directors, or employees:

16.5.1. Is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or Agency;

16.5.2. Has within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State, or local) transaction or contract related to a public transaction, violation of federal or State antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

16.5.3. Is presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Subsection 16.5.2. above;

16.5.4. Has within a three-year period preceding this Agreement had one or more public transactions (federal, State, or local) terminated for cause or default; and

16.5.5. Is included on the list titled "**Specially Designated Nationals and Blocked Persons**" maintained by the Office of Foreign Assets Control for the U.S. Treasury and currently found at: <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>.

**17. Governing Law; Jurisdiction.**

This Agreement is 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 Agency or any other agency or department of the State of Oregon, or both, and Subgrantee that

arises from or relates to this Agreement must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it will be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event may this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, to or from any Claim or from the jurisdiction of any court. SUBGRANTEE, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE PERSONAL JURISDICTION OF SUCH COURTS.

## **18. Default.**

**18.1. Subgrantee.** Subgrantee will be in default under this Agreement upon the occurrence of any of the following events:

- 18.1.1. Subgrantee fails to use the Grant Funds for the intended purpose described in Exhibit A or otherwise fails to perform, observe, or discharge any of its covenants, agreements, or obligations under this Agreement;
- 18.1.2. Subgrantee fails to comply timely with any material obligation under this Agreement, including but not limited to any Agency directive or term of a corrective action plan;
- 18.1.3. Any representation, warranty, or statement made by Subgrantee in this Agreement or in any documents or reports relied upon by Agency to measure the Work, the expenditure of Grant Funds, or the performance by Subgrantee is untrue in any material respect when made;
- 18.1.4. Subgrantee (a) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator or itself or all of its property, (b) admits in writing its inability, or is generally unable, to pay its debts as they become due, (c) makes a general assignment for the benefit of its creditors, (d) is adjudicated a bankrupt or insolvent, (e) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (f) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (g) 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 (h) takes any action for the purpose of affecting any of the foregoing; or
- 18.1.5. A proceeding or case is commenced, without the application or consent of Subgrantee in any court of competent jurisdiction, seeking (a) the liquidation, dissolution or winding-up, or the composition or readjustment of debts of Subgrantee, (b) the appointment of a trustee, receiver, custodian, liquidator, or the like of Subgrantee or of all or any substantial part of its assets, or (c) similar relief in respect to Subgrantee 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 consecutive dates, or an order for relief against Subgrantee is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect)..

**18.2. Agency.** Agency will be in default under this Agreement if, after fifteen (15) days written notice specifying the nature of the default, Agency fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Agreement; provided, however, Agency will not be in default if Agency fails to disburse Grant Funds because there is insufficient expenditure authority for, or moneys available from, the funding source.

## 19. Remedies.

### 19.1. Agency Remedies.

- 19.1.1. In the event Subgrantee is in default under Section 18.1, Agency may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to: (i) termination of this Agreement under Section 20.2; (ii) modifying any NOA under this Agreement; (iii) reducing or withholding payment for the Work that is deficient or that Subgrantee has failed to complete by any scheduled deadlines, including disallowing costs; (iv) suspending or recouping payments, or both; (v) requiring Subgrantee to complete, at Subgrantee's expense, corrective action or additional activities necessary to satisfy its obligations or meet performance standards under this Agreement; (vi) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief; (vii) exercise of its right of recovery of overpayments under this Agreement; (viii) declaring Subgrantee ineligible for the receipt of future awards from Agency; (ix) criminal action for misstatements or fraud, misfeasance, or other culpable behavior; and (x) investigation, audit, and/or sanction by other governmental bodies.
- 19.1.2. Subgrantee acknowledges and agrees that any such remedies are subject to Article XI, Section 7 of the Oregon Constitution, the Oregon Tort Claims Act, and the terms and conditions of any other applicable provision of this Agreement.
- 19.1.3. **No Waiver.** No failure or delay by Agency to enforce any provision of this Agreement shall constitute a waiver by Agency of that or any other provision, nor shall any single or partial exercise of any right, power, or privilege under this Agreement preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege.
- 19.1.4. **Survival.** Remedies provided under this Agreement or otherwise shall survive termination of this Agreement.

**19.2. Subgrantee Remedies.** In the event Agency is in default under Section 18.2 and whether or not Subgrantee elects to terminate this Agreement, Subgrantee's sole monetary remedy will be, within any limits set forth in this Agreement, reimbursement of Work completed and accepted by Agency and of authorized expenses incurred, based on Subgrantee following the Program Requirements for client eligibility and issuing of benefits, less any claims Agency has against Subgrantee. In no event will Agency be liable to Subgrantee for any expenses related to termination of this Agreement or for anticipated profits.

## 20. Termination.

**20.1. Mutual.** This Agreement may be terminated at any time by mutual written consent of the Parties.

**20.2. By Agency.** Agency may terminate this Agreement as follows:

- 20.2.1. At Agency's discretion, upon thirty (30) days advance written notice to Subgrantee;
- 20.2.2. Immediately upon written notice to Subgrantee, if Agency fails to receive funding, or appropriations, limitations, or other expenditure authority at levels sufficient in Agency's reasonable administrative discretion, to perform its obligations under this Agreement;
- 20.2.3. Immediately upon written notice to Subgrantee, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Agency's performance under this Agreement is prohibited or Agency is prohibited from funding the Agreement from the funding source; or
- 20.2.4. Immediately upon written notice to Subgrantee, if Subgrantee is in default under this

Agreement and such default remains uncured fifteen (15) days after written notice thereof to Subgrantee.

**20.3. By Subgrantee.** Subgrantee may terminate this Agreement as follows:

- 20.3.1. If Subgrantee is a governmental entity, immediately upon written notice to Agency, if Subgrantee fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to perform its obligations under this Agreement.
- 20.3.2. If Subgrantee is a governmental entity, immediately upon written notice to Agency, if applicable laws, rules, regulations or guidelines are modified or interpreted in such a way that the Work is prohibited by law or Agreement is prohibited from paying for the Work from the Grant Funds or other planned funding; or
- 20.3.3. Immediately upon written notice to Agency, if Agency is in default under this Agreement and such default remains uncured fifteen (15) days after written notice thereof to Agency.

**20.4. Cease Activities.** Upon receiving a notice of termination of this Agreement, Subgrantee must immediately cease all activities under this Agreement, unless Agency expressly directs otherwise in such notice. Upon termination, Subgrantee must deliver to Agency all materials or other property that are or would be required to be provided to Agency under this Agreement or that are needed to complete the Work that would have been performed by Subgrantee.

**21. Miscellaneous.**

**21.1. Conflict of Interest.**

- 21.1.1. **Generally.** By signature to this Agreement, Subgrantee declares and certifies the award of this Agreement and the Work, create no potential or actual conflict of interest, as defined by ORS Chapter 244, for a director, officer, or employee of Subgrantee.
- 21.1.2. **Conflict of Interest Policy and Reporting.** A conflict of interest exists if, among other things, a decision or recommendation could affect the finances of the public official or the finances of a relative. If a conflict of interest exists, the public official must always give notice of the conflict, and in some situations the public official is restricted in their ability to participate in the matter that presents the conflict of interest. Subgrantee will timely report to Agency any perceived or actual conflict of interest. Subgrantee certifies it has established a conflict of interest policy that outlines the process for disclosing in writing any potential conflict of interest and such policy must be provided to Agency upon Agency's request, or as otherwise requested during a Subgrantee audit.

**21.2. Nonappropriation.** Agency's obligation to pay any amounts and otherwise perform its duties under this Agreement is conditioned upon Agency receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement. Nothing in this Agreement may be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law limiting the activities, liabilities or monetary obligations of Agency.

**21.3. Amendments.**

- 21.3.1. Agency reserves the right to add or amend Community Plans and NOAs. Otherwise, the Parties may not waive, supplement, or amend the terms of the Agreement, in any manner whatsoever, except by written amendment signed by the Parties and for which all necessary Agency approvals have been obtained.
- 21.3.2. Subgrantee's proposed changes to or additions of a Community Plan must be submitted to Agency in writing and require the prior written approval of Agency before Subgrantee may commence a change.

21.3.3. All federal terms and conditions included in this Agreement at time of original Agreement execution may be amended from time to time by the federal grantor or regulator of funds.

- 21.4. Notices.** Except as otherwise expressly provided in this Agreement, any notices to be given under this Agreement must be given in writing by email, personal delivery, or postage prepaid mail, to a Party's Grant Manager at the physical address or email address set forth in this Agreement, or to such other addresses as either Party may indicate pursuant to this Section. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system.
- 21.5. Required Notifications to Agency.** In addition to the requirements provided elsewhere in this Agreement, Subgrantee shall immediately report changes in Key Personnel including Fiscal, Program, and Executive Level Leadership.
- 21.6. Survival.** All rights and obligations of the Parties under this Agreement will cease upon termination of this Agreement, other than the rights and obligations arising under Sections 8, 9.6, 9.7, 17, 19, 21.6, 21.7, and 21.10 hereof and those rights and obligations that by their express terms survive termination of this Agreement; provided, however, termination of this Agreement will not prejudice any rights or obligations accrued to the Parties under this Agreement prior to termination.
- 21.7. Headings.** The headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Agreement.
- 21.8. Severability.** The Parties agree 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 will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
- 21.9. Execution in Counterparts.** This Agreement may be executed in several counterparts, all of which when taken together constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.
- 21.10. Indemnity.** Subject to applicable law, Subgrantee shall take all reasonable steps to cause its subrecipients and 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 attorney's 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 Subgrantee's subrecipients and contractors or any of the officers, agents, employees or subcontractors of the subrecipient or contractor ("Claims"). It is 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 subrecipient or contract from and against any and all Claims..
- 21.11. Attorney Fees.** In the event a lawsuit of any kind is instituted on behalf of Agency or the Subgrantee with respect to this Agreement, or any right or claim related thereto, including but not limited to the collection of any payment due under this Agreement or to obtain performance of any kind under this Agreement, the prevailing party is, to the extent permitted by law, entitled to its reasonable attorney fees incurred before and during trial, on appeal, in arbitration, in

bankruptcy, and in such other forum or proceeding appropriate thereto, together with such additional terms as the court or hearing officer may adjudge for reasonable costs and disbursements incurred therein. Reasonable fees shall not exceed the rate charged to Agency by its attorneys.

- 21.12. Compliance with Law.** In connection with their activities under this Agreement, the Parties must comply with all applicable federal, state, and local laws. While the Agency will make reasonable efforts to update its Program guidance and notify the Subgrantee thereof, the Subgrantee is ultimately responsible for maintaining awareness of and compliance with updates to federal law governing the Program.
- 21.13. No Third-Party Beneficiaries.** Agency and Subgrantee are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this Agreement.
- 21.14. Assignment and Successors.** Subgrantee may not assign or transfer its interest in this Agreement without the prior written consent of Agency and any attempt by Subgrantee to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. Agency's consent to Subgrantee's assignment or transfer of its interest in this Agreement will not relieve Subgrantee of any of its duties or obligations under this Agreement. The provisions of this Agreement will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.
- 21.15. Contracts and Subgrants.** Subgrantee may not, without Agency's prior written consent, enter into any contracts or subgrants for any of the Work. Agency's consent to any contract or subgrant will not relieve Subgrantee of any of its duties or obligations under this Agreement.
- 21.16. Time of the Essence.** Time is of the essence in the performance of this Agreement.
- 21.17. No Limitations on Actions of Agency in Exercise of Its Governmental Powers.** Nothing in this Agreement is intended, nor shall it be construed, to in any way limit the actions of Agency in the exercise of its governmental powers. It is the express intention of the Parties that Agency shall retain the full right and ability to exercise its governmental powers with respect to the Subgrantee, the Grant Funds, and the transactions contemplated by this Agreement to the same extent as if it were a party to this Agreement, and in no event shall Agency have any liability in contract arising under this Agreement by virtue of any exercise of its governmental powers.
- 21.18. Records Maintenance and Access.** Subgrantee must, and must require and cause its subrecipients to, maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Subgrantee must, and must require and cause its subrecipients to, maintain any other records, whether in paper, electronic or other form, pertinent to this Agreement in such a manner as to clearly document Subgrantee's and subrecipients' performance. All financial records and other records, whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records". Subgrantee acknowledges and agrees Agency and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. Subgrantee must retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. In its agreements with subrecipients, Subgrantee shall require and cause its subrecipients

to comply with the requirements of this Section and to grant right of access to and ownership by Agency of the subrecipients' books and records related to this Agreement.

**21.19. Audits.**

21.19.1. **Agency-Required Audits.** As required by Agency, Subgrantee will, and will cause its subrecipients to, submit to Agency financial and compliance audits satisfactory to Agency for such periods and programs covered by this Agreement.

21.19.2. **Federal Audits.** If Subgrantee expends \$750,000 or more in federal funds (from all sources) in a fiscal year, Subgrantee shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR Subtitle B with guidance at 2 CFR Part 200 and applicable federal regulations.

**21.20. Headings.** The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and may not be used to construe the meaning or to interpret this Agreement.

**21.21. Agreement Documents.** This Agreement consists of the following documents, which are incorporated by this reference and listed in descending order of precedence:

- This Agreement less all Exhibits
- Exhibit B (Federal Assurances; Terms & Conditions)
- Exhibit A (Emergency Rental Assistance Program Element)

**21.22. Merger.** This Agreement, all Exhibits, and all incorporated documents, constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

**21.23. Waiver.** No waiver or consent under this Agreement binds either Party unless in writing and signed by both Parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given.

**21.24. Diversity, Equity, and Inclusion.** Agency and Subgrantee commit to an intentional, data driven approach to reduce disparities in housing and social service provisions. Agency commits to creating a system to analyze Agency-funded programs and remove identified barriers to accessing opportunities within those programs.

*[The rest of this page left intentionally blank]*

#### **48. CERTIFICATIONS AND SIGNATURE OF SUBGRANTEE'S AUTHORIZED REPRESENTATIVE**

THIS AGREEMENT MUST BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF SUBGRANTEE.

The undersigned certifies under penalty of perjury both individually and on behalf of Subgrantee that:

- A. The undersigned is a duly authorized representative of Subgrantee, has been authorized by Subgrantee to make all representations, attestations, and certifications contained in this Agreement and to execute this Agreement on behalf of Subgrantee;
- B. By signature on this Agreement for Subgrantee, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Subgrantee and that Subgrantee is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620.
- C. To the best of the undersigned's knowledge, Subgrantee has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts.
- D. Subgrantee and Subrecipients' employees and agents are not included on the list titled "Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control of the U.S. Treasury and currently found at <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>;
- E. Subgrantee has sufficient staffing and operation capacity to expend the Grant Funds;
- F. Subgrantee acknowledges that Agency reserves the right to reduce Subgrantee funding as it determines to be appropriate (in its sole discretion) and redistribute such funds to other eligible providers with the goal of minimizing service disruption and ensuring funds are utilized;
- G. Subgrantee is bound by and will comply, and require its subrecipients to comply, with all federal, state and local laws, regulations, requirements, terms and conditions contained in and as applicable to this Agreement; and
- H. Subgrantee further certifies to having a formal statement of nondiscrimination in its employment policy and that it enforces such policy.

***[Signature Pages Follow]***



**SIGNATURE PAGE**

**SUBGRANTEE, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT SUBGRANTEE HAS READ THIS AGREEMENT, UNDERSTANDS IT, HAS THE LEGAL AUTHORITY TO BIND, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.**

Authorized Signature: *Gary Schmidt*  
Title: County Administrator  
Name (Type or Print): Gary Schmidt  
Date: May 20, 2021  
Telephone Number: 503-655-8581  
Email Address: gschmidt@clackamas.us  
Subgrantee Address: 2051 Kaen Rd #135, Oregon City, OR 97045

**44. SIGNATURE OF STATE'S AUTHORIZED REPRESENTATIVE**

State of Oregon acting by and through its  
Housing and Community Services Department  
725 Summer Street NE Suite B, Salem, OR 97301

Authorized Signature:

\_\_\_\_\_  
Margaret Solle Salazar, Director or designee Date

Reviewed and Approved: Laura Lien, Assistant Director of Homeless Services May 18, 2021  
OHCS Grant Administrator Date

DEPARTMENT OF JUSTICE

Approved for legal sufficiency by: AAG Maria DiMiceli pursuant to OAR 137-045-0015(3) May 18, 2021  
Date

**EXHIBIT A**  
**Emergency Rental Assistance Program Element**

**1. Description.** The Oregon Emergency Rental Assistance Program is a program designed to assist households that are unable to pay rent and utilities due to the COVID-19 pandemic.

**2. Scope of Work.**

- A. Subgrantee shall comply and perform, and shall cause and require by contract that its subrecipients comply and perform all Work to the satisfaction of Agency, and in accordance with the terms of this Agreement and the Program Requirements. The remaining provisions of this Section 2 are supplemental to and do not limit the obligations of Subgrantee or its subrecipients arising under this Subsection 2A or otherwise under this Agreement.
- B. Subgrantee shall, and shall cause and require its subrecipients by contract to administer the program in a manner satisfactory to Agency and in compliance with the Program Requirements, including but not limited to the following terms and conditions:
- 1) Develop and implement a comprehensive Emergency Rental Assistance Community Plan to enable a timely and equitable delivery of resources to communities who are most impacted by the COVID-19 pandemic, including, but not limited to communities of color, people with disabilities, and other groups as defined by Agency.
  - 2) Prioritize applications for program services in alignment with U.S. Treasury and Agency requirements. Applications must use the Allita HSM software, provided by the Agency, as the platform for capturing applicant information for processing prioritization.
  - 3) Conduct eligibility assessment for households with the following requirements as well as any other requirements the Agency imposes through Program Guidance:
    - i. One or more individuals within the household has qualified for unemployment benefits or experienced a reduction in household income, incurred significant costs, or experienced other financial hardship due, directly or indirectly, to the COVID-19 pandemic;
    - ii. One or more individuals within the household can demonstrate a risk of experiencing homelessness or housing instability; and
    - iii. The household has a household income at or below 80% of area median income.
  - 4) Utilization of Grant Funds to address the unique needs of those at risk of homelessness or who have experienced homelessness is allowable per Program Guidance provided by the Agency, as may be amended from time to time.

**3. Program Specific Reporting.**

Subgrantee shall, and shall cause and require its subrecipients by contract to submit to the satisfaction of Agency reports as required in this Agreement. Such reports may include reports from the Allita HSM software demonstrating timely payments on behalf of households once a completed application is received and approved.

Subgrantee may make request for a reporting deadline extension when necessary by submitting a written request to Agency Program Coordinator. The Agency Program Coordinator will review an extension request and provide a written notification of approval or denial to the Subgrantee.

## EXHIBIT B

### Federal Assurances; Terms and Conditions

Subgrantee hereby assures, warrants, covenants, and certifies that with respect to any federal funds disbursed to it under this Agreement:

- A. Application, Acceptance and Use of Federal Funds.** Use, Compliance with Federal Law; Subgrantee shall comply with all applicable Federal regulations, policies, guidelines, and requirements, as may be modified from time to time, as they relate to the application, and use of all federal funds under this Agreement which may include, but are not limited to 2 CFR Subtitle B with guidance at 2 CFR, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (OMB Super Circular effective December 23, 2014). The U.S. Treasury has supplemented the foregoing at Section 501(a) of Division N of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260 and U.S. Treasury interpretive guidance.
- B. Further Assurances.** As the duly authorized representative of the Subgrantee, I assure, warrant, covenant, and certify that the Subgrantee, in addition to complying with 2 CFR Subtitle B with guidance at 2 CFR, Part 200, 2 CFR Part 300, and Section 501(a) of Division N of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260 and U.S. Treasury interpretive guidance, shall comply and, require all Subrecipients and Vendors, as applicable, to comply with the following federal requirements, as they may be amended from time to time.

### GENERAL ASSURANCES

- 1. Miscellaneous Federal Provisions.** Subgrantee shall comply and require all subrecipients to comply with all federal laws, regulations, and executive orders applicable to the Agreement or to the delivery of Work. Without limiting the generality of the foregoing, Subgrantee expressly agrees to comply and require all subrecipients to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) Title VI and VII of the Civil Rights Act of 1964, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, (c) the Age Discrimination in Employment Act of 1967, and the Age Discrimination Act of 1975, (d) Title IX of the Education Amendment of 1972, (e) the Drug Abuse Office and Treatment Act of 1972, (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, (g) Section 523 and 527 of the Public Health Service Act of 1912, (h) Title VIII of the Civil Rights act of 1968, (i) the Hatch Act (U.S.C. 1501-1508 ad 7328), (j) Davis-Bacon Act (40 U.S.C. 276a to 276a7), (k) the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), (l) the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), (m) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to this Agreement and required by law to be so incorporated. No federal funds may be used to provide Work in violation of 42 U.S.C. 14402.
- 2. Equal Employment Opportunity.** If this Agreement, including amendments, is for more than \$10,000, then Subgrantee shall comply and require all subrecipients to comply with Executive Order 11246, entitled “Equal Employment Opportunity,” as amended.

- 3. Clean Air, Clean Water, EPA Regulations.** If this Agreement, including amendments, exceeds \$150,000 then Subgrantee shall comply and require all subrecipients to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to Agency, United States Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. Subgrantee shall include and require all subrecipients to include in all Agreements with subrecipients receiving more than \$150,000, language requiring the subrecipient to comply with the federal laws identified in this section.
- 4. Other Environmental Standards.** Subgrantee shall comply and require all subrecipients to comply with all applicable environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order 11514; (b) protection of wetlands pursuant to Executive Order 11990; (c) evaluation of flood hazards in flood plains in accordance with Executive Order 11988; (d) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et. seq.); (e) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (f) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (g) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
- 5. Energy Efficiency.** Subgrantee shall comply and require all subrecipients to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42 U.S.C. 6201 et. seq. (Pub. L. 94-163).
- 6. Truth in Lobbying.** By signing this Agreement, the Subgrantee certifies, to the best of the Subgrantee's knowledge and belief that:

  - a.** No federal appropriated funds have been paid or will be paid, by or on behalf of Subgrantee, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
  - b.** If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Subgrantee shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

- c.** The Subgrantee shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.
- d.** This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31 of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- e.** No part of any federal funds paid to Subgrantee under this Agreement shall be used other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the United States Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government itself.
- f.** No part of any federal funds paid to Subgrantee under this Agreement shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the United States Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.
- g.** The prohibitions in subsections (e) and (f) of this Section shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.
- h.** No part of any federal funds paid to Subgrantee under this Agreement may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under Section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance of that federally sponsored clinical trials are being conducted to determine therapeutic advantage.

## **7. Audits.**

- a.** Subgrantee shall comply, and require any subrecipient to comply, with applicable audit requirements and responsibilities set forth in this Agreement and applicable state or federal law.

- b. If Subgrantee receives federal awards in excess of \$750,000 in a fiscal year, Subgrantee is subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Copies of all audits must be submitted to Agency within 30 days of completion.
  - c. Subgrantee shall save, protect and hold harmless Agency from the cost of any audits or special investigations performed by the Secretary of State with respect to the funds expended under this Agreement. Subgrantee acknowledges and agrees that any audit costs incurred by Subgrantee as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Subgrantee and State.
- 8. Debarment and Suspension.** Subgrantee shall not permit any person or entity to be a subrecipient 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 Nonprocurement Programs" in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and Suspension". (See 2 CFR Part 180.) 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. Subrecipients with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.
- 9. Drug-Free Workplace.** Subgrantee shall comply and cause all subrecipients to comply with the following provisions to maintain a drug-free workplace: (i) Subgrantee certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in Subgrantee's workplace or while providing services to Agency clients. Subgrantee's notice shall specify the actions that will be taken by Subgrantee against its employees for violation of such prohibitions; (ii) Establish a drug-free awareness program to inform its employees about: The dangers of drug abuse in the workplace, Subgrantee's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations; (iii) Provide each employee to be engaged in the performance of services under this Agreement a copy of the statement mentioned in paragraph (i) above; (iv) Notify each employee in the statement required by paragraph (i) above that, as a condition of employment to provide services under this Agreement, the employee will: abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; (v) Notify Agency within ten (10) days after receiving notice under subparagraph (iv) above from an employee or otherwise receiving actual notice of such conviction; (vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988; (vii) Make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs (i) through (vi) above; (viii) Require any subrecipient to comply with subparagraphs (i) through (vii) above; (ix) Neither Subgrantee, or any of Subgrantee's employees, officers, agents or subrecipients may provide any service required under this Agreement while under the influence of drugs. For purposes of this provision, "under the influence" means: observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the Subgrantee or Subgrantee's employee, officer, agent or subrecipient has used a controlled substance, prescription or non-prescription

medication that impairs the Subgrantee or Subgrantee's employee, officer, agent or subrecipient's performance of essential job function or creates a direct threat to Agency clients or others. Examples of abnormal behavior include, but are not limited to: hallucinations, paranoia or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to: slurred speech, difficulty walking or performing job activities; and (x) Violation of any provision of this subsection may result in termination of the Agreement.

- 10. Federal Intellectual Property Rights Notice.** The federal funding agency, as the awarding agency of the funds used, at least in part, for the Work under this Agreement, may have certain rights as set forth in the federal requirements pertinent to these funds. For purposes of this subsection, the terms “grant” and “award” refer to funding issued by the federal funding agency to the State of Oregon. The Subgrantee agrees that it has been provided the following notice:
- a.** The federal funding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the Work, and to authorize others to do so, for Federal Government purposes with respect to:
    - (1) The copyright in any Work developed under a grant, subgrant or contract under a grant or subgrant; and
    - (2) Any rights of copyright to which a Subgrantee, subrecipient or a contractor purchases ownership with grant support.
  - b.** The parties are subject to applicable federal regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.”
  - c.** The parties are subject to applicable requirements and regulations of the federal funding agency regarding rights in data first produced under a grant, subgrant or contract under a grant or subgrant.
- 11. Super Circular Requirements.** 2 CFR Part 200, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, including but not limited to the following:
- a. Property Standards.** 2 CFR 200.313, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, which generally describes the required maintenance, documentation, and allowed disposition of equipment purchased with federal funds.
  - b. Procurement Standards.** When procuring goods or services (including professional consulting services), applicable state procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C or 2 CFR §§ 200.318 through 200.326, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, as applicable.
  - c. Contract Provisions.** The contract provisions listed in 2 CFR Part 200, Appendix II, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, that are hereby incorporated into this Exhibit, are, to the extent applicable, obligations of Subgrantee, and Subgrantee shall also include these Agreement provisions in its contracts with non-Federal entities

- 12. Federal Whistleblower Protection.** Recipient shall comply, and ensure the compliance by subcontractors or subrecipients, with 41 U.S.C. 4712, Enhancement of contractor protection from reprisal for disclosure of certain information. Therefore, in part, Subgrantee, its subrecipients, and contractors shall, inform its or their employees, in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 USC 4712.
- 13. System for Award Management (SAM) reporting (41 USC § 2313).** The Subgrantee must comply with applicable requirements regarding the System for Award Management (SAM), currently accessible at <https://www.sam.gov>. This includes applicable requirements regarding registration with SAM, as well as maintaining current information in SAM. The Subgrantee also must comply with applicable restrictions on subawards ("subgrants") to first-tier subrecipients (first-tier "subrecipients"), including restrictions on subawards to entities that do not acquire and provide (to the Subgrantee) the unique entity identifier required for SAM registration.
- 14. Requirement to report breach of personally identifiable information (PII) per OMB M-17-12.** The Subgrantee (and any subrecipient at any tier) must have written procedures in place to respond in the event of breach (as defined in OMB M-17-12) if it (or a subrecipient) -- 1) creates, collects, uses, processes, stores, maintains, disseminates, discloses, or disposes of personally identifiable information (PII) (as defined in 2 C.F.R. 200.79) within the scope of a grant-funded program or activity, or 2) uses or operates a Federal information system. The Subgrantee's breach procedures must include a requirement to report actual or imminent breach of PII to Grantor no later than 24 hours after an occurrence of an actual breach, or the detection of an imminent breach.



**Information required by 2 CFR § 200.331(a)(1)**

Federal Award Identification:

- (i) Subgrantee name (which must match registered name in DUNS): Clackamas County
- (ii) Subgrantee's DUNS number: 096992656
- (iii) Federal Award Identification Number (FAIN): \_\_\_\_\_
- (iv) Federal Award Date: January 12, 2021
- (v) Sub-award Period of Performance Start and End Date: From March 13, 2020 to September 30, 2022
- (vi) Total Amount of Federal Funds Obligated by this Agreement: \$ 204,336,635.00
- (vii) Total Amount of Federal Funds Obligated to the Subgrantee by the pass-through entity including this Agreement: \$18,964,989.00
- (viii) Total Amount of Federal Award committed to the Subgrantee by the pass-through entity: \$10,192,438.00
- (ix) Federal award project description: Provide financial assistance and housing stability services to eligible households.
- (x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity:
  - (a) Name of Federal awarding agency: U.S. Department of Treasury
  - (b) Name of pass-through entity: Oregon Housing and Community Services
  - (c) Contact information for awarding official of the pass-through entity: Gaby Zhu, Chief Financial Officer
- (xi) Is Award R&D? \_NO\_

# Financial Assistance Application Lifecycle Form

Use this form to track your potential grant from conception to submission.

Sections of this form are designed to be completed in collaboration between department program and fiscal staff.

## \*\* CONCEPTION \*\*

Note: The processes outlined in this form are not applicable to disaster recovery grants.

### Section I: Funding Opportunity Information - To be completed by Requester

Application for:  Subrecipient Assistance  Direct Assistance  
Grant Renewal?  Yes  No

**If renewal, complete sections 1, 2, & 4 only**  
**If Disaster or Emergency Relief Funding, EOC will need to approve prior to being sent to the BCC**

Lead Department: Health, Housing and Human Services-SSD

Name of Funding Opportunity: OERA-Emergency Rental Assistance

Funding Source: Federal  State  Local

Requestor Information (Name of staff person initiating form): Brenda Durbin, Director of Social Services Division

Requestor Contact Information: BrendaDur@co.clackamas.or.us

Department Fiscal Representative: Sue Aronson

Program Name or Number (please specify): 05455 OERAP: OR EMERGENCY RENTAL

Brief Description of Project:

U.S. Treasury Federal Emergency Rent Assistance funding from the Consolidated Appropriations Act is being passed through via the State of Oregon Housing and Community Services Department. Funding will allow Social Services to make payments to landlords on behalf of eligible households impacted by COVID-19.

Name of Funding Agency: Oregon Housing & Community Services

Agency's Web Address for funding agency Guidelines and Contact Information:  
https://www.oregon.gov/ohcs/Pages/index.aspx

### OR

Application Packet Attached:  Yes  No

Completed By: Jessica Diridoni Date: 5-6-2021

## \*\* NOW READY FOR SUBMISSION TO DEPARTMENT FISCAL REPRESENTATIVE \*\*

### Section II: Funding Opportunity Information - To be completed by Department Fiscal Rep

Competitive Application  Non-Competing Application  Other

CFDA(s), if applicable:	<u>21.023</u>	Funding Agency Award Notification Date:	<u></u>
Announcement Date:	<u>N/A</u>	Announcement/Opportunity #:	<u>N/A</u>
Grant Category/Title:	<u>Federal Emergency Rent Assistance</u>	Max Award Value:	<u>\$10,192,438</u>
Allows Indirect/Rate:	<u>County doesn't have indirect rate</u>	Match Requirement:	<u>N/A</u>
Application Deadline:	<u>Return to State April 26, 2021</u>	Other Deadlines:	<u></u>
Award Start Date:	<u>Eligible period starts 3-13-2020</u>	Other Deadline Description:	<u></u>
Award End Date:	<u>9-30-2022</u>		
Completed By:	<u>Jessica Diridoni</u>	Program Income Requirement:	<u>80% AMI or less, preference to 50% AMI</u>
Pre-Application Meeting Schedule:	<u>N/A</u>		

**Section III: Funding Opportunity Information** - To be completed at Pre-Application Meeting by Dept Program and Fiscal Staff

**Mission/Purpose:**

1. How does the grant/funding opportunity support the Department and/or Division's Mission/Purpose/Goals?

Ensures safe, healthy and secure communities by providing rent assistance to eligible households impacted by the COVID-19 crisis.

2. What, if any, are the community partners who might be better suited to perform this work?

Social Services has been conducting outreach through the Continuum of Care network of providers, the vulnerable populations task force of the Emergency Operations Center, and through informal networks within vulnerable communities.

3. What are the objectives of this funding opportunity? How will we meet these objectives?

Provide providing rent assistance to eligible households impacted by the COVID-19 crisis.

4. Does the grant/financial assistance fund an existing program? If yes, which program? If no, what is the purpose of the program?

These grant funds are federal pass-through funds from the Oregon Housing and Community Services Department. They are a component of Emergency Rent Assistance program.

**Organizational Capacity:**

1. Does the organization have adequate and qualified staff? If no, can staff be hired within the grant/financial assistance funding opportunity timeframe?

No. Additional staff will be hired.

2. Are there partnership efforts required? If yes, who are we partnering with and what are their roles and responsibilities?

Social Services will collaborate with community partners and has provided a list of possible partners to the funder.

3. If this is a pilot project, what is the plan for sunseting the project and/or staff if it does not continue (e.g. making staff positions temporary or limited duration, etc.)?

Grant funding ends September 30, 2022.

4. If funded, would this grant/financial assistance create a new program, does the department intend for the program to continue after initial funding is exhausted? If yes, how will the department ensure funding (e.g. request new funding during the budget process, supplanted by a different program, etc.)?

No.

**Collaboration**

1. List County departments that will collaborate on this award, if any.

Coordination with PGA to promote the program. Coordination with Procurement on contracts, and Grants Finance if subrecipient agreements are issued.

**Reporting Requirements**

1. What are the program reporting requirements for this grant/funding opportunity?

Quarterly and annual reporting is required. All data must be entered into funder's new Allita database.

2. How will performance be evaluated? Are we using existing data sources? If yes, what are they and where are they housed? If not, is it feasible to develop a data source within the grant timeframe?

To be determined by funder. There will be monitoring by funder and review of data required to determine eligible household status, program income requirement, and COVID impact met.

3. What are the fiscal reporting requirements for this funding?

Funds will be drawn down through Oregon Housing & Community Services' financial system. Funder reporting through required new Allita database.

**Fiscal**

1. Will we realize more benefit than this financial assistance will cost to administer?

Yes.

2. Are other revenue sources required? Have they already been secured?

STARR (state) and F-ERA (federal) are funding stream components of the rent assistance program.

3. For applications with a match requirement, how much is required (in dollars) and what type of funding will be used to meet it (CGF, In-kind, Local Grant, etc.)?

There is no match requirement.

4. Does this grant/financial assistance cover indirect costs? If yes, is there a rate cap? If no, can additional funds be obtained to support indirect expenses and what are they?

The grant covers both direct and indirect costs. The total of all administrative costs incurred, whether direct or indirect costs, may not exceed 10 percent of the total amount of the award.

Program Approval:

**Teresa Christopherson**

**5/11/21**

Teresa D.  
Christopherson

Digitally signed by Teresa D. Christopherson  
Date: 2021.05.11 10:08:32 -0700

Name (Typed/Printed)

Date

Signature

**\*\* NOW READY FOR PROGRAM MANAGER SUBMISSION TO DIVISION DIRECTOR \*\***

**\*\*ATTACH ANY CERTIFICATIONS REQUIRED BY THE FUNDING AGENCY. COUNTY FINANCE OR ADMIN WILL SIGN.\*\***

**Section IV: Approvals**

<b>DIVISION DIRECTOR (or designee, if applicable)</b>		
Brenda Durbin		Brenda Durbin <small>Digitally signed by Brenda Durbin Date: 2021.05.11 10:17:26 -07'00'</small>
Name (Typed/Printed)	Date	Signature

<b>DEPARTMENT DIRECTOR (or designee, if applicable)</b>		
Rodney A. Cook, Interim Director		
Name (Typed/Printed)	Date	Signature

<b>Finance Administration</b>		
Elizabeth Comfort		
Name (Typed/Printed)	Date	Signature

<b>EOC COMMAND APPROVAL (DISASTER OR EMERGENCY RELIEF APPLICATIONS ONLY)</b>		
Nancy Bush		
Name (Typed/Printed)	Date	Signature

**Section V: Board of County Commissioners/County Administration**

*(Required for all grant applications. If your grant is awarded, all grant **awards** must be approved by the Board on their weekly consent agenda regardless of amount per local budget law 294.338.)*

**For applications less than \$150,000:**

<b>COUNTY ADMINISTRATOR</b>	Approved: <input checked="" type="checkbox"/>	Denied: <input type="checkbox"/>
Gary Schmidt	5/20/2021	Gary Schmidt <small>Digitally signed by Gary Schmidt Date: 2021.05.20 16:52:22 -07'00'</small>
Name (Typed/Printed)	Date	Signature

**For applications greater than \$150,000 or which otherwise require BCC approval:**

BCC Agenda item #:

Date:

OR

Policy Session Date:

---

County Administration Attestation

**County Administration: re-route to department contact when fully approved.  
Department: keep original with your grant file.**



**Nancy Bush**

Director

**Disaster Management**  
1710 Red Soils Ct., Ste. 225  
Oregon City, OR 97045

T 503-655-8378

[clackamas.us](http://clackamas.us)

May 20, 2021

Board of County Commissioners,  
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement (IGA) with Oregon Health Authority  
Covid-19 Vaccination Operations

<b>Purpose/Outcomes</b>	OHA is providing funding under this Agreement, for COVID Vaccination Operations
<b>Dollar Amount and Fiscal Impact</b>	The contract maximum is \$1,000,000.00
<b>Funding Source</b>	This is funded by OHA. No County General Funds are involved.
<b>Duration</b>	December 1, 2020 through September 30, 2021
<b>Previous Board Action</b>	No previous board action
<b>Strategic Plan Alignment</b>	1. Improved Community Safety and Health 2. Ensure safe, healthy and secure communities.
<b>Counsel Review</b>	County counsel has reviewed and approved this document on May 18, 2021 KR
<b>Procurement Review</b>	1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> 2. This is an IGA.
<b>Contact Person</b>	Daniel Nibouar, Interim Disaster Management Director 503-650-3381 or Philip Mason-Joyner – 503-742-5456
<b>Contract No.</b>	10156

**BACKGROUND:**

Clackamas County Public Health Division (CCHPD) of the Health, Housing & Human Services Department requests the approval of an Intergovernmental Agreement (IGA) with Oregon Health Authority for vaccination operations.

OHA is providing funding for vaccination operations. The contract maximum for this Agreement is \$1,000,000.00. This Agreement is effective December 1, 2020 and will terminate on September 30, 2021.

**RECOMMENDATION:**

Staff recommends the Board of County Commissioners approve the attached IGA with OHA. for vaccination operations, to complete the transaction, authorize the Procurement

*Healthy Families. Strong Communities.*

Page 2 Staff Report  
May 20, 2021  
Oregon Health Authority - Agreement #10156

Office to execute any other needed instruments and purchase orders in order to complete the term.

Respectfully submitted,

Daniel Nibouar  
Interim Disaster Management



**Agreement Number 170117**

**STATE OF OREGON  
INTERGOVERNMENTAL AGREEMENT**

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 Agreement is between the State of Oregon, acting by and through its Oregon Health Authority, hereinafter referred to as “OHA,” and

**Clackamas County  
2051 Kaen Road, Suite 367  
Oregon City, OR 97045-4035  
Attn: Philip Mason-Joyner  
Phone: (503) 742-5300  
Email: [pmason@co.clackamas.or.us](mailto:pmason@co.clackamas.or.us)**

hereinafter referred to as “County.”

Work to be performed under this Agreement relates principally to OHA’s

**Public Health Division  
800 NE Oregon Street, Suite 930  
Portland, OR 97232  
Agreement Administrator: Carole Yann or delegate  
Telephone: 971-212-1363  
E-mail address: [carole.l.yann@dhsaha.state.or.us](mailto:carole.l.yann@dhsaha.state.or.us)**

**RECITAL**

OHA is providing funding under this Agreement, for the purpose of responding to the state of emergency declared by the Governor Kate Brown in State of Oregon Executive Order 20-03 (Declaration of Emergency due to Coronavirus (COVID-19), Outbreak in Oregon) as extended by State of Oregon Executive Order 20-67 and pursuant to the Major Disaster Declaration number DR4499OR as a direct result of COVID-19.

This Agreement is subject to the additional federal terms and conditions located at: <https://www.oregon.gov/das/Procurement/Documents/COVIDFederalProvisions.pdf>, as may be applicable to this Contract as well as the terms of the FEMA-OHA State Agreement, attached hereto as Exhibit E and incorporated herein by reference. See also Section 3. of Exhibit A, Part 1.



**1. Effective Date and Duration.**

Upon approval of this Agreement by the parties, and when required, the Department of Justice, this Agreement shall become effective on **December 1, 2020** regardless of the date this Agreement has been fully executed by every party. Unless extended or terminated earlier in accordance with its terms, this Agreement shall expire on **September 30, 2021**. Agreement termination or expiration shall not extinguish or prejudice either party's right to enforce this Agreement with respect to any default by the other party that has not been cured.

**2. Agreement Documents.**

**a.** This Agreement consists of this document and includes the following listed exhibits which are incorporated into this Agreement:

- (1) Exhibit A, Part 1: Statement of Work
- (2) Exhibit A, Part 2: Payment and Financial Reporting
- Attachment 1: Invoice Form
- (3) Exhibit A, Part 3: Special Terms and Conditions
- (4) Exhibit B: Standard Terms and Conditions
- (5) Exhibit C: Subcontractor Insurance Requirements
- (6) Exhibit D: Federal Terms and Conditions
- (7) Exhibit E: FEMA-OHA/State Agreement

This Agreement constitutes the entire agreement between the parties on the subject matter in it; there are no understandings, agreements, or representations, oral or written, regarding this Agreement that are not specified herein.

**b.** 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. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: this Agreement without Exhibits, Exhibits E, D, B, A, and C.

**c.** For purposes of this Agreement, "Work" means specific work to be performed or services to be delivered by County as set forth in Exhibit A.

**3. Consideration.**

**a.** The maximum not-to-exceed amount payable to County under this Agreement, which includes any allowable expenses, is **\$1,000,000**. OHA will not pay County any amount in excess of the not-to-exceed amount for completing the Work, and will not pay for Work until this Agreement has been signed by all parties.

**b.** OHA will pay only for completed Work under this Agreement, and may make interim payments as provided for in Exhibit A.

**4. Contractor or Subrecipient Determination.**

In accordance with the State Controller’s Oregon Accounting Manual, policy 30.40.00.104, OHA’s determination is that:

County is a subrecipient     County is a contractor     Not applicable

Catalog of Federal Domestic Assistance (CFDA) #(s) of federal funds to be paid through this Agreement: 97.036

**5. County Data and Certification.**

**a. County Information.** This information is requested pursuant to ORS 305.385.

**PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION:**

**County Name (exactly as filed with the IRS):**

\_\_\_\_\_  
\_\_\_\_\_

Street address:

\_\_\_\_\_

City, state, zip code:

\_\_\_\_\_

Email address:

\_\_\_\_\_

Telephone:

\_\_\_\_\_ Facsimile: \_\_\_\_\_

**Proof of Insurance:** County shall provide the following information upon submission of the signed Agreement, all insurance listed herein and required by Exhibit C, must be in effect prior to Agreement execution.

Workers’ Compensation Insurance Company: \_\_\_\_\_

Policy #: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

- b. Certification.** Without limiting the generality of the foregoing, by signature on this Agreement, the County hereby certifies under penalty of perjury that:
- (1) The County is in compliance with all insurance requirements of this Agreement and notwithstanding any provision to the contrary, County shall deliver to the OHA Agreement Administrator (see page 1 of this Agreement) the required Certificate(s) of Insurance within 30 days of execution of this Agreement. By certifying compliance with all insurance as required by this Agreement, County acknowledges it may be found in breach of the Agreement for failure to obtain required insurance. County may also be in breach of the Agreement for failure to provide Certificate(s) of Insurance as required and to maintain required coverage for the duration of the Agreement;
  - (2) The County acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any “claim” (as defined by ORS 180.750) that is made by (or caused by) the County and that pertains to this Agreement or to the project for which the Agreement work is being performed. The County certifies that no claim described in the previous sentence is or will be a “false claim” (as defined by ORS 180.750) or an act prohibited by ORS 180.755. County further acknowledges that in addition to the remedies under this Agreement, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the County;
  - (3) The information shown in this Section 5a. “County Information”, is County’s true, accurate and correct information;
  - (4) To the best of the undersigned’s knowledge, County has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts;
  - (5) County and County’s employees and agents are not included on the list titled “Specially Designated Nationals” maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at: <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>;
  - (6) County is not listed on the non-procurement portion of the General Service Administration’s “List of Parties Excluded from Federal procurement or Non-procurement Programs” found at: <https://www.sam.gov/portal/public/SAM/>;
  - (7) County is not subject to backup withholding because:
    - (a) County is exempt from backup withholding;
    - (b) County has not been notified by the IRS that County is subject to backup withholding as a result of a failure to report all interest or dividends; or
    - (c) The IRS has notified County that County is no longer subject to backup withholding; and

- (8) County Federal Employer Identification Number (FEIN) provided to OHA is true and accurate. If this information changes, County is required to provide OHA with the new FEIN within 10 days.

**EACH PARTY, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.**

**COUNTY: YOU WILL NOT BE PAID FOR WORK PERFORMED PRIOR TO THE EFFECTIVE DATE OF THIS AGREEMENT.**

- 6. Signatures.** This Agreement and any subsequent amendments 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 the Agreement and any amendments so executed shall constitute an original.

**Clackamas County**  
**By:**

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

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**State of Oregon, acting by and through its Oregon Health Authority pursuant to ORS 190**  
**By:**

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

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Approved for Legal Sufficiency:**

\_\_\_\_\_  
*Jeff Wahl, AAG via email*

\_\_\_\_\_  
*May 14, 2021*

\_\_\_\_\_  
Department of Justice

\_\_\_\_\_  
Date

**OHA Program Review:**

\_\_\_\_\_  
*Carole Yann & Derrick Clark via email*

\_\_\_\_\_  
*Carole Yann & Derrick Clark*

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

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
*Carole Yann: Fiscal & Business Operations Director*  
*Derrick Clark: Operations & Policy Analyst*

\_\_\_\_\_  
*May 14, 2021*  
*May 13, 2021*

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**EXHIBIT A**  
**Part 1**  
**Statement of Work**

**1. Background and Purpose**

Oregon’s local public health agencies are assisting in establishing vaccination sites and vaccine administration around Oregon to support Governor Kate Brown’s COVID-19 vaccination plan. The funds provided under this Agreement will support the establishment and maintenance of vaccination implementation activities.

As used in this Agreement, the phrase “vaccination sites” includes but are not limited to facilities that house vulnerable populations, and other non-traditional venues such as convention centers, community centers, places of worship, retail settings, food pantries and drive-through testing sites as determined by local stakeholder partners.

The purposes of this Agreement are to:

- obtain County’s services described in Section 2. below to expedite and maximize the COVID-19 vaccination rate throughout Oregon by establishing vaccination sites for their local communities; and
- help Governor Brown and the Oregon Health Authority achieve and maintain the statewide vaccination goals to vaccinate Oregonians, depending on vaccination supply provided by the federal government.

As outlined by Governor Kate Brown, Oregon’s vaccination plan relies on a regional framework to meet each region’s unique vaccination needs and population. See <https://covidvaccine.oregon.gov/> and <https://www.oregon.gov/oha/covid19/Documents/COVID-19-Vaccination-Plan-Oregon.pdf>

The regional framework creates a coordinated approach led by local hospitals and health systems. Accordingly, the Program activities described below will be done in partnership with local public health agencies (LPHAs) and will prioritize Oregon’s vaccination population phases.

**2. Required County Services**

County shall perform the following services on an ongoing basis throughout the term of this Agreement:

- 2.1** Expedite and maximize COVID-19 vaccinations throughout Oregon at local mass vaccinations sites and community events, with the focus of vaccinating populations based on allocated vaccine supply and as outlined by Governor Brown’s vaccination plan, including priority groups and timelines.
- 2.2** Conduct regular dialogue with community stakeholders including community-based organizations, hospitals, providers, organizations representing priority populations, etc.

- 2.3 Provide updated information to the OHA vaccination team on vaccination rate through the ALERT IIS system on a regular basis pursuant to state and federal guidance.
- 2.4 Adhere to the OHA guidance on vaccinating priority groups as driven by local vaccination supply.
- 2.5 Provide ongoing recommendations to the OHA with on-the-ground data and information for improvement regarding vaccination deployment, implementation, and operations.
- 2.6 Catalogue various expenses related to vaccination services. (*See Vaccination Service Expense Report table below under Section 3. Reporting Requirements.*)
- 2.7 Participate with OHA and members of the Governor's office in a post-event evaluation to highlight learnings for future events.

### **3. Compliance with FEMA-OHA/State Agreement (Exhibit E)**

The terms of the FEMA-OHA/State Agreement that provides federal FEMA Public Assistance award funds for this Agreement are incorporated herein by reference into this project Agreement (and attached hereto as Exhibit E). County must comply with all applicable laws, regulations, policy and guidance, including but not limited to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Title 44 of the CFR, FEMA Policy No. 104-009-2, Public Assistance Program and Policy Guide, and other applicable FEMA policy and guidance.

### 3. Reporting Requirements

To support County's invoices County shall collect the following reports and submit them to [ohacovid.fema@dhsosha.state.or.us](mailto:ohacovid.fema@dhsosha.state.or.us) as follows:

Report type	Reporting requirement	Report Periods	Report Due Dates
<b>Project outcome reports</b>	County's summary of outcomes for the report period: site locations, stakeholders participating, vaccination throughput rate, and populations served (including race / ethnicity and age).	December 1, 2021 through Agreement execution	30 days after Agreement execution.
		Each month of the Agreement from Agreement execution through June 30, 2021	The 15 <sup>th</sup> day of the month following the Report Period
<b>Cost - expenditure reports</b>	County's cost - expenditure reports shall include a summary of expenditures for the report period, including: a completed <i>Vaccination Service Expense Report</i> (see report form below*), and supporting documentation for expenses as requested by OHA, which Contractor shall maintain in accordance with Exhibit B, Section 15. Records Maintenance; Access.  In addition, County shall complete and submit any required FEMA cost – expenditure reports that OHA provides County for completion.	December 1, 2021 through Agreement execution	30 days after Agreement execution.
		Each month of the Agreement from Agreement execution through June 30, 2021	The 15 <sup>th</sup> day of the month following the Report Period

<b>*Vaccination Service Expense Report</b>		
<b>LPHA Name:</b>		
<b>Report Period:</b>		
<b>Vaccination Service Expense Type</b>		<b>Reimbursement Request</b>
<input type="checkbox"/>	Staff time for management, coordination, planning	\$
<input type="checkbox"/>	Staff time for volunteer recruitment, management	\$
<input type="checkbox"/>	Staff time for outreach and/or communications	\$
<input type="checkbox"/>	Staff time for quality assurance and improvement	\$

<b>*Vaccination Service Expense Report</b>		
<b>LPHA Name:</b>		
<b>Report Period:</b>		
<b>Vaccination Service Expense Type</b>	<b>Reimbursement Request</b>	
<input type="checkbox"/> Staff time for greeters, registration, patient flow	\$	
<input type="checkbox"/> Staff time for public health reporting, data entry	\$	
<input type="checkbox"/> Workforce recruitment and training	\$	
<input type="checkbox"/> Volunteer mileage, parking, per diem	\$	
<input type="checkbox"/> Public education campaigns	\$	
<input type="checkbox"/> Translation services and/or capabilities	\$	
<input type="checkbox"/> Vaccine site space rental	\$	
<input type="checkbox"/> Scheduling planning and technology solutions	\$	
<input type="checkbox"/> Supplies and equipment not supplied by federal government: personal protective equipment, storage, patient/traffic flow, signage	\$	
<input type="checkbox"/> Security services	\$	
<input type="checkbox"/> Transportation for patients and/or workforce	\$	
<input type="checkbox"/> Transport of vaccine and/or supplies	\$	
<input type="checkbox"/> Legal and compliance services	\$	
<input type="checkbox"/> EMS on-site (note – cannot include cost of treatment)	\$	
<input type="checkbox"/> Additional expenses approved by OHA in writing (list additional expense types).	\$	
	<b>TOTAL REQUEST</b>	<b>\$</b>

**Note:** OHA will not reimburse the following costs under this Agreement:

- Costs of the vaccine and ancillary supplies supplied by the federal government; and
- Other costs that are expected to be reimbursed by third party insurance.



**EXHIBIT A**  
**Part 2**  
**Payment and Financial Reporting**

**1. Payment Provisions.**

- a. All payments under this Agreement will be made on a cost reimbursement basis.
- b. County shall send all invoices to [ohacovid.fema@dhsoha.state.or.us](mailto:ohacovid.fema@dhsoha.state.or.us) or to any other address as OHA may indicate in writing to County. *See Attachment 1: Invoice Form.* County's claims to OHA for overdue payments on invoices are subject to ORS 293.462.
- c. OHA will review the reports required by Section 3. of Exhibit A, Part 1 (Project outcome reports and Cost expenditure reports, and supporting documentation for expenses as requested by OHA).

OHA approval of those reports is required prior to payment of County's invoices and will be the method for verifying payments and proper expenditures under this Agreement.

- 2. Travel and Other Expenses.** OHA will not reimburse County for any travel or other expenses not listed in the *Vaccination Service Expense Report* form listed in Exhibit A, Part 1, Section 3. Reporting Requirements or approved in writing by OHA.

**Note:** OHA will not reimburse the following costs under this Agreement:

- Costs of the vaccine and ancillary supplies supplied by the federal government; and
- Other costs that are expected to be reimbursed by 3<sup>rd</sup> party insurance.

**Attachment 1:  
INVOICE FORM:**

**Invoice #:** \_\_\_\_\_

**OHA Agreement #170117**

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

**From:** Clackamas County  
2051 Kaen Road, Suite 367  
Oregon City, OR 97045-4035  
Attn: Richard Swift  
Phone: (503) 655-8479  
Email: [rswift@co.clackamas.or.us](mailto:rswift@co.clackamas.or.us)

**Tax ID/EIN #** \_\_\_\_\_

**To:** Oregon Health Authority  
Public Health Division  
800 NE Oregon Street, Suite 930  
Portland, OR 97232  
Attention: Carole Yann  
Telephone: 971-212-1363  
Email: [ohacovid.fema@dhsaha.state.or.us](mailto:ohacovid.fema@dhsaha.state.or.us)

**Submit invoice only via email to: [ohacovid.fema@dhsaha.state.or.us](mailto:ohacovid.fema@dhsaha.state.or.us).**

DESCRIPTION	TOTAL
<b>Total Due</b>	<b>\$</b>

## EXHIBIT A

### Part 3 Special Terms and Conditions

#### 1. Confidentiality of Client Information.

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

#### 2. Amendments.

- a. OHA reserves the right to amend or extend the Agreement under the following general circumstances:
  - (1) OHA may extend the Agreement for additional periods of time up to a total Agreement period of 5 years, and for additional money associated with the extended period(s) of time. The determination for any extension for time may be based on OHA's satisfaction with performance of the work or services provided by the County under this Agreement.
  - (2) OHA may periodically amend any payment rates throughout the life of the Agreement proportionate to increases in Portland Metropolitan Consumer Price Index; and to provide Cost Of Living Adjustments (COLA) if OHA so chooses. Any negotiation of increases in rates to implement a COLA will be as directed by the Oregon State Legislature.
- b. OHA further reserves the right to amend the Statement of Work for the following:
  - (1) Programmatic changes/additions or modifications deemed necessary to accurately reflect the original scope of work that may not have been expressed in the original Agreement or previous amendments to the Agreement;
  - (2) Implement additional phases of the Work; or
  - (3) As necessitated by changes in Code of Federal Regulations, Oregon Revised Statutes, or Oregon Administrative Rules which, in part or in combination, govern the provision of services provided under this Agreement.
- c. Upon identification, by any party to this Agreement, of any circumstance which may require an amendment to this Agreement, the parties may enter into negotiations regarding the proposed modifications. Any resulting amendment must be in writing and be signed by all parties to the Agreement before the modified or additional

provisions are binding on either party. All amendments must comply with Exhibit B, Section 22 “Amendments” of this Agreement.

4. **Equal Access to Services.** County shall provide equal access to covered services for both males and females under 18 years of age, including access to appropriate facilities, services and treatment, to achieve the policy in ORS 417.270.
5. **Media Disclosure.** The County will not provide information to the media regarding a recipient of services purchased under this Agreement without first consulting the OHA office that referred the child or family. The County will make immediate contact with the OHA office when media contact occurs. The OHA office will assist the County with an appropriate follow-up response for the media.
6. **Nondiscrimination.** The County must provide services to OHA clients without regard to race, religion, national origin, sex, age, marital status, sexual orientation or disability (as defined under the Americans with Disabilities Act). Contracted services must reasonably accommodate the cultural, language and other special needs of clients.

## EXHIBIT B

### Standard Terms and Conditions

1. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, “Claim”) between the parties that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within a circuit court for the State of Oregon of proper jurisdiction. THE PARTIES, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Except as provided in this section, neither party waives any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. The parties acknowledge that this is a binding and enforceable agreement and, to the extent permitted by law, expressly waive any defense alleging that either party does not have the right to seek judicial enforcement of this Agreement.
2. **Compliance with Law.** Both parties shall comply with laws, regulations and executive orders to which they are subject and which are applicable to the Agreement or to the Work. Without limiting the generality of the foregoing, both parties expressly agree to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations; (b) all state laws requiring reporting of client abuse; (c) ORS 659A.400 to 659A.409, ORS 659A.145 and all regulations and administrative rules established pursuant to those laws in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the Work. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. All employers, including County and OHA, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers’ Compensation coverage, unless such employers are exempt under ORS 656.126. Nothing in this Agreement shall require County or OHA to act in violation of state or federal law or the Constitution of the State of Oregon.
3. **Independent Contractors.** The parties agree and acknowledge that their relationship is that of independent contracting parties and that County is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.
4. **Representations and Warranties.**
  - a. County represents and warrants as follows:
    - (1) **Organization and Authority.** County is a political subdivision of the State of Oregon duly organized and validly existing under the laws of the State of Oregon. County has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder.
    - (2) **Due Authorization.** The making and performance by County of this Agreement (a) have been duly authorized by all necessary action by County and (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other

administrative agency or any provision of County'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 County is a party or by which County may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by County of this Agreement.

- (3) Binding Obligation. This Agreement has been duly executed and delivered by County and constitutes a legal, valid and binding obligation of County, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- (4) 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;
- (5) County shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the Work; and
- (6) County prepared its proposal related to this Agreement, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.

**b.** OHA represents and warrants as follows:

- (1) Organization and Authority. OHA has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder.
- (2) Due Authorization. The making and performance by OHA of this Agreement (a) have been duly authorized by all necessary action by OHA and (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which OHA is a party or by which OHA may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by OHA of this Agreement, other than approval by the Department of Justice if required by law.
- (3) Binding Obligation. This Agreement has been duly executed and delivered by OHA and constitutes a legal, valid and binding obligation of OHA, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

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

**5. Funds Available and Authorized Clause.**

- a.** The State of Oregon’s payment obligations under this Agreement are conditioned upon OHA receiving funding, appropriations, limitations, allotment, or other expenditure authority sufficient to allow OHA, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Agreement. County is not entitled to receive payment under this Agreement from any part of Oregon state government other than OHA. Nothing in this Agreement is to be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. OHA represents that as of the date it executes this Agreement, it has sufficient appropriations and limitation for the current biennium to make payments under this Agreement.
- b.** Payment Method. Payments under this Agreement will be made by Electronic Funds Transfer (EFT) and shall be processed in accordance with the provisions of OAR 407-120-0100 through 407-120-0380 or OAR 410-120-1260 through OAR 410-120-1460, as applicable, and any other Oregon Administrative Rules that are program-specific to the billings and payments. Upon request, County shall provide its taxpayer identification number (TIN) and other necessary banking information to receive EFT payment. County shall maintain at its own expense a single financial institution or authorized payment agent capable of receiving and processing EFT using the Automated Clearing House (ACH) transfer method. The most current designation and EFT information will be used for all payments under this Agreement. County shall provide this designation and information on a form provided by OHA. In the event that EFT information changes or the County elects to designate a different financial institution for the receipt of any payment made using EFT procedures, the County shall provide the changed information or designation to OHA on a OHA-approved form. OHA is not required to make any payment under this Agreement until receipt of the correct EFT designation and payment information from the County.

**6. Recovery of Overpayments.** If billings under this Agreement, or under any other Agreement between County and OHA, result in payments to County to which County is not entitled, OHA, after giving to County written notification and an opportunity to object, may withhold from payments due to County such amounts, over such periods of time, as are necessary to recover the amount of the overpayment. Prior to withholding, if County objects to the withholding or the amount proposed to be withheld, County shall notify OHA that it wishes to engage in dispute resolution in accordance with Section 19 of this Agreement.

**7. Reserved.**

**8. Ownership of Intellectual Property.**

- a. Definitions.** As used in this Section 8 and elsewhere in this Agreement, the following terms have the meanings set forth below:

  - (1) "County Intellectual Property" means any intellectual property owned by County and developed independently from the Work.
  - (2) "Third Party Intellectual Property" means any intellectual property owned by parties other than OHA or County.

- b.** Except as otherwise expressly provided herein, or as otherwise required by state or federal law, OHA will not own the right, title and interest in any intellectual property created or delivered by County or a subcontractor in connection with the Work. With respect to that portion of the intellectual property that the County owns, County grants to OHA a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to (1) use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the intellectual property, (2) authorize third parties to exercise the rights set forth in Section 8.b.(1) on OHA's behalf, and (3) sublicense to third parties the rights set forth in Section 8.b.(1).
  - c.** If state or federal law requires that OHA or County grant to the United States a license to any intellectual property, or if state or federal law requires that OHA or the United States own the intellectual property, then County shall execute such further documents and instruments as OHA may reasonably request in order to make any such grant or to assign ownership in the intellectual property to the United States or OHA. To the extent that OHA becomes the owner of any intellectual property created or delivered by County in connection with the Work, OHA will grant a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to County to use, copy, distribute, display, build upon and improve the intellectual property.
  - d.** County shall include in its subcontracts terms and conditions necessary to require that subcontractors execute such further documents and instruments as OHA may reasonably request in order to make any grant of license or assignment of ownership that may be required by federal or state law.
- 9. County Default.** County shall be in default under this Agreement upon the occurrence of any of the following events:
- a.** County fails to perform, observe or discharge any of its covenants, agreements or obligations set forth herein;
  - b.** Any representation, warranty or statement made by County herein or in any documents or reports relied upon by OHA to measure the delivery of Work, the expenditure of payments or the performance by County is untrue in any material respect when made;
  - c.** County (1) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (2) admits in writing its inability, or is generally unable, to pay its debts as they become due, (3) makes a general assignment for the benefit of its creditors, (4) is adjudicated a bankrupt or insolvent, (5) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (6) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (7) 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 (8) takes any action for the purpose of effecting any of the foregoing; or



- d. A proceeding or case is commenced, without the application or consent of County, in any court of competent jurisdiction, seeking (1) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of County, (2) the appointment of a trustee, receiver, custodian, liquidator, or the like of County or of all or any substantial part of its assets, or (3) similar relief in respect to County 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 consecutive days, or an order for relief against County is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

**10. OHA Default.** OHA shall be in default under this Agreement upon the occurrence of any of the following events:

- a. OHA fails to perform, observe or discharge any of its covenants, agreements, or obligations set forth herein; or
- b. Any representation, warranty or statement made by OHA herein or in any documents or reports relied upon by County to measure performance by OHA is untrue in any material respect when made.

**11. Termination.**

**a. County Termination.** County may terminate this Agreement:

- (1) For its convenience, upon at least 30 days advance written notice to OHA;
- (2) Upon 45 days advance written notice to OHA, if County does not obtain funding, appropriations and other expenditure authorizations from County's governing body, federal, state or other sources sufficient to permit County to satisfy its performance obligations under this Agreement, as determined by County in the reasonable exercise of its administrative discretion;
- (3) Upon 30 days advance written notice to OHA, if OHA is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as County may specify in the notice; or
- (4) Immediately upon written notice to OHA, if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that County no longer has the authority to meet its obligations under this Agreement.

**b. OHA Termination.** OHA may terminate this Agreement:

- (1) For its convenience, upon at least 30 days advance written notice to County;
- (2) Upon 45 days advance written notice to County, if OHA does not obtain funding, appropriations and other expenditure authorizations from federal, state or other sources sufficient to meet the payment obligations of OHA under this Agreement, as determined by OHA in the reasonable exercise of its administrative discretion. Notwithstanding the preceding sentence, OHA may terminate this Agreement, immediately upon written notice to County or at such other time as it may determine if action by the Oregon Legislative

Assembly or Emergency Board reduces OHA's legislative authorization for expenditure of funds to such a degree that OHA will no longer have sufficient expenditure authority to meet its payment obligations under this Agreement, as determined by OHA in the reasonable exercise of its administrative discretion, and the effective date for such reduction in expenditure authorization is less than 45 days from the date the action is taken;

- (3) Immediately upon written notice to County if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that OHA no longer has the authority to meet its obligations under this Agreement or no longer has the authority to provide payment from the funding source it had planned to use;
- (4) Upon 30 days advance written notice to County, if County is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as OHA may specify in the notice;
- (5) Immediately upon written notice to County, if any license or certificate required by law or regulation to be held by County or a subcontractor to perform the Work is for any reason denied, revoked, suspended, not renewed or changed in such a way that County or a subcontractor no longer meets requirements to perform the Work. This termination right may only be exercised with respect to the particular part of the Work impacted by loss of necessary licensure or certification; or
- (6) Immediately upon written notice to County, if OHA determines that County or any of its subcontractors have endangered or are endangering the health or safety of a client or others in performing work covered by this Agreement.

**c. Mutual Termination.** The Agreement may be terminated immediately upon mutual written consent of the parties or at such time as the parties may agree in the written consent.

## **12. Effect of Termination.**

### **a. Entire Agreement.**

- (1) Upon termination of this Agreement, OHA shall have no further obligation to pay County under this Agreement.
- (2) Upon termination of this Agreement, County shall have no further obligation to perform Work under this Agreement.

**b. Obligations and Liabilities.** Notwithstanding Section 12.a., any termination of this Agreement shall not prejudice any obligations or liabilities of either party accrued prior to such termination.

## **13. Limitation of Liabilities.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT. NEITHER PARTY SHALL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT OR ANY PART HEREOF IN ACCORDANCE WITH ITS TERMS.

14. **Insurance.** County shall require subcontractors to maintain insurance as set forth in Exhibit C, which is attached hereto.
15. **Records Maintenance; Access.** County shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, County shall maintain any 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 Agreement in such a manner as 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 Agreement, are collectively referred to as "Records." County acknowledges and agrees that OHA and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to all Records to perform examinations and audits and make excerpts and transcripts. County shall retain and keep accessible all Records for a minimum of six years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. County shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.
16. **Information Privacy/Security/Access.** If the Work performed under this Agreement requires County or its subcontractor(s) to have access to or use of any OHA computer system or other OHA Information Asset for which OHA imposes security requirements, and OHA grants County or its subcontractor(s) access to such OHA Information Assets or Network and Information Systems, County shall comply and require all subcontractor(s) to which such access has been granted to comply with OAR 943-014-0300 through OAR 943-014-0320, as such rules may be revised from time to time. For purposes of this section, "Information Asset" and "Network and Information System" have the meaning set forth in OAR 943-014-0305, as such rule may be revised from time to time.
17. **Force Majeure.** Neither OHA nor County shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, natural causes, or war which is beyond the reasonable control of OHA or County, respectively. Each party shall, however, make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. OHA may terminate this Agreement upon written notice to the other party after reasonably determining that the delay or breach will likely prevent successful performance of this Agreement.
18. **Assignment of Agreement, Successors in Interest.**
  - a. County shall not assign or transfer its interest in this Agreement without prior written approval of OHA. Any such assignment or transfer, if approved, is subject to such conditions and provisions as OHA may deem necessary. No approval by OHA of any assignment or transfer of interest shall be deemed to create any obligation of OHA in addition to those set forth in the Agreement.
  - b. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns.
19. **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.

20. **Subcontracts.** County shall not enter into any subcontracts for any of the Work required by this Agreement without OHA's prior written consent. In addition to any other provisions OHA may require, County shall include in any permitted subcontract under this Agreement provisions to require that OHA will receive the benefit of subcontractor performance as if the subcontractor were the County with respect to Sections 1, 2, 3, 4, 8, 15, 16, 18, 21, and 23 of this Exhibit B. OHA's consent to any subcontract shall not relieve County of any of its duties or obligations under this Agreement.
21. **No Third Party Beneficiaries.** OHA and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. The parties agree that County's performance under this Agreement is solely for the benefit of OHA to assist and enable OHA to accomplish its statutory mission. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
22. **Amendments.** No amendment, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and, when required, the Department of Justice. Such amendment, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given.
23. **Severability.** The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
24. **Survival.** Sections 1, 4, 5, 6, 8, 12, 13, 14, 15, 16, 19, 21, 22, 23, 24, 25, 26, 28, 29, 30 and 31 of this Exhibit B shall survive Agreement expiration or termination as well as those the provisions of this Agreement that by their context are meant to survive. Agreement expiration or termination shall not extinguish or prejudice either party's right to enforce this Agreement with respect to any default by the other party that has not been cured.
25. **Notice.** Except as otherwise expressly provided in this Agreement, 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 County or OHA at the address or number set forth in this Agreement, or to such other addresses or numbers as either party may indicate pursuant to this section. Any communication or notice so addressed and mailed by regular mail shall be deemed received and effective five days after the date of mailing. Any communication or notice delivered by facsimile shall be deemed received and effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the recipient, or on the next business day if transmission was outside normal business hours of the recipient. Notwithstanding the forgoing, to be effective against the other party, any notice transmitted by facsimile must be confirmed by telephone notice to the other party. Any communication or notice given by personal delivery shall be deemed effective when actually delivered to the addressee.

**OHA:** Office of Contracts & Procurement  
635 Capitol Street NE, Suite 350  
Salem, OR 97301  
Telephone: 503-945-5818  
Facsimile: 503-378-4324

26. **Headings.** The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret this Agreement.
27. **Waiver.** The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision. No waiver or consent shall be effective unless in writing and signed by the party against whom it is asserted.
28. **Reserved.**
29. **Contribution.** 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.

With respect to a Third Party Claim for which the State is jointly liable with the County (or would be if joined in the Third Party Claim), the State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the County in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the County 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 State on the one hand and of the County 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 State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

With respect to a Third Party Claim for which the County is jointly liable with the State (or would be if joined in the Third Party Claim), the County 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 State in such proportion as is appropriate to reflect the relative fault of the County on the one hand and of the State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the County on the one hand and of the State on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such

expenses, judgments, fines or settlement amounts. The County'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.

- 30. Indemnification by Subcontractors.** County 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 County'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.
- 31. Stop-Work Order.** OHA may, at any time, by written notice to the County, require the County to stop all, or any part of the work required by this Agreement for a period of up to 90 days after the date of the notice, or for any further period to which the parties may agree through a duly executed amendment. Upon receipt of the notice, County shall immediately comply with the Stop-Work Order terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the stop work order notice. Within a period of 90 days after issuance of the written notice, or within any extension of that period to which the parties have agreed, OHA shall either:
- a.** Cancel or modify the stop work order by a supplementary written notice; or
  - b.** Terminate the work as permitted by either the Default or the Convenience provisions of Section 11. Termination.

If the Stop Work Order is canceled, OHA may, after receiving and evaluating a request by the County, make an adjustment in the time required to complete this Agreement and the Agreement price by a duly executed amendment.

## **EXHIBIT C**

### **Subcontractor Insurance Requirements**

County shall require its first tier contractor(s) (Contractor) that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS 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 County 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 OHA. County shall not authorize contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, County shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. County 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 County permit a contractor to work under a Subcontract when the County 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 county directly enters into a contract. It does not include a subcontractor with which the contractor enters into a contract.

### **TYPES AND AMOUNTS**

#### **WORKERS' COMPENSATION & EMPLOYERS' LIABILITY**

All employers, including Contractor, 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). Contractor shall require and ensure that each of its subcontractors complies with these requirements. If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If contractor is an employer subject to any other state's workers' compensation law, Contractor 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**

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 contract, 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 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.

**AUTOMOBILE LIABILITY INSURANCE:**

Required  Not required

**PROFESSIONAL LIABILITY:**

Required  Not required

**NETWORK SECURITY AND PRIVACY LIABILITY:**

Required  Not required

**EXCESS/UMBRELLA INSURANCE:**

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

**ADDITIONAL COVERAGE REQUIREMENTS:**

Contractor's insurance shall be primary and non-contributory with any other insurance. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

**ADDITIONAL INSURED:**

All liability insurance, except for Workers' Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Subcontract 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 Contractor's activities to be performed under this Contract. 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 07 04 or equivalent.

**WAIVER OF SUBROGATION:**

Contractor shall waive rights of subrogation which Contractor or any insurer of Contractor may acquire against the OHA or State of Oregon by virtue of the payment of any loss. Contractor will obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the OHA has received a waiver of subrogation endorsement from the Contractor or the Contractor's insurer(s).

**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, Contractor 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 Subcontract, for a minimum of 24 months following the later of (i) Contractor's completion and County's acceptance of all Services required under this Subcontract, or, (ii) County's or Contractor termination of contract, or, iii) The expiration of all warranty periods provided under this Subcontract.

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

County shall obtain from the Contractor a Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) shall



list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) shall also include all required endorsements or copies of the applicable policy language effecting coverage required by this contract. 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 OHA has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Contract.

**NOTICE OF CHANGE OR CANCELLATION:**

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

**INSURANCE REQUIREMENT REVIEW:**

Contractor agrees to periodic review of insurance requirements by OHA under this agreement and to provide updated requirements as mutually agreed upon by Contractor and OHA.

**STATE ACCEPTANCE:**

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

## EXHIBIT D

### Federal Terms and Conditions

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

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

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

local or tribal government in policymaking and administrative processes within the executive branch of that government.

- g.** The prohibitions in subsections (e) and (f) of this section shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.
  - h.** No part of any federal funds paid to County under this Agreement may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance of that federally sponsored clinical trials are being conducted to determine therapeutic advantage.
- 6. Resource Conservation and Recovery.** County shall comply and require all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 U.S.C. 6901 et. seq.). Section 6002 of that Act (codified at 42 U.S.C. 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.
- 7. Audits.**
- a.** County shall comply, and require any subcontractor to comply, with applicable audit requirements and responsibilities set forth in this Agreement and applicable state or federal law.
  - b.** If County expends \$750,000 or more in federal funds (from all sources) in a federal fiscal year, County shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR Subtitle B with guidance at 2 CFR Part 200. Copies of all audits must be submitted to DHS within 30 days of completion. If County expends less than \$750,000 in a federal fiscal year, Recipient is exempt from federal audit requirements for that year. Records must be available as provided in Exhibit B, "Records Maintenance, Access".
- 8. Debarment and Suspension.** County shall not permit any person or entity to be a subcontractor 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. 12549 and No. 12689, "Debarment and Suspension". (See 2 CFR Part 180.) 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. Subcontractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.
- 9. Pro-Children Act.** County shall comply and require all subcontractors to comply with the Pro-Children Act of 1994 (codified at 20 U.S.C. Section 6081 et. seq.).
- 10. Medicaid Services. [Reserved]**

11. **Agency-based Voter Registration.** If applicable, County shall comply with the Agency-based Voter Registration sections of the National Voter Registration Act of 1993 that require voter registration opportunities be offered where an individual may apply for or receive an application for public assistance.
12. **Disclosure. [Reserved]**
13. **Federal Intellectual Property Rights Notice.** The federal funding agency, as the awarding agency of the funds used, at least in part, for the Work under this Agreement, may have certain rights as set forth in the federal requirements pertinent to these funds. For purposes of this subsection, the terms “grant” and “award” refer to funding issued by the federal funding agency to the State of Oregon. The County agrees that it has been provided the following notice:
  - a. The federal funding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the Work, and to authorize others to do so, for Federal Government purposes with respect to:
    - (1) The copyright in any Work developed under a grant, subgrant or agreement under a grant or subgrant; and
    - (2) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.
  - b. The parties are subject to applicable federal regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.”
  - c. The parties are subject to applicable requirements and regulations of the federal funding agency regarding rights in data first produced under a grant, subgrant or agreement under a grant or subgrant.
14. **Federal Whistleblower Protection.** County shall comply, and ensure the compliance by subcontractors or subgrantees, with 41 U.S.C. 4712, Enhancement of contractor protection from reprisal for disclosure of certain information.

## Exhibit E: FEMA-OHA/State Agreement

### 439679 172308 OHA Vaccine Operations OR

The purpose of this Version 0 Expedited Project is to provide funding to the Oregon Health Authority for COVID-19 emergency response activities of distributing and administering COVID-19 vaccines to its population starting from January 21, 2021 through April 20, 2021.

\*\*\*\*\*VERSION 1\*\*\*\*\*

The purpose of this Version 1 Expedited Project is to provide funding to the Oregon Health Authority for COVID-19 emergency response activities of distributing and administering COVID-19 vaccines to its population starting from December 1, 2020 through July 31, 2021.

\*\*\*\*\*

The project cost estimate is prepared based on Applicant-provided costs in response to FEMA 4499DR-OR (a COVID-19 declared event).

#### Work to be Completed

The Oregon Health Authority (OHA) is applying for funding on behalf of PNPs that will be administering vaccinations within the State. The applicant's funding request to vaccinate its population within their jurisdiction is limited at 36% of the population. According to the 2019 US Census, the total population of the State was 4,217,737. The total amount of vaccines eligible to be administered is 3,036,772 eligible doses (2 doses X 36% X 4,217,737).

The Applicant plans to distribute 75% of the eligible doses, 2,176,626 eligible doses ((3,036,772 eligible doses - 134,604 previously obligated doses) x 75%) throughout the state in this operational period by utilizing up to 71 potential vaccination sites of various sizes. These potential sites include 3 Mega Sites, 10 Large Sites, 23 Medium Sites, and 35 Small Sites. Local jurisdictions may request for the remaining 25% of the eligible doses, 725,542 eligible doses ((3,036,772 eligible doses - 134,604 previously obligated doses) x 25%).

The average unit cost based on Applicant provided information is \$101.15/dose, which is within the allowable range identified in 'Vaccine Administration Unit Costs.xlsx'.

Total project cost = unit cost per dose X eligible doses = \$101.15 X 2,176,626 = \$220,165,720

#### Approximate Vaccine Unit Cost per Site Type: (rounded to the nearest cent)

- 3 Mega Sites: \$28,911,592.60
  - \$58.85/vaccine x 491,276 vaccines
- 10 Large: \$68,270,960.34
  - \$83.38/vaccine x 818,793 vaccines
- 23 Medium: \$79,767,175.94
  - \$127.07/vaccine x 627,742 vaccines

- 35 Small: \$43,215,991.02
  - \$180.96/vaccine x 238,815 vaccines

Oregon Health Authority

A. Labor: \$200,990,107.75

- For Emergency Work, only overtime labor is eligible for budgeted employees. For unbudgeted employees performing Emergency Work, both straight-time and overtime labor are eligible. Chapter 2:V.A. Applicant (Force Account) Labor of the PAPPG (V3.1)
- 2 Team Lead
- 2 Deputy Team Lead
- 22 Security Personnel
- 10 Traffic Control
- 52 Vaccinators
- 7 Pharmacists
- 25 Nurse's Aides
- 25 Medical Screeners
- 2 Supply Managers
- 5 IT Support
- 5 On Call EMT
- 32 General Staff
- 4 Logistics Specialists
- 2 Forms Distribution Staff
- 2 Orientation Personnel
- 4 Clinic Flow; Reviewers/Billing
- 1 Clinic Manager
- 3 Translators
- 10 Float Staff
- 3 Legal Affairs Officers

B. Facility Leases Costs: \$2,902,174.68

- Facility Lease
- Additional Parking

C. Facility Equipment/Service Costs: \$6,227,059.17

- Disinfection of Interior Facility will have no grey water runoff.
- One time 'Start-Up' Cost:
  - 4 Internet Access Hot Spot Device (one time cost)
  - 38 Interior Signage (one time cost)
  - 228 Chairs / Tables (per staff basis)
  - 300 Medical Waste Disposal (one time cost)
  - 10 Hand Carts (one time cost)
  - 15 Storage Equip (one time cost)
  - 1 Janitorial (one time material cost)

- o 51 Tablets (one time cost)
- o 84 Specialty Freezers (one time cost)
- o 2 Outside banner
- o 6 Message Boards in parking lot
- o 600 Traffic cones in parking lot
- o 52 Interior Privacy Partitions
- o 1 Initial Buildout of Facility
- o 1 Restoration back to pre-disaster

D. Medical Materials Costs: \$10,046,378.29

- 3,000 Needles
- 3,000 Syringes
- 3,000 Alcohol Prep Pads
- 1,500 Surgical Masks
- 1,500 Face Shields
- 3,000 Band-aids
- 1,500 Gloves
- 18 Sharp Containers
- 150 Antihistamines
- 5 Epi-Pens
- 25 First aid kit
- 18 Blood pressure measuring device
- 18 Light source to examine mouth and throat
- 3,000 Oxygen
- 18 Stethoscope
- 18 Timing device for measuring pulse
- 3,000 Tongue depressors
- 3,000 Tourniquet

**Work to be Completed Total: \$220,165,719.90**

Expedited project will be funded at 50% of the project cost.

**Version 0 Expedited Project Cost x 50%Reduction: \$110,082,859.95**

The Federal Cost Share for this Project is 100%.

**Project Notes:**

1. Scope and cost were developed based on 'Vaccine Administration Unit Costs.xlsx' See attachment: 'ST 172308 cost estimate.xlsx'.
2. This is an Expedited Project and will be reconciled for actual costs with all documentation required prior to any future version of this project.



3. Oregon projects with doses previously obligated are: 170298 (2,380); 169848 (5,344); 169861 (5,710); 169867 (61,616); 170071 (59,554). Total doses previously obligated = 134,604.
4. 'VERSION 1' only modifies project start and end dates. See document 'DR 4499 OR - Oregon Health Authority - Request to Modify our FEMA Agreement - Project 172308.pdf'.

#### **Grant Conditions**

##### **COVID-19 Expedited Application Disclosures:**

1. Contracts must include a Termination for Convenience clause.
2. FEMA will not approve PA funding that duplicates funding or assistance provided by another Federal agency, including the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, and the United States Department of Agriculture.
3. FEMA will only reimburse for PPE/medical supplies and equipment provided to and used by Applicants and essential workers as necessary to prevent the spread of infection as directed by public health officials not to exceed the duration of the HHS public health emergency declaration for COVID-19.
4. Under the COVID-19 Declarations, eligible emergency medical care costs are eligible for the duration of the Public Health Emergency, as determined by HHS.
5. Medical Waste will be disposed of in accordance with state-approved protocol.
6. Pursuant to Section 312 of the Stafford Act, FEMA is prohibited from providing financial assistance where such assistance would duplicate funding available from another program, insurance, or any other source for the same purpose.
7. The level of disinfection work proposed for Healthcare and other public facilities needs to comply with the Centers for Disease Control and Prevention (CDC) recommendations for Healthcare or Community Facilities that have been occupied or visited by those Suspected or Confirmed of having Coronavirus Disease 2019. For any additional, non-routine disinfection work undertaken by the Applicant, the Applicant must demonstrate that the work was taken at the direction or guidance of a Public Health Official and that it complies with CDC recommendations for disinfection of subject Facilities.



**Nancy Bush**

Director

**Disaster Management**  
1710 Red Soils Ct., Ste. 225  
Oregon City, OR 97045

T 503-655-8378

[clackamas.us](http://clackamas.us)

May 26, 2021

Gary Schmidt  
County Administrator  
Clackamas County

Dear Mr. Schmidt:

Approval of Amendment #1 to Subrecipient Agreement (ESG CV2) with  
Clackamas County Children's Commission

<b>Purpose/ Outcome</b>	Extend the termination date for the Clackamas County Children's Commission (CCCC) Subrecipient Agreement for Emergency Solutions Grant COVID (ESG CV1), as authorized by the Coronavirus Aid, Relief, and Economic Securities Act (CARES Act) so that grant funds may be utilized as awarded.
<b>Dollar Amount and Fiscal Impact</b>	No budget change to the Emergency Solutions Grant CARES Act (ESG CV2) funds.
<b>Funding Source</b>	U.S. Department of Housing and Urban Development ESG CARES Act funds <b>No County General Funds</b> are included in this Agreement
<b>Duration</b>	Upon signature to December 31, 2021
<b>Previous Board Action/ Review</b>	Board members approved the allocation of these ESG CV2 funds for hotel vouchers, shelters and rapid rehousing services at the July 30, 2020 business meeting and approved the Subrecipient Agreement on February 9, 2021.
<b>Strategic Plan Alignment</b>	Increase self-sufficiency for our clients. Ensure safe, healthy and secure communities.
<b>County Review</b>	The Subrecipient Agreement was reviewed and approved by County Counsel AN on May 10, 2021.
<b>Procurement Review</b>	<ol style="list-style-type: none"> <li>1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/></li> <li>2. Item is a Subrecipient Agreement that was processed through Finance Grant Management</li> </ol>
<b>Contact Person</b>	Mark Sirois, Manager - Community Development: 503-655-8359
<b>Contract No.</b>	Subrecipient Agreement 21-015 A.1

**BACKGROUND:** The Community Development Division of the Health, Housing and Human Services Department requests the approval of a Subrecipient Agreement with Clackamas County Children's Commission (CCCC) for Rapid Rehousing (RRH) services to prevent, prepare for, and respond to the coronavirus pandemic (COVID 19) in Clackamas County. In October of 2020 CCCC applied for special Emergency Solutions Grant (ESG CV2) funding to provide eligible RRH and case management services needed.

**PROJECT OVERVIEW:** CCCC will provide staffing, crisis intervention, information and referral services as requested for the purpose of providing RRH services to individuals and families to prevent exposure and to mitigate the impacts of COVID-19. An extension of time

to the original contract date is needed in order to utilize the grant funds. It took longer than expected to get staffing in place to execute program services. There has been no utilization of grant funds to date.

It is expected that the funding under this ESG CV2 agreement will assist approximately 12 homeless families with shelter services during the program year.

The Department of Health, Housing, and Human Services (H3S) Community Development group has been working with Emergency Operations Center (EOC) command staff to respond to the impacts of this public health crisis, which includes increases in homelessness, unemployment, and food insecurity.


**RECOMMENDATION:** We recommend the approval of this Amendment to the Subrecipient Agreement extending the termination date and that you sign on behalf of the Board of County Commissioners.

Respectfully submitted,



Nancy Bush, Director  
Emergency Management

County Administrator Approval

Approval	Deny
	

**Contract Amendment**  
**Health, Housing and Human Services Department**

H3S Contract Number 21-014 A.1 Board Agenda Number N/A (under \$150k)  
and Date 5/6/2021

Division Community Development Amendment No. 1

Contractor Clackamas County Children's Commission

Amendment Requested By Amy Council

Changes:  Scope of Services  Contract Budget  
 Contract Time  Other \_\_\_\_\_

**Justification for Amendment:**

This Amendment updates the term of the Agreement to year-end. Additional time is needed for Clackamas County Children's Commission ("Subrecipient") to fully implement its program to provide a direct response to COVID.

This Amendment is effective **upon signature** and continues through **December 31, 2021**.

Except as amended hereby, all other terms and conditions of the Contract remain in full force and effect. The County has identified the changes with "***bold/italic***" font for easy reference.

---

**AMEND:**

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

AGREEMENT

1. Term and Effective Date. This Agreement becomes effective when it is signed by both Parties. Eligible expenses for this Agreement may be charged during the period beginning January 1, 2021 and expiring June 30, 2021, a total of six (6) months.

**TO READ:**

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

AGREEMENT

1. Term and Effective Date. This Agreement becomes effective when it is signed by both Parties. Eligible expenses for this Agreement may be charged during the period beginning January 1, 2021 ***and expiring December 31, 2021, a total of twelve (12) months.***

*[Signature page follows]*

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

**CLACKAMAS COUNTY CHILDREN'S COMMISSION**

By: *Darcee Kilsdonk*  
Darcee Kilsdonk, Executive Director

\_\_\_\_\_  
Date  
16518 SE River Road  
Street Address  
Milwaukie, Oregon 97267  
City/State/Zip  
darceek@clackcokids.org  
Email

**CLACKAMAS COUNTY**

Commissioner: Tootie Smith, Chair  
Commissioner: Sonya Fischer  
Commissioner: Paul Savas  
Commissioner: Martha Schrader  
Commissioner: Mark Shull

**Signing on Behalf of the Board:**

*Gary Schmidt*  
Gary Schmidt, County Administrator

05/26/2021  
Date