

April 11, 2024

BCC Agenda Date/Item: _____

Board of County Commissioners
 Clackamas County

**Approval of a Local Subrecipient Grant Agreement and Declaration of Restrictive Covenants with Transcending Hope for the acquisition of property and start-up costs for behavioral health housing. Agreement value is \$950,862.70.
 Funding through Oregon Health Authority. No County General Funds are involved.**

Previous Board Action/Review	Briefed at Issues April 9, 2024		
Performance Clackamas	Ensuring safe, healthy and secure communities through the provision of mental health and substance use services.		
Counsel Review	Yes	Procurement Review	No
Contact Person	Mary Rumbaugh	Contact Phone	503-742-5305

EXECUTIVE SUMMARY: The Behavioral Health Division of the Health, Housing and Human Services Department requests approval of a local subrecipient grant agreement and declaration of restrictive covenants with Transcending Hope for the acquisition and start-up of property to operate as temporary and transitional behavioral health housing for the Clackamas County residents receiving services through county programs, including the Aid & Assist and Choice Model Services programs.

In 2022, the Oregon State Legislature passed House Bill (HB) 5202, which included funding for the development of behavioral health housing. The goal was “to expand the availability of housing and residential treatment beds for people with behavioral health issues.” Program goals include providing an array of supported housing; help relieve the “bottleneck” at the Oregon State Hospital; address health inequities and housing access disparities; and decrease the number of people with behavioral health disorders who are homeless. Behavioral health housing funds from HB 5202 were distributed to Community Mental Health Programs (CMHPs).

As Clackamas County is a CMHP, the Behavioral Health Division (BHD) received an allocation of \$4.7 million from HB 5202. To support the goals of the program, BHD issued a request for proposals (“RFP”) to identify experienced organizations interested in developing and launching a program in Clackamas County to temporarily house and service the Aid & Assist and Choice Model program populations.

This project was advertised in accordance with ORS and LCRB Rules on October 16, 2023, through RFP 2023-88. Proposals were publically opened on November 15, 2023. The County received two

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proposals in response to the RFP, one of which was from Transcending Hope. After review of the Proposals, it was determined to be in the County's best interest to award to both proposers.

Transcending Hope submitted a proposal to acquire and operate single-family homes as part of this program. They are a non-profit organization whose mission is to provide low barrier, safe and structured recovery housing for diverse communities battling substance use, mental health disorders, and/or family crises.

Transcending Hope has entered into a purchase and sale agreement and carried out due diligence on a 3,900 square foot single-family residence at 13806 Holcomb Blvd., Oregon City, OR 97045. This Agreement provides up to \$858,910.74 to cover the full cost of acquiring the property, plus an additional \$9,475.00 for due diligence costs and \$82,476.96 for property improvements, supplies and staffing, for a total award of \$950,862.70. The property transaction is set to close on April 15, 2024, and program delivery is anticipated to begin by August 15, 2024. A separate agreement will be established to provide funding for program operations.

A declaration of restrictive covenants for each the county and the State of Oregon will be recorded on the property at closing. This will restrict use of the property for programmatic purposes that comply with the terms of the funding for a period of twenty years, consistent with requirements imposed on this transaction by the State of Oregon.

The Agreement is effective upon signature and terminates December 31, 2045.

RECOMMENDATION: Staff recommends Board approval of this Agreement.

Respectfully submitted,

A handwritten signature in cursive script that reads "Rodney A. Cook".

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

CLACKAMAS COUNTY, OREGON
LOCAL SUBRECIPIENT GRANT AGREEMENT – H3S Agreement #11552

Program Name: **Behavioral Health Housing – Holcomb Boulevard**

Program Number:

This Agreement is between **Clackamas County**, Oregon, acting by and through its Department of Health, Housing and Human Services, Behavioral Health Division (“COUNTY”), and **Transcending Hope** (“SUBRECIPIENT”), an Oregon Nonprofit Corporation.

Clackamas County Data

Grant Accountant: Lorrie Biggs

Program Manager: Mary Rumbaugh

Clackamas County – Finance

Clackamas County – Behavioral Health Division

2051 Kaen Road

2051 Kaen Road, Suite 154

Oregon City, OR 97045

Oregon City, OR 97045

503-742-5421

503-742-5305

LBiggs@clackamas.us

MaryRum@clackamas.us

Subrecipient Data

Subrecipient Representative: Deena Feldes

Transcending Hope

347A S 1st Avenue

Hillsboro, OR 97123

503-984-6851

dfeldes@transcending-hope.com

RECITALS

1. In 2022, the Oregon State Legislature passed House Bill (HB) 5202 to fund the development of Behavioral Health Housing with the directive that funds would be equitably distributed to Community Mental Health Programs (CMHPs). The goal was “to expand the availability of housing and residential treatment beds for people with behavioral health issues.” Program goals include providing an array of supported housing; help relieve the “bottleneck” at the Oregon State Hospital; address health inequities and housing access disparities; and decrease the number of people with behavioral health disorders who are homeless.
2. As Clackamas County is a CMHP, COUNTY received an allocation of funding resulting from HB 5202. To support the goals of the program COUNTY issued a request for proposals (“RFP”) on November 15, 2023. COUNTY sought proposals from experienced organizations to develop and launch a program in Clackamas County for transitional behavioral health housing and supportive services, including the Aid & Assist and Choice Model program populations.
3. Transcending Hope (“SUBRECIPIENT”) is a non-profit 501(c)(3) organization whose mission is to provide low barrier, safe, and structured recovery housing for diverse communities battling substance use, mental health disorders, and/or family crises.

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4. SUBRECIPIENT was awarded a grant as a result of the RFP to acquire real property described as 13806 Holcomb Boulevard, Oregon City, Oregon 97045 (the "Property") to be operated as temporary and transitional housing in Clackamas County, including for the Aid and Assist and Choice Model populations.
5. This local grant agreement of financial assistance ("Agreement") sets forth the terms and conditions pursuant to which SUBRECIPIENT agrees to acquire and operate the Property, as further described below.

NOW THEREFORE, according to the terms of this Agreement the COUNTY and SUBRECIPIENT agree as follows:

AGREEMENT

1. **Term and Effective Date.** This Agreement shall become effective on the date it is fully executed and will terminate on December 31, 2045, unless sooner terminated or extended pursuant to the terms hereof. Eligible expenses for this Agreement may be charged during the period beginning **January 1, 2024** and expiring **September 30, 2024**, subject to additional restrictions set forth below and to the exhibits attached hereto, and unless this Agreement is sooner terminated or extended pursuant to the terms hereof. No grant funds are available for expenditures after the expiration date of this Agreement.
2. **Program.** The Program is described in Exhibit A, Subrecipient Statement of Program Objectives & Performance Reporting, attached hereto and incorporated by this reference herein. SUBRECIPIENT agrees to carry out the Program in accordance with the terms and conditions of this Agreement and according to the scope of work in Exhibit A.
3. **Standards of Performance.** SUBRECIPIENT shall perform all activities and programs in accordance with the requirements set forth in this Agreement and all applicable laws and regulations. Furthermore, SUBRECIPIENT shall perform all activities and programs in with the requirements of the **Oregon Health Authority Behavioral Health Housing IGA #177736** that is the source of the grant funding and other required information in Exhibits A- H, which are attached to and made a part of this agreement by this reference. SUBRECIPIENT shall further comply with any and all terms, conditions, and other obligations as may be required by the applicable local or State agency providing funding for performance under this Agreement, whether or not specifically referenced herein. SUBRECIPIENT agrees to take all necessary steps, and execute and deliver any and all necessary written instruments, to perform under this Agreement including, but not limited to, executing all additional documentation necessary to comply with applicable State other funding requirements.
4. **Grant Funds.** COUNTY's funding for this Agreement is the **Behavioral Health Housing IGA #177736** issued to COUNTY by the Oregon Health Authority. The maximum, not to exceed, grant amount that the COUNTY will pay is **\$950,862.70**. The first phase is a fixed unit grant in the amount up to **\$868,385.74**, to be used for property acquisition and based on the actual amount required to close, as further described in Exhibit A. The second phase will be a cost reimbursement grant not to exceed **\$82,476.96**, the award is conditional and disbursements will be made in accordance with the schedule and requirements contained in Required Financial Reporting and Payment Request. Failure to comply with the terms of this Agreement may result in withholding of payment. Funds advanced and unspent must be returned to COUNTY within 30 days of the end of termination period in Section 1 if award conditions are not met.
5. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties. **SUBRECIPIENT must submit a written request including a justification for any amendment to**

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COUNTY in writing at least forty-five (45) calendar days before this Agreement expires. No payment will be made for any services performed before the beginning date or after the expiration date of this Agreement. If the maximum compensation amount is increased by amendment, the amendment must be fully executed before SUBRECIPIENT performs work subject to the amendment.

6. **Termination.** This Agreement may be suspended or terminated prior to the expiration of its term as follows:
- a. At COUNTY's discretion, upon thirty (30) days' advance written notice to SUBRECIPIENT;
 - b. Immediately upon written notice to SUBRECIPIENT if SUBRECIPIENT fails to comply with any term of this Agreement;
 - c. At any time upon mutual agreement by COUNTY and SUBRECIPIENT;
 - d. Immediately upon written notice provided to SUBRECIPIENT that COUNTY has determined funds are no longer available for this purpose;
 - e. Immediately upon written notice provided to SUBRECIPIENT that COUNTY lacks sufficient funds, as determined by COUNTY in its sole discretion, to continue to perform under this Agreement; or
 - f. Immediately upon written notice to SUBRECIPIENT if SUBRECIPIENT is in default under this Agreement.

Upon completion of improvements or upon termination of this Agreement, any unexpended balances shall remain with COUNTY.

7. **Effect of Termination.** The expiration or termination of this Agreement, for any reason, shall not release SUBRECIPIENT from any obligation or liability to COUNTY, or any requirement or obligation that:
- a. Has already accrued hereunder;
 - b. Comes into effect due to the expiration or termination of the Agreement; or
 - c. Otherwise survives the expiration or termination of this Agreement.

Following the termination of this Agreement, SUBRECIPIENT shall promptly identify all unexpended funds and return all unexpended funds to COUNTY. Unexpended funds are those funds received by SUBRECIPIENT under this Agreement that (i) have not been spent or expended in accordance with the terms of this Agreement; and (ii) are not required to pay allowable costs or expenses that will become due and payable as a result of the termination of this Agreement.

8. **Funds Available and Authorized.** COUNTY certifies that it has received an award sufficient to fund this Agreement. SUBRECIPIENT understands and agrees that payment of amounts under this Agreement is contingent on COUNTY receiving appropriations or other expenditure authority sufficient to allow COUNTY, in the exercise of its sole administrative discretion, to continue to make payments under this Agreement.
9. **Future Support.** COUNTY makes no commitment of future support and assumes no obligation for future support for the activity contracted herein except as set forth in Section 8.

10. State Procurement Standards

- a) COUNTY's performance under the Agreement is conditioned upon SUBRECIPIENT's compliance with, and SUBRECIPIENT shall comply with, the obligations applicable to public contracts under the Local Contract Review Board ("LCRB") regulations (Appendix C of Clackamas County Code, located at <http://www.clackamas.us/code/>), which are incorporated by reference herein.
- b) Procurements for goods and services under this award shall use processes as outlined below:

\$0-\$5,000	Direct procurement	One vendor contact
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\$5,000-\$50,000	Intermediate procurement	Obtain & document three quotes, award on best value
\$50,000-\$150,000	Intermediate Plus procurement	Issue request for quotes or other appropriate form of solicitation, award on best value
+\$150,000	Formal	Formal solicitation process following written procurement policies

- c) All procurement transactions, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. All sole-source procurements in excess of \$5,000 must receive prior written approval from COUNTY in addition to any other approvals required by law applicable to SUBRECIPIENT. Justification for sole-source procurement in excess of \$5,000 should include a description of the project and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Intergovernmental agreements are excluded from this provision.
- d) SUBRECIPIENT must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. If SUBRECIPIENT has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, SUBRECIPIENT must also maintain written standards of conduct covering organizational conflicts of interest. SUBRECIPIENT shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, and/or Requests for Proposals (“RFP”) for a proposed procurement must be excluded by SUBRECIPIENT from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to COUNTY.
- e) SUBRECIPIENT agrees that, to the extent they use contractors or subcontractors, SUBRECIPIENT shall use small, minority-owned, and/or women-owned businesses when possible.
11. **No Duplicate Payment.** SUBRECIPIENT may use other funds in addition to the grant funds to complete the Program; provided, however, SUBRECIPIENT may not credit or pay any grant funds for Program costs that are paid for with other funds and would result in duplicate funding.
12. **Non-supplanting.** SUBRECIPIENT must ensure funds provided in this Agreement are used to supplement and not supplant moneys budgeted or received from any other source for the same activities.
13. **General Agreement Provisions.**
- a) **Non-appropriation Clause.** If payment for activities and programs under this Agreement extends into COUNTY’s next fiscal year, COUNTY’s obligation to pay for such work is subject to approval of future appropriations to fund the Agreement by the Board of County Commissioners.
- b) **Indemnification.** SUBRECIPIENT agrees to indemnify, defend and hold COUNTY, and its elected officials, officers, employees, and agents, harmless with respect to any claim, cause, damage, action, penalty or other cost (including attorney’s and expert fees) arising from or related to (1) SUBRECIPIENT’s negligent or willful acts or those of its employees, agents, or those under SUBRECIPIENT’s control; or (2) SUBRECIPIENT’s acts or omissions in performing under this Agreement including, but not limited to, any claim by State or Federal funding sources that SUBRECIPIENT used funds for an ineligible purpose. SUBRECIPIENT is responsible for the actions of its own agents and employees, and COUNTY assumes no liability or responsibility with

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respect to SUBRECIPIENT's actions, employees, agents or otherwise with respect to those under its control.

SUBRECIPIENT agrees 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 and 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 SUBRECIPIENT or any of the officers, agents, employees or subcontractors of SUBRECIPIENT ("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 from and against any and all Claims.

- c) **Assignment.** This Agreement may not be assigned in whole or in part without the prior express written approval of COUNTY.
- d) **Independent Status.** SUBRECIPIENT is independent of COUNTY and will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder. SUBRECIPIENT is not an agent of COUNTY and undertakes this work independent from the control and direction of COUNTY excepting as set forth herein. SUBRECIPIENT shall not seek or have the power to bind COUNTY in any transaction or activity.
- e) **Notices.** Any notice provided for under this Agreement shall be effective if in writing and (1) delivered personally to the addressee or deposited in the United States mail, postage paid, certified mail, return receipt requested, (2) sent by overnight or commercial air courier (such as Federal Express), (3) sent by electronic mail with confirming record of delivery confirmation through electronic mail return-receipt, or by confirmation that the electronic mail was accessed, downloaded, or printed. Notice will be deemed to have been adequately given three days following the date of mailing, or immediately if personally served. For service by facsimile or by electronic mail, service will be deemed effective at the beginning of the next working day.
- f) **Governing Law.** This Agreement is made in the State of Oregon and shall be governed by and construed in accordance with the laws of that state without giving effect to the conflict of law provisions thereof. Any litigation between COUNTY and SUBRECIPIENT arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Clackamas County court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the State of Oregon.
- g) **Severability.** If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be stricken.
- h) **Counterparts.** This Agreement may be executed in any number of counterparts, all of which together will constitute one and the same Agreement. Facsimile copy or electronic signatures shall be valid as original signatures.
- i) **Third Party Beneficiaries.** Except as expressly provided in this Agreement, there are no third party beneficiaries to this Agreement. The terms and conditions of this Agreement may only be enforced by the parties.
- j) **Binding Effect.** This Agreement shall be binding on all parties hereto, their heirs, administrators, executors, successors and assigns.
- k) **Integration.** This Agreement contains the entire Agreement between COUNTY and SUBRECIPIENT and supersedes all prior written or oral discussions or Agreements.

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- l) **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.
 - m) **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
14. **Recording Requirement.** SUBRECIPIENT shall execute and record, or cause to be recorded, the Restrictive Covenants attached hereto as Exhibits F and G within thirty (30) days after execution of this Agreement. SUBRECIPIENT shall provide County proof of recordation of the Restrictive Covenants, together with a copy of a title insurance policy showing that (1) SUBRECIPIENT has acquired the Property, and is the sole title holder of the Property; and (2) title to the Property is free and clear of all liens and encumbrances other than the Restrictive Covenants and those encumbrances specifically approved in writing by COUNTY.

15. Agreement Documents.

This Agreement consists of the following documents, which are attached and incorporated by reference herein:

- Exhibit A: SUBRECIPIENT Scope of Work & Performance Reporting
- Exhibit B: SUBRECIPIENT Program Budget
- Exhibit C: Required Financial Reporting and Payment Request
- Exhibit D: General Administrative Requirements and Terms & Conditions
- Exhibit E: SUBRECIPIENT Insurance Requirements
- Exhibit F: State Declaration of Restrictive Covenants
- Exhibit G: County Declaration of Restrictive Covenants
- Exhibit H: Original Notice of Funding Opportunity, related FAQ's, and SUBRECIPIENT's approved proposal and certification

In the event of a conflict between the terms of any exhibits to this Agreement, interpretations shall be based on the following order of precedence:

- This Agreement
- Exhibit D
- Exhibit F
- Exhibit G
- Exhibit E
- Exhibit A
- Exhibit C
- Exhibit B
- Exhibit H

(Signature Page Follows)

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SIGNATURE PAGE TO SUBRECIPIENT GRANT AGREEMENT

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

CLACKAMAS COUNTY

Transcending Hope

By: _____

By: _____

Its: _____

Its: _____

Dated: _____

Dated: _____

Approved to Form

By: _____

County Counsel

Dated: _____

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**EXHIBIT A
SUBRECIPIENT SCOPE OF WORK AND PERFORMANCE REPORTING**

PROGRAM NAME: Behavioral Health Housing – Holcomb Boulevard	H3S Agreement #11552
SUBRECIPIENT: Transcending Hope	

Statement of Work

The project (“Project”) is the acquisition of and improvements to a property located at 13806 Holcomb Boulevard, Oregon City, Oregon 97045 (the “Property”), for the purpose of providing low-barrier, goal focused temporary and transitional housing and supportive services for up to one (1) year at no cost to individuals eighteen (18) years and older currently enrolled in COUNTY’S Aid and Assist or Choice Model programs (the “Program”). Under the Program, SUBRECIPIENT will further serve approximately six (6) Aid and Assist participants using a Recovery Housing model that will serve individuals with a Serious and Persistent Mental Illness (SPMI) as defined in OAR 309-036-0105(13) (“SPMI”) who are able to live independently with appropriate support services readily available and/or people actively using substances or diagnosed with a substance use disorder (“SUD”) or persons that meet the criteria of a SUD diagnosis in accordance with OAR 944-001-0020(3)(f). SUBRECIPIENT will further use the Property to provide “Supportive Housing”, as that term is defined in Exhibits F and G.

Scope of Work

Phase I

COUNTY shall provide grant funds to be used by SUBRECIPIENT for acquisition costs to acquire the Property for the purpose described above.

Acquisition of the Property shall occur within sixty (60) days of execution of this Agreement.

Phase II

Upon the successful acquisition of the Property in accordance with the terms of this Agreement, COUNTY shall reimburse SUBRECIPIENT for costs to prepare the Property for residency and Program operation to include:

- Home set-up to create a comfortable living environment, to include purchase and installation of furnishings, appliance, linens, electronics, dishes, pots and pans, décor and hygiene products
- Add three (3) single occupancy rooms
- Hire and onboard Program staff
- Purchase office and programmatic supplies
- In operating the Program, SUBRECIPIENT shall further comply with the use restrictions set forth in Exhibits F and G to the Agreement.

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Milestones and Deliverables:

Description	Date
Purchase of property	April 15, 2024
Preparation for residency and program operation	April – July 2024
Program operations commence	August 15, 2024

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**EXHIBIT B
SUBRECIPIENT PROGRAM BUDGET**

PROGRAM NAME: Behavioral Health Housing – Holcomb Boulevard	H3S Agreement #11552
SUBRECIPIENT: Transcending Hope	

Phase I – Acquisition of Property	Cost
Property Purchase	\$843,910.74
Due Diligence	\$9,475.00
Contingency to allow for closing	\$15,000.00
<i>Phase I Sub-Total</i>	\$868,385.74
Phase II – Start-Up	
Home Set-Up (Furnishing, linens, appliances, etc.)	\$30,000.00
Add Three Single Rooms	\$25,000.00
<i>Personnel:</i>	
Executive Director	\$585.00
Men’s Housing Director	\$460.00
House Manager (Part-Time)	\$1,625.00
BIPOC Case Manager	\$4,853.33
Program Supervisor	\$5,333.00
Maintenance Staffing (Part-time)	\$2,600.00
<i>Other payroll expenses:</i>	
Payroll Taxes	\$1,545.63
Benefits	\$1,625.00
401K	\$425.00
<i>Other expenses:</i>	
Cell Phones	\$175.00
Gas Stipends	\$1,125.00
Accounting Fees	\$575.00
Insurance	\$450.00
Staff Training	\$4,000.00
Office Supplies	\$2,100.00
<i>Phase II Sub-Total</i>	\$82,476.96
TOTAL	\$950,862.70

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**EXHIBIT C
REQUIRED FINANCIAL REPORTING AND PAYMENT REQUEST**

1. Funds for the acquisition of the Property will be wired by COUNTY directly to escrow to facilitate closing on the Property. SUBRECIPIENT must provide COUNTY with closing instructions and/or any other information needed to make payment(s) necessary to close no less than seventy-two (72) hours before payment deadline.
2. Payments associated with due diligence and start-up costs shall be reimbursed to SUBRECIPIENT by COUNTY. To receive reimbursement SUBRECIPIENT shall submit monthly invoices referencing grant agreement #11552.
 - a. Requests for reimbursement shall be submitted by the 10th of the month for the previous month.
 - b. Requests shall be submitted electronically to:

BHAP@clackamas.us
 - c. Invoices are subject to the review and approval of the Program Manager and Grant Accountant. Payment is contingent on compliance with all terms and conditions of this Agreement, including reporting requirements.

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**EXHIBIT D
GENERAL ADMINISTRATIVE REQUIREMENT AND TERMS & CONDITIONS**

1. Status

a) COUNTY has determined:

Entity is a non-federal subrecipient Entity is a contractor Not applicable

2. Administrative Requirements. SUBRECIPIENT agrees to its status as a subrecipient, and accepts among its duties and responsibilities the following:

- a) **Financial Management.** SUBRECIPIENT shall use adequate internal controls and maintain necessary sources documentation for all costs incurred.
- b) **Revenue Accounting.** Grant revenue and expenses generated under this Agreement should be recorded in compliance with generally accepted accounting principles and/or governmental accounting standards. This requires that the revenues are treated as unearned income or “deferred” until the compliance requirements and objectives of the grant have been met. Revenue may be recognized throughout the life cycle of the grant as the funds are “earned.” All grant revenues not fully earned and expended in compliance with the requirements and objectives at the end of the period of performance must be returned to COUNTY within 15 days.
- c) **Change in Key Personnel.** SUBRECIPIENT is required to notify COUNTY, in writing, whenever there is a change in SUBRECIPIENT key administrative or programmatic personnel and the reason for the change. Key personnel include but are not limited to: Executive Director, Finance Director, Program Manager, Bookkeeper, or any equivalent to these positions within the organization.
- d) **Cost Principles.** SUBRECIPIENT shall only use grant funds for eligible costs set forth in Exhibit A. Costs disallowed by the funding agency listed in the body of this Agreement shall be the liability of the SUBRECIPIENT.
- e) **Period of Availability.** SUBRECIPIENT may charge to the award only allowable costs resulting from obligations incurred during the funding period.
- f) **Match.** Matching funds are not required for this Agreement.
- g) **Budget.** SUBRECIPIENT use of funds may not exceed the amounts specified in the Exhibit B: Subrecipient Program Budget. At no time may budget modification change the scope of the original grant application or Agreement.
- h) **Reserved.**
- i) **Payment.** SUBRECIPIENT must submit a final request for payment no later than fifteen (15) days after the end date of this Agreement. Routine requests for reimbursement should be submitted as specified in **Exhibit C: Required Financial Reporting and Payment Request.**
- j) **Performance Reporting.** SUBRECIPIENT shall comply with reporting requirements as specified in **Exhibit A: SUBRECIPIENT Scope of Work & Performance Reporting.**

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- k) **Financial Reporting.** Upon execution of this Agreement, SUBRECIPIENT will submit completed **Exhibit C: Required Financial Reporting and Payment Request** on a monthly basis.
- l) **Closeout.** COUNTY will closeout this award when COUNTY determines that all applicable administrative actions and all required work have been completed by SUBRECIPIENT. SUBRECIPIENT must liquidate all obligations incurred under this award and must submit all financial, performance, and other reports as required by the terms and conditions of COUNTY, no later than 90 calendar days after the end date of this Agreement.
- m) **Monitoring.** SUBRECIPIENT agrees to allow COUNTY access to conduct site visits and inspections of financial records for the purpose of monitoring. COUNTY, OHA, and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of SUBRECIPIENT that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Monitoring may be performed onsite or offsite, at COUNTY's discretion. Depending on the outcomes of the financial monitoring processes, this Agreement shall either a) continue pursuant to the original terms, b) continue pursuant to the original terms and any additional conditions or remediation deemed appropriate by COUNTY, or c) be de-obligated and terminated.
- n) **Record Retention.** SUBRECIPIENT will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of six (6) years from the end of program date, or such longer period as may be required by OHA or applicable state law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.
- o) **Certification of Compliance with Grant Documents.** SUBRECIPIENT acknowledges that it has read the award conditions and certifications for Behavioral Health Housing Investment IGA #177736 that it understands and accepts those conditions and certifications, and that it agrees to comply with all the obligations, and be bound by any limitations applicable to the Clackamas County, as COUNTY, under those grant documents.

3. Default

- a) **Subrecipient's Default.** SUBRECIPIENT will be in default under this Agreement upon the occurrence of the following:
 - a. SUBRECIPIENT fails to use the grant funds for eligible purposes described in Exhibit A;
 - b. SUBRECIPIENT fails to close on acquisition of the Property within sixty (60) days of execution of this Agreement;
 - c. SUBRECIPIENT fails to use the Property for the purposes described in this Agreement;
 - d. After thirty (30) days' written notice of an opportunity to cure, SUBRECIPIENT fails to comply with any term or condition set forth in this Agreement;
 - e. SUBRECIPIENT fails to complete Project within ninety (90) days of execution of this Agreement;
 - f. SUBRECIPIENT uses funds in a manner that results in under-expenditure, over-expenditure, or mis-expenditure in violation of this Agreement;
 - g. SUBRECIPIENT transfers the Property without County's written permission. As used herein, "transfers" means any refinance, sale, assignment, or transfer of any portion of SUBRECIPIENT's interest in the Property, whether voluntary or involuntary, that occurs without County's written permission;
 - h. Any representation, warranty or statement made by SUBRECIPIENT in this Agreement or in any documents or reports relied upon by COUNTY to measure the Program, the expenditure of grant funds or the performance by SUBRECIPIENT is untrue in any material respect when made;

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- i. A petition, proceeding, or case is filed by or against SUBRECIPIENT under federal or state bankruptcy, insolvency, receivership, or other law.
- b) **County's Default.** COUNTY will be in default under this Agreement if, after thirty (30) days' notice and opportunity to cure, COUNTY fails to perform a material obligation under this Agreement provided, however, that failure to disburse grant funds due to lack of appropriation shall not constitute a default of COUNTY.

4. Remedies

- a) **County's Remedies.** In the event of SUBRECIPIENT's default, COUNTY may, at its option, pursue any or all remedies available to it under this Agreement, at law, or in equity including, but not limited to: (1) withholding SUBRECIPIENT grant funds until compliance is met; (2) reclaiming grant funds in the case of omissions or misrepresentations in financial or programmatic reporting; (3) requiring the return or repayment of any funds used by SUBRECIPIENT in violation of this Agreement including, but not limited to, failure to acquire the Property or complete the Project by the dates set forth herein; (4) termination of this Agreement; (5) declaring SUBRECIPIENT ineligible for receipt of future awards from COUNTY; (6) initiation of an action or proceeding for damages, specific performance, declaratory, or injunctive relief; (7) require SUBRECIPIENT to return all funds provided by COUNTY to SUBRECIPIENT for the acquisition of the Property; and/or (8) in the event SUBRECIPIENT fails to complete the Project by August 15, 2024, return of all funds provided by COUNTY to SUBRECIPIENT under this Agreement. Failure by COUNTY to enforce any right under this Agreement shall not be deemed to be a waiver of that right or of any other right.
- b) **Subrecipient's Remedies:** In the event COUNTY is in default, and whether or not SUBRECIPIENT elects to terminate this Agreement, SUBRECIPIENT's sole remedy for COUNTY's default, subject to the limits of applicable law or in this Agreement, is reimbursement for eligible costs incurred in accordance with this Agreement, less any claims COUNTY may have against SUBRECIPIENT. In no event will COUNTY be liable to SUBRECIPIENT for expenses related to termination of this Agreement or for any indirect, incidental, consequential or special damages.

5. Compliance with Applicable Laws

- a) **Public Policy.** SUBRECIPIENT expressly agrees to comply with all public policy requirements, laws, regulations, and executive orders issued by the Federal government, to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, "Equal Employment Opportunity" as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) all regulations and administrative rules established pursuant to the foregoing laws; and (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- b) **Compliance With Applicable Law.** SUBRECIPIENT shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time.
- c) **Conflict Resolution.** If potential, actual or perceived conflicts are discovered among federal, state and local statutes, regulations, administrative rules, executive orders, ordinances or other laws applicable to this Agreement, SUBRECIPIENT may in writing request COUNTY to resolve the conflict. SUBRECIPIENT shall specify if the conflict(s) create a problem for the Program.

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COUNTY shall undertake reasonable efforts to resolve the issue but is not required to deliver any specific answer or product. SUBRECIPIENT shall remain obligated to independently comply with all applicable laws and no action by COUNTY shall be deemed a guarantee, waiver, or indemnity for non-compliance with any law.

- d) **Confidential Information.** SUBRECIPIENT acknowledges that it and its employees and agents may, in the course of performing their obligations under this Agreement, be exposed to or acquire information that the County desires or is required to maintain as confidential, including information that is protected under applicable law, including Personal Information (as “Personal Information” is defined in ORS 646A.602(11)). SUBRECIPIENT agrees to hold any and all information that it is required by law or that the County marks as “Confidential” to be held in confidence (“Confidential Information”), using at least the same degree of care that SUBRECIPIENT uses in maintaining the confidentiality of its own confidential information, and will use the Confidential Information for no purpose other than in the performance of this Agreement, or as may be permitted under applicable law, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. SUBRECIPIENT further agrees to take reasonable measures to safeguard such information and to follow all applicable federal, state and local regulations regarding privacy and obligations of confidentiality.
- e) **Mileage reimbursement.** If mileage reimbursement is authorized in SUBRECIPIENT budget or by the written approval of COUNTY, mileage must be paid at the rate established by SUBRECIPIENT’s written policies covering all organizational mileage reimbursement or at the IRS mileage rate at the time of travel, whichever is lowest.

6. Dispute Resolution.

The parties will attempt in good faith to informally 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 to resolve the dispute short of litigation. Each party will bear its own costs incurred for any mediation.

**EXHIBIT E
SUBRECIPIENT INSURANCE REQUIREMENTS**

During the term of this Contract, Contractor shall maintain in full force, each insurance noted below:

1. Workers Compensation. Contractor, its subcontractors, if any, and all employers providing work, labor, or materials under this Contract are subject employers under the Oregon Workers' Compensation Law, and shall either comply with ORS 656.017, which requires said employers to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or shall comply with the exemption set out in ORS 656.126. Contractors shall maintain employer's liability insurance with limits of \$500,000 each accident, \$500,000 disease each employee, and \$500,000 each policy limit.

2. Professional Liability. **Required by County** **Not required by County**

Professional Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000. This is to cover damages because of personal injury, bodily injury, death, or damage to property caused by error, omission or negligent acts related to the professional services to be provided under this Contract. The policy must provide extending reporting period coverage for claims made within two years after the contract is completed.

If this box is checked Professional Liability limits shall be \$2,000,000 per occurrence and \$4,000,000 in annual aggregate.

3. General Liability. **Required by County** **Not required by County**

General Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage for the protection of the **County and the State of Oregon, and its officers, elected officials, agents, and employees.** It shall include contractual liability coverage for the indemnity provided under this Contract.

If this box is checked General Liability limits shall be \$2,000,000 per occurrence and \$4,000,000 in annual aggregate for bodily injury/death, and \$200,000 per occurrence and \$600,000 annual aggregate for property damage.

4. Automobile Liability. **Required by County** **Not required by County**

Commercial Automobile Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each accident for Bodily Injury, Death, and Property Damage, including coverage for owned, hired, or non-owned vehicles, as applicable.

Commercial Automobile Liability insurance limits shall be \$2,000,000 per occurrence and \$4,000,000 in annual aggregate for bodily injury/death, and \$200,000 per occurrence and \$600,000 annual aggregate for property damage.

Personal Automobile Liability insurance limits shall be not less than \$250,000/occurrence, \$500,000/aggregate, and \$100,000/property damage.

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5. Physical Abuse and Molestation Liability. **Required by County** **Not required by County**

Physical Abuse and Molestation Liability insurance with a combined single limit of not less than \$1,000,000 each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000.

Coverage shall be provided through either general liability or professional liability coverage. Proof of Sex Abuse/Molestation insurance coverage must be provided.

6. Privacy and Network Security. **Required by County** **Not required by County**

Privacy and Network Security coverages shall be obtained and maintained to provide protection against liability for (a) system attack; (b) denial or loss of service attacks; (c) spread of malicious software code; (d) unauthorized access and use of computer systems; and (e) liability from the loss or disclosure of confidential data with limit of \$1,000,000 per claim/annual aggregate.

If this box is checked Privacy and Network Security limit shall be at least \$4,000,000.

7. Additional Insured Provision. The insurance, other than Professional Liability (except to the extent it only applies to Commercial General Liability exposures), Workers' Compensation, Personal Automobile Liability and Pollution Liability Insurance, shall include **Clackamas County and the State of Oregon, and their officers, elected officials, agents, and employees** as an additional insured.

8. Primary Coverage Clause. Contractor's insurance shall apply as primary and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above. This must be noted on the insurance certificate.

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

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

11. Self-insurance. Contractor may fulfill one or more of its insurance obligation herein through a program of self-insurance, provided that Contractor's self-insurance program complies with all applicable laws, provides coverage equivalent in both type and level to that required in this Exhibit, and is reasonably acceptable to County. Contractor shall furnish an acceptable insurance certificate to County for any insurance coverage required by this Contract that is fulfilled through self-insurance. Stop-loss insurance and reinsurance coverage against catastrophic and unexpected expenses may not be self-insured.

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12. Certificates of Insurance. Contractor shall furnish evidence of the insurance required in this Contract. Contractor will maintain the insurance in full force throughout the duration of this Contract. No Contract shall be in effect until the required certificates have been received, approved, and accepted by County. A renewal certificate will be sent to County ten (10) days prior to coverage expiration. The insurance for general liability and commercial automobile liability must include an endorsement naming **Clackamas County and the State of Oregon, and their officers, elected officials, agents, and employees** as additional insureds with respect to the Work under this Contract. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the County. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

Certificate Holder should be:

Clackamas County, 2051 Kaen Road, Suite 154, Oregon City, Oregon 97045

Certificates of Insurance should be submitted electronically or by mail to:

BHContracts@clackamas.us

Clackamas County
Contracts Administration
2051 Kaen Road, Suite 154
Oregon City, OR 97045

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

14. Waiver of Subrogation. Contractor agrees to waive their rights of subrogation arising from the Work performed under this Contract.

15. Notice of cancellation or change. There shall be no cancellation, material change, exhaustion of aggregate limits, reduction of limits, or intent not to renew the insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to the County at the following address: Clackamas County Behavioral Health Division, 2051 Kaen Road, Suite 154, Oregon City, OR 97045 or BHContracts@clackamas.us.

16. Insurance Compliance. The County will be entitled to enforce Contractor compliance with the insurance requirements, and will 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, terminating the Contract as permitted by the Contract, or pursuing legal action to enforce the insurance requirements. In no event shall County permit a Contractor to work under this Contract when the County is aware that the Contractor is not in compliance with the insurance requirements.

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**EXHIBIT F
STATE DECLARATION OF RESTRICTIVE COVENANTS**

After Recording Return to:
Oregon Health Authority
Health Systems Division
500 Summer St NE, E86
Salem, OR 97301

SPACE ABOVE FOR RECORDER'S USE

**STATE OF OREGON
OREGON HEALTH AUTHORITY**

DECLARATION OF RESTRICTIVE COVENANTS

This Declaration of Restrictive Covenants (this “**Declaration**”) is made and entered into this 15th day of April 2024 (the “**Effective Date**”) by and between Transcending Hope, an Oregon nonprofit public benefit corporation (**Declarant**) and the State of Oregon, acting by and through the Oregon Health Authority and its Health System Division (collectively, “**OHA**”). OHA and Declarant may be referred to herein jointly as the “**Parties**” or individually as a “**Party**”.

RECITALS

A. The Oregon State Legislature’s Joint Committee on Ways and Means stated in the Budget Report and Measure Summary for House Bill 5202 that the OHA was appropriated funds “for distribution to community mental health programs (CMHPs) and related administrative support in OHA (the “**5202 Funds**”). The 5202 Funds are to provide an array of Supportive Housing (as hereinafter defined) and residential treatment, relieve bottlenecks in the continuum of care, and address health inequities and housing access disparities, among others.”

B. OHA issued a Request for Applications (RFA) to the CMHPs for receiving this funding and Clackamas County Behavioral Health (the “**CMHP**”) applied for a 5202 Funds award.

C. Declarant is a subrecipient of 5202 Funds from the CMHP pursuant to an agreement between the CMHP and Declarant dated April 11, 2024 (the “**Subcontract**”).

D. The Subcontract requires Declarant to execute this Declaration and comply with certain terms of that certain Grant Agreement by and between the CMHP and OHA dated October 31, 2022, as may be amended from time to time.

E. Pursuant to the Subcontract, Declarant was subawarded up to **NINE HUNDRED FIFTY THOUSAND EIGHT HUNDRED SIXTY-TWO DOLLARS AND TWENTY-ONE CENTS (\$950,862.70)** (the “**SubGrant**”) for the purpose of acquiring and renovating a residential property to serve approximately six (6) Aid and Assist participants using a Recovery Housing model that will serve individuals with a Serious and Persistent Mental Illness (SPMI) as defined in OAR 309-036-0105(13)

("SPMI") who are able to live independently with appropriate support services readily available and/or people actively using substances or diagnosed with a substance use disorder ("SUD") or persons that meet the criteria of a SUD diagnosis in accordance with OAR 944-001-0020(3)(f) (collectively, the "Improvements") situated on certain real property located in the city of Oregon City, Clackamas County (the "County"), State of Oregon, as more particularly described in Exhibit A attached hereto (the "Property"). The Property, together with the Improvements, is referred to herein as the "Project".

F. The Parties desire that this Declaration be recorded in the relevant records of the County at Declarant's cost and that certain terms herein constitute restrictive covenants and equitable servitudes running with the Property and governing, among other things, the maintenance, monitoring, and operation of the Project.

AGREEMENT

NOW, THEREFORE, for good and sufficient consideration, including the terms, conditions, covenants, warranties, and undertakings set forth herein, the Parties agree as follows:

1. INCORPORATION.

The foregoing recitals and exhibit(s) to this Declaration are incorporated into this Declaration by reference to the same extent and with the same force and effect as if fully set forth herein, provided, however, that the incorporated items do not modify the express provisions of this Declaration.

2. REPRESENTATIONS, WARRANTIES AND COVENANTS OF DECLARANT.

Declarant represents, warrants and covenants that:

2.1. Organization and Authority.

(a) Declarant is an Oregon nonprofit public benefit corporation validly created and existing under the laws of the State of Oregon.

(b) Declarant has all necessary right, power and authority under its organizational documents to (a) execute, deliver and record this Declaration, and (b) incur and perform its obligations under this Declaration.

2.2. Use of SubGrant Funds. Declarant has used or will use the SubGrant funds only for the Project costs as provided for in this Declaration and the Subcontract.

2.3. Full Disclosure. Declarant has disclosed in writing to OHA all facts that may materially adversely affect the Project, or the ability of Declarant to perform all obligations required by this Declaration. Declarant has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading, regarding the Grant, the Project and this Declaration. The information contained in this Declaration is true and accurate in all respects.

2.4. Pending Litigation. Declarant has disclosed in writing to OHA all proceedings, environmental

or otherwise, pending (or to the knowledge of Declarant, threatened) against or affecting Declarant, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project or the ability of Declarant to perform all obligations required by this Declaration.

2.5. No Defaults.

(a) No Defaults or Events of Default exist or occur upon authorization, execution or delivery of this Declaration.

(b) Declarant has not violated and has not received notice of any claimed violation of, any agreement or instrument to which it is a party or by which the Project or its property may be bound, that would materially adversely affect the Project or the ability of Declarant to perform all obligations required by this Declaration.

2.6. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Declaration will not: (i) cause a breach of a material agreement, indenture, mortgage, deed of trust, or other instrument, to which Declarant is a party or by which the Project or any of Declarant's property or assets may be bound; (ii) violate any provision of the applicable enabling statutes, code, charter, ordinances or other Oregon law pursuant to which Declarant was organized or established; or (iii) violate any laws, regulations, ordinances, resolutions, or court orders related to Declarant, the Project or Declarant's properties or operations.

2.7. Governmental Consent. Declarant has obtained or will obtain all permits and approvals, and has made or will make all notifications, declarations, filings or registrations, required for the making and performance of its obligations under this Declaration and undertaking and completion of the Project, including without limitation, all land use approvals and development permits required under local zoning or development ordinances, state law and federal law for the use of the land on which the Project will be located.

2.8. Responsibility. Declarant assumes full responsibility for timely and appropriate completion of the Project, for ownership of the Project, for its operation in accordance with this Declaration and the Subcontract and acknowledges that OHA has no direct or contractual responsibility for the Project, for ownership of the Project, or for its operation.

3. ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF DECLARANT.

Declarant also represents, warrants, and covenants that:

3.1. Fair Housing and Other Civil Rights Compliance. Declarant shall comply with all applicable state and federal nondiscrimination laws, including but not limited to the Fair Housing Act and the Americans with Disabilities Act;

3.2. Use Restrictions and Duration.

(a) **Use Restrictions.** Upon completion of the Project and for the duration of the Use Restriction Period (as hereinafter defined), Declarant shall continuously operate the Project as Supportive Housing and shall fill or hold vacant and available within the Project six (6) units of recovery housing to serve individuals with a SPMI and/or SUD (collectively, the “**Use Restrictions**”).

As used herein, “**Supportive Housing**” means rental housing for individuals with SPMI with the following key characteristics and requirements for such residents:

- (i) It is permanent housing. Residents may maintain tenancy as long as they meet occupancy obligations, including payment of monthly rent.
- (ii) It is affordable housing. Residents shall pay no more than 30% of their monthly income for housing expenses, including rent and utilities.
- (iii) It is community-based housing. Opportunities to interact with neighbors and community members, who do not have a disability, to the fullest extent possible are readily available.
- (iv) It offers access to support services as follows:
 - (a) Participation in support services is voluntary; services cannot be mandated as a condition of tenancy and a resident cannot be evicted solely for rejecting services.
 - (b) Residents have a choice and range of flexible as well as culturally appropriate and responsive services that are available as needed and desired; services are adaptable to meet the changing needs of residents.
 - (c) Services are designed to promote recovery and enable residents to attain and maintain their housing.
 - (d) The provision of housing and the provision of services are distinct activities.
 - (e) Access to the services of peer mentor is a program requirement.
- (v) It is private and secure with a target population resident having the same rights and responsibilities that are enjoyed by any other member of the community.
- (vi) It is comparable to other rental housing in the market without restrictions or provisions specific to individuals with SPMI. This applies to lease provisions, lease terms with option to renew (as long as in compliance), occupancy rules and range of choices for unit type.

(b) **Use Restriction Period.** For a period of twenty (20) years from December 31st of the year that

the Project is completed or until **December 31, 2045**, whichever is later (the “**Use Restriction Period**”), Declarant is required to provide and comply with the requirements of the Use Restrictions.

3.3. Habitability; Other Compliance. Throughout the Use Restriction Period, Declarant will manage the Project in a safe and sanitary condition that is satisfactory to OHA and in accordance with applicable zoning, code and habitability requirements.

3.4. Prevailing Wage Requirements. Declarant shall comply with the CMHP’s imposition of requirements pertaining to Oregon Prevailing Wage Rate Law as set forth in ORS 279C.800 through 279C.870, the administrative rules promulgated thereunder (OAR Chapter 839, Division 25) and Oregon Laws 2021, chapter 678, section 17.

3.5. Financial Records. Declarant shall keep accurate books and records regarding use of the SubGrant and maintain them according to generally accepted accounting principles applicable to Declarant in effect at the time.

3.6. Inspections; Information. Declarant shall permit OHA and any party designated by OHA: (i) to inspect the Project and (ii) to inspect and make copies of any accounts, books and records, including, without limitation, Declarant’s records regarding receipts, disbursements, contracts, investments and any other related matters.

3.7. Reports.

(a) Declarant shall prepare and electronically submit written quarterly reports that satisfy OHA requirements of the continued use of the Project for the agreed purpose as defined in this Declaration.

(b) The quarterly reports are due to OHA no later than April 30 (January 1-March 31), July 30 (April 1- June 30), October 30 (July 1- September 30), and January 30 (October 1-December 31) each year.

(c) The quarterly reports shall provide data as OHA requests, including but not limited to bed/unit/client capacity with their utilization rates and data on clients served by the property/facility. OHA will provide the reporting form and instructions for completion and submission of this quarterly compliance report. Declarant may be required to provide capacity and utilization rates every 60 days or more frequently as requested by OHA.

(d) Declarant shall supply any other reports and information related to the Project as OHA may reasonably require.

3.8. Records Maintenance. Declarant shall retain and keep accessible all books, documents, papers, and records that are directly related to this Declaration, the Project, or the SubGrant throughout the Use Restriction Period and for a minimum of six (6) years, or such longer period thereafter, as may be required by OHA.

3.9. Corrective Action. As a consequence of its monitoring, review of quarterly reports or otherwise, OHA may identify deficiencies in Declarant’s compliance with this Declaration. OHA may require action

by Declarant (satisfactory to OHA) to correct such deficiencies. Declarant must correct such deficiencies within thirty (30) days of notice by OHA of such deficiencies unless earlier correction is required by OHA to address material health or safety needs of Project users. The reasonableness of such corrective actions is subject to OHA in its sole discretion. Nothing herein is intended or may be construed to impose any duty on OHA to identify deficiencies in Declarant's compliance with this Declaration or to require any action by Declarant to correct such deficiencies, and Declarant remains solely responsible for compliance with this Declaration.

3.10. Insurance, Damage. Declarant shall maintain insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by entities constructing, operating and maintaining similar properties/facilities.

4. FURTHER ASSURANCES.

4.1. Further Acts. Declarant, at any time upon request of OHA, will do, make, execute and deliver all such additional and further acts, instruments or papers as OHA may require in its sole discretion to protect OHA's rights under this Declaration.

4.2. Reliance. OHA may rely upon statements, certificates, and other records of Declarant and its agents and assigns, including as to accuracy, genuine nature, and proper execution of such statements, certificates, and other records.

5. COVENANTS AND EQUITABLE SERVITUDES TO RUN WITH THE LAND.

5.1. Inducement. Declarant represents, covenants and warrants that the issuance to it of the SubGrant described herein by OHA is an inducement to Declarant to complete the Project and to operate the Project in accordance with the Subcontract and this Declaration. In consideration of the issuance of the SubGrant, Declarant has entered into this Declaration and has agreed to restrict the operation of and uses to which the Project can be put on the terms and conditions set forth herein. Therefore, Declarant covenants, agrees and acknowledges that OHA has relied on this Declaration in determining to issue the SubGrant.

5.2. Covenants; Equitable Servitudes.

(a) OHA and Declarant hereby declare their express intent that throughout the Use Restriction Period the covenants, restrictions, charges and easements set forth herein, including the Use Restrictions, will be deemed covenants running with the Property and will create equitable servitudes running with the Property, and will pass to and be binding upon OHA's and Declarant's successors in title including any purchaser, grantee or lessee of any portion of the Project and any other person or entity having any right, title or interest therein and upon the respective heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee or lessee of any portion of the Project and any other person or entity having any right, title or interest therein.

(b) Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof or interest therein (other than a residential rental agreement or residential lease) will contain an express provision making such conveyance subject to the covenants,

restrictions, charges and easements contained herein; provided, however, that any such contract, deed or other instrument will conclusively be held to have been executed, delivered and accepted subject to such covenants, regardless of whether or not such covenants are set forth or incorporated by reference in such contract, deed or other instrument.

(c) Any and all legal requirements for the provisions of this Declaration to constitute restrictive covenants running with the Property and applying to the Project as a whole, or to create equitable servitudes with respect to same in favor of OHA, are deemed satisfied in full.

(d) The consent of any recorded prior lien holder on the Project, including the Property, is not required in connection with recording this Declaration, or if required, such consent has been or will be obtained by Declarant.

5.3. Burden and Benefit.

(a) Declarant hereby declares its understanding and intent that the burdens of the covenants and equitable servitudes, including the Use Restrictions, set forth herein touch and concern the Property, and the Project as a whole, in that Declarant's legal interest in the Project is rendered less valuable thereby.

(b) Declarant hereby further declares its understanding and intent that the benefits of such covenants and equitable servitudes touch and concern the Property, and the Project as a whole, by enhancing and increasing the enjoyment and use of the Project by tenants, intended beneficiaries (in addition to OHA) of such covenants, reservations and restrictions, and by furthering the public purposes for which the SubGrant was issued.

5.4. Right of Modification. OHA may compromise, waive, amend or modify the terms of this Declaration including, but not limited to the restrictive covenants and equitable servitudes created hereby, with the written consent of Declarant or subsequent Project owners, as it so determines in OHA's sole discretion to be to the benefit of OHA, the Project, or OHA efforts to provide or maintain safe and sanitary conditions of the Project. To be effective, any compromise, waiver, amendment or modification of this Declaration must be in writing, signed by an authorized OHA representative.

6. GENERAL PROVISIONS.

6.1. Compliance with Applicable Laws and Requirements.

(a) **Compliance.** Declarant shall comply with and shall ensure that the Project complies with all federal, state and local laws, rules regulations, codes, ordinances, and orders applicable to the Project.

(b) **Contracts; Subcontracts.** Declarant shall ensure that all contracts and subcontracts related to the Project or this Declaration comply with the terms and conditions hereof, including containing a provision to that effect therein.

(c) **Endurance of Obligations.** Declarant will remain fully obligated under the provisions of this Declaration notwithstanding its designation of any third-party or parties for the undertaking of all or any part of the Project with respect to which SubGrant funding is being provided.

6.2. Indemnity. Declarant assumes sole liability for breach of the conditions of this Declaration by Declarant or any of its officers, agents, employees, and assigns. Declarant will save, hold harmless, indemnify and defend the State of Oregon, OHA and their officers, agents, employees, members and assigns, from all suits, actions, claims, losses or damages, liabilities, costs and expenses of whatsoever nature, kind or description, including attorney fees (collectively, “**Claims**”) related to the SubGrant, the Project, this Declaration or resulting from or arising out of the acts, omissions, neglect or misconduct of Declarant or its subcontractors, agents, or employees under this Declaration or related to the SubGrant, Project, to the extent permitted by law. Neither Declarant nor any attorney engaged by Declarant may defend any Claim in the name of the State of Oregon (including any agency of the State of Oregon), nor purport to act as legal representative for the State of Oregon, without first receiving from the Oregon Attorney General, in a form and manner determined appropriate by the Oregon Attorney General, authority to act as legal counsel for the State of Oregon, nor may Declarant settle any Claim on behalf of the State of Oregon without the approval of the Oregon Attorney General. If the State of Oregon assumes its own defense, Declarant will be liable for the attorney fees of the State of Oregon, including but not limited to any fees charged by the Oregon Department of Justice. This Section shall survive expiration or termination of this Declaration.

6.3. Indemnification by Subcontractors.

Declarant shall take all reasonable steps to require 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 Declarant’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. This Section shall survive expiration or termination of this Declaration.

6.4. Time of the Essence. Time is of the essence in the performance by Declarant of the terms of this Declaration.

6.5. No Discrimination; Marketing. Except as permitted by law, Declarant will not inappropriately discriminate in the provision of housing or services on the basis of race, creed, color, sex, national origin, religion, marital status, sexual orientation, family status, age, disability or the receipt of public assistance.

6.6. Notice. Except as otherwise expressly provided in this Declaration, any notices required or permitted to be given under this Declaration will be given in writing, by personal delivery, or mailing the same, postage prepaid, to OHA or Declarant at the following addresses:

If to OHA: Oregon Health Authority
Health Systems Division
500 NE Summer St. E-86
Salem, OR 97301

If to Declarant: Attn: Deena L. Feldes, Executive Director
347A S 1st Avenue
Hillsboro, OR 97123

or to such other address a party may indicate to the other pursuant to this Section. Any notice so addressed and mailed will be effective five (5) days after mailing. Any notice by personal delivery will be deemed to be given when actually delivered.

6.7. No Third-Party Beneficiaries. Unless and only to the degree expressly provided otherwise in this Declaration, OHA and Declarant are the only Parties to this Declaration and are the only Parties entitled to rely on and enforce the terms of this Declaration. Nothing in this Declaration gives, is intended to give, or will be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly indirectly or otherwise, to third persons unless such third persons are expressly identified in this Declaration and only to the degree they are expressly described as intended beneficiaries of particular terms of this Declaration and only with such remedies as expressly given herein with respect to such interests.

6.8. Declarant Status.

(a) **Independent Contractor.** Declarant shall perform all obligations under this Declaration and will timely satisfy its obligations hereunder as an independent contractor. Declarant is not an officer, employee or agent of the State, as those terms are used in ORS 30.265 or otherwise, with respect to performance under this Declaration.

(b) **Declarant Responsible for Insurance Coverage.** Declarant agrees that insurance coverage, whether purchased or by self-insurance, for Declarant's agents, employees, officers and/or subcontractors is the sole responsibility of Declarant.

(c) **Non-Federal Employment Certification.** Declarant certifies that it is not employed by or contracting with the Federal Government for performance covered by this Declaration.

(d) **Good Standing Certification.** Declarant certifies to the best of its knowledge and belief that neither Declarant nor any of its principals, officers, directors or employees providing services under this Declaration:

(i) Is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any state or federal department or agency;

(ii) Has within a three (3) year period preceding this Declaration 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;

(iii) 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 (d)(ii) of this Section;

(iv) Has within a three (3) year period preceding this Declaration had one or more public transactions (federal, state or local) terminated for cause or default; and

(v) Is included on the list titled “**Specially Designated Nationals and Blocked Persons**” 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>

6.9. Termination. OHA may terminate this Declaration in whole or in part, without further liability and without impairment of its remedies, effective upon delivery of written notice to Declarant, under any of the following conditions:

(a) If funding from federal, state, or other sources is not obtained or is not continued at levels sufficient to allow for delivery of full SubGrant funding; or

(b) If federal or state laws, regulations, rules or other requirements are modified or interpreted in such a way that the intended use of SubGrant funding for the Project is no longer allowable or appropriate or the Project is no longer eligible for the SubGrant funding identified in this Declaration from the planned funding source(s); or

(c) If any authority required by law or regulation to be held by Declarant to complete the Project ends for any reason; or

(d) If Declarant is unable or fails to commence the Project within six (6) months from the date of this Declaration; or

(e) If Declarant breaches or fails to timely perform any of its obligations under this Declaration, or any other applicable agreement and such breach is not cured within the grace period, if any, provided for cure in the applicable document; or

(f) If OHA determines that any representation, warranty or covenant of Declarant, whether in whole or in part, is false, invalid, or in default; or

(g) If Declarant (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all or substantially all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) is adjudicated as bankrupt or insolvent, (vi) files

a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, winding-up, or composition or adjustment of debts, (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect), or (viii) takes any action for the purpose of effecting any of the foregoing.

(h) Termination of this Declaration does not terminate or otherwise impair or invalidate any remedy available to OHA or to Declarant hereunder, at law, or otherwise.

6.10. Declarant Default. Any of the following constitutes an “**Event of Default**” of Declarant:

(a) Any false or misleading representation is made by or on behalf of Declarant, in this Declaration or in any document provided by Declarant to OHA related to the SubGrant or the Project.

(b) Declarant fails to perform any obligation required under this Declaration and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Declarant by OHA, or such longer period as OHA may agree to in writing, if OHA determines in its sole discretion that Declarant has instituted and is diligently pursuing corrective action.

(c) Declarant: (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) is adjudicated a bankrupt or insolvent, (v) commences a voluntary case under the Federal Bankruptcy Code, (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (viii) takes any corporate action for the purpose of effecting any of the foregoing.

(d) A proceeding or case is commenced, without the application or consent of Declarant, in any court of competent jurisdiction, seeking: (i) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Declarant, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of Declarant or of all or any substantial part of its assets, or (iii) similar relief in respect to Declarant under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty (60) consecutive days, or an order for relief against Declarant is entered in an involuntary case under the Federal Bankruptcy Code.

6.11. OHA Default. OHA will be in default under this Declaration if it fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Declaration.

6.12. Remedies.

(a) **Repayment.** If this Declaration or any part hereof, terminates prior to the term of the Use Restriction Period, Declarant will, within thirty (30) days of written demand for repayment by OHA, repay the SubGrant to OHA multiplied by a fraction, the numerator of which is 20 minus the number of full years that have transpired between the year the Project is completed and the year of OHA's demand and the denominator of which is 20.

(b) **Deficiencies.** OHA may, from time to time, identify and direct Declarant to correct deficiencies (including deficiencies by the Owner) in its compliance with this Declaration, which it shall correct as so directed.

(c) **Extension of Use Restriction Period.** OHA may by written notice extend the Use Restriction Period described in this Declaration for periods of time matching corresponding periods of time during which OHA determines Declarant to be in material noncompliance with any of the terms of this Declaration. Such extensions may be recorded in the County's property records.

(d) **Additional Remedies.** If Declarant defaults in the performance or observance of any covenant, agreement or obligation set forth in this Declaration (including correction of deficiencies), and if such default remains uncured by Declarant for a period of thirty (30) days or less (depending upon the requirements of the notice, lesser notice periods being reserved for matters that OHA determines in its sole discretion relate to material health or safety needs of Project occupants) after notice thereof shall have been given by OHA, or if such default runs for a period of thirty (30) days from the date Declarant should, with due diligence, have discovered such default, then OHA may declare an Event of Default to have occurred hereunder provided, however, if a default is not reasonably capable of being cured within thirty (30) days or any lesser notice period provided by OHA, OHA may, in its sole discretion, extend the correction period for up to six (6) months, but only if OHA determines in its sole discretion there is good cause for granting the extension; and provided further, however, in the event of a foreclosure, deed in lieu of foreclosure, or similar event with respect to the Project or the Property, the correction period for the successor for an existing Event of Default will be no less than thirty (30) days from the earlier of the date the successor obtains control or becomes the owner of the Project. To the extent that the default is not corrected within the above-described period including extensions, if any, granted by OHA, an Event of Default will be deemed to occur and OHA may exercise its rights and remedies under this Section. Following the occurrence of an Event of Default hereunder OHA may, at its option, take any one or more of the following steps in addition to all other remedies provided in this Declaration, by law, or in equity:

i. By mandamus or other suit, action or proceeding at law or in equity, require Declarant specifically to perform its obligations under this Declaration or enjoin any acts or things that may be unlawful or in violation of the rights of OHA under this Declaration;

ii. Obtain the appointment of a receiver to operate the Project in compliance with this Declaration;

iii. Withhold from Declarant, suspend or terminate, or (upon thirty (30)-days written demand) require the repayment of all or part of any disbursed SubGrant funds or other funding assistance provided by OHA to Declarant with respect to the Project;

iv. Declare Declarant, its owners, principals, employees, and agents ineligible to receive further OHA funds or other OHA financial assistance, including with respect to other projects or requests for same, for such period as OHA determines in its sole discretion;

v. Offset amounts due from repayment of the SubGrant against other funding awarded or to be awarded to Declarant;

vi. Have access to, and inspect, examine and make copies of, all of the books and records of Declarant pertaining to the Project and to inspect the Project itself;

vii. Enter onto the Property and correct Events of Default with respect to the Project at Declarant's expense, which expense Declarant will repay to OHA within ten (10) days of any presentment of charges for same; and

viii. Take such other action under this Declaration, at law, in equity, or otherwise as may be available to OHA.

(e) **Survival of Remedies; Remedies Not Exclusive; Non-Waiver.** The rights and remedies of OHA provided for in this Declaration, which by their nature are intended to survive termination of this Declaration, will survive the termination of the Use Restriction Period and of this Declaration. Furthermore, such remedies will not be exclusive and are in addition to any other rights and remedies available at law, in equity or otherwise. No failure of or delay by OHA to enforce any provision of this Declaration will constitute a waiver by OHA of that or any other provision, nor will any single or partial exercise of any right, power or privilege under this Declaration preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.

6.13. Severability. If any term or provision of this Declaration 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 this Declaration did not contain the particular term or provisions held to be invalid.

6.14. Survival of Obligations. The obligations of Declarant as set forth in this Declaration will survive the expiration or termination of the Subcontract.

6.15. Attorney Fees. Subject to Article XI, Section 7, of the Oregon Constitution, in the event a lawsuit or other proceeding is instituted regarding this Declaration, the prevailing party in any dispute arising under this Declaration will, to the extent permitted by law, be entitled to recover from the other(s) its reasonable attorney fees and all costs and disbursements incurred at trial, in mediation, and on appeal. Reasonable attorney fees will not exceed the rate charged to OHA by its attorneys. This provision does not apply to lawsuits or other proceedings instituted or maintained by or against tenants or other third-party beneficiaries hereunder, if any, for which lawsuits or other proceedings no award of attorney fees is permitted.

6.16. Construction. The Parties to this Declaration acknowledge that each party and its counsel have participated in the drafting and revision of this Declaration (or knowingly and voluntarily waived the party's right to do so). Accordingly, the Parties agree that any rule of construction to the effect that

ambiguities are to be resolved against the drafting party will not apply in the interpretation of this Declaration or any amendment, modification, supplementation or restatement of the foregoing or of any exhibit to this Declaration.

6.17. Captions. The captions or headings in this Declaration are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Declaration.

6.18. Execution and Counterparts. This Declaration may be executed in several counterparts, each of which will be an original, all of which will constitute but one and the same instrument.

6.19. Governing Law; Venue: Consent to Jurisdiction. This Declaration will be governed by the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, “**Claim**”) related to this Declaration will be conducted exclusively within the Circuit Court of Marion County, Oregon (unless Oregon law requires that it be brought and conducted where the real property is located) or, if necessary, the United States District Court for the District of Oregon. In no event will this provision be construed as a waiver by OHA or the State of Oregon of any form of defense or immunity, whether it is 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. OHA and the State of Oregon expressly reserve all sovereignty rights. **DECLARANT, BY EXECUTION OF THIS DECLARATION, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**

6.20. Merger Clause. This Declaration constitutes the entire agreement between the Parties on the subject matter hereof. No modification or amendment of this Declaration will bind either Party unless in writing and signed by the Parties (and the necessary approvals obtained), and no waiver or consent will be effective unless signed by the party against whom such waiver or consent is asserted. Such waiver or consent, if given, will be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Declaration.

6.21. No Limitations on Actions of OHA in Exercise of Its Governmental Powers. Nothing in this Declaration is intended, nor will it be construed, to in any way limit the actions of OHA in the exercise of its governmental powers. It is the express intention of the Parties hereto that OHA will retain the full right and ability to exercise its governmental powers with respect to Declarant, the Project, this Declaration, and the transactions contemplated by this Declaration to the same extent as if it were not a party to this Declaration or the transactions contemplated hereby, and in no event will OHA have any liability in contract arising under this Declaration, or otherwise by virtue of any exercise of its governmental powers.

(Signature Pages Follow)

IN WITNESS WHEREOF, OHA and Declarant have caused this Declaration to be signed by their duly authorized officers on the Effective Date.

OHA: **STATE OF OREGON**, acting by and through its **OREGON HEALTH AUTHORITY**,

By: _____
Michael Kincaid
Director of Business Operations

STATE OF OREGON)
 : ss
County of Marion)

This instrument was acknowledged before me this ____ day of _____ 2024, by Michael Kincaid, for and on behalf of the State of Oregon, acting by and through its Director of Business Operations.

NOTARY PUBLIC FOR OREGON
My Commission Expires: January 5, 2027

DECLARANT:

By: _____
Deena L. Feldes, Executive Director

STATE OF OREGON)
 : ss
County of Clackamas)

This instrument was acknowledged before me this ____ day of _____ 2024,
by _____, for and on behalf of _____ acting by and through its
_____.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

EXHIBIT A
Legal Description

Parcel 3, PARTITION PLAT NO. 1996-119, in the City of Oregon City, County of Clackamas and State of Oregon.

Situs Address: Transcending Hope 13806 Holcomb Boulevard, Oregon City, OR 97045

Transcending Hope

Local Subrecipient Grant Agreement – H3S Agreement #11552

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EXHIBIT G
COUNTY DECLARATION OF RESTRICTIVE COVENANTS

After Recording Return to:
Clackamas County
Health, Housing & Human Services
Attn: Behavioral Health Division Director
2051 Kaen Road
Oregon City, OR 97045

SPACE ABOVE FOR RECORDER'S USE

CLACKAMAS COUNTY

DECLARATION OF RESTRICTIVE COVENANTS

This Declaration of Restrictive Covenants (this “**Declaration**”) is made and entered into this 15th day of April 2024 (the “**Effective Date**”) by and between Transcending Hope, an Oregon nonprofit public benefit corporation (“**Declarant**”) and Clackamas County, acting by and through its Health, Housing and Human Services Department (“**COUNTY**”). County and Declarant may be referred to herein jointly as the “**Parties**” or individually as a “**Party**”.

RECITALS

- A.** The Oregon State Legislature’s Joint Committee on Ways and Means stated in the Budget Report and Measure Summary for House Bill 5202 that the Oregon Health Authority (“OHA”) was appropriated funds “for distribution to community mental health programs (CMHPs) and related administrative support in OHA (the “**5202 Funds**”). The 5202 Funds are to provide an array of Supportive Housing (as hereinafter defined) and residential treatment, relieve bottlenecks in the continuum of care, and address health inequities and housing access disparities, among others.”
- B.** OHA issued a Request for Applications (RFA) to the CMHPs for receiving this funding and County, through its Behavioral Health Division applied and was granted a 5202 Funds award (the “**Grant Agreement**”).
- C.** Declarant is a subrecipient of 5202 Funds pursuant to a local grant agreement of financial assistance between County and Declarant (the “**Subaward**”).
- D.** The Subaward requires Declarant to execute this Declaration and comply with certain terms of both the Subaward and the Grant Agreement by and between the County and OHA dated October 31, 2022, as may be amended from time to time.
- E.** Pursuant to the Subaward, Declarant was granted up to **NINE HUNDRED FIFTY THOUSAND EIGHT HUNDRED SIXTY-TWO DOLLARS AND SEVENTY CENTS (\$950,862.70)** for the purpose of acquiring and renovating a residential property to serve approximately six (6) Aid and Assist participants using a Recovery Housing model that will serve individuals with a Serious and Persistent Mental Illness (SPMI) as defined in OAR 309-036-0105(13) (“**SPMI**”) who are able to live independently

Grant Agreement 177736-0
5202 Subawardee
Declaration of Restrictive Covenants
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with appropriate support services readily available and/or people actively using substances or diagnosed with a substance use disorder (“SUD”) or persons that meet the criteria of a SUD diagnosis in accordance with OAR 944-001-0020(3)(f) (collectively, the “Improvements”) situated on certain real property located in the city of Oregon City, Clackamas County (“Clackamas County”), State of Oregon, as more particularly described in Exhibit A attached hereto (the “Property”). The Property, together with the Improvements, is referred to herein as the “Project”. Upon completion, Declarant’s program will provide low-barrier, goal-focused temporary and transitional housing and supportive services to for up to one (1) year at no cost to individuals eighteen (18) years and older currently enrolled in County’s Aid and Assist or Choice Model programs (the “Program”).

F. The Parties desire that this Declaration be recorded in the relevant records of Clackamas County at Declarant’s cost and that certain terms herein constitute restrictive covenants and equitable servitudes running with the Property and governing, among other things, the maintenance, monitoring, and operation of the Project.

AGREEMENT

NOW, THEREFORE, for good and sufficient consideration, including the terms, conditions, covenants, warranties, and undertakings set forth herein, the Parties agree as follows:

1. INCORPORATION.

The foregoing recitals and exhibit(s) to this Declaration are incorporated into this Declaration by reference to the same extent and with the same force and effect as if fully set forth herein, provided, however, that the incorporated items do not modify the express provisions of this Declaration.

2. REPRESENTATIONS, WARRANTIES AND COVENANTS OF DECLARANT.

Declarant represents, warrants and covenants that:

2.1. Organization and Authority.

(a) Declarant is an Oregon nonprofit public benefit corporation validly created and existing under the laws of the State of Oregon.

(b) Declarant has all necessary right, power and authority under its organizational documents to (a) execute, deliver and record this Declaration, and (b) incur and perform its obligations under this Declaration.

2.2. Use of Subaward Funds. Declarant has used or will use the Subaward funds only for the Project costs as provided for in this Declaration and the Subaward.

2.3. Full Disclosure. Declarant has disclosed in writing to County all facts that may materially adversely affect the Project, or the ability of Declarant to perform all obligations required by this Declaration. Declarant has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading, regarding the Subaward, the Grant Agreement, the Project

and this Declaration. The information contained in this Declaration is true and accurate in all respects.

2.4. Pending Litigation. Declarant has disclosed in writing to County all proceedings, environmental or otherwise, pending (or to the knowledge of Declarant, threatened) against or affecting Declarant, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project or the ability of Declarant to perform all obligations required by this Declaration.

2.5. No Defaults.

(a) No Defaults or Events of Default exist or occur upon authorization, execution or delivery of this Declaration.

(b) Declarant has not violated and has not received notice of any claimed violation of, any agreement or instrument to which it is a party or by which the Project or its property may be bound, that would materially adversely affect the Project or the ability of Declarant to perform all obligations required by this Declaration.

2.6. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Declaration will not: (i) cause a breach of a material agreement, indenture, mortgage, deed of trust, or other instrument, to which Declarant is a party or by which the Project or any of Declarant's property or assets may be bound; (ii) violate any provision of the applicable enabling statutes, code, charter, ordinances or other Oregon law pursuant to which Declarant was organized or established; or (iii) violate any laws, regulations, ordinances, resolutions, or court orders related to Declarant, the Project or Declarant's properties or operations.

2.7. Governmental Consent. Declarant has obtained or will obtain all permits and approvals, and has made or will make all notifications, declarations, filings or registrations, required for the making and performance of its obligations under this Declaration and undertaking and completion of the Project, including without limitation, all land use approvals and development permits required under local zoning or development ordinances, state law and federal law for the use of the land on which the Project will be located.

2.8. Responsibility. Declarant assumes full responsibility for timely and appropriate completion of the Project, for ownership of the Project, for its operation in accordance with this Declaration and the Subcontract and acknowledges that County has no direct or contractual responsibility for the Project, for ownership of the Project, or for its operation.

3. ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF DECLARANT.

Declarant also represents, warrants, and covenants that:

3.1. Fair Housing and Other Civil Rights Compliance. Declarant shall comply with all applicable state and federal nondiscrimination laws, including but not limited to the Fair Housing Act and the Americans with Disabilities Act;

3.2. Use Restrictions and Duration.

(a) **Use Restrictions.** Upon completion of the Project and for the duration of the Use Restriction Period (as hereinafter defined), Declarant shall continuously operate the Project as Supportive Housing and shall fill or hold vacant and available within the Project six (6) units of recovery housing to serve individuals with a SPMI and/or SUD (collectively, the “**Use Restrictions**”).

As used herein, “**Supportive Housing**” means rental housing for individuals with SPMI with the following key characteristics and requirements for such residents:

- (i) It is permanent housing. Residents may maintain tenancy as long as they meet occupancy obligations, including payment of monthly rent.
- (ii) It is affordable housing. Residents shall pay no more than 30% of their monthly income for housing expenses, including rent and utilities.
- (iii) It is community-based housing. Opportunities to interact with neighbors and community members, who do not have a disability, to the fullest extent possible are readily available.
- (iv) It offers access to support services as follows:
 - (a) Participation in support services is voluntary; services cannot be mandated as a condition of tenancy and a resident cannot be evicted solely for rejecting services.
 - (b) Residents have a choice and range of flexible as well as culturally appropriate and responsive services that are available as needed and desired; services are adaptable to meet the changing needs of residents.
 - (c) Services are designed to promote recovery and enable residents to attain and maintain their housing.
 - (d) The provision of housing and the provision of services are distinct activities.
 - (e) Access to the services of peer mentor is a program requirement.
- (v) It is private and secure with a target population resident having the same rights and responsibilities that are enjoyed by any other member of the community.
- (vi) It is comparable to other rental housing in the market without restrictions or provisions specific to individuals with SPMI. This applies to lease provisions, lease terms with option to renew (as long as in compliance), occupancy rules and range of choices for unit type.

(b) **Use Restriction Period.** For a period of twenty (20) years from December 31st of the year that the Project is completed or until **December 31, 2045**, whichever is later (the “**Use Restriction Period**”), Declarant is required to provide and comply with the requirements of the Use Restrictions.

3.3. Habitability; Other Compliance. Throughout the Use Restriction Period, Declarant will manage the Project in a safe and sanitary condition that is satisfactory to County and in accordance with applicable zoning, code and habitability requirements.

3.4. Prevailing Wage Requirements. Declarant shall comply with County’s imposition of requirements pertaining to Oregon Prevailing Wage Rate Law as set forth in ORS 279C.800 through 279C.870, the administrative rules promulgated thereunder (OAR Chapter 839, Division 25) and Oregon Laws 2021, chapter 678, section 17.

3.5. Financial Records. Declarant shall keep accurate books and records regarding use of the Subaward and maintain them according to generally accepted accounting principles applicable to Declarant in effect at the time.

3.6. Inspections; Information. Declarant shall permit County and any party designated by County: (i) to inspect the Project and (ii) to inspect and make copies of any accounts, books and records, including, without limitation, Declarant’s records regarding receipts, disbursements, contracts, investments and any other related matters.

3.7. Reports.

(a) Declarant shall prepare and electronically submit written quarterly reports that satisfy both reporting requirements under the Subaward and OHA requirements of the continued use of the Project for the agreed purpose as defined in this Declaration.

(b) Reports are due to County pursuant to the terms of the Subaward. Quarterly reports are due to OHA no later than April 30 (January 1-March 31), July 30 (April 1- June 30), October 30 (July 1- September 30), and January 30 (October 1-December 31) each year.

(c) The quarterly reports shall provide data as OHA requests, including but not limited to bed/unit/client capacity with their utilization rates and data on clients served by the property/facility. OHA will provide the reporting form and instructions for completion and submission of this quarterly compliance report. Declarant may be required to provide capacity and utilization rates every 60 days or more frequently as requested by OHA.

(d) Declarant shall supply any other reports and information related to the Project as either County or OHA may reasonably require.

3.8. Records Maintenance. Declarant shall retain and keep accessible all books, documents, papers, and records that are directly related to this Declaration, the Project, or the Subaward throughout the Use Restriction Period and for a minimum of six (6) years, or such longer period thereafter, as may be required by County.

3.9. Corrective Action. As a consequence of its monitoring, review of quarterly reports or otherwise, County may identify deficiencies in Declarant's compliance with this Declaration. County may require action by Declarant (satisfactory to County) to correct such deficiencies. Declarant must correct such deficiencies within thirty (30) days of notice by County of such deficiencies unless earlier correction is required by County to address material health or safety needs of Project users. The reasonableness of such corrective actions is subject to County in its sole discretion. Nothing herein is intended or may be construed to impose any duty on County to identify deficiencies in Declarant's compliance with this Declaration or to require any action by Declarant to correct such deficiencies, and Declarant remains solely responsible for compliance with this Declaration.

3.10. Insurance, Damage. Declarant shall maintain insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by entities constructing, operating and maintaining similar properties/facilities.

4. FURTHER ASSURANCES.

4.1. Further Acts. Declarant, at any time upon request of County, will do, make, execute and deliver all such additional and further acts, instruments or papers as County may require in its sole discretion to protect County's rights under this Declaration.

4.2. Reliance. County may rely upon statements, certificates, and other records of Declarant and its agents and assigns, including as to accuracy, genuine nature, and proper execution of such statements, certificates, and other records.

5. COVENANTS AND EQUITABLE SERVITUDES TO RUN WITH THE LAND.

5.1. Inducement. Declarant represents, covenants and warrants that the issuance to it of the Subaward described herein by County is an inducement to Declarant to complete the Project and to operate the Project in accordance with the Subaward and this Declaration. In consideration of the issuance of the Subaward, Declarant has entered into this Declaration and has agreed to restrict the operation of and uses to which the Project can be put on the terms and conditions set forth herein. Therefore, Declarant covenants, agrees and acknowledges that County has relied on this Declaration in determining to issue the Subaward.

5.2. Covenants; Equitable Servitudes.

(a) County and Declarant hereby declare their express intent that throughout the Use Restriction Period the covenants, restrictions, charges and easements set forth herein, including the Use Restrictions, will be deemed covenants running with the Property and will create equitable servitudes running with the Property, and will pass to and be binding upon County's and Declarant's successors in title including any purchaser, grantee or lessee of any portion of the Project and any other person or entity having any right, title or interest therein and upon the respective heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee or lessee of any portion of the Project and any other person or entity having any right, title or interest therein.

(b) Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof or interest therein (other than a residential rental agreement or residential lease) will contain an express provision making such conveyance subject to the covenants, restrictions, charges and easements contained herein; provided, however, that any such contract, deed or other instrument will conclusively be held to have been executed, delivered and accepted subject to such covenants, regardless of whether or not such covenants are set forth or incorporated by reference in such contract, deed or other instrument.

(c) Any and all legal requirements for the provisions of this Declaration to constitute restrictive covenants running with the Property and applying to the Project as a whole, or to create equitable servitudes with respect to same in favor of County, are deemed satisfied in full.

(d) The consent of any recorded prior lien holder on the Project, including the Property, is not required in connection with recording this Declaration, or if required, such consent has been or will be obtained by Declarant.

5.3. Burden and Benefit.

(a) Declarant hereby declares its understanding and intent that the burdens of the covenants and equitable servitudes, including the Use Restrictions, set forth herein touch and concern the Property, and the Project as a whole, in that Declarant's legal interest in the Project is rendered less valuable thereby.

(b) Declarant hereby further declares its understanding and intent that the benefits of such covenants and equitable servitudes touch and concern the Property, and the Project as a whole, by enhancing and increasing the enjoyment and use of the Project by tenants, intended beneficiaries (in addition to County) of such covenants, reservations and restrictions, and by furthering the public purposes for which the Subaward was issued.

5.4. Right of Modification. County may compromise, waive, amend or modify the terms of this Declaration including, but not limited to the restrictive covenants and equitable servitudes created hereby, with the written consent of Declarant or subsequent Project owners, as it so determines in County's sole discretion to be to the benefit of County, the Project, or County efforts to provide or maintain safe and sanitary conditions of the Project. To be effective, any compromise, waiver, amendment or modification of this Declaration must be in writing, signed by an authorized County representative.

6. GENERAL PROVISIONS.

6.1. Compliance with Applicable Laws and Requirements.

(a) **Compliance.** Declarant shall comply with and shall ensure that the Project complies with all federal, state and local laws, rules regulations, codes, ordinances, and orders applicable to the Project.

(b) Contracts; Subcontracts. Declarant shall ensure that all contracts and subcontracts related to the Project or this Declaration comply with the terms and conditions hereof, including containing a provision to that effect therein.

(c) Endurance of Obligations. Declarant will remain fully obligated under the provisions of this Declaration notwithstanding its designation of any third-party or parties for the undertaking of all or any part of the Project with respect to which Subaward funding is being provided.

6.2. Indemnity. Declarant assumes sole liability for breach of the conditions of this Declaration by Declarant or any of its officers, agents, employees, and assigns. Declarant will save, hold harmless, indemnify and defend the County and its officers, agents, employees, members and assigns, from all suits, actions, claims, losses or damages, liabilities, costs and expenses of whatsoever nature, kind or description, including attorney fees (collectively, “**Claims**”) related to the Subaward, the Project, this Declaration or resulting from or arising out of the acts, omissions, neglect or misconduct of Declarant or its subcontractors, agents, or employees under this Declaration or related to the Subaward or the Project, to the extent permitted by law. Neither Declarant nor any attorney engaged by Declarant may defend any Claim in the name of the County (including any agency of the County), nor purport to act as legal representative for the County, without first receiving from the County, in a form and manner determined appropriate by the County, authority to act as legal counsel for the County, nor may Declarant settle any Claim on behalf of the County without the approval of the County. This Section shall survive expiration or termination of this Declaration.

6.3. Indemnification by Subcontractors.

Declarant shall take all reasonable steps to require 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 County 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 Declarant’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. This Section shall survive expiration or termination of this Declaration.

6.4. Time of the Essence. Time is of the essence in the performance by Declarant of the terms of this Declaration.

6.5. No Discrimination; Marketing. Except as permitted by law, Declarant will not inappropriately discriminate in the provision of housing or services on the basis of race, creed, color, sex, national origin, religion, marital status, sexual orientation, family status, age, disability or the receipt of public assistance.

6.6. Notice. Except as otherwise expressly provided in this Declaration, any notices required or permitted to be given under this Declaration will be given in writing, by personal delivery, or mailing the same, postage prepaid, to County or Declarant at the following addresses:

If to County: Clackamas County
Health, Housing & Human Services
Attn: Behavioral Health Division Director
2051 Kaen Road
Oregon City, OR 97045

If to Declarant: Attn: Deena L. Feldes, Executive Director
347A S 1st Avenue
Hillsboro, OR 97123

or to such other address a party may indicate to the other pursuant to this Section. Any notice so addressed and mailed will be effective five (5) days after mailing. Any notice by personal delivery will be deemed to be given when actually delivered.

6.7. No Third-Party Beneficiaries. Unless and only to the degree expressly provided otherwise in this Declaration, County and Declarant are the only Parties to this Declaration and are the only Parties entitled to rely on and enforce the terms of this Declaration. Nothing in this Declaration gives, is intended to give, or will be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly indirectly or otherwise, to third persons unless such third persons are expressly identified in this Declaration and only to the degree they are expressly described as intended beneficiaries of particular terms of this Declaration and only with such remedies as expressly given herein with respect to such interests.

6.8. Declarant Status.

(a) Independent Contractor. Declarant shall perform all obligations under this Declaration and will timely satisfy its obligations hereunder as an independent contractor. Declarant is independent of County and will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder. Declarant is not an agent of County and undertakes this work under this Declaration independent from the control and direction of County. Declarant shall not seek or have the power to bind County in any transaction or activity.

(b) Declarant Responsible for Insurance Coverage. Declarant agrees that insurance coverage, whether purchased or by self-insurance, for Declarant's agents, employees, officers and/or subcontractors is the sole responsibility of Declarant.

(c) Non-Federal Employment Certification. Declarant certifies that it is not employed by or contracting with the Federal Government for performance covered by this Declaration.

(d) Good Standing Certification. Declarant certifies to the best of its knowledge and belief that neither Declarant nor any of its principals, officers, directors or employees providing services under this Declaration:

(i) Is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any state or federal department or agency;

(ii) Has within a three (3) year period preceding this Declaration 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;

(iii) 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 (d)(ii) of this Section;

(iv) Has within a three (3) year period preceding this Declaration had one or more public transactions (federal, state or local) terminated for cause or default; and

(v) Is included on the list titled “**Specially Designated Nationals and Blocked Persons**” 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>

6.9. Termination. County may terminate this Declaration in whole or in part, without further liability and without impairment of its remedies, effective upon delivery of written notice to Declarant, under any of the following conditions:

(a) If funding from federal, state, or other sources is not obtained or is not continued at levels sufficient to allow for delivery of full Subaward funding; or

(b) If federal or state laws, regulations, rules or other requirements are modified or interpreted in such a way that the intended use of Subaward funding for the Project is no longer allowable or appropriate or the Project is no longer eligible for the Subaward funding identified in this Declaration from the planned funding source(s); or

(c) If any authority required by law or regulation to be held by Declarant to complete the Project ends for any reason; or

(d) If Declarant is unable or fails to commence the Project within six (6) months from the date of this Declaration; or

(e) If Declarant breaches or fails to timely perform any of its obligations under this Declaration, or any other applicable agreement and such breach is not cured within the grace period, if any, provided for cure in the applicable document; or

(f) If County determines that any representation, warranty or covenant of Declarant, whether in whole or in part, is false, invalid, or in default; or

(g) If Declarant (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all or substantially all of its property, (ii) admits

in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) is adjudicated as bankrupt or insolvent, (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, winding-up, or composition or adjustment of debts, (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect), or (viii) takes any action for the purpose of effecting any of the foregoing.

(h) Termination of this Declaration does not terminate or otherwise impair or invalidate any remedy available to County or to Declarant hereunder, at law, or otherwise.

6.10. Declarant Default. Any of the following constitutes an “**Event of Default**” of Declarant:

(a) Any default under the terms and conditions of the Subaward.

(b) Any false or misleading representation is made by or on behalf of Declarant, in this Declaration or in any document provided by Declarant to County related to the SubGrant or the Project.

(c) Declarant fails to perform any obligation required under this Declaration and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Declarant by County, or such longer period as County may agree to in writing, if County determines in its sole discretion that Declarant has instituted and is diligently pursuing corrective action.

(d) Declarant: (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) is adjudicated a bankrupt or insolvent, (v) commences a voluntary case under the Federal Bankruptcy Code, (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (viii) takes any corporate action for the purpose of effecting any of the foregoing.

(e) A proceeding or case is commenced, without the application or consent of Declarant, in any court of competent jurisdiction, seeking: (i) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Declarant, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of Declarant or of all or any substantial part of its assets, or (iii) similar relief in respect to Declarant under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty (60) consecutive days, or an order for relief against Declarant is entered in an involuntary case under the Federal Bankruptcy Code.

(f) Declarant sells or transfers (or attempts to sell or transfer) all or any part of, or any interest in, the Property or the Project, or any beneficial interest in Declarant, without the prior written consent of the County (which the County may grant, condition, or withhold in its sole and absolute discretion). As used herein, and except as identified below, the term “sale or transfer” is used in its broadest sense, and includes, with respect to the Property or Project, a ground lease, master lease or other lease not in the ordinary course of business, land sale contract, foreclosure, deed in lieu of foreclosure, or transfer (by operation of law or otherwise) pursuant to any dissolution, liquidation, merger, reorganization or consolidation, and with respect to a beneficial interest in Declarant, a sale, gift or other transfer of any partnership, stock, membership or other ownership interest in Declarant.

6.11. County Default. County will be in default under this Declaration if it fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Declaration.

6.12. Remedies.

(a) **Repayment.** If this Declaration or any part hereof, terminates prior to the term of the Use Restriction Period, Declarant will, within thirty (30) days of written demand for repayment by County, repay the Subaward to County multiplied by a fraction, the numerator of which is 20 minus the number of full years that have transpired between the year the Project is completed and the year of County’s demand and the denominator of which is 20.

(b) **Deficiencies.** County may, from time to time, identify and direct Declarant to correct deficiencies (including deficiencies by the Owner) in its compliance with this Declaration, which it shall correct as so directed.

(c) **Extension of Use Restriction Period.** County may by written notice extend the Use Restriction Period described in this Declaration for periods of time matching corresponding periods of time during which County determines Declarant to be in material noncompliance with any of the terms of this Declaration. Such extensions may be recorded in the County’s property records.

(d) **Additional Remedies.** If Declarant defaults in the performance or observance of any covenant, agreement or obligation set forth in this Declaration (including correction of deficiencies), and if such default remains uncured by Declarant for a period of thirty (30) days or less (depending upon the requirements of the notice, lesser notice periods being reserved for matters that County determines in its sole discretion relate to material health or safety needs of Project occupants) after notice thereof shall have been given by County, or if such default runs for a period of thirty (30) days from the date Declarant should, with due diligence, have discovered such default, then County may declare an Event of Default to have occurred hereunder provided, however, if a default is not reasonably capable of being cured within thirty (30) days or any lesser notice period provided by County, County may, in its sole discretion, extend the correction period for up to six (6) months, but only if County determines in its sole discretion there is good cause for granting the extension; and provided further, however, in the event of a foreclosure, deed in lieu of foreclosure, or similar event with respect to the Project or the Property, the correction period for the successor for an existing Event of Default will be no less than thirty (30) days from the earlier of the date the successor obtains control or becomes the owner of the Project. To the extent that the default is not corrected within the above-described period including extensions, if any, granted by County, an Event of Default will be deemed to occur and County may

exercise its rights and remedies under this Section. Following the occurrence of an Event of Default hereunder County may, at its option, take any one or more of the following steps in addition to all other remedies provided in this Declaration, by law, or in equity:

- i.** By mandamus or other suit, action or proceeding at law or in equity, require Declarant specifically to perform its obligations under this Declaration or enjoin any acts or things that may be unlawful or in violation of the rights of County under this Declaration;
- ii.** Obtain the appointment of a receiver to operate the Project in compliance with this Declaration;
- iii.** Withhold from Declarant, suspend or terminate, or (upon thirty (30)-days written demand) require the repayment of all or part of any disbursed Subaward funds or other funding assistance provided by County to Declarant with respect to the Project;
- iv.** Declare Declarant, its owners, principals, employees, and agents ineligible to receive further County funds or other County financial assistance, including with respect to other projects or requests for same, for such period as County determines in its sole discretion;
- v.** Offset amounts due from repayment of the Subaward against other funding awarded or to be awarded to Declarant;
- vi.** Have access to, and inspect, examine and make copies of, all of the books and records of Declarant pertaining to the Project and to inspect the Project itself;
- vii.** Enter onto the Property and correct Events of Default with respect to the Project at Declarant's expense, which expense Declarant will repay to County within ten (10) days of any presentment of charges for same; and
- viii.** Take such other action under this Declaration, at law, in equity, or otherwise as may be available to County.

(e) Survival of Remedies; Remedies Not Exclusive; Non-Waiver. The rights and remedies of County provided for in this Declaration, which by their nature are intended to survive termination of this Declaration, will survive the termination of the Use Restriction Period and of this Declaration. Furthermore, such remedies will not be exclusive and are in addition to any other rights and remedies available at law, in equity or otherwise. No failure of or delay by County to enforce any provision of this Declaration will constitute a waiver by County of that or any other provision, nor will any single or partial exercise of any right, power or privilege under this Declaration preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.

6.13. Severability. If any term or provision of this Declaration 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 this Declaration did not contain the particular term or provisions held to be invalid.

6.14. Survival of Obligations. The obligations of Declarant as set forth in this Declaration will survive the expiration or termination of the Subcontract.

6.15. Construction. The Parties to this Declaration acknowledge that each party and its counsel have participated in the drafting and revision of this Declaration (or knowingly and voluntarily waived the party's right to do so). Accordingly, the Parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not apply in the interpretation of this Declaration or any amendment, modification, supplementation or restatement of the foregoing or of any exhibit to this Declaration.

6.16. Captions. The captions or headings in this Declaration are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Declaration.

6.17. Execution and Counterparts. This Declaration may be executed in several counterparts, each of which will be an original, all of which will constitute but one and the same instrument.

6.18. Governing Law; Venue: Consent to Jurisdiction. This Declaration will be governed by the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "**Claim**") related to this Declaration will be conducted exclusively within the Circuit Court of Clackamas County, Oregon (unless Oregon law requires that it be brought and conducted where the real property is located) or, if necessary, the United States District Court for the District of Oregon. In no event will this provision be construed as a waiver by County of any form of defense or immunity, whether it is 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. County expressly reserves all sovereignty rights. **DECLARANT, BY EXECUTION OF THIS DECLARATION, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**

6.19. Merger Clause. This Declaration constitutes the entire agreement between the Parties on the subject matter hereof. No modification or amendment of this Declaration will bind either Party unless in writing and signed by the Parties (and the necessary approvals obtained), and no waiver or consent will be effective unless signed by the party against whom such waiver or consent is asserted. Such waiver or consent, if given, will be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Declaration.

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

6.21. No Limitations on Actions of County in Exercise of Its Governmental Powers. Nothing in this Declaration is intended, nor will it be construed, to in any way limit the actions of County in the exercise of its governmental powers. It is the express intention of the Parties hereto that County will retain the full right and ability to exercise its governmental powers with respect to Declarant, the Project, this Declaration, and the transactions contemplated by this Declaration to the same extent as if it were not a party to this Declaration or the transactions contemplated hereby, and in no event will County have any

liability in contract arising under this Declaration, or otherwise by virtue of any exercise of its governmental powers.

(Signature Pages Follow)

IN WITNESS WHEREOF, County and Declarant have caused this Declaration to be signed by their duly authorized officers on the Effective Date.

County: **Clackamas County**

By: _____
Tootie Smith
Chair

STATE OF OREGON)
 : ss
County of Clackamas)

This instrument was acknowledged before me this ____ day of _____ 2024, by Tootie Smith, for and on behalf of the County.

NOTARY PUBLIC FOR OREGON
My Commission Expires: January 5, 2027

DECLARANT:

By: _____
Deena L. Feldes, Executive Director

STATE OF OREGON)
 : ss
County of Clackamas)

This instrument was acknowledged before me this ____ day of _____ 2024,
by _____, for and on behalf of _____ acting by and through its
_____.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

EXHIBIT A
Legal Description

Parcel 3, PARTITION PLAT NO. 1996-119, in the City of Oregon City, County of Clackamas and State of Oregon.

Situs Address: Transcending Hope 13806 Holcomb Boulevard, Oregon City, OR 97045

Transcending Hope

Local Subrecipient Grant Agreement – H3S Agreement #11552

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EXHIBIT H

REQUEST FOR PROPOSAL AND SUBRECIPIENT'S PROPOSAL AND CERTIFICATION



REQUEST FOR PROPOSALS #2023-88

FOR

BEHAVIORAL HEALTH HOUSING AND SUPPORTIVE SERVICES

BOARD OF COUNTY COMMISSIONERS

TOOTIE SMITH, Chair
PAUL SAVAS, Commissioner
MARK SHULL, Commissioner
MARTHA SCHRADER, Commissioner
BEN WEST, Commissioner

Gary Schmidt
County Administrator

Contract Analyst
Thomas Candelario

PROPOSAL CLOSING DATE, TIME AND LOCATION

DATE: **November 15, 2023**

TIME: **2:00 PM, Pacific Time**

PLACE: **<https://bidlocker.us/a/clackamascounty/BidLocker>**

SCHEDULE

Request for Proposals Issued.....	October 16, 2023
Protest of Specifications Deadline.....	October 23, 2023, 5:00 PM, Pacific Time
Question and Answer Session	October 25, 2023, TBD, Pacific Time
Deadline to Submit Clarifying Questions.....	November 1, 2023, 5:00 PM, Pacific Time
Request for Proposals Closing Date and Time.....	November 15, 2023, 2:00 PM, Pacific Time
Deadline to Submit Protest of Award.....	Seven (7) days from the Intent to Award

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Section 1 – Notice of Request for Proposals
Section 2 – Instructions to Proposers
Section 3 – Scope of Work
Section 4 – Evaluation and Selection Criteria
Section 5 – Proposal Content (Including Proposal Certification)

SECTION 1 NOTICE OF REQUEST FOR PROPOSALS

Notice is hereby given that Clackamas County through its Board of County Commissioners, will receive sealed Proposals per specifications until **2:00 PM, November 15, 2023** (“Closing”), to provide Behavioral Health Housing and Supportive Services. No Proposals will be received or considered after that time.

Potential Contractors interested in the Q&A session noted in the schedule, please email the procurement analyst named below for details, this meeting will be scheduled based on interest in this session.

Location of RFP documents: OregonBuys

RFP Documents can be downloaded from the state of Oregon procurement website (“OregonBuys”) at the following address <https://oregonbuys.gov/bsv/view/login/login.xhtml>, Document No. S-C01010-000008419

Prospective Proposers will need to sign in to download the information and that information will be accumulated for a Plan Holder's List. Prospective Proposers are responsible for obtaining any Addenda, clarifying questions, and Notices of Award from OregonBuys.

Submitting Proposals: Bid Locker

Proposals will only be accepted electronically thru a secure online bid submission service, **Bid Locker**. *Email submissions to Clackamas County email addresses will no longer be accepted.*

- A. Completed proposal documents must arrive electronically via Bid Locker located at <https://bidlocker.us/a/clackamascounty/BidLocker>.
- B. Bid Locker will electronically document the date and time of all submissions. Completed documents must arrive by the deadline indicated in Section 1 or as modified by Addendum. LATE PROPOSALS WILL NOT BE ACCEPTED.
- C. Proposers must register and create a profile for their business with Bid Locker in order to submit for this project. It is free to register for Bid Locker.
- D. Proposers with further questions concerning Bid Locker may review the Vendor’s Guide located at <https://www.clackamas.us/how-to-bid-on-county-projects>.

Contact Information

Procurement Process and Technical Questions: Thomas Candelario, tcandelario@clackamas.us

The Board of County Commissioners reserves the right to reject any and all Proposals not in compliance with all prescribed public bidding procedures and requirements, and may reject for good cause any and all Proposals upon the finding that it is in the public interest to do so and to waive any and all informalities in the public interest. In the award of the contract, the Board of County Commissioners will consider the element of time, will accept the Proposal or Proposals which in their estimation will best serve the interests of Clackamas County and will reserve the right to award the contract to the contractor whose Proposal shall be best for the public good.

Clackamas County encourages proposals from Minority, Women, Veteran and Emerging Small Businesses.

SECTION 2 INSTRUCTIONS TO PROPOSERS

Clackamas County (“County”) reserves the right to reject any and all Proposals received as a result of this RFP. County Local Contract Review Board Rules (“LCRB”) govern the procurement process for the County.

2.1 Modification or Withdrawal of Proposal: Any Proposal may be modified or withdrawn at any time prior to the Closing deadline, provided that a written request is received by the County Procurement Division Director, prior to the Closing. The withdrawal of a Proposal will not prejudice the right of a Proposer to submit a new Proposal.

2.2 Requests for Clarification and Requests for Change: Proposers may submit questions regarding the specifications of the RFP. Questions must be received in writing on or before 5:00 p.m. (Pacific Time), on the date indicated in the Schedule, at the Procurement Division address as listed in Section 1 of this RFP. Requests for changes must include the reason for the change and any proposed changes to the requirements. The purpose of this requirement is to permit County to correct, prior to the opening of Proposals, RFP terms or technical requirements that may be unlawful, improvident or which unjustifiably restrict competition. County will consider all requested changes and, if appropriate, amend the RFP. No oral or written instructions or information concerning this RFP from County managers, employees or agents to prospective Proposers shall bind County unless included in an Addendum to the RFP.

2.3 Protests of the RFP/Specifications: Protests must be in accordance with LCRB C-047-0730. Protests of Specifications must be received in writing on or before 5:00 p.m. (Pacific Time), on the date indicated in the Schedule, or within three (3) business days of issuance of any addendum, at the Procurement Division address listed in Section 1 of this RFP. Protests may not be faxed. Protests of the RFP specifications must include the reason for the protest and any proposed changes to the requirements.

2.4 Addenda: If any part of this RFP is changed, an addendum will be provided to Proposers that have provided an address to the Procurement Division for this procurement. It shall be Proposers responsibility to regularly check OregonBuys for any notices, published addenda, or response to clarifying questions.

2.5 Submission of Proposals: Proposals must be submitted in accordance with Section 5. All Proposals shall be legibly written in ink or typed and comply in all regards with the requirements of this RFP. Proposals that include orders or qualifications may be rejected as irregular. All Proposals must include a signature that affirms the Proposer’s intent to be bound by the Proposal (may be on cover letter, on the Proposal, or the Proposal Certification Form) shall be signed. If a Proposal is submitted by a firm or partnership, the name and address of the firm or partnership shall be shown, together with the names and addresses of the members. If the Proposal is submitted by a corporation, it shall be signed in the name of such corporation by an official who is authorized to bind the contractor. The Proposals will be considered by the County to be submitted in confidence and are not subject to public disclosure until the notice of intent to award has been issued.

No late Proposals will be accepted. Proposals submitted after the Closing will be considered late and will be returned unopened. Proposals may not be submitted by telephone or fax.

2.6 Post-Selection Review and Protest of Award: County will name the apparent successful Proposer in a Notice of Intent to Award published on OregonBuys. Identification of the apparent successful Proposer is procedural only and creates no right of the named Proposer to award of the contract. Competing Proposers shall be given seven (7) calendar days from the date on the Notice of Intent to Award to review the file at the Procurement Division office and file a written protest of award, pursuant to LCRB C-047-0740. Any award protest must be in writing and must be delivered by email, hand-delivery or mail to the address for the Procurement Division as listed in Section 1 of this RFP.

Only actual Proposers may protest if they believe they have been adversely affected because the Proposer would be eligible to be awarded the contract in the event the protest is successful. The basis of the written protest must be in accordance with ORS 279B.410 and shall specify the grounds upon which the protest is based. In order to be an adversely affected Proposer with a right to submit a written protest, a Proposer must be next in line for award, i.e. the

protester must claim that all higher rated Proposers are ineligible for award because they are non-responsive or non-responsible.

County will consider any protests received and:

- a. reject all protests and proceed with final evaluation of, and any allowed contract language negotiation with, the apparent successful Proposer and, pending the satisfactory outcome of this final evaluation and negotiation, enter into a contract with the named Proposer; OR
- b. sustain a meritorious protest(s) and reject the apparent successful Proposer as nonresponsive, if such Proposer is unable to demonstrate that its Proposal complied with all material requirements of the solicitation and Oregon public procurement law; thereafter, County may name a new apparent successful Proposer; OR
- c. reject all Proposals and cancel the procurement.

2.7 Acceptance of Contractual Requirements: Failure of the selected Proposer to execute a contract and deliver required insurance certificates within ten (10) calendar days after notification of an award may result in cancellation of the award. This time period may be extended at the option of County.

2.8 Public Records: Proposals are deemed confidential until the “Notice of Intent to Award” letter is issued. This RFP and one copy of each original Proposal received in response to it, together with copies of all documents pertaining to the award of a contract, will be kept and made a part of a file or record which will be open to public inspection. If a Proposal contains any information that is considered a **TRADE SECRET** under ORS 192.345(2), **SUCH INFORMATION MUST BE LISTED ON A SEPARATE SHEET CAPABLE OF SEPARATION FROM THE REMAINING PROPOSAL AND MUST BE CLEARLY MARKED WITH THE FOLLOWING LEGEND:**

“This information constitutes a trade secret under ORS 192.345(2), and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192.”

The Oregon Public Records Law exempts from disclosure only bona fide trade secrets, and the exemption from disclosure applies only “unless the public interest requires disclosure in the particular instance” (ORS 192.345). Therefore, non-disclosure of documents, or any portion of a document submitted as part of a Proposal, may depend upon official or judicial determinations made pursuant to the Public Records Law.

2.9 Investigation of References: County reserves the right to investigate all references in addition to those supplied references and investigate past performance of any Proposer with respect to its successful performance of similar services, its compliance with specifications and contractual obligations, its completion or delivery of a project on schedule, its lawful payment of subcontractors and workers, and any other factor relevant to this RFP. County may postpone the award or the execution of the contract after the announcement of the apparent successful Proposer in order to complete its investigation.

2.10 RFP Proposal Preparation Costs and Other Costs: Proposer costs of developing the Proposal, cost of attendance at an interview (if requested by County), or any other costs are entirely the responsibility of the Proposer, and will not be reimbursed in any manner by County.

2.11 Clarification and Clarity: County reserves the right to seek clarification of each Proposal, or to make an award without further discussion of Proposals received. Therefore, it is important that each Proposal be submitted initially in the most complete, clear, and favorable manner possible.

2.12 Right to Reject Proposals: County reserves the right to reject any or all Proposals or to withdraw any item from the award, if such rejection or withdrawal would be in the public interest, as determined by County.

2.13 Cancellation: County reserves the right to cancel or postpone this RFP at any time or to award no contract.

2.14 Proposal Terms: All Proposals, including any price quotations, will be valid and firm through a period of one hundred and eighty (180) calendar days following the Closing date. County may require an extension of this firm offer period. Proposers will be required to agree to the longer time frame in order to be further considered in the procurement process.

2.15 Oral Presentations: At County's sole option, Proposers may be required to give an oral presentation of their Proposals to County, a process which would provide an opportunity for the Proposer to clarify or elaborate on the Proposal but will in no material way change Proposer's original Proposal. If the evaluating committee requests presentations, the Procurement Division will schedule the time and location for said presentation. Any costs of participating in such presentations will be borne solely by Proposer and will not be reimbursed by County. **Note:** Oral presentations are at the discretion of the evaluating committee and may not be conducted; therefore, **written Proposals should be complete.**

2.16 Usage: It is the intention of County to utilize the services of the successful Proposer(s) to provide services as outlined in the below Scope of Work.

2.17 Review for Responsiveness: Upon receipt of all Proposals, the Procurement Division or designee will determine the responsiveness of all Proposals before submitting them to the evaluation committee. If a Proposal is incomplete or non-responsive in significant part or in whole, it will be rejected and will not be submitted to the evaluation committee. County reserves the right to determine if an inadvertent error is solely clerical or is a minor informality which may be waived, and then to determine if an error is grounds for disqualifying a Proposal. The Proposer's contact person identified on the Proposal will be notified, identifying the reason(s) the Proposal is non-responsive. One copy of the Proposal will be archived and all others discarded.

2.18 RFP Incorporated into Contract: This RFP will become part of the Contract between County and the selected contractor(s). The contractor(s) will be bound to perform according to the terms of this RFP, their Proposal(s), and the terms of the Sample Contract.

2.19 Communication Blackout Period: Except as called for in this RFP, Proposers may not communicate with members of the Evaluation Committee or other County employees or representatives about the RFP during the procurement process until the apparent successful Proposer is selected, and all protests, if any, have been resolved. Communication in violation of this restriction may result in rejection of a Proposer.

2.20 Prohibition on Commissions and Subcontractors: County will contract directly with persons/entities capable of performing the requirements of this RFP. Contractors must be represented directly. Participation by brokers or commissioned agents will not be allowed during the Proposal process. Contractor shall not use subcontractors to perform the Work unless specifically pre-authorized in writing to do so by the County. Contractor represents that any employees assigned to perform the Work, and any authorized subcontractors performing the Work, are fully qualified to perform the tasks assigned to them, and shall perform the Work in a competent and professional manner. Contractor shall not be permitted to add on any fee or charge for subcontractor Work. Contractor shall provide, if requested, any documents relating to subcontractor's qualifications to perform required Work.

2.21 Ownership of Proposals: All Proposals in response to this RFP are the sole property of County, and subject to the provisions of ORS 192.410-192.505 (Public Records Act).

2.22 Clerical Errors in Awards: County reserves the right to correct inaccurate awards resulting from its clerical errors.

2.23 Rejection of Qualified Proposals: Proposals may be rejected in whole or in part if they attempt to limit or modify any of the terms, conditions, or specifications of the RFP or the Sample Contract.

2.24 Collusion: By responding, the Proposer states that the Proposal is not made in connection with any competing Proposer submitting a separate response to the RFP, and is in all aspects fair and without collusion or fraud. Proposer also certifies that no officer, agent, elected official, or employee of County has a pecuniary interest in this Proposal.

2.25 Evaluation Committee: Proposals will be evaluated by a committee consisting of representatives from County and potentially external representatives. County reserves the right to modify the Evaluation Committee make-up in its sole discretion.

2.26 Commencement of Work: The contractor shall commence no work until all insurance requirements have been met, the Protest of Awards deadline has been passed, any protest have been decided, a contract has been fully executed, and a Notice to Proceed has been issued by County.

2.27 Nondiscrimination: The successful Proposer agrees that, in performing the work called for by this RFP and in securing and supplying materials, contractor will not discriminate against any person on the basis of race, color, religious creed, political ideas, sex, age, marital status, sexual orientation, gender identity, veteran status, physical or mental handicap, national origin or ancestry, or any other class protected by applicable law.

SECTION 3 SCOPE OF WORK

3.1. INTRODUCTION

Clackamas County is seeking Proposals from vendors to provide Behavioral Health Housing and Supportive Services.

Please direct all Technical/Specifications or Procurement Process Questions to the indicated representative referenced in the Notice of Request for Proposals and note the communication restriction outlined in Section 2.19.

3.2 BACKGROUND

In 2022, the Oregon Legislature passed House Bill (HB) 5202 to fund the development of Behavioral Health Housing with the directive that funds would be equitably distributed to Community Mental Health Programs (CMHPs). The goal was “to expand the availability of housing and residential treatment bed for people with behavioral health issues.” Program goals include providing an array of supported housing; help relieve the “bottleneck” at the Oregon State Hospital; address health inequities and housing access disparities; and decrease the number of people with behavioral health disorders who are houseless.

Clackamas County Behavioral Health Division (BHD) is seeking experienced organizations to develop and launch a pilot program in Clackamas County to temporarily house and service the Aid and Assist and Choice Model program populations. More information about the Aid and Assist process can be found at <https://www.oregon.gov/oha/osh/legal/pages/aid-assist-orders.aspx>. More information about the Choice Model program can be found at <https://www.oregon.gov/oha/hsd/amh/pages/choice-model.aspx>. Development of the pilot program will include the Behavioral Health Division providing funding for the capital acquisition/renovation of housing assets and ongoing program operation.

The County intends to enter into one or more contracts in response to this solicitation. Funds may be used to purchase, lease, and/or renovate an existing building/home and support ongoing program operations. In addition to the funds available through this solicitation, the County intends to explore other funding options with awardees, including through the Metro Supportive Housing Services Measure. Proposers are also invited to propose creative opportunities to leverage other funding to pay for housing and supportive services. Successful proposers are expected to utilize Medicaid billing for Medicaid eligible services, which would be individually directed, whenever possible.

In submitting a response to this Request for Proposals, Proposer certifies that paid staff providing services under any contract issued will be paid a living wage and receive appropriate benefits.

3.3. SCOPE OF WORK

3.3.1. **Scope:**

Program Overview

Contractor shall be responsible for providing low barrier, goal-focused housing and supportive services to adults, age eighteen (18) years and older, currently enrolled with Clackamas County’s Aid and Assist program or Choice Model program, with priority being given to Aid and Assist program participants. Low barrier housing means minimal exclusion criteria for program participants. When there are concerns about a participant’s ability to succeed in the program, Contractor must maintain a

commitment to having collaborative conversations about navigating those concerns. Housing shall be goal focused and considered transitional and temporary, lasting no more than one (1) year and be at no cost to the participants. Individuals exiting the Aid and Assist or Choice Model program shall be offered services to assist in their transition and long-term housing plans.

Site Identification, Acquisition and/or Rehabilitation

Contractor shall be responsible for identifying one (1) or more sites to provide the housing component to program participants. Funding available through this solicitation can be used to lease site(s), support/renovate existing site(s) owned or under the control of Contractor, and/or for the capital acquisition and rehabilitation of new site(s).

Any award of funds for lease or purchase of property by successful proposer(s) shall be conditional upon site review and inspection by the County to confirm the suitability of the identified site(s) prior to lease or purchase by the successful proposer(s).

Facility Requirements

Preferred facility requirements shall include:

- Private space for residents and staff to engage in, and facilitate, web-based services and assessments, such as telehealth, court appearances and forensic evaluations
- A minimum of two single-occupancy rooms/units, other rooms and units may be shared
- Access to public transportation (within reasonable walking distance to public transit)
- Common space for residents to congregate
- Kitchen space open for use by residents and staff
- Economy of scale to serve most individuals

Supportive Services

In addition to no cost, low-barrier housing, on-site supportive services shall be offered. These services include, but are not limited to: outreach, case management, legal skills training, benefit assistance, life skills training, food assistance, and transportation coordination; all with the goal of helping program participants maintain stability and reduce recidivism and hospital admission rates. Services shall also include, transition supports to help program participants gain permanent housing, including, but not limited to: long-term housing resource identification, planning and application assistance, property owner/landlord relations, social engagement, and relationship building.

Contractor shall collaborate with appropriate County staff regarding referrals, services, length of stay, transition planning and challenges. Contractor shall maintain on-site staff 7 days per week/365 days per year. This program will not be licensed as a residential treatment home (RTH) or residential treatment facility (RTF).

Reporting Requirements

3.3.2. Work Schedule:

Successful proposer(s) awarded a contract involving the acquisition/purchase of a building/home shall identify site within thirty (30) days of contract execution.

Successful proposer(s) awarded a contract only for the provision of supportive services shall commence operations within forty-five (45) days of contract execution.

Successful proposer(s) shall include in Proposal timelines, to include key milestones for program components as identified by the Clackamas County Behavioral Health Division and as set by the Oregon Health Authority.

3.3.3. Available Funding:

Total maximum funding available is 4.5 million dollars. Proposed cost for the acquisition/purchase and/or renovation of a building/home shall not exceed 3.5 million dollars.

3.3.4. Term of Contract:

The term of the awarded contract(s) shall be from the effective date through June 30, 2025. Contract(s) shall include an option for one two (2) year renewal thereafter subject to the mutual agreement of the parties.

3.3.4 Sample Contract: Submission of a Proposal in response to this RFP indicates Proposer’s willingness to enter into a contract containing substantially the same terms (including insurance requirements) of the sample contract identified below. No action or response to the sample contract is required under this RFP. Any objections to the sample contract terms should be raised in accordance with Paragraphs 2.2 or 2.3 of this RFP, pertaining to requests for clarification or change or protest of the RFP/specifications, and as otherwise provided for in this RFP. This RFP and all supplemental information in response to this RFP will be a binding part of the final contract.

The applicable Sample Personal Services Contract for this RFP can be found at <https://www.clackamas.us/finance/terms.html>.

Personal Services Contract (unless checked, item does not apply)

The following paragraphs of the Professional Services Contract will be applicable:

- Article I, Paragraph 5 – Travel and Other Expense is Authorized
- Article II, Paragraph 28 – Confidentiality
- Article II, Paragraph 29 – Criminal Background Check Requirements
- Article II, Paragraph 30 – Abuse Reporting

ABUSE REPORTING. Contractor shall comply with all processes and procedures of child abuse (ORS 419B.005 – 419B.050), mentally ill and developmentally disabled abuse (ORS 430.731 – 430.768 and OAR 407-045-0250 through 407-45-0370) and elder abuse reporting laws (ORS 124.050 – 124.092) as if Contractor were a mandatory abuse reporter. If Contractor is not a mandatory reporter by statute, these reporting requirements shall apply during work hours only. Contractor shall immediately report to the proper State or law enforcement agency circumstances (and provide such other documentation as may be relevant) supporting reasonable cause to believe that any person has abused a child, mentally ill or developmentally disabled adult or an elderly person, or that any such person has been abused.

- Article II, Paragraph 31 – Cooperative Contracting
- Article II, Paragraph 33 – HIPAA Compliance
- Exhibit A – On-Call Provision

The insurance requirements are detailed in the insurance exhibit to this RF

**SECTION 4
EVALUATION PROCEDURE**

4.1 An evaluation committee will review all Proposals that are initially deemed responsive and they shall rank the Proposals in accordance with the below criteria. The evaluation committee may recommend an award based solely on the written responses or may request Proposal interviews/presentations. Interviews/presentations, if deemed beneficial by the evaluation committee, will consist of the highest scoring Proposers. The invited Proposers will be notified of the time, place, and format of the interview/presentation. Based on the interview/presentation, the evaluation committee may revise their scoring.

Written Proposals must be complete and no additions, deletions, or substitutions will be permitted during the interview/presentation (if any). The evaluation committee will recommend award of a contract to the final County decision maker based on the highest scoring Proposal. The County decision maker reserves the right to accept the recommendation, award to a different Proposer, or reject all Proposals and cancel the RFP.

Proposers are not permitted to directly communicate with any member of the evaluation committee during the evaluation process. All communication will be facilitated through the Procurement representative.

4.2 Evaluation Criteria

<u>Category</u>	<u>Points available:</u>
Proposer’s History, Capacity & Implementation	0-20
Scope of Work & Program Description, including Staffing Plan	0-40
Equity	0-20
Budget	0-20
Available points	0-100

4.3 Once a selection has been made, the County will enter into contract negotiations. During negotiation, the County may require any additional information it deems necessary to clarify the approach and understanding of the requested services. Any changes agreed upon during contract negotiations will become part of the final contract. The negotiations will identify a level of work and associated fee that best represents the efforts required. If the County is unable to come to terms with the highest scoring Proposer, discussions shall be terminated and negotiations will begin with the next highest scoring Proposer. If the resulting contract contemplates multiple phases and the County deems it is in its interest to not authorize any particular phase, it reserves the right to return to this solicitation and commence negotiations with the next highest ranked Proposer to complete the remaining phases.

SECTION 5 PROPOSAL CONTENTS

5.1. Vendors must observe submission instructions and be advised as follows:

5.1.1. Proposals will only be accepted electronically thru Equity Hub's Bid Locker. Email submissions to Clackamas County email addresses will no longer be accepted.

5.1.2. Completed proposal documents must arrive electronically via Equity Hub's Bid Locker located at <https://bidlocker.us/a/clackamascounty/BidLocker>.

5.1.3. County reserves the right to solicit additional information or Proposal clarification from the vendors, or any one vendor, should the County deem such information necessary.

5.1.4. Proposal may not exceed a total of **15 pages** (single-sided), inclusive of all exhibits, attachments, title pages, pages separations, table of contents, or other information. The Proposal Certification Page will NOT count towards the final page count.

Provide the following information in the order in which it appears below:

5.2 Proposer's History, Capacity & Implementation

- Describe your organization's history performing the type of work and capacity to implement the described program for the identified population. Describe best practices established within your organization related to the services you are applying to provide.
 - Aid and Assist population
 - Facility operations, including capital acquisition and capital asset preservation, as applicable
 - Transitioning program participants from temporary to permanent housing
- Description of providing similar services to public entities of similar size within the past five (5) years.
- Description of the organization's ability to meet the requirements in Section 3.

5.3 Scope of Work/Program Description, including Staffing Plan

- Describe your plan to provide the programming described in the Section 3, including the proposed staffing model. Include a program implementation timeline and projected success rate. Describe essential services necessary to serve the demographic described to be served under a contract, if awarded.
- Describe your organization's experience providing habilitative services to individuals who experience significant barriers to living in the community due to legal and/or behavioral health symptoms.
- Describe your plan, if applicable, to lease/purchase/renovate an appropriate site. Describe your experience with facility operations including capital acquisition and capital asset preservation.

5.4 Equity

- Describe how your organization centers racial equity and incorporates culturally responsive practices into its service delivery model. How will equity lead your work if awarded a contract?
- Describe how your organization incorporates lived experience/peer perspectives and voices into the service delivery model.

5.5 Budget

- Provide a detailed budget and budget narrative. Budget line items should include administration, staffing, all program expenses and flexible funding required to perform the work described in your application. In the narrative, please provide a brief description of the specific use of funds for each budget line item.
- Please provide separate budgets for property acquisition/purchase and/or renovation and ongoing housing and supportive services.
- Identify matching, contributing or leveraged funding

5.5. References

Provide at least three (3) references from clients your firm has served similar to the County in the past three (3) years, including one client that has newly engaged the firm in the past thirty-six (36) months and one (1) long-term client. Provide the name, address, email, and phone number of the references. Please note the required three references may not be from County staff, but additional references may be supplied.

5.6. Completed Proposal Certification (see the below form)

PROPOSAL CERTIFICATION
RFP #2023-88

Submitted by: _____
(Must be entity's full legal name, and State of Formation)

Each Proposer must read, complete and submit a copy of this Proposal Certification with their Proposal. Failure to do so may result in rejection of the Proposal. By signature on this Proposal Certification, the undersigned certifies that they are authorized to act on behalf of the Proposer and that under penalty of perjury, the undersigned will comply with the following:

SECTION I. OREGON TAX LAWS: As required in ORS 279B.110(2)(e), the undersigned hereby certifies that, to the best of the undersigned's knowledge, the Proposer is not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means the tax laws of the state or a political subdivision of the state, including ORS 305.620 and ORS chapters 316, 317 and 318. If a contract is executed, this information will be reported to the Internal Revenue Service. Information not matching IRS records could subject Proposer to 24% backup withholding.

SECTION II. NON-DISCRIMINATION: That the Proposer has not and will not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation, gender identity, national origin, or any other protected class. Nor has Proposer or will Proposer discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business that is certified under ORS 200.055.

SECTION III. CONFLICT OF INTEREST: The undersigned hereby certifies that no elected official, officer, agent or employee of Clackamas County is personally interested, directly or indirectly, in any resulting contract from this RFP, or the compensation to be paid under such contract, and that no representation, statements (oral or in writing), of the County, its elected officials, officers, agents, or employees had induced Proposer to submit this Proposal. In addition, the undersigned hereby certifies that this proposal is made without connection with any person, firm, or corporation submitting a proposal for the same material, and is in all respects fair and without collusion or fraud.

SECTION IV. COMPLIANCE WITH SOLICITATION: The undersigned further agrees and certifies that they:

1. Have read, understand and agree to be bound by and comply with all requirements, instructions, specifications, terms and conditions of the RFP (including any attachments); and
2. Are an authorized representative of the Proposer, that the information provided is true and accurate, and that providing incorrect or incomplete information may be cause for rejection of the Proposal or contract termination; and
3. Will furnish the designated item(s) and/or service(s) in accordance with the RFP and Proposal; and
4. Will use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this RFP.

Name: _____ Date: _____
Signature: _____ Title: _____
Email: _____ Telephone: _____
Oregon Business Registry Number: _____ OR CCB # (if applicable): _____

Business Designation (check one):

Corporation Partnership Sole Proprietorship Non-Profit Limited Liability Company

Resident Quoter, as defined in ORS 279A.120

Non-Resident Quote. Resident State: _____

6.1 Exhibit List:

Exhibit A	Compensation
Exhibit B	Insurance
Exhibit C	Qualified Service Organization Business Associate Agreement

6.2 Attachment List:

Attachment 1	State of Oregon, Oregon Health Authority Declaration of Restrictive Covenants **SAMPLE**
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**EXHIBIT A
COMPENSATION**

- a. Payment for all Work performed under this Contract shall be subject to the provisions of ORS 293.462 and shall not exceed the total maximum sum of \$XXXX.

Contractor shall be compensated based on the following budget:

- b. Contractor shall submit **itemized monthly invoices by the 10th day of the month** following the month Services were provided. The invoice shall include:

Contract #XXXX,
Service details,
Date(s) of service,
Total amount due for all Services provided during the month, and
Total amount billed to date by Contractor prior to the current invoice.

If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor.

All invoices and supporting documentation shall be sent by email or mail to:

BHAP@clackamas.us

Clackamas County Behavioral Health Division
Accounts Payable
2051 Kaen Road, Suite #154
Oregon City, Oregon 97045

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

- c. Payments shall be made to Contractor, within thirty (30) days, following the County's review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

**EXHIBIT B
INSURANCE**

During the term of this Contract, Contractor shall maintain in full force at its own expense, each insurance noted below:

1. Workers Compensation. Contractor, its subcontractors, if any, and all employers providing work, labor, or materials under this Contract are subject employers under the Oregon Workers' Compensation Law, and shall either comply with ORS 656.017, which requires said employers to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or shall comply with the exemption set out in ORS 656.126. Contractors shall maintain employer's liability insurance with limits of \$500,000 each accident, \$500,000 disease each employee, and \$500,000 each policy limit.

2. Professional Liability. **Required by County** **Not required by County**

Professional Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000. This is to cover damages because of personal injury, bodily injury, death, or damage to property caused by error, omission or negligent acts related to the professional services to be provided under this Contract. The policy must provide extending reporting period coverage for claims made within two years after the contract is completed.

If this box is checked Professional Liability limits shall be \$2,000,000 per occurrence and \$4,000,000 in annual aggregate.

3. General Liability. **Required by County** **Not required by County**

General Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage for the protection of the **County and the State of Oregon, and its officers, elected officials, agents, and employees.** It shall include contractual liability coverage for the indemnity provided under this Contract.

If this box is checked General Liability limits shall be \$2,000,000 per occurrence and \$4,000,000 in annual aggregate for bodily injury/death, and \$200,000 per occurrence and \$600,000 annual aggregate for property damage.

4. Automobile Liability. **Required by County** **Not required by County**

Commercial Automobile Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each accident for Bodily Injury, Death, and Property Damage, including coverage for owned, hired, or non-owned vehicles, as applicable.

Commercial Automobile Liability insurance limits shall be \$2,000,000 per occurrence and \$4,000,000 in annual aggregate for bodily injury/death, and \$200,000 per occurrence and \$600,000 annual aggregate for property damage.

Personal Automobile Liability insurance limits shall be not less than \$250,000/occurrence, \$500,000/aggregate, and \$100,000/property damage.

5. Physical Abuse and Molestation Liability. **Required by County** **Not required by County**

Physical Abuse and Molestation Liability insurance with a combined single limit of not less than \$1,000,000 each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000. Coverage shall be provided through either general liability or professional liability coverage. Proof of Sex Abuse/Molestation insurance coverage must be provided.

6. **Privacy and Network Security.** **Required by County** **Not required by County**

Privacy and Network Security coverages shall be obtained and maintained to provide protection against liability for (a) system attack; (b) denial or loss of service attacks; (c) spread of malicious software code; (d) unauthorized access and use of computer systems; and (e) liability from the loss or disclosure of confidential data with limit of \$1,000,000 per claim/annual aggregate.

If this box is checked Privacy and Network Security limit shall be at least \$4,000,000.

7. **Additional Insured Provision.** The insurance, other than Professional Liability (except to the extent it only applies to Commercial General Liability exposures), Workers' Compensation, Personal Automobile Liability and Pollution Liability Insurance, shall include **Clackamas County and the State of Oregon, and their officers, elected officials, agents, and employees** as an additional insured.
8. **Primary Coverage Clause.** Contractor's insurance shall apply as primary and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above. This must be noted on the insurance certificate.
9. **Cross-Liability Clause.** A cross-liability clause or separation of insureds condition will be included in all general liability, professional liability, pollution and errors and omissions policies required by this Contract.
10. **"Tail" Coverage.** If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the 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 the Contract, for a minimum of twenty-four (24) months following the later of: (i) the Contractor's completion and County's acceptance of all Services required under the Provider Contract; or (ii) the expiration of all warranty periods provided under the Contract. Notwithstanding the foregoing 24-month requirement, if the Contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the Contractor may request and County may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If County approval is granted, the Contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.
11. **Self-insurance.** Contractor may fulfill one or more of its insurance obligation herein through a program of self-insurance, provided that Contractor's self-insurance program complies with all applicable laws, provides coverage equivalent in both type and level to that required in this Exhibit, and is reasonably acceptable to County. Contractor shall furnish an acceptable insurance certificate to County for any insurance coverage required by this Contract that is fulfilled through self-insurance. Stop-loss insurance and reinsurance coverage against catastrophic and unexpected expenses may not be self-insured.
12. **Certificates of Insurance.** Contractor shall furnish evidence of the insurance required in this Contract. Contractor will maintain the insurance in full force throughout the duration of this Contract. No Contract shall be in effect until the required certificates have been received, approved, and accepted by County. A renewal certificate will be sent to County ten (10) days prior to coverage expiration. The insurance for general liability and commercial automobile liability must include an endorsement naming **Clackamas**

County and the State of Oregon, and their officers, elected officials, agents, and employees as additional insureds with respect to the Work under this Contract. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the County. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

Certificate Holder should be:

Clackamas County, 2051 Kaen Road, Suite 154, Oregon City, Oregon 97045

Certificates of Insurance should be submitted electronically or by mail to:

BHContracts@clackamas.us

Clackamas County
Contracts Administration
2051 Kaen Road, Suite 154
Oregon City, OR 97045

- 13. Insurance Carrier Rating.** Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable by the County. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. The County reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
- 14. Waiver of Subrogation.** Contractor agrees to waive their rights of subrogation arising from the Work performed under this Contract.
- 15. Notice of cancellation or change.** There shall be no cancellation, material change, exhaustion of aggregate limits, reduction of limits, or intent not to renew the insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to the County at the following address: Clackamas County Behavioral Health Division, 2051 Kaen Road, Suite 154, Oregon City, OR 97045 or BHContracts@clackamas.us.
- 16. Insurance Compliance.** The County will be entitled to enforce Contractor compliance with the insurance requirements, and will 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, terminating the Contract as permitted by the Contract, or pursuing legal action to enforce the insurance requirements. In no event shall County permit a Contractor to work under this Contract when the County is aware that the Contractor is not in compliance with the insurance requirements.

EXHIBIT C
QUALIFIED SERVICE ORGANIZATION BUSINESS ASSOCIATE AGREEMENT

This Qualified Service Organization Business Associate Agreement (“Agreement”) is entered into as of **Date** (“Effective Date”) by and between **Clackamas County, on behalf of its Department of Health, Housing and Human Services, Behavioral Health Division** (“Covered Entity”) and **Contractor Name** (“Business Associate”) in conformance with the Health Insurance Portability and Accountability Act of 1996 and its regulations (“HIPAA”), and Confidentiality of Substance Use Disorder Patient Records, 42 CFR Part 2 (“Confidentiality Rule”).

RECITALS

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

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

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

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

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

Now, therefore, the parties hereby agree as follows:

SECTION I – DEFINITIONS

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

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

SECTION II – OBLIGATIONS AND ACTIVITIES OF THE BUSINESS ASSOCIATE

The Business Associate agrees to the following:

- 2.1 Not to use or further disclose PHI other than as permitted or required by this Agreement or as Required by Law;
- 2.2 To use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Agreement;
- 2.3 To mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by the Business Associate in violation of the requirements of this Agreement;
- 2.4 To immediately report to the Covered Entity any use or disclosure of PHI not provided for by this Agreement of which it becomes aware, including any Security Incident of which it becomes aware;
- 2.5 In accordance with 45 CFR §§164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any agent, including a subcontractor, that creates, receives, maintains, or transmits PHI on behalf of the Business Associate agrees in writing to the same restrictions, conditions and requirements that apply to the Business Associate with respect to such PHI. Notwithstanding the preceding language of this subsection, Business Associate acknowledges that PHI obtained by the Business Associate relating to individuals who may have been diagnosed as needing, or who have received, substance use disorder treatment services, diagnosis or referral for treatment shall be maintained and used only for the purposes intended under this Agreement and in conformity with all applicable provisions of the Confidentiality Rule. This information received from the Covered Entity, is protected by the Confidentiality Rule and therefore the Business Associate is specifically prohibited from re-disclosing such information to agents or subcontractors without specific written consent of the subject Individual;
- 2.6 To provide access, at the request of the Covered Entity, and in the time and manner designated by the Covered Entity, to PHI in a Designated Record Set, to the Covered Entity or, as directed by the Covered

- Entity, to the Individual or the Individual's designee as necessary to meet the Covered Entity's obligations under 45 CFR §164.524; provided, however, that this Section is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
- 2.7 To make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of the Covered Entity or an Individual, and in the time and manner designated by the Covered Entity; provided, however, that this Section is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
 - 2.8 To make internal practices, books and records, including policies and procedures on PHI, relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of, the Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary's determining the Covered Entity's and the Business Associate's compliance with the HIPAA Rules;
 - 2.9 To document such disclosures of PHI and information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
 - 2.10 To comply with the confidentiality, disclosure and re-disclosure requirements of the Confidentiality Rule as applicable;
 - 2.11 To resist any efforts in judicial proceedings any efforts to obtain access to the PHI protected by the Confidentiality Rule except as expressly provided for in the Confidentiality Rule;
 - 2.12 To provide to the Covered Entity or an Individual, in a time and manner designated by the Covered Entity, information collected in accordance with Section 2.9 of this Agreement, to permit the Covered Entity to respond to a request by an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
 - 2.13 That if it creates, receives, maintains, or transmits any Electronic PHI on behalf of the Covered Entity, it will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI, and it will ensure that any agents (including subcontractors) to whom it provides such electronic PHI agrees to implement reasonable and appropriate security measures to protect the PHI. The Business Associate will report to the Covered Entity any Security Incident of which it becomes aware;
 - 2.14 To retain records related to the PHI hereunder for a period of six (6) years unless this Agreement is terminated prior thereto. In the event of termination of this Agreement, the provisions of Section V of this Agreement shall govern record retention, return or destruction;
 - 2.15 To promptly notify the Covered Entity of a Breach of Unsecured PHI as soon as practicable, but in no case later than 10 calendar days, after the discovery of such Breach. A Breach shall be treated as discovered as of the first day on which such Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or agent of Business Associate. The notification shall include, to the extent possible, the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach in addition to the information required in Section V. In addition, Business Associate shall provide the Covered Entity with any other available information that the Covered Entity is required to include in the notification to the individual under 45 CFR §164.404(c); and
 - 2.16 To the extent Business Associate is to carry out one or more of the Covered Entity's obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

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

- 3.1 The Covered Entity and the Business Associate agree that this Agreement constitutes a Qualified Service Organization Agreement as required by the Confidentiality Rule. Accordingly, information obtained by the Business Associate relating to Individuals who may have been diagnosed as needing, or who have

received, substance use disorder treatment services, diagnosis or referral for treatment shall be maintained and used only for the purposes intended under this Agreement and in conformity with all applicable provisions of the Confidentiality Rule.

- 3.2 Business Associate agrees to make uses and disclosures and requests for PHI consistent with the Covered Entity's minimum necessary policies and procedures.
- 3.3 Except as otherwise limited in this Agreement, the Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, the Covered Entity as specified in the Services Agreement, provided that such use or disclosure would not violate the Confidentiality or HIPAA Rules if done by the Covered Entity; and,
- 3.4 Except as otherwise limited in this Agreement, the Business Associate may:
 - a. **Use for management and administration.** Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate so long as such use is also permitted by the Confidentiality Rule; and,
 - b. **Disclose for management and administration.** Disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are Required by Law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached. PHI that is also subject to the Confidentiality Rule cannot be disclosed to a third party except as permitted under the Confidentiality Rule.

SECTION IV – NOTICE OF PRIVACY PRACTICES

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

SECTION V – BREACH NOTIFICATION REQUIREMENTS

- 5.1 With respect to any Breach, the Covered Entity shall notify each individual whose Unsecured PHI has been, or is reasonably believed by the Covered Entity to have been, accessed, acquired, used, or disclosed as a result of such Breach, except when law enforcement requires a delay pursuant to 45 CFR §164.412. This notice shall be:
 - a. Without unreasonable delay and in no case later than 60 calendar days after discovery of a Breach.
 - b. By notice in plain language including and to the extent possible:
 - 1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - 2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - 3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;

- 4) A brief description of what the Covered Entity and/or Business Associate involved is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any further Breaches; and,
 - 5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
 - c. By a method of notification that meets the requirements of 45 CFR §164.404(d).
 - d. Provided notice to the media when required under 45 CFR §164.406 and to the Secretary pursuant to 45 CFR §164.408.
- 5.2 Business Associate shall promptly provide any information requested by Covered Entity to provide the information described in Section 5.1.
- 5.3 Covered Entity may, in its sole discretion, require Business Associate to provide the notice of Breach to any individual or entity required by applicable law to receive such notice.

SECTION VI – TERM AND TERMINATION

- 6.1 **Term.** The term of this Agreement shall be effective as of the date set forth above in the first paragraph and shall terminate when all of the PHI provided by the Covered Entity to the Business Associate, or created, maintained, transmitted or received by the Business Associate on behalf of the Covered Entity, is destroyed or returned to the Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- 6.2 **Termination for Cause.** Upon the Covered Entity’s knowledge of a material breach of this Agreement by the Business Associate, the Covered Entity shall provide an opportunity for the Business Associate to cure the breach or end the violation. The Covered Entity shall terminate this Agreement and the Services Agreement if the Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity, or immediately terminate this Agreement if cure is not reasonably possible. If the Business Associate fails to cure a breach for which cure is reasonably possible, the Covered Entity may take action to cure the breach, including but not limited to obtaining an injunction that will prevent further improper use or disclosure of PHI. Should such action be taken, the Business Associate agrees to indemnify the Covered Entity for any costs, including court costs and attorneys' fees, associated with curing the breach.
- Upon the Business Associate's knowledge of a material breach of this Agreement by the Covered Entity, the Business Associate shall provide an opportunity for the Covered Entity to cure the breach or end the violation. The Business Associate shall terminate this Agreement and Services Agreement if the Covered Entity does not cure the breach or end the violation within the time specified by the Business Associate, or immediately terminate this Agreement if the Covered Entity has breached a material term of this Agreement if cure is not reasonably possible.
- 6.3 **Effect of Termination.**
- a. **Return or Destruction of PHI.** Except as provided in Section 6.3(b), upon termination of this Agreement, for any reason, the Business Associate shall return, or if agreed to by the Covered Entity, destroy all PHI received from the Covered Entity, or created, maintained or received by the Business Associate on behalf of the Covered Entity and retain no copies. This provision shall apply to PHI that is in the possession of subcontractors or agents of the Business Associate.
 - b. **Return or Destruction of PHI Infeasible.** In the event that the Business Associate determines that returning or destroying PHI is infeasible, the Business Associate shall provide to the Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of the PHI is infeasible, the Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the Business Associate maintains such PHI. In addition, the Business Associate shall continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI to prevent use or disclosure of the PHI, for as long as the Business Associate retains the PHI.

SECTION VII – GENERAL PROVISIONS

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

(Signature Page for QSOBAA Follows)

**SIGNATURE PAGE FOR QUALIFIED SERVICE ORGANIZATION BUSINESS ASSOCIATE
AGREEMENT**

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

Business Associate

Contractor

Covered Entity

Clackamas County

By: _____
Authorized Signature

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTACHMENT 1
STATE OF OREGON, OREGON HEALTH AUTHORITY
DECLARATION OF RESTRICTED COVENANTS

*

After Recording Return to:

- 1 Oregon Health Authority
- 2 Health Systems Division
- 3 500 Summer St SE, E86
- 4 Salem, OR 97301

SPACE ABOVE FOR RECORDER'S USE

SAMPLE SAMPLE SAMPLE SAMPLE SAMPLE SAMPLE SAMPLE
(for use with Oregon governmental entity Declarants)

STATE OF OREGON
OREGON HEALTH AUTHORITY

DECLARATION OF RESTRICTIVE COVENANTS

This Declaration of Restrictive Covenants (this "Declaration") is made and entered into this [] day of [] 2022 (the "Effective Date") by and between [], an Oregon [] ("Declarant") and the State of Oregon ("State"), acting by and through the Oregon Health Authority and its Health System Division ("OHA") pursuant to House Bill 5202, section 364. OHA and Declarant may be referred to herein jointly as the "Parties" or individually as a "Party".

RECITALS

A. Whereas, the Oregon State Legislature's Joint Committee On Ways and Means stated in the Budget Report and Measure Summary for House Bill 5502 that the OHA was appropriated funds "for distribution to community mental health programs (CMHP) and related administrative support in OHA. The goals of this funding are to provide an array of supported housing and residential treatment, relieve bottlenecks in the continuum of care, and address health inequities and housing access disparities, among others."

B. Whereas, the OHA issued a Request for Applications (RFA) to the CMHPs for receiving this funding and Declarant applied for a grant award.

C. Declarant is a CMHP and was awarded an amount not to exceed [] (\$[]) (the "Grant") from the State General Fund for the purpose of increasing behavioral health housing by [] (collectively, the "Improvements") situated on certain real property located in the city of [], [] County (the "County"), State of Oregon, as more particularly described in Exhibit A attached hereto (the

“Property”). The Property, together with the Improvements, is referred to herein as the “Project” and is further described in Exhibit B attached hereto.

D. Terms and conditions of the Grant for the Project are set forth in that certain Intergovernmental Grant Agreement dated [____], 2022 by and between the Parties (the “Grant Agreement”).

E. A condition of the Grant Agreement provides that to the extent that grant funds are to be used for certain purchases or renovations of real property, Declarant is required to follow additional OHA procedures. Pursuant to that condition, provided in Exhibit A, Part 3 of the Grant Agreement, OHA has required Declarant to execute this Declaration, as a condition to Declarant’s use of Grant funds for the purchase or renovation of real property for purposes of the Project.

F. The Parties desire that this Declaration be recorded in the relevant county records at Declarant’s cost and that certain terms herein constitute restrictive covenants and equitable servitudes running with the Property and governing, among other things, the maintenance, monitoring, and operation of the Project.

AGREEMENT

NOW, THEREFORE, for good and sufficient consideration, including the terms, conditions, covenants, warranties, and undertakings set forth herein, the Parties agree as follows:

1. INCORPORATION.

The foregoing recitals and exhibit(s) to this Declaration are incorporated into this Declaration by reference to the same extent and with the same force and effect as if fully set forth herein, provided, however, that the incorporated items do not modify the express provisions of this Declaration.

2. REPRESENTATIONS, WARRANTIES AND COVENANTS OF DECLARANT.

Declarant represents, warrants and covenants that:

2.1. **Organization and Authority.** Declarant has all necessary right, power and authority under its organizational documents to (a) execute, deliver and record this Declaration, and (b) incur and perform its obligations under this Declaration.

2.2. **Use of Grant Funds.** Declarant has used or will use the Grant funds only for the Project costs as provided for in the Grant Agreement.

2.3. **Full Disclosure.** Declarant has disclosed in writing to OHA all facts that may materially adversely affect the Project, or the ability of Declarant to perform all obligations required by this Declaration. Declarant has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading, regarding the Grant, the Project and this Declaration. The information contained in this Declaration is true and accurate in all respects.

2.4. **Pending Litigation.** Declarant has disclosed in writing to OHA all proceedings, environmental or otherwise, pending (or to the knowledge of Declarant, threatened) against or affecting Declarant, in any

court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project or the ability of Declarant to perform all obligations required by this Declaration.

2.5. No Defaults.

(a) No Defaults or Events of Default exist or occur upon authorization, execution or delivery of this Declaration.

(b) Declarant has not violated and has not received notice of any claimed violation of any agreement or instrument to which it is a party or by which the Project or its property may be bound, that would materially adversely affect the Project or the ability of Declarant to perform all obligations required by this Declaration.

2.6. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Declaration will not: (i) cause a breach of a material agreement, indenture, mortgage, deed of trust, or other instrument, to which Declarant is a party or by which the Project or any of Declarant's property or assets may be bound; (ii) violate any provision of the applicable enabling statutes, code, charter, ordinances or other Oregon law pursuant to which Declarant was organized or established; or (iii) violate any laws, regulations, ordinances, resolutions, or court orders related to Declarant, the Project or Declarant's properties or operations.

2.7. Governmental Consent. Declarant has obtained or will obtain all permits and approvals, and has made or will make all notifications, declarations, filings or registrations, required for the making and performance of its obligations under this Declaration and undertaking and completion of the Project, including without limitation, all land use approvals and development permits required under local zoning or development ordinances, state law and federal law for the use of the land on which the Project will be located.

2.8. Responsibility. Declarant assumes full responsibility for timely and appropriate completion of the Project, for ownership of the Project, for its operation in accordance with this Declaration and the Grant Agreement and acknowledges that OHA has no direct or contractual responsibility for the Project, for ownership of the Project, or for its operation.

3. ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF DECLARANT.

Declarant also represents, warrants, and covenants that:

3.1. Fair Housing and Other Civil Rights Compliance. Declarant shall comply with all applicable state and federal nondiscrimination laws, including but not limited to the Fair Housing Act and the Americans with Disabilities Act;

3.2. Use Restrictions.

(a) [_____]

(b) [_____]

(c) **Use Restriction Period.** For a period of twenty (20) years from December 31st of the year that the Project is completed or until December 31, 2042, whichever is later (the "Use Restriction Period"), Declarant is required to provide and comply with the requirements of the [_____] together, the "Use Restrictions".

3.3. Habitability; Other Compliance. Throughout the Use Restriction Period, Declarant will manage the Project in a safe, sanitary, and habitable condition satisfactory to OHA and in accordance with applicable zoning and code requirements.

3.4. Financial Records. Declarant shall keep accurate books and records regarding use of the Grant and maintain them according to generally accepted accounting principles applicable to Declarant in effect at the time.

3.5. Inspections; Information. Declarant shall permit the State and any party designated by the State: (i) to inspect the Project and (ii) to inspect and make copies of any accounts, books and records, including, without limitation, Declarant's records regarding receipts, disbursements, contracts, investments and any other related matters.

3.6. Reports.

(a) Declarant shall prepare and electronically submit written quarterly reports that satisfy OHA requirements of the continued use of the Project for the agreed purpose as defined in this Declaration.

(b) The quarterly reports are due to OHA no later than April 15 (January 1-March 31), July 15 (April 1- June 30), October 15 (July 1- September 30), and January 15 (October 1-December 31) each year.

(c) The quarterly reports shall provide data as OHA requests, including but not limited to bed/unit/client capacity with their utilization rates and data on clients served by the property/facility. OHA will provide the reporting form and instructions for completion and submission of this quarterly compliance report. Declarant may be required to provide capacity and utilization rates every 60 days or more frequently as requested by OHA.

(d) Declarant shall supply any other reports and information related to the Project as the State may reasonably require.

3.7. Records Maintenance. Declarant shall retain and keep accessible all books, documents, papers, and records that are directly related to this Declaration, the Project, or the Grant throughout the Use Restriction Period and for a minimum of six (6) years, or such longer period thereafter, as may be required by OHA.

3.8. Corrective Action. As a consequence of its monitoring, review of quarterly reports or otherwise, OHA may identify deficiencies in Declarant's compliance with this Declaration. OHA may require action by Declarant (satisfactory to OHA) to correct such deficiencies. Declarant must correct such deficiencies within thirty (30) days of notice by OHA of such deficiencies unless earlier correction is required by OHA to address material health or safety needs of Project users. The reasonableness of such corrective actions is subject to OHA in its sole discretion. Nothing in this Section 3.8 is intended or may be construed to impose any duty on OHA to identify deficiencies in Declarant's compliance with this Declaration or to require any action by Declarant to correct such deficiencies, and Declarant remains solely responsible for compliance with this Declaration.

3.9. Insurance, Damage. Declarant shall maintain insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by entities constructing, operating and maintaining similar properties/facilities.

4. FURTHER ASSURANCES.

4.1. Further Acts. Declarant, at any time upon request of OHA, will do, make, execute and deliver all such additional and further acts, instruments or papers as OHA may require in its sole discretion to protect OHA's rights under this Declaration.

4.2. Reliance. OHA may rely upon statements, certificates, and other records of Declarant and its agents and assigns, including as to accuracy, genuine nature, and proper execution of such statements, certificates, and other records.

5. COVENANTS AND EQUITABLE SERVITUDES TO RUN WITH THE LAND.

5.1. Inducement. Declarant represents, covenants and warrants that the issuance to it of the Grant described herein by OHA is an inducement to Declarant to complete the Project and to operate the Project in accordance with the Grant Agreement and this Declaration. In consideration of the issuance of the Grant, Declarant has entered into this Declaration and has agreed to restrict the operation of and uses to which the Project can be put on the terms and conditions set forth herein. Therefore, Declarant covenants, agrees and acknowledges that OHA has relied on this Declaration in determining to issue the Grant.

5.2. Covenants; Equitable Servitudes.

(a) OHA and Declarant hereby declare their express intent that throughout the Use Restriction Period the covenants, restrictions, charges and easements set forth herein, including the Use Restrictions, will be deemed covenants running with the Property and will create equitable servitudes running with the Property, and will pass to and be binding upon OHA's and Declarant's successors in title including any purchaser, grantee or lessee of any portion of the Project and any other person or entity having any right, title or interest therein and upon the respective heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee or lessee of any portion of the Project and any other person or entity having any right, title or interest therein.

(b) Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof or interest therein (*other than a residential rental agreement or residential lease for a Housing Unit*) will contain an express provision making such conveyance subject to the covenants, restrictions, charges and easements contained herein; provided, however, that any such contract, deed or other instrument will conclusively be held to have been executed, delivered and accepted subject to such covenants, regardless of whether or not such covenants are set forth or incorporated by reference in such contract, deed or other instrument.

(c) Any and all legal requirements for the provisions of this Declaration to constitute restrictive covenants running with the Property and applying to the Project as a whole, or to create equitable servitudes with respect to same in favor of OHA, are deemed satisfied in full.

(d) The consent of any recorded prior lien holder on the Project, including the Property, is not required in connection with recording this Declaration, or if required, such consent has been or will be obtained by Declarant.

5.3. Burden and Benefit.

(a) Declarant hereby declares its understanding and intent that the burdens of the covenants and equitable servitudes, including the Use Restrictions, set forth herein touch and concern the Property, and the Project as a whole, in that Declarant's legal interest in the Project is rendered less valuable thereby.

(b) Declarant hereby further declares its understanding and intent that the benefits of such covenants and equitable servitudes touch and concern the Property, and the Project as a whole, by enhancing and increasing the enjoyment and use of the Project by tenants, intended beneficiaries (in addition to OHA) of such covenants, reservations and restrictions, and by furthering the public purposes for which the Grant was issued.

5.4. **Right of Modification.** OHA may compromise, waive, amend or modify the terms of this Declaration including, but not limited to the restrictive covenants and equitable servitudes created hereby, with the written consent of Declarant or subsequent Project owners, as it so determines in OHA's sole discretion to be to the benefit of OHA, the Project, or OHA efforts to provide or maintain safe and sanitary conditions of the Project *and affordability of the Housing Units in the State of Oregon*. To be effective, any compromise, waiver, amendment or modification of this Declaration must be in writing, signed by an authorized OHA representative.

6. GENERAL PROVISIONS.

6.1. Compliance with Applicable Laws and Requirements.

(a) **Compliance.** Declarant shall comply with and shall ensure that the Project complies with all federal, state and local laws, rules regulations, codes, ordinances, and orders applicable to the Project from time to time.

(b) **Contracts; Subcontracts.** Declarant shall ensure that all contracts and subcontracts related to the Project or this Declaration comply with the terms and conditions hereof, including containing a provision to that effect therein.

(c) **Endurance of Obligations.** Declarant will remain fully obligated under the provisions of this Declaration notwithstanding its designation of any third-party or parties for the undertaking of all or any part of the Project with respect to which Grant funding is being provided.

6.2 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 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 Declarant (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 Declarant in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the Declarant 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 Declarant 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 Declarant is jointly liable with the State (or would be if joined in the Third Party Claim), the Declarant 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 Declarant 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 Declarant 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 Declarant'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.

This Section shall survive expiration or termination of this Agreement.

6.3 Indemnification by Subcontractors.

Declarant shall take all reasonable steps to require 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 Declarant'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. This Section shall survive expiration or termination of this Agreement.

6.4. Time of the Essence. Time is of the essence in the performance by Declarant of the terms of this Declaration.

6.5. No Discrimination; Marketing. Except as permitted by law, Declarant will not inappropriately discriminate in the provision of housing on the basis of race, creed, color, sex, national origin, religion, marital status, sexual orientation, family status, age, disability or the receipt of public assistance.

6.6. Notice. Except as otherwise expressly provided in this Declaration, any notices required or permitted to be given under this Declaration will be given in writing, by personal delivery, or mailing the same, postage prepaid, to OHA or Declarant at the following addresses:

If to OHA:

[_____]

If to Declarant:

[_____]

or to such other address a party may indicate to the other pursuant to this Section. Any notice so addressed and mailed will be effective five (5) days after mailing. Any notice by personal delivery will be deemed to be given when actually delivered.

6.7. No Third-Party Beneficiaries. Unless and only to the degree expressly provided otherwise in this Declaration, OHA and Declarant are the only Parties to this Declaration and are the only Parties entitled to rely on and enforce the terms of this Declaration. Nothing in this Declaration gives, is intended to give, or will be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly indirectly or otherwise, to third persons unless such third persons are expressly identified in this Declaration and only to the degree they are expressly described as intended beneficiaries of particular terms of this Declaration and only with such remedies as expressly given herein with respect to such interests.

6.8. Declarant Status.

(a) **Independent Contractor.** Declarant shall perform all obligations under this Declaration and will timely satisfy its obligations hereunder as an independent contractor. Declarant is not an officer,

employee or agent of the State, as those terms are used in ORS 30.265 or otherwise, with respect to performance under this Declaration.

(b) **Declarant Responsible for Insurance Coverage.** Declarant agrees that insurance coverage, whether purchased or by self-insurance, for Declarant's agents, employees, officers and/or subcontractors is the sole responsibility of Declarant.

(c) **Non-Federal Employment Certification.** Declarant certifies that it is not employed by or contracting with the Federal Government for performance covered by this Declaration.

(d) **Good Standing Certification.** Declarant certifies to the best of its knowledge and belief that neither Declarant nor any of its principals, officers, directors or employees:

(i) Is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any state or federal department or agency,

(ii) Has within a three (3) year period preceding this Declaration 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,

(iii) 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 (d)(ii) of this Section;

(iv) Has within a three (3) year period preceding this Declaration had one or more public transactions (federal, state or local) terminated for cause or default; and

(v) Is included on the list titled "Specially Designated Nationals and Blocked Persons" 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>

6.9. **Termination.** OHA may terminate this Declaration in whole or in part, without further liability and without impairment of its remedies, effective upon delivery of written notice to Declarant, under any of the following conditions:

(a) If funding from federal, state, or other sources is not obtained or is not continued at levels sufficient to allow for delivery of full Grant funding; or

(b) If federal or state laws, regulations, rules or other requirements are modified or interpreted in such a way that the intended use of Grant funding for the Project is no longer allowable or appropriate or the Project is no longer eligible for the Grant funding identified in this Declaration from the planned funding source(s); or

(c) If any authority required by law or regulation to be held by Declarant to complete the Project ends for any reason; or

(d) If Declarant is unable or fails to commence the Project within six (6) months from the date of this Declaration; or

(e) If Declarant breaches or fails to timely perform any of its obligations under this Declaration, or any other applicable Grant document and such breach is not cured within the grace period, if any, provided for cure in the applicable document; or

(f) If OHA determines that any representation, warranty or covenant of Declarant, whether in whole or in part, is false, invalid, or in default; or

(g) If Declarant (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all or substantially all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) is adjudicated as bankrupt or insolvent, (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, winding-up, or composition or adjustment of debts, (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect), or (viii) takes any action for the purpose of effecting any of the foregoing.

(h) Termination of this Declaration does not terminate or otherwise impair or invalidate any remedy available to OHA or to Declarant hereunder, at law, or otherwise.

6.10. Declarant Default. Any of the following constitutes an "Event of Default" of Declarant:

(a) Any false or misleading representation is made by or on behalf of Declarant, in this Declaration or in any document provided by Declarant to OHA related to this Grant or the Project.

(b) Declarant fails to perform any obligation required under this Declaration and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Declarant by OHA, or such longer period as OHA may agree to in writing, if OHA determines in its sole discretion that Declarant has instituted and is diligently pursuing corrective action.

(c) Declarant: (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) is adjudicated a bankrupt or insolvent, (v) commences a voluntary case under the Federal Bankruptcy Code, (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (viii) takes any corporate action for the purpose of effecting any of the foregoing.

(d) A proceeding or case is commenced, without the application or consent of Declarant, in any court of competent jurisdiction, seeking: (i) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Declarant, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of Declarant or of all or any substantial part of its assets, or (iii) similar relief in respect to Declarant under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty (60) consecutive days, or an order for relief against Declarant is entered in an involuntary case under the Federal Bankruptcy Code.

6.11. OHA Default. OHA will be in default under this Declaration if it fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Declaration.

6.12. Remedies.

(a) **Repayment.** If this Declaration or any part hereof terminates prior to the term of the Use Restriction Period, Declarant will, within thirty (30) days of written demand for repayment by OHA, repay to OHA \$ [_____], multiplied by a fraction, the numerator of which is 20 minus the number of full years that have transpired between the year the Project is completed and the year of Payee's demand and the denominator of which is 20.

(b) **Deficiencies.** OHA may, from time to time, identify and direct Declarant to correct deficiencies (including deficiencies by the Owner) in its compliance with this Declaration, which it shall correct as so directed.

(c) **Extension of Use Restriction Period.** OHA may by written notice extend the Use Restriction Period described in this Declaration for periods of time matching corresponding periods of time during which OHA determines the Declarant to be in material noncompliance with any of the terms of this Declaration.

(d) **Additional Remedies.** If the Declarant defaults in the performance or observance of any covenant, agreement or obligation set forth in this Declaration (including correction of deficiencies), and if such default remains uncured by the Declarant for a period of thirty (30) days or less (depending upon the requirements of the notice, lesser notice periods being reserved for matters that OHA determines in its sole discretion relate to material health or safety needs of Project occupants) after notice thereof shall have been given by OHA, or if such default runs for a period of thirty (30) days from the date the Declarant should, with due diligence, have discovered such default, then OHA may declare an Event of Default to have occurred hereunder provided, however, if a default is not reasonably capable of being cured within thirty (30) days or any lesser notice period provided by OHA, OHA may, in its sole discretion, extend the correction period for up to six (6) months, but only if OHA determines in its sole discretion there is good cause for granting the extension; and provided further, however, in the event of a foreclosure, deed in lieu of foreclosure, or similar event with respect to the Project or the Property, the correction period for the successor for an existing default shall be no less than thirty (30) days from the earlier of the date the successor obtains control or becomes the owner of the Project. To the extent that the default is not corrected within the above-described period including extensions, if any, granted by OHA, an Event of Default shall be deemed to occur and OHA

may exercise its rights and remedies under this Section. Following the occurrence of an Event of Default hereunder OHA may, at its option, take any one or more of the following steps in addition to all other remedies provided in this Declaration, by law, or in equity:

i. By mandamus or other suit, action or proceeding at law or in equity, require Declarant specifically to perform its obligations under this Declaration or enjoin any acts or things that may be unlawful or in violation of the rights of OHA under this Declaration;

ii. Obtain the appointment of a receiver to operate the Project in compliance with this Declaration;

iii. Withhold from Declarant, suspend or terminate, or (upon thirty (30)-days written demand) require the repayment of all or part of any disbursed Grant funds or other funding assistance provided by OHA to Declarant with respect to the Project;

iv. Declare Declarant, its owners, principals, employees, and agents ineligible to receive further OHA funds or other OHA financial assistance, including with respect to other projects or requests for same, for such period as OHA determines in its sole discretion;

v. Offset amounts due from repayment of the Grant against other funding awarded or to be awarded to Declarant;

vi. Have access to, and inspect, examine and make copies of all of the books and records of Declarant pertaining to the Project and to inspect the Project itself;

vii. Enter onto the Property and correct Events of Default with respect to the Project at Declarant's expense, which expense Declarant will repay to OHA within ten (10) days of any presentment of charges for same; and

viii. Take such other action under this Declaration, at law, in equity, or otherwise as may be available to OHA.

(e) **Survival of Remedies; Remedies Not Exclusive; Non-Waiver.** The rights and remedies of OHA provided for in this Declaration, which by their nature are intended to survive termination of this Declaration, will survive the termination of the Use Restriction Period and of this Declaration. Furthermore, such remedies will not be exclusive and are in addition to any other rights and remedies available at law, in equity or otherwise. No failure of or delay by OHA to enforce any provision of this Declaration will constitute a waiver by OHA of that or any other provision, nor will any single or partial exercise of any right, power or privilege under this Declaration preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.

6.13. **Severability.** If any term or provision of this Declaration 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 this Declaration did not contain the particular term or provisions held to be invalid.

6.14. **Survival of Obligations.** The obligations of Declarant as set forth in this Declaration will survive

the expiration or termination of the Grant Agreement.

6.15. Attorney Fees. Subject to Article XI, Section 7, of the Oregon Constitution, in the event a lawsuit or other proceeding is instituted regarding this Declaration, the prevailing party in any dispute arising under this Declaration will, to the extent permitted by law, be entitled to recover from the other(s) its reasonable attorney fees and all costs and disbursements incurred at trial, in mediation, and on appeal. Reasonable attorney fees will not exceed the rate charged to OHA by its attorneys. This provision does not apply to lawsuits or other proceedings instituted or maintained by or against tenants or other third-party beneficiaries hereunder, if any, for which lawsuits or other proceedings no award of attorney fees is permitted.

6.16. Construction. The Parties to this Declaration acknowledge that each party and its counsel have participated in the drafting and revision of this Declaration (or knowingly and voluntarily waived the party's right to do so). Accordingly, the Parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not apply in the interpretation of this Declaration or any amendment, modification, supplementation or restatement of the foregoing or of any exhibit to this Declaration.

6.17. Captions. The captions or headings in this Declaration are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Declaration.

6.18. Execution and Counterparts. This Declaration may be executed in several counterparts, each of which will be an original, all of which will constitute but one and the same instrument.

6.19. Governing Law; Venue; Consent to Jurisdiction. This Declaration will be governed by the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") related to this Declaration will be conducted exclusively within the Circuit Court of Marion County, Oregon (unless Oregon law requires that it be brought and conducted where the real property is located) or, if necessary, the United States District Court for the District of Oregon. In no event will this provision be construed as a waiver by OHA or the State of Oregon of any form of defense or immunity, whether it is 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. OHA and the State of Oregon expressly reserve all sovereignty rights. **DECLARANT, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**

6.20. Merger Clause. This Declaration, along with the Grant Agreement constitutes the entire agreement between the Parties on the subject matter hereof. No modification or amendment of this Declaration will bind either Party unless in writing and signed by the Parties (and the necessary approvals obtained), and no waiver or consent will be effective unless signed by the party against whom such waiver or consent is asserted. Such waiver or consent, if given, will be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Declaration.

6.21. No Limitations on Actions of OHA in Exercise of Its Governmental Powers. Nothing in this Declaration is intended, nor will it be construed, to in any way limit the actions of OHA in the exercise of its governmental powers. It is the express intention of the Parties hereto that OHA will retain the full right

and ability to exercise its governmental powers with respect to Declarant, the Project, this Declaration, and the transactions contemplated by this Declaration to the same extent as if it were not a party to this Declaration or the transactions contemplated hereby, and in no event will OHA have any liability in contract arising under this Declaration, or otherwise by virtue of any exercise of its governmental powers.

(Signature Pages Follow)

IN WITNESS WHEREOF, OHA and Declarant have caused this Declaration to be signed by their duly authorized officers on the Effective Date.

OHA:

STATE OF OREGON, acting by and through its
OREGON HEALTH AUTHORITY,

By: _____

STATE OF OREGON)
 : ss
County of Marion)

This instrument was acknowledged before me this ____ day of _____ 2022,
by _____, for and on behalf of the State of Oregon, acting by and through its
_____.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

DECLARANT:

[Name of Grant Recipient]

By: _____

STATE OF OREGON)
 : ss
County of [_____]

This instrument was acknowledged before me this ____ day of _____ 2022,
by _____, for and on behalf of _____ acting by and through its
_____.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

EXHIBIT A
Legal Description

[_____]

EXHIBIT B
Project Description

Use Restrictions:

A. [_____]

B. [_____] ...

Community Restoration Aid & Assist



Changing Lives One Step at A Time
Tri - Co. Supportive Housing
www.transcending-hope.com

Deena Feldes

TRANSCENDING HOPE PO BOX 584 Hillsboro, Or 97123



Changing Lives One Step at A Time
Tri - Co. Supportive Housing
www.transcending-hope.com

Aid & Assist Community Restoration Bid Solicitation S-C01010-00008419

5.2 Transcending Hope, formerly known as Fairhaven, was established in 2009. In 2018 there was a transformation, reconstruction, and rebranding of the Non-Profit 501C-3 “Transcending Hope”. The current Executive Director “Deena Feldes” a Biracial Latina woman who identifies as being in long term recovery of over 20 years and has a 24 yr. old son who lives with a diagnosis of Schizophrenia & Substance Use Disorder; has created a passion driven environment for Transcending Hope to serve our most vulnerable populations including but not limited to our community members with higher baseline disorders who otherwise would be homeless. The nonprofits restructure ensured to accommodate diversity, inclusion, and lower barrier housing, with lived experience staff support.

Transcending hope was 13 homes in 2018, today we have 21 recovery residences and have expanded to all three counties- Washinton County, Clackamas County, and Multnomah County. The Executive Director created and applied for Aid and Assist Community Restoration in Washington County in late 2022. Transcending Hope opened three homes in early 2023 and a fourth aid and assist/choice location in October 2023. Transcending Hope prides itself on the passionate staff that provides supports for the program participants. Transcending Hopes Executive Director has seven years navigating Oregon behavioral health systems including Choice with her son and as a medical guardian. The Executive Director holds seats on the Mental Health Alliance Policy Legislative Workgroup, Washington Counties Housing Advisory Committee with the Social Service seat, and the Peer Network private group with Kevin Fitts. Our staff is composed of people with diverse lived experience in Substance Use Disorders, Mental Health, and Trauma.

Transcending Hopes best practices include staff that work through a trauma informed lens, culturally responsive connections, meeting participants where they are at, ensuring recovery and mentor services are available, timely access to health insurance, prescriptions are filled, and Intervention of supports. Transcending Hope staff are committed to working collaboratively with valuable community partners to provide referrals and connections to service providers that will support our program participants while working collectively with the current providers.

The implementation of Transcending Hopes Washinton County Aid & Assist in early 2023 has been successful due to strong communication, proactivity, and preparedness. Transcending Hopes program in Washington County sought and Identified properties accessible to public transit, shopping, and other essential needs. Transcending Hopes maintenance and Safety team are responsible for the set-up, safety postings and in-house training for participants. Transcending Hope can cater to their participants by utilizing numerous community partners such as Cascadia, Lifeworks, Bridges to Change, Act teams, New Narrative, Clackamas Co, ect. Transcending Hope is established in the community, we have many avenues for transitioning to more permanent housing for our program participants. Transcending Hopes case managers and housing navigators utilize options such as OHSU vouchers, RLRA vouchers, supportive housing Services, Clackamas County housing, New Narrative, and other housing providers. Transcending Hope has eleven rental properties in Washington county that are accessible for transitions and 6 BRHN homes in Clackamas County (eligibility to provide placement in BRHN homes you must identify with substance use disorder).

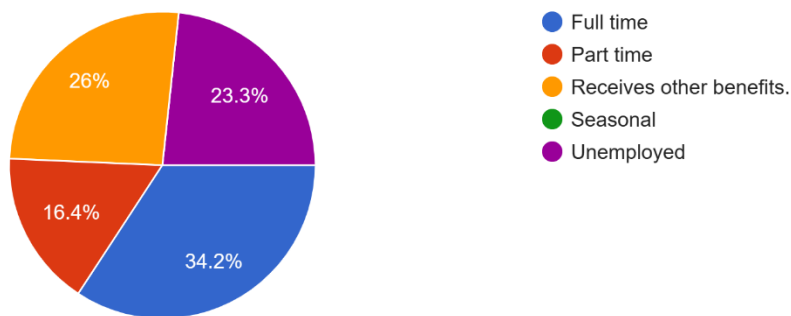
- Transcending Hopes current Aid & Assist Community Restoration housing in Washington County has four Locations which provide 20 private rooms for the program participants. These locations are Gender responsive.
- Each location has a live in-house Manager. The House Manager is responsible for creating a home environment with support. The House Manager facilitates two support meetings in the home per week. The House Manager supports and implements community building activities. The House Manager collaborates daily with team staff members, supports chores, reports maintenance, and basic daily living skills. Full duties description will be provided upon request.
- DDA facilitator provides DDA support meeting once a week on sight.
- On-site Case Manager provides scheduling, support services, connection, transport, Legal skills, attends court docket, and provides STRONG collaborations with all inside/outside team members.
- Program Supervisor supports Case Managers, and house managers by providing daily communication, weekly supervision for development, supports with referrals and collaborations with the State Hospital, Clackamas Co and any other community partner that is referring to the program. Program Supervisor maintains strong communication with the Team. Program Supervisor supports with barriers that may come about, medication issues, and unforeseen deficits.
- All Staff collaborate and coordinate outings, such as to the horse farm, zoo, DDA & Community events, Support Groups, etc.
- Maintenance is responsible for maintaining the properties, damages, and upgrades.
- Safety coordinator does CPR, Narcan, TB, Fire drill and other trainings essential to safety
- Transcending Hope does have culturally responsive Spanish speaking and African American staff.
- Currently Transcending Hope has three staff members being certified/trained to facilitate Hearing Voices support groups which will be implemented into their Aid & Assist programs.

In July of 2022 Transcending Hope created and implemented 8 stabilization supportive community living homes in Clackamas and Multnomah County, out of the 8 homes 4 are Culturally Responsive Latina homes. Transcending Hopes stabilization BHRN (Behavioral Health Resource Network) homes have a similar structure to Transcending Hope Washington County Aid & Assist and the proposed structure for Clackamas Co Aid and Assist. The BHRN homes provide six months of funded housing with supportive staff, entry surveys, goal setting, need assessments, flex funds, community home like environments, support groups and community building activities, strong communication, safety plans verses discharge, and upon entry we are creating next steps for more permanent housing. Transcending Hope collaborates with community support to ensure the best outcomes. Transition plans are created and upon transition Transcending Hope staff and participants complete an exit survey using REALD data. The collaborations with service providers and referral processes ensured that the program participants' immediate and long-term needs were being implemented and met. Transcending Hope success rate of transition to more permanent housing is seen below with our last 71 Placements. The last 71 responses reflect participants from ALL 4 of Transcending Hopes programs.

- 39.4% Transitioned to permanent housing.
- 14.1% Transitioned to Recovery Rental properties.
- 12.7% Transitioned to Supportive Housing
- 12.7% discharged unsuccessfully.
- 15.5% Reunification with Family
- 1.4% Referred to a Higher level of Care.

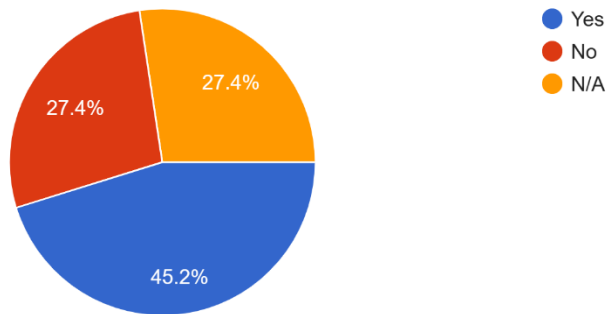
Statistics on our last 73 discharges from programs housing PG PPG

Employment status upon discharge
73 responses



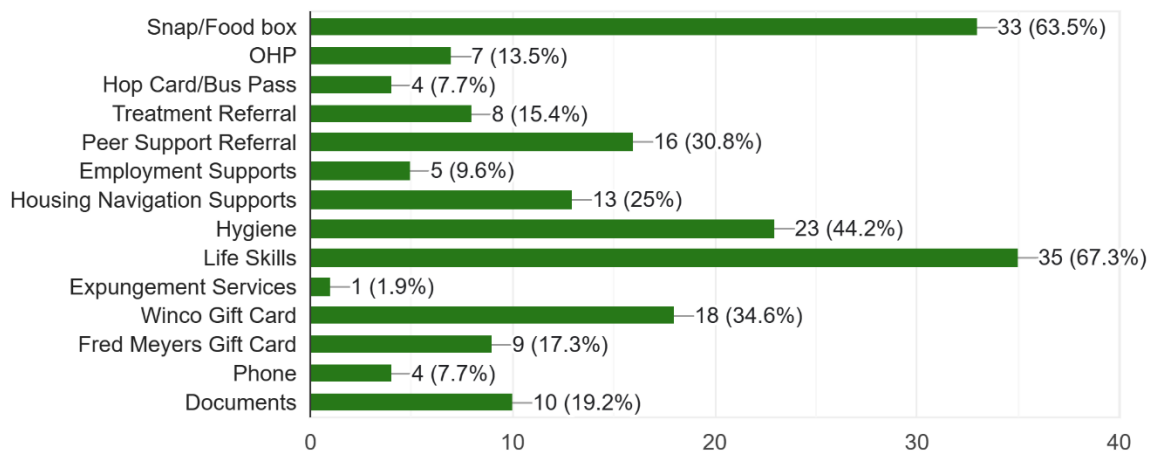
Enrolled in Peer Services

73 responses



Services Received

52 responses



The services above are offered to all participants due to the different programs Transcending Hope receives referrals from many sources and some needs are greater than others.

Transcending Hopes has positive outcomes including capital acquisition and capital asset, Transcending Hope opened a mens home in Washington County during COVID 2020, maintain two with Washington County, maintain several grants through OHA, and maintain a partnership/contract with 4D recovery to provide Culturally responsive housing to our Latino community members in Multnomah County. Transcending Hope is prepared to expand and implement Aid & Assist/Choice supportive housing in Clackamas County.

5.3 Scope of Work/Program Description

- The Clackamas County Aid & Assist team will consist of 20% Housing Director, 20% Executive Director 20% Programs manager one FTE Program Supervisor, two FTE Case managers, three live in-house managers, one full-time maintenance personnel.
- Executive Director Supervises the Programs Manager
- Programs Manager Supervises case managers, housing navigator, and house managers (6 employees)
- Housing Director Supervises Maintenance
- All Team members participate in Group supervision once a week with rotating leadership.

Program Plan

- Transcending Hopes will provide up to 20 placements for Aid & Assist/Choice Community participants in Clackamas County at 3 locations. These locations may or may not be Gender responsive.
- Transcending Hope minimizes barriers for program participants.
- Each location has a live in-house Manager. The House Manager is responsible for creating a home environment with support and social engagement. The House Manager facilitates two support meetings in the home per week. The House Manager supports and implements community building activities. The House Manager collaborates daily with team staff members, supports chores, reports maintenance, and basic daily living skills. Full duties description will be provided upon request.
- Private Space for residents and staff to engage in, and facilitate, web-based services and assessments, such as telehealth, court appearances and forensic evaluations.
- A minimum of two single rooms per location
- Access to public transportation
- Common space for residents to congregate.
- Kitchen space open for use for residents and staff
- Economy of scale to serve most individuals.
- DDA facilitator provides DDA support meeting once a week on sight.
- On-site Case Manager provides scheduling, support services, connection, transport, Legal skills, attends court docket, and provides STRONG collaborations with all inside/outside team members.
- Housing Navigator works with program participants and team members to create housing transition plans, supports transports, peer support, outreach, and other essential appointments. Housing Navigator collaborates with community resources to secure vouchers, housing opportunities through waitlist, and all housing opportunities available for transitions.
- Program Supervisor supports Case Managers, and house managers by providing daily communication, weekly supervision for development, supports with referrals and collaborations with the State Hospital, Clackamas Co and any other community partner that are referring to the program. Program Supervisor maintains strong communication with the Team. Program Supervisor supports with barriers that may come about, medication issues, and unforeseen deficits.

- All Staff collaborates and coordinate outings, such as to the horse farm, zoo, DDA & Community events, Support Groups, ect
- Maintenance is responsible for maintaining the properties, damages, and upgrades.
- Safety coordinator does CPR, Narcan, TB, Fire drill and other trainings essential to safety
- Transcending Hope does have culturally responsive Spanish speaking and African American staff.
- Currently Transcending Hope has three staff members being certified/trained to facilitate Hearing Voices support groups which will be implemented into their Aid & Assist programs.
- Transcending Hope will provide a 24HR phone line for crisis situations.

Describe essential services necessary to serve the demographic described to be served under a contract, if awarded.

- Community Environment where individuals support each other.
- Connection with Culturally Responsive Supports
- Peer Support through case managers, housing Navigator, and outside referrals
- All Team members have lived experience and training including ongoing development.
- Distribution of power throughout the home
- On site structure and support groups
- Strong Communication and Collaborations with ALL providers
- Community team building activities in the homes.
- Safety
- Hygiene products on site
- General House Supplies/cleaning supplies
- Empower the program participants.
- Treatment Services if Applicable
- Medications if Applicable
- Primary Care
- Legal Skills
- Connection
- Consistency and Structure
- Ensure supports travel with Participants when discharged and transitioned.
- Staff and live in house manager coordinate for 24/7 site supports.
- Procedures and Crisis lines
- 24Hr Internal Crisis Line

Describe your organization's experience providing habilitative services to individuals who experience significant barriers to living in the community due to legal and/or behavioral health symptoms.

Transcending Hope has been serving individuals who experience significant barriers to living in the community due to legal and/or behavioral health symptoms since 2018. Transcending Hope recognized a serious deficit in services for individuals who identify with co-occurring symptoms and persons who may or may not identify with significant behavioral health symptoms. Transcending hope is committed and has prioritized providing housing to our most vulnerable populations who otherwise would be homeless, incarcerated, or at the State Hospital. Transcending Hope counts on collaboration and support with not only our staff, but with all services provided including act teams, and crisis support, to ensure the best outcomes. The participants create and are supported in goals they want to achieve while the community in the home provides stabilization, security, empowerment, and value to each participant. All Transcending Hope staff consist of lived experience with Behavioral health and substance use disorders. Transcending Hope recognizes that to heal our basic human needs and rights such as housing must be fulfilled to even begin to implement supports for more permanent positive outcomes.

Describe your plan, if applicable, to lease/purchase/renovate an appropriate site. Describe your experience with facility operations including capital acquisition and capital asset preservation.

Transcending Hope receives support in locating properties from Jeff Edmondson, owner and operator of 24/7 properties. Transcending Hope has identified several potential properties that will provide single and double occupancy rooms with a maximum of 20 placements. The locations will have space for live-in-house managers including private space for virtual appointments.

Transcending Hope leases 21 properties tri county. Transcending Hope maintains capital acquisition and capital asset prevention. Transcending Hope applies for tax exemptions and has gained capital from existing rental properties and contracts held.

Transcending Hope will attach identified properties with cost for purchase. Transcending Hope will also provide a budget for a leasing option. Clackamas County will be able to see the cost for both program models. Transcending Hope is not limited to purchase and services, if Transcending Hope is not awarded for purchasing, we would like Clackamas County to consider allowing us funding to lease properties with service model, Transcending Hope would also be willing to partner and provide services in an owned or purchased property.

Transcending Hope will implement and strategize to purchase and prepare to begin services within 90-120 days of contract implementation.

If Transcending Hope is chosen for leasing options Transcending Hope will begin services within 60 days, if there is a provider providing the property we will implement services within 45 days.

5.4 Describe how your organization centers racial equity and incorporates culturally responsive practices into its service delivery model. How will equity lead your work if awarded a contract?

I have inserted a link to a video presentation regarding Transcending Hopes culturally responsive housing. Transcending Hope House managers are the creators of the environment of the homes. Transcending Hope employs BIPOC community members with lived experience to support our program participants. If there is a participant that we could not serve through a culturally responsive lens, we would refer to community partners for peer services and culturally responsive support.

https://youtu.be/5_yQuKCMLyY?si=uy_xo7BB3_5H54aa

Transcending Hope creates space for all participants to respect and learn from each other, valuing ethnicity, culture, and equity for all our participants. The homes that are set up and created will be for diverse populations and the environment will support this.

Transcending Hope is committed to working with partners throughout the county and region to find opportunities and innovative ways to support all participants through an equity lens.

Describe how your organization incorporates lived experience/peer perspectives and voices into the service delivery model.

Transcending Hope is composed of people with lived experience in Behavioral health, and substance use disorders. Transcending Hopes Staff is diverse culturally and ethnically. Transcending Hopes staff knowledge is comprised of education, continued development, perspectives, personal identities, and history beyond their professional or educational experience. The incorporation of lived experience can help you truly hear and understand people's needs and support you to design and deliver projects to meet them. It is a two-way process that benefits everyone; it brings a valuable perspective on cultural humility by promoting understanding and respect for the diverse identities and experiences of the individuals.

Thank you for your time and Consideration

**Deena Feldes
Executive Director
Transcending Hope
11/15/2023**

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