

December 7, 2023

Board of County Commissioners  
 Clackamas County

**Approval of a Revenue Intergovernmental Agreement with Washington County to partner on a Notice of Funding Opportunity (NOFO) for the Tobacco Prevention Community Grant. Agreement value is \$105,000 for 20 months. Funding is through the Oregon Health Authority Tobacco Tax Revenue. No County General Funds are involved.**


<b>Previous Board Action/Review</b>	Briefed at Issues -December 5, 2023.		
<b>Performance Clackamas</b>	1. Ensure safe, healthy, and secure communities. 2. Health outcome disparities identified in the Community Health Improvement Plan will be reduced.		
<b>Counsel Review</b>	Yes	<b>Procurement Review</b>	No
<b>Contact Person</b>	Philip Mason-Joyner	<b>Contact Phone</b>	503-742-5956

**EXECUTIVE SUMMARY:** Clackamas County Public Health Division (CCPHD) of the Health, Housing, and Human Services Department requests the approval of the Intergovernmental Revenue Agreement with Washington County Public Health Division (WCPHD) to partner on a Notice of Funding Opportunity (NOFO) for the Tobacco Prevention Community Grant.

This agreement will increase access to tobacco cessation and education programs for Clackamas County and Washington County residents. CCPHD and WCPHD Tobacco Prevention and Education Programs are dedicating a total of \$350,000 of allocated funds to community-based organizations (CBOs) to address the root causes of commercial tobacco use and related health disparities. Distribution of funds will be determined via a competitive grant application process. A committee consisting of two CCPHD staff, two WCPHD staff, and two individuals from CBOs will review applications and award seven organizations up to \$50,000 each. Both parties agree to promote, evaluate, and award grants from proposals submitted. WCPHD will provide \$100,000 to contribute to the Commercial Tobacco Prevention Grants and \$5,000 for administrative costs associated with contract development and execution.

The Oregon Health Authority (OHA) allocates tobacco tax revenue to CCPHD and WCPHD to implement policy, systems, and environmental changes that facilitate community partnerships, create tobacco-free environments, promote cessation among adults and youth, enforce statewide tobacco control laws and reduce the burden of tobacco-related chronic disease. These activities are conducted through each County's respective Tobacco Prevention and Education Program.

**RECOMMENDATION:** Staff recommends the Board of County Commissioners approve the attached Intergovernmental/Revenue Agreement #11324.

Respectfully submitted,  
  
 Rodney A. Cook,  
 Director of Health, Housing, and Human Services

For Filing Use Only

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN CLACKAMAS COUNTY  
AND WASHINGTON COUNTY  
#11324**

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

**RECITALS**

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

The parties desire to partner on a Notice of Funding Opportunity (NOFO) for the Tobacco Prevention Community Grant. Both parties agree to promote, evaluate, and award grants from proposals submitted.

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

**TERMS**

1. **Term.** This Agreement shall be effective upon execution, and shall expire upon the completion of each and every obligation of the Parties set forth herein, or June 30, 2025, whichever is sooner.
2. **Scope of Work.** Clackamas County agrees to provide the services further identified in the Scope of Work attached hereto as Exhibit A and incorporated herein Notice of Funding Opportunity Grant ("Work").
3. **Consideration.** Washington County agrees to pay Clackamas County, from available and authorized funds, a sum not to exceed one hundred and five thousand dollars (\$105,000) for accomplishing the Work required by this Agreement.
4. **Payment.** Clackamas County shall invoice Washington County for total amount upon full execution of this agreement.
5. **Representations and Warranties.**
  - A. *Clackamas County Representations and Warranties:* Clackamas County represents and warrants to Washington County that Clackamas County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of Agency enforceable in accordance with its terms.
  - B. *County Representations and Warranties:* County represents and warrants to Agency that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of Clackamas County enforceable in accordance with its terms.
  - C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

## 6. Termination.

- A. Either Washington County or Clackamas County may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
- B. Either Washington County or Clackamas County may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- C. Washington County or Clackamas County shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- D. Washington County may terminate this Agreement in the event Washington County fails to receive expenditure authority sufficient to allow Washington County, in the exercise of its reasonable administrative discretion, to continue to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Project under this Agreement is prohibited or Washington County is prohibited from paying for such work from the planned funding source.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

## 7. Indemnification.

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, Washington County agrees to indemnify, save harmless and defend Clackamas County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of Washington County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which Washington County has a right to control.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, Clackamas County agrees to indemnify, save harmless and defend Washington County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon

damages or injuries to persons or property caused by the negligent or willful acts of Clackamas County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which Clackamas County has a right to control.

**8. Insurance.**

The Parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.

**9. Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

A. Gwyn Ashcom or their designee will act as liaison for Washington County.

**Contact Information:**

Phone number: 503-846-4544 - [Gwyn\\_Ashcom@co.washington.or.us](mailto:Gwyn_Ashcom@co.washington.or.us)

Jamie Zentner or their designee will act as liaison for Clackamas County.

**Contact Information:**

Phone number: 503-758-4143 - [jzentner@clackamas.us](mailto:jzentner@clackamas.us)

**10. General Provisions.**

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

- B. Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. Access to Records.** Agency shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. Agency shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, Agency shall permit the County's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.
- E. Work Product.** All work performed under this Agreement shall be the property of both parties. The parties shall own any and all data, documents, plans, copyrights, specifications, working papers and any other materials produced in connection with this Agreement.
- F. Hazard Communication.** Clackamas County shall notify Washington County prior to using products containing hazardous chemicals to which Washington County employees may be exposed, which includes any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by Oregon Administrative Rules, Chapter 137, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon Washington County's request, Clackamas County shall immediately provide Material Safety Data Sheets for the products subject to this provision.
- G. Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- H. Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and

effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.

- I. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- J. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- K. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- L. **No Third-Party Beneficiary.** Clackamas County and Washington County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- M. **Subcontract and Assignment.** Clackamas County shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from Washington County, which shall be granted or denied in Washington County's sole discretion. Washington County's consent to any subcontract shall not relieve Clackamas County of any of its duties or obligations under this Agreement.
- N. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.

- O. **Survival.** All provisions in Sections 5, 7, and 10 (A), (C), (D), (G), (H), (I), (J), (L), (Q), (T), and (U) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- P. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- Q. **Time is of the Essence.** The parties agrees that time is of the essence in the performance this Agreement.
- R. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- S. **Force Majeure.** Neither Clackamas County nor Washington County shall be held responsible for delay or default caused by events outside of Clackamas County or Washington County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, the counties shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- T. **Confidentiality.** Clackamas County acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire confidential information. Any and all information of any form obtained by Clackamas County or its employees or agents in the performance of this Agreement shall be deemed confidential information of Washington County ("Confidential Information"). Clackamas County agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Clackamas County uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement.
- U. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

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

**Clackamas County**

\_\_\_\_\_  
Chair, Board of County Commissioners

\_\_\_\_\_  
Date

**Washington County**

DocuSigned by:

*Marni Kuyl*  
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\_\_\_\_\_  
Marni Kuyl, Assistant County Administrator

10/31/2023 | 04:34 PDT

\_\_\_\_\_  
Date

Approved as to Form:

*Janet Foreman*      11/21/2023  
\_\_\_\_\_  
County Counsel      Date



## Exhibit A

### SCOPE OF WORK

**Project Description:**

The Oregon Health Authority (OHA) allocates tobacco tax revenue to Clackamas County Public Health Division (CCPHD) and Washington County Public Health Department (WCPHD) to implement policy, systems, and environmental changes that facilitate community partnerships; create tobacco-free environments; promote cessation among adults and youth; enforce statewide tobacco control laws; and reduce the burden of tobacco-related chronic disease. These activities are conducted through each County's respective Tobacco Prevention and Education Program (TPEP).

CCPHD and WCPH TPEPs are dedicating a portion of allocated funds to community-based organizations (CBOs) to address the root causes of commercial tobacco use and related health disparities. Distribution of funds will be determined via a competitive grant application process. A committee consisting of two CCPHD staff, two WCPHD staff, and two individuals from CBOs will review applications and award seven organizations up to \$50,000 each.

**Deliverables:** Contractor will deliver to the County the following deliverables:

No.	Description of Deliverables	Due Date or Estimated Duration
1	Pass through \$100,000 to contribute to the Commercial Tobacco Prevention Grants.	1/1/24
2	Pass through \$5,000 for administrative costs associated with contract development and execution.	1/1/24
3	Participate in check-ins with grantees.	1/1/24 – 6/30/25

The County will deliver to the Contractor the following deliverables:

No.	Description of Deliverables	Due Date or Estimated Duration
1	Pass through \$350,000 to contribute to the Commercial Tobacco Prevention Grants.	1/1/24
2	Administer contracts, monitor progress, and reporting requirements for grantees.	1/1/24 – 6/30/25
3	Participate in check-ins with grantees.	1/1/24 – 6/30/25

**Fees:**

Fixed payment of \$105,000.
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**Payment Schedule:**

WCPHD will issue to CCPHD a one-time payment of \$105,000 by January 1, 2024.
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