



# AGENDA

**Thursday, September 12, 2013 - 10:00 AM**  
**Board of County Commissioners Business Meeting**

Beginning Board Order No. 2013-75

**I. CALL TO ORDER**

- Roll Call
- Pledge of Allegiance

**II. CITIZEN COMMUNICATION** *(The Chair of the Board will call for statements from citizens regarding issues relating to County government. It is the intention that this portion of the agenda shall be limited to items of County business which are properly the object of Board consideration and may not be of a personal nature. Persons wishing to speak shall be allowed to do so after registering on the blue card provided on the table outside of the hearing room prior to the beginning of the hearing. Testimony is limited to three (3) minutes. Comments shall be respectful and courteous to all.)*

**III. PUBLIC HEARINGS** *(The following items will be individually presented by County staff or other appropriate individuals. Persons appearing shall clearly identify themselves and the organization they represent. In addition, a synopsis of each item, together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)*

1. Board Order No. \_\_\_\_\_ for Boundary Change Proposal No. CL 13-004 to Clackamas County Service District No. 1 (Chris Storey, County Counsel & Ken Martin, Boundary Change Consultant)
2. First Reading of Ordinance No. \_\_\_\_\_ Amending the County Code to Update the Exclusions Process and Allow Exclusions from County Buildings (Stephen Madkour, County Counsel)

**IV. DISCUSSION ITEMS** *(The following items will be individually presented by County staff or other appropriate individuals. Citizens who want to comment on a discussion item may do so when called on by the Chair.)*

**~NO DISCUSSION ITEMS SCHEDULED**

**V. CONSENT AGENDA** *(The following items are considered to be routine, and therefore will not be allotted individual discussion time on the agenda. Many of these items have been discussed by the Board in Study Session. The items on the Consent Agenda will be approved in one motion unless a Board member requests, before the vote on the motion, to have an item considered at its regular place on the agenda.)*

**A. Health, Housing & Human Services**

- 3 1. Approval of an Amendment to the Intergovernmental Agreement between Community Solutions for Clackamas County and the State of Oregon Department of Energy for Weatherization Services - Community Solutions for Clackamas County

- 4 2. Approval of Amendment No. 1 to a Sub-Award Agreement with Providence Health & Services, dba Providence Medical Center for the Intensive Transition Teams Project Grant Funding – *Behavioral Health*
- 5 3. Approval of a Renewal Revenue Health Care Services Agreement with Northwest Permanente to Provide Chemical Dependency Treatment Services to Referred Members – *Health Clinics*
- 6 4. Approval of Amendment No. 1 with Multnomah County for the Healthy Columbia Willamette Project to Outline Roles and Responsibilities for the Four-County Community Needs Assessment – *Public Health*
- 7 5. Approval of an Intergovernmental Agreement with the Oregon Health Authority for the Adult Mental Health Initiative Program – *Behavior Health*

**B. Elected Officials**

- 8 1. Approval of Previous Business Meeting Minutes – *BCC*

**C. Department of Emergency Management**

- 9 1. Approval of FY 2012 Urban Area Security Initiative Sub-Recipient Grant Agreement with Clackamas River Water District

**D. Business & Community Services**

- 10 1. Approval of an Intergovernmental Agreement with Portland State University/Oregon Solutions Program, for the Clackamas County Food System ONEStop Program

**VI. DEVELOPMENT AGENCY**

- 11 1. Approval of a Contract with Harper Houf Peterson Righellis, Inc. for Consulting Services for Engineering Design and Construction Plans for the Monterey Avenue Extension Project - *Purchasing*

**VII. COUNTY ADMINISTRATOR UPDATE**

**VIII. COMMISSIONERS COMMUNICATION**

**NOTE: Regularly scheduled Business Meetings are televised and broadcast on the Clackamas County Government Channel. These programs are also accessible through the County's Internet site. DVD copies of regularly scheduled BCC Thursday Business Meetings are available for checkout at the Clackamas County Library in Oak Grove by the following Saturday. You may also order copies from any library in Clackamas County or the Clackamas County Government Channel.**

<http://www.clackamas.us/bcc/business.html>



1

OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING

2051 KAEN ROAD OREGON CITY, OR 97045

September 12, 2013

Board of County Commissioners  
Clackamas County

Stephen L. Madkour  
County Counsel

Members of the Board:

David W. Anderson  
Kimberley Ybarra  
Kathleen Rastetter  
Chris Storey  
Scott C. Ciecko  
Alexander Gordon  
Amanda Keller  
Nathan K. Boderman  
Assistants

Approval of Annexation to Clackamas County Service District No. 1

<b>Purpose/Outcomes</b>	Conduct Public Hearing/Approve Order
<b>Dollar Amount and Fiscal Impact</b>	None
<b>Funding Source</b>	Not Applicable
<b>Safety Impact</b>	Not Applicable
<b>Duration</b>	Not Applicable
<b>Previous Board Action</b>	None
<b>Contact Person</b>	Chris Storey, Assistant County Counsel 503 742 4623 Ken Martin, Boundary Change Consultant - 503 222-0955
<b>Contract No.</b>	Not Applicable

(CS)

**BACKGROUND**

The County Board is charged with making boundary change decisions (annexations, withdrawals, etc.) for many types of special districts (water, sanitary sewer, rural fire protection, etc.) within the County. One type of special district over which the Board has jurisdiction is a county service district and Clackamas County Service District No. 1 is such a district.

Proposal No. CL 13-004 is a proposed annexation to Clackamas County Service District No. 1. State statute and the Metro Code require the Board to hold a public hearing on the proposed annexation. Notice of this hearing invited testimony from any interested party. Notice consisted of: 1) Posting three notices near the territory and one notice near the County hearing room 20 days prior to the hearing; 2) Published notice twice in the Clackamas County Review; 3) Mailed notice sent to affected local governments and all property owners within 100 feet of the area to be annexed.

As required by statute the Board of the District has endorsed the proposed annexation. In this instance, the BCC delegated to the Director of Water Environment Services the authority to make endorsements on its behalf for annexations, which has been done. The property owners have, per CCSD#1 policy requirements, petitioned for annexation into the City of Happy Valley simultaneously with annexation into CCSD#1. The city annexation process will be handled directly by the City.

This proposal was initiated by a consent petition of property owners and registered voters. The petition meets the requirement for initiation set forth in ORS 198.855(3) (double majority annexation law), ORS 198.750 (section of statute which specifies contents of petition) and Metro Code 3.09.040(a) (lists Metro's minimum requirements for petition). If the Board approves the proposal the boundary change will become effective immediately.

The territory to be annexed is located generally in the eastern part of the District. The territory contains 2.0 acres, one single family dwelling and is valued at \$239,051.

## **REASON FOR ANNEXATION**

The property owners desire annexation to provide sewer service to facilitate residential development. A 10 lot single family subdivision is planned for the site.

## **CRITERIA**

Oregon Revised Statute 198 directs the Board to "consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district."

Additional criteria can be found in the Metro Code. The code requires a report which addresses the criteria listed below and which includes the following information:

1. The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
2. Whether the proposed boundary change will result in the withdrawal of territory from the legal boundary of any necessary party<sup>1</sup>; and
3. The proposed effective date of the boundary change.

Service availability is covered in the section below. Staff has examined the statutes and determined that approval of this annexation will not cause the withdrawal of the affected territory from the boundary of any necessary party. The proposed effective date (immediately upon adoption) was noted above.

To approve a boundary change, the reviewing entity [the County Board] must apply the following criteria:

To approve a boundary change the County must:

- (1) Find that the change is consistent with expressly applicable provisions in:
  - (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;
  - (B) Any applicable annexation plan adopted pursuant to ORS 195.205;

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<sup>1</sup> A "necessary party" is another governmental entity which includes the same area or provides an urban service to the area.

- (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;
  - (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
  - (E) Any applicable comprehensive plan;
  - (F) Any applicable concept plan; and
- (2) Consider whether the boundary change would:
- (A) Promote the timely, orderly and economic provision of public facilities and services;
  - (B) Affect the quality and quantity of urban services; and
  - (C) Eliminate or avoid unnecessary duplication of facilities and services.

There are no cooperative agreements, urban service agreements or annexation plans specifically adopted pursuant to ORS 195 in effect in this area. The original public facility plan for this area does call for service by the District. The proposal is consistent with the Comprehensive Plan as stated in the section below. No concept plans cover this area.

**LAND USE PLANNING**

*REGIONAL PLANNING*

General Information

This territory is inside of Metro's jurisdictional boundary and inside the regional Urban Growth Boundary (UGB).

Regional Framework Plan

The law that requires Metro to adopt criteria for boundary changes specifically states that Metro shall “. . . ensure that a boundary change is in compliance with the Metro regional framework plan as defined in ORS 197.015 and cooperative agreements and urban service agreements adopted pursuant to ORS chapter 195.” ORS 197.015 says “Metro regional framework plan means the regional framework plan required by the 1992 Metro Charter or its separate components.” The Regional Framework Plan was reviewed and found not to contain specific criteria applicable to boundary changes.

There are two adopted regional functional plans, the Urban Growth Management Functional Plan and the Regional Transportation Plan, which were examined and found not to contain any directly applicable standards and criteria for boundary changes.

*COUNTY PLANNING*

The PUBLIC FACILITIES AND SERVICES Element of the Comprehensive Plan contains the

following Goal:

## POLICIES

### Sanitary Sewage Disposal

\*\*\*

- 6.0 Require sanitary sewerage service agencies to coordinate extension of sanitary services with other key facilities, i.e., water, transportation, and storm drainage systems, which are necessary to serve additional lands.

Current county zoning is FU-10, future Urban 10 acre minimum lot size. The owners are currently processing a zone change to VR-5/7, Village Standard Lot Residential District, 5000-7000 square foot lot sizes.

## **FACILITIES AND SERVICES**

ORS 195 Agreements. ORS 195 requires agreements between providers of urban services. Urban services are defined as: sanitary sewers, water, fire protection, parks, open space, recreation and streets, roads and mass transit. These agreements are to specify which governmental entity will provide which service to which area in the long term. The counties are responsible for facilitating the creation of these agreements. There are no urban service agreements under ORS 195 relative to sewer service in this area of Clackamas County.

Sewer. The District can provide sanitary sewer service to the property from an existing 8 inch District line in SE Ellis Court at the north edge of the property. Storm drainage in this area is handled through 12 inch lines in SE Ellis Court and SE 139<sup>th</sup> Avenue.

Water. The territory to be annexed is within and served by the Sunrise Water Authority.

Police Service. The area receives police service from the Clackamas County Sheriff's Department. The property will eventually be annexed to the City of Happy Valley which contracts with the Sheriff's office for service.

Fire. The territory is within the Clackamas County R.F.P.D. #1. This service will not be affected by annexation to the County Service District for sanitary sewers.

Parks and Recreation. The area to be annexed is within the North Clackamas County Parks & Recreation District.

## **RECOMMENDATION**

Based on the attached Order and Findings, Staff recommends approval of Proposal No. CL-13-004, annexation to Clackamas County Service District No. 1.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of Approving  
Boundary Change Proposal  
No. CL 13-004



ORDER NO.

This matter coming before the Board at this time, and it appearing that more than half the electors and owners of more than half the land in the territory to be annexed have petitioned to annex the territory to Clackamas County Service District No. 1;

It further appearing that this Board is charged with deciding this proposal for a boundary change pursuant to ORS Chapters 198 and Metro Code 3.09; and

It further appearing that staff retained by the County have reviewed the proposed boundary change and issued a report which complies with the requirements of Metro Code 3.09.050(b); and

It further appearing that this matter came before the Board for public hearing on September 12, 2013 and that a decision of approval was made on September 12, 2013;

NOW, THEREFORE, IT IS HEREBY ORDERED that Boundary Change Proposal No. CL 13-004 is approved for the reasons stated in attached Exhibit A and the territory described in Exhibit B and depicted on Exhibit C is annexed to Clackamas County Service District No. 1 as of September 12, 2013.

ADOPTED this 12<sup>th</sup> day of September, 2013.

BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
Chair

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

## FINDINGS

Based on the study and the public hearing the Board found:

1. The territory to be annexed contains 2.0 acres, one single family dwelling and is valued at \$239,051.
2. The property owners desire annexation to provide sewer service to facilitate residential development. A 10 lot single family subdivision is planned for the site.
3. Oregon Revised Statute 198 directs the Board to “consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district.”

Additional criteria can be found in the Metro Code. The code requires a report which addresses the criteria listed below and which includes the following information:

1. The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
2. Whether the proposed boundary change will result in the withdrawal of territory from the legal boundary of any necessary party<sup>1</sup>; and
3. The proposed effective date of the boundary change.

Service availability is covered in Findings 7-11 below. Staff has examined the statutes and determined that approval of this annexation will not cause the withdrawal of the affected territory from the boundary of any necessary party. The proposed effective date is immediately upon adoption.

To approve a boundary change, the reviewing entity [the County Board] must apply the following criteria:

To approve a boundary change the County must:

- (1) Find that the change is consistent with expressly applicable provisions in:
  - (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;
  - (B) Any applicable annexation plan adopted pursuant to ORS 195.205;

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<sup>1</sup> A “necessary party” is another governmental entity which includes the same area or provides an urban service to the area.



- (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;
  - (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
  - (E) Any applicable comprehensive plan;
  - (F) Any applicable concept plan; and
- (2) Consider whether the boundary change would:
- (A) Promote the timely, orderly and economic provision of public facilities and services;
  - (B) Affect the quality and quantity of urban services; and
  - (C) Eliminate or avoid unnecessary duplication of facilities and services.

There are no cooperative agreements, urban service agreements or annexation plans specifically adopted pursuant to ORS 195 in effect in this area. The original public facility plan for this area does call for service by the District. The proposal is consistent with the Comprehensive Plan as stated in Finding No. 5 below. No concept plans cover this area.

4. This territory is inside of Metro's jurisdictional boundary and inside the regional Urban Growth Boundary (UGB).

The law that requires Metro to adopt criteria for boundary changes specifically states that Metro shall ". . . ensure that a boundary change is in compliance with the Metro regional framework plan as defined in ORS 197.015 and cooperative agreements and urban service agreements adopted pursuant to ORS chapter 195." ORS 197.015 says "Metro regional framework plan means the regional framework plan required by the 1992 Metro Charter or its separate components." The Regional Framework Plan was reviewed and found not to contain specific criteria applicable to boundary changes.

There are two adopted regional functional plans, the Urban Growth Management Functional Plan and the Regional Transportation Plan, which were examined and found not to contain any directly applicable standards and criteria for boundary changes.

5. The PUBLIC FACILITIES AND SERVICES Element of the Comprehensive Plan contains the following Goal:

POLICIES

Sanitary Sewage Disposal

\*\*\*

- 6.0 Require sanitary sewerage service agencies to coordinate extension of sanitary services with other key facilities, i.e., water, transportation, and storm drainage systems, which are necessary to serve additional lands.

Current county zoning is FU-10, future Urban 10 acre minimum lot size. The owners are currently processing a zone change to VR-5/7, Village Standard Lot Residential District, 5000-7000 square foot lot sizes.

6. ORS 195 requires agreements between providers of urban services. Urban services are defined as: sanitary sewers, water, fire protection, parks, open space, recreation and streets, roads and mass transit. These agreements are to specify which governmental entity will provide which service to which area in the long term. The counties are responsible for facilitating the creation of these agreements. There are no urban service agreements under ORS 195 relative to sewer service in this area of Clackamas County.
7. The District can provide sanitary sewer service to the property from an existing 8 inch District line in SE Ellis Court at the north edge of the property. Storm drainage in this area is handled through 12 inch lines in SE Ellis Court and SE 139<sup>th</sup> Avenue.
8. The territory to be annexed is within and served by the Sunrise Water Authority.
9. The area receives police service from the Clackamas County Sheriff's Department. The property will eventually be annexed to the City of Happy Valley which contracts with the Sheriff's office for service.
10. The territory is within the Clackamas County R.F.P.D. #1. This service will not be affected by annexation to the County Service District for sanitary sewers.
11. The area to be annexed is within the North Clackamas County Parks & Recreation District.

**CONCLUSIONS AND REASONS FOR DECISION**

Based on the Findings, the Board determined:

1. The Metro Code requires the boundary change decision to be consistent with expressly applicable provisions in any urban service provider agreements, cooperative agreements and annexation plans adopted pursuant to ORS 195. As noted in Findings 3 & 6 there are no such agreements or plans in place in this area. The Board concludes that its decision is not inconsistent with any such agreements and plans.
2. The Metro Code calls for consistency between the Board decision and any "applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services." The Board notes the original public facility plan for this area does call for sewer service by the District.
3. ORS 198 requires consideration of the comprehensive plan and any service agreements affecting the area. The Board has reviewed the applicable comprehensive plan (Clackamas County's Comprehensive Plan) and concludes this proposal complies with it. All other urban services necessary for development are available.
4. The Board considered the timing & phasing of public facilities to this area, the quantity and quality of services available and the potential for duplication of services. The District has service available to the area to be annexed as noted in Finding No. 7. The Board concludes this annexation is timely, the District has an adequate quantity and quality of services available and that the services are not duplicative.
5. The Metro Code at 3.09.050 (B) (2) requires a determination of whether the boundary change will cause withdrawal of the territory from the boundary of any necessary party. An examination of this issue found that no such withdrawals would be caused by approval of this annexation.

Job No. 3483

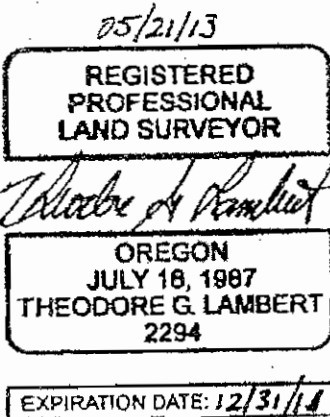
## EXHIBIT B

Proposal No. CL-13-004

A tract of land located in the Southeast One-Quarter of Section 2, Township 2 South, Range 2 East, Willamette Meridian, , Clackamas County, Oregon being more particularly described as follows:

**Beginning** at the southwest corner of Tract "A" of "Pfeifer Ridge", said point also being the northwest corner of Document Number 2013-019524; thence along the west line of said Document South  $00^{\circ}03'16''$  West 265.00 feet to the southwest corner of said Document, said point also being the northwest corner of Parcel 1 of Partition Plat No. 2002-091; thence along the south line of said Document and the north line of said Parcel 1 South  $89^{\circ}43'51''$  East 364.34 feet to the southeast corner of Document Number 2003-058532; thence along the east line of said Document North  $00^{\circ}03'23''$  East 265.00 feet to the easterly extension of the north line of Document Number 2013-019524 and the City of Happy Valley city limits; thence along said easterly extension and north line and along said city limits North  $89^{\circ}43'51''$  West 364.35 feet the **Point of Beginning**.

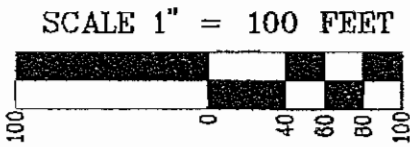
The above described tract of land contains 2.22 acres, more or less.



RECEIVED  
CLACKAMAS  
COUNTY  
ASSISTANT

# EXHIBIT B

A TRACT OF LAND LOCATED IN THE SOUTHEAST 1/4 OF SECTION 2,  
TOWNSHIP 2 SOUTH, RANGE 2 EAST, WILLAMETTE MERIDIAN,  
CLACKAMAS COUNTY, OREGON



## LEGEND

HAPPY VALLEY CITY LIMITS

PREPARED FOR  
CITY OF HAPPY VALLEY  
16000 SE MISTY DRIVE  
HAPPY VALLEY, OR 97086  
5/21/13

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Theodore G. Lambert*

OREGON  
JULY 16, 1987  
THEODORE G. LAMBERT  
2294

RENEWS: 12/31/14

JOB NAME: 14225 SE 139TH

JOB NUMBER: 3483

DRAWN BY: MEB

CHECKED BY: TGL

DWG NO.: 3483 EXHB

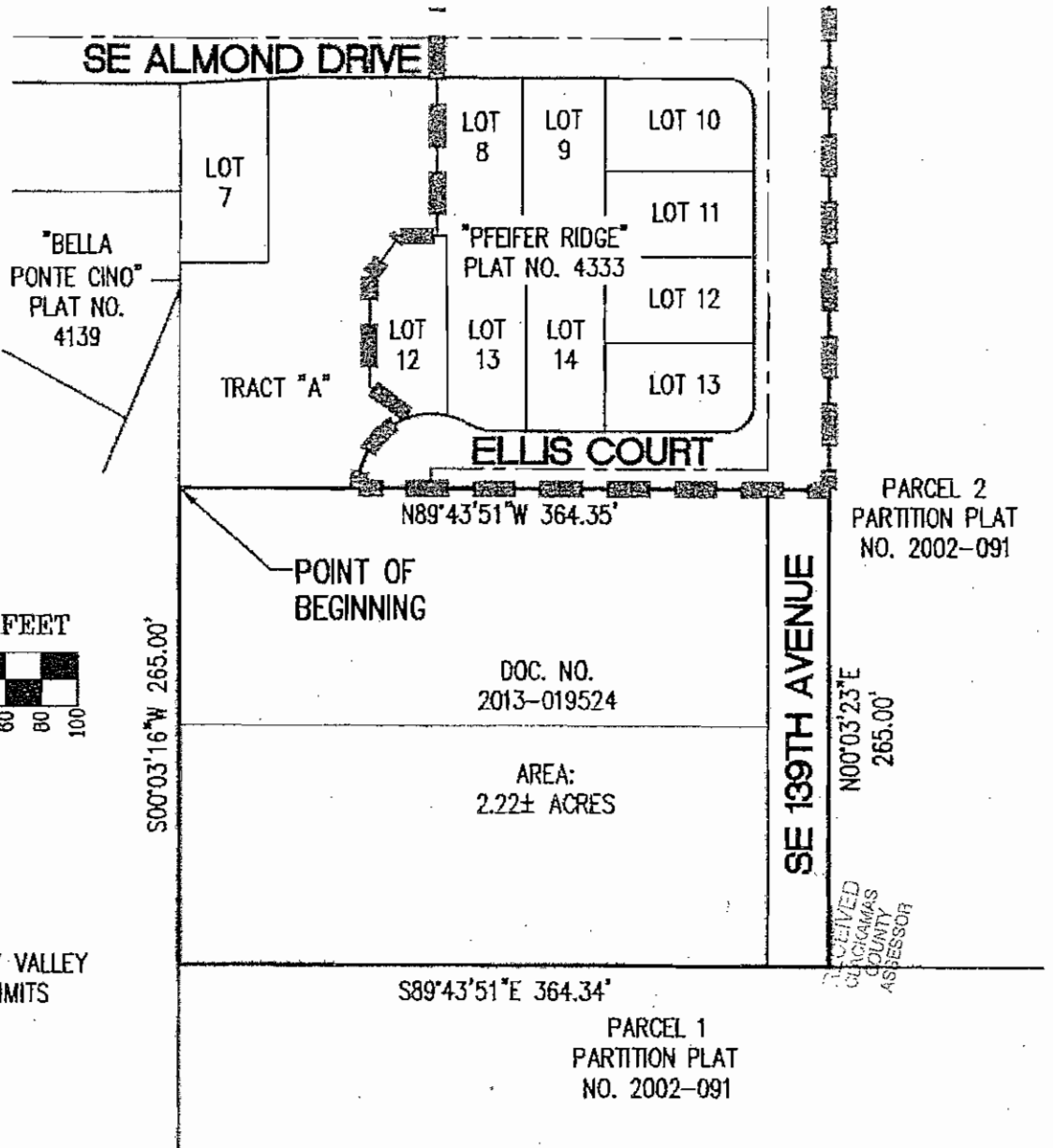
ENGINEERING • PLANNING • LANDSCAPE ARCHITECTURE  
FORESTRY • SURVEYING



LICENSED IN OR & WA

13910 SW GALBREATH  
DRIVE, SUITE 100  
SHERWOOD, OR 97140  
PHONE: (503) 925-8799  
FAX: (503) 925-8969

OFFICES LOCATED IN REDMOND, OR & VANCOUVER, WA



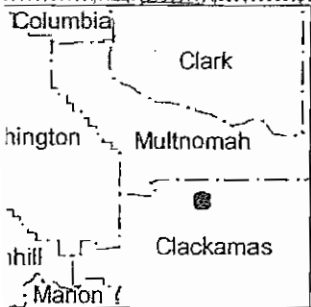
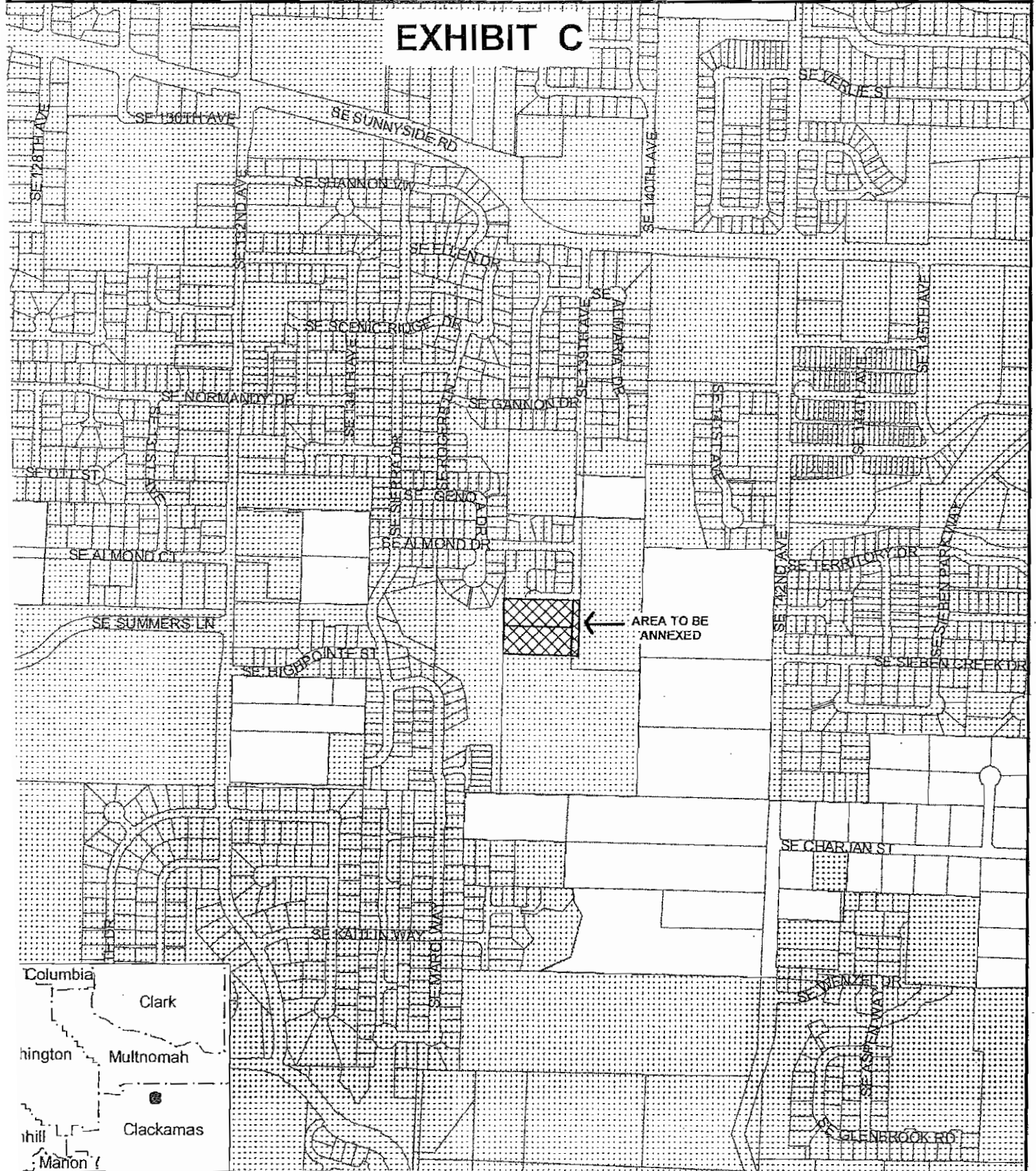
# CL13-004

S2E02



Clackamas County Service District #1

Clackamas County

## EXHIBIT C



Resource Center  
1215 Grand Ave  
Portland, OR 97232-2736  
www.oregonmetro.gov/drc  
Metro

-  CCSD#1
-  Area to be annexed

CL13-004

Ken Martin Consulting  
P.O. Box 29079  
Portland, OR 97296-9079  
(503) 222-0955



1:7,500



2

OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING  
2051 KAEN ROAD OREGON CITY, OR 97045

September 12, 2013

Stephen L. Madkour  
County Counsel

Board of County Commissioners  
Clackamas County

David W. Anderson  
Kimberley Ybarra  
Kathleen Rastetter  
Chris Storey  
Scott C. Ciecko  
Alexander Gordon  
Amanda Keller  
Nathan K. Boderman  
Assistants

Members of the Board:

Amending the County Code to Update Library Exclusions Process and  
Allow Exclusions from County Buildings

<b>Purpose/Outcomes</b>	Conduct Public Hearing/1 <sup>st</sup> Reading
<b>Dollar Amount and Fiscal Impact</b>	None
<b>Funding Source</b>	Not Applicable
<b>Safety Impact</b>	Improved Safety for Patrons & Staff in Public Buildings
<b>Duration</b>	Perpetual until amended or repealed
<b>Previous Board Action</b>	Study session discussion on August 27 <sup>th</sup> , 2013
<b>Contact Person</b>	Stephen Madkour, County Counsel Chris Storey, Assistant County Counsel 503 742 4623
<b>Contract No.</b>	Not Applicable

**BACKGROUND**

County Counsel is running a review and update process for the County Code. As part of that review, the provisions dealing with exclusions of persons from County property were reviewed and updated. The primary changes dealt with exclusion of patrons from the county libraries, focusing on refining the exclusion levels to allow for a less formal exclusion process to deal with minor situations. Similar provisions, with less need for certain categories, were drafted to apply to certain other county-owned property and buildings.

The Chapter 6.09 of the County Code allows for library staff to exclude patrons who are disrupting the library usage of other patrons. The proposed amendments allow for library staff to issue "immediate ejection" directives to patrons who are not following library rules, such as not wearing clothing or bringing non-service animals into the library. This new category allows such patrons to reenter and use the library after solving the issue, such as by putting on a shirt or leaving the animal outside. Currently, a warning is issued and if that does not work, a second warning and then exclusion for a period between 1 and 30 days per the code is issued. Having the ability to ask a patron to leave the building until the actions stop, or the ability to ask the kids to take disruptive/noisy play outside and when they are done playing come back in, provides an additional tool to keep the library operating safely and productively for citizens and staff. Staff has attempted to design the updated library exclusion policy to allow for the best level of service to the public generally. The scope and nature of the exclusion seeks to match the problem. As

the scope of the exclusion increases in place or duration, the excluded citizen gains additional due process rights to ensure that the proposed action is appropriate. Attached for Board review as Exhibit A are the proposed updates to the county code dealing with Library exclusions.

The same philosophy was applied to exclusions to certain public buildings operated by the County, such as the Public Services Building. Currently no authorization exists to ask a disruptive member of the public to leave, and this new Chapter 6.12 of the County Code would allow for it, as set forth on Exhibit B. The County Administrator or Sherriff, or their designee, is named as the "person in charge" per state law requirements for making exclusion decisions, and an appeal process is established for review of such decisions.

### **RECOMMENDATION**

Staff recommends the Board read the proposed amendments and additions to the County Code at its business meeting and schedule a second reading and hearing on September 26<sup>th</sup>, 2013.



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 6.09 OF THE CLACKAMAS  
COUNTY CODE – LIBRARY EXCLUSION PROCESS

WHEREAS, the Clackamas County Board of Commissioners finds that disruptive behavior on County Library property is contrary to the public health, safety and welfare and hinders the ability of County staff to provide service; and

WHEREAS, the Clackamas County Board of Commissioners wishes to update and clarify the authority to County staff to exclude persons from the Library who engage in such disruptive behavior;

Now, therefore, the Board of Commissioners of Clackamas County amends the Clackamas County Code as follows:

**Section 1:** Chapter 6.09, Library Exclusion Process is amended in its entirety to read as follows:

6.09 LIBRARY EXCLUSION PROCESS

6.09.010 EXCLUSION FROM LIBRARY

- A. A person is subject to a warning notice, ~~or immediate exclusion from library property, immediate ejection from library property~~ or may otherwise have their library privileges restricted or suspended for a period of up to ninety (90) days for any of the following conduct:
1. **Sleeping.** Sleeping using bedding, sleeping bag or other sleeping matter in the library unless such use has been approved in advance by the Library Director;
  2. **Unrelated Activities.** Use of Library facilities and/or equipment for activities unrelated to the purposes of the Library;
  3. **Excessive Noise.** Loud or excessive noise or use of amplified recording or sound production equipment, including, but not limited to, radios, tape recorders, compact disc (CD) players, and digital media players, such that the sound produced is audible five (5) feet from the device, unless such use has been approved in advance by the Library Director.

4. **Children Required to be in School.** Violating ORS 339.010 or any successor statutes, which requires children between the ages of 7 and 18 years who have not completed the 12<sup>th</sup> grade to attend regularly a public full-time school, unless the child is exempt from compulsory school attendance by ORS 339.030.
5. **Disruptive Behavior.** Disruptive behavior, which includes, but is not limited to:
  - a. any illegal activity;
  - b. damaging library materials or equipment;
  - c. smoking;
  - d. intoxication or drinking alcoholic beverages;
  - e. littering;
  - f. soliciting;
  - g. running;
  - h. harassing patrons and/or staff;
  - i. using abusive or threatening language or gestures;
  - j. create public disturbance;
  - k. panhandling; or
  - l. riotous behavior.
6. **Disobeying Library Staff.** Disobeying the direction of a library staff member.
7. **Interference with Use or Duties.** Persons who interfere with the use of the Library by other persons, or interfere with Library employees' performance of their duties.
8. **Appropriate Clothing.** Persons who are not wearing a shirt or other covering of their upper bodies, pants or other covering of their lower bodies, or who are not wearing shoes or other footwear.
9. **Hygiene.** Persons whose bodily hygiene is offensive so as to constitute a nuisance to other persons shall be required to leave the building.
10. **Weapons.** Persons who bring a weapon into the library unless authorized by law. A person authorized to carry a weapon must notify library staff that he/she is carrying a weapon in the library.
11. **Animals.** Allowing any non-service animal that is not pre-approved by library staff into the library. Any service

animal that is allowed to annoy, molest, bark continuously, attack or injure any person or animal on library property or is tied up and left unattended will no longer be deemed a service dog and will not be permitted to remain on the premises.

Under the federal Americans with Disabilities Act, a service animal is defined as a dog that is individually trained to do work or perform tasks for people with disabilities. The work or task a dog has been trained to provide must be directly related to the person's disability. A service animal whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.

12. **Concessions and Solicitations.** Persons who engage in any of the following on library property:
- a. Operate a concession, either fixed or mobile, without having obtained a permit or contract from the Director;
  - b. Solicit, sell, or offer for sale, peddle, hawk, or vend any goods, wares, merchandise, food, liquids or services without having obtained a permit or contract from the Director; or
  - c. Advertise any goods or services, except signs painted or mounted on vehicles in personal use, without having obtained a permit from the Director.
- B. As used in subsection A: above, the term "library privileges" means the ability to obtain the use of any printed material, pictures, sound recordings or information that is kept in any form within any Clackamas County Library building, and to physically enter any Clackamas County Library.
- C. A person may be ~~immediately~~ ~~immediately excluded~~ ~~dejected~~ from the library based on conduct from subsection A, at the discretion of the Library Director or other authorized designee.
- D. A person may obtain a permit to engage in concessions or solicitations, as referenced above in subsection A(12), by submitting a completed application to the Director. The Director will use a range of content-neutral factors to make a determination whether to issue the permit. If a permit application is denied, the applicant may file an appeal following the procedures in 6.09.040 below.

6.09.020 PERSONS AUTHORIZED TO ISSUE EXCLUSION OR WARNING NOTICES OR EJECT INDIVIDUALS FROM PROPERTY.

The Library Director is hereby designated as the person in charge of the Library for purposes of excluding or ejecting individuals and issuing exclusion or warning notices in accordance with this Chapter. The Library Director may authorize other personnel to exclude or eject individuals or issue exclusion or warning notices consistent with this Chapter.

6.09.030 ISSUANCE OF WARNING OR EXCLUSION NOTICES.

A. Warning Notice.

At the time of the occurrence of any conduct identified in Section 6.09.010.A., the Library Director, or designee may issue a written warning notice. The notice shall specify that in the event a second notice is issued to the individual within ninety (90) days of the first notice, that person shall be subject to exclusion from the Library and/or lose such other Library privileges as the Library Director may determine to be appropriate for a period of up to ninety (90) days. The warning notice shall include information concerning the right to appeal the warning notice to the County Administrator.

B. Exclusion Notice.

The Library Director may issue a written exclusion notice excluding the person from the Library. If an individual engages in conduct described in section 6.09.010(A) above that warrants exclusion without a warning notice, then the individual will receive a written exclusion notice.

The notice shall specify that the person is to be excluded from the Library, the period of the exclusion, the time the exclusion is to commence, as well as contain information concerning the right to appeal the exclusion notice to the County Administrator.

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6.09.040 RIGHT TO APPEAL.

- A. The individual who is excluded, to whom a warning or exclusion notice is issued, or to whom a permit application has been denied shall have the right to appeal the decision.

- B. An appeal must be filed, in writing, with the County Administrator within five (5) business days of the notice's issuance. The notice of appeal shall state the following:
1. The appellant's name;
  2. The appellant's address and a telephone number where they can be reached.
  3. A concise statement as to why the exclusion, denial of a permit or issuance of the notice was in error; and
  4. Attach a copy of the notice or letter of denial.
- C. A hearing on the appeal shall be held no more than thirty (30) calendar days after the filing of the appeal, except in the event the County Administrator determines otherwise. The hearing shall afford a reasonable opportunity for the person requesting it to present and rebut evidence that the warning, exclusion, or permit denial is invalid or unjustified. The decision of the County Administrator is final and shall be in writing. The written decision shall state how it can be appealed.
- D. The warning or exclusion shall ~~not take~~remain in effect during the pendency of the appeal. ~~In the event no appeal is properly and timely filed, then the warning or exclusion shall take effect on the sixth calendar day following the issuance of the notice.~~
- E. The ~~County individual~~individual shall have the burden to show by a preponderance of evidence that the warning or exclusion is based ~~on conduct described in Section 6.09.010~~unwarranted. In the case of a permit denial, the ~~County individual~~individual shall have the burden to show by a preponderance of the evidence that the denial of the permit was not determined appropriately through a ~~content-neutral~~analysis.
- F. Copies of any and all County documents ~~which are to be used by the County at the hearing shall be made available to the appellant upon request, at least two (2) day,s prior to the hearing.~~

**Section 2:** Emergency Clause

ORDINANCE NO. \_\_\_\_

The Board of Commissioners hereby finds and declares that an emergency exists inasmuch as the immediate effect of this Ordinance is necessary for the peace, health and welfare of the residents of the County. Accordingly, this Ordinance shall be effective upon its adoption.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ 201\_\_.

BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
Chair

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

## Chapter 6.12

### 6.12 EXCLUSION OF PERSONS FROM COUNTY BUILDINGS AND PROPERTY

#### 6.12.010 Purpose

To establish a policy and procedure for lawfully excluding disruptive or threatening persons from County buildings and property.

#### 6.12.020 General Policy

A person who engages in certain disruptive or threatening conduct in County buildings or on County property shall be subject to immediate exclusion as necessary to ensure the safety of others and the ability to conduct County business.

#### 6.12.030 Policy Guidelines and Procedures

- A. A person shall be subject to exclusion from County buildings or property if that person engages in any of the following types of conduct:
1. Fighting or engaging in threatening behavior or disorderly conduct;
  2. Interfering with the ability to conduct County business;
  3. Making unreasonably loud or disturbing noise;
  4. Causing damage to County property;
  5. Using abusive or obscene language in a threatening manner;
  6. Intentionally entering or attempting to enter an area that is not open to the public;
  7. Entering or attempting to enter a County building or County property while possessing an illegal or dangerous item, including a weapon, unless the individual meets an exception as listed in ORS 166.370(3); or
  8. Refusing to vacate County property after being asked to do so by a County employee.
- B. For the purposes of this policy, the persons in charge of County buildings and property are either the County Administrator or his designee and the Clackamas County Sheriff or his designee. All such persons in charge are delegated the discretion to exclude people pursuant to this policy.
- C. Persons in charge shall have discretion to set reasonable parameters when issuing exclusions. The extent and duration of an exclusion shall be reasonably related to the following factors:
1. The nature of the conduct;
  2. The level of threat posed;
  3. Any history of past exclusions or similar conduct;
  4. Any risk of violence; or
  5. The likelihood of repeated conduct.
- D. The duration of the exclusion shall be no less than 7 days and no longer than 1 year unless the exclusion results from fighting or other offensive physical contact, or bringing an illegal or dangerous item onto County property, in which case the exclusion shall be no less than 1 year and no longer than 3 years.

- E. Upon determining that an exclusion of a person is necessary, a person in charge shall issue a written notice of exclusion. The notice shall be personally served on the person to be excluded, or may alternatively be served by mailing a copy by first-class mail, to the excluded individual's residence or mailing address.
- F. A notice of exclusion shall contain at least the following:
1. The name and address (if known) of the individual to be excluded;
  2. The date and time of the event(s) resulting in the exclusion;
  3. A brief description of the behavior or conduct resulting in the exclusion;
  4. The duration for which the exclusion will be in effect;
  5. The name and phone number of the person in charge who issues the exclusion;
  6. A statement that the excluded person may request reconsideration of the exclusion and how such a request can be made;
  7. A statement that if the excluded person requires County services during the exclusion period, he/she may do so pursuant to Section 6.12.030(I) of this exclusion policy;
  8. A statement that the violation of a notice of exclusion could result in arrest and prosecution pursuant to Oregon law, including ORS 162.235, ORS 164.245, ORS 164.265, or ORS 166.360; and
  9. A full copy of this exclusion policy for the person's reference.
- G. A person who has received notice that he or she is excluded from County buildings or property and who subsequently remains or returns to County buildings or property, may be arrested and may face prosecution for criminal trespass pursuant to ORS 162.235, ORS 164.245, ORS 164.265, or ORS 166.360.
- H. This policy applies to buildings and property owned or leased by the County. If this general exclusion policy conflicts with a more specific exclusion policy, the more specific policy shall control.
- I. Persons excluded pursuant to this policy may obtain necessary County services during the exclusion period by scheduling to meet with staff at specified locations at pre-arranged times, provided the individual appropriately conducts him or herself during any such meetings. When an excluded individual arrives for a pre-arranged meeting, the person must immediately check-in with a security checkpoint, building reception or departmental reception upon entering County property.
- J. Excluded persons may request reconsideration by mailing a written request and explanation within 10 days of the exclusion to the County Administrator. The request must contain a current mailing address, telephone number, and any other pertinent contact information. Upon receiving a request for reconsideration, the County Administrator shall review the exclusion for consistency with County policy. Review shall be completed within 10 days after the request is delivered and the excluded person shall be informed of the determination in writing. The exclusion order remains in effect unless changed or rescinded upon reconsideration.
- K. The decision by the County Administrator after reconsideration shall be the County's final decision on an exclusion.



September 12, 2013

Board of County Commissioner  
Clackamas County

Members of the Board:

Approval of Amendment No. 3 to the Intergovernmental Agreement (IGA) Between  
Community Solutions for Clackamas County and State of Oregon Department of Energy for  
Weatherization Services

<b>Purpose/Outcomes</b>	This amendment will continue to reimburse the Clackamas County Weatherization Program for cost effective energy conservation measures installed in qualified dwellings.
<b>Dollar Amount and Fiscal Impact</b>	This amendment adds \$10,000 revenue to the original IGA for a total of \$50,000 in Grant Funds
<b>Funding Source</b>	State of Oregon Department of Energy. No County General Funds are involved.
<b>Safety Impact</b>	None
<b>Duration</b>	Effective upon signature and terminates on December 31, 2015
<b>Previous Board Action</b>	The original contract was approved by the Board of County Commissioners on July 16, 2009 - agenda item #071609-III1
<b>Contact Person</b>	Jacque Meier 503-650-3339
<b>Contract No.</b>	CSCC 6407

**BACKGROUND:**


This IGA amendment will continue to reimburse the Clackamas County Weatherization Program for cost effective energy conservation measures installed in qualified dwellings. Upon eligibility determination, an energy audit will be performed to determine eligible energy saving measures to be performed. These measures may include insulation, house tightening measures, installation of flame retention burners, window replacement, and furnace repair or replacement.

This IGA was last reviewed and approved by County Counsel in July 2011.

**RECOMMENDATION:**

Staff recommends the Board approval of this amendment and authorizes Cindy Becker, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,

  
Cindy Becker, Director

This Reinstatement and Amendment of Grant Agreement is made and entered into as of the date of the last signature below by and between the State of Oregon acting by and through its Department of Energy, hereinafter referred to as "ODOE" and

**Community Solutions for Clackamas County (CSCC)**  
**1810 Red Soils CT, Suite B**  
**Oregon City, OR 97405**  
**(503) 650-3339**  
**jacquemei@co.clackamas.or.us**

hereinafter referred to as "Recipient"

#### **RECITALS**

WHEREAS, ODOE and Recipient, entered into Contract number 11-004 effective on July 01, 2011 incorporated herein by this reference (the Agreement);

WHEREAS, ODOE and Recipient intended to amend the Agreement to extend its effectiveness through June 30, 2015;

WHEREAS, the proposed amendment number 002 to extend the effectiveness of the Agreement and otherwise modify it was not executed by the parties prior to the Agreement's expiration date;

WHEREAS, the Agreement expired on June 30, 2013, in accordance with its terms; and

WHEREAS, ODOE and Recipient desire to reinstate the Agreement in its entirety as of July 01, 2011 and to amend the Agreement (once reinstated) to extend its effectiveness through December 31, 2015; as set forth herein;

NOW, THEREFORE, in consideration of the premises, covenants and agreements contained herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

#### **AMENDMENT**

1. **Reinstatement.** ODOE and Recipient hereby reinstate the Agreement in its entirety as of July 01, 2011 and agree that the Agreement was and is in full force and effect from its effective date through the date of this Reinstatement and Amendment. ODOE and Recipient further agree that, upon the amendment of the Agreement pursuant to Paragraph 2 below, the Agreement was, is and will be in full force and effect from the effective date through the expiration date set forth in Section 1 as amended, subject to the termination provisions otherwise set forth in the Agreement.

2. **Amendment.** ODOE and Recipient hereby amend the Agreement. *Language to be deleted or replaced is struck through; and new language is bold and underlined.*

**1. Effective Date and Duration**

This agreement shall become effective on the date at which every party has signed this amendment. Unless earlier terminated, amended or extended, this agreement shall expire when the Recipient's completed performance has been accepted by ODOE or ~~June 30, 2013,~~ **December 31, 2015** whichever is sooner.

**Section 3: Grant**

In accordance with the terms and conditions of this Agreement, ODOE shall provide Recipient ~~\$40,000.00~~ **\$50,000.00** in Grant Funds or Grant monies for the purpose describes in Section 4 (the "Program"). ODOE shall pay the Grant monies from available funds from the "State Home Oil Weatherization Program".

Exhibit A-Statement of Work, GENERAL INFORMATION.

**Section II. Reimbursement Provisions**

6. Invoices for reimbursement of work performed between ~~July 1, 2012~~ **July 1, 2013** and ~~June 30, 2013~~ **June 30, 2015 must be submitted to ODOE for payment within 90 days of completed work.**

3. Except as expressly amended above, all other terms and conditions of the original Contract and any previous amendments are still in full force and effect. Recipient certifies that the representations, warranties and certifications contained in the original Contract are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this amendment.

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

**RECIPIENT: YOU WILL NOT BE PAID FOR SERVICES RENDERED PRIOR TO NECESSARY STATE APPROVALS**

**Signatures:**

**Approved by Community Solutions for Clackamas County**

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

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

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

**Approved by Oregon Department of Energy**

\_\_\_\_\_  
Michael Kaplan Deputy Director Date

\_\_\_\_\_  
Jan Lemke DPO Date

\_\_\_\_\_  
Anthony Buckley Division Administrator Date

September 12, 2013

Board of County Commissioner  
Clackamas County

Members of the Board:

Approval of Amendment No. 1 to a Subaward Agreement with  
Providence Health & Services – Oregon dba Providence Portland Medical Center for  
Intensive Transition Teams (ITT) Project Grant Funding

<b>Purpose/Outcomes</b>	Amendment No. 1 extends the grant award through December 31, 2013 and adds \$136,714 for housing support for members engaged in the Intensive Transition (ITT) program.
<b>Dollar Amount and Fiscal Impact</b>	The maximum value is increased by \$136,714 to a revised value of \$308,487. The subaward is funded by Providence Health and Services who were awarded a \$17.3 million Innovations Challenge grant from the Center for Medicaid and Medicare.
<b>Funding Source</b>	Providence Portland Medical Center subaward – no County general funds are involved.
<b>Safety Impact</b>	None
<b>Duration</b>	Effective July 1, 2013 and terminates on December 31, 2013
<b>Previous Board Action</b>	The original agreement was approved by the Board of County Commissioners on October 11, 2012 - agenda item 101112-A3
<b>Contact Person</b>	Jill Archer, Director – Behavioral Health Division - 742-5336
<b>Contract No.</b>	BH-41-12/13

**BACKGROUND:**

Providence Health & Services – Oregon was awarded a three year \$17.3 million Innovations Challenge grant from the Center for Medicaid and Medicare. Included within that grant is a program which links clients who are discharging from a psychiatric hospital to an outpatient behavioral health provider with the end goal of reducing future psychiatric hospitalizations. The grant is based on the premise that the multiple programs included within the grant will create up to \$32.5 million in savings of Medicaid expenses over the three years.

Amendment # 1 extends the subaward for six months effective July 1, 2013 through December 31, 2013 and adds funding in the amount of \$136,714. The amendment is retroactive due to receiving it from Providence late.

**RECOMMENDATION:**

Staff recommends the Board approval of this amendment and authorizes Cindy Becker, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,



Cindy Becker, Director

**AMENDMENT No. 1 TO SUBAWARD #CMMI-PROVIDENCE-CCHD-2012-01**

This Amendment No. 1 to subaward CMMI-PROVIDENCE-CCHD-2012-01 ("Amendment") is between Providence Health and Services d/b/a Providence Portland Medical Center located at 4805 NE Glisan Street, Portland, OR 97213-2933 ("PH&S") and Clackamas County ("SUBAWARDEE") located at 2051 Kaen Road, Oregon City, OR 97045.

**RECITALS**

- A. Both parties entered into subaward CMMI-PROVIDENCE-CCHD-2012-01 dated 10/17/2012, to conduct a scope of work identified in Grant No. 1C1CMS330985 between Providence Portland Medical Center and The Centers for Medicare & Medicaid Services (CMS).
- B. PH&S is extending the performance period of the project and adding additional funding.

The parties agree as follows:

**AGREEMENT**

- 1. **Section 2: Period of Performance** is amended to read in its entirety as follows:

The term of this SUBAWARD is from 7/1/2013 through 12/31/2013 (the "TERM").

- 2. **Attachment 3: Budget** is amended by adding funding in the amount of \$136,714 as depicted in Attachment 1 of this amendment. Carryover from year 1 is **not** allowed; therefore, any unobligated funds as of June 30, 2013 return to CMS.
- 3. **Other Provisions.** The provisions of the subaward, which are not amended or deleted herein, remain unchanged and in full force and effect.

**SUBAWARDEE:**

**PH&S:**

\_\_\_\_\_  
By: Cindy Becker (date)  
Its: Director, Health, Housing & Human Services Dept

\_\_\_\_\_  
By: Mary Healy (date)  
Its: Director, Regional Research

## CCHD Subcontract Budget

### ITT

For the period of July 1, 2013 - December 31, 2013

<u>A. Personnel</u>		Base Salary	FTE	# Months	Salary Requested
	QMHS 1	\$95,800	2.00	6.00	\$95,800
<b><i>Subtotal Personnel</i></b>					<b>\$95,800</b>
<b><u>B. Fringe (30%)</u></b>					
<b><i>Subtotal Fringe</i></b>					<b>\$28,740</b>
<b><u>C. Other</u></b>					
	Psychiatric Services	\$92	76.30	6.00	\$3,510
	Patient Support Funds	\$50	240.00	6.00	\$6,000
	Mileage	\$222	24.00	6.00	\$2,664
<b><i>Subtotal Other</i></b>					<b>\$12,174</b>
 <b>TOTAL ITT</b>					 <b>\$136,714</b>

September 12, 2013

Board of County Commissioner  
Clackamas County

Members of the Board:

Approval of a renewal Revenue Health Care Services Agreement with Northwest Permanente, provide chemical dependency treatment services to referred members.

<b>Purpose/Outcomes</b>	Provide chemical dependency treatment services to referred members.
<b>Dollar Amount and Fiscal Impact</b>	This is a revenue contract. No contract maximum. Revenue depends on number of referred persons.
<b>Funding Source</b>	This revenue agreement is funded by fee for services. No County General Funds are involved.
<b>Safety Impact</b>	None
<b>Duration</b>	Effective October 01, 2013 and terminates on September 30, 2015
<b>Previous Board Action</b>	The board last reviewed this contract on September 10, 2009 Agenda item 091009-III A9.
<b>Contact Person</b>	Tracy Garell, Behavioral Health Clinic Manager – 503-722-4803
<b>Contract No.</b>	6406

**BACKGROUND:**

Clackamas County Health Center Division – Behavioral Health Clinics (CCHCDBHC) has been providing chemical dependency treatment services to consumers that are members of this insurance company since 1998.

CCHCDBHC will continue to provide chemical dependency treatment services to consumers that are members of this insurance company as referred.

This contract is effective October 1, 2013 and continues through September 30, 2015. This contract has been reviewed by County Counsel on August 29, 2013.

**RECOMMENDATION:**

Staff recommends the Board approval of this agreement and authorizes Cindy Becker, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,



Cindy Becker, Director

**HEALTH CARE SERVICES AGREEMENT**

**BETWEEN**

**NORTHWEST PERMANENTE, P.C., PHYSICIANS & SURGEONS**

**AND**

**CLACKAMAS COUNTY COMMUNITY HEALTH DIVISION**



## ARTICLE 1 DEFINITIONS

- 1.1 Clean Claim
- 1.2 Covered Services
- 1.3 Kaiser Payer
- 1.4 Member
- 1.5 Member Cost Share
- 1.6 Other Payer
- 1.7 Payer
- 1.8 Plan
- 1.9 Policies
- 1.10 Proprietary Information
- 1.11 Services

## ARTICLE 2 PROVIDER'S RESPONSIBILITIES

- 2.1 Provision of Services
- 2.2 Non-Discrimination
- 2.3 Licensure and Credentials
- 2.4 Subcontracts
- 2.5 Information
- 2.6 Policies
- 2.7 Law

## ARTICLE 3 NETWORK'S RESPONSIBILITIES

## ARTICLE 4 BILLING AND PAYMENT

- 4.1 Compensation
- 4.2 Claims
- 4.3 Prompt Payment
- 4.4 Member Billing
- 4.5 Member Hold Harmless
- 4.6 Coordination of Benefits
- 4.7 Liens and Third Party Claims
- 4.8 Audit, Recoupment, and Offset

## ARTICLE 5 TERM AND TERMINATION

- 5.1 Term
- 5.2 Termination Without Cause
- 5.3 Termination With Cause
- 5.4 Immediate Termination
- 5.5 Effect of Termination
- 5.6 Suspension of Participation

## ARTICLE 6 DISPUTE RESOLUTION

- 6.1 Member Grievance

6.2 Disputes Between a Plan and Provider

ARTICLE 7 RECORDS AND CONFIDENTIALITY

- 7.1 Maintenance of Records
- 7.2 Access to Records

ARTICLE 8 RELATIONSHIP OF PARTIES

- 8.1 Communication with Members
- 8.2 Independent Contractor
- 8.3 Government Contractor
- 8.4 Proprietary Information
- 8.5 Insurance
- 8.6 Mutual Indemnification

ARTICLE 9 MISCELLANEOUS

- 9.1 Notice
- 9.2 Assignment and Delegation
- 9.3 No Third Party Beneficiaries
- 9.4 Force Majeure
- 9.5 Use of Name
- 9.6 Governing Law
- 9.7 Severability
- 9.8 Waiver
- 9.9 Amendment
- 9.10 Interpretation
- 9.11 Counterparts
- 9.12 No Exclusivity
- 9.13 No Guarantee
- 9.14 Remedies Cumulative
- 9.15 Entire Agreement

## HEALTH CARE SERVICES AGREEMENT

This Health Care Services Agreement (“**Agreement**”) is entered into between Northwest Permanente, P.C., Physicians & Surgeons (“**Network**”) and Clackamas County Community Health Division (“**Provider**”). This Agreement is effective for Services rendered on and after October 1, 2013 (“**Effective Date**”).

WHEREAS, Kaiser Foundation Hospitals has been retained by Kaiser Foundation Health Plan of the Northwest (“**KFHP-NW**”) to provide or arrange for institutional health care services to Members (as defined below); and

WHEREAS, Northwest Permanente, P.C., Physicians & Surgeons has been retained by KFHP-NW to provide or arrange for professional services to Members, and together, Kaiser Foundation Hospitals, Northwest Permanente, P.C., Physicians & Surgeons and KFHP-NW cooperate to form the Kaiser Permanente Medical Care Program in the Northwest Region (“**KP**”); and

WHEREAS, KFHP-NW shall be the corporation responsible for the obligations of a licensed health care services contractor with respect to Members with individual or group coverage issued by KFHP-NW and regulated by the applicable state insurance commissioner; and

WHEREAS, Network desires to enter into an arrangement for Provider to render Services to Members;

NOW THEREFORE, the parties agree as follows:

### ARTICLE 1 DEFINITIONS

When used in this Agreement, these capitalized terms shall have the following meanings.

1.1. “**Clean Claim**” means a claim that (1) is completed with all data elements required by the Payer, (2) if submitted electronically, is submitted using standard code sets as required by law, and (3) has no defect or error that prevents timely adjudication.

1.2. “**Covered Services**” means the health care services that a Member is entitled to receive under the terms and conditions of a Plan.

1.3. “**Kaiser Payer**” means Kaiser Foundation Hospitals, Northwest Permanente, P.C., Physicians & Surgeons, KFHP-NW and any company controlling, controlled by, or under common control with KFHP-NW when a Member of such a company under any circumstance (such as, but not limited to, vacations, temporary work assignments, and direct referrals for specialty care), seeks care from Provider under a Plan regulated by a state insurance or managed care commissioner. With respect to applicable state laws

regarding health care service contractors, KFHP-NW is responsible for the conduct of such companies and their compliance with the terms of this Agreement.

1.4. **“Member”** means an individual entitled to receive Covered Services.

1.5. **“Member Cost Share”** means a copayment, deductible, or coinsurance amount payable by a Member for Covered Services pursuant to the Member’s Plan.

1.6. **“Other Payer”** means any public or private entity – including, without limitation, employers, insurers, third party administrators, labor unions, trusts, associations, and other organizations, persons, and entities – that is responsible for funding a Plan and that enters into an administrative or management service arrangement with a Kaiser Payer to administer its Plan.

1.7. **“Payer”** means a Kaiser Payer or Other Payer.

1.8. **“Plan”** means a plan of health benefits administered, issued, sponsored or underwritten by either a Kaiser Payer or an Other Payer, as set forth in the Member’s summary plan description, coverage agreement, evidence of coverage, certificate of coverage, or other written coverage document.

1.9. **“Policies”** means the policies and procedures of Kaiser Payer and Other Payers that relate to this Agreement including, but not limited to: (1) quality improvement/management; (2) utilization management and referral and authorization processes; (3) pre-admission testing guidelines; (4) claims payment; (5) member grievances; (6) provider credentialing; and (7) electronic transmission of data. Policies include those policies and procedures set forth in manuals, bulletins, and newsletters, whether made available by postal mail, electronic mail, web site, or other media.

1.10. **“Proprietary Information”** means all information, whether prepared by Provider, Network, Plan, Payer, or their representatives, relating to itself or the development, execution or performance of this Agreement whether furnished or obtained prior to or after the Effective Date. Proprietary Information includes, but is not limited to, pricing, financial information, rate schedules, and Member information collected by Plans and Payers not otherwise set forth in medical records; provided, however, the following shall not constitute Proprietary Information: (1) information known prior to receipt from the other party; (2) information previously available to the public prior to receipt; or (3) Proprietary Information that subsequently becomes available to the public through no fault or omission on the part of the party receiving the Proprietary Information.

1.11. **“Services”** means those services, supplies and other resources described in Exhibit “Compensation and Services” that Provider customarily provides to its general patient population.

## ARTICLE 2 PROVIDER'S RESPONSIBILITIES

2.1. **Provision of Services.** Provider shall make available to and provide Members with Services, along with any related facilities, equipment, personnel or other resources necessary to provide Services, according to generally accepted standards of practice. Services shall be readily available and accessible to Members and provided in a prompt and efficient manner without unreasonable delays.

2.2. **Non-Discrimination.** Provider shall provide Services to Members without discrimination on the basis of race, ethnicity, color, gender, sex, creed, religion, national origin, age, health status, physical or mental disability, genetic information, veteran's status, marital status, sexual orientation, gender identity, income, source of payment, participation in a government program, evidence of insurability, medical condition, claims experience, receipt of health care, conditions arising out of acts of domestic violence, status as a Member, or any other status protected by applicable law; and Provider shall ensure that Provider's facilities and equipment are accessible to persons with disabilities. Provider shall make Services available to all classes of Members, in the same manner, in accordance with the same standards, and with the same availability, as with respect to Provider's other patients.

2.3. **Licensure and Credentials.** Provider represents and warrants that it (together with its employees, agents, and contractors providing Services) shall throughout the term of this Agreement: possess and maintain, without restriction, all applicable federal, state and local licenses, permits, certificates, approvals and authorizations required to render Services to Members (including, if applicable, medical staff membership and clinical privileges at facilities designated by Network); comply with KP credentialing requirements, as described in Policies; remain accredited or certified by the organizations designated by Network; be enrolled in, participate in, meet coverage conditions for and, where applicable under Centers for Medicare and Medicaid Services rules, be certified by the Medicare and Medicaid programs; and not (i) be "opted out" of Medicare, (ii) be sanctioned, debarred, suspended or excluded from any federal program, including Medicare or Medicaid, or (iii) be identified on any federal list of sanctioned or excluded entities and individuals, including lists maintained by the Department of Health and Human Services, General Services Administration, Office of Inspector General and Office of Foreign Assets Control. Provider shall comply with the standards of any organization accrediting KP as they apply to Services rendered to Members.

2.4. **Subcontracts.** If Provider arranges for the provision of Services to a Member by any individual or entity not a bona fide employee of Provider ("**Subcontractor**"), Provider shall enter into a written contract with such Subcontractor prior to the provision of Services to Members by the Subcontractor. Such contract shall require the Subcontractor to comply with the same terms applicable to Provider under this Agreement. Upon request, Provider shall promptly provide access to and copies of all contracts with Subcontractors. Unless otherwise required by law or arranged with

Network, Provider shall retain responsibility for paying its Subcontractors (in accordance with any law applicable to subcontractors of health care service contractors), and such Subcontractors shall not seek reimbursement from or have any recourse against a Payer for Subcontractor's services provided to Members.

2.5. **Information.** Provider shall notify Network promptly upon Provider's knowledge of any of the following involving Provider or any employee, agent or Subcontractor providing Services: (1) the revocation, suspension, restriction, or expiration of any license, permit, certification, approval, authorization, medical staff membership or clinical privilege required to render Services to Members or of any accreditation or certification specified in Section 2.3; (2) sanction by or debarment, exclusion, suspension or "opt out" from any federal program, including Medicare or Medicaid, or identification on a federal list of sanctioned or excluded entities and individuals, including lists maintained by the Department of Health and Human Services, General Services Administration, Office of Inspector General and Office of Foreign Assets Control; (3) the submission of a formal report to a professional board, licensing agency, or the National Practitioner Data Bank of adverse credentialing or peer review action; (4) a material change in credentialing or privilege status; (5) any change in operations that will likely materially affect the manner in which Services are provided to Members; (6) any unusual occurrence involving a Member that is reported or required to be reported to a regulatory body or an accreditation organization; (7) any change in legal status, tax identification number, or Medicare or Medicaid number; (8) any material change in ownership, control, name, or location; (9) the initiation of any legal action, accreditation organization action, or, regulatory or governmental action that is likely to materially and adversely affect Provider's or a Subcontractor's ability to perform its obligations under this Agreement; (10) any professional liability claim or other legal action filed or asserted by a Member against Provider or an employee, agent, or Subcontractor of Provider; and (11) any event or circumstance that is likely to materially impair the ability to provide Services to Members. However, Provider shall not be required to waive legal privilege in order to comply with subsections (3), (6), (9) and (10) of this Section.

2.6. **Policies.** Provider shall cooperate and comply with Policies of which Provider knows or reasonably should have known. Policies may be modified by Payers from time to time, but no Policy change shall be retroactive without the express consent of Provider. In the event of any inconsistency between a Policy and this Agreement, this Agreement shall prevail.

A. Provider shall cooperate and comply with Payers' quality assurance and utilization management activities (including pre-service, concurrent and retrospective reviews), case management and disease management services, preauthorization steps required for Covered Services, member and provider grievance and appeals processes, pharmaceutical formularies, claims submission and payment procedures.

2.7. **Law.** Provider shall comply with all laws, rules and regulations applicable to Provider and Services under this Agreement, including those set forth in Exhibits.

### ARTICLE 3 NETWORK'S RESPONSIBILITIES

Network shall cause Payers to provide Members with sufficient information to permit Provider to determine Plan benefits, Member eligibility for Plan benefits, and other necessary Plan information. Network shall cause Payers to appropriately designate Provider in directories.

### ARTICLE 4 BILLING AND PAYMENT

4.1. **Compensation.** Compensation to Provider for Services that are Covered Services to Members shall be at the rates set forth in Exhibit "Compensation and Services," less any Member Cost Share. Provider accepts such amount as payment in full for all Services that are Covered Services and acknowledges that compliance with Section 2.3 is a precondition to payment. Pursuant to the procedures in Section 4.4, Provider shall also accept from the Member payment at the rates set forth in Exhibit "Compensation and Services" as payment in full for all Services that are not Covered Services.

4.2. **Claims.** Provider shall submit to the applicable Payer a Clean Claim for Covered Services rendered to Members. Provider shall maximize the use of electronic claims rather than paper claims. Provider agrees that Payers shall not be obligated to make payments for billings received more than 180 days from (1) the date of service or (2) when a Payer is the secondary payer, from the date of receipt by Payer of the primary payer's explanation of benefits. This requirement may be waived, in the discretion of the applicable Payer, in the event Provider provides notice and appropriate evidence to the Payer of extraordinary circumstances outside the control of Provider that resulted in the delayed submission. If Provider does not timely submit a claim, or does not timely dispute any alleged underpayment, Provider's claim for payment shall be deemed waived, and Provider shall not seek payment from the Plan, Payer, Network, or Member.

4.3. **Prompt Payment.** Within 30 days of receipt of a Clean Claim from Provider, Network shall (1) cause Kaiser Payer to pay Provider for Services that are Covered Services rendered to Members of Kaiser Payer and (2) to the extent permitted by law, notify Other Payers to authorize payment to Provider for Services that are Covered Services rendered to an Other Payer's Members; provided, that such period shall be extended as reasonably necessary where benefits must be coordinated with another health plan. Network is not responsible for the promptness or ultimate payment of claims for services rendered to Members of any Plan other than KFHP-NW. Network shall, however, reasonably assist Provider in collecting delinquent or underpayments from Payers.

4.4. **Member Billing.** Provider shall bill Members for applicable Member Cost Share. Provider may bill Members, subject to Section 4.1, for Services that are not Covered Services if prior to the services being rendered, the Member agreed in writing to pay for such services after being advised the services may not be Covered Services. Provider may not bill Members for Services that are Covered Services where payment is denied based upon utilization management decisions of Payers or where Provider failed to comply with the terms or conditions of this Agreement. Provider may bill or charge individuals who were not Members at the time that services were rendered.

4.5. **Member Hold Harmless.** In no event including, but not limited to, nonpayment by or insolvency of Network, KFHP-NW or a Payer, or breach of this Agreement, shall Provider bill; charge; collect a deposit from; seek compensation, reimbursement, or remuneration from; impose surcharges; or have any recourse against any Member, person acting on the Member's behalf, or any person other than the responsible Payer for Covered Services provided under this Agreement, except for Member Cost Share payment. The terms of this Section shall survive the termination or expiration of this Agreement regardless of the cause giving rise to termination, shall be construed to be for the benefit of Members, and shall supersede any oral or written agreement to the contrary now existing or hereafter entered into between Provider and the Member or persons acting on the Member's behalf.

4.6. **Coordination of Benefits.** When a Payer accessing the rates under this Agreement is the primary payer under applicable coordination of benefit principles, that Payer shall pay in accordance with this Agreement. When such Payer is secondary under applicable coordination of benefit principles, Provider is owed an amount that, when added to the amount payable by the primary payer, equals the amount that would be owed under this Agreement without coordination of benefits, unless otherwise required by law. However, if Provider provides services for an employment-related injury or illness compensable under workers' compensation or employment liability law, Provider shall look to the applicable workers' compensation carrier or responsible employer for compensation and shall not be entitled to additional payment under this Agreement for such services paid under workers' compensation or employment liability law.

4.7. **Liens and Third Party Claims.** In instances of third party liability claims (involving, for example, liability carriers), Provider shall accept the amount payable under this Agreement as payment in full. Provider shall not, directly or indirectly through assignment or otherwise, assert any lien claim, subrogation claim, or any other claim against a Member, or any other person or organization against which a Member may hold a potential claim for personal injury, or against the proceeds of a Member's personal injury recovery based on Services provided to a Member for an injury or illness allegedly caused by a third party.

4.8. **Audit, Recoupment, and Offset.** Unless otherwise required by law, Network, Provider, Plan, Payer, and their authorized agents may audit paid claims to verify the appropriateness and amount of payment so long as such audit takes place within two



years of the date of payment or denial (or such longer period as may be set forth in an Other Payer's Plan or as required by a government program), except in cases of fraud, for which no time limit applies. Unless otherwise required by law, a refund or payment to correct an undisputed overpayment or underpayment shall be due upon demand, and failure to make such payment within 30 days of receipt of a demand shall entitle the Payer to offset, recoup or deduct the amount owed from any other amounts owed to Provider. To the maximum extent permitted by law, Payers are authorized to offset and recoup the amount of any debt owed by Provider to Payer against any debt or money owed Provider. This Section shall survive the termination or expiration of this Agreement.

## **ARTICLE 5 TERM AND TERMINATION**

5.1. **Term.** This Agreement shall begin on the Effective Date and, subject to earlier termination as described in this Article 5, shall continue for a term of two year(s); provided, that the number of years chosen not be greater than three. This Agreement shall not renew, but shall terminate at the end of this term.

5.2. **Termination Without Cause.** Notwithstanding Section 5.1, this Agreement may be terminated by a party without cause at any time by giving the other party prior written notice of no less than ninety (90) days termination.

5.3. **Termination With Cause.** This Agreement may be terminated upon written notice by a party for material breach, provided that (a) such party gives at least 60 days prior written notice of termination to the party in breach and a description of the other party's breach, and (b) such material breach is not cured during the 60 day notice period. Provider's failure to comply with Section 2.3 or Section 2.6 shall be deemed a material breach.

5.4. **Immediate Termination.** Any of the following events shall, at the sole discretion of Network, result in the immediate termination or suspension of this Agreement, upon written notice to Provider: (1) the withdrawal, debarment, suspension, expiration, restriction or non-renewal of any federal, state or local license, certificate, approval or authorization of Provider required to render Services; (2) the bankruptcy, dissolution or receivership of Provider, or an assignment by Provider for the benefit of creditors; (3) the loss or material limitation of Provider's liability insurance described in this Agreement; (4) a determination by Network that Provider's continued participation in this Agreement could result imminent and substantial harm to Members; (5) sanction under, debarment, suspension, exclusion or "opt out" of Provider from participation in any governmental sponsored program including, but not limited to, Medicare or Medicaid, or identification of Provider on a federal list of sanctioned or excluded entities and individuals, including lists maintained by the Department of Health and Human Services, General Services Administration, Office of Inspector General and Office of

Foreign Assets Control; (6) the conviction of Provider of any crime; (7) the revocation or suspension of Provider's accreditation or credentialing status; or (8) a change of ownership or control of Provider.

5.5. **Effect of Termination.**

A. **Cooperation in Transfer of Members.** Upon termination or expiration of this Agreement, Provider shall cooperate in the timely and efficient transfer of Members to other facilities designated by the Payer. Network shall arrange for timely notification of Members of the termination or expiration of this Agreement.

B. **Survival.** Termination or expiration shall not affect those rights, powers, remedies, liabilities, and obligations that accrued or arose before termination or expiration. Termination or expiration shall also not affect those provisions of this Agreement expressly stated to survive termination or expiration.

C. **Continuation of Care.** Upon termination or expiration of this Agreement, Provider shall continue to provide Services pursuant to this Agreement and the Policies to Members who are under the care of Provider at the time of termination or expiration until the later to occur of the discharge or transfer of the Member in accordance with an appropriate professional standard of care or such time period as may be prescribed by applicable law.

5.6. **Suspension of Participation.** Any of the following events may result in Network's immediate suspension, for the time period determined by Network, of a practitioner or site of Provider providing Services under this Agreement from participation in this Agreement (without terminating or suspending the Agreement), upon written notice to Provider: (1) the withdrawal, debarment, suspension, expiration, restriction or non-renewal of any federal, state or local license, certificate, approval, or authorization of such practitioner or site required to render Services; (2) the failure of the practitioner or site to comply with KP's credentialing requirements, and if applicable to practitioner, the loss or restriction of practitioner's medical staff membership or clinical privileges (3) sanction under, debarment, suspension, or exclusion of practitioner or site from participation in any governmental sponsored program including Medicare or Medicaid, "opt out" from any federal program including Medicare or Medicaid, or identification on a federal list of sanctioned or excluded entities and individuals, including lists maintained by the Department of Health and Human Services, General Services Administration, Office of Inspector General and Office of Foreign Assets Control; (4) the conviction of practitioner or site of any crime; (5) failure of practitioner or site to comply with law or Policies following a reasonable request for compliance by Network; or (6) a determination by Network that practitioner's or site's continued participation in this Agreement could result imminent and substantial harm to Members.

**ARTICLE 6**  
**DISPUTE RESOLUTION**

6.1. **Member Grievance.** Provider agrees to (1) cooperate with and participate in Member appeal, grievance and external review procedures; (2) provide the Plan with the information necessary to conduct Member appeal, grievance and external review procedures; and (3) abide by decisions of Member appeals, grievance and review committees.

6.2. **Disputes Between a Plan and Provider.**

A. **Provider Appeals Process.** Network shall ensure that each Plan will provide an internal mechanism whereby Provider may raise issues, concerns, controversies or claims arising from or related to this Agreement. Specifically, Network shall ensure that each Plan will maintain an appeals process pursuant to which Provider may seek to resolve disputes arising from this Agreement. This appeals process shall be exhausted before Provider may pursue further action against a Plan or Payer.

B. **Arbitration.** With respect to disputes arising from services under this Agreement to Members of a Kaiser Payer, Provider hereby waives the right to civil trial of any dispute, controversy or claim arising out of, or related to, this Agreement (except for matters requiring the remedies of injunction or temporary restraining orders) and agrees to bind itself to arbitration to the extent allowed by applicable law. Likewise, Network shall, and shall cause Kaiser Payers to, waive the right to civil trial of any dispute, controversy or claim arising out of, or related to, this Agreement (except for matters requiring the remedies of injunction or temporary restraining orders) and agree to bind themselves to arbitration to the extent allowed by applicable law. Provider, Network, or Kaiser Payer may, by written notice to the other party(ies) and to JAMS (originally the Judicial Arbitration and Mediation Service), submit any dispute arising from or related to this Agreement to arbitration before a single arbitrator agreed to by the parties to arbitration (and if not agreed to within 30 days of the notice of arbitration, then as selected by JAMS). The arbitration shall be conducted in accordance with the JAMS Comprehensive Arbitration Rules and Procedures, except as otherwise set forth in this Section 6.2.B. The parties to arbitration shall be responsible for their own attorney's fees and costs incurred in preparing for and attending the arbitration. All parties to the arbitration shall share equally the fees of the arbitrator. The arbitrator shall prepare the award in writing, including factual findings and the legal basis and other reasons on which the award is based. The decision and award shall not be appealable except for fraud. Judgment upon the award rendered may be entered in any court of competent jurisdiction. This provision shall survive the termination or expiration of this Agreement.

**ARTICLE 7  
RECORDS AND CONFIDENTIALITY**

7.1. **Maintenance of Records.** Provider shall maintain its financial, accounting, administrative, and patient medical records in a current, detailed, organized and comprehensive manner in accordance with prudent industry practice, applicable laws, and accreditation standards. All Member medical records shall be treated by Provider as confidential in accordance with applicable laws. Provider shall maintain these records with respect to a Member for the longer of six years after the last date Services were provided to the Member or the period required by law. Should Provider experience a disclosure of Member information impermissible under state privacy laws or the privacy rules of the Health Insurance Portability and Accountability Act, Provider shall notify Network of the nature of the disclosure and the identity of the Members involved and shall take all steps required by law and reasonable business practice to remedy, mitigate and report the disclosure. This Section shall survive the termination or expiration of this Agreement, regardless of the circumstances of termination or expiration.

7.2. **Access to Records.** In accordance with applicable law, Network, KP, the applicable Plan and Payer, their authorized agents, and authorized government and accreditation officials shall have access to (including electronic access where practicable), a right to photocopy, and upon reasonable notice, a right to perform site visits related to, all financial, accounting, administrative, and patient medical records (including electronic images that are part of medical records) pertaining to Members for the purpose of meeting legal, regulatory and accreditation requirements applicable to the Plans; assessing quality of care, conducting medical evaluations and audits; performing utilization management functions; verifying the accuracy of amounts paid or payable to Provider; and other functions of a Plan. In addition, Provider shall supply periodic reports pertaining to Services provided to Members as the parties may, from time to time, agree or as otherwise required for Plans to meet their legal and accreditation requirements. Photocopies of medical records and other files, reports, books, and records shall be without charge to Network, Payers and Plans unless otherwise required by law. Provider agrees to allow access to or supply copies of such records, as requested, within 14 days of the receipt of a request, where practicable, and in no event later than the date required by any applicable law or regulatory or accreditation authority. This Section shall survive the termination or expiration of this Agreement, regardless of the circumstances of termination or expiration.

**ARTICLE 8  
RELATIONSHIP OF PARTIES**

8.1. **Communication with Members.** Nothing in this Agreement shall be construed to limit Provider's ability to freely communicate with a Member or the Member's authorized representative about the Member's treatment options. Any such information shall be provided to Members in a culturally competent manner.

8.2. **Independent Contractor.** Provider is an independent contractor to Network. Nothing in this Agreement is intended to create, nor shall it be construed to create, between Network and Provider a relationship of principal, agent, employee, partnership, joint venture or association. Network and Provider have no authorization to enter into any contracts, assume any obligations, or make any warranties or representations on behalf of the other. No individual through whom Provider renders Services shall be entitled to or shall receive from Network compensation for employment, employee welfare and pension benefits, fringe benefits, or workers' compensation, life or disability insurance or any other benefits of employment, in connection with providing Services. Provider represents and warrants that it shall be responsible for all legally required tax withholding for itself and its employees.

8.3. **Government Contractor.** As an organization with federal government contracts (including the Federal Employees Health Benefits Program contract), Network and the Kaiser Payers are subject to various federal laws, executive orders and regulations regarding equal opportunity and affirmative action. This Section constitutes notice to Provider that Provider may be required to comply with the following Federal Acquisition Regulations (each a "FAR") at 48 CFR Part 52, which are incorporated herein by reference: (a) Equal Opportunity at FAR 52.222-26; (b) Equal Opportunity for Veterans at FAR 52.222-35 and -37; (c) Affirmative Action for Workers with Disabilities at FAR 52.222-36, (d) Utilization of Small Business Concerns at FAR 52.219-8, and (e) Prohibition of Segregated Facilities at FAR 52.222-2. In addition, Executive Order 11246 regarding nondiscrimination in employment decisions and Executive Order 13496 (codified at 29 CFR Part 471, Appendix A to Subpart A) concerning the obligations of federal contractors and subcontractors to provide notice to employees about their rights under Federal labor laws shall be incorporated herein by reference. If Provider is not otherwise subject to compliance with the laws and executive orders specified in this Section, the inclusion of this Section shall not be deemed to impose such requirements upon Provider.

8.4. **Proprietary Information.** Provider and Network agree the Proprietary Information of the other is the exclusive property of the other and that they have no right, title or interest in the Proprietary Information of the other. Provider and Network agree to keep Proprietary Information strictly confidential and agree not to disclose any Proprietary Information to any third party, except (i) to governmental or accreditation authorities having jurisdiction, (ii) in legal proceedings or government administrative proceedings, (iii) in the case of Network's disclosure, to Members, Plans, Payers, affiliates in the Kaiser Permanente Medical Care Program, consultants and vendors under contract with Network, or (iv) as otherwise directed by the other party. This Section shall survive the termination or expiration of this Agreement, regardless of the circumstances of termination or expiration.

8.5. **Insurance.**

A. **Provider's Insurance.** Provider, at Provider's sole cost and expense, shall procure and maintain such policies of general and professional liability and other insurance (or programs of self insurance) at minimum levels required from time to time by Network, but in no event less than \$1,000,000 per claim/ \$3,000,000 annual aggregate for professional liability insurance and \$1,000,000 per claim/ \$3,000,000 annual aggregate for comprehensive general liability insurance. Such insurance coverage shall cover the acts and omissions of Provider as well as those of Provider's agents and employees. Provider agrees to deliver memorandum copies of such policies to Network upon request. Provider agrees to make best efforts to provide to Network at least 30 days advance notice, and in any event shall provide notice as soon as reasonably practicable, of any cancellation or material modification of these policies.

B. **Network's Insurance.** Network, at its sole cost and expense, shall procure and maintain such policies of general and professional liability and other insurance (or programs of self-insurance) as shall be necessary to insure itself and its employees against any claim or claims for damages arising by reason of personal injuries or death occasioned directly or indirectly in connection with the performance of any service by Network under this Agreement.

8.6. **Mutual Indemnification.**

A. **Provider.** Provider shall indemnify and hold harmless Kaiser Foundation Hospitals, Northwest Permanente, P.C., Physicians & Surgeons, KFHP-NW and their officers, agents and employees from and against all claims and damages for or in connection with, injury (including death) or damage to any person or property to the extent resulting from the negligent or otherwise wrongful act or failure to act or willful misconduct of Provider.

B. **Network.** Network shall indemnify and hold harmless Provider and its officers, agents and employees from and against all claims and damages for or in connection with, injury (including death) or damage to any person or property to the extent resulting from the negligent or otherwise wrongful act or failure to act or willful misconduct of Network.

**ARTICLE 9  
MISCELLANEOUS**

9.1. **Notice.** Any notices to be given under this Agreement shall be in writing, signed by an authorized signatory, and shall be deemed given upon receipt if sent to the addresses listed below as follows: (1) personally delivered; (2) sent by United States Postal Service, postage prepaid, certified, and return receipt requested; or (3) sent by a commercial delivery service with proof of delivery. Any party may change its address for notice purposes by written notice to the other party.

**NETWORK**

Northwest Permanente, P.C., Physicians & Surgeons  
500 N.E. Multnomah Street, Suite 100  
Portland, Oregon 97232  
Director of Provider Contracting

**PROVIDER**

Administrator  
Clackamas Co Community Health Division  
2051 Kaen Rd, Ste 367  
Oregon City, OR 97045-4035

9.2. **Assignment and Delegation.** Except as otherwise provided in this Agreement, Provider shall not assign this Agreement, subcontract or delegate any of its duties and obligations under this Agreement without the prior written consent of Network. Any change of ownership or control of Provider shall be deemed an assignment. Any succession or assignment shall not relieve or otherwise affect the liability of Provider, which shall remain jointly and severally liable with the successor or assignee.

9.3. **No Third Party Beneficiaries.** With the exception of the Member Hold Harmless provision and with respect to KP and Payers, nothing in this Agreement shall be construed to give any person other than Provider or Network any benefits, rights or remedies.

9.4. **Force Majeure.** The parties shall be excused from any inability to meet their obligations under this Agreement due to extraordinary circumstances beyond their reasonable control occasioned by war, acts of government, labor disputes, acts of terrorism, fire, flood, earthquake, extreme weather or other acts of nature. The affected party shall give notice to the other party as soon as practicable of any such circumstance.

9.5. **Use of Name.** Each party reserves to itself the right to, and the control of the use of, its own names, symbols, trademarks and service marks, presently existing or hereafter established, and no party shall use another party’s names, symbols, trademarks or service marks in any advertising or promotional materials or communication of any type or otherwise without the latter party’s prior written consent; provided, however, Network and Plans may use the name, address and telephone number of Provider in lists of contracting providers and other marketing materials.

9.6. **Governing Law.** Except as preempted by federal law, this Agreement shall be governed by the laws of the state in which Provider is located, without application of the conflict of laws provisions of such state.

9.7. **Severability.** Any determination that any provision of this Agreement or any application thereof is invalid, illegal, or unenforceable shall not affect the validity, legality, and enforceability of such provision in any other instance, or the validity, legality or enforceability of any other provision of this Agreement.

9.8. **Waiver.** A failure of any party to exercise any provision of this Agreement shall not be deemed a waiver. To be effective, any waiver of any provision of this Agreement shall be in writing and signed by the party against whom the waiver is sought to be enforced. Any such waiver shall not operate or be construed as a waiver of any other provision of this Agreement or a future waiver of the same provision.

9.9. **Amendment.** This Agreement constitutes the entire understanding of the parties, and no changes, amendments or alterations shall be effective unless in a writing signed by the parties. Notwithstanding any other provision of the Agreement, if either party reasonably determines that a modification of this Agreement is necessary to cause it to be in compliance with a state or federal law or the requirements of an accrediting or regulatory agency, that party shall give the other party written notice of the proposed modification, the justification for the modification, and the date on which it is to go into effect, which shall not be less than thirty days following the date of the notice (unless a shorter period of time is required by law). The modification shall go into effect on that date. The party providing notice shall consider any objection made by the other party concerning the proposed modification during the notice period.

9.10. **Interpretation.** The headings contained in this Agreement are included for purposes of convenience only, and shall not affect in any way the meaning or interpretation of any of the terms or provisions of this Agreement. This Agreement shall be interpreted according to its fair intent and not for or against any one party on the basis of whether such party drafted the Agreement. All references to “including” or “include(s)” shall mean “including, without limitation” and “include(s) without limitation,” respectively. The omission of a particular example or the inclusion of any examples shall not be construed to broaden or limit the effect of the language. Any reference to a statute, regulation, government agency or program, regulatory body, accreditation standard or accreditation organization refers to the statute, regulation, government agency or program, regulatory body, accreditation standard or accreditation organization as amended from time to time, and to any successor statute, regulation, government agency or program, regulatory body, accreditation standard or accreditation organization. References to Provider shall include references to Provider, any employees or agents of Provider, and any Subcontractors.

9.11. **Counterparts.** This Agreement may be executed in separate counterparts, none of which need contain the signatures of all parties, and each of which, when so executed, shall be deemed an original and all together constitute and be one of the same instrument. Facsimile or electronic signatures shall be as valid as original signatures.



9.12. **No Exclusivity.** This is not an exclusive agreement. Provider and Network may enter into similar agreements with other parties.

9.13. **No Guarantee.** There is no representation, warranty, guarantee, or covenant that any minimum volume or value of business will be referred to Provider. Provider does not have a right to participate in any particular Plan, line of business, product, or network of a Plan.

9.14. **Remedies Cumulative.** The rights and remedies of this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.

9.15. **Entire Agreement.** This Agreement and its Exhibits constitute the complete and sole contract between the parties regarding the subject hereof and supersede all prior or contemporaneous oral or written representations, communications, proposals, or agreements not expressly included herein. This Agreement and its Exhibits may not be contradicted or varied by evidence of prior, contemporaneous or subsequent oral representations, communications, proposals, agreements, prior course of dealings or discussions of the parties. There are no oral agreements among the parties. Provider has not relied on any data, financial analysis, reports, notes, proposals, conclusions or projections, whether made orally or in writing, made by Network or any of its representatives, agents, employees or advisors, in connection with negotiation, acceptance, execution or delivery of this Agreement by Provider.

[next page is signature page]

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

**NETWORK**

**PROVIDER**

**Northwest Permanente, P.C., Physicians  
& Surgeons**

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

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

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

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

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

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

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

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

## **LIST OF EXHIBITS**

**Compensation and Services**

**Oregon State Compliance**

**Oregon State Medicaid Program Compliance**

**Federal Program Compliance**

**National Committee for Quality Assurance Required Provisions**

## EXHIBIT

### COMPENSATION AND SERVICES

#### 1. Definitions

“**Billed Charges**” means Provider's total charges based on its commercial fee schedule effective as of the encounter date.

“**Services**” means all ordinary and necessary professional services normally rendered by Provider’s physicians and for which Provider may submit a professional bill for reimbursement for services defined below. Medical evaluations (histories, physicals, and lab work) shall be completed by Network and sent to Provider prior to, or concurrent with treatment. Network shall provide ongoing medical follow-up. Provider staff shall not order additional ancillary services without prior approval by the Department of Addiction Medicine medical director, clinical director or designee. Provider shall provide services under this Agreement for Members who have been evaluated by the Department of Addiction Medicine and require addiction treatment services as defined below:

“**Outpatient Chemical Dependency Services**” means basic alcohol and chemical dependency outpatient services to Members that have an authorized referral.

Services shall include the following elements:

- Intensive outpatient treatment
- Recovery support phase
- Individual sessions, as needed
- Family components
- Urinalysis (UA’s)

If a Member has a 30-day or longer lapse in treatment, they must be reassessed by a Kaiser Permanente’s Department of Addiction Medicine provider prior to receiving additional services. If a Member is to receive additional services, a new referral shall need to be generated.

#### 2. Compensation

Services provided to all Members under this Agreement shall be paid to the Provider as follows:

Outpatient Chemical Dependency Services shall be paid at the lesser of Billed Charges or an all-inclusive rate of \$63.67 per visit. UA’s should not be paid outside the per visit rate. Services billed outside of all-inclusive rate shall be denied.

## EXHIBIT

### OREGON STATE COMPLIANCE

This Exhibit is incorporated by reference into and made part of the Agreement with respect to Services rendered to Members of Kaiser Foundation Health Plan of the Northwest (“KFHP-NW”) under the jurisdiction of the Oregon Insurance Division. In the event of a conflict or inconsistency with any term or condition in the Agreement relating to Services rendered to Members of KFHP-NW under the jurisdiction of the Oregon Insurance Division, this Exhibit shall control.

Network shall itself, or shall cause KFHP-NW to, satisfy the obligations of KFHP-NW under this Exhibit. With respect to Members of KFHP-NW, KFHP-NW is the entity ultimately responsible for the obligations under this Exhibit.

With respect to Services rendered to Members of KFHP-NW under the jurisdiction of the Oregon Insurance Division, the Agreement shall be governed by the laws of the state of Oregon, without application of the conflict of laws provisions of the state of Oregon.

1. **Hold Harmless.** [ORS 750.095(2) and ORS 743.821] If KFHP-NW or Network fails to pay for Covered Services, the Member is not liable to Provider for any amounts owed by KFHP-NW or Network, and Provider shall not bill or attempt to collect from Members any amounts owed by KFHP-NW or Network.
2. **Annual Accounting.** [ORS 743.803(2)(c)] No more than once per year upon the request of Provider, KFHP-NW shall deliver to Provider an annual accounting accurately summarizing the financial transactions under the Agreement for that year.
3. **Provider Withdrawal from Patient Care.** [ORS 743.803(2)(d)] Provider may withdraw from the care of a Member when, in the professional judgment of Provider, it is in the best interest of the Member to do so; provided however that Provider shall give advance notice of withdrawal whenever reasonably feasible to KFHP-NW and shall cooperate with KFHP-NW to facilitate a medically appropriate transfer of care of the Member. Nothing in this paragraph shall relieve Provider of Provider’s professional obligations in connection with withdrawal from the care of a patient.
4. **Retention.** [ORS 743.803(2)(e)] KFHP-NW shall retain a doctor of medicine or osteopathy licensed in Oregon who shall be responsible for all final medical and mental health decisions relating to coverage or payment made pursuant to the Agreement.
5. **No Retaliation.** [ORS 743.803(2)(f)] A physician who is practicing in conformity with ORS 677.095 may advocate a decision, policy or practice without being subject to termination or penalty under the Agreement for the sole reason of such advocacy.
6. **Assumption of Financial Risk.** [ORS 743.803(2)(g)] If Provider is paid under the Agreement on a basis that includes financial risk withholds, KFHP-NW shall deliver to Provider

a full accounting of health benefits claims data and related financial information on no less than a quarterly basis, as follows: (a) The data shall include all pertinent information relating to the health care services provided, including related provider and patient information, reimbursements made and amounts withheld under the financial risk withhold provisions of the Agreement for the period of time under reconciliation and settlement between the parties; (b) any reconciliation and settlement undertaken pursuant to the Agreement shall be based directly and exclusively upon data provided to Provider; and (c) all data, including supplemental information or documentation, necessary to finalize the reconciliation and settlement provisions of the Agreement relating to financial risk withholds shall be provided to Provider no later than 30 days prior to finalizing the reconciliation and settlement. Nothing in this section shall prevent KFHP-NW or Provider from mutually agreeing to alternative reconciliation and settlement policies and procedures.

7. **Continuity of Care.** [ORS 743.803(2)(h)] When continuity of care is required to be provided under a KFHP-NW health benefit plan by ORS 743.854, KFHP-NW and Provider shall provide continuity of care to Members as provided in ORS 743.854.

8. **Grievance Procedures.** [ORS 743.803(2)(a)] KFHP-NW shall provide Provider adequate notice and hearing procedures, or other such procedures as are fair to Provider under the circumstances, in accordance with ORS 743.803(2)(a), prior to termination or non-renewal of the Agreement when such termination or renewal is based upon issues relating to the quality of patient care rendered by Provider.

9. **Contract Termination.** [ORS 743.803(2)(b)] The criteria for termination or nonrenewal of the Agreement are set forth in Sections 5.2, 5.3, and 5.4 of the Agreement.

10. **Refunds of Paid Claims.** [ORS 743.912] Notwithstanding anything to the contrary in the Agreement, except in case of fraud or abuse of billing, a request for refund of a payment previously made to Provider shall be made in writing within 18 months, or if for reasons relating to coordination of benefits within 30 months, after payment was made, and shall specify why the applicable Payer believes the refund is owed. If the refund is claimed for reasons relating to coordination of benefits, Payer will include in the written request the name and mailing address of the other insurer or entity that has primary responsibility for payment of the claim. If a request for a refund is not disputed in writing within 30 days after the request is received, the Provider must pay the refund within 60 days after receiving the request. Notwithstanding the foregoing, Payer may request a refund of a claim previously paid at any time if liability is imposed by law on a third party and Payer is unable to recover from the third party because the third party has paid or will pay Provider for the services covered by the claim.

## EXHIBIT

### OREGON STATE MEDICAID PROGRAM COMPLIANCE

Kaiser Foundation Health Plan of the Northwest (“KFHP-NW”), has entered into a Risk Accepting Entity Participation Agreement, effective September 1, 2012 (the “Participation Agreement”), with Tri-County Medicaid Collaborative, an Oregon nonprofit corporation (“TCMC”). TCMC has entered into a Health Plan Services Contract, Coordinated Care Organization Contract # 139071, effective September 1, 2012 (the “Core Contract”), by and between the State of Oregon, acting by and through its Oregon Health Authority (“OHA”), pursuant to which TCMC acts as a Coordinated Care Organization. The Core Contract and the Participation Agreement require that the provisions in this Exhibit be included in any subcontracts with respect to goods and services rendered under those agreements. This Exhibit is incorporated by reference into and made part of the Agreement with respect to products provided and services rendered under the Agreement by Provider to enrollees of the Oregon Health Plan (“OHP”) Medicaid managed care program (“Members”). In the event of a conflict or inconsistency with any term or condition in the Agreement relating to goods and services rendered to Members who are enrolled in the Oregon Health Plan Medicaid managed care program, this Exhibit shall control.

Provider shall comply with the provisions in this Exhibit to the extent that they are applicable to the goods and services provided by Provider under the Agreement. Capitalized terms used in this Exhibit but not otherwise defined in the Agreement shall have the same meaning as those terms in the Participation Agreement, including definitions incorporated therein by reference.

**1. Applicable Provisions from Core Contract or Participation Agreement.** [Participation Agreement Ex. D § 18(a)(4)] The Agreement is subject to, and shall be interpreted and administered in accordance with, the terms and conditions of the Core Contract and the Participation Agreement. If any provision in the Core Contract or the Participation Agreement applies to the Agreement (each, an “Applicable Provision”), KFHP-NW and Provider agree to abide by the Applicable Provision as the Core Contract or the Participation Agreement, as applicable, intended for the Applicable Provision to apply to the Agreement. In the event of a conflict between an Applicable Provision and a provision in the Agreement, the Applicable Provision shall control. KFHP-NW and Provider agree to cooperate in good faith and take best efforts to amend the Agreement (a) to comply with an Applicable Provision, if any provision in the Agreement conflicts with such Applicable Provision, and (b) to set forth the Applicable Provision in the Agreement as the Core Contract or Participation Agreement, as applicable, intended for the Applicable Provision to apply to the Agreement, if the Applicable Provision is not set forth in the Agreement or if the Agreement does not address the Applicable Provision as intended by the Core Contract or Participation Agreement. If the Participation Agreement is amended or modified, then, upon the direction of TCMC, KFHP-NW and Provider agree to cooperate in good faith and take best efforts to amend the Agreement within 30 calendar days to be consistent with such amendments or modifications.

2. **Termination for Cause.** [Core Contract Ex. B, Pt 4, § 10(a)(7)(a); Participation Agreement Ex. B, Pt 4, § 10] In addition to pursuing any other remedies allowed at law or in equity or by the Agreement, the Agreement may be terminated by KFHP-NW, or KFHP-NW may impose other sanctions against Provider, if Provider's qualifications or performance are inadequate to meet the requirements of the Core Contract or the Participation Agreement.

3. **Monitoring.**

a. *By KFHP-NW.* [Core Contract Ex. B, Pt 4, § 10(a)(6); Participation Agreement Ex. B, Pt 4, § 10] KFHP-NW will monitor Provider's performance on an ongoing basis and perform at least once a year a formal review of compliance with delegated responsibilities and Provider's performance, including deficiencies or areas for improvement, in accordance with 42 CFR § 438.230. Upon identification of deficiencies or areas for improvement, Provider shall take the Corrective Action identified by KFHP-NW.

b. *By OHA.* [Core Contract Ex. D § 31; Participation Agreement Ex. D § 31] Provider agrees that OHA is authorized to monitor compliance with the requirements in the Statement of Work under the Core Contract and that methods of monitoring compliance may include review of documents submitted by Provider, Core Contract, Participation Agreement, or Agreement performance review, Grievances, on-site review of documentation or any other source of relevant information. Provider agrees to assist KFHP-NW during the course of any OHA compliance review conducted in accordance with the Core Contract, Exhibit D, Section 31. Provider agrees to make its records and facilities available, and those of any Sub-Subcontractor (as defined below) available, for compliance review, consistent with the Core Contract, Exhibit D, Section 13. For purposes of this Exhibit, "Sub-Subcontractor" means (i) any individual, entity, facility, or organization that subcontracts with Provider regarding any of the products to be provided or services to be rendered under the Agreement and (ii) all subsequent subcontractors under Sub-Subcontractor who provide products or services pursuant to subcontracts under the Agreement.

4. **Federal Medicaid Managed Care.** [Core Contract Ex. B, Pt 4, § 10(a)(7)(b); Participation Agreement Ex. B, Pt 4, § 10] Provider shall comply with the requirements of 42 CFR § 438.6 that are applicable to the Work required under the Agreement.

5. **Billing and Payment.** [Core Contract Ex. B, Pt 4, § 10(a)(4); Participation Agreement Ex. B, Pt 4, § 10; Participation Agreement Ex. D, § 18(b)(2); Group Provider Agreement § 5.3.4; OAR 410-120-1280(3)(c)] Provider shall not bill Members for services that are not covered under the Core Contract unless there is a full written disclosure or waiver on file signed by the Member, in advance of the service being provided, in accordance with OAR 410-141-0420. Provider shall, and shall require all Sub-Subcontractors to, comply with the provisions of the Participation Agreement related to billing Members. Provider shall not, and Provider shall require all Sub-Subcontractors to not, bill Members for missed appointments.

6. **Access to Records.** [Core Contract Ex. D, §§ 13, 18; Participation Agreement Ex. D, § 13; OAR 410-141-3180; 42 CFR § 434.6(5)] Provider shall, and shall require each Sub-Subcontractor to, maintain all financial records related to the Core Contract, the Participation



Agreement, or the Agreement in accordance with generally accepted accounting principles or National Association of Insurance Commissioners accounting standards. In addition, Provider shall, and require each Sub-Subcontractor to, maintain any other records, books, documents, papers, plans, records of shipment and payments, and writings of Provider, whether in paper, electronic or other form, that are pertinent to the Core Contract (the "Records") in such a manner to clearly document Provider's performance or Sub-Subcontractor's performance, as applicable. Provider shall, and shall require each Sub-Subcontractor to, provide timely and reasonable access to Records to (a) OHA; (b) the Secretary of State's Office; (c) CMS; (d) the Comptroller General of the United States; (e) the Oregon Department of Justice Medicaid Fraud Control Unit; (f) other authorized state or federal reviewers; and (g) all duly authorized representatives of any of the foregoing (the "Reviewers"), to perform examinations and audits, make excerpts and transcripts, and evaluate the quality, appropriateness and timeliness of services performed. Provider shall, and shall require each Sub-Subcontractor to, cooperate with the Reviewers for audits, inspection and examination of Members' clinical records. Provider's and Sub-Subcontractor's documentation must be sufficiently complete and accurate to permit evaluation and confirmation that coordinated care services were authorized and provided, referrals made, and outcomes of coordinated care and referrals sufficient to meet professional standards applicable to the health care professional and meet the requirements for health oversight and outcome reporting in the Oregon Administrative Rules. Provider shall, and shall require each Sub-Subcontractor to, upon request and without charge, provide a suitable work area and copying capabilities to facilitate such a review or audit. This right also includes timely and reasonable access to Provider's and Sub-Subcontractor's personnel for the purpose of interview and discussion related to such documents. Provider shall, and shall require each Sub-Subcontractor to, retain and keep accessible all Records, including Members' clinical records, for the longer of (a) seven years following final payment and termination of the Core Contract or the date of services for which claims are made, whichever is later (or, if an audit, litigation, research and evaluation, or other action involving the records is started before the end of the seven-year period, until all issues arising out of the action are resolved); (b) the period as may be required by applicable law, including the records retention schedules set forth in OAR Chapter 166; or (c) until the conclusion of any audit, controversy or litigation arising out of or related to the Core Contract or the Records. The rights of access in this Section 6 are not limited to the required retention period, but shall last as long as the Records are retained.

**7. Information Privacy/Security/Access.** [Core Contract Ex. D, §§ 14, 18; Participation Agreement Ex. D, § 14] If the items or services provided under the Agreement permit Provider or any Sub-Subcontractor to have access to or use of any OHA computer system or other OHA Information Asset for which OHA imposes security requirements, and OHA grants Provider or Sub-Subcontractor access to such OHA Information Assets or Network and Information Systems, Provider shall, and shall require each Sub-Subcontractor to, comply with OAR 407-014-0300 through OAR 407-014-0320, as such rules may be revised from time to time.

**8. Governing Law, Consent to Jurisdiction.** [Core Contract Ex. D, §§ 1, 18; Participation Agreement Ex. D, § 1] The Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding between (i) the OHA (or any other agency or department of the State

of Oregon) and Provider or (ii) the OHA (or any other agency or department of the State of Oregon) and any Sub-Subcontractor that arises from or relates to the Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, that if a claim must be brought in a federal forum, then it shall be conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section 8 be construed as a waiver of the State of Oregon of the jurisdiction of any court or of any form of defense to or immunity from any claim whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise. Any claim, action, suit or proceeding that arises from or relates to the Participation Agreement shall be brought and conducted solely and exclusively within the Circuit Court of the County where the claim arises or relates; provided, that if a claim must be brought in a federal forum, then it shall be conducted solely and exclusively within the United States District Court for the District of Oregon. **PROVIDER, BY EXECUTION OF THE AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.** Provider shall cause all Sub-Subcontractors under the Agreement to comply with the requirements of this Section 8.

9. **Independent Contractor.** [Core Contract Ex. D, §§ 3, 18; Participation Agreement Ex. D, § 3(b)]

a. *Not an Employee of the State.* Provider represents and warrants that it is not an officer, employee or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.

b. *Current Work for State or Federal Government.* If Provider is currently performing work for the State of Oregon or the federal government, Provider hereby represents and warrants that Provider's Work to be performed under the Agreement creates no potential or actual conflict of interest as defined by ORS Chapter 244 and that no statutes, rules, or regulations of the State of Oregon or federal agency for which Provider currently performs work would prohibit Provider's work under the Agreement, the Participation Agreement, or the Core Contract. If compensation under the Agreement is to be charged against federal funds, Provider certifies that it is not currently employed by the federal government.

c. *Taxes.* Provider shall be responsible for all federal and State taxes applicable to compensation paid to Provider under the Agreement, and unless Provider is subject to backup withholding, neither OHA nor KFHP-NW will withhold from such compensation any amount to cover Provider's federal or State tax obligations. Provider shall not be eligible for any social security, unemployment insurance, or workers' compensation benefits from compensation paid to Provider under the Agreement, except as a self-employed individual.

d. *Control.* Provider shall perform all Work as an independent contractor. Provider agrees that OHA and KFHP-NW each reserve the right (i) to determine and modify the delivery schedule for the Work and (ii) to evaluate the quality of the Work Product; however, neither OHA nor KFHP-NW may control the means or manner of Provider's performance.

Provider is responsible for determining the appropriate means and manner of performing the Work delegated under the Agreement.

e. *Provision Applicable to Sub-Subcontractors.* Provider shall cause all Sub-Subcontractors to comply with the requirements of this provision as if each Sub-Subcontractor was Provider under this provision.

**10. Compliance with Applicable State and Local Law.** [Core Contract Ex. D, §§ 2(a), 18; Participation Agreement Ex. D, § 2] Provider shall, and shall cause all Sub-Subcontractors to, comply with all State and local laws, rules, regulations, executive orders, and ordinances (as they may be adopted, amended or repealed from time to time) applicable to the Core Contract, the Participation Agreement, the Agreement or to the performance of Work under any of the foregoing, including, but not limited to, the following: (a) ORS Chapter 659A.142; (b) all other applicable requirements of State civil rights and rehabilitation statutes, rules and regulations; (c) OHA rules pertaining to the provision of prepaid capitated health care and services, OAR Chapter 410, Division 141; and (d) all other OHA rules in OAR Chapter 410. These laws, rules, regulations, executive orders and ordinances are incorporated by reference herein to the extent that they are applicable to the Core Contract, the Participation Agreement or the Agreement and required by law to be so incorporated. Provider shall, and shall require each Sub-Subcontractor to, to the maximum extent economically feasible in the performance of the Agreement pertinent to the OHP Contract, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled products (as “recycled products” is defined in ORS 279A.010(1)(ii)).

**11. Americans with Disabilities Act.** [Core Contract Ex. D, §§ 2(b), 18; Participation Agreement Ex. D, § 2] In compliance with the Americans with Disabilities Act, any written material that is generated and provided by Provider under the Core Contract, the Participation Agreement, or the Agreement to Members, including Medicaid-Eligible Individuals, shall, at the request of such individuals, be reproduced in alternative formats of communication, to include Braille, large print, audiotape, oral presentation, and electronic format. Provider shall not be reimbursed for costs incurred in complying with this provision. Provider shall cause all Sub-Subcontractors to comply with the requirements of this provision as if each Sub-Subcontractor was Provider under this provision.

**12. Representations and Warranties.** [Core Contract Ex. D, §§ 4, 18; Participation Agreement Ex. D, § 4] The representations and warranties set forth in this Section 12 are in addition to, and not in lieu of, any other representations or warranties provided under the Agreement.

a. *Core Contract.* Provider represents and warrants to KFHP-NW and OHA that (a) Provider has the power and authority to enter into and perform the Agreement; (b) the Agreement, when executed and delivered, shall be a valid and binding obligation of Provider enforceable in accordance with its terms; (c) Provider has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Provider will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in

accordance with standards prevalent in Provider's industry, trade or profession; (d) Provider shall, at all times during the term of the Agreement, be qualified, professionally competent, and duly licensed to perform the Work; and (e) KFHP-NW prepared its application related to the Agreement, if any, independent from all other applicants, and without collusion, fraud or other dishonesty. Provider covenants to immediately notify KFHP-NW if any of the foregoing representations or warranties becomes untrue after the effective date of the Agreement. Provider shall cause all Sub-Subcontractors to (i) make the representations and warranties of this subsection 12(a) to KFHP-NW and OHA as if each Sub-Subcontractor was Provider under this subsection 12(a) and (ii) covenant to notify KFHP-NW if any of the foregoing representations or warranties becomes untrue with respect to such Sub-Subcontractor after the effective date of the subcontract.

b. *Participation Agreement.* Provider represents and warrants to KFHP-NW that (a) all Covered Services provided or arranged by Provider shall be provided or arranged by duly licensed, certified or authorized professional personnel in accordance with (A) the generally accepted medical and surgical practices and standards prevailing in the applicable professional community at the time of treatment, (B) the provisions of TCMC's quality initiative described in Exhibit B, Part 9 of the Participation Agreement and (C) the requirements of State, federal, and municipal law; (b) Provider and each of Provider's agents, employees and subcontractors shall maintain in good standing at all times during the term of the Agreement the necessary licenses or certifications required by State federal, and local law to provide or arrange Covered Services to Members; (c) each of Provider, if Provider is a physician, and each of Provider's agents, employees or subcontractors who is a physician shall maintain in good standing at all times during the term of the Agreement medical staff membership and clinical privileges at licensed acute care hospitals in KFHP-NW's service area that have entered into a written agreement with KFHP-NW or TCMC to provide hospital services to Members; (d) Provider is an entity duly organized and validly existing under the laws of the State of Oregon, and neither the execution and delivery by Provider of the Agreement nor compliance with any material provisions of the Agreement by Provider, (A) will violate, conflict with or result in a breach of any material provision of Provider's articles of incorporation or bylaws; (B) will violate any judgment, order or decree of any court or other governmental agency or authority to which Provider or any affiliate of Provider is subject; or (C) will violate any law, rule, regulation, or ordinance to which Provider or any affiliate of Provider is subject, the violation of which would have a material adverse effect on TCMC or KFHP-NW or the continuation of the Core Contract, the Participation Agreement, or the Agreement; (e) Provider shall provide Medically Appropriate services that Provider is obligated to provide, under law or under the Agreement, to a Member covered under the Core Contract, the Participation Agreement, or the Agreement; (f) Provider shall not impose on Member premiums or charges that are in excess of the premiums or charges permitted under the Medical Assistance Program; (g) Provider shall not commit acts to discriminate among Members on the basis of their health status or need for health care services, including, but not limited to, termination of Enrollment or refusal to enroll a Member (except as permitted under the Medical Assistance Program) or any practice that would reasonably be expected to discourage Enrollment by individuals whose medical condition or history indicates probable need for substantial future

medical services; (h) Provider shall not misrepresent or falsify any information that it furnishes to CMS, the State of Oregon, OHA, TCMC, or KFHP-NW, including, but not limited to, any certification, any report required to be submitted under the Agreement, encounter data, or other information relating to care or services provided to a Member; (i) Provider shall not misrepresent or falsify information that it furnishes to a Member, Potential Member or health care provider; (j) Provider shall comply with the requirements for Physician Incentive Plans, as set forth in 42 CFR §§ 422.208 and 422.210; (k) Provider shall assist KFHP-NW in maintaining a Participating Provider Panel sufficient to ensure adequate capacity to provide Covered Services under the Participation Agreement; (l) Provider shall following the accounting principles and accounting standards required by federal or State laws, rules or regulations, or the Participation Agreement or the Agreement; (m) Provider shall make timely payments to Providers and Sub-Subcontractors, as applicable; (n) Provider shall comply with any applicable requirements of Sections 1903(m) or 1932 of the Social Security Act and any implementing regulations; (o) Provider shall, as applicable, comply with and, as applicable, assist KFHP-NW in complying with, TCMC's compliance plan ("Compliance Plan"), and Provider agrees to follow the processes and provisions in such Compliance Plan applicable to Provider as the same may be updated, amended, modified, or supplemented from time to time in the sole discretion of TCMC, including, without limitation, those provisions providing mechanisms for identifying and addressing compliance problems related to KFHP-NW's or Provider's operations and performance; (p) Provider agrees to participate in education programs relating to the Compliance Plan; and (q) if Provider is a provider, Provider has not been terminated from OHA or excluded as a Medicare, CHIP, or Medicaid provider by CMS and Provider is not subject to exclusion for any lawful conviction by a court for which Provider could be excluded under 42 CFR § 1001.101 and 42 CFR § 455.3(b). Provider covenants to immediately notify KFHP-NW if any of the foregoing representations or warranties becomes untrue after the effective date of the Agreement. Provider shall cause all Sub-Subcontractors to (i) make the representations and warranties of this subsection 12(b) to KFHP-NW and OHA as if each Sub-Subcontractor was Provider under this subsection 12(b) and (ii) covenant to notify KFHP-NW if any of the foregoing representations or warranties becomes untrue with respect to such Sub-Subcontractor after the effective date of the subcontract.

**13. Assignment; Successor in Interest.** [Core Contract Ex. D, §§ 17, 18; Participation Agreement Ex. D, § 17] Provider shall not assign or transfer its interest in the Agreement, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or in any other matter, without prior written consent of KFHP-NW and OHA. Any such assignment or transfer, if approved, is subject to such conditions and provisions as KFHP-NW or OHA may deem necessary, including, but not limited to, Exhibit B, Part 8, Section 14 of the Core Contract. No approval by KFHP-NW or OHA of any assignment or transfer of interest shall be deemed to create any obligation on KFHP-NW in addition to those, if any, set forth in the Agreement. The provisions of the Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Provider shall cause all Sub-Subcontractors to comply with the requirements of this Section 13 as if each Sub-Subcontractor was Provider under this Section 13.

14. **Severability.** [Core Contract Ex. D, §§ 21, 18] If any term or provision of the Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be unlawful.

15. **Subcontracts.** [Core Contract Ex. D, § 18; Participation Agreement Ex. B, Pt 4, § 10; Participation Agreement Ex. D, § 18]

a. *In General.* Where Provider is permitted to subcontract certain functions of the Agreement, Provider shall notify KFHP-NW, in writing, prior to subcontracting such work. Provider shall ensure that all subcontracts are (i) in writing; (ii) include all the requirements set forth in the Agreement that are applicable to the service or activity delegated under the subcontract; and (iii) are available for inspection upon request by KFHP-NW. In addition, Provider shall subcontract in accordance with Exhibit D, Section 18 of the Participation Agreement and Exhibit B, Part 4, Section 10.a.(3) through 10.a.(9) of the Core Contract. Provider shall expressly assume the duties and obligations applicable to KFHP-NW as described in Exhibit B, Part 4, Sections 10.a.(3) through 10.a.(9) of the Core Contract. KFHP-NW's consent to any subcontract shall not relieve Provider of any of its duties or obligations under the Agreement. Provider shall comply with the requirements of Exhibit B, Part 8, Section 14 of the Core Contract as if Provider was KFHP-NW under that section.

b. *Notice of Subcontractor's Subcontractor Terminations.* Provider shall provide 90 calendar days' prior written notice to KFHP-NW of the termination of the Agreement or any subcontract; provided, that if any subcontract is terminated with less than 90 calendar days' notice, then Provider shall provide written notice to KFHP-NW within five business days of Provider becoming aware of such termination. Provider shall cause all Sub-Subcontractors to comply with the requirements of this subsection 15(b) as if each Sub-Subcontractor was Provider under this subsection 15(b). Furthermore, with respect to Provider's contracts with Sub-Subcontractors, Provider shall remain responsible for providing or arranging Covered Services through its remaining Sub-Subcontractors and shall remain financially responsible for Covered Services furnished to Members under the Agreement.

c. *Restriction, Suspension or Termination of Subcontractor's Subcontractor.* Provider shall, as warranted, immediately cease or, as applicable, restrict, suspend, or terminate any Sub-Subcontractor from providing or arranging Covered Services to Members in the following circumstances: (i) the Sub-Subcontractor ceases to meet the licensing/certification requirements or other professional standards described in the Participation Agreement or the Agreement or (ii) TCMC, KFHP-NW, or Provider reasonably determines that there are serious deficiencies in the professional competence, conduct, or quality of care of Sub-Subcontractor that affects or could adversely affect the health or safety of Members. Provider shall immediately notify KFHP-NW if it or any Sub-Subcontractor ceases to meet the licensing/certification requirements or other professional standards described in the Agreement and Provider's actions under this subsection 15(c). If Provider fails to act as required by this subsection 15(c) with respect any Sub-Subcontractor,

each of TCMC and KFHP-NW shall have the right to immediately prohibit such Sub-Subcontractors from continuing to provide Covered Services to Members.

d. *Compliance with Requirements of State, Federal, and Local Law.* Provider's subcontracts shall comply with the standards of State, federal, and local laws, rules, and regulations. If there are changes in such requirements, Provider shall make best efforts to amend its subcontracts to comply with such changes within 30 calendar days following notice thereof from TCMC or KFHP-NW.

e. *Access by TCMC and Government Agencies to Subcontracts and Books and Records.* Provider shall make available for inspection, examination, and copying by TCMC, KFHP-NW, and Government Agencies during normal business hours (i) its subcontracts relating to the provision of Covered Services and (ii) books and records of its subcontractors related to Covered Services provided to Members. Copies of subcontracts and the books and records of subcontractors shall be maintained for at least seven years from the close of the fiscal year in which Covered Services were provided.

f. *Subcontractor's Responsibility for Providing or Arranging Covered Services.* Notwithstanding the existence of Provider's subcontracts, Provider shall remain responsible for satisfying the obligations of Provider set forth in the Agreement. If any of Provider's subcontracts are terminated, Provider shall remain responsible for providing or arranging Covered Services and shall remain financially responsible for Covered Services provided to Members under the Agreement.

g. Miscellaneous.

i. Provider shall participate in TCMC's quality initiatives described in Exhibit B, Part 9 of the Participation Agreement.

ii. Provider shall provide Covered Services to Members for the period in which TCMC paid KFHP-NW for such services.

iii. The term of the Agreement shall be not less than one year, subject to the termination provisions as may be set forth in the Agreement.

iv. Provider shall carry insurance as required by TCMC or KFHP-NW and shall provide proof of insurance to TCMC or KFHP-NW upon request.

v. Each subcontract that Provider enters into shall set forth provisions consistent with Exhibit D, Section 10 of the Participation Agreement and pertaining to either the terminations of the Participation Agreement or the termination of the subcontract between Provider and Sub-Subcontractor.

h. *Required Terms of Subcontracts.* Provider shall cause all Sub-Subcontractors to comply with the requirements of this Section 15 as if each Sub-Subcontractor was Provider under this Section 15. In addition, among other terms required to be included in

subcontracts by the Agreement, all subcontracts in connection with the Agreement shall contain the following terms: (i) describe adequately the responsibilities of Provider and Sub-Subcontractor in connection with the subcontract; (ii) require each Sub-Subcontractor to comply with the provisions of the Participation Agreement and the Agreement related to billing Members; (iii) require each Sub-Subcontractor to participate in TCMC's quality initiatives described in Exhibit B, Part 9 of the Participation Agreement; (iv) require each Sub-Subcontractor to provide Covered Services to Members for the period in which TCMC paid KFHP-NW for such services; (v) have a term of not less than one year, subject to the termination provisions as may be set forth in the subcontract between Provider and Sub-Subcontractor; (vi) require each Sub-Subcontractor to carry insurance as required by TCMC or KFHP-NW and to provide certificates of insurance to TCMC or KFHP-NW upon request; and (vii) set forth provisions consistent with the provisions of Exhibit D, Section 10 of the Participation Agreement and pertaining to the terminations of the Participation Agreement, the Agreement or the subcontract between Provider and Sub-Subcontractor.

**16. Compliance with Applicable Federal Laws.** [Core Contract Ex. D, §§ 2(c), 18; Participation Agreement Ex. D, § 2] Provider shall comply, and shall cause each Sub-Subcontractor to comply, with federal laws forth or incorporated, or both, in the Core Contract, including, without limitation, all applicable standards, policies, orders, or requirements that apply to KFHP-NW as stated in the Core Contract, Exhibit E, and all other federal laws applicable to Provider's performance relating to the Core Contract, the Participation Agreement, or the Agreement. For purposes of the Core Contract, the Participation Agreement, or the Agreement, all references to federal laws are references to federal laws as they may be amended from time to time. In addition, unless exempt under 45 CFR Part 87 for Faith-Based Organizations or other federal provisions, Provider shall comply with the following federal requirements to the extent that they are applicable to Provider:

a. *Miscellaneous Federal Provisions.* [Core Contract Ex. E, § 1; Participation Agreement Ex. E] Provider shall comply with all federal laws, regulations, and executive orders applicable to the Agreement or to the delivery of Work under the Agreement. Without limiting the generality of the foregoing, Provider expressly agrees to comply and cause all Sub-Subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) Titles VI and VII of the Civil Rights Act of 1964, as amended; (b) 45 CFR Part 84, which implements Title V, Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (c) the Americans with Disabilities Act of 1990, as amended; (d) Executive Order 11246, as amended, (e) the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"); (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (h) all regulations and administrative rules established pursuant to the foregoing laws; (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations; and (j) all federal law governing operation of community mental health programs, including, without limitation, all federal laws requiring reporting of Client abuse. These laws, regulations and executive orders are



incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. No federal funds may be used to provide products or services under the Agreement in violation of 42 USC § 14402.

b. *Equal Employment Opportunity.* [Core Contract Ex. E, § 2; Participation Agreement Ex. E] If the Core Contract, including amendments, is for more than \$10,000, then Provider shall comply with Executive Order 11246, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

c. *Clean Air, Clean Water, EPA Regulations.* [Core Contract Ex. E, § 3; Participation Agreement Ex. E] If the Core Contract, including amendments, exceeds \$100,000 then Provider shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC § 7606); the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 USC §§ 1251 to 1387), specifically including, but not limited to, Section 508 (33 USC § 1368); Executive Order 11738; and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to OHA, the U.S. Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. Provider shall include in all contracts with subcontractors receiving more than \$100,000 language requiring the subcontractor to comply with the federal laws identified in this subsection 16(c).

d. *Energy Efficiency.* [Core Contract Ex. E, § 4; Participation Agreement Ex. E] Provider shall comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 USC § 6201 et seq. (Pub. L. 94-163).

e. *Truth in Lobbying.* [Core Contract Ex. E, § 5; Participation Agreement Ex. E] Provider certifies, to the best of Provider’s knowledge and belief, that:

i. No federal appropriated funds have been paid or will be paid, by or on behalf of Provider, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

ii. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, Provider shall complete and submit Standard Form LLL, “Disclosure Form to

Report Lobbying” in accordance with its instructions.

Provider shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.

f. *HIPAA Compliance.* [Core Contract Ex. E, § 6; Participation Agreement Ex. E] Provider acknowledges and agrees that Provider is a “covered entity” for purpose of the privacy and security provisions of HIPAA. Provider shall comply with HIPAA to the extent any Work or obligations of KFHP-NW arising under the Agreement are covered by HIPAA. Without limiting the generality of the foregoing, Provider shall comply with HIPAA and the following:

i. Individually Identifiable Health Information (“IIHI”) about specific individuals is protected from unauthorized use or disclosure consistent with the requirements of HIPAA. IIHI relating to specific individuals may be exchanged between Provider and KFHP-NW for purposes directly related to the provision of services to Members that are funded in whole or in part under the Agreement. However, Provider shall not use or disclose any IIHI about specific individuals in a manner that would violate (i) the HIPAA Privacy Rules in CFR Parts 160 and 164; (ii) the OHA Privacy Rules, OAR 407-014-0000 et seq., or (iii) the OHA Notice of Privacy Practices, if done by OHA. A copy of the most recent OHA Notice of Privacy Practices is posted on the OHA website at <https://apps.state.or.us/Forms/Served/DE2090.pdf> or may be obtained from OHA.

ii. Provider shall adopt and employ reasonable administrative and physical safeguards consistent with the Security Rule in 45 CFR Part 164 to ensure that Member Information is used by or disclosed only to the extent necessary for the permitted use or disclosure and consistent with applicable State, federal, and local laws, rules, and regulations and the terms and conditions of the Agreement. Security incidents involving Member Information must be immediately reported to KFHP-NW’s privacy officer and to the Oregon Department of Human Services’ (“DHS”) Privacy Officer.

iii. Provider shall comply with the HIPAA standards for electronic transactions published in 45 CFR Part 162 and the DHS Electronic Data Transmission Rules, OAR 410-001-0000 through 410-001-0200. In order for Provider to exchange electronic data transactions with OHA in connection with Claims or encounter data, eligibility, or Enrollment information, authorizations, or other electronic transactions, Provider shall execute an EDT Trading Partner Agreement with OHA and comply with OHA Electronic Data Transmission Rules.

iv. If Provider reasonably believes that KFHP-NW’s, TCMC’s or OHA’s data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, Provider shall promptly consult KFHP-NW, TCMC, or the OHA HIPAA officer.

g. *Resource Conservation and Recovery.* [Core Contract Ex. E, § 7; Participation Agreement Ex. E] Provider shall comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 USC § 6901 et seq.). Section 6002 of that Act (codified at 42 USC § 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.

h. *Audits.* [Core Contract Ex. E § 8; Participation Agreement Ex. E] Provider shall comply with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled “Audits of States, Local Governments and Non-Profit Organizations.”

i. *Debarment and Suspension.* [Core Contract Ex. E, § 9; Participation Agreement Ex. E] Provider shall not permit any person or entity to be a subcontractor if the person or entity is (i) excluded by the U.S. Department of Health and Human Services Office of the Inspector General or (ii) listed on the non-procurement portion of the General Service Administration’s “List of Parties Excluded from Federal Procurement or Nonprocurement Programs” (the “Debarment List”) in accordance with Executive Order Nos. 12549 and 12689, “Debarment and Suspension.” (See 2 CFR Part 180.) Provider represents and warrants that it is not excluded by the U.S. Department of Health and Human Services Office of the Inspector General or listed on the Debarment List. Provider shall cause all Sub-Subcontractors to make the representations and warranties from the foregoing sentence as if each Sub-Subcontractor was Provider in that sentence.

j. *Drug-Free Workplace.* [Core Contract Ex. E, § 10; Participation Agreement Ex. E] Provider shall comply, and cause all subcontractors to comply, with the following provisions to maintain a drug-free workplace:

i. Provider certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in Provider’s workplace or while providing services to Members. Provider’s notice shall specify the actions that will be taken by Provider against its employees for violation of such prohibitions;

ii. Establish a drug-free awareness program to inform its employees about the dangers of drug abuse in the workplace; Provider’s policy of maintaining a drug-free workplace; any available drug counseling, rehabilitation, and employee assistance programs; and the penalties that may be imposed upon employees for drug abuse violations;

iii. Provider shall provide each employee to be engaged in the performance of services under the Agreement a copy of the statement mentioned in subsection 16(j)(i);

iv. Provider shall notify each employee in the statement required by subsection 16(j)(i) that, as a condition of employment to provide services under the Agreement the employee will abide by the terms of the statement and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

v. Provider shall notify OHA and KFHP-NW within 10 days after receiving notice under subsection 16(j)(iv) from an employee or otherwise receiving actual notice of such conviction;

vi. Provider shall impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988;

vii. Provider shall make a good-faith effort to continue a drug-free workplace through implementation of subsections 16(j)(i) through 16(j)(vi);

viii. Provider shall require each Sub-subcontractor to comply with subsections 16(j)(i) through 16(j)(vii);

ix. None of Provider; any of Provider's employees, officers, or agents; nor any Sub-Subcontractor may provide any service required under the Agreement while under the influence of drugs. For purposes of this provision, "under the influence" means observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the person has used a controlled substance, prescription, or non-prescription medication that impairs the person's performance of essential job function or creates a direct threat to Members or others. Examples of abnormal behavior include, but are not limited to, hallucinations, paranoia, or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to, slurred speech, difficulty walking, or performing job activities;

x. Violation of any provision of this subsection 16(j) may result in termination of the Agreement.

k. *Pro-Children Act.* [Core Contract Ex. E, § 11; Participation Agreement Ex. E] Provider shall comply with the Pro-Children Act of 1994 (codified at 20 USC § 6081 et seq.).

l. *Clinical Laboratory Improvements.* [Core Contract Ex. E, § 14; Participation Agreement Ex. E] Provider shall, and Provider shall ensure that any Laboratories used by Provider shall, comply with the Clinical Laboratory Improvement Amendments (CLIA 1988), 42 CFR Part 493 Laboratory Requirements and ORS Chapter 438, which require, *inter alia*, that all laboratory testing sites providing services under the Core Contract shall have either a Clinical Laboratory Improvement Amendments ("CLIA") certificate of waiver or a certificate of registration along with a CLIA identification number. Laboratories with certificates of waiver will provide only the eight types of tests permitted under the terms of

the waiver. Laboratories with certificates of registration may perform a full range of laboratory tests.

m. *OASIS*. [Core Contract Ex. E, § 21; Participation Agreement Ex. E] To the extent applicable, Provider shall comply with the Outcome and Assessment Information Set (“OASIS”) reporting requirements and patient notice requirements for skilled services provided by Home Health Agencies, pursuant to the CMS requirements published in 64 FR 3764, 64 FR 3748, 64 FR 23846, and 64 FR 32984, and such subsequent regulations as CMS may issue in relation to the OASIS program.

n. *Patient Rights Condition of Participation*. [Core Contract Ex. E, § 22; Participation Agreement Ex. E] To the extent applicable, Provider shall comply with the Patient Rights Condition of Participation that hospitals must meet to continue participation in the Medicaid program, pursuant to 42 CFR Part 482. For purposes of this Exhibit, hospitals include short-term, psychiatric, rehabilitation, long-term, and children’s hospitals.

o. *Federal Grant Requirements*. [Core Contract Ex. E, § 23; Participation Agreement Ex. E] To the extent applicable to Provider or to the extent OHA requires KFHP-NW or Provider to supply information or comply with procedures to permit OHA to satisfy its obligations, federal grant obligations, or both, Provider must comply with the following parts of 45 CFR:

- i. Part 74, including Appendix A (uniform federal grant administration requirements);
- ii. Part 80 (nondiscrimination under Title VI of the Civil Rights Act);
- iii. Part 84 (nondiscrimination on the basis of handicap);
- iv. Part 91 (nondiscrimination on the basis of age);
- v. Part 95 (Medicaid and CHIP federal grant administration requirements).

In addition, Provider shall not expend any of the funds paid under the Agreement for roads, bridges, stadiums, or any other item or service not covered under the OHP.

p. *Non-Discrimination*. Provider shall comply with all federal and State laws and regulations, including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972 (regarding education programs and activities), the Age Discrimination Act of 1975, the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and all amendments to those acts and all regulations promulgated thereunder. Provider shall comply with all applicable requirements of State civil rights and rehabilitation statutes and rules. Provider shall comply with the integration mandate in 28 CFR § 35.130(d), Title II of the Americans with Disabilities Act and its implementing regulations published in the Code of Federal Regulations.

q. *Applicability to Subcontracts.* Provider shall require each Sub-Subcontractors to comply with the requirements of this Section 16 as if each Sub-Subcontractor was Provider under this Section 16.

**17. Notices.**

a. [Core Contract Ex. B, Pt 4, § 10(a)(8); Participation Agreement Ex. B, Pt 4, § 10] Provider acknowledges and agrees that KFHP-NW may provide written notice of the termination of any of Provider's agreements with KFHP-NW regarding the provision of Covered Services to Members, within 15 days after KFHP-NW receives or issues the termination notice, to each Member who received his or her primary care from, or was seen on a regular basis by, Provider.

b. [Group Provider Agreement § 3.16] Provider shall, and shall require each Sub-Subcontractor to, notify KFHP-NW, in writing, within three days, of any of the following events affecting Provider, any Sub-Subcontractor, or the agents or employees of any Provider or Sub-Subcontractor: (i) loss of licensure, accreditation, or participating provider status in Medicaid; (ii) notice of any claim, demand, or complaint involving a Member; (iii) termination, suspension, restriction, or non-renewal of clinical privileges or staff membership with any hospital, health plan, or provider organization; (iv) loss of insurance coverage required under the Agreement.

**18. Payment Types and Rates.** [Participation Agreement Ex. C, § 1(c)] If Provider is a designated Type A, Type B, or Rural critical access hospital, Provider represents and warrants to TCMC (i) that the Agreement establishes the total reimbursement for the services provided to the persons whose medical assistance benefits are administered by KFHP-NW and (ii) Provider is not entitled to any additional reimbursement from OHA for services provided to persons whose medical assistance benefits are administered by KFHP-NW.

## EXHIBIT

### FEDERAL PROGRAM COMPLIANCE

#### A. Medicare Advantage Program

Kaiser Foundation Health Plan of the Northwest (“KFHP-NW”) has entered into a Medicare Advantage Organization contract with the Centers for Medicare and Medicaid Services (“CMS”). KFHP-NW has contracted with Network to provide certain services under such CMS contract. CMS and KFHP-NW require Network to include the provisions of Section A of this Exhibit in any subcontracts. This Section A is incorporated by reference into and made part of the Health Care Services Agreement (“Agreement”) with respect to Services rendered to Members enrolled in the Medicare Advantage program (“MA Members”). In the event of a conflict or inconsistency with any term or condition in the Agreement relating to Services rendered to MA Members, this Section A shall control.

Network shall itself, or shall cause KFHP-NW to, satisfy the obligations of KFHP-NW under Section A of this Exhibit. With respect to MA Members, KFHP-NW is the entity ultimately responsible for the obligations under this Section A.

1. **Records.** [42 CFR §422.118, §422.504(d), §422.504(a)(13), MMCM Ch. 11, §100.4] Provider shall (a) abide by all federal and state laws regarding confidentiality and disclosure of medical records, or other health and enrollment information; (b) ensure that medical information is released only in accordance with applicable federal or state law, or pursuant to court orders or subpoenas; (c) maintain medical records and related information in an accurate and timely manner and for ten years after termination or expiration of this Agreement or the date of completion of any audit, whichever is later; and (d) ensure timely access by MA Members to the records and information that pertain to them.

2. **Prompt Payment.** [42 CFR §422.520(b)(1), §422.504(c), MMCM Ch. 11, §100.4] Provider shall be paid for Covered Services rendered to MA Members within the lesser of 45 days of receipt of a properly submitted, supported and undisputed claim or the time period set forth elsewhere in this Agreement.

3. **Member Hold Harmless.** [42 CFR §§422.504(g)(1)(i)&(iii), §422.504(i)(3)(i), §422.105(a), §422.100(g), MMCM Ch. 11, §100.4] Provider agrees that in no event including, without limitation, nonpayment by or insolvency of KFHP-NW or Network or breach of this Agreement, shall Provider bill; charge; collect a deposit from; seek compensation, reimbursement, or remuneration from; impose surcharges; or have any recourse against a MA Member or a person acting on behalf of a MA Member for fees that are the legal obligation of KFHP-NW or Network. This Agreement does not prohibit Provider from collecting Member Cost Share or fees for non-Covered Services to the extent permitted by the applicable health benefit plan; however, Member Cost Share may not be imposed for influenza and pneumococcal vaccines that are Covered Services. If a person who correctly identifies himself as a MA

Member seeks Services from Provider without an applicable authorization or referral, Provider may only charge the MA Member for customary in-plan Member Cost Share unless Provider notified the MA Member that the Services would be Covered Services only if further action is taken by the MA Member per applicable health benefit plan rules. If a MA Member is also enrolled in Medicaid and Medicaid is responsible for the Member Cost Share, Provider shall not hold MA Member liable for such Member Cost Share, and Provider shall accept payment pursuant to this Agreement as payment in full or bill Medicaid for such Member Cost Share. Sections A.3 and A.4 shall be construed in favor of the MA Member as an intended third party beneficiary, shall survive the termination of the Agreement, the insolvency of KFHP-NW or Network, and shall supersede any oral or written agreement between Provider and a MA Member.

4. **Continuation of Benefit.** [42 CFR §422.504(g)(2), MMCM Ch. 11, §100.4] In the event of the termination or expiration of this Agreement, KFHP-NW's or Network's insolvency, or other cessation of business, Provider shall continue to provide Covered Services for all MA Members through the period for which premium was paid and, for MA Members who are confined in an inpatient facility on the date of insolvency or other cessation of business, through the date of discharge.

5. **Audit and Inspection.** [42 CFR §§422.504(e)(1)(iii),(e)(4)&(i)(2), MMCM Ch. 11, §100.4] The Department of Health and Human Services, the U.S. Comptroller General, or their designees have the right to inspect, evaluate, and audit any pertinent facilities, contracts, books, documents, papers, and records of Provider involving transactions related to the KFHP-NW's Medicare Advantage contract during the period of this Agreement and for ten years after termination or expiration of this Agreement or the date of completion of any audit, whichever is later. Provider shall retain such contracts, books, documents, papers, and records for this period.

6. **Accountability and Delegation.** [42 CFR §§422.504(i)(1),(3),(4)&(5)] KFHP-NW shall only delegate activities or functions to Provider pursuant to a written delegation agreement in compliance with CMS rules, which require, among other things, a covenant of Provider that it will comply with all applicable Medicare laws, regulations, and CMS instructions. To the extent KFHP-NW delegates any functions for which it is responsible, KFHP-NW is ultimately responsible to CMS for oversight and compliance and shall retain the right to monitor performance of the delegated functions and to revoke such delegation if KFHP-NW or CMS determines that performance is unsatisfactory. If KFHP-NW delegates the selection of providers, KFHP-NW retains the right to approve, suspend or terminate any such selection.

7. **Exclusion/Sanction.** [42 CFR §422.752(a)(8), §422.204(b)(4), 42 USC §1320a-7 & §1320a-7a] Provider represents that (a) it is not excluded, debarred, sanctioned, suspended or otherwise ineligible from, by or for participation in any federal or state program, including Medicare and Medicaid, (b) with respect to Covered Services provided to MA Members, it does not knowingly employ or contract with an individual or entity so excluded, debarred, sanctioned, suspended, or otherwise ineligible, and (c) no practitioner providing Covered Services to a MA Member has opted out of Medicare. This representation shall be continuing throughout the term



of this Agreement, and Provider shall promptly notify KFHP-NW if such representation can no longer be made.

8. **Certification of Data.** [42 CFR §422.504(l)(3), MMCM Ch. 11, §100.4] The chief executive officer of Provider, the chief financial officer, or an individual delegated the authority to sign on behalf of one of these officers, shall certify from time to time, as requested by KFHP-NW or Network, that the encounter data and other data supplied by Provider (based on its best knowledge, information, and belief) are accurate, complete and truthful.

9. **Termination.** [42 CFR §422.202(d)(4), §422.506(b), §422.510, §422.111(e), MMCM Ch. 6, §60.4, MMCM Ch. 11, §100.4] If this Agreement may be terminated without cause, the minimum period of notice shall be at least 60 days, but shall be greater if provided in this Agreement. If the Medicare Advantage contract between KFHP-NW and CMS is terminated or not renewed, this Agreement will be terminated as to MA Members, except to the extent KFHP-NW enters into a different form of contract with CMS, in which case Provider agrees to cooperate with KFHP-NW in meeting its requirements under the new contract until such time as the Provider agreement may be amended. If Provider provides primary care services to MA Members, Provider shall provide at least 30 days notice before terminating the Agreement.

10. **Access to Books and Records.** [42 USC §1395x(v)(1)(I), 42 CFR §420.302(b)] If this Agreement is determined to be subject to the provisions of 42 USC §1395x(v)(1)(I), which governs access to books and records of contractors of Covered Services to MA Members, Provider agrees to permit representatives of the Secretary of the U.S. Department of Health and Human Services and the U.S. Comptroller General to have access to this Agreement and to the books, documents, and records of Provider, as necessary to verify the costs of this Agreement in accordance with criteria and procedures contained in applicable federal law.

11. **Advance Directives.** [42 CFR §§422.128(b)(1)(ii)(E)&(F)] The MA Member's medical record shall reflect, in a prominent part, whether or not the MA Member has executed an advance directive. Provider may not condition the provision of care or otherwise discriminate against a MA Member based on whether or not the MA Member has executed an advanced directive.

12. **Compliance.** [42 CFR §422.2, §§422.504(h),(i)&(j), §422.562(a), §422.516, §422.503(b)(4)(vi), §422.2268, MMCM Ch. 11, §100.4 and 120] Provider shall comply and shall require any subcontractors providing services to MA Members, to comply with all applicable Medicare laws and regulations (including without limitation those designed to prevent or ameliorate fraud, waste and abuse), state and federal laws (including criminal laws, the False Claims Act, Anti-Kickback statute, Health Insurance Portability and Accountability Act or HIPAA, Civil Rights Act, Age Discrimination Act, Rehabilitation Act of 1973, Americans with Disabilities Act, Genetic Information Nondiscrimination Act of 2008), with CMS instructions, with KFHP-NW's policies and procedures, with applicable elements of KFHP-NW's compliance plan (including, without limitation, reporting of compliance issues, cooperation with KFHP-NW's routine monitoring and auditing of providers, and annual training and education, e.g., related to fraud, waste and abuse), and with applicable contractual obligations under KFHP-

NW's Medicare Advantage contract, as amended from time to time. In the event of changes to the governing laws, regulations, or CMS requirements applicable to the Medicare Advantage program, this Exhibit shall be superseded to the extent required by any such later required changes. Provider shall cooperate, assist and provide records, data and information, as requested by KFHP-NW or Network, for KFHP-NW's compliance with Medicare requirements.

A. Provider shall provide information to KFHP-NW about disclosure of MA Members' Protected Health Information ("PHI," as defined by HIPAA) to entities outside the United States so that KFHP-NW may complete CMS's required Offshore Subcontractor Information and Attestation form; and if Provider discloses MA Members' PHI to entities outside the United States, Provider shall inform KFHP-NW of the fact of such disclosures within 15 days of contract execution or amendment, shall implement reasonable security policies and procedures auditable by KFHP-NW to protect such PHI, and shall report actual or suspected security breaches to KFHP-NW.

B. Provider acknowledges that funds received from KFHP-NW and/or Network are in whole or in part derived from federal funds.

C. Provider shall also cooperate with KFHP-NW's grievance and appeals procedures for MA Members.

D. If Provider engages in any marketing activities related to MA Members or the Medicare Advantage program (including distribution of any materials related to the Medicare Advantage program), Provider shall comply with all applicable Medicare Advantage marketing rules.

**13. Credentialing.** [42 CFR §422.204, §422.112(a)(5)] Provider agrees to cooperate with KFHP-NW's credentialing process for providers rendering Covered Services to MA Members (including recredentialing at least every 3 years). Provider agrees that KFHP-NW will review the credentials of Provider and (as applicable) its medical professionals or allow KFHP-NW to review, approve and audit Provider's credentialing process.

**14. Access to Services.** [42 CFR §§422.100(b)&(g), §§422.112(a)(1),(3),(6),(7),(8), §422.110(a), §422.206(a)(2), MMCM Ch. 11, §100.4] Covered Services shall be available and accessible in a timely manner, during hours of operation convenient to the population served, and in a manner that does not discriminate against MA Members. Provider shall not discriminate against MA Members on the basis of health status (including medical condition, claims experience, receipt of health care, medical history, genetic information, evidence of insurability, conditions arising out of acts of domestic violence and disability), race, ethnicity, national origin, religion, sex, age, mental or physical disability, sexual orientation, or source of payment. Services and information about treatment options shall be provided to MA Members in a culturally competent manner, including the option of no treatment, and with appropriate assistance for MA Members with limited communication skills and disabilities. Provider shall allow direct access (a) for all MA Members to influenza vaccines and (b) for women MA Members to screening mammography and women's health specialists for women's routine and

preventive health care services. KFHP-NW shall assume financial responsibility for emergency and urgently needed services to MA Members in accordance with applicable law and health benefit plan rules, regardless of whether there is a prior authorization for the services.

**15. Quality Assurance.** [42 CFR §422.112(b)(5), §422.152, §§422.504(a)(3)(iii)&(5), MMCM Ch. 11, §100.4] Provider shall participate in and cooperate with KFHP-NW's quality assurance and improvement programs, including cooperating with any independent or external review organization retained by KFHP-NW as part of its quality assurance and improvement programs. Provider shall render Covered Services in a manner consistent with professionally recognized standards of care. Provider shall inform MA Members of specific health care needs that require follow-up and shall provide, as appropriate, training in self-care and other measures for MA Members to promote their own health.

**16. Subcontractors.** [42 CFR §422.504(i)(3)(iii)] If Provider provides Covered Services to MA Members through a subcontractor, Provider shall require such subcontractor to provide Services to MA Members consistent with KFHP-NW's contractual obligations.

**17. Encounter Reporting.** [42 CFR §422.310] In the event Provider does not submit standard claims for payment, Provider shall provide the information necessary for KFHP-NW to report to CMS all encounters for MA Members on a standard CMS 1500 or UB-04 form (or its successor form).

**18. Hospital Provisions.** [42 CFR §422.620] If Provider is a hospital, Provider shall provide MA Members with advance notice of hospital discharge appeal rights and cooperate with KFHP-NW and/or the applicable Quality Improvement Organization regarding appeals or grievances related to the discharge.

**19. Physician Provisions.** [42 CFR §422.208(c), §422.202(d)(1), MMCM Ch. 11, §100.4] Where Provider is a physician or physician group: (a) if the compensation arrangement places physician(s) at "substantial financial risk" as defined under the Physician Incentive Plan rules, the parties shall comply with such rules; and (b) if this Agreement is suspended or terminated, physician(s) shall be given written notice of the reasons for suspension or termination and, if applicable, the right to appeal.

## **B. Federal Employee Health Benefits Program**

Kaiser Foundation Health Plan of the Northwest ("KFHP-NW") has entered into a contract with the U.S. Office of Personnel Management ("OPM") to provide or arrange health care services for persons enrolled in the Federal Employees Health Benefits Program ("FEHBP"). KFHP-NW has contracted with Network to provide certain services under such FEHBP contract. OPM and KFHP-NW require Network to include the provisions of this Section B of this Exhibit in any subcontracts. This Section B is incorporated by reference into and made part of the Health Care Services Agreement ("Agreement") with respect to Services rendered to Members enrolled in FEHBP ("FEHBP Members"). In the event of a conflict or inconsistency with any term or

condition in the Agreement relating to Services rendered to FEHBP Members, this Section B shall control.

Network shall itself, or shall cause KFHP-NW to, satisfy the obligations of KFHP-NW under Section B of this Exhibit. With respect to FEHBP Members, KFHP-NW is the entity ultimately responsible for the obligations under this Section B.

1. **Service Obligations.** [FEHBP contract §§1.9, 1.11, 1.20, and 1.27] Provider and its health care providers shall cooperate with KFHP-NW quality standards, implementation of patient safety improvement programs, and disaster recovery plans and assist KFHP-NW with collection of data for quality assurance records.
2. **Hold Harmless.** [FEHBP contract §2.9] In the event of (a) insolvency of KFHP-NW, Network or of Provider, or (b) KFHP-NW's, Network's or Provider's inability to pay expenses for any reason, Provider shall not look to FEHBP Members for payment, and shall prohibit health care providers from looking to FEHBP Members for payment.
3. **Billing and Payment.** [FEHBP contract §§2.3(g), 2.6(b), and 2.11] Provider shall cooperate with KFHP-NW and Network in the performance of its obligations under the FEHBP contract to administer and coordinate benefits, pay claims and recoup erroneous payments (for which no time limit applies to such recoupments). Provider shall submit claims on the appropriate CMS 1500 form or UB-04 form (or the appropriate successor form) and shall make all reasonable efforts to submit claims electronically.
4. **Termination of FEHBP Contract.** [FEHBP contract §4.59] If the FEHBP contract is terminated by OPM, the Agreement and all subcontracts shall be terminated with respect to FEHBP Members, and the parties shall assign to the government, as directed by OPM, all right, title, and interest of KFHP-NW under the Agreement and subcontracts terminated.
5. **Continuation of Care.** [FEHBP contract §1.24] In the event KFHP-NW terminates its FEHBP contract with OPM or terminates this Agreement other than for cause, Provider, KFHP-NW, and Network agree that specialized care shall continue to be rendered and paid under the terms of this Agreement for those FEHBP Members who are undergoing treatment for a chronic or disabling condition or who are in the second or third trimester of pregnancy for up to 90 days, or through their postpartum period, whichever is later. Provider shall also promptly transfer all medical records to the designated new provider during or upon completion of the transition period, as authorized by the FEHBP Member and shall give all necessary information to KFHP-NW and Network for quality assurance purposes.
6. **Confidentiality.** [FEHBP contract §1.6(b)] Provider shall hold confidential all medical records of FEHBP Members, and information relating thereto, except (a) as may be reasonably necessary for administration of the FEHBP contract, (b) as authorized by the FEHBP Member or his or her guardian, (c) as disclosure is necessary to permit government officials having authority to investigate and prosecute alleged civil or criminal actions, (d) as necessary to audit the FEHBP contract, (e) as necessary to carry out the coordination of benefit provisions of the

FEHBP contract, and (f) for bona fide medical research or educational purposes (only if aggregated).

**7. Maintenance and Audit of Records.** [FEHBP contract §§5.7 and 48 CFR §§2.101, 52.215-2] OPM and other government officials have the right to inspect and evaluate the work performed or being performed under the FEHBP contract, records involving work or transactions related to the FEHBP contract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If government officials or their authorized representatives request access, inspection or evaluation of such Provider records or premises, Provider shall cooperate by providing access to records and facilities until six years after final payment or settlement under the FEHBP contract.

**8. Notice of Significant Events.** [FEHBP contract §1.10 and 48 CFR §1652.222-70] Provider agrees to notify KFHP-NW and Network of any Significant Event within seven business days after the Provider becomes aware of it. A “Significant Event” is any occurrence or anticipated occurrence that might reasonably be expected to have a material effect upon Provider’s ability to meet its obligations under the Agreement.

**9. Compliance.** [FEHBP contract §§1.20, 5.5, 5.47, and 5.56 and 48 CFR §52.203.7] Provider and KFHP-NW shall comply with the Health Care Consumer Bill of Rights (at <http://www.opm.gov/insure/archive/health/cbrr.htm>), as amended from time to time. Provider and its health care providers shall comply with the Anti-Kickback Act and its implementing regulations and shall not pay any person for influencing or attempting to influence a government entity or employee. Neither KFHP-NW nor Network shall be liable for payment to Provider for services rendered by a provider debarred, excluded or suspended from participation in any federal program. In addition, as requested, Provider shall cooperate with, assist, and provide information to KFHP-NW as needed for KFHP-NW’s compliance with all FEHBP contract requirements.

**10. Health Information Technology.** [FEHBP contract §1.27] As Provider implements, acquires, or upgrades health information technology systems, it shall use reasonable efforts to utilize, where available, certified health information technology systems and products that meet interoperability standards recognized by the Secretary of Health and Human Services (“Interoperability Standards”), have already been pilot-tested in a variety of live settings, and demonstrate meaningful use of health information technology in accordance with the HITECH ACT. Provider shall also encourage its subcontracted providers to comply with applicable Interoperability Standards.

**11. Licensure and Other Credentials.** [FEHBP contract §1.9(f)] Provider shall require that all physicians providing Services to FEHBP Members comply with KFHP-NW’s credentialing requirements.

## EXHIBIT

### NATIONAL COMMITTEE FOR QUALITY ASSURANCE (“NCQA”) REQUIRED PROVISIONS

This Exhibit is incorporated by reference into and made part of the Agreement with respect to Services rendered to Members of Kaiser Foundation Health Plan of the Northwest (“KFHP-NW”), as required by NCQA. Network shall itself, or shall cause KFHP-NW to, satisfy the obligations of KFHP-NW under this Exhibit. With respect to Members of KFHP-NW, KFHP-NW is the entity ultimately responsible to NCQA.

1. Quality Improvement. Provider shall participate in KFHP-NW’s Quality Improvement (“QI”) program, including cooperating with QI activities, providing applicable performance data, and tracking and regular reporting on mutually agreed upon quality indicators, all in accord with KFHP-NW’s expectations and NCQA standards.
2. Communications with Members. Provider’s physicians and other personnel licensed or certified to provide services to Members hereunder may freely communicate with a Member or a Member’s authorized representatives about the Member’s treatment options, without regard to benefit coverage limitations, while maintaining confidentiality consistent with the confidentiality provisions set forth in this Agreement.
3. Utilization Management Decisions. Utilization management decision-making is based on appropriateness of care and service and existence of coverage. Individuals responsible for utilization management decision-making do not receive financial incentives that specifically reward them for issuing denials of coverage or service, or that encourage decisions that result in underutilization.
4. Credentialing. Provider shall comply, and shall cause its physicians and other personnel to comply, with KFHP-NW’s credentialing requirements. KFHP-NW retains the right, based on quality issues, to approve new practitioners, providers and sites and to terminate or suspend the right of individual practitioners, providers or sites to treat Members.
5. Confidentiality. Provider shall maintain the confidentiality of Member information and records, and all other protected health information, in compliance with the confidentiality provisions set forth in this Agreement and KFHP-NW’s Policies regarding protected health information. Data shared with employers, whether self-insured or insured, shall not implicitly or explicitly identify a Member without the written consent of the Member, except as permitted by law.
6. Site Visits and Medical Records Reviews. Provider shall permit and cooperate with, at reasonable times with reasonable notice, initial and follow-up inspection of its site(s) by representatives of KFHP-NW, Network, NCQA and other accrediting or licensing organizations on a biannual basis or more frequently as requested by KFHP-NW. Provider shall cause all physicians and other personnel to permit and cooperate with such inspections and medical record reviews.

7. Subcontracts. Provider shall require all provisions of this Exhibit to be included in any contract or agreement between Provider and any subcontractor providing services for Members.

September 12, 2013

Board of County Commissioner  
Clackamas County

Members of the Board:

Approval of Amendment #01 with Multnomah County – Healthy Columbia Willamette, Outline roles and responsibilities for the four-county community needs assessment.

<b>Purpose/Outcomes</b>	Define roles, responsibilities and funding obligations between the founding hospitals, public health, and coordinated care organization participants in the continuing assessment and reporting of health care needs in our four-county community.
<b>Dollar Amount and Fiscal Impact</b>	Amendment #01 increases the contract by \$30,000. Bringing the maximum contract value to \$44,194.44
<b>Funding Source</b>	252-3210-8150 Public Health Program Admin
<b>Safety Impact</b>	None
<b>Duration</b>	Effective June 01, 2013 and terminates on January 31, 2015
<b>Previous Board Action</b>	The original agreement did not go before the Board.
<b>Contact Person</b>	Dana Lord, Public Health Interim Manager – 503-655-8405
<b>Contract No.</b>	1135

**BACKGROUND:**

Clackamas County Public Health Division (CCPHD) partnering with other hospitals, public health departments, and coordinated care organizations with the four-county region comprised of Washington, Multnomah, Clackamas and Clark Counties to maximize resources, assess community health needs and improve the overall well being of the communities.

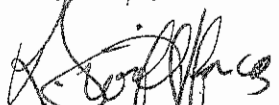
Amendment #01 adds new partners, updated funding obligations, and defines payment terms for Participants' financial contributions. Amendment #01 replaces the original agreement in its entirety

This contract is effective June 01, 2013 and continues through January 31, 2015. This contract has been reviewed by County Counsel on July 08, 2013. The contract is being processed retroactively due to language negotiations.

**RECOMMENDATION:**

Staff recommends the Board approval of this agreement and authorizes Cindy Becker, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,

  
Cindy Becker, Director



## INTER-AGENCY AGREEMENT

Contract Number 1112161-1

This is an Agreement between "Participants." Washington County, Multnomah County, Clackamas County, Clark County, Legacy Emanuel, Legacy Good Samaritan, Providence Portland, Legacy Mount Hood, Adventist Medical Center, Oregon Health & Sciences University, Providence Milwaukie, Kaiser Sunnyside, Legacy Meridian Park, Providence Willamette Falls, Tuality Healthcare, Providence St. Vincent, PeaceHealth Southwest Washintong Medical Center, and Legacy Salmon Creek in Clark County, Family Care and Health Share of Oregon as described in the Healthy Columbia Willamette Memorandum of Understanding, attached and herein incorporated by reference as Attachment A. Each Participant is a separate party to this contract.

### PURPOSE:

The purpose of this agreement is to define payment terms for Participants' financial contributions for the work described in Attachment A. Amendment #1 adds new partners and updates funding obligations. This amendment replaces the previous agreement in its entirety.

The parties agree as follows:

1. **TERM** The term of this agreement shall become effective June 1, 2013 to January 31, 2015. This agreement may be renewed at the end of the initial three year term for additional one year terms.
2. **RESPONSIBILITIES OF ALL PARTIES** Each signing party agrees to pay the Community Convener, as described in Attachment A, the amounts listed in the Financing section of the MOU. Attachment A describes payments due from each party.
3. **TERMINATION** This agreement may be terminated by either party upon 60 day's written notice.
4. **INDEMNIFICATION** Each party shall be responsible all liability, loss and costs arising out of or resulting from the acts of its officers, employees and agents in the performance of this agreement.
5. **INSURANCE** Each party shall be responsible for providing worker's compensation insurance as required by law. Parties shall not be required to provide or show proof of any other insurance coverage.
6. **ADHERENCE TO LAW** Each party shall comply with all federal, state and local laws and ordinances applicable to this agreement.
7. **NON-DISCRIMINATION** Each party shall comply with all requirements of federal and state civil rights and rehabilitation statutes and local non-discrimination ordinances.

8. **ACCESS TO RECORDS** Each party shall have access to the books, documents and other records of the others which are related to this agreement for the purpose of examination, copying and audit, unless otherwise limited by law.
9. **SUBCONTRACTS AND ASSIGNMENT** Parties will not subcontract or assign any part of this agreement without the written consent of the other parties.
10. **THIS IS THE ENTIRE AGREEMENT** This Agreement constitutes the entire Agreement between the parties. This Agreement may be modified or amended only by the written agreement of the parties.
11. **ADDITIONAL TERMS AND CONDITIONS:**
  - a. Payment to the Community Convener is due within 30 days upon invoice receipt from the Community Convener.
  - b. Each party agrees to the two year financial commitment outlined in Attachment A. Termination by a party does not change or end that party's commitment to pay the amounts required in each year of the agreement.
12. **DEBT LIMITATION CLAUSE** This agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein that would conflict with law are deemed inoperative to that extent.

**PARTICIPANT SIGNATURE**

\_\_\_\_\_  
Family Care                      Date

\_\_\_\_\_  
Health Share of Oregon      Date

\_\_\_\_\_  
Washington County          Date

\_\_\_\_\_  
Multnomah County            Date

\_\_\_\_\_  
Clackamas County            Date

\_\_\_\_\_  
Clark County                      Date

\_\_\_\_\_  
Legacy Emanuel                Date

\_\_\_\_\_  
Legacy Good Samaritan      Date

\_\_\_\_\_  
Providence Portland          Date

\_\_\_\_\_  
Legacy Mount Hood            Date

\_\_\_\_\_  
Adventist Medical Center    Date

\_\_\_\_\_  
Oregon Health & Science University

\_\_\_\_\_  
Providence Milwaukie        Date

\_\_\_\_\_  
Kaiser Sunnyside              Date

\_\_\_\_\_  
Legacy Meridian Park        Date

\_\_\_\_\_  
Providence Willamette Falls    Date

\_\_\_\_\_  
Tuality Healthcare            Date

\_\_\_\_\_  
Providence St. Vincent        Date

\_\_\_\_\_  
PeaceHealth Southwest        Date

\_\_\_\_\_  
Washington Medical Center    Date

\_\_\_\_\_  
Legacy Salmon Creek          Date

**ATTACHMENT A**  
**Healthy Columbia Willamette Memorandum of Understanding**  
**May 28, 2013**

This Memorandum of Understanding describes project terms, roles and responsibilities between founding hospital, public health, and coordinated care organization participants (participants) in the four-county region comprised of Washington, Multnomah, Clackamas and Clark counties (a list of participants and proposal is attached).

**Terms of Agreement**

- Participating hospital, public health and coordinated care participants govern all decision-making for the needs assessment process.
- A Community convener/legal entity has been selected by participants through a request for proposal and will continue to provide facilitation and central management. Each participant will provide the names and contact information for respective principal or decision-making executive herein.
- Criteria to select additional participants may be developed and include reevaluation of funding model.
- Participants will use a common survey instrument and dashboard; Healthy Communities Institute (HCI) Community Health Needs Assessment (CHNA) web system, a regional site for all partners. Carried over from year one, Clackamas County Health Department and Tuality Healthcare have individual sites that link to the regional one. Funding will be based on participation of 20 organizations. Costs will be distributed equally among counties and include an additional 3% for year 2. Participation costs are allocated among the participating hospitals according to the original participation formula as determined by OAHHS plus an additional 3% for year 2.
- Funding includes staffing, management and oversight to be provided by community convener/legal entity.
- Coordinated care organizations (CCO's), due to their later start date will pay a total support fee of \$80,000 per year. This fee will be divided between the CCO's based upon their mutually agreed upon methodology. Payments are due at the same time as the original collaborative participants.
- Funding includes staffing, management and oversight to be provided by community convener/legal entity.
- This agreement's term begins June 1, 2013 and continues through January 30, 2015.
- The working agreement may be terminated by any party hereto (including any participant) with 60-days advance written notice.

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

Organization: \_\_\_\_\_

**Organization Contact Information**

**(1) Principal**

Name: Cindy Becker

Email: cbecker@co.clackamas.or.us

Phone number: 503.657.5796

Assistant: Linda Anderson

**(2) Project Lead**

Name: Dana Lorel

Email: dana.lore@co.clackamas.or.us

Phone number: 503.655-8405

Assistant: Pam Douglas

**Definitions:**

**Community Convener (CCO):** Qualified organization that will contract with the Healthy Communities Institute vendor and serve as the convener and manage the community health needs assessment work. This organization will provide senior level leadership and staffing to manage the process.

**Common Survey Instrument and Dashboard:** The participants have selected the Healthy Communities Institute (HCI) Community Health Needs Assessment (CHNA) web system as a common assessment framework. This CHNA web system brings together in one system, data from multiple geographies and disparate sources. The web system provides a shared and common dataset that are continually updated, making ongoing tracking possible.

**Participants (Participants):**

- 1) Legacy Emanuel
- 2) Legacy Good Samaritan
- 3) Providence Portland
- 4) Legacy Mount Hood
- 5) Adventist Medical Center
- 6) Oregon Health & Science University
- 7) Providence Milwaukie
- 8) Kaiser Sunnyside
- 9) Legacy Meridian Park
- 10) Providence Willamette Falls
- 11) Tuality Healthcare
- 12) Providence St. Vincent
- 13) Multnomah County Health Department
- 14) Clackamas County Health Department
- 15) Washington County Health Department
- 16) PeaceHealth Southwest Washington Medical Center
- 17) Legacy Salmon Creek in Clark County
- 18) Clark County Public Health Department
- 19) Health Share of Oregon
- 20) Family Care

**Four-County Region:** Washington, Multnomah, Clackamas, and Clark counties.

**Principal:** Representative of a founding organization with decision making authority who serves on the governing body.

**Project lead:** Representative of the founding organization responsible for carrying out the needs assessment work and participating on the working committee.

**Stakeholder:** Person, group, organization, or system who affects or can be affected by the health of the community or actions of the participants' assessment work.

**Healthy Columbia Willamette Proposal**

**April 8, 2013**

The following is an overview of the proposal to develop a single health needs assessment across hospital, public health and coordinated care organization participants in the four-county region comprised of Washington, Multnomah, Clackamas and Clark counties (Four-County Participants).

**The Vision**

The vision is to align efforts to develop a simultaneously accessible "living" or real-time assessment of community health in the region. This unified approach will eliminate

duplicate efforts and lead to effective prioritization of needs and enable joint efforts for implementing and tracking improvement activities.

#### Common Survey Instrument and Dashboard

The participants have selected the Healthy Communities Institute (HCI) Community Health Needs Assessment (CHNA) web system as a common assessment framework. This CHNA web system brings together in one system, data from multiple geographies and disparate sources. The web system provides a shared and common dataset of 75-100 indicators that are continually updated, making ongoing tracking possible. The common web system frees staff time to focus on processes related to appropriate collaborations and programmatic activity necessary for advancing health in the region. This standard survey instrument and dataset has been vetted by representative epidemiologists and hospital community benefit leaders to meet the requirements of the four-county region.

#### Participating Organizations and Geography

##### *1 Convening Organization "Community Convener" (Multnomah County Health Department)*

The participants and stakeholders have learned from experience that it is essential for the success of the project to engage an organization to serve as a neutral convener. This organization, referred to as "community convener," is a qualified organization that will centrally manage the community needs assessment process. This organization will also serve as the legal entity for vendor contracting and management and provide senior level leadership to ensure ongoing success. This organization will have expertise in public health, research and a proven track record of working collaboratively with participants and stakeholders in the four counties, as well as the state.

##### *20 Participants:*

(OR) -- Legacy Emanuel, Legacy Good Samaritan, Providence Portland, Legacy Mount Hood, Adventist Medical Center, Oregon Health & Science University, Providence Milwaukie, Kaiser Sunnyside, Legacy Meridian Park, Providence Willamette Falls in Clackamas County, Tuality Healthcare and Providence St. Vincent in Washington County, Multnomah County Health Department, Clackamas County Health Department, Washington County Health Department;

(WA) – PeaceHealth Southwest Washington Medical Center and Legacy Salmon Creek in Clark County, Clark County Health Department, Family Care and Health Share of Oregon.

##### *4 Counties:*

(OR) Clackamas, Multnomah, Washington

(WA) Clark County

### **Participant Commitment**

Representative organizations will commit to participate in this project throughout the term of this Agreement. The current term, subject to any parties ability to terminate without cause as specified above, is based on a three-year financial/working commitment. Each participant organization will contribute a designated project leader to work with the convening organization to implement and sustain the project. A reevaluation will occur at the end of the initial three year period to determine ongoing needs.

### **Governance**

Principals of the representative organizations provide oversight and governance of the project. The consensus model is used for decision-making.

### **Administration, Roles and Responsibilities**

For this shared CHNA system, each representative organization in the Healthy Columbia Willamette will identify one point of contact/local administrator for their site-specific contribution to the shared needs assessment. This individual will participate in regular meetings and will be responsible to manage local content and indicators entered into the shared system. Each health department, hospital or hospital system or coordinated care organization is able to embed the common dashboard and CHNA system in their own website; each health department/hospital or system or coordinated care organization will have the ability to select their specific county/service area for the default initial dashboard view.

### **Community Convener**

The most important role of the community convener is to serve as the legal entity for the project. The community convener must have a strong track record of effective collaboration in order to engage participants and lead processes to gather primary research data, such as key informant interviews and focus groups. The convening organization provides research assistance, reports and serves as a repository of public health data and information for the region.

### **Four-County Participants**

Public health, hospital and coordinated care organization participants attend meetings, provide expertise and make decisions on priority areas and jointly develop the region's CHNA.

### **HCI CHNA Web System**

The HCI system provides a dashboard of indicators that is constantly updated for the four counties: (OR) Clackamas, Multnomah, Washington, (WA) Clark County; indicators include a combination of county, zip code and census tract data to compare indicators across locations; view disparities by race/ethnicity, age group, and gender; to compare current values to HP 2020 goals; to examine demographic



variables by locations. A template outline for a community health assessment; listing of data and sources supplied in the dashboard; addition of related content/linked reports and existing web links; Priority Trackers allow participants to summarize priority areas, see the current values, and dynamically track progress.

### **Financing**

The following outlines a financing proposal for Healthy Columbia Willamette community health needs assessment work. The financing proposal assumes participation from 20 organizations: 14 hospitals with allocation based on the number of Portland-Metro discharges [actual discharges based on prior year's data, current year's data, or estimated discharges] four county health departments at equal participation levels and two coordinated care organizations.

### **Selecting a Community Convener**

A community convener was identified through an open RFP process. The participants jointly developed and issued the RFP that was posted publically. Selection was based on consensus, using mutually agreed-upon evaluation criteria. Multnomah County Health Department was engaged and will continue to serve as the legal entity to contract with the HCI vendor and to lead, manage and facilitate the process to develop the multi-county needs assessment.

**PARTICIPANT SIGNATURE**

\_\_\_\_\_  
**Family Care**                      **Date**

\_\_\_\_\_  
**Health Share of Oregon**                      **Date**

\_\_\_\_\_  
**Washington County**                      **Date**

\_\_\_\_\_  
**Multnomah County**                      **Date**

\_\_\_\_\_  
**Clackamas County**                      **Date**

\_\_\_\_\_  
**Clark County**                      **Date**

\_\_\_\_\_  
**Legacy Emanuel**                      **Date**

\_\_\_\_\_  
**Legacy Good Samaritan**                      **Date**

\_\_\_\_\_  
**Providence Portland**                      **Date**

\_\_\_\_\_  
**Legacy Mount Hood**                      **Date**

\_\_\_\_\_  
**Adventist Medical Center**                      **Date**

\_\_\_\_\_  
**Oregon Health & Science University**

\_\_\_\_\_  
**Providence Milwaukie**                      **Date**

\_\_\_\_\_  
**Kaiser Sunnyside**                      **Date**

\_\_\_\_\_  
**Legacy Meridian Park**                      **Date**

\_\_\_\_\_  
**Providence Willamette Falls**                      **Date**

\_\_\_\_\_  
**Tuality Healthcare**                      **Date**

\_\_\_\_\_  
**Providence St. Vincent**                      **Date**

\_\_\_\_\_  
**PeaceHealth Southwest**                      **Date**

\_\_\_\_\_  
**Washington Medical Center**                      **Date**

\_\_\_\_\_  
**Legacy Salmon Creek**                      **Date**

September 12, 2013

Board of County Commissioner  
 Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement with the Oregon Health Authority for the Adult Mental Health Initiative (AMHI)

<b>Purpose/Outcomes</b>	The Adult Mental Health Initiative is designed to promote effective use of mental health services to minimize use of long term institutional care.
<b>Dollar Amount and Fiscal Impact</b>	The maximum value of the agreement is \$1,155,720 for two years. This is a revenue agreement.
<b>Funding Source</b>	Oregon Health Authority - no County General Funds are involved.
<b>Safety Impact</b>	None
<b>Duration</b>	Effective July 1, 2013 and terminates on June 30, 2015
<b>Previous Board Action</b>	The previous agreement was approved by the Board of County Commissioners on August 4, 2011 - agenda item 08011-A4
<b>Contact Person</b>	Jill Archer, Director – Behavioral Health Division – (503)742-5336
<b>Contract No.</b>	6387

**BACKGROUND:**

AMHI is designed to promote effective use of facility-based mental health treatment, increase care coordination and increase accountability at a local and state level. The initiative will support adults with mental illness in the least restrictive environment possible and minimize use of long term institutional care.

This is a revenue agreement with a value of \$1,155,720. The agreement is effective July 1, 2013 and terminates June 30, 2015. This agreement has been reviewed and approved by County Counsel. The agreement is retroactive because the County received the document late from the State and was reviewed internally.

**RECOMMENDATION:**

Staff recommends the Board approval of this agreement and authorizes Cindy Becker, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,



Cindy Becker, Director



**Agreement Number 142491**

**STATE OF OREGON  
INTERGOVERNMENTAL AGREEMENT**

In compliance with the Americans with Disabilities Act, this document is available in alternate formats such as Braille, large print, audio recordings, Web-based communications and other electronic formats. To request an alternate format, please send an e-mail to [dhs-oha.publicationrequest@state.or.us](mailto:dhs-oha.publicationrequest@state.or.us) or call 503-378-3486 (voice) or 503-378-3523 (TTY) to arrange for the alternative format.

This Agreement is between the State of Oregon, acting by and through the Oregon Health Authority, hereinafter referred to as "OHA," and

**Clackamas County  
Acting by and through its Behavioral Health Division  
2051 Kaen Road #367  
Oregon City, OR 97045  
Telephone: 503-742-5336  
Facsimile: 503-742-5311  
E-mail address: [jarcher@clackamas.us](mailto:jarcher@clackamas.us)**

hereinafter referred to as "County."

Work to be performed under this Agreement relates principally to the OHA's

**Addictions and Mental Health Division  
500 Summer Street NE, E86  
Salem, OR 97301  
Agreement Administrator: Karen Wheeler or delegate  
Telephone: 503-945-6191  
Facsimile: 503-378-8467  
E-mail address: [karen.wheeler@state.or.us](mailto:karen.wheeler@state.or.us)**

**1. Effective Date and Duration.**

Upon signature by all applicable parties, this Agreement shall be effective on the later of: (i) July 1, 2013 or, (ii) when required, the date this Agreement is approved by Department of Justice, regardless of the date it is actually signed by all other parties. Unless extended or terminated earlier in accordance with its terms, this Agreement shall terminate on June 30, 2015. Agreement termination or expiration shall not extinguish or prejudice DHS' right to enforce this Agreement with respect to any default by Agency that has not been cured.

**2. Agreement Documents.**

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

- (1) Exhibit A, Part 1: Statement of Work
- (2) Exhibit A, Part 2: Payment and Financial Reporting
- (3) Exhibit A, Part 3: Special Terms and Conditions
- (4) Exhibit B: Standard Terms and Conditions
- (5) Exhibit C: Subcontractor Insurance Requirements
- (6) Exhibit D: Required Federal Terms and Conditions
- (7) Exhibit E: Financial Pages

There are no understandings, agreements or representations, oral or written, regarding this Agreement that are not specified in it.

- b. In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: this Agreement without Exhibits, Exhibits D, A, B, C and E.
- c. For purposes of this Agreement, "Work" means specific work to be performed or services to be delivered by County as set forth in Exhibit A.

**3. Consideration.**

- a. The maximum not-to-exceed amount payable to County under this Agreement, which includes any allowable expenses, is as described in Exhibit E., "Financial Pages". OHA will not pay County any amount in excess of the not-to-exceed amount for completing the Work, and will not pay for Work until this Agreement has been signed by all parties.
- b. OHA will pay only for completed Work under this Agreement, and may make interim payments as provided for in Exhibit A.

**4. Vendor or Sub-Recipient Determination.**

In accordance with the State Controller's Oregon Accounting Manual, policy 30.40.00.102, OHA's determination is that:

County is a sub-recipient; OR  County is a vendor.

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

**5. County Data and Certification**

- a. County shall provide information set forth below. This information is requested pursuant to ORS 305.385.

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

County Name (exactly as filed with the IRS: Clackamas County

Street address: 2051 Kaen Road, # 367

City, state, zip code: Oregon City, OR 97045

Email address: emilyzwe.clackamas.us

Telephone: (503) 742-5318 Facsimile: (503) 742-5311

Federal Employer Identification Number: 93-6002286

**Proof of Insurance:**

Workers' Compensation Insurance Company: Self insured/Self administered

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

The above information must be provided prior to Agreement approval. County shall provide proof of Insurance upon request by OHA or OHA designee.

- b. **Certification.** The County acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any "claim" (as defined by ORS 180.750) that is made by (or caused by) the County and that pertains to this Agreement or to the project for which the Agreement work is being performed. The County certifies that no claim described in the previous sentence is or will be a "false claim" (as defined by ORS 180.750) or an act prohibited by ORS 180.755. County further acknowledges that in addition to the remedies under this Agreement, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the County. Without limiting the generality of the foregoing, by signature on this Agreement, the County hereby certifies that:

- (1) Under penalty of perjury the undersigned is authorized to act on behalf of County and that County is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620;

- (2) The information shown in this Section 5., County Data and Certification , is County's true, accurate and correct information;
  - (3) To the best of the undersigned's knowledge, County has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts;
  - (4) County and County's employees and agents are not included on the list titled "Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at:  
<http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>;
  - (5) County is not listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal procurement or Nonprocurement Programs" found at:  
<https://www.sam.gov/portal/public/SAM/>; and
  - (6) County is not subject to backup withholding because:
    - (a) County is exempt from backup withholding;
    - (b) County has not been notified by the IRS that County is subject to backup withholding as a result of a failure to report all interest or dividends; or
    - (c) The IRS has notified County that County is no longer subject to backup withholding.
- c. County is required to provide its Federal Employer Identification Number (FEIN). By County's signature on this Agreement, County hereby certifies that the FEIN provided to OHA is true and accurate. If this information changes, County is also required to provide OHA with the new FEIN within 10 days.

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

**COUNTY: YOU WILL NOT BE PAID FOR WORK PERFORMED PRIOR TO NECESSARY STATE APPROVALS**

**6. Signatures:**

**Clackamas County Acting by and through its Behavioral Health Division**

**By:**

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Authorized Signature	Title	Date
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**State of Oregon acting by and through its Oregon Health Authority pursuant to ORS 190**

**By:**

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Authorized Signature	Title	Date
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**Approved for Legal Sufficiency:**

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Approved via email by Jeffrey Wahl		6/14/2013
Assistant Attorney General		Date

**OHA Program Review:**

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Approved via email by Sheryl Derting		6/13/2013
Authorized Signature	Title	Date

**Office of Contracts and Procurement:**

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Contract Specialist		Date
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## EXHIBIT A

### Part 1 Statement of Work

#### 1. Purpose:

County shall provide oversight and care coordination of individuals whose county of responsibility falls within Clackamas County, or who are members and individuals assigned to Clackamas County by OHA to ensure access to services consistent with the clinical needs of the individual and the purpose of the Adult Mental Health Initiative (AMHI). County of responsibility is defined as the county in which the person most recently maintained a postal address. Incarceration or placement in the state hospital or a licensed 24-hour facility is not to be used to make this determination.

#### 2. Tasks:

County shall provide the following services:

Service Name: MHS SPECIAL PROJECTS

Service ID Code: MHS 37

Specialized Exhibit: ADULT MENTAL HEALTH INITIATIVE (AMHI)

##### (1) Service Description

The Adult Mental Health Initiative (AMHI) is designed to promote more effective utilization of current capacity in facility based treatment settings, increase care coordination and increase accountability at a local and state level. It is also designed to promote the availability and quality of individualized community-based services and supports so that adults with mental illness are served in the least restrictive environment possible and use of long term institutional care is minimized.

##### **Target Population:**

County shall provide oversight and care coordination of clients within the target population to facilitate access to services consistent with the clinical needs of the client and the purpose of the Adult Mental Health Initiative. County shall maintain and monitor a provider panel that requires written agreements between County and providers, and that has sufficient capacity and expertise to provide adequate, timely and medically appropriate access to services for the target population. The clinical services may be described and funded in other service elements including, but not limited to, MHS 20 Non- Residential Mental Health Services for Adults (General), MHS 24 Regional Acute Psychiatric Inpatient Services, MHS

26 Non-Residential Mental Health Services For Youth and Young Adults In Transition (Designated), MHS 27 Residential Treatment Services for Youth and Young Adults In Transition, MHS 28 Residential Treatment Services, MHS 34 Adult Foster Care Services, MHS 37 MHS Special Projects, and MHS 201 Non-Residential Mental Health Services for Adults (Designated), for clients who are 18 years of age or older.

The target population is individuals who because of mental illness:

- (a) Currently reside at an institution listed in ORS 179.321 and includes patients residing within a Neuro/Gero ward at Oregon State Hospital in Salem, Oregon.
- (b) Currently reside in a licensed community based setting listed in ORS 443.400 and includes licensed programs designated specifically for young adults in transition (YAT).
- (c) Are under a civil commitment pursuant to ORS 426.
- (d) Were under a civil commitment that expired in the past 12 months.
- (e) Would deteriorate to meeting one of the above criteria without treatment and community supports.
- (f) This does not include individuals who are under the jurisdiction of the Psychiatric Security Review Board.

(2) **Performance Requirements**

County shall perform the following responsibilities:

- (a) Supported Housing:
  - i. Develop supported housing resources.
  - ii. Coordinate access, subject to availability of funds, to safe and affordable housing.
  - iii. Management and distribution of Rental Assistance program resources.
  - iv. Promote access to Personal Care 20 Hour Program (PC20) as described in Oregon Administrative Rules and technical assistance documents.
- (b) Exceptional Needs Care Coordination
  - i. Coordinate treatment planning team meetings for clients originating from within County' service area and temporarily residing at a state hospital with the goal of assuring appropriate community-based services and supports are developed and available upon Interdisciplinary

Team (IDT) determination that the client no longer requires hospital level of services. Attend and participate in hospital IDT meetings for each client.

- ii. Ensure administration of the Level of Care Utilization System for Psychiatric and Addiction Services (LOCUS).
- iii. Ensure systemic monitoring of client's need and access to services.
- iv. Ensure clients have access to all appropriate benefits and resources available.

(c) Supported Employment – Assertive Community Treatment

- i. Ensure, subject to availability of funds, both non-Medicaid and Medicaid enrolled clients who are not enrolled in managed care have access to Supported Employment and Assertive Community Treatment (ACT) services as defined below:
  - A. Supported Employment Services are available to clients with serious mental health illness as defined in OAR 309-036-0105(11). Employment specialists assist in obtaining and maintaining employment in the community and in continuing treatment for the client to promote rehabilitation and productive employment. Providers shall use a team approach to engage and retain clients in treatment and provide the supports necessary to promote success at the workplace.
  - B. Assertive Community Treatment (ACT) - A multidisciplinary, team based approach, providing proactive, focused, sustained care and treatment targeted at a defined group of consumers. Services are aimed at maintaining the client's contact with services, reducing the extent of hospital admissions and seeking improvement with social functioning and quality of life. Services are most appropriate for clients with severe and persistent mental health illness and the greatest level of functional impairment.
- ii. Ensure the promotion and coordination of services described in (2)(c)i. above in the community.

(d) Increased Rehabilitative Mental Health Treatment Services

- i. Ensure, subject to availability of funds, both non-Medicaid and Medicaid enrolled clients who are not enrolled in managed care have access to community-based rehabilitative mental health treatment services as defined in and funded through MHS 20.
  - ii. Ensure, subject to availability of funds, the promotion and coordination of services described in (2)(d)i. above in the community.
- (e) Transition Planning and Management
- i. Ensure utilization management of existing residential resources.
  - ii. Ensure residential treatment coordination occurs to assist clients in transitioning between licensed facilities and from licensed facilities to independent living.
  - iii. Provide Oregon Health Authority (OHA), Addictions and Mental Health Division (AMH) with admission and discharge information for clients receiving personal care and rehabilitative mental health services in licensed community-based settings.
- (f) Peer Run and Peer Delivered Services
- i. Promote peer run and peer delivered services
    - A. Peer run and peer delivered services that are provided by individuals who have successfully engaged in their own personal recovery and demonstrate the core competencies for Peer Specialists, as defined by OAR 309-032-1500 through 309-032-1565 which may be revised from time to time.
    - B. These services are provided to individuals who share a similar experience and promote recovery. Peer specialists are compensated for delivering Peer Delivered Services.
    - C. The provider shall maintain policies and procedures that facilitate and document accessibility to a full range of peer run and peer delivered services.

- (g) Recovery-oriented services
  - i. Develop recovery oriented services based on identified individual and community needs that are culturally responsive and geographically accessible.
  - ii. The provider shall maintain policies and procedures that facilitate and document accessibility to a full range of recovery-oriented services.

(3) **Reporting Requirements**

- (a) County shall prepare and submit in a manner approved by the Oregon Health Authority (OHA), Addictions and Mental Health (AMH) Division designated staff the following items for each client served:

- i. Prior Authorization Request Form
- ii. Plan of Care Request
- iii. Level of Care Utilization System (LOCUS) Results
- iv. Discharge Information Form

Items i. through iii. shall be submitted within three (3) calendar days upon admission of the client. Item iv. shall be submitted on the day of discharge of the client.

- (b) County shall prepare and electronically submit the following data within thirty (30) calendar days of the end of each subject month in a format approved by OHA.

AMHI Level of Service Intensity Determination Data that includes:

- i. An eight digit alphanumeric character Medicaid ID number or a nine digit social security number.
- ii. Client's date of birth (00/00/0000)
- iii. Client's gender
- iv. Date of referral
- v. Referral Source
- vi. Date of Determination
- vii. County
- viii. Scores for LOCUS Domains
- ix. Composite LOCUS score.

- x. AMHI eligibility Y/N.
  - xi. Levels of Care recommended. (Note: Base the recommended level of care on both LOCUS data and other data indicative of the client's needs and functioning.)
  - xii. Date the client is determined not to be AMHI eligible or the last day the client is considered AMHI eligible. Field will be blank if the client continues to be AMHI eligible. A blank field will be considered complete.
  - xiii. Type of community services provided for each individual served in unlicensed community settings; and
  - xiv. Additional narrative that may help document the services and supports offered to the individual by the MHO.
- (c) County shall prepare and submit in a manner approved by OHA's AMH Division within sixty (60) calendar days after the end of each subject quarter, an AMHI Statement of Revenue and Expenses.
- (d) Upon OHA's identification of any deficiencies in the County's subcontractor performance under this Agreement, including failure to expend available funding, County shall prepare and submit to OHA an OHA approved corrective action plan (CAP). The CAP shall include the following information:
- i. The name of the sub-contractor responsible for the deficiency;
  - ii. Reason or reasons for the CAP;
  - iii. The date the CAP will become effective;
  - iv. Proposed resolution of the deficiencies identified; and
  - v. Proposed remedies, short of termination, should County's subcontractor not come into compliance within the timeframe set forth in the CAP.

Submit reports to:  
Oregon Health Authority  
Addictions and Mental Health Services Division  
Attention: Contracts Administrator  
500 Summer Street N.E. E86  
Salem, OR 97301-1118

Reports must be prepared using forms and procedures prescribed by OHA.

(4) **Payment Calculation, Disbursement, and Settlement Procedures**

- (a) **Calculation of Payment:** Payments for this special project are intended to be general payments to County for this special project. Accordingly, OHA will not track delivery of special project services or service capacity on a per unit basis except as necessary to verify that the performance requirements set forth above have been met. County is not authorized to bill above the stated amount.

➤ **Performance Payment:**

County will qualify for a performance payment at the end of each fiscal year if it was operational, as defined by serving clients and evidenced by the data reported on the AMHI Level of Service Intensity Determination Data, for at least 180 days per fiscal year and who meet the following performance criteria:

- i. County has documented achievement of 80% of the minimum number of mutually agreed upon qualifying events prior to April 30, 2014 and April 30, 2015; or
  - ii. County has documented achievement of 70% of the minimum number of mutually agreed upon qualifying events prior to April 30, 2014 and April 30, 2015; and
  - iii. County provides to AMH transition dates prior to May 15, 2014 and May 15, 2015 for individuals equal in number to 80% of the minimum number of mutually agreed upon qualifying events. In addition to the date, County must provide evidence that the subsequent level of care contained in the transition plan will be available on the expected date of transition.
- (b) **Disbursement of Payment:** Unless a different disbursement method is specified in that line of the Exhibit E, Financial Pages, OHA will disburse the payments for this special project on a particular line of the Financial Pages to County in substantially equal monthly payments during the period specified in the Financial Pages, subject to the following:
- i. OHA may, upon written request of County, adjust monthly payments.

ii. Upon amendment to the Financial Pages, OHA shall adjust monthly payments as necessary, to reflect changes in the funding for this special project on that line of the Financial Pages.

➤ Performance Payment:

The performance payments for July 1, 2013 through June 30, 2014, and July 1, 2014 through June 30, 2015 are based on achievement of the mutually agreed upon performance targets. County may invoice OHA during the month of June 2014 and June 2015 for a performance payment not to exceed \$28,892.95 each to be paid no later than July 31.

(c) Agreement Settlement: Agreement Settlement will be used to confirm implementation of the special project described herein and satisfaction of the minimum performance requirements, based on data properly reported through reports required or permitted by this special project description or the MHS 37 Service Description.



## **EXHIBIT A**

### **Part 2 Payment and Financial Reporting**

**1. Payment Provisions:**

OHA agrees to pay Contractor for accomplishing the Work required by this Contract, subject to the provisions of Exhibit A, Part 1, Statement of Work and in Exhibit E., "Financial Pages."

**2. Travel and Other Expenses:**

OHA shall not reimburse County separately for any travel or additional expenses under this Contract.

## **EXHIBIT A**

### **Part 3 Special Terms and Conditions**

#### **1. Confidentiality of Client Information**

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

#### **2. Amendments**

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

combination, govern the provision of services provided under this Agreement.

- c. Upon identification, by any party to this Agreement, of any circumstance which may require an amendment to this Agreement, the parties may enter into negotiations regarding the proposed modifications. Any resulting amendment must be in writing and be signed by all parties to the Agreement before the modified or additional provisions are binding on either party. All amendments must comply with Exhibit B, Section 22 "Amendments" of this Agreement.

3. **Background Checks.** The County shall verify that any employee working with clients referred by OHA has not been convicted of any of the following crimes: child abuse, offenses against persons, sexual offenses, child neglect, or any other offense bearing a substantial relation to the qualifications, functions or duties of an employee scheduled to work with OHA clients. The County shall establish verification by:
  - a. Having the applicant as a condition of employment, apply for and receive a criminal history check from a local Oregon State Police (OSP) office, which will be shared with the County, OR
  - b. The County as an employer will contact the local OSP for an "Oregon only" criminal history check on the applicant/employee. The County will need to give to OSP the applicant's name, birth date and social security number.

The County shall determine after receiving the criminal history check, whether the employee has listed convictions, and whether these convictions pose a risk to working safely with clients. If the County notes a conviction from any of the above listed crimes on the applicant/employee's record, and the County chooses to hire the employee/applicant, the County shall confirm in writing, the reasons for hiring the individual.

These reasons shall address how the applicant/employee is presently suitable or able to work with referred clients in a safe and trustworthy manner. The County will place this information, along with the applicant/employee's criminal history check, in the employee's personnel file.

The criminal history check procedures listed above also apply to the County. The County shall establish a personal personnel file and place County's criminal history check in named file for possibility of future OHA review.

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

defined under the Americans with Disabilities Act). Contracted services must reasonably accommodate the cultural, language and other special needs of clients.

## EXHIBIT B

### Standard Terms and Conditions

1. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between the parties that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within a circuit court for the State of Oregon of proper jurisdiction. THE PARTIES, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Except as provided in this section, neither party waives any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. The parties acknowledge that this is a binding and enforceable agreement and, to the extent permitted by law, expressly waive any defense alleging that either party does not have the right to seek judicial enforcement of this Agreement.
2. **Compliance with Law.** Both parties shall comply with laws, regulations and executive orders to which they are subject and which are applicable to the Agreement or to the Work. Without limiting the generality of the foregoing, both parties expressly agree to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations; (b) all state laws requiring reporting of client abuse; (c) ORS 659A.400 to 659A.409, ORS 659A.145 and all regulations and administrative rules established pursuant to those laws in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the Work. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. All employers, including County and OHA, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126.
3. **Independent Contractors.** The parties agree and acknowledge that their relationship is that of independent contracting parties and that County is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.
4. **Representations and Warranties**
  - a. County represents and warrants as follows:
    - (1) **Organization and Authority.** County is a political subdivision of the State of Oregon duly organized and validly existing under the laws of the State of Oregon. County has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder.
    - (2) **Due Authorization.** The making and performance by County of this

Agreement (a) have been duly authorized by all necessary action by County and (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of County's charter or other organizational document and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which County is a party or by which County may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by County of this Agreement.

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

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

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

- (3) **Binding Obligation.** This Agreement has been duly executed and delivered by OHA and constitutes a legal, valid and binding obligation of OHA, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- c. **Warranties Cumulative.** The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

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

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

- 6. **Recovery of Overpayments.** If billings under this Agreement, or under any other Agreement between County and OHA, result in payments to County to which County is not entitled, OHA, after giving to County written notification and an opportunity to object, may withhold from payments due to County such amounts, over such periods of time, as are necessary to recover the amount of the overpayment, subject to Section 7 below. Prior to withholding, if County objects to the withholding or the amount proposed

to be withheld, County shall notify OHA that it wishes to engage in dispute resolution in accordance with Section 19 of this Agreement.

7. **Compliance with Law.** Nothing in this Agreement shall require County or OHA to act in violation of state or federal law or the Constitution of the State of Oregon.

8. **Ownership of Intellectual Property.**

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

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

b. Except as otherwise expressly provided herein, or as otherwise required by state or federal law, OHA will not own the right, title and interest in any intellectual property created or delivered by County or a subcontractor in connection with the Work. With respect to that portion of the intellectual property that the County owns, County grants to OHA a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to (1) use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the intellectual property, (2) authorize third parties to exercise the rights set forth in Section 8.a.(2) on OHA's behalf, and (3) sublicense to third parties the rights set forth in Section 8.a.(2).

c. If state or federal law requires that OHA or County grant to the United States a license to any intellectual property, or if state or federal law requires that the OHA or the United States own the intellectual property, then County shall execute such further documents and instruments as OHA may reasonably request in order to make any such grant or to assign ownership in the intellectual property to the United States or OHA. To the extent that OHA becomes the owner of any intellectual property created or delivered by County in connection with the Work, OHA will grant a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to County to use, copy, distribute, display, build upon and improve the intellectual property.

d. County shall include in its subcontracts terms and conditions necessary to require that subcontractors execute such further documents and instruments as OHA may reasonably request in order to make any grant of license or assignment of ownership that may be required by federal or state law.

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

a. County fails to perform, observe or discharge any of its covenants, agreements or obligations set forth herein;



- b. Any representation, warranty or statement made by County herein or in any documents or reports relied upon by OHA to measure the delivery of Work, the expenditure of payments or the performance by County is untrue in any material respect when made;
  - c. County (1) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (2) admits in writing its inability, or is generally unable, to pay its debts as they become due, (3) makes a general assignment for the benefit of its creditors, (4) is adjudicated a bankrupt or insolvent, (5) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (6) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (7) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (8) takes any action for the purpose of effecting any of the foregoing; or
  - d. A proceeding or case is commenced, without the application or consent of County, in any court of competent jurisdiction, seeking (1) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of County, (2) the appointment of a trustee, receiver, custodian, liquidator, or the like of County or of all or any substantial part of its assets, or (3) similar relief in respect to County under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive days, or an order for relief against County is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).
- 10. OHA Default.** OHA shall be in default under this Agreement upon the occurrence of any of the following events:
- a. OHA fails to perform, observe or discharge any of its covenants, agreements, or obligations set forth herein; or
  - b. Any representation, warranty or statement made by OHA herein or in any documents or reports relied upon by County to measure performance by OHA is untrue in any material respect when made.

**11. Termination.**

- a. **County Termination.** County may terminate this Agreement:
  - (1) For its convenience, upon at least 30 days advance written notice to OHA;
  - (2) Upon 45 days advance written notice to OHA, if County does not obtain funding, appropriations and other expenditure authorizations from County's governing body, federal, state or other sources sufficient to permit County to satisfy its performance obligations under this Agreement, as determined by County in the reasonable exercise of its

administrative discretion;

- (3) Upon 30 days advance written notice to OHA, if OHA is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as County may specify in the notice; or
- (4) Immediately upon written notice to OHA, if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that County no longer has the authority to meet its obligations under this Agreement.

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

- (1) For its convenience, upon at least 30 days advance written notice to County;
- (2) Upon 45 days advance written notice to County, if OHA does not obtain funding, appropriations and other expenditure authorizations from federal, state or other sources sufficient to meet the payment obligations of OHA under this Agreement, as determined by OHA in the reasonable exercise of its administrative discretion. Notwithstanding the preceding sentence, OHA may terminate this Agreement, immediately upon written notice to County or at such other time as it may determine if action by the Oregon Legislative Assembly or Emergency Board reduces OHA's legislative authorization for expenditure of funds to such a degree that OHA will no longer have sufficient expenditure authority to meet its payment obligations under this Agreement, as determined by OHA in the reasonable exercise of its administrative discretion, and the effective date for such reduction in expenditure authorization is less than 45 days from the date the action is taken;
- (3) Immediately upon written notice to County if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that OHA no longer has the authority to meet its obligations under this Agreement or no longer has the authority to provide payment from the funding source it had planned to use;
- (4) Upon 30 days advance written notice to County, if County is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as OHA may specify in the notice;
- (5) Immediately upon written notice to County, if any license or certificate required by law or regulation to be held by County or a subcontractor to perform the Work is for any reason denied, revoked, suspended, not renewed or changed in such a way that County or a subcontractor no longer meets requirements to perform the Work. This termination right

may only be exercised with respect to the particular part of the Work impacted by loss of necessary licensure or certification;

(6) Immediately upon written notice to County, if OHA determines that County or any of its subcontractors have endangered or are endangering the health or safety of a client or others in performing work covered by this Agreement.

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

**12. Effect of Termination.**

a. Entire Agreement.

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

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

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

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

**14. Insurance.** County shall require subcontractors to maintain insurance as set forth in Exhibit C, which is attached hereto.

**15. Records Maintenance; Access.** County shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, County shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of County, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document County's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of County whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." County acknowledges and agrees that OHA and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to all Records to perform examinations and audits and make excerpts and transcripts. County shall retain and keep accessible all Records for a minimum of six years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of

or related to this Agreement, whichever date is later. County shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.

16. **Information Privacy/Security/Access.** If the Work performed under this Agreement requires County or its subcontractor(s) to have access to or use of any OHA computer system or other OHA Information Asset for which OHA imposes security requirements, and OHA grants County or its subcontractor(s) access to such OHA Information Assets or Network and Information Systems, County shall comply and require all subcontractor(s) to which such access has been granted to comply with OAR 943-014-0300 through OAR 943-014-0320, as such rules may be revised from time to time. For purposes of this section, "Information Asset" and "Network and Information System" have the meaning set forth in OAR 943-014-0305, as such rule may be revised from time to time.
17. **Force Majeure.** Neither OHA nor County shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, natural causes, or war which is beyond the reasonable control of OHA or County, respectively. Each party shall, however, make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. OHA may terminate this Agreement upon written notice to the other party after reasonably determining that the delay or breach will likely prevent successful performance of this Agreement.
18. **Assignment of Agreement, Successors in Interest.**
  - a. County shall not assign or transfer its interest in this Agreement without prior written approval of OHA. Any such assignment or transfer, if approved, is subject to such conditions and provisions as OHA may deem necessary. No approval by OHA of any assignment or transfer of interest shall be deemed to create any obligation of OHA in addition to those set forth in the Agreement.
  - b. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns.
19. **Alternative Dispute Resolution.** The parties should attempt in good faith to resolve any dispute arising out of this agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
20. **Subcontracts.** County shall not enter into any subcontracts for any of the Work required by this Agreement without OHA's prior written consent. In addition to any other provisions OHA may require, County shall include in any permitted subcontract under this Agreement provisions to require that OHA will receive the benefit of subcontractor performance as if the subcontractor were the County with respect to Sections 1, 2, 3, 4, 8, 15, 16, 18, 21, and 23 of this Exhibit B. OHA's consent to any subcontract shall not relieve County of any of its duties or obligations under this Agreement.

21. **No Third Party Beneficiaries.** OHA and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. The parties agree that County's performance under this Agreement is solely for the benefit of OHA to assist and enable OHA to accomplish its statutory mission. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
22. **Amendments.** No amendment, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and, when required, the Department of Justice. Such amendment, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given.
23. **Severability.** The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
24. **Survival.** Sections 1, 4, 5, 6, 7, 8, 12, 13, 14, 15, 16, 19, 21, 22, 23, 24, 25, 26, 28, 29, 30 and 31 of this Exhibit B shall survive Agreement expiration or termination as well as those the provisions of this Agreement that by their context are meant to survive. Agreement expiration or termination shall not extinguish or prejudice either party's right to enforce this Agreement with respect to any default by the other party that has not been cured.
25. **Notice.** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid to County or OHA at the address or number set forth below, or to such other addresses or numbers as either party may indicate pursuant to this section. Any communication or notice so addressed and mailed shall be effective five days after mailing. Any communication or notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the recipient, or on the next business day, if transmission was outside normal business hours of the recipient. To be effective against the other party, any notice transmitted by facsimile must be confirmed by telephone notice to the other party at number listed below. Any communication or notice given by personal delivery shall be effective when actually delivered to the addressee.

**OHA:** Office of Contracts & Procurement  
250 Winter St NE, Room 306  
Salem, OR 97301  
Telephone: 503-945-5818  
Facsimile Number: 503-378-4324

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

27. **Counterparts.** This Agreement and any subsequent amendments may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement and any amendments so executed shall constitute an original.
28. **Waiver.** The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision. No waiver or consent shall be effective unless in writing and signed by the party against whom it is asserted.
29. **Construction.** [Reserved]
30. **Contribution.** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

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

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

circumstances resulting in such expenses, judgments, fines or settlement amounts. The County's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

- 31. Indemnification by Subcontractors.** County shall take all reasonable steps to cause its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of County's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.
- 32. Stop-Work Order.** OHA may, at any time, by written notice to the County, require the County to stop all, or any part of the work required by this Agreement for a period of up to 90 days after the date of the notice, or for any further period to which the parties may agree through a duly executed amendment. Upon receipt of the notice, County shall immediately comply with the Stop-Work Order terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the stop work order notice. Within a period of 90 days after issuance of the written notice, or within any extension of that period to which the parties have agreed, OHA shall either:

  - a.** Cancel or modify the stop work order by a supplementary written notice; or
  - b.** Terminate the work as permitted by either the Default or the Convenience provisions of Section 11. Termination. If the Stop Work Order is canceled, OHA may, after receiving and evaluating a request by the County, make an adjustment in the time required to complete this Agreement and the Agreement price by a duly executed amendment.

## EXHIBIT C

### Subcontractor Insurance Requirements

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

1. **Workers' Compensation.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). If contractor is a subject employer, as defined in ORS 656.023, contractor shall obtain employers' liability insurance coverage limits of not less than \$1,000,000.

2. **Professional Liability.**

Required by OHA  Not required by OHA

Professional Liability Insurance covering any damages caused by an error, omission or negligent act related to the services to be provided under the Subcontract, with limits not less than the following, as determined by OHA:

\$4,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

3. **Commercial General Liability.**

Required by OHA  Not required by OHA

Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to OHA. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts



as determined by OHA:

**Bodily Injury, Death and Property Damage:**

\$4,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

**4. Automobile Liability Insurance.**

Required by OHA  Not required by OHA

Automobile Liability Insurance covering all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Automobile Liability Insurance must be in not less than the following amounts as determined by OHA:

**Bodily Injury, Death and Property Damage:**

\$4,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

- 5. Additional Insured.** The Commercial General Liability insurance and Automobile Liability insurance must include the State of Oregon, its officers, employees and agents as Additional Insureds but only with respect to the contractor's activities to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.
- 6. "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 Subcontract, for a minimum of 24 months following the later of: (i) the contractor's completion and County's acceptance of all services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. 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 OHA may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If OHA approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.
- 7. Notice of Cancellation or Change.** The contractor or its insurer must provide 30 days' written notice to County before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).
- 8. Certificate(s) of Insurance.** County shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: (i) all entities and individuals who are endorsed on the policy as Additional Insured and (ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.

## **EXHIBIT D**

### **Required Federal Terms and Conditions**

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

**1. Miscellaneous Federal Provisions**

County shall comply and require all subcontractors to comply with all federal laws, regulations, and executive orders applicable to the Agreement or to the delivery of Work. Without limiting the generality of the foregoing, County expressly agrees to comply and require all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Executive Order 11246, as amended, (e) the Health Insurance Portability and Accountability Act of 1996, as amended, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (j) all federal law governing operation of Community Mental Health Programs, including without limitation, all federal laws requiring reporting of client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. No federal funds may be used to provide Work in violation of 42 U.S.C. 14402.

**2. Equal Employment Opportunity**

If this Agreement, including amendments, is for more than \$10,000, then County shall comply and require all subcontractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

**3. Clean Air, Clean Water, EPA Regulations**

If this Agreement, including amendments, exceeds \$100,000 then County shall comply and require all subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt Federal contracts, grants or

loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to OHA, United States Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. County shall include and require all subcontractors to include in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section.

**4. Energy Efficiency**

County shall comply and require all subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act U.S.C. 6201 et.seq. (Pub. L. 94-163).

**5. Truth in Lobbying**

By signing this Agreement, the County certifies, to the best of the County's knowledge and belief that:

- a. No federal appropriated funds have been paid or will be paid, by or on behalf of County, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the County shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- c. The County shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.
- d. This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by section 1352, Title 31 of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- e. No part of any federal funds paid to County under this Agreement shall be used other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any

kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the United States Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government itself.

- f.** No part of any federal funds paid to County under this Agreement shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the United States Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.
- g.** The prohibitions in subsections (e) and (f) of this section shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.
- h.** No part of any federal funds paid to County under this Agreement may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance of that federally sponsored clinical trials are being conducted to determine therapeutic advantage.

## **6. HIPAA Compliance**

OHA is a Covered Entity with respect to its healthcare components as described in OAR 943-014-0015 for purposes of the Health Insurance Portability and Accountability Act and the federal regulations implementing the Act (collectively referred to as HIPAA), and OAR 125-055-0100 through OAR 125-055-0130. OHA must comply with HIPAA to the extent that any Work or obligations of OHA arising under this Agreement are covered by HIPAA. County shall determine if County will have access to, or create any protected health information in the performance of any Work or other obligations under this Agreement. To the extent that County will have access to, or create any protected health information to perform functions, activities, or services for, or on behalf of, a healthcare component of OHA in the performance of any Work required by this Agreement, County shall comply and cause all subcontractors to comply with OAR 125-055-0100 through OAR 125-055-0130 and the following:

- a.** Privacy and Security of Individually Identifiable Health Information. Individually Identifiable Health Information about specific individuals is confidential.

Individually Identifiable Health Information relating to specific individuals may be exchanged between County and OHA for purposes directly related to the provision of services to Clients which are funded in whole or in part under this Agreement. To the extent that County is performing functions, activities, or services for, or on behalf of, a healthcare component of OHA in the performance of any Work required by this Agreement, County shall not use or disclose any Individually Identifiable Health Information about specific individuals in a manner that would violate OHA Privacy Rules, OAR 943-014-0000 *et. seq.*, or OHA Notice of Privacy Practices. A copy of the most recent OHA Notice of Privacy Practices may be obtained by contacting OHA or by looking up form number 2090 on the OHA web site at <https://apps.state.or.us/cfl/FORMS/>.

- b. Data Transactions Systems. If County intends to exchange electronic data transactions with a health care component of OHA in connection with claims or encounter data, eligibility or enrollment information, authorizations or other electronic transaction, County shall execute an EDI Trading Partner Agreement with OHA and shall comply with OHA EDI Rules.
- c. Consultation and Testing. If County reasonably believes that the County's or OHA's data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, County shall promptly consult the OHA Information Security Office. County or OHA may initiate a request for testing of HIPAA transaction requirements, subject to available resources and the OHA testing schedule.

## 7. Resource Conservation and Recovery

County shall comply and require all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 U.S.C. 6901 *et. seq.*). Section 6002 of that Act (codified at 42 U.S.C. 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.

## 8. Audits

- a. County shall comply, and require any subcontractor to comply, with applicable audit requirements and responsibilities set forth in this Agreement and applicable state or federal law.
- b. Sub-recipients shall also comply with applicable Code of Federal Regulations (CFR) and OMB Circulars governing expenditure of federal funds including, but not limited, to OMB A-133 Audits of States, Local Governments and Non-Profit Organizations.

## 9. Debarment and Suspension

County shall not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Non-procurement Programs" in

accordance with Executive Orders No. 12549 and No. 12689, "Debarment and Suspension". (See 2 CFR Part 180.) This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Subcontractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

#### **10. Drug-Free Workplace**

County shall comply and require all subcontractors to comply with the following provisions to maintain a drug-free workplace: (i) County certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in County's workplace or while providing services to OHA clients. County's notice shall specify the actions that will be taken by County against its employees for violation of such prohibitions; (ii) Establish a drug-free awareness program to inform its employees about: The dangers of drug abuse in the workplace, County's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations; (iii) Provide each employee to be engaged in the performance of services under this Agreement a copy of the statement mentioned in paragraph (i) above; (iv) Notify each employee in the statement required by paragraph (i) above that, as a condition of employment to provide services under this Agreement, the employee will: abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; (v) Notify OHA within ten (10) days after receiving notice under subparagraph (iv) above from an employee or otherwise receiving actual notice of such conviction; (vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988; (vii) Make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs (i) through (vi) above; (viii) Require any subcontractor to comply with subparagraphs (i) through (vii) above; (ix) Neither County, or any of County's employees, officers, agents or subcontractors may provide any service required under this Agreement while under the influence of drugs. For purposes of this provision, "under the influence" means: observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the County or County's employee, officer, agent or subcontractor has used a controlled substance, prescription or non-prescription medication that impairs the County or County's employee, officer, agent or subcontractor's performance of essential job function or creates a direct threat to OHA clients or others. Examples of abnormal behavior include, but are not limited to: hallucinations, paranoia or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to: slurred speech, difficulty walking or performing job activities; and (x) Violation of any provision of this subsection may result in termination of this Agreement.

#### **11. Pro-Children Act**

County shall comply and require all subcontractors to comply with the Pro-Children Act of 1994 (codified at 20 U.S.C. section 6081 et. seq.).

**12. Medicaid Services**

County shall comply with all applicable federal and state laws and regulation pertaining to the provision of Medicaid Services under the Medicaid Act, Title XIX, 42 U.S.C. Section 1396 et. seq., including without limitation:

- a. Keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving Medicaid assistance and shall furnish such information to any state or federal agency responsible for administering the Medicaid program regarding any payments claimed by such person or institution for providing Medicaid Services as the state or federal agency may from time to time request. 42 U.S.C. Section 1396a(a)(27); 42 CFR 431.107(b)(1) & (2).
- b. Comply with all disclosure requirements of 42 CFR 1002.3(a) and 42 CFR 455 Subpart (B).
- c. Maintain written notices and procedures respecting advance directives in compliance with 42 U.S.C. Section 1396(a)(57) and (w), 42 CFR 431.107(b)(4), and 42 CFR 489 subpart I.
- d. Certify when submitting any claim for the provision of Medicaid Services that the information submitted is true, accurate and complete. County shall acknowledge County's understanding that payment of the claim will be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.
- e. Entities receiving \$5 million or more annually (under this Agreement and any other Medicaid Agreement) for furnishing Medicaid health care items or services shall, as a condition of receiving such payments, adopt written fraud, waste and abuse policies and procedures and inform employees, contractors and agents about the policies and procedures in compliance with Section 6032 of the Deficit Reduction Act of 2005, 42 U.S.C. § 1396a(a)(68).

**13. Agency-based Voter Registration**

If applicable, County shall comply with the Agency-based Voter Registration sections of the National Voter Registration Act of 1993 that require voter registration opportunities be offered where an individual may apply for or receive an application for public assistance.

**14. Disclosure.**

- a. 42 CFR 455.104 requires the State Medicaid agency to obtain the following information from any provider of Medicaid or CHIP services, including fiscal agents of providers and managed care entities: (1) the name and address (including the primary business address, every business location and P.O. Box address) of any person (individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity; (2) in the case of an individual, the date of birth and Social Security Number, or, in the case of a corporation, the tax identification number of the entity, with an ownership interest in the provider, fiscal agent or managed care entity or of any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest; (3) whether the person (individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling, or whether the person (individual or corporation) with an ownership or control interest in any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling; (4) the name of any other provider, fiscal agent or managed care entity in which an owner of the provider, fiscal agent or managed care entity has an ownership or control interest; and, (5) the name, address, date of birth and Social Security Number of any managing employee of the provider, fiscal agent or managed care entity.
- b. 42 CFR 455.434 requires as a condition of enrollment as a Medicaid or CHIP provider, to consent to criminal background checks, including fingerprinting when required to do so under state law, or by the category of the provider based on risk of fraud, waste and abuse under federal law.
- c. As such, a provider must disclose any person with a 5% or greater direct or indirect ownership interest in the provider whom has been convicted of a criminal offense related to that person's involvement with the Medicare, Medicaid, or title XXI program in the last 10 years.
- d. County shall make the disclosures required by this Section 14. to OHA. OHA reserves the right to take such action required by law, or where OHA has discretion, it deems appropriate, based on the information received (or the failure to receive information) from the provider, fiscal agent or managed care entity.

- 15. Federal Intellectual Property Rights Notice.** The federal funding agency, as the awarding agency of the funds used, at least in part, for the Work under this Agreement, may have certain rights as set forth in the federal requirements pertinent to these funds. For purposes of this subsection, the terms "grant" and "award" refer to funding issued by the federal funding agency to the State of Oregon. The County agrees that it has been provided the following notice:



- a.** The federal funding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the Work, and to authorize others to do so, for Federal Government purposes with respect to:

  - (1) The copyright in any Work developed under a grant, subgrant or agreement under a grant or subgrant; and
  - (2) Any rights of copyright to which a grantee, subgrantee or a county purchases ownership with grant support.
- b.** The parties are subject to applicable federal regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."
- c.** The parties are subject to applicable requirements and regulations of the federal funding agency regarding rights in data first produced under a grant, subgrant or agreement under a grant or subgrant.

**EXHIBIT E**  
**Financial Pages**

OREGON HEALTH AUTHORITY  
Financial Assistance Award Amendment (FAAA)  
2013-2015

CONTRACTOR: CLACKAMAS COUNTY - AMHI  
DATE: 06/13/2013

Contract#: 142491  
Reference#: 001

MENTAL HEALTH SERVICES

SECTION: 1  
SERVICE REQUIREMENTS MEET EXHIBIT B AND, IF INDICATED, EXHIBIT B-2

Part	Start/End Dates	Client Code	Approved Service Funds	Approved Start-up	Serv. Units	Unit Type	EXHIB B2 Codes	Spec Cond#
SE# 37 MHS SPECIAL PROJECTS								
A	7/2013- 6/2014	N/A	\$548,967	\$0	0	NA	N/A	M0008 1
A	7/2014- 6/2015	N/A	\$548,967	\$0	0	NA	N/A	M0008 1
C	7/2013- 6/2014	N/A	\$28,893	\$0	0	NA	N/A	M0008 2
C	7/2014- 6/2015	N/A	\$28,893	\$0	0	NA	N/A	M0008 2
SUBTOTAL SE# 37			\$1,155,720	\$0				
TOTAL SECTION 1			\$1,155,720	\$0				
TOTAL AUTHORIZED FOR MENTAL HEALTH SERVICES						<u>\$1,155,720</u>		
TOTAL AUTHORIZED FOR THIS FAAA:				<u>\$1,155,720</u>				

OREGON HEALTH AUTHORITY  
Financial Assistance Award Amendment (FAAA)

CONTRACTOR: CLACKAMAS COUNTY - AMHI  
DATE: 06/13/2013

Contract#: 142491  
REF#: 001

REASON FOR FAAA (for information only):

MHS 37 Special Projects - Adult Mental Health Initiative (AMHI) funds are awarded for the 2013-15 biennium.

The following special condition(s) apply to funds as indicated by the special condition number in column 9. Each special condition set forth below may be qualified by a full description in the Financial Assistance Award.

- MO008 1 These payments are for the special project described in Exhibit A, MHS 37 Adult Mental Health Initiative (AMHI).
- MO008 2 These payments are for MHS 37 AMHI performance payment services.

OREGON HEALTH AUTHORITY  
 Financial Assistance Award Amendment (FAAA)  
 FAAA Totals  
 Part A  
 2013-2015

\*\*\*\*\* INFORMATION ONLY \*\*\*\*\*

CONTRACTOR: CLACKAMAS COUNTY - AMHI  
 DATE: 06/13/2013

CONTRACT#: 142491  
 REF#: 001

SE#	DESCRIPTION	CURRENT APPROVED	CURRENT PENDING	PROPOSED CHANGE	REVISED TOTAL
37	MHS SPECIAL PROJECTS	\$0	\$0	\$1,097,934	\$1,097,934
TOTAL SE#	37	\$0	\$0	\$1,097,934	\$1,097,934
		\$0	\$0	\$1,097,934	\$1,097,934

NOTE: The amounts in the "REVISED TOTAL" column include amounts reported in the "CURRENT PENDING" column that have not yet been accepted/approved. Therefore, these amounts may change.

OREGON HEALTH AUTHORITY  
 Financial Assistance Award Amendment (FAAA)  
 FAAA Totals  
 Part C  
 2013-2015

\*\*\*\*\* INFORMATION ONLY \*\*\*\*\*

CONTRACTOR: CLACKAMAS COUNTY - AMHI  
 DATE: 06/13/2013

CONTRACT#: 142491  
 REF#: 001

SE#	DESCRIPTION	CURRENT APPROVED	CURRENT PENDING	PROPOSED CHANGE	REVISED TOTAL
37	MHS SPECIAL PROJECTS	\$0	\$0	\$57,786	\$57,786
TOTAL SE#	37	\$0	\$0	\$57,786	\$57,786
		\$0	\$0	\$57,786	\$57,786

NOTE: The amounts in the "REVISED TOTAL" column include amounts reported in the "CURRENT PENDING" column that have not yet been accepted/approved. Therefore, these amounts may change.

OREGON HEALTH AUTHORITY  
 Financial Assistance Award Amendment (FAAA)  
 FAAA Totals  
 Summary  
 2013-2015

\*\*\*\*\* INFORMATION ONLY \*\*\*\*\*

CONTRACTOR: CLACKAMAS COUNTY - AMHI  
 DATE: 06/13/2013

CONTRACT#: 142491  
 REP#: 001

SE#	DESCRIPTION	CURRENT APPROVED	CURRENT PENDING	PROPOSED CHANGE	REVISED TOTAL
37	MHS SPECIAL PROJECTS	\$0	\$0	\$1,155,720	\$1,155,720
TOTAL SE#	37	\$0	\$0	\$1,155,720	\$1,155,720
CONTRACT TOTAL		\$0	\$0	\$1,155,720	\$1,155,720

NOTE: The amounts in the "REVISED TOTAL" column include amounts reported in the "CURRENT PENDING" column that have not yet been accepted/approved. Therefore, these amounts may change.

8

Approval of previous Business Meeting minutes:

July 25, 2013

August 1, 2013

August 8, 2013

August 15, 2013

(Minutes attached)

# **BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING MINUTES**

*A complete video copy and packet including staff reports, of this meeting can be viewed at*

<http://www.clackamas.us/bcc/business.html>

**July 25, 2013 - 10:00 AM**

**Public Services Building**

**2051 Kaen Rd., Oregon City, OR 97045**

**PRESENT: Commissioner John Ludlow, Chair  
Commissioner Paul Savas  
Commissioner Martha Schrader  
Commissioner Tootie Smith**

**EXCUSED: Commissioner Jim Bernard**

## **I. CALL TO ORDER**

- Roll Call

Commissioner Bernard is out of the office and will not be in attendance today.

- Pledge of Allegiance

## **II. CITIZEN COMMUNICATION**

<http://www.clackamas.us/bcc/business.html>

1. Brian Johnson, Gladstone – asked about the plans for the Maple Lane work being done by WES.
2. Tena Olson, Oregon City – concerned about the mistakes on the Elections Office Report.
3. Les Poole, Gladstone – asked if trimet have land use approval regarding the trolley trail – he also spoke about the Columbia river crossing and light rail.
4. Maryanna Moore, Gladstone – supports the trolley trail bridge in Gladstone – asked if the BCC could write a letter of support for grant money for the bridge – also asked for info regarding the Ledding Library.
5. Cyndi Lewis Wolfrum – all business of the County should be done at the Thursday meetings.

## **III. PRESENTATION**

1. Presentation for the Willamette Falls Legacy Project

Catherine Comer, Business and Economic Development presented the staff report and introduce Ken Pirie, Walker Macy and Ellen Wyoming, Cogan Owens who are partners for this project. They showed a short PowerPoint presentation – they explained the framework plan with will include these four key values - public access, economic redevelopment, healthy habitat, and historic and cultural interpretation.

2. Presentation and Recognition of the 2013 NACo Achievement Awards for Clackamas County

Tim Heider, Public and Government Affairs presented the staff report. Tim explained that the NACo (National Association of Counties) awards recognized effective and innovative programs which contribute to the enhancement of County government. This year Clackamas County was recognized with five awards.

The Board presented the awards to the employees present and thanked them for their contributions.

## **IV. DISCUSSION ITEMS**

*~NO DISCUSSION ITEMS SCHEDULED*

## **V. CONSENT AGENDA**



Chair Ludlow asked the Clerk to read the consent agenda by title. He then asked for a motion.

**MOTION:**

Commissioner Smith: I move we approve the consent agenda.

Commissioner Savas: Second.

Clerk call the poll:

Commissioner Savas: Aye.

Commissioner Schrader: Aye.

Commissioner Smith: Aye.

Chair Ludlow: Aye.

The motion is approved 4-0.

**A. Health, Housing & Human Services**

1. Board Order No. **2013-67** Approval of Mental Health Director's Designee to Authorize a Custody Hold Under *ORS 426.233 - Behavioral Health*
2. Approval of a Renewal Grant Agreement from the US Department of Housing & Urban Development, Supportive Housing Program, for the Ready to Rent Program to Reduce Housing Barriers to Accessing Permanent Housing for Homeless Individuals & Families - *Social Services*
3. Approval of Intergovernmental Agreement No. 142998 with the State of Oregon Department of Human Services, Aging & People with Disabilities Division for the Provision of Services to Clackamas County Residents age 60 and over - *Social Services*
4. Approval of Intergovernmental Agreement with the City of Lake Oswego/Lake Oswego Adult Community Center to Provide Social Services for Clackamas County Residents age 60 and over - *Social Services*
5. Approval of Intergovernmental Agreement No. 4400000571 with Multnomah County Department of County Human Services, Aging & Disability Services Division - *Social Services*
6. Approval of an Intergovernmental Agreement between the Community Development Division and the City of Gladstone for Street Improvements in Northwest Gladstone - *Community Development*
7. **REMOVED** - Approval of Two Agreements between Clackamas County, Proud Ground and Portland Community Land Trust Development LLC (PCLT) to use Neighborhood Stabilization Program Funds and HOME Program Funds to Purchase and Rehabilitate a Foreclosed Home - *Community Development*

**B. Department of Transportation & Development**

1. Approval of Amendment No. 2 to an Intergovernmental Agreement with Oregon Department of Fish and Wildlife for a Full Time Fish & Wildlife Biologist Liaison for Transportation Maintenance Services
2. Approval of Amendment No. 1 to Intergovernmental Agreement No. 27472 with Oregon Department of Transportation for the Pudding River (Whiskey Hill Road) Bridge Project

**VI. COUNTY ADMINISTRATOR UPDATE**

**VII. COMMISSIONERS COMMUNICATION**

<http://www.clackamas.us/bcc/business.html>

**MEETING ADJOURNED – 11:19 AM**

NOTE: Regularly scheduled Business Meetings are televised and broadcast on the Clackamas County Government Channel. These programs are also accessible through the County's Internet site. DVD copies of regularly scheduled BCC Thursday Business Meetings are available for checkout at the Clackamas County Library in Oak Grove by the following Saturday. You may also order copies from any library in Clackamas County or the Clackamas County Government Channel. <http://www.clackamas.us/bcc/business.html>

## **BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING MINUTES**

*A complete video copy and packet including staff reports, of this meeting can be viewed at <http://www.clackamas.us/bcc/business.html>*

**August 1, 2013 - 10:00 AM**

**Public Services Building**

**2051 Kaen Rd., Oregon City, OR 97045**

**PRESENT: Commissioner John Ludlow, Chair  
Commissioner Jim Bernard  
Commissioner Paul Savas  
Commissioner Martha Schrader  
Commissioner Tootie Smith**

### **I. CALL TO ORDER**

- Roll Call
- Pledge of Allegiance

Chair Ludlow announced we have a special presentation today from Rick Gruen, County Parks and Under Sheriff Matt Ellington regarding issues on the Clackamas River. Ellington showed a short video showing the large crowds and litter in and around the Clackamas River. Rick gave some background on the litter taken out of the River and the stated the annual river clean-up will be on September 8, 2013. Matt Ellington spoke about the enforcement issues happening on the River.

*~Board Discussion~*

### **II. CITIZEN COMMUNICATION**

<http://www.clackamas.us/bcc/business.html>

1. Brian Johnson, Gladstone – work on Maple Lane Road by WES.
2. Richard Koenig, West Linn – his constitutional rights.
3. Maryanna Moore – Gladstone – spoke regarding the trolley trail bridge and the Gladstone festival this weekend.
4. Cyndi Lewis Wolfrum, Milwaukie – supports life vest on the river.
5. Mack Woods, Canby – spoke in support of the Sheriff's Office.
6. Les Poole, Gladstone – spoke about the issues on the river – he submitted an article regarding the trolley bridge restoration.

### **III. DISCUSSION ITEMS**

***~NO DISCUSSION ITEMS SCHEDULED***

### **IV. CONSENT AGENDA**

Chair Ludlow asked the Clerk to read the consent agenda by title. He then asked for a motion.

#### **MOTION:**

Commissioner Schrader: I move we approve the consent agenda.

Commissioner Bernard: Second.

*~Board Discussion~*

Clerk call the poll:

Commissioner Schrader: Aye.

Commissioner Savas: Aye.

Commissioner Smith: Aye.

Commissioner Bernard: Aye.

Chair Ludlow: Aye.

The motion is approved 5-0.

**A. Health, Housing & Human Services**

1. Board Order No. **2013-68** Approving the Mental Health Director's Designee to Authorize a Custody Hold Under ORS 426.233 – *Behavioral Health*
2. Approval of a New Revenue Participating Providers Service Agreement with Pacificsource, to Provide Primary Care Services at School Based Health Centers – *Health Centers*

**B. Department of Transportation & Development**

1. Resolution No. **2013-69** Amending the Declaration of Necessity of Purpose for Acquisition of Rights-of-Way and Easements for the Barlow/Zimmerman Intersection Improvement project and Authorizing Negotiations and Eminent Domain Actions
2. Approval of Cooperative Improvement Agreement No. 29149 with Oregon Department of Transportation for the Sunrise Corridor Project

**C. Elected Officials**

1. Approval to Apply for FY 2013 Supplemental Support for the Honest Opportunity Probation with Enforcement (HOPE) Demonstration Field Experiment Program Agreement No. 2011-RY-BX-K007 - *DA*
2. Request by the Clackamas County Sheriff's Office to Enter into an Annual Operating Plan and Financial Plan with the Oregon State Marine Board for the Clackamas County Boating Safety Action Plan 2013 – 2014 - *ccso*

**V. COUNTY ADMINISTRATOR UPDATE**

**VI. COMMISSIONERS COMMUNICATION**

<http://www.clackamas.us/bcc/business.html>

**MEETING ADJOURNED – 11:40 AM**

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<http://www.clackamas.us/bcc/business.html>

## BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING MINUTES

A complete video copy and packet including staff reports, of this meeting can be viewed at <http://www.clackamas.us/bcc/business.html>

**August 8, 2013 - 10:00 AM**

**Public Services Building**

**2051 Kaen Rd., Oregon City, OR 97045**

**PRESENT: Commissioner John Ludlow, Chair  
Commissioner Jim Bernard  
Commissioner Paul Savas  
Commissioner Martha Schrader  
Commissioner Tootie Smith**

### **I. CALL TO ORDER**

- Roll Call
- Pledge of Allegiance

### **II. CITIZEN COMMUNICATION**

<http://www.clackamas.us/bcc/business.html>

1. Kevin Phillips, Beavercreek – has concerns regarding the proposed amendments to the Parks Rules pertaining to alcohol.
2. Travis Herseim, Portland – asked the Board to support funding for Veteran Services.
3. Lisa Herseim, Portland – please support funding for Veterans Services.
4. Tena Olson, Oregon City – spoke regarding for Veterans Services and concerned about location of Veterans Office.
5. Jonathan Graving, Milwaukie – has some issues regarding Probate Court.
6. Everett Hall – concern about the amount of taxes he is paying.
7. Cyndi Lewis Wolfram – Milwaukie – Commissioners should be in 100% agreement on Veterans Services.
8. Mike and Maria Brenner – supports Veterans Services – specifically, help for Vets when they return home.

*~Board Discussion~*

Cindy Becker, Health Housing and Human Services gave some background and updates on Veterans Service in Clackamas County.

### **III. READING AND ADOPTION OF PREVIOUSLY HEARD ZDO ORDINANCE** *(No public testimony on this item)*

1. Adoption of Zoning & Development Ordinance **243** Amending Chapters of the Clackamas County Comprehensive Plan and Several Sections of the Clackamas County Zoning and Development Ordinance - *Previously Approved at the July 24, 2013 Land Use Hearing*  
Chris Storey, County Counsel and Jennifer Hughes, Planning - this item deals with industrial lands - it was previously approved by the Board at the July 24, 2013 Land Use hearing. If adopted today, this will go into effect on September 9, 2013.

Chair Ludlow asked for a motion to read it by title only.

#### **MOTION:**

Commissioner Smith: I move we read ZDO-243 by title only.  
Commissioner Savas: Second.  
Clerk call the poll:  
Commissioner Bernard: Aye.  
Commissioner Smith: Aye.  
Commissioner Schrader: Aye.  
Commissioner Savas: Aye.  
Chair Ludlow: Aye.

The motion is approved 5-0.

The Clerk read ZDO-243 by title only.

Chair Ludlow asked for a motion to adopt ZDO-243.

**MOTION:**

Commissioner Smith: I move we adopt ZDO-243 Amending Chapters of the Clackamas County Comprehensive Plan and Several Sections of the Clackamas County Zoning and Development Ordinance as Previously Approve at the July 24, 2013 Public Land Use Hearing.

Commissioner Savas: Second.

Clerk call the poll:

*~Board Discussion~*

Commissioner Savas: Aye.

Commissioner Schrader: Aye.

Commissioner Smith: Aye.

Commissioner Bernard: Aye.

Chair Ludlow: Aye.

The motion is approved 5-0.

**IV. DISCUSSION ITEMS**

*~NO DISCUSSION ITEMS SCHEDULED*

**V. CONSENT AGENDA**

Chair Ludlow asked the Clerk to read the consent agenda by title. He then asked for a motion.

**MOTION:**

Commissioner Bernard: I move we approve the consent agenda.

Commissioner Schrader: Second.

Clerk call the poll:

Commissioner Smith: Aye.

Commissioner Schrader: Aye.

Commissioner Savas: Aye.

Commissioner Bernard: Aye.

Chair Ludlow: Aye.

The motion is approved 5-0.

**A. Health, Housing & Human Services**

1. Approval of Renewal Grant Agreements with the US Department of Housing and Urban Development, Continuum of Care Program, for the Homeless Management Information System - *Community Development*
2. Approval of a Sub-Recipient Agreement between the Community Development Division and Northwest Housing Alternatives to Fund the HomeBase Program in Clackamas County - *Community Development*
3. Approval of an Intergovernmental Agreement with Tri-County Metropolitan Transportation District of Oregon (TriMet) for Operational Funding for the Catch-a-Ride Shuttle Service – *Social Services*

**B. Finance Department**

1. Resolution No. **2013-70** for a Transfer of Appropriations for Fiscal Year 2013-2014
2. Resolution No. **2013-71** for Budgeting of New Specific Purpose Revenue for Fiscal Year 2013-2014

**VI. WATER ENVIRONMENT SERVICES**

1. Approval of Release of All Claims from Ilya and Mariya Adamstev to Clackamas County Service District No. 1 for the North Clackamas Revitalization Project

**VII. COUNTY ADMINISTRATOR UPDATE**

**VIII. COMMISSIONERS COMMUNICATION**

<http://www.clackamas.us/bcc/business.html>

**MEETING ADJOURNED – 11:45 AM**

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<http://www.clackamas.us/bcc/business.html>

# **BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING MINUTES**

*A complete video copy and packet including staff reports, of this meeting can be viewed at*

<http://www.clackamas.us/bcc/business.html>

**Thursday, August 15, 2013 - 6:00 PM**

**Public Services Building**

**2051 Kaen Rd., Oregon City, OR 97045**

**PRESENT: Commissioner John Ludlow, Chair  
Commissioner Jim Bernard  
Commissioner Paul Savas  
Commissioner Martha Schrader  
Commissioner Tootie Smith**

**EXCUSED: Housing Authority Commissioner Paul Reynolds**

## **I. CALL TO ORDER**

- Roll Call
- Pledge of Allegiance

Chair Ludlow announced the Board will convene as the Housing Authority of Board for the next item. He asked the Clerk to read the Housing Authority Consent agenda by title. He then asked for a motion.

## **II. HOUSING AUTHORITY CONSENT AGENDA**

1. Approval of Conditional Funding Awards for Four Housing Development Projects
2. Approval of the Construction Agreement Contract with A-1 Quality Construction for Public Housing Flooring Replacements
3. Resolution No. 1902 – Approval of the Housing Authority’s Certification for the Section 8 Management Assessment Program

### **MOTION:**

Commissioner Bernard: I move we approve the Housing Authority Consent Agenda.  
Commissioner Smith: Second.  
Commissioner Savas: Aye.  
Commissioner Schrader: Aye  
Commissioner Smith: Aye.  
Commissioner Bernard: Aye.  
Chair Ludlow: Aye.  
Chair Ludlow – The motion is approved 5-0.

Chair Ludlow announced the Board will adjourn as the Housing Authority Board and convene as the Board of County Commissioners for the remainder of the meeting.

## **III. CITIZEN COMMUNICATION**

<http://www.clackamas.us/bcc/business.html>

1. Tim McFarland, Canby – spoke regarding his neighbors code violations – still waiting for a call from the County.
2. Les Poole, Gladstone – asked about the sales agreement for the Trolley Trail.  
*~the following citizen were heard after the public hearing~*
3. Aaron and Kimberly Auer, Oregon City – spoke regarding the Jason Lee statue replacement.
4. Mack Woods, Canby – spoke against the CRC, Light Rail and Obama Care.

#### **IV. PUBLIC HEARING**

1. Reading and Adoption of County Ordinance No. **04-2013** Amending Park Rules in Section 6.06 of the County Code to Allow for Administrative Inspections and Declaring an Emergency

Rick Gruen, County Parks, Lieutenant Jeff Davis, Sheriff's Office and Stephen Madkour, County Counsel presented the staff report. A 5 minutes video produced by the Sheriff's Office was shown showing the issues on the Clackamas River from Barton Park to Carver Park. Mr. Madkour explained that this current proposal would amend County parks rules set forth in Chapter 6.06, of the County code to specifically provide authority for the Sheriff's office and other individuals designated by the Parks Director to perform visual inspections of personal property items such as coolers. The amendments would establish a properly authorized administrative program designated and systematically administered to provide clear authority to conduct administrative inspection of prohibited items. Administrative searches are conducted for purposes other than law enforcement, such as courthouse and airport security, fire safety, mobile homes and elevators. As such, they are a well recognized exception to warrant requirement rule. He also explained the reason for declaring the emergency is to have the ordinance effective upon its adoption.

*~Board Discussion~*

Chair Ludlow opened the public hearing and stated there are folks who signed up to speak.

1. Kevin Phillips, Beaver Creek – spoke in opposition of the ordinance.
2. Laurie Freeman Swanson, Molalla – spoke in support of the ordinance.
3. Frank Heaton, Carver – lives on the River and spoke against the ordinance.
4. Eugene Schoenheit, Milwaukie – stated this ordinance violated people's fourth amendment rights.
5. Les Poole, Gladstone – has concerns that people will go other places including private property.

Chair Ludlow asked if anyone else wished to speak on this subject, seeing none he closed the public hearing and asked for a motion to read the Ordinance in full.

#### **MOTION:**

Commissioner Bernard: I move we read the ordinance in full text.  
Commissioner Schrader: Second.  
Commissioner Savas: Aye.  
Commissioner Schrader: Aye  
Commissioner Smith: Aye.  
Commissioner Bernard: Aye.  
Chair Ludlow: Aye.

Chair Ludlow – The motion is approved 5-0. He asked the Clerk to assign a number and read the Ordinance in full text.

The Clerk assigned Ordinance No. 04-2013 and read the ordinance in full text.

Chair Ludlow asked for a motion to adopt the ordinance.

#### **MOTION:**

Commissioner Bernard: I move we adopt Ordinance No. 04-2013 amending park rules in section 6.06 of the Clackamas County Code to allow for Administrative inspections and declaring an emergency.  
Commissioner Savas: Second.

*~Board Discussion~*

Commissioner Schrader: Aye.  
Commissioner Smith: Aye  
Commissioner Bernard: Aye.  
Commissioner Savas: Aye.  
Chair Ludlow: Aye.

Chair Ludlow – The motion is approved 5-0



## **V. DISCUSSION ITEMS**

*~NO DISCUSSION ITEMS SCHEDULED*

## **VI. CONSENT AGENDA**

Chair Ludlow asked the Clerk to read the consent agenda by title. He then asked for a motion.

### **MOTION:**

Commissioner Schrader: I move we approve the consent agenda.

Commissioner Smith: Second.

Commissioner Smith: Aye.

Commissioner Schrader: Aye.

Commissioner Savas: Aye.

Commissioner Bernard: Aye.

Chair Ludlow: Aye.

The motion is approved 5-0.

## **A. Health, Housing & Human Services**

1. Approval of an Amendment with Empowerment Initiatives, Inc. for Peer Services

## **B. Department of Transportation & Development**

1. Approval of an Intergovernmental Agreement with the State of Oregon to Participate in the Motor Carrier Safety Assistance Program
2. Approval of a Requirement Contract with Paramount Petroleum Corporation for Liquid Asphalt 2013
3. Approval of a Requirement Contract with Albina asphalt for Liquid Asphalt 2013

## **VII. WATER ENVIRONMENT SERVICES**

1. Approval of a Retainer Agreement between Clackamas County Service District No. 1, Tri-City Service District and Richwine Environmental, Inc. for Consultant Services

## **VIII. COUNTY ADMINISTRATOR UPDATE**

## **IX. COMMISSIONERS COMMUNICATION**

# **MEETING ADJOURNED – 7:35 PM**

**NOTE: Regularly scheduled Business Meetings are televised and broadcast on the Clackamas County Government Channel. These programs are also accessible through the County's Internet site. DVD copies of regularly scheduled BCC Thursday Business Meetings are available for checkout at the Clackamas County Library in Oak Grove by the following Saturday. You may also order copies from any library in Clackamas County or the Clackamas County Government Channel.**

<http://www.clackamas.us/bcc/business.html>



9

NANCY S. BUSH  
DIRECTOR

DEPARTMENT OF EMERGENCY MANAGEMENT

September 12, 2013

COMMUNICATIONS AND EMERGENCY OPERATIONS CENTER  
2200 KAEN ROAD | OREGON CITY, OR 97045

Board of County Commissioner  
Clackamas County

Members of the Board:

Approval of FY12 Urban Area Security Initiative (UASI)  
Subrecipient Grant Agreement with Clackamas River Water District

<b>Purpose/Outcomes</b>	Approving the FY12 Subrecipient Grant Agreement between Clackamas County and the Clackamas River Water District (CRWD) allows CRWD to receive and/or benefit from UASI grant funds that pass through Clackamas County.
<b>Dollar Amount and Fiscal Impact</b>	The UASI grant is a 100% federal share grant. Clackamas County acts as the pass-through for grant funds to sub-recipients, receiving full reimbursement for any expenses incurred. Upon approval of the Subrecipient Grant Agreement, CRWD will be eligible to receive \$88,000 for an overland pipe system.
<b>Funding Source</b>	The United States Department of Homeland Security, Federal Emergency Management Agency - no County General Funds are involved.
<b>Safety Impact</b>	CRWD will enhance their disaster response capability with funds from this grant.
<b>Duration</b>	The FY12 UASI grant award period is effective from the date of signature by both parties through May 31, 2014.
<b>Previous Board Action</b>	The FY12 UASI Intergovernmental Agreement, which serves as the basis for this agreement, was approved by the Board of County Commissioners during the August 29, 2013 business meeting – agenda item 082913-E2.
<b>Contact Person</b>	Sarah Stegmuller Eckman, Administrative Services Manager, 503-650-3381
<b>Contract No.</b>	N/A

**BACKGROUND:**

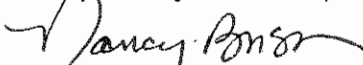
Clackamas County is a signatory to the FY12 UASI Intergovernmental Agreement with the City of Portland that requires the County to be the sponsoring, or pass-through, agency for other county agencies and special districts that receive funding or benefit from UASI grants. Approval of the FY12 UASI Subrecipient Grant Agreement with CRWD will allow the District to receive \$88,000 for an overland pipe system, as well as to be eligible to benefit from any future FY12 UASI funding opportunities.

The agreement has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

Staff respectfully recommends the Board approve the FY12 Subrecipient Grant Agreement between Clackamas County and the CRWD and authorize Nancy Bush, the Emergency Management Director, to sign on behalf of Clackamas County.

Respectfully submitted,

  
Nancy Bush, Director

**CLACKAMAS COUNTY, OREGON  
SUBRECIPIENT GRANT AGREEMENT 14-007**

Project Name: **UA12-0035 Clackamas River Water District Overland Pipe System**

Project Number: **To Be Assigned by Clackamas County**

This Agreement is between Clackamas County, Oregon, acting by and through its  
Department of Emergency Management and **Clackamas River Water District** (Subrecipient).

**Clackamas County Data**

Grant Accountant: <b>Judy Anderson-Smith</b>	Program Manager: <b>Sarah Stegmuller-Eckman</b>
Clackamas County – Finance 2051 Kaen Road Oregon City, OR 97045 503-742-5422 jsmith2@co.clackamas.or.us	Clackamas County – Emergency Management 2200 Kaen Road Oregon City, OR 97045 503-650-3381 sarahste@co.clackamas.or.us

**Subrecipient Data**

Finance/Fiscal Representative: <b>Carol Bryck</b>	Program Representative: <b>Donn Bunyard</b>
Clackamas River Water District 16770 SE 82 <sup>nd</sup> Drive Clackamas, OR 97015 503-722-9224 cbryck@crwater.com	Clackamas River Water District 16770 SE 82 <sup>nd</sup> Drive Clackamas, OR 97015 503-722-9243 dbunyard@crwater.com
DUNS: 02-899-9878	

**URBAN AREA SECURITY INITIATIVE (UASI)**

THIS IS an intergovernmental agreement (Agreement) between Clackamas County, Oregon (“County”) Clackamas River Water District (“Subrecipient”) entered into pursuant to the authority granted in Oregon Revised Statutes (ORS) Chapter 190 for the coordination of activities related to use of the United States Department of Homeland Security’s Urban Areas Security Initiative (UASI) grant program funds for addressing the unique planning, organization, equipment, training, and exercise needs of high-threat, high-density urban areas to assist in building an enhanced and sustainable capacity to prevent, protect against, respond to, and recover from acts of terrorism.

**SECTION I. RECITALS**

WHEREAS, the United States Department of Homeland Security, Federal Emergency Management Subrecipient (FEMA) Grant Programs Directorate, provided UASI grant funding in the amount of \$2,049,396, in Fiscal Year 2012 to the State of Oregon (State) for distribution to the Portland Urban Area (PUA); and

WHEREAS, the State awarded UASI Grant #12-170 (CFDA #97.008) to the City of Portland, Bureau of Emergency Management (PBEM), as sub grantee, for Fiscal Year 2012 in the amount of \$2,049,396, a copy of which is attached to this Agreement and incorporated herein as Exhibit A; and

WHEREAS, UASI Grant #12-170 is intended to increase the capabilities of the PUA, which includes jurisdictions, agencies, and organizations in Multnomah, Clackamas, Columbia, and Clackamas counties in Oregon and Clark County in Washington, to prevent, protect against, respond to, and recover from threats and acts of terrorism; and

WHEREAS, a list of equipment, supplies, professional services, training, and exercises to be funded by the grant has been developed through the application process and coordination with the State; and

WHEREAS, PBEM, as Grant Administrator, is required to oversee and coordinate the expenditure of the UASI grant funds and has developed procedures to guide the procurement, delivery, and reimbursement processes; and

WHEREAS, PBEM, as Grant Administrator, is required to make periodic reports to the State regarding the expenditure of the UASI grant funds and has developed procedures to coordinate the collection and submission of information and documents needed to support the reporting process; and

WHEREAS, the City of Portland and all other PUA jurisdictions, agencies, and organizations that receive direct benefit from UASI grant purchases are required to comply with all terms of the UASI Grant # 12-170 award including, but not limited to, obligations regarding reporting, access to records, financial tracking and procurement, and supplanting of funds; and

WHEREAS, the City of Portland has entered into an agreement with Clackamas County to secure the County's commitment to follow the City of Portland-developed procurement, delivery, reimbursement, and reporting procedures, to ensure its compliance with all terms of the grant, and to obligate it to coordinate with and obtain similar assurances from directly benefiting jurisdictions, agencies, and organizations within the County.

WHEREAS, This Grant Agreement of Federal financial assistance sets forth the terms and conditions pursuant to which SUBRECIPIENT agrees on delivery of the Program.

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

1. **Effective Date and Duration.** This Agreement shall be effective from the date both parties have **signed** and shall be terminated on **May 31, 2014**, unless sooner terminated or extended pursuant to the terms hereof.
2. **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 comply with the requirements of the UASI Grant #12-170, that is the source of the grant funding, in addition to compliance with requirements of Title 44 of the *Code of Federal Regulations*, Part 13. A copy of the grant award has been provided to SUBRECIPIENT by the COUNTY, which is attached to and made a part of this Agreement by this reference.
3. **Grant Funds.** The COUNTY's funding for this Agreement is the **Non-Profit Security Program (UASI) (CFDA 97.008)** issued to the COUNTY by the City of Portland, through its Bureau of Emergency Management. The maximum, not to exceed, grant amount that the COUNTY will pay is **\$88,000.00**. Disbursements will be made in accordance with the schedule and requirements contained in Exhibit D: Clackamas County Invoice Voucher Template and Exhibit E: Biannual Dashboard Report. Failure to comply with the terms of this Agreement may result in withholding of payment.
4. **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 the 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 effective before SUBRECIPIENT performs work subject to the amendment.
5. **Termination.** Either party may terminate this Agreement in the event the other fails to comply with its obligations under the Agreement. If the Agreement is terminated due to the Sub-recipient's failure or

inability to comply with the provisions of the grant or the Agreement, the Sub-recipient will be liable to Clackamas County for the full cost of any equipment, materials, or services provided to the Sub-recipient, and any penalties imposed by the State or Federal Government. Each party will notify the other, in writing, of its intention to terminate this Agreement and the reasons therefore. The other party shall have fourteen days, or such other time as the parties may agree, from the date of the notice in which to correct or otherwise address the compliance failure which is the subject of the notice.

6. **Funds Available and Authorized.** The COUNTY certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Agreement within the current fiscal year budget. SUBRECIPIENT understands and agrees that payment of amounts under this Agreement is contingent on the COUNTY receiving appropriations or other expenditure authority sufficient to allow the COUNTY, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.
7. **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 this agreement.
8. **Administrative Requirements.** SUBRECIPIENT agrees to its status as a Subrecipient, and accepts among its duties and responsibilities the following:
  - a) That it has read the award conditions and certifications for UASI Grant #12-170, 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 grantee, under those grant documents.
  - b) That the SUBRECIPIENT may charge to the award only allowable costs resulting from obligations incurred during the funding period also known at the period of availability.
  - c) To comply with all Clackamas County, City of Portland, and State and Federal financial management and procurement requirements, including competitive bid processes, and to maintain accounting and financial records in accordance with Generally Accepted Accounting Principles (GAAP) and financial, administrative, and audit requirements as set forth in the most recent versions of the Code of Federal Regulations (CFR) and Office of Management and Budget (OMB) circulars. A nonexclusive list of regulations commonly applicable to DHS grants includes:
    - i. Administrative Requirements: 44 CFR Part 13 (State and Local Governments) and 2 CFR Part 215 (Non-Profit Organizations).
    - ii. Cost Principles: 2 CFR Part 225 (State, Local, and Tribal Governments); Part 230 (Non-Profit Organizations); and Federal Acquisition Regulations (FAR) Part 31.2 (Contracts with Commercial Organizations). These principles must be applied for all costs incurred whether charged on a direct or indirect basis. Costs disallowed by the Federal government shall be the liability of the SUBRECIPIENT.
    - iii. Audit Requirements: OMB Circular A-133. The SUBRECIPIENT shall comply with the audit requirements prescribed in the Single Audit Act Amendments and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations". SUBRECIPIENT expenditures of \$500,000 or more in Federal funds require an annual Single Audit. SUBRECIPIENT is required to hire an independent auditor qualified to perform an A-133 audit and submit the audit reports to the COUNTY within 9 months from the SUBRECIPIENT'S fiscal year end or 30 days after issuance of the reports, whichever is sooner.

- d) That all equipment, supplies, and services purchased by the City of Portland or Clackamas County on behalf of the Sub-recipient, or purchased by the Sub-recipient and reimbursed by the County are as described in the approved grant budget documents, which the Sub-recipient has seen.
- e) That it will not deviate from the items listed in the approved grant budget documents without first securing written authority from the Clackamas County. See budget document attached in Exhibit B.
- f) The SUBRECIPIENT shall comply with 2 CFR 25.200-205 and apply for a unique universal identification number (DUNS) as required for receipt of funding. In addition, the SUBRECIPIENT shall register and maintain an active registration in the Central Contractor Registration database, now located at <http://www.sam.gov>.
- g) The SUBRECIPIENT shall comply with 2 CFR 180 and 901. This common rule restricts sub-awards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. SUBRECIPIENT is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. SUBRECIPIENT may access the Excluded Parties List System at <http://www.sam.gov>
- h) The SUBRECIPIENT agrees that no portion of the Federal grant funds will be used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law which prohibits the use of Federal grant funds for litigation against the United States. See Exhibit C: Lobby and Litigation Certificate.
- i) The SUBRECIPIENT agrees to allow access to conduct site visits and inspections of financial records for the purpose of monitoring. The COUNTY, the City of Portland, the Federal or State government, 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 the COUNTY's discretion.
- j) To comply with all property and equipment tracking and monitoring processes required by the grants, this Agreement, the City of Portland, Clackamas County and the State and Federal government.
- k) To treat all single items of equipment valued over \$5,000 as fixed assets and to provide Clackamas County with a list of such equipment. The list should include, but is not limited to, dates of purchase, equipment description, serial numbers, and locations where the equipment is housed or stored. All requirements for the tracking and monitoring of fixed assets are set forth in 44 CFR Part 13.32.
- l) To maintain and store all equipment and supplies, provided or purchased, in a manner that will best prolong its life and keep it in good working order at all times.
- m) That regardless of how it is procured, all equipment and supplies purchased shall be recorded as an asset of the Sub-recipient. The Sub-recipient shall be responsible for inventory tracking, maintenance, and storage while in possession of such equipment and supplies. Sub-recipient shall obtain from Clackamas County approval to dispose of all equipment and supplies, as title remains vested in the Federal Government in accordance with 44 CFR Part 13.32(f).

- n) That any request or invoice it submits for reimbursement of costs is consistent with the items identified in the approved grant budget documents.
- o) That it understands and accepts full financial responsibility and may not be reimbursed for costs incurred which have not been approved by the Clackamas County, City of Portland, State, and the U.S. Department of Homeland Security, FEMA Grant Programs Directorate.
- p) That all publications created with funding under this grant shall prominently contain the following statement: "This document was prepared under a grant from FEMA's Grant Programs Directorate, U.S. Department of Homeland Security. Points of view or opinions expressed in this document are those of the authors and do not necessarily represent the official position or policies of FEMA's Grant Programs Directorate or the U.S. Department of Homeland Security."
- q) That all financial records and supporting documentation, and all other records pertinent to this grant or agreements under this grant, shall be retained for a minimum of 10 years following termination, completion, or expiration of this Agreement for purposes of City of Portland, Clackamas County, State, or federal examination and audit.
- r) To obtain a copy of 44 CFR Part 13 and all applicable OMB circulars, and to apprise itself of all rules and regulations set forth.
- s) Not to supplant its local funds with federal and to, instead, use the federal funds to increase the amount of funds that, in the absence of federal aid, would be made available to fund programs within the UASI grant program guidelines.
- t) To comply with National Incident Management System (NIMS) objectives identified as requirements by the State.
- u) To comply with all applicable federal, state, and local environmental and historic preservation (EHP) requirements and provide information requested to ensure compliance with applicable laws.
- v) To provide timely compliance with all reporting obligations required by the grant's terms to Clackamas County.
- w) To provide Clackamas County with Performance Reports, Financial Reimbursement Reports, and Audit Reports as required by the City of Portland and Clackamas County and in the form required by the City of Portland and Clackamas County.
  - i. Performance Reports are due to the Portland Bureau of Emergency Management (PBEM) biannually on June 15th and December 15th during the term of the grant agreement. Late Performance Reports could result in the suspension and/or termination of the grant.
  - ii. Financial Reimbursement Reports are due to Clackamas County no less frequently than quarterly during the term of the grant agreement. Late Financial Reimbursement Reports could result in the suspension and/or termination of the grant.
  - iii. Per UASI Grant #12-170, Section K.2.b., reimbursement for expenses may be withheld if performance reports are not submitted by the specified dates or are incomplete.
  - iv. Single Audit Certification Form is to be completed and returned to Clackamas County within 30 days from receipt.

- x) To follow the travel expense and per diem guidelines set forth by the U.S. General Services Administration (GSA) as well as the guidelines of the City of Portland and State. Per UASI Grant #12-170, Section K.2.c., reimbursements rates for travel expenses shall not exceed those allowed by the State. Requests for reimbursement for travel must be supported with a detailed statement identifying the person who traveled, the purpose of the travel, the dates, times, and places of travel, and the actual expense or authorized rates incurred.

GSA per diem rates can be found on the GSA website:  
<http://www.gsa.gov/portal/category/21287>.

The City of Portland's guidelines can be found on the Office of the City Auditor's website:  
BCP-FIN-6.13 Travel:  
<http://www.portlandonline.com/auditor/index.cfm?&c=34747&a=160271>

BCP-FIN-6.14 **Non-travel Meals, Light Refreshments and Related Miscellaneous Expenses:** <http://www.portlandonline.com/auditor/index.cfm?&a=160283&c=34747>

- y) To comply with all of its obligations under this Agreement and any applicable, incorporated document or documents. SUBRECIPIENT acknowledges and agrees that this agreement and the terms and conditions therein are essential terms in allowing the relationship between COUNTY and SUBRECIPIENT to continue, and that failure to comply with such terms and conditions represents a material breach of the original contract and this agreement. Such material breach shall give rise to the COUNTY's right, but not obligation, to withhold SUBRECIPIENT grant funds until compliance is met or to terminate this relationship including the original contract and all associated amendments.
9. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of law. Any claim, action, suit or proceeding that arises from or relates to this Agreement shall be brought and conducted exclusively within the Circuit Court of Clackamas County for the state of Oregon. In the event a claim is brought in a federal forum, then it shall be brought and conducted solely and exclusively in the United States District Court for the District of Oregon, Portland Division.
10. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute one and the same instrument.
11. **Survival.** The terms, conditions, representations, and all warranties in this Agreement shall survive the termination or expiration of this Agreement.
12. **Force Majeure.** Neither party shall be held responsible for delay or default caused by fire, riot, acts of God, or war where such cause was beyond reasonable control. Each party shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligations under this Agreement.
13. **Indemnification.** Sub-recipient shall indemnify, defend and hold harmless the County and the City of Portland, their officers, employees and agents from and against any and all liability, claims, damages, losses, and expenses, arising out of or relating to the performance of this Agreement, unless such liability, claims, damages, losses and expenses are due solely to the act of the County or the City of Portland.
14. **Insurance.** Sub-recipient shall obtain, at Sub-recipient's expense, and keep in effect during the term of this contract, Commercial General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form in the amount of not less than \$1 Million per occurrence/\$2 Million general aggregate for the protection of the County, its officers, commissioners, and



employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement. Alternatively, Sub-recipient may provide the County with evidence of a sufficient self-insurance in lieu of purchasing commercial general liability insurance described herein.

15. **Third Party Beneficiaries.** The County and the Sub-recipient are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, or 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 persons are individually identified by name herein.
16. **Entire Agreement.** The parties agree and acknowledge that this Agreement is a complete, integrated agreement that supersedes any prior understandings related to implementation of the FY12 UASI program grant and that it is the entire agreement between them relative to that grant.
17. **Worker's Compensation.** Sub-recipient shall be responsible for providing worker's compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers (contractors with one or more employees, unless exempt under ORS 656.027).
18. **Nondiscrimination.** Each party shall comply with all requirements of federal and state civil rights and rehabilitation statutes and local non-discrimination ordinances.
19. **Access to Records.** Each party shall maintain, and shall have access to the books, documents, papers, and other records of the other party which are related to this Agreement for the purpose of making audit, examination, excerpts, and transcripts. Copies of applicable records shall be made available upon request. Access to records for Oregon Emergency Management (OEM), the Oregon Secretary of State, the Office of the Comptroller, the General Accounting Office (GAO), or any of their authorized representatives, shall not be limited to the required retention period but shall last as long as records are retained.
20. **Subcontracts and Assignment.** Neither party will subcontract or assign any part of this Agreement without the prior written consent of the other party. Notwithstanding County approval of a subcontractor, the Sub-recipient shall remain obligated for full performance hereunder, and the County shall incur no obligation other than its obligations to the Sub-recipient hereunder.

(Signature Page Attached)

Signature Page to SUBRECIPIENT GRANT Agreement

AGREED as of the Effective Date.

**CLACKAMAS COUNTY**, a political  
subdivision of the State of Oregon

By: \_\_\_\_\_  
Authorized Signature

Date: \_\_\_\_\_, 2013

Approved as to form

By: \_\_\_\_\_  
County Counsel

Date: \_\_\_\_\_, 2013

**SUB-RECIPIENT**

By: \_\_\_\_\_  
Authorized Signature

For: \_\_\_\_\_  
Sub-recipient

Date: \_\_\_\_\_, 2013

Approved as to form

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

Date: \_\_\_\_\_, 2013

- Exhibit A: UASI GRANT AGREEMENT #12-170
- Exhibit B: SUBRECIPIENT Program Budget
- Exhibit C: Lobbying and Litigation Certificate
- Exhibit D: Clackamas County Invoice Voucher Template
- Exhibit E: Biannual Dashboard Report

Exhibit A

## Subgrantee Copy

**OREGON MILITARY DEPARTMENT  
OFFICE OF EMERGENCY MANAGEMENT  
URBAN AREA SECURITY INITIATIVE GRANT PROGRAM  
CFDA # 97.008**

### ***GRANT AWARD CONDITIONS AND CERTIFICATIONS***

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PROGRAM NAME:	UASI FY 2012	GRANT NO:	# 12-170
SUBGRANTEE:	City of Portland	FEDERAL AWARD:	\$2,049,396
ADDRESS:	Bureau of Emergency Management 1001 SW 5 <sup>th</sup> Ave., Suite 650 Portland, OR 97204	AWARD PERIOD:	4/1/13 thru 5/31/14
PROGRAM CONTACT:	Carmen Merlo carmen.merlo@portlandoregon.gov	TELEPHONE:	(503) 823-2691
FISCAL CONTACT:	Shelli Tompkins shelli.tompkins@portlandoregon.gov	TELEPHONE:	(503) 823-4187

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### **BUDGET**

Equipment	
CBRNE Incident Response Vehicles	\$111,000
CBRNE Logistical Support	\$88,000
CBRNE Operational/Search and Rescue	\$598,476
Information Technology	\$217,919
Interoperable Communications	\$42,000
Other Authorized Equipment	\$31,500
Personal Protective Equipment	\$25,000
Exercises	\$50,000
Planning	\$715,216
Training (ODP-approved)	\$67,815
Administration	\$102,470
Total	<u>\$2,049,396</u>

## GRANT AWARD AGREEMENT AND PROVISIONS

### I. Provisions of Award

- A. Agreement Parties. This Agreement is between the State of Oregon, acting by and through the Oregon Military Department, Office of Emergency Management (OEM) and the Subgrantee.
- B. Effective Date. This Agreement shall become effective on the date this Agreement has been fully executed by every party. Agreement termination shall not extinguish or prejudice OEM's right to enforce this Agreement with respect to any default by Subgrantee that has not been cured.
- C. Source of Funds. Payment for this Program will be from the Fiscal Year 2012 Urban Area Security Initiative Grant Program.
- D. Merger Clause: Waiver. This Agreement and referenced documents constitute the entire Agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. No waiver, consent, modifications or change of terms of this agreement shall be binding unless agreed to in writing and signed by both the Subgrantee and OEM. Such waiver, consent, modification or change, if made shall be effective only in the specific instance and for the specific purpose given.
- E. Acknowledgment. The Subgrantee, by signature of its authorized representative, hereby acknowledges that he/she has read this agreement, understands it, and agrees to be bound by its terms and conditions (including all references to other documents). Failure to comply with this agreement and with applicable state and federal rules and guidelines may result in any or all of the withholding of reimbursement, the termination or suspension of the agreement, denial of future grants, or damages to OEM.

## TERMS AND CONDITIONS

### II. Conditions of Award

- A. The Subgrantee agrees that all allocations and use of funds under this Agreement will be in accordance with the FY2012 Homeland Security Grant Program Funding Opportunity Announcement (FOA), the requirements of which are incorporated into this Agreement by this reference, and to expend funds in accordance with the approved budget unless the Subgrantee receives prior written approval by OEM to modify the program or budget. OEM may withhold funds for any expenditure not within the approved budget or in excess of amounts approved by OEM. Failure of the Subgrantee to operate the program in accordance with the written agreed upon investment justification contained in the grant application materials and budget will be grounds for immediate suspension or termination of this Agreement.
- B. The Subgrantee agrees to cooperate with any assessments, national evaluation efforts, or information or data collection requests, including, but not limited to, the provision of any information required for the assessment or evaluation of any activities within this Agreement.
- C. By accepting FY 2012 funds, the Subgrantee certifies that it has met NIMS compliance activities outlined in the NIMS Implementation Matrix for State, Tribal, or Local Jurisdictions. Additional information on achieving compliance is available through the NIMS Resource Center at <http://www.fema.gov/emergency/nims/>.
- D. Administrative Requirements, Retention and Access to Records, and Audits.
  1. Administrative Requirements. The Subgrantee agrees to comply with all financial management and procurement requirements (Section E), to maintain accounting and financial records in accordance with Generally Accepted Accounting Principles (GAAP) and financial, administrative, and audit requirements as set forth in the most recent versions of the Code of Federal Regulations (CFR), the Office of Management and Budget (OMB) Circulars, Department of Homeland Security (DHS) program legislation, and DHS/Federal Emergency Management Agency (FEMA) regulations. A nonexclusive list of regulations commonly applicable to DHS grants includes:
    - a. Administrative Requirements. 44 CFR Part 13 (State and Local Governments).
    - b. Cost Principles. 2 CFR Part 225 (State, Local, and Tribal Governments) and 48 CFR Federal Acquisition Regulations (FAR) Part 31.2 (Contracts with Commercial Organizations).
    - c. Audit Requirements. OMB Circular A-133.

2. **Retention of Records.** All financial records, supporting documentation, and all other records pertinent to this grant or agreements under this grant shall be retained by the Subgrantee until the latest of (a) six years following termination, completion or expiration of this Agreement, (b) upon resolution of any litigation or other disputes related to this Agreement, or (c) an extended period as established under 44 CFR 13.42. It is the responsibility of the Subgrantee to obtain a copy of 44 CFR Part 13 and all applicable OMB Circulars, and to apprise itself of all rules and regulations set forth.
3. **Access to Records.** Subgrantee acknowledges and agrees, and Subgrantee will require its subrecipients, contractors, successors, transferees, and assignees to acknowledge and agree, to provide OEM, Oregon Secretary of State, Office of Inspector General (OIG), Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), or any of their authorized representatives, access to records, accounts, documents, information, facilities, and staff. Subgrantee and any subrecipients must cooperate with any compliance review or complaint investigation by any of the above listed agencies, providing them access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary. The right of access is not limited to the required retention period but shall last as long as the records are retained.
4. **Audits.** If the Subgrantee expends \$500,000 or more in Federal funds (from all sources) in its fiscal year, the Subgrantee shall have a single organization-wide audit conducted in accordance with the provisions of OMB Circular A-133. Copies of all audits must be submitted to OEM within 30 days of completion. If the Subgrantee expends less than \$500,000 in its fiscal year in Federal funds, the Subgrantee is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials as provided in Section II.D.3 herein.
5. **Audit Costs.** Audit costs for audits not required in accordance with OMB Circular A-133 are unallowable. If the Subgrantee did not expend \$500,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the grant.

**E. Procurement Requirements (44 CFR Part 13.36).**

1. The Subgrantee shall use its own procurement procedures and regulations, provided that the procurement conforms to applicable Federal and State law (including without limitation ORS chapters 279A, 279B, 279C).
2. All procurement transactions, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner that encourages fair and open competition to the maximum practical extent possible. All sole-source procurements in excess of \$100,000 must receive prior written approval from OEM in addition to any other approvals required by law applicable to the Subgrantee. Justification for sole-source procurement in excess of \$100,000 should include a description of the program and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Interagency agreements between units of government are excluded from this provision.
3. The Subgrantee 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, or Requests for Proposals (RFP) for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to OEM.
4. The Subgrantee agrees that, to the extent it uses contractors or subcontractors, such recipients shall use small, minority, women-owned or disadvantaged business concerns and contractors or subcontractors to the extent practicable.

**F. Property/Equipment Management and Records Control, and Retention of Property/Equipment Records.**

1. **Property/Equipment Management and Records Control.** The Subgrantee agrees to comply with all requirements set forth in 44 CFR Part 13 for the active tracking and monitoring of property/equipment. Procedures for managing property/equipment, whether acquired in whole or in part with grant funds, until disposition takes place, will, at a minimum, meet the following requirements:

- a. All property/equipment purchased under this agreement, whether by the Subgrantee or a subcontractor, will be recorded and maintained in the Subgrantee's property/equipment inventory system.
  - b. The Subgrantee shall maintain property/equipment records that include: a description of the property/equipment; the manufacturer's serial number, model number, or other identification number; the source of the property/equipment, including the Catalog of Federal Domestic Assistance (CFDA) number; who holds title; the acquisition date; the cost of the property/equipment and the percentage of Federal participation in the cost; the location, use and condition of the property/equipment; and any ultimate disposition data including the date of disposal and sale price of the property/equipment.
  - c. A physical inventory of the property/equipment must be taken and the results reconciled with the property/equipment records, at least once every two years.
  - d. A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property/equipment. Any loss, damage, or theft shall be investigated.
  - e. Adequate maintenance procedures must be developed to keep the property/equipment in good condition.
  - f. If the Subgrantee is authorized to sell the property/equipment, proper sales procedures must be established to ensure the highest possible return.
  - g. Subgrantee agrees to comply with 44 CFR Part 13.32.e when original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency.
  - h. The Subgrantee agrees that, when practicable, any property/equipment purchased with grant funding shall be prominently marked as follows: "Purchased with funds provided by the U.S. Department of Homeland Security".
  - i. The Subgrantee shall pass on property/equipment management requirements that meet or exceed the requirements outlined above for all subcontractors, consultants, and the subgrantees who receive pass-through funding from this Agreement.
2. Retention of Property/Equipment Records. Records for property/equipment shall be retained for a period of six years from the date of the disposition or replacement or transfer at the discretion of OEM. Title to all property/equipment and supplies purchased with funds made available under the Urban Area Security Initiative Grant Program shall vest in the Subgrantee agency that purchased the property/equipment, if it provides written certification to OEM that it will use the property/equipment for purposes consistent with the Urban Area Security Initiative Grant Program.

**G. Funding.**

1. Matching Funds. This Grant does not require matching funds.
2. Allowable Costs. The Subgrantee agrees that all allocations and use of funds under this Agreement will be in accordance with the Fiscal Year 2012 Homeland Security Grant Program and FOA.
3. Supplanting. The Subgrantee certifies that federal funds will not be used to supplant state or local funds, but will be used to increase the amount of funds that, in the absence of federal aid, would be made available to the Subgrantee to fund programs consistent with Urban Area Security Initiative Grant Program guidelines.

**H. Reports.** Failure of the Subgrantee to submit the required program, financial, or audit reports, or to resolve program, financial, or audit issues may result in the suspension of grant payments, or termination of this Agreement, or both.

1. Performance Reports.

The Subgrantee agrees to submit reports in a form acceptable to OEM on reporting on its progress in meeting its agreed upon strategic goals and objectives. The narrative reports will address specific information regarding the activities carried out under the FY 2012 Urban Area Security Initiative Grant Program and how they address identified project specific strategic goals and objectives.

Performance reports are due to OEM on the last day of each calendar year quarter.

Any Performance Report that is outstanding for more than one month past the due date may cause the suspension or termination of the grant. The Subgrantee must receive prior written approval from OEM to extend a performance report requirement past its due date.

2. Biannual Strategy Implementation Report.

The Subgrantee agrees to provide reports to OEM in a form acceptable to OEM to enable OEM to meet its obligation to provide to FEMA the Biannual Strategy Implementation Report (BSIR) to show progress made toward meeting strategic goals and objectives. BSIR completion is due twenty-one days after the end of each BSIR reporting period, July 21 for the reporting period January 1 through June 30; and January 20 for the reporting period of July 1 through December 31.

3. Financial Reimbursement Reports.

- a. In order to receive reimbursement, the Subgrantee agrees to submit a signed Request for Reimbursement (RFR), using a form provided by OEM that includes supporting documentation for all grant expenditures. RFRs may be submitted monthly but no less frequently than quarterly during the term of this Agreement. At a minimum, RFRs must be submitted no later than one month following the end of each calendar year quarter, and a final RFR must be submitted no later than one month following the end of the grant period.
- b. Reimbursements for expenses will be withheld if performance reports are not submitted by the specified dates or are incomplete.
- c. Reimbursement rates for travel expenses shall not exceed those allowed by the State of Oregon. Requests for reimbursement for travel must be supported with a detailed statement identifying the person who traveled, the purpose of the travel, the dates, times, and places of travel, and the actual expenses or authorized rates incurred.
- d. Reimbursements will only be made for actual expenses incurred during the grant period. The Subgrantee agrees that no grant funds may be used for expenses incurred before April 1, 2013 or after May 31, 2014.
- e. The Subgrantee shall be accountable for and shall repay to OEM any overpayment, audit disallowances or any other breach of grant that results in a debt owed to the Federal Government. OEM shall apply interest, penalties, and administrative costs to a delinquent debt owed by a debtor pursuant to the Federal Claims Collection Standards and OMB Circular A-129.

4. Audit Reports. The Subgrantee shall provide OEM copies of all audit reports pertaining to this Agreement obtained by the Subgrantee, whether or not the audit is required by OMB Circular A-133 (Section II.D.4-5).

I. Contribution: Subcontractor Indemnity and Insurance.

1. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.
2. With respect to a Third Party Claim for which OEM is jointly liable with the Grantee (or would be if joined in the Third Party Claim), OEM shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Grantee in such proportion as is appropriate to reflect the relative fault of OEM on the one hand and of the Grantee on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of OEM on the one hand and of the Grantee on the other hand shall be determined by reference to, among other things, the

parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. OEM's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if OEM had sole liability in the proceeding.

3. With respect to a Third Party Claim for which the Grantee is jointly liable with OEM (or would be if joined in the Third Party Claim), the Grantee shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by OEM in such proportion as is appropriate to reflect the relative fault of the Grantee on the one hand and of OEM on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Grantee on the one hand and of OEM on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Grantee's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.
  4. Subgrantee shall take all reasonable steps to cause its contractor(s) or subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless OEM and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Grantee's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims
  5. Subgrantee shall require its contractor(s) or (subcontractor(s) to obtain insurance in amounts required by OEM, not to exceed OEM's limits of liability under the Oregon Tort Claims Act, and shall provide that the State of Oregon, OEM, and their officers, employees and members are named as Additional Insureds, but only with respect to the contractor's or subcontractor's services performed under this grant.
- J. Time is of the Essence. The Subgrantee agrees that time is of the essence under this Agreement.
- K. Governing Law; Venue; Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit, or proceeding (collectively, "Claim") between OEM (or any other agency or department of the State of Oregon) and the Subgrantee that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for the State of Oregon; provided, however, if the 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. This Section applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. The Subgrantee, by execution of this Agreement, hereby consents to the In Personam Jurisdiction of said courts, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.
- L. Notices. Except as otherwise expressly provided in this Section, any communications between the parties hereto or notice to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same by registered or certified mail, postage prepaid to the Subgrantee or OEM at the address or number set forth on page 1 of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and sent by registered or certified mail shall be deemed delivered upon receipt or refusal of receipt. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. The parties also may communicate by telephone, regular mail or other means, but such communications shall not be deemed Notices under this Section unless receipt by the other party is expressly acknowledged in writing by the receiving party.



- M. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of OEM, the Subgrantee, and their respective successors and assigns, except that the Subgrantee may not assign or transfer its rights or obligations hereunder or any interest herein without the prior consent in writing of OEM.
- N. Survival. All provisions of this Agreement set forth in the following sections shall survive termination of this Agreement: Section II.D (Administrative Requirements, Retention and Access to Records, and Audits); Section II.E (Procurement Requirements); Section II.F (Property/Equipment Management and Records Control, and Retention of Records); Section II.H (Reports); and Section II.I (Contribution; Subcontractor Indemnity and Insurance).
- O. Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- P. Relationship of Parties. The parties agree and acknowledge that their relationship is that of independent contracting parties and neither party hereto shall be deemed an agent, partner, joint venturer or related entity of the other by reason of this Agreement.

### III. Subgrantee Compliance and Certifications

- A. Debarment, Suspension, Ineligibility and Voluntary Exclusion. The Subgrantee certifies by accepting funds under this Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this transaction by any Federal department or agency (44 CFR Part 13.35). The Subgrantee shall establish procedures to provide for effective use and dissemination of the Excluded Parties List (<http://www.epls.gov/>) to assure that their contractors are not in violation of the nonprocurement debarment and suspension common rule.
- B. Standard Assurances and Certifications Regarding Lobbying. The Subgrantee is required to comply with 44 CFR Part 18, *New Restrictions on Lobbying*. The restrictions on lobbying are enforceable via large civil penalties, with civil fines between \$10,000 and \$100,000 per expenditure. The Subgrantee understands and agrees that no funds provided under this Agreement may be expended in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government. These lobbying prohibitions can be found at 31 USC § 1352.
- C. Compliance with Applicable Law. The Subgrantee agrees to comply with all applicable laws, regulations, program guidance, and guidelines of the State of Oregon, the Federal Government and OEM in the performance of this Agreement, including but not limited to:
  1. Administrative Requirements set forth in 44 CFR Part 13.
  2. Cost Principles set forth in 2 CFR Part 225 and 48 CFR Federal Acquisition Regulation (FAR) Part 31.2.
  3. Audit Requirements set forth in OMB Circular A-133.
  4. The provisions set forth in 44 CFR Part 7; Part 9; Part 10; and Federal laws or regulations applicable to Federal assistance programs.
  5. The Freedom of Information Act (FOIA), 5. USC § 552 with consideration of State and local laws and regulations regarding the release of information and regulations governing Sensitive Security Information (49 CFR Part 1520).
  6. Award Term for Trafficking in Persons set forth in 2 CFR Part 175.
  7. Requirements for Drug-Free Workplace set forth in 2 CFR Part 3001.
  8. Animal Welfare Act of 1966, as amended, 7 USC § 2131 et seq.
  9. Clean Air Act of 1970, as amended, 42 USC § 7401-7671, and Clean Water Act of 1977, as amended, 33 USC § 1251.
  10. Protection of Human Subjects, set forth in 45 CFR Part 46.
  11. National Flood Insurance Act of 1968, as amended, 42 USC § 4013, pursuant to regulations set forth in 44 CFR Part 63.
  12. Flood Disaster Protection Act of 1973, as amended, 42 USC § 4002.
  13. Coastal Wetlands Planning, Protection, and Restoration Act of 1990, as amended, 16 USC § 3951, pursuant to regulations set forth in 44 CFR Part 9.
  14. USA Patriot Act of 2001, as amended, 8 USC § 1105, 1182, 1189.

D. Non-discrimination and Civil Rights Compliance, Equal Employment Opportunity Program, and Services to Limited English Proficient (LEP) Persons.

1. Non-discrimination and Civil Rights Compliance. The Subgrantee, and all its contractors and subcontractors, assures compliance with all applicable nondiscrimination laws, including but not limited to:
  - a. Title VI of the Civil Rights Act of 1964 as amended, and related nondiscrimination regulations in 44 CFR Part 7.
  - b. Title VIII of the Civil Rights Act of 1968, as amended.
  - c. Titles I, II, and III of the Americans with Disabilities Act of 1990, as amended, 42 USC §§ 12101 – 12189.
  - d. Age Discrimination Act of 1975, as amended, 42 USC § 6101.
  - e. Title IX of the Education Amendments of 1972, as amended, 20 USC § 1681 et seq.
  - f. Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794, as amended.

If, during the past three years, the Subgrantee has been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status, the Subgrantee must provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the OEM. In the event any court or administrative agency makes a finding of discrimination on grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status against the Subgrantee, or the Subgrantee settles a case or matter alleging such discrimination, Subgrantee must forward a copy of the complaint and findings to the OEM.

2. Equal Employment Opportunity Program. The Subgrantee, and any of its contractors and subcontractors, certifies that an equal employment opportunity program will be in effect on or before the effective date of this Agreement. The Subgrantee must maintain a current copy on file.
3. Services to Limited English Proficient (LEP) Persons. The Subgrantee, and any of its contractors and subcontractors agrees to comply with the requirements of Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin and resulting agency guidance, national origin discrimination includes discrimination on the basis of LEP. To ensure compliance with Title VI, Subgrantee must take reasonable steps to ensure that LEP persons have meaningful access to your programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Subgrantee is encouraged to consider the need for language services for LEP persons served or encountered both in developing budgets and in conducting programs and activities. For assistance additional information regarding LEP obligations, please see <http://www.lep.gov>.

E. Environmental and Historic Preservation.

1. The Subgrantee shall comply with all applicable Federal, State, and local environmental and historic preservation (EHP) requirements and shall provide any information requested by FEMA to ensure compliance with applicable environmental and historic preservation laws including but not limited to:
  - a. National Environmental Policy Act of 1969, as amended, 42 USC 4321, and related FEMA regulations, 44 CFR Part 10.
  - b. National Historic Preservation Act, 16 USC 470 et seq.
  - c. Endangered Species Act, 16 USC 1531 et seq.
  - d. Executive Orders on Floodplains (11988), Wetlands (11990) and Environmental Justice (12898).

Failure of the Subgrantee to meet Federal, State, and local EHP requirements and obtain applicable permits may jeopardize Federal funding.

2. The Subgrantee shall not undertake any project without prior EHP approval by FEMA, including but not limited to communications towers, physical security enhancements, new construction, and modifications to buildings, structures, and objects that are 50 years old or greater. The Subgrantee must comply with all conditions placed on the project as the result of the EHP review. Any change to the approved project scope of work will require re-evaluation for compliance with these EHP requirements. If ground disturbing activities occur during project implementation, the Subgrantee must ensure monitoring of ground disturbance and if any potential archeological resources are discovered, the Subgrantee will immediately cease construction in that area and notify FEMA and the appropriate State Historic Preservation Office. Any

construction activities that have been initiated without the necessary EHP review and approval will result in a non-compliance finding and will not be eligible for FEMA funding.

3. For any of the Subgrantee's or its contractors' or subcontractors' existing programs or activities that will be funded by these grant funds, the Subgrantee, upon specific request from the U.S. DHS, agrees to cooperate with the U.S. DHS in any preparation by the U.S. DHS of a national or program environmental assessment of that funded program or activity.
- F. Drug Free Workplace Requirements (2 CFR Part 3001). The Subgrantee agrees to comply with the requirements of the Drug-Free Workplace Act of 1988, as amended, (41 USC § 701 et seq.), which requires that all organizations receiving grants (or subgrants) from any Federal agency agree to maintain a drug-free workplace. The Subgrantee must notify this office if an employee of the Subgrantee is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment.
- G. Classified National Security Information. No funding under this Agreement shall be used to support a contract, subgrant or other agreement for goods or services that will include access to classified national security information if the award recipient has not been approved for and has access to such information. Classified national security information as defined in Executive Order (EO) 12958, as amended, means information that has been determined pursuant to EO 12958 or any predecessor order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form. See award notification.
- H. Human Trafficking (2 CFR Part 175). The Subgrantee, employees, contractors and subrecipients under this Agreement and their respective employees may not:
1. Engage in severe forms of trafficking in persons during the period of the time the award is in effect;
  2. Procure a commercial sex act during the period of time the award is in effect; or
  3. Use forced labor in the performance of the subgrant or subgrants under the award.
- The Subgrantee must inform OEM immediately of any information the Subgrantee receives from any source alleging a violation of any of the above prohibitions in this award term. OEM's right to terminate this Agreement unilaterally, without penalty, is in addition to all other remedies under this Agreement. The Subgrantee must include these requirements in any subgrant made to public or private entities.
- I. Fly America Act of 1974. The Subgrantee agrees to comply with the requirements of the Preference for U.S. Flag Air Carriers: Travel supported by U.S. Government funds requirement, which states preference for the use of U.S. flag air carriers (air carriers holding certificates under 49 USC § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended (49 USC § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to the Comptroller General Decision B138942.
- J. Activities Conducted Abroad. The Subgrantee agrees to comply with the requirements that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.
- K. Acknowledgement of Federal Funding from DHS. The Subgrantee agrees to comply with requirements to acknowledge Federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds.
- L. Copyright (44 CFR Part 13.34). The Subgrantee agrees to comply with requirements that publications or other exercise of copyright for any work first produced under Federal financial assistance awards hereto related unless the work includes any information that is otherwise controlled by the Government (e.g., classified information or other information subject to national security or export control laws or regulations). For any scientific, technical, or other copyright work based on or containing data first produced under this Agreement, including those works published in academic, technical or professional journals, symposia proceedings, or similar works, the Subgrantee grants the Government a royalty-free, nonexclusive and irrevocable license to reproduce, display, distribute copies, perform, disseminate, or prepare derivative works, and to authorize others to do so, for Government purposes in all such copyrighted works. The Subgrantee shall affix the applicable copyright notices of 17 USC § 401 or 402 and an acknowledgement of Government sponsorship (including Subgrant number) to any work first produced under an award.
- M. Use of DHS Seal, Logo and Flags. Subgrantee agrees to obtain DHS's approval prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

#### IV. Suspension or Termination of Funding

OEM may suspend funding in whole or in part, terminate funding, or impose another sanction on an Urban Area Security Initiative Grant Program recipient for any of the following reasons:

- A. Failure to comply substantially with the statutory and administrative requirements or objectives of the Urban Area Security Initiative Grant Program, with the Program guidelines, or with other applicable federal or state laws and regulations.
- B. Failure to make satisfactory progress toward the goals and objectives set forth in the approved Investment Justifications.
- C. Failure to adhere to the requirements of this Agreement and standard or special conditions.
- D. Proposing or implementing substantial plan changes to the extent that, if originally submitted, would not have been funded.
- E. Before imposing sanctions, OEM will provide reasonable notice to the Subgrantee of its intent to impose sanctions and will attempt to resolve the problem informally.

#### V. Termination of Agreement

- A. OEM may unilaterally terminate all or part of this Agreement or may reduce its scope of work if there is:
  1. A reduction in federal funds which are the basis for this Agreement.
  2. A material misrepresentation, error, or inaccuracy in Subgrantee's application.
  3. A change, modification or interpretation of State or Federal laws, regulations or guidelines that deprives OEM of authority to provide grant funds for the program or provide funds from the planned funding source.
  4. A failure by OEM to obtain sufficient funding, appropriation, limitations, allotments or other expenditure authority to allow OEM, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Agreement.
- B. OEM may terminate this Agreement, - immediately upon written notice to Subgrantee, or at such later date as OEM may establish in such notice, if Subgrantee commits any material breach or default of any covenant, warranty, obligation or certification under this Agreement. In its notice, OEM may permit Subgrantee an opportunity to cure the breach, default or failure in such time and on such terms as OEM may specify in such notice.

VI. Subgrantee Representations and Warranties

The Subgrantee represents and warrants to OEM as follows:

- A. Existence and Power. The Subgrantee is a political subdivision of the State of Oregon. The Subgrantee has full power and authority to transact the business in which it is engaged and full power, authority, and legal right to execute and deliver this Agreement and incur and perform its obligations hereunder.
- B. Authority, No Contravention. The making and performance by the Subgrantee of this Agreement (a) have been duly authorized by all necessary action of the Subgrantee, (b) do not and will not violate any provision of any applicable law, rule, or regulation or order of any court, regulatory commission, board or other administrative agency or any provision of the Subgrantee's articles of incorporation or bylaws and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which the Subgrantee is a party or by which the Subgrantee or any of its properties are bound or affected.
- C. Binding Obligation. This Agreement has been duly authorized, executed and delivered on behalf of the Subgrantee and constitutes the legal, valid, and binding obligation of the Subgrantee, enforceable in accordance with its terms.
- D. Approvals. No authorization, consent, license, approval of, filing or registration with, or notification to, any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by the Subgrantee of this Agreement.

*[Handwritten Signature]*

5/17/13  
Date

Paulina Layton, Mitigation and Recovery Section Director  
Oregon Military Department  
Office of Emergency Management  
PO Box 14370  
Salem, OR 97309-5062

*[Handwritten Signature]*

5/8/13  
Date

Signature of Authorized Subgrantee Official

*[Handwritten Signature]*  
Charlie Hales, Mayor

Name/Title

APPROVED AS TO FORM  
*[Handwritten Signature]*  
CITY ATTORNEY

Approved for Legal Sufficiency:

By Keith L. Kutler by e-mail  
Assistant Attorney General

March 28, 2013  
Date

**ORDINANCE No. 185990**

\*Accept and appropriate a grant in the amount of \$2,049,396 from the Department of Homeland Security, FY 2012 Urban Areas Security Initiative Grant Program for the purpose of enhancing emergency preparedness through planning, training and equipping emergency responders. (Ordinance)

The City of Portland ordains:

**Section 1. The Council Finds:**

1. The Department of Homeland Security provides financial assistance to selected urban areas through the FY 2012 Urban Areas Security Initiative (UASI). The City of Portland, in cooperation with regional partners (TriMet, Port of Portland, Multnomah, Clackamas, Washington and Columbia Counties of Oregon and Clark County, Washington) applied for financial assistance to address the unique equipment, training, planning, exercise and operational needs of large urban areas.
2. The Department of Homeland Security has designated Portland, Oregon as the core urban area in the State of Oregon. The City of Portland will be eligible for a portion of the \$2,049,396 available to our regional metropolitan area
3. Funds provided under the UASI Grant Program will be granted directly to the States with no less than 80% of the total award going to selected urban areas. Funds will be used and dedicated for equipment, training, planning and exercises. The Portland Urban Area has completed a regional strategy to guide the use of federal homeland security grant funds. The City of Portland Bureau of Emergency Management (PBEM) will administer the Grant for the region.
4. There are no financial match requirements for this Grant.

**NOW THEREFORE, the Council Directs:**

- a. The Mayor and Portland Bureau of Emergency Management are authorized to accept the grant from the Department of Homeland Security in the amount of \$2,049,396.
- b. The Mayor is authorized to provide such information and assurances as are required for the grant period.
- c. The FY 2012/2013 budget is hereby amended as follows:

**GRANTS FUND**

Fund - 217

Business Area - EM00

Bureau Program Expenses - \$500,000

000281

- d. The OMF Grants Office is authorized to perform all administrative matters in relation to the grant application, grant agreement or amendments, requests for reimbursement from the grantor, and to submit required online grant documents on the Mayor's behalf.
- e. The Director of PBEM is authorized to accept on behalf of the City of Portland any subsequent modifications by the Department of Homeland Security for UASI Grant No. 12-170 (BM000025) provided such modifications do not increase the City of Portland's financial obligation or risk. Any modifications that increase the City of Portland's financial obligation or risk must be authorized by the Portland City Council.

Section 2. The Council declares that an emergency exists because a delay would unnecessarily delay the City's ability to perform the activities authorized by the grant. Therefore this ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council:

APR 24 2013

Mayor Charlie Hales  
 Prepared by: Valentine Hellman  
 Date Prepared: 4/3/2013

LaYonne Griffin-Valade  
 Auditor of the City of Portland

By:

*[Signature]*  
 Deputy

Changes from UASI 11 to 12 - Deletions from 11 crossed out and additions from 12 bolded and underlined.

## II. Conditions of Award

### *Section A unchanged*

~~B. To ensure consistency among statewide planning efforts, the Subgrantee agrees to coordinate grant-funded planning projects with OEM, to include assistance with the creation of a scope of work, review and approval of service providers, and overall project direction.~~

~~C. The Subgrantee agrees that funds utilized to establish or enhance state and local fusion centers must support the development of a statewide fusion process that corresponds with the Global Justice/Homeland Security Advisory Council (HSAC) Fusion Center Guidelines and achievement of a baseline level of capability as defined by the Fusion Capability Planning Tool.~~

~~D. The Subgrantee agrees that all publications created with funding under this grant shall prominently contain the following statement: "This document was prepared under a grant from FEMA's Grant Programs Directorate, U.S. Department of Homeland Security. Points of view or opinions expressed in this document are those of the authors and do not necessarily represent the official position or policies of FEMA's Grant Programs Directorate or the U.S. Department of Homeland Security."~~

### *Section E and F become B and C but content unchanged*

#### B ~~D~~. Administrative Requirements, Retention and Access to Records, and Audits.

1. Administrative Requirements. The Subgrantee agrees to comply with all financial management and procurement requirements (Section H E), ~~including competitive bid processes and other procurement requirements, and to maintain accounting and financial records in accordance with Generally Accepted Accounting Principles (GAAP) and financial, administrative, and audit requirements as set forth in the most recent versions of the Code of Federal Regulations (CFR) and the Office of Management and Budget (OMB) Circulars. A nonexclusive list of regulations commonly applicable to DHS grants includes:~~

- a. Administrative Requirements. 44 CFR Part 13 (State and Local Governments).
- b. Cost Principles. 2 CFR Part 225 (State, Local, and Tribal Governments) and 48 CFR Federal Acquisition Regulations (FAR) Part 31.2 (Federal Acquisition Regulations—Contracts with Commercial Organizations).
- c. Audit Requirements. OMB Circular A-133 (States, ~~Local Governments, and Non-Profit Organizations~~).

2. Retention of Records. All financial records, supporting documentation, and all other records pertinent to this grant or agreements under this grant shall be retained by the Subgrantee ~~for a minimum of~~ until the latest of (a) six years following termination,



completion or expiration of this Agreement for purposes of State of Oregon or Federal examination and audit, (b) upon resolution of any litigation or other disputes related to this Agreement, or (c) an extended period as established under 44 CFR 13.42. It is the responsibility of the Subgrantee to obtain a copy of 44 CFR Part 13 and all applicable OMB Circulars, and to apprise itself of all rules and regulations set forth.

3. Access to Records. Subgrantee acknowledges and agrees, and Subgrantee will require its subrecipients, contractors, successors, transferees, and assignees to acknowledge and agree, to provide OEM, Oregon Secretary of State, Office of Inspector General (OIG), Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of the Subgrantee and any contractors or subcontractors of the Subgrantee, which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts access to records, accounts, documents, information, facilities, and staff. Subgrantee and any subrecipients must cooperate with any compliance review or complaint investigation by any of the above listed agencies, providing them access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary. The right of access is not limited to the required retention period but shall last as long as the records are retained.

*Part 4 and 5 unchanged*

H.E. Procurement Standards.

1. The Subgrantee shall use their own procurement procedures and regulations provided that the procurement conforms to applicable Federal (44 CFR Part 13.36) and State law (including without limitations ORS chapters 279A, 279B, 279C) and standards.

2. The Subgrantee agrees to provide the existing state prevailing rate of wage and, if applicable, the federal prevailing rate of wage required under the federal Davis-Bacon Act (40 U.S.C. 3141 et seq.) that must be paid to workers in each trade or occupation that is used in performing all or part of this Agreement.

*Part 3, 4 and 5 become 2, 3 and 4 but content unchanged*

I.E. Property/Equipment Management and Records Control, and Retention of Property/Equipment Records.

1. Property/Equipment Management Records Control.

*Parts a - f unchanged*

g. Subgrantee agrees to comply with 44 CFR Part 13.32.e when original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency.

*Parts g and h become h and i but content is unchanged*

*Section J becomes section G but content is unchanged*

~~K H.~~ Reports. Failure of the Subgrantee to submit the required program, financial, or audit reports, or to resolve program, financial, or audit issues may result in the suspension of grant payments, or termination of this Agreement, or both.

#### 1. Performance Reports.

The Subgrantee agrees to submit reports in a form acceptable to OEM on reporting on its progress in meeting each of its agreed upon strategic goals and objectives. The narrative reports will address specific information regarding the activities carried out under the FY 2012 Urban Area Security Initiative Grant Program and how they address identified project specific strategic goals and objectives.

Performance reports are due to OEM by the end on the last day of each calendar year quarter.

Any Performance Report that is outstanding for more than one month past the due date may cause the suspension and/or termination of the grant. The Subgrantee must receive prior written approval from OEM to extend a performance report requirement past its due date.

#### 2. Biannual Strategy Implementation Report.

The Subgrantee agrees to provide reports to OEM in a form acceptable to OEM to enable OEM to meet its obligation to provide to FEMA the Biannual Strategy Implementation Report (BSIR) to show progress made toward meeting strategic goals and objectives. BSIR completion is due twenty-one days after the end of each BSIR reporting period, July 21 for the reporting period January 1 through June 30; and January 20 for the reporting period of July 1 through December 31.

*Part 2 becomes Part 3 but content is unchanged.*

*Section L becomes I and is deleted in its entirety and replaced with new language*

#### ~~L. Indemnification.~~

~~The Sub grantee shall, to the extent permitted by the Oregon Constitution and by the Oregon Tort Claims Act, defend, save, hold harmless, and indemnify the State of Oregon, OEM, and their officers, employees, agents, and members from all claims, suits, actions, losses,~~

~~damages, liabilities, costs and expenses of any nature resulting from or arising out of, or relating to the activities of the Subgrantee, its officers, employees, subcontractors, or agents under this Agreement.~~

~~The Subgrantee shall require any of its contractors or subcontractors to defend, save, hold harmless and indemnify the State of Oregon, OEM, and their officers, employees, agents, and members, from all claims, suits or actions of whatsoever nature resulting from or arising out of the activities of subcontractor under or pursuant to this Agreement.~~

~~The Subgrantee shall, if liability insurance is required of any of its contractors or subcontractors, also require such contractors or subcontractors to provide that the State of Oregon, OEM, and their officers, employees and members are Additional Insureds, but only with respect to the contractor's or subcontractor's services performed under this Agreement.~~

I. Contribution: Subcontractor Indemnity and Insurance.

1. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

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

3. With respect to a Third Party Claim for which the Grantee is jointly liable with OEM (or would be if joined in the Third Party Claim), the Grantee shall contribute to the amount

of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by OEM in such proportion as is appropriate to reflect the relative fault of the Grantee on the one hand and of OEM on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Grantee on the one hand and of OEM on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Grantee's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

4. Subgrantee shall take all reasonable steps to cause its contractor(s) or subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless OEM and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Grantee's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims

5. Subgrantee shall require its contractor(s) or (subcontractor(s) to obtain insurance in amounts required by OEM, not to exceed OEM's limits of liability under the Oregon Tort Claims Act, and shall provide that the State of Oregon, OEM, and their officers, employees and members are named as Additional Insureds, but only with respect to the contractor's or subcontractor's services performed under this grant.

*Section M becomes Section J but content is unchanged*

*Section N is deleted in its entirety*

Ø K Governing Law; Venue; Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit, or proceeding (collectively, "Claim") between OEM (or any other agency or department of the State of Oregon) and the Subgrantee that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for the State of Oregon; provided, however, if the 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. This Section applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of

Oregon to be sued in federal court. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. The Subgrantee, by execution of this Agreement, hereby consents to the In Personam Jurisdiction of said courts, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

*Sections P - T become sections L - P but content is unchanged*

### III. Subgrantee Compliance and Certifications

A. Debarment, Suspension, Ineligibility and Voluntary Exclusion. The Subgrantee certifies by accepting funds under this Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this transaction by any Federal department or agency. ~~(This certification is required by regulations published May 26, 1988, implementing Executive Order 12549, Debarment and Suspension, 44 CFR Part 47 13.35).~~ The Subgrantee shall establish procedures to provide for effective use and/or dissemination of the Excluded Parties List ([http://www.epls.gov /](http://www.epls.gov/)) to assure that their contractors are not in violation of the nonprocurement debarment and suspension common rule.

B. Standard Assurances and Certifications Regarding Lobbying. The Subgrantee is required to comply with 44 CFR Part 18, New Restrictions on Lobbying ([http://www.access.gpo.gov/nara/cfr/waisidx\\_07/44cfr18\\_07.html](http://www.access.gpo.gov/nara/cfr/waisidx_07/44cfr18_07.html)). The restrictions on lobbying are enforceable via large civil penalties, with civil fines between \$10,000 and \$100,000 per expenditure. The Subgrantee understands and agrees that it cannot use any federal funds, either directly or indirectly, in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government, ~~without the express prior written approval of FEMA.~~ These lobbying prohibitions can be found at 31 USC § 1352.

C. Compliance with Applicable Law. The Subgrantee agrees to comply with all applicable laws, regulations, program guidance, and guidelines of the State of Oregon, the Federal Government and OEM in the performance of this Agreement, including but not limited to:

1. Administrative Requirements set forth in 44 CFR Part 13.
2. Cost Principles set forth in 2 CFR Part 225 and 48 CFR Federal Acquisition Regulation (FAR) Part 31.2.
3. Audit Requirements set forth in OMB Circular A-133.
4. The provisions set forth in 44 CFR Part 7; Part 9; Part 10; and Federal laws or regulations applicable to Federal assistance programs.
5. The Freedom of Information Act (FOIA), 5. U.S.C. §552 with consideration of State and local laws and regulations regarding the release of information and regulations governing Sensitive Security Information (49 CFR Part 1520).
6. Award Term for Trafficking in Persons set forth in 2 CFR Part 175.
7. Requirements for Drug-Free Workplace set forth in 2 CFR Part 3001.
8. Animal Welfare Act of 1966, as amended, 7 USC § 2131 et seq.
9. Clean Air Act of 1970, as amended, 42 USC§ 7401-7671, and Clean Water Act of 1977, as amended, 33 USC§ 1251.
10. Protection of Human Subjects, set forth in 45 CFR Part 46.
11. National Flood Insurance Act of 1968, as amended, 42 USC § 4013, pursuant to regulations set forth in 44 CFR Part 63.
12. Flood Disaster Protection Act of 1973, as amended, 42 USC § 4002.

13. Coastal Wetlands Planning, Protection, and Restoration Act of 1990, as amended, 16 USC§ 3951, pursuant to regulations set forth in 44 CFR Part 9.

14. USA Patriot Act of 2001, as amended, 8 USC§ 1105, 1182, 1189.

D. Non-discrimination and Civil Rights Compliance. Equal Employment Opportunity Program and Services to Limited English Proficient (LEP) Persons.

1. Non-discrimination and Civil Rights Compliance. ~~The Subgrantee, and all its contractors and subcontractors, certifies that no person shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any activity funded under this Agreement on the basis of race, color, age, religion, national origin, disability, or gender. The Subgrantee, and all its contractors and subcontractors, assures compliance with all applicable nondiscrimination laws, including but not limited to:~~

~~a. Title VI of the Civil Rights Act of 1964 as amended, and related Nondiscrimination Regulations s in 44 CFR Part 7;~~

~~b. Title VIII of the Civil Rights Act of 1968, as amended.~~

~~b c. Titles I, II and III of the Americans with Disabilities Act (ADA) of 1990; as amended, 42 USC §§ 12101 - 12189.~~

~~d. Age Discrimination Act of 1975, as amended, 42 USC § 6101.~~

~~e. Title IX of the Education Amendments of 1972, as amended, 20 USC§ 1681 et seq.~~

~~f. Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794, as amended.~~

~~In the event that a Federal or State court or administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, age, religion, national origin, disability or gender against the Subgrantee or any of its contractors or subcontractors, the Subgrantee or any of its contractors or subcontractors will forward a copy of the finding to OEM.~~

~~If, during the past three years, the Subgrantee has been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status, the Subgrantee must provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the OEM. In the event any court or administrative agency makes a finding of discrimination on grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status against the Subgrantee, or the Subgrantee settles a case or matter alleging such discrimination, Subgrantee must forward a copy of the complaint and findings to the OEM.~~

2. Equal Employment Opportunity Program. The Subgrantee, and any of its contractors and subcontractors, certifies that an equal employment opportunity program will be in effect on or before the effective date of this Agreement. The Subgrantee must maintain a current copy on file.

~~3. Services to Limited English Proficient (LEP) Persons. National origin discrimination includes discrimination on the basis of limited English proficiency. Recipients of federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important benefits, programs, information and services. For additional information, please see <http://www.lep.gov>.~~

3. Services to Limited English Proficient (LEP) Persons. The Subgrantee, and any of its contractors and subcontractors agrees to comply with the requirements of Executive Order 13166, improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin and resulting agency guidance, national origin discrimination includes discrimination on the basis of LEP. To ensure compliance with Title VI, Subgrantee must take reasonable steps to ensure that LEP persons have meaningful access to your programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Subgrantee is encouraged to consider the need for language services for LEP persons served or encountered both in developing budgets and in conducting programs and activities. For assistance additional information regarding LEP obligations, please see <http://www.lep.gov>.

*Section E is unchanged*

*Section F is deleted in its entirety and replaced*

~~F. Drug-Free Workplace Requirements. The Subgrantee certifies that it will provide a drug-free workplace. There are two general requirements if you are a recipient other than an individual.~~

~~1. You must make a good faith effort, on a continuing basis, to maintain a drug-free workplace. Briefly, those measures are to:~~

- ~~a. Publish a drug-free workplace statement and establish a drug-free awareness program for your employees (see 44 CFR Part 17.6); and~~
- ~~b. Take actions concerning employees who are convicted of violating drug statutes in the workplace.~~

~~2. You must identify all known workplaces under your Federal awards.~~

~~Additional information can be referenced at:~~

~~[http://www.access.gpo.gov/nara/cfr/waisidx\\_08/44cfrv1\\_08.html](http://www.access.gpo.gov/nara/cfr/waisidx_08/44cfrv1_08.html).~~

F. Drug Free Workplace Requirements (2 CFR Part 3001). The Subgrantee agrees to comply with the requirements of the Drug-Free Workplace Act of 1988, as amended, (41 USC 701 et seq.), which requires that all organizations receiving grants (or subgrants) from any Federal agency agree to maintain a drug-free workplace. The Subgrantee must



notify this office if an employee of the Subgrantee is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment

*Section G was unchanged*

H. Human Trafficking (2 CER Part 175). The Subgrantee, employees, contractors and subrecipients under this Agreement and their respective employees may not:

1. Engage in severe forms of trafficking in persons during the period of the time the award is in effect;
2. Procure a commercial sex act during the period of time the award is in effect; or
3. Use forced labor in the performance of the subgrant or subgrants under the award.

The Subgrantee must inform OEM immediately of any information the Subgrantee receives from any source alleging a violation of any of the above prohibitions in this award term. OEM's right to terminate this Agreement unilaterally, without penalty, is in addition to all other remedies under this award Agreement. The Subgrantee must include these requirements in any subaward subgrant made to public or private entities.

I. Fly America Act of 1974. The Subgrantee agrees to comply with the requirements of the Preference for U.S. Flag Air Carriers: Travel supported by U.S. Government funds requirement, which states preference for the use of U.S. flag air carriers (air carriers holding certificates under 49 USC § 411 02) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended (49 USC§ 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to the Comptroller General Decision B138942.

J. Activities Conducted Abroad. The Subgrantee agrees to comply with the requirements that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

K. Acknowledgement of Federal Funding from DHS. The Subgrantee agrees to comply with requirements to acknowledge Federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds.

L. Copyright (44 CFR Part 13.34). The Subgrantee agrees to comply with requirements that publications or other exercise of copyright for any work first produced under Federal financial assistance awards hereto related unless the work includes any information that is otherwise controlled by the Government (e.g., classified information or other information subject to national security or export control laws or regulations). For any

scientific, technical, or other copyright work based on or containing data first produced under this Agreement, including those works published in academic, technical or professional journals, symposia proceedings, or similar works, the Subgrantee grants the Government a royalty-free, nonexclusive and irrevocable license to reproduce, display, distribute copies, perform, disseminate, or prepare derivative works, and to authorize others to do so, for Government purposes in all such copyrighted works. The Subgrantee shall affix the applicable copyright notices of 17 USC § 401 or 402 and an acknowledgement of Government sponsorship (including Subgrant number) to any work first produced under an award.

M. Use of DHS Seal, Logo and Flags. Subgrantee agrees to obtain DHS's approval prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

Exhibit B

Item No.	Discipline	Agency/Bureau	Category (Solution Area)	Subcategory	Investment Name	AEL No. Where applicable	Item	Qty	Unit Cost	Current Budget	Contact Name	Contact email	Contact Phone Number	
UA12-0003	EM	Clack Co EM	planning	personnel	Collaborative Regional Planning		regional staff	1	\$ 77,777.00	\$	77,777.00	Hilary Bush		
UA12-0022	LE	Clackamas Co Sheriff	equipment	information technology	Regional Incident Response and Recovery	04MD-03-11CAM	Underwater video cameras	1		\$	1,750.00	Gil MacGregor	gil_macgregor@co.washington.or.us	503-846-5926
UA12-0033	PW	Milwaukie PW	equipment	CBRNE Search and Rescue	Regional Incident Response and Recovery	03OE-03LTPA	Light Plants	1		\$	15,200.00	Willie Miller	millerw@cl.milwaukie.or.us	503-766-7621
UA12-0034	PW	Damascus	equipment	CBRNE Search and Rescue	Regional Incident Response and Recovery	03OE-03LTPA	Light Plants	1		\$	15,200.00	Willie Miller	millerw@cl.milwaukie.or.us	503-766-7621
UA12-0037	PW	Milwaukie PW	equipment	CBRNE Incident Response Vehicle	Regional Incident Response and Recovery	12VE-00-MIS5	Incident Response Truck	1		\$	75,000.00	Willie Miller	millerw@cl.milwaukie.or.us	503-766-7621
UA12-0043	Comm	Clackamas Co EM	equipment	information technology	Interoperable Communications and Information Sharing	04AP-05-ALRT	EAS equipment - shipping and installation	2		\$	8,200.00	Larry Hetch	lhetch@wecox.com	503-690-4911 x207
UA12-0030	PW	Clackamas County	equipment	CBRNE Search and Rescue	Regional Incident Response and Recovery	03SR-01-TLPM 03SR-02-TPHF 03SR-02-TPHS	Concrete cutting saws-bit, hydraulic and gas	6		\$	21,885.00	Donn Buryard	dburyard@crwater.com	503-727-9243
UA12-0031	PW	Clackamas County	equipment	CBRNE Search and Rescue	Regional Incident Response and Recovery	03OF-03LTPA	Light Plants	1		\$	15,200.00	Willie Miller	millerw@cl.milwaukie.or.us	503-766-7621
UA12-0035	PW	Clackamas County	equipment	CBRNE Logistical Support Equipment	Regional Incident Response and Recovery	19SN-00-1120D	Systems, Overland Pipe	1		\$	88,000.00	Donn Buryard	dburyard@crwater.com	503-727-9243
UA12-0036	PW	Happy Valley PW	equipment	CBRNE Incident Response Vehicle	Regional Incident Response and Recovery	12TR-00-TEQM	Traffic Incident Management Trailers	1		\$	98,000.00	Michelle Amend	michellea@cl.happyvalley.or.us	503-783-3612
UA12-0045	LE	Clackamas Co Sheriff	equipment	Personal Protective Equipment	Regional Incident Response and Recovery	01SW-04-5PFD	Personal Floatation Device/ Life Jacket	20		\$	5,000.00	Gil MacGregor	gil_macgregor@co.washington.or.us	503-846-5926

CLACKAMAS COUNTY AND CLACKAMAS RIVER WATER DISTRICT SUBRECIPIENT AGREEMENT  
EXHIBIT C: LOBBYING CERTIFICATE

Exhibit C

Grant Agreement #: 14-007  
Federal Grant: FY12 Urban Area Security Initiative (UASI)  
Recipient Name: Clackamas River Water District  
Recipient Address: 16770 SE 82<sup>nd</sup> Drive #100, Clackamas, OR 97015

Lobbying Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Clackamas River Water District 14-007, CRW Overland Pipe System  
Organization Name Award Number or Project Name

\_\_\_\_\_  
Name and Title of Authorized Representative

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

Exhibit D

INVOICE VOUCHER NO.
AGENCY NAME
Clackamas County Emergency Management Attn: Sarah Stegmuller Eckman 2200 Kaen Road Oregon City, OR 97045
VENDOR OR CLAIMANT (Check is to be payable to)

DATE:	
INSTRUCTIONS TO VENDOR: Submit this form to claim payments/reimbursement for equipment, materials or services. Show complete detail for each item and include all backup documentation (checklist definitions on page 2).	
SUBMIT TO: Clackamas County Emergency Management	

VENDOR CONTRACT/IGA NO.	RECEIVED BY:	Backup Documentation Checklist to include: : (see instructions on reverse)
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DATE	DESCRIPTION	BUDGET LINE-ITEM	BUDGET	AMOUNT OF REIMBURSEMENT	FOR VENDOR/CLAIMANT USE
					<input type="checkbox"/> EPLS for all Vendors/Contractors <input type="checkbox"/> COP EEO & EB <input type="checkbox"/> COP Biz Lic./ or Exemption <input type="checkbox"/> Goods Received <input type="checkbox"/> Solicitation, Responses & Contract <input type="checkbox"/> Packing Slip <input type="checkbox"/> Invoices & Proof of Payment <input type="checkbox"/> Receipts <input type="checkbox"/> Other: _____  _____ Initials

PREPARED BY	TELEPHONE NUMBER	DATE	VENDOR/CLAIMANT APPROVAL	DATE RECEIVED
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APPROVAL FOR PAYMENT: YES <input type="checkbox"/> NO <input type="checkbox"/>	DATE	AMOUNT :
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Note: Refer to the Grant Award Conditions and Certifications for all compliance guidelines and requirements. Guidelines and requirements may vary by grant year - please pay special attention to the Administrative Requirements, Retention and Access to Records and Audits section.

## Documents Required for Reimbursement Requests:

### Supplies and Equipments Purchase Reimbursement

The purchase must be compliant with policies and procedures of City of Portland Procurement Services. For procurements under \$5,000 for Goods and Services, only one quote from a vendor is required. For procurements over \$5,000, three quotes from different vendors or sole source justification is required. For procurements over \$50,000 please contact the PBEM Finance Department.

#### Included Backup Documentation:

- Copy of Contract procurement was made against.
- Solicitation (Request for Proposals, Invitation to Bid, etc.) and Responses (Proposals, Bids, etc.) from firms solicited.
- Invoice - reviewed and signed by the person having first hand knowledge of the project

Note - Invoices and backup for invoices cannot include:

- tips on food or services
- alcohol
- Proof of payment to vendor
- Goods Receipt
- Contractor checked against:
  - EPLS (Excluded Parties List System) - <https://www.sam.gov>. Check Firm Name(s) and Firm Owner(s) and include a printout from the website.
  - City of Portland EEO and EB Certification (when applicable)
  - Compliance with City of Portland Business License regulations - If the Firm is located in the City of Portland, or any business is done in the City of Portland, the Firm must register with the City of Portland's Revenue Bureau. If the firm is not located in the City of Portland, and no business is conducted within the City of Portland, then the Firm is exempt from registration.

### Regional Staffing Reimbursements

The supporting documents include invoice voucher, receipts, payroll reports and time sheets with Manager's signature.

### Travel Reimbursement

Lodging and meals must meet the GSA rate. The supporting documents include invoice voucher, registration form, travel authorization form, conference or training agenda, receipts and proof of payment for all expenses except meals. Food and beverages provided during the event must be deducted from per diem allowance.

Note - Receipts and proof of payment cannot include:

- tips on food or services
- alcohol

### Overtime or Backfill Reimbursement for Exercise or Training

Only OT or backfill wages plus FICA, worker's compensation, unemployment and retirement benefits are eligible for reimbursement. The supporting documents include invoice voucher, summary worksheet including employees name, hours, OT rate, wages and benefits, payroll reports and time sheets.

### Use of Internal Labor for Installation

To reimburse for expenses for use of agencies' internal labor for installation, regular wages plus benefits except trimet tax are allowable for reimbursement. Overtime and overhead are not allowable for reimbursement. The supporting documents include invoice voucher, payroll report, and a summary worksheet showing employees name, hours, hourly rate, benefits, description of work performed and total amount. A Project Manager who oversees the installation needs to certify the worksheet.

### Training and Conference

The supporting documents including roster, registration information, copies of invoice for expenses incurred for meeting space, facilitation costs and materials and supplies and copies of the contract if applicable. For training, a training report needs to be submitted to the State within 30 days after the training. See also 3. Travel Reimbursement if needed.



# THE REGIONAL DISASTER PREPAREDNESS ORGANIZATION

Exhibit E

## UASI GRANT PROGRAM Dashboard Form Instructions

Dashboard reports have three aims:

1. To meet our bi-annual reporting requirement to the Feds via the State Administration Agency;
2. To track the progress of projects: for projects experiencing implementation issues, we work with the project manager to identify solutions; and
3. To identify funds for reprogramming (e.g., funds left over from completed projects or from projects that will not be completed that could be allocated towards other projects.)

Dashboard Reports are due twice a year: by the 15<sup>th</sup> of both June and December. All project managers are required to complete and submit these reports by those deadlines.

Instructions (please read before completing the form on the back):

Please fill in all areas with current information. If any applicable areas are not adequately filled in, the form will be returned to the originator for completion.

**Project Name** – Provide the name of this project as it appeared on the original project proposal.

**Report Date** – Provide the date the report is completed.

**Project Lead** – Provide the name of the person responsible for managing the project (the PM).

**Contact** – Provide the name of the person that filled out this report.

**UASI Grant Year** – Provide the Fiscal Year of the grant funds.

**Line Item(s)** – Provide the line items associated with this project.

**Funds Budgeted** – Provide the amount budgeted for this project.

**Funds Expensed/Encumbered** – Provide the amount of funds encumbered and spent for this project according to the records maintained by the PM.

**Funds to Reprogram** – Provide the funds approved for reprogramming that are not anticipated to be spent.

**Timeline Status** – This should match the timeline in the original project proposal. List all the major steps for these projects, the date they have been, or will be, completed and their status (i.e. Completed, In Progress, or Not Started).

**Current Status** – Describe the status of this project as of the completion of this report.

**Issues/Concerns** – If there are any issues that will cause this project to be delayed or require alterations to the scope or deliverables, list those here. If the project no longer aligns with the timeline in the original project proposal, a new timeline, Extension, or Amendment is required.

**Working Group Status** – Provide the applicable information in all spaces.

\*\*Please email completed reports to Valentine Hellman: [valentine.hellman@portlandoregon.gov](mailto:valentine.hellman@portlandoregon.gov)\*\*

## Project Name Dashboard Report

Report Date:	Project Lead:	Contact:
--------------	---------------	----------

### Grant/Budget Information:

Source: UASI Grant Year 20XX	Line Item(s): UAXX-XXXX	
Funds Budgeted: \$	Funds Expended/Encumbered: \$	Funds to Reprogram: \$

### Timeline Status:

Project Phase/Line Item	Original Date	Completion Date	Status
First Step	Date	Date	Example: Completed
Next/Second Step	Date	Date	Example: In progress. Estimated completion by XX/XX/XX (date).
Next/Third Step	Date	Date	Example: Not Started
Next/Fourth Step	Date	Date	Example: Not Started
Next Step	Date	Date	Example: Not Started
Next Step	Date	Date	Example: Not Started
Next To Last Step	Date	Date	Example: Not Started
Final Step	Date	Date	Example: Not Started

### Current Status:

The brief statement of where this project is at.

### Issues/Concerns:

Any issues or concerns with the project.

### Working Group Status:

Chair –	Co-Chair –
How often the group meets:	
Number of members:	
Regional Staff -	



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Gary Barth  
Director

**BUSINESS AND COMMUNITY SERVICES**

Development Services Building  
150 Beaver Creek Road Oregon City, OR 97045

September 12, 2013

The Board of County Commissioners Clackamas County  
Members of the Board:

Authorization to Enter into an Intergovernmental Agreement with  
Oregon Solutions/Portland State University

<b>Purpose/Outcomes</b>	Approval of IGA with Oregon Solutions/PSU for the purpose of developing and implementing the Clackamas County FoodSystem ONEStop as part of the County's Ag Investment Plan Strategy.
<b>Dollar Amount and Fiscal Impact</b>	BCS/Ag and Forest Economic Development will provide 50 percent or \$22,500 to the overall cost of the \$45,000 Oregon Solutions Project.
<b>Funding Source</b>	2013/14 Ag Investment Plan program operating budget (Lottery Dollars).
<b>Safety Impact</b>	N/A
<b>Duration</b>	This project will be completed by March 31, 2014.
<b>Previous Board Action/Review</b>	Acceptance of the Governor's recommendation of the Clackamas County FoodSystem ONEStop as an Oregon Solution project approved by BCC in Study Session on May 14, 2013 with a not to exceed amount of \$30,000.
<b>Contact Person</b>	Rick Gruen, Ag and Forest Economic Development Manager, 503-742-4345

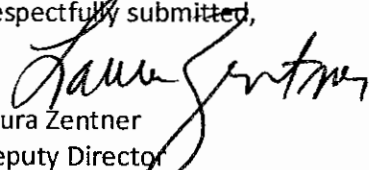
**BACKGROUND:**

The Governor's Oregon Solution Program has recommended and approved the Clackamas County Food System ONEStop program and requested that it be accepted as an Oregon Solutions project. In this capacity, the Oregon Solution's project team will work with Co-Conveners, BCS/Ag and Forest Economic Development and Partners to develop the ONEStop framework and working partners' Memorandum of Understand for participation in the ONEStop.

**RECOMMENDATION:**

Staff respectfully recommends authorization of the IGA with Oregon Solutions/Portland State University.

Respectfully submitted,

  
Laura Zentner  
Deputy Director  
Business and Community Services

**INTERGOVERNMENTAL AGREEMENT (IGA)**  
between  
**PORTLAND STATE UNIVERSITY**  
and  
**CLACKAMAS COUNTY**

This Agreement is entered into by and between Clackamas County, (hereinafter "COUNTY"), and the State Board of Higher Education, working by and through Portland State University (hereinafter "PSU") for a cooperative working relationship under the authority of ORS 190.010.

**I. Statement of Work**

Oregon Solutions (OS), a non-profit organization affiliated with PSU and its National Policy Consensus Center (NPCC-PSU), will provide services for up to eight project team meetings and also for up to three subcommittee meetings for the Clackamas ONESStop project, a virtual public, private, non-profit and academic partnership in support of the metropolitan foodshed vision. These services include:

- a. OS orientation and preparation meeting with co-conveners
- b. Scheduling, planning, and preparation (including copying and printing)
- c. Meeting facilitation (including set up and take down) and note-taking
- d. Follow-up work (including meeting summaries and action items)
- e. Coordination of work between meetings
- f. Preparation of the draft Declaration of Cooperation (DoC), planning for the signing celebration, and finalizing the DoC with signatures

The objectives of the work include developing the ONESStop project and getting agreements from project team members addressing integration and leveraging of resources for implementation.

**II. Other Contract Terms**

*A. Term*

The term of this Agreement shall run from the date of last signature below through March 31, 2014 unless terminated earlier as provided in this Agreement.

*B. Termination*

1. Either party may terminate this Agreement upon thirty (30) days written notice to the other party.
2. This agreement may be terminated at any time for nonperformance of any material term of this agreement.

*C. Payment*

COUNTY, through its BCS/Ag and Forest Economic Development Program, will contribute 50% of the total project cost, up to \$22,500.00 as per Attachment A: Oregon Solutions Task Allocation Budget (hereby incorporated by reference). PSU will invoice COUNTY for task work completed.

*D. Compliance with Law.*

County and OS agree to comply with all applicable local, state, and federal ordinances, statutes, laws and regulations.

*E. Project Managers and Notices*

The Project Managers designated by the respective parties under this Agreement are as follows:

PSU: Heather Binns, Budget Administrator  
Oregon Solutions/NPCC  
PO Box 751  
Portland, OR 97207  
503-725-9071  
[hbinns@pdx.edu](mailto:hbinns@pdx.edu)

COUNTY: Rick Gruen, Ag/Forest Economic Development Manager  
Business and Community Services  
Clackamas County  
150 Beaver Creek Road, Suite 413  
OREGON CITY, OR 97045  
503-742-4345  
[rgruen@clackamas.us](mailto:rgruen@clackamas.us)

Unless written notification is given by either party of a change in the Project Manager, the above named individuals will be the parties' representatives for purposes of written communication under this Agreement.

*F. Governing Law*

This Agreement shall be governed and construed in accordance with the laws of the State of Oregon, without resort to any jurisdiction's conflicts of rules and doctrines.

*G. Indemnification*

Subject to the limits and conditions of Oregon Laws (Oregon Revised Statutes 30.260 through 30.300) and the Oregon Constitution (Article XI, Sections 7 and 10), each party shall indemnify and hold harmless the other party and the other party's officers, agents, and employees against claims, demands, actions, and suits brought against any of them arising from the negligence or intentional misconduct of the indemnifying party or its employees or agents acting within the scope of their duties.

*H. Successors and Assigns*

This Agreement shall bind each party, its successors, assigns, and legal representatives. No party, under any condition(s), may voluntarily assign or transfer its obligations to any third party. Any attempted assignment shall be void.

*I. Independent Contractor Relationship*

PSU through its employees, officers and agents, will provide the services described in this Agreement as an independent contractor, and nothing herein shall be interpreted or construed as creating or establishing the relationship of employer/employee, principal/agent, partnership, joint venture, association, or any other type of legal or business relationship between COUNTY and PSU or between PSU and COUNTY. Each party shall be solely responsible for paying its own taxes (federal, state, and local of any type or amount); the consideration owed to its own contractors and agents; its operational expenses; the wages, salaries, benefits, withholdings, and assessments for its employees (including, for example, federal and state income taxes, Social Security, Medicare, unemployment insurance, workers compensation, pension or retirement, medical or life insurance); and the damages or settlements for claims arising from

the negligent, reckless, or intentional acts of its employees or agents, all without contribution from the other party. COUNTY shall have no right to direct or control the manner or method by which PSU provides the services that PSU agrees to provide through this Agreement.

*J. Force Majeure*

Neither Party shall be held responsible for delay or default caused by fire, riot, acts of God and war which are beyond its reasonable control. The affected party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the contract.

*K. Amendment*

This agreement constitutes the entire agreement between the parties, and may be modified only in writing and signed by authorized representatives of both parties.

*L. Severability*

If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**III. APPROVAL**

COUNTY and PSU, by the signature of their authorized representatives, hereby acknowledge that they have read this agreement, understand it, and agree to be bound by its terms and conditions. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement.

**THE STATE BOARD OF HIGHER  
EDUCATION WORKING BY AND  
THROUGH PORTLAND STATE  
UNIVERSITY**

**CLACKAMAS COUNTY**

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

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

Name:

Name: John Ludlow

Its: Contracts Officer

Its: Chair, Board of County Commissioners

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

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



11  
DAN JOHNSON  
MANAGER

**DEVELOPMENT AGENCY**

**DEVELOPMENT SERVICES BUILDING**  
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

September 12, 2013

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of a Contract with Harper Houf Peterson Righellis, Inc. for  
Consulting Services for Engineering Design and Construction Plans  
for the Monterey Avenue Extension Project**

<b>Purpose/Outcomes</b>	This contract will provide funding for engineering design and construction plans for an extension of Monterey Avenue from 82 <sup>nd</sup> Avenue to Fuller Road
<b>Dollar Amount and Fiscal Impact</b>	The maximum contract value is \$914,568.42, which includes a contingency of \$145,912.21 in the event additional bridge design, permitting or right of way services are needed.
<b>Funding Source</b>	Clackamas County Development Agency; Clackamas Town Center Urban Renewal District - no County General Funds are involved.
<b>Safety Impact</b>	The extension of Monterey Avenue will provide safer accesses to 82 <sup>nd</sup> Avenue and improved east/west connectivity for the traveling public and emergency service providers. Sidewalks and dedicated bike lanes and street lighting are included in the project.
<b>Duration</b>	The contract will terminate on June 30, 2015. The extended timeframe is a result of environmental permitting and right of way acquisition requirements.
<b>Previous Board Action</b>	The Board of County Commissioners previously approved moving forward with this project, as recommended by the Clackamas Regional Center Working Group, at a business meeting on April 11, 2013 and subsequent study session on April 16.
<b>Contact Person</b>	David Queener, Senior Project Planner, Clackamas County Development Agency – (503) 742-4322

**BACKGROUND**

The Clackamas Regional Center (CRC) Working Group evaluated many potential projects that could encourage economic growth, foster a healthier community, provide safe and efficient travel options, and improve circulation and connections for all forms of travel in the Clackamas Regional Center area. An extension of Monterey Avenue from 82<sup>nd</sup> Avenue to Fuller Road met these criteria and was considered a high priority by the Working Group.

The Board reviewed and evaluated the CRC Working Group's recommended Work Program and directed staff to move forward with design and construction of the Monterey Avenue extension.

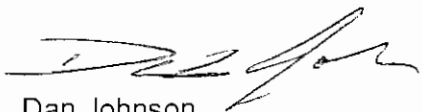
This contract will prepare roadway design plans, specifications and cost estimates for improvements that will include a new roadway with bike lanes, sidewalks, landscaping and street lighting. Specific elements of the contract include project management, public involvement, traffic engineering, environmental permitting and right of way services.

Staff solicited qualified consultants for this project under a Request for Qualifications. Eight proposals were received and evaluated. Harper Houf Peterson Righellis (HHPR) was selected following interviews with the top two rated firms. Further negotiations were required with HHPR to refine the scope of work and negotiate a fee. The contract price of \$914,568.42 is approximately 12% of the total estimated cost of the project, which is within industry standards.

**RECOMMENDATION:**

Staff recommends the Board approve and sign the contract with Harper Houf Peterson Righellis, Inc. for consulting services for engineering design and construction plans for the Monterey Avenue extension project.

Respectfully submitted,



Dan Johnson  
Development Agency Manager

Placed on the Sept. 12, 2013 Agenda by the Purchasing Division



LANE MILLER  
MANAGER

**PURCHASING DIVISION**

**PUBLIC SERVICES BUILDING**  
2051 KAEN ROAD | OREGON CITY, OR 97045

September 12, 2013

## MEMORANDUM TO THE BOARD OF COUNTY COMMISSIONERS

Please place on the Board Agenda of September 12, 2013, this contract with Harper Houf Peterson Righellis Inc. for **Consulting Services for Engineering Design and Construction Plans for the Monterey Avenue Extension Project**. This project was requested by David Queener, Development Agency Project Manager, and was publicly advertised in accordance with ORS 279. Thirty-nine proposal packets were requested and sent out with eight proposal responses received: Harper Houf Peterson Righellis, Hatch Mott, KPFF, OBEC, Otak, PacLand, Parametrix, and URS. A selection panel reviewed and evaluated the Request for Qualifications based on the selection criteria outlined in the RFP documents. Harper Houf Peterson Righellis and OBEC were the highest ranking firms and were selected to participate in oral interviews as part of a secondary evaluation process. Harper Houf Peterson Righellis was the highest ranking firm overall and was selected to enter into contract. The contract amount is not to exceed \$914,568.42. The contract term is from contract execution through June 30, 2015. This contract has been reviewed and approved by County Counsel. Funds for this project are budgeted under account line 450-6600-00-481200-30038 for fiscal years 2013/2014 and 2014/2015.

Respectfully Submitted,

Kathryn M. Holder  
Purchasing Staff