



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: June 28, 2017

Department: Health Agenda Planning Date: June 22, 2017 Time required: 10

Audio/Visual aids

Contact: Cydney Nestor, Division Director Phone: 503-585-4911

Department Head Signature:

TITLE DHS Intergovernmental Agreement #154304; Provide In-home Crisis Respite Services for Children and Youth

Issue, Description & Background Oregon Department of Human Services is issuing IGA #154304 to Marion County Health Department to provide oversight and funding to community providers in Marion County who provide in-home crisis respite services and intensive case management for children and youth currently residing within Marion and Polk Counties. The term of the agreement is July 1, 2017 through June 30, 2019

Financial Impacts: IGA #154304-0 funding is \$250,000 for the term; July 1, 2017 through June 30, 2019. Upon signature of all parties, and submission of an invoice from the County, DHS shall disburse \$250,000 in one lump sum payment.

Impacts to Department & External Agencies The Health Department anticipates no impacts to any other departments or external agencies.

Options for Consideration:
1. Approve IGA #154304 from DHS to provide In-home Crisis Respite Services for Children and Youth.
2. Deny approval of IGA #154304 from DHS to provide In-home Crisis Respite Services for Children and Youth.
3. Take no action at this time.

Recommendation: The Health Department recommends approval of IGA #154304 from DHS to provide In-home Crisis Respite Services for Children and Youth.

List of attachments: DHS Intergovernmental Agreement #154304; Provide In-home Crisis Respite Services for Children and Youth

Presenter: Cydney Nestor, Division Director

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to: lwilson@co.marion.or.us



Contract Review Sheet

Contract #: HE-1553-17

Person Sending: Linda Wilson Department: Health

Contact Phone #: 503-361-2792 Date Sent: _____

Contract Amendment# _____ Lease IGA MOU Grant (attach approved grant award transmittal form)

Title: #154304 Provide In-home Crisis Respite Services for Children and Youth

Contractor's Name: Department of Human Services

Term - Date From: July 1, 2017 Expires: June 30, 2019

Contract Total: \$250,000.00 Amendment Amount: _____ New Contract Total: _____

Source Selection Method: Special Procurement (attach approval) # _____

Additional Considerations (check all that apply)

- Board Order # _____
- Incoming Funds
- Independent Contractor (LECS) approval date: _____
- Insurance Waiver (attach)
- Feasibility Determination (attach approved form)
- Federal Funds (attach sub-recipient / contractor analysis)
- Reinstatement (attach written justification)
- Retroactive (attach written justification)

Description of Services or Grant Award:

Oregon Department of Human Services is issuing IGA #154304 to Marion County to provide oversight and funding to community providers in Marion County who provide in-home crisis respite services and intensive case management for children and youth currently residing within Marion and Polk Counties.

FOR FINANCE USE

Date Finance Received: _____ BOC Planning Date: _____ Date Legal Received: _____

Comments: _____

REQUIRED APPROVALS:

Finance - Contracts _____ Date _____ Risk Manager _____ Date _____

Legal Counsel _____ Date _____ Chief Administrative Officer _____ Date _____

Date _____ To be filed Added to master list

Returned to _____ Department for _____ signatures



Grant Agreement Number 154304

**STATE OF OREGON
INTERGOVERNMENTAL GRANT 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 or call 503-378-3486 (voice) or 503-378-3523 (TTY) to arrange for the alternative format.

This Agreement is between the State of Oregon, acting by and through its Department of Human Services, hereinafter referred to as "DHS," and

Marion County
Acting by and through its Health Department
3180 Center Street NE
Salem, OR 97301
Contact: Cary Moller
Telephone: (503)566-2998
Facsimile: 503-364-6552
E-mail address: CDMoller@co.marion.or.us

hereinafter referred to as "Agency" or "Recipient."

The Program to be supported under this Agreement relates principally to the DHS'

Department of Human Services
Director's Office
500 Summer St. NE
Salem, OR 97301
Agreement Administrator: Clyde Saiki, Director or delegate
Telephone: (503) 945-6997
E-mail address: Clyde.Saiki@dhs.oha.state.or.us

1. Effective Date and Duration.

This Agreement shall become effective on the date this Agreement has been fully executed by every party and, when required, approved by Department of Justice or on

June 1, 2017, whichever date is later. Unless extended or terminated earlier in accordance with its terms, this Agreement shall expire on **June 30, 2019**. Agreement termination or expiration shall not extinguish or prejudice DHS' right to enforce this Agreement with respect to any default by Recipient 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: Program Description
- (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: Federal Terms and Conditions

There are no other Agreement documents unless specifically referenced and incorporated in this Agreement.

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 documents comprising this Agreement shall be in the following descending order of precedence: this Agreement less all exhibits, Exhibits D, B, A, and C.

3. Grant Disbursement Generally.

The maximum not-to-exceed amount payable to Recipient under this Agreement, which includes any allowable expenses, is **\$250,000.00**. DHS will not disburse grant to Recipient in excess of the not-to-exceed amount and will not disburse grant until this Agreement has been signed by all parties. DHS will disburse the grant to Recipient as described in Exhibit A.

4. Vendor or Sub-Recipient Determination.

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

Recipient is a sub-recipient Recipient is a vendor Not applicable

Catalog of Federal Domestic Assistance (CFDA) #(s) of federal funds to be paid through this Agreement: 93.645

5. **Recipient Data and Certification.**

a. **Recipient Information.** Recipient shall provide the information set forth below.

Please print or type the following information

Recipient Name (exactly as filed with the IRS): Marion County, Oregon

Street address: PO Box 14500

City, state, zip code: Salem, OR 97309

Email address: lwilson@co.marion.or.us

Telephone: (503) 361-2792 Facsimile: (503) 364-6552

Federal Employer Identification Number: 93-6002307

Recipient Proof of Insurance:

Workers' Compensation Insurance Company: Marion County is self insured

Policy #: _____ Expiration Date: until cancelled

The above information must be provided prior to Agreement execution. Recipient shall provide proof of insurance upon request by DHS or DHS designee.

b. **Certification.** The Recipient 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 Recipient and that pertains to this Agreement or to the project for which the grant activities are being performed. The Recipient 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. Recipient 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 Recipient. Without limiting the generality of the foregoing, by signature on this Agreement, the Recipient hereby certifies that:

- (1) The information shown in this Section 5., Recipient Data and Certification, is Recipient's true, accurate and correct information;
- (2) To the best of the undersigned's knowledge, Recipient 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;
- (3) Recipient and Recipient's employees and agents are not included on the list titled "Specially Designated Nationals" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury

and currently found at: <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>;

- (4) Recipient is not listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal procurement or Non-procurement Programs" found at: <https://www.sam.gov/portal/public/SAM/>; and
 - (5) Recipient is not subject to backup withholding because:
 - (a) Recipient is exempt from backup withholding;
 - (b) Recipient has not been notified by the IRS that Recipient is subject to backup withholding as a result of a failure to report all interest or dividends; or
 - (c) The IRS has notified Recipient that Recipient is no longer subject to backup withholding.
- c. Recipient is required to provide its Federal Employer Identification Number (FEIN) to DHS. By Recipient's signature on this Agreement, Recipient hereby certifies that the FEIN provided to DHS is true and accurate. If this information changes, Recipient is also required to provide DHS with the new FEIN within 10 days.

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.

6. **Signatures.** This Agreement and any subsequent amendments may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement and any amendments so executed shall constitute an original.

Marion County

By:



Authorized Signature

Administrator

Title

Cary Moller

Printed Name
6.14.17

Date

State of Oregon acting by and through its Department of Human Services

By:

Authorized Signature

Title

Printed Name

Date

Approved for Legal Sufficiency:

Via e-mail by Steven Marlowe, Assistant Attorney General

Assistant Attorney General

June 13, 2017

Date

Agreement #154304-0

State of Oregon
Department of Human Services
Intergovernmental Agreement
In-home Crisis Respite Services

MARION COUNTY

Fund Verification Service Code: _____

Account: _____

 6/13/17
Jeremiah Elliott, Date
Sr. Administrative Services Manager

APPROVED AS TO FORM:

Chief Administrative Officer Date

Marion County Legal Counsel Date

Marion County Contracts and Procurement Date

MARION COUNTY BOARD OF COMMISSIONERS

Chair

Commissioner

Commissioner

Date

EXHIBIT A

Part 1 Program Description

Recipient shall coordinate with and provide funding to community providers in Marion County to provide in-home crisis respite services and intensive case management for Children and Youth currently residing within Marion and Polk Counties. In-home crisis respite services are to be provided to Children and Youth residing in their Family homes or in other residential settings.

1. Definitions

- a. "Child" or "Children" means a person under 18 years of age that has been identified by Recipient as eligible for in-home crisis respite services or intensive case management.
- b. "Client" means, for the purposes of this Intergovernmental Grant Agreement, any Child or Youth that Agency determines qualifies for the in-home crisis services to be provided under this Intergovernmental Grant Agreement.
- c. "Family" means at a minimum but not to the exclusion of siblings as defined in ORS 419A.004 or other person living in the same household with a child or youth or other persons living in the same household and:
 - 1) The child's or youth's parent as defined in ORS 419A.004;
 - 2) The child's or youth's guardian appointed pursuant to ORS Chapter 125;
or
 - 3) A person who has a caregiver relationship as defined in ORS 419B.116 with the child or youth.
- d. "Youth" means an individual age 18 through 20 years of age who has been identified by Recipient as eligible for in-home crisis respite services or intensive case management.

2. Recipient Program Goals

- a. Identify service gaps,
- b. Identify Child/Youth's strengths and possible in-home crisis service needs,
- c. Provide a mobile crisis team for community outreach and support,
- d. Procedures for and resources to meet crisis service needs under short time lines.

3. DHS will support Recipient to achieve the following:

- a. Working with area provider agencies to establish criteria for determining when a child or youth qualifies to receive in-home crisis respite services.
- b. Establishment of response processes and resources to meet crisis service needs under short time lines.
- c. Creation of processes and procedures for meeting in-home crisis services needs and how to determine when a child or youth needs to be removed from the in-home setting on a short term basis to allow for the Child or Youth to de-escalate, gain perspective, and work on making better behavioral choices in order to maintain the safety and security of the Child or Youth in their current residence and community.
- d. Developing relationships with area provider agencies to create a continuity of services when providing in-home crisis respite services or temporary out of home placements when needed.
- e. Establishing and maintaining an ongoing system in partnership with area provider agencies that will meet the urgent short term crisis needs of children and youth in both Marion and Polk Counties.

4. Reporting Requirements

- a. Quarterly update on the processes utilized to initiate and negotiate with local crisis services providers and final outcome of the discussions;
- b. Periodic update on a time line to be agreed upon between Agency and DHS, regarding the procedures established for implementation of services which will include lessons learned and recommendations for any possible future implementation of these services in other areas of the State.
- c. Quarterly summary of progress to date to include a month by month list of the number of Children and Youth assisted and the services that were provided.
- d. Final report regarding services provide to include a description of overall lessons learned, issues that were identified and how they were addressed, and recommendations for changes to be made in the future if services are continued.

EXHIBIT A

Part 2 Payment and Financial Reporting

1. Payment Provisions:

As consideration for the services provided by the Agency during the period specified in **Section 1. Effective Date and Duration**, DHS will pay to the Agency, a maximum not-to-exceed amount as specified in **Section 3. Consideration**, to be paid as follows:

- a. DHS will make a payment to the Agency for in-home crisis services in the amount of \$250,000.00 to assist in the provision of all services as described in Exhibit A, Part 1.
- b. Agency Invoice, Completion and Submission will have the following language and links:

Agency shall submit billings on the approved DHS invoice form located at:

<https://apps.state.or.us/Forms/Served/ce0846.xlsm>

Instructions and requirements for completion and submission of an invoice are included on the third tab of the Excel invoice document.

Invoice must be submitted with all fields properly populated.

- c. Payment will be made by DHS to the Agency on or before the June 30, 2017 subject to receipt and approval by DHS of the Agency's invoice.
- d. For questions regarding payment please email the DHS employee identified by the DHS Contract Administrator as the Central Point of Contact (CPO).

2. **Travel and Other Expenses.** DHS will not reimburse Agency for any travel or additional expenses under this Contract.

EXHIBIT A

Part 3 Special Terms and Conditions

1. Confidentiality of Client Information.

a. Client Information:

- (1) All information as to personal facts and circumstances obtained by the Agency on the Client ("Client Information") shall be treated as privileged communications, shall be held confidential, and shall not be divulged without the written consent of the Client, his or her guardian, or the responsible parent when the Client is a minor child, or except as required by other terms of this Contract. Nothing prohibits the disclosure of information in summaries, statistical, or other form, which does not identify particular individuals.
- (2) The use or disclosure of Client Information shall be limited to persons directly connected with the administration of this Contract. Confidentiality policies shall be applied to all requests from outside sources.
- (3) DHS, Agency and any subcontractor will share information as necessary to effectively serve DHS Clients.

b. Non-Client Information:

- (1) Each Party acknowledges that it and any of its officers, directors, employees and agents may, in the course of performing its responsibilities under the Agreement, be exposed to or acquire information that is confidential to the other Party. To the extent permitted by law, any and all information of any form provided to a Party or its officers, directors, employees and agents in the performance of the Agreement that reasonably could at the time of its disclosure be understood to be confidential shall be deemed to be confidential information of the originating Party ("Confidential Non-Client Information").
- (2) Confidential Non-Client Information shall be deemed not to include information that:
 - (a) Is or becomes (other than by disclosure by the Party acquiring such information) publicly known or is contained in a publicly available document except to the extent applicable law still restricts disclosure;
 - (b) Is furnished by the originating Party to others without restrictions similar to those imposed on the receiving Party under the Agreement;
 - (c) Is rightfully in the receiving Party's possession without the obligation of nondisclosure prior to the time of its disclosure by the originating Party under the Agreement;
 - (d) Is obtained from a source other than the originating Party without the obligation of confidentiality;
 - (e) Is disclosed with the written consent of the originating Party; or

- (f) Is independently developed by the receiving Party's officers, directors, employees and agents who can be shown to have had no access to the Confidential Non-Client Information.
- (3) Nondisclosure. The receiving Party shall hold all Confidential Non-Client Information in strict confidence, using at least the same degree of care that it uses in maintaining the confidentiality of its own confidential information; shall not sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Non-Client Information to third parties; shall not use Confidential Non-Client Information for any purposes whatsoever other than as contemplated by this Agreement or reasonably related thereto; and shall advise any of its officers, directors, employees and agents that receive or have access to the Confidential Non-Client Information of their obligations to keep Confidential Non-Client Information confidential. These confidentiality obligations do not restrict disclosure of information otherwise qualifying as Confidential Non-Client Information if the receiving Party can show that either of the following conditions exists: (i) the information was disclosed in response to a subpoena or court order duly issued in a judicial or legislative process, in which case the receiving Party shall notify the originating Party of the subpoena five days prior to the disclosure, unless such notice could not reasonably be given; or (ii) the disclosure was required to respond to a request for the information made under the Oregon Public Records Law, ORS 192.410 to 192.505. The receiving Party shall notify the originating Party of a public records request five days prior to the disclosure.
- c. Upon request and pursuant to the instructions of DHS, Agency shall return or destroy all copies of Confidential Information, and Agency shall certify in writing the return or destruction of all Confidential Information.

2. Amendments.

- a. DHS reserves the right to amend or extend the Agreement under the following general circumstances:
 - (1) DHS 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 DHS' satisfaction with performance of the work or services provided by the Agency under this Agreement.
 - (2) DHS 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 DHS so chooses. Any negotiation of increases in rates to implement a COLA will be as directed by the Oregon State Legislature.
- b. DHS 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 21. "Amendments" of this Agreement.

3. Agency Requirements to Report Abuse of Certain Classes of Persons.

- a. Agency shall comply with, and cause all employees to comply with, the applicable laws for mandatory reporting of abuse for certain classes of persons in Oregon, including:
 - (1) Children (ORS 419B.005 through 419B.045);
- b. Agency shall make reports of suspected abuse of persons who are members of the classes established in Section 3.a. above to Oregon's Statewide Abuse Reporting Hotline: 1-855-503-SAFE (7233), as a requirement of this Agreement.
- c. Agency shall immediately report suspected child abuse, neglect or threat of harm to DHS' Child Protective Services or law enforcement officials in full accordance with the mandatory Child Abuse Reporting law (ORS 419B.005 through 419B.045). If law enforcement is notified, the Agency shall notify the referring DHS caseworker within 24 hours. Agency shall immediately contact the local DHS Child Protective Services office if questions arise as to whether or not an incident meets the definition of child abuse or neglect.
- e. If known, the abuse report should contain the following:
 - (1) The name and address of the abused person and any people responsible for their care;
 - (2) The abused person's age;
 - (3) The nature and the extent of the abuse, including any evidence of previous abuse;
 - (4) The explanation given for the abuse;
 - (5) The date of the incident; and
 - (6) Any other information that might be helpful in establishing the cause of the abuse and the identity of the abuser.

4. Background Checks. RESERVED

5. **Equal Access to Services.** Agency 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.
6. **Media Disclosure.** Agency 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. Agency will make immediate contact with the DHS office when media contact occurs. The DHS office will assist Agency with an appropriate follow-up response for the media.
7. **Nondiscrimination.** Agency 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). Agency 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 DHS or any other agency or department of the State of Oregon, or both, and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the 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. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum. This Section shall survive expiration or termination of this Agreement.

2. Compliance with Law.

Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Recipient and this Agreement. This Section shall survive expiration or termination of this Agreement.

3. Independent Parties.

The parties agree and acknowledge that their relationship is that of independent parties and that Recipient is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.

4. Grant Funds; Payments.

- a. Recipient is not entitled to compensation under this Agreement by any other agency or department of the State of Oregon. Recipient understands and agrees that DHS' participation in this Agreement is contingent on DHS receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow DHS, in the exercise of its reasonable administrative discretion, to participate in this Agreement.
- b. Disbursement Method. Disbursements 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 DHS Oregon Administrative Rules that are program-specific to the billings and payments. Upon request, Recipient must provide its taxpayer identification number (TIN) and other necessary banking information to receive

EFT payment. Recipient must 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 disbursements under this Agreement. Recipient must provide this designation and information on a form provided by DHS. In the event that EFT information changes or the Recipient elects to designate a different financial institution for the receipt of any payment made using EFT procedures, Recipient will provide the changed information or designation to DHS on a DHS-approved form.

5. Recovery of Overpayments.

Any funds disbursed to Recipient under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement "Misexpended Funds" or that remain unexpended on the earlier of termination or expiration of this Agreement must be returned to DHS. Recipient shall return all Misexpended Funds to DHS promptly after DHS' written demand and no later than 15 days after DHS' written demand. Recipient shall return all Unexpended Funds to DHS within 14 days after the earlier of termination or expiration of this Agreement. DHS, in its sole discretion, may recover Misexpended or Unexpended Funds by withholding from payments due to Recipient such amounts, over such periods of time, as are necessary to recover the amount of the overpayment. Prior to withholding, if Recipient objects to the withholding or the amount proposed to be withheld, Recipient shall notify DHS that it wishes to engage in dispute resolution in accordance with Section 13 of this Exhibit.

6. Reserved.

7. Contribution.

If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which the State is jointly liable with the Recipient (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 Recipient in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the Recipient 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 Recipient 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 Recipient is jointly liable with the State (or would be if joined in the Third Party Claim), the Recipient 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 Recipient 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 Recipient 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 Recipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

This Section shall survive expiration or termination of this Agreement.

8. Indemnification by Subcontractors.

Recipient shall take all reasonable steps to require its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Recipient's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims. This Section shall survive expiration or termination of this Agreement.

9. Default; Remedies; Termination.

a. Default by Recipient. Recipient shall be in default under this Agreement if:

- (1) Recipient fails to perform, observe or discharge any of its covenants, agreements or obligations set forth herein;
- (2) Any representation, warranty or statement made by Recipient herein or in any documents or reports relied upon by DHS to measure compliance with this Agreement, the expenditure of disbursements or the desired outcomes by Recipient is untrue in any material respect when made;
- (3) Recipient (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
- (4) A proceeding or case is commenced, without the application or consent of Recipient, in any court of competent jurisdiction, seeking (1) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Recipient, (2) the appointment of a trustee, receiver, custodian, liquidator, or the like of Recipient or of all or any substantial part of its assets, or (3) similar relief in respect to Recipient 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 Recipient is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

b. DHS' Remedies for Recipient's Default. In the event Recipient is in default under Section 9.a., DHS may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to:

- (1) termination of this Agreement under Section 9.e.(2);
- (2) withholding all or part of monies not yet disbursed by DHS to Recipient;
- (3) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief; or

- (4) exercise of its right of recovery of overpayments under Section 5. of this Exhibit B.

These remedies are cumulative to the extent the remedies are not inconsistent, and DHS may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If a court determines that Recipient was not in default under Section 9.a., then Recipient shall be entitled to the same remedies as if this Agreement was terminated pursuant to Section 9.e.(1).

c. Termination.

- (1) DHS' Right to Terminate at its Discretion. At its sole discretion, DHS may terminate this Agreement:
 - (a) For its convenience upon 30 days' prior written notice by DHS to Recipient;
 - (b) Immediately upon written notice if DHS fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to continue supporting the program; or
 - (c) Immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that DHS' support of the program under this Agreement is prohibited or DHS is prohibited from paying for such support from the planned funding source.
 - (d) Immediately upon written notice to Recipient if there is a threat to the health, safety, or welfare of any person receiving funds or benefitting from services under this Agreement "DHS Client", including any Medicaid Eligible Individual, under its care.
- (2) DHS' Right to Terminate for Cause. In addition to any other rights and remedies DHS may have under this Agreement, DHS may terminate this Agreement immediately upon written notice to Recipient, or at such later date as DHS may establish in such notice if Recipient is in default under Section 9.a.
- (3) Mutual Termination. The Agreement may be terminated immediately upon mutual written consent of the parties or at such other time as the parties may agree in the written consent.
- (4) Return of Property. Upon termination of this Agreement for any reason whatsoever, Recipient shall immediately deliver to DHS all of DHS' property that is in the possession or under the control of Recipient at that time. This Section 9.c.(4) survives the expiration or termination of this Agreement.
- (5) Effect of Termination. Upon receiving a notice of termination of this Agreement or upon issuing a notice of termination to DHS, Recipient shall immediately cease all activities under this Agreement unless, in a notice issued by DHS, DHS expressly directs otherwise.

10. Insurance.

All employers, including Recipient, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Recipient shall require subcontractors to maintain insurance as set forth in Exhibit C, which is attached hereto.

11. Records Maintenance, Access.

Recipient shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Recipient shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of Recipient, whether in paper, electronic or other form, that are pertinent to this Agreement, in such a manner as to clearly document Recipient's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of Recipient whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." Recipient acknowledges and agrees that DHS and the 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. Recipient shall retain and keep accessible all Records for the longest of:

- a. Six years following final payment and termination of this Agreement;
- 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 this Agreement.

12. Information Privacy/Security/Access.

If this Agreement requires or allows Recipient or, when allowed, its subcontractor(s), to have access to or use of any DHS computer system or other DHS Information Asset for which DHS imposes security requirements, and DHS grants Recipient or its subcontractor(s) access to such DHS Information Assets or Network and Information Systems, Recipient shall comply and require all subcontractor(s) to which such access has been granted to comply with OAR 407-014-0300 through OAR 407-014-0320, 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 407-014-0305, as such rule may be revised from time to time.

13. Assignment of Agreement, Successors in Interest.

- a. Recipient shall not assign or transfer its interest in this Agreement without prior written consent of DHS. Any such assignment or transfer, if approved, is subject to such conditions and provisions required by DHS. No approval by DHS of any assignment or transfer of interest shall be deemed to create any obligation of DHS in addition to those set forth in this Agreement.

- b. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, and permitted assigns.

14. Resolution of Disputes.

The parties shall attempt in good faith to resolve any dispute arising out of this 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. This Section shall survive expiration or termination of this Agreement.

15. Subcontracts.

Recipient shall not enter into any subcontracts for any part of the program supported by this Agreement without DHS' prior written consent. In addition to any other provisions DHS may require, Recipient shall include in any permitted subcontract under this Agreement provisions to ensure that DHS will receive the benefit of subcontractor activity(ies) as if the subcontractor were the Recipient with respect to Sections 1, 2, 3, 6, 7, 8, 10, 11, 12, 13, 15, 16, and 17 of this Exhibit B. DHS' consent to any subcontract shall not relieve Recipient of any of its duties or obligations under this Agreement.

16. No Third Party Beneficiaries.

DHS and Recipient are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons 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. This Section shall survive expiration or termination of this Agreement.

17. 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. This Section shall survive expiration or termination of this Agreement.

18. 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, e-mail, or mailing the same, postage prepaid to Recipient or DHS at the address or number set forth in this Agreement, or to such other addresses or numbers as either party may indicate pursuant to this Section. Any communication or notice so addressed and mailed by regular mail shall be deemed received and effective five days after the date of mailing. Any communication or notice delivered by e-mail shall be deemed received and effective five days after the date of e-mailing. Any communication

or notice delivered by facsimile shall be deemed received and effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the Recipient, or on the next business day if transmission was outside normal business hours of the Recipient. Notwithstanding the foregoing, to be effective against the other party, any notice transmitted by facsimile must be confirmed by telephone notice to the other party. Any communication or notice given by personal delivery shall be deemed effective when actually delivered to the addressee.

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

This Section shall survive expiration or termination of this Agreement.

19. 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.

20. Amendments; Waiver; Consent.

DHS may amend this Agreement to the extent provided herein, the solicitation document, if any from which this Agreement arose, and to the extent permitted by applicable statutes and administrative rules. No amendment, waiver, or other consent under this Agreement shall bind either party unless it is in writing and signed by both parties and when required, the Department of Justice. Such amendment, waiver, or consent shall be effective only in the specific instance and for the specific purpose given. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision. This Section shall survive the expiration or termination of this Agreement.

21. Merger Clause.

This Agreement constitutes 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.

22. 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.

EXHIBIT C

SUBCONTRACTOR INSURANCE REQUIREMENTS

Recipient 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 Change or Cancellation, and Certificate(s) or Proof of Insurance before the contractors perform under contracts between Recipient 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 Agency. Recipient shall not authorize contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, Recipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Recipient 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 Recipient permit a contractor to work under a Subcontract when the Recipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, a "first tier" contractor is a contractor with which the Recipient directly enters into a contract. It does not include a subcontractor with which the contractor enters into a contract.

1. Types and Amounts

a. **Workers' Compensation and Employers' Liability:**

Subcontractors that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide Workers' Compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). If Subcontractor is a subject employer, as defined in ORS 656.023, Subcontractor shall also obtain Employers' Liability insurance coverage with limits not less than \$500,000 each accident. Out-of-state employers, including Subcontractor, shall provide Workers' Compensation insurance coverage for their employees as required by applicable Workers' Compensation laws including Employers' Liability insurance coverage with limits not less than \$500,000.

b. **Professional Liability:**

Required Not required

Professional Liability insurance covering any damages caused by an error, omission or any negligent acts related to the Services to be provided under this Agreement by Recipient's subcontractors, and subcontractor's agents, officers or employees in an amount not less than \$1,000,000.00 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.00. If coverage is on a claims

made basis, then either an extended reporting period of not less than 24 months shall be included in the Professional Liability insurance coverage, or the Subcontractor shall provide Tail Coverage as stated below.

c. Commercial General Liability:

Required Not required

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, and contractual liability coverage for the indemnity provided under this Agreement. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000.00 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.00.

d. Abuse and Molestation:

Required Not required

Abuse and Molestation insurance as an endorsement to the Commercial General Liability policy in a form and with coverage that are satisfactory to the State covering damages arising out of actual or threatened physical abuse, mental injury, sexual molestation, negligent: hiring, employment, supervision, investigation, reporting to proper authorities, and retention of any person for whom the Subcontractor is responsible including but not limited to Subcontractor and Subcontractor's employees and volunteers. Policy endorsement's definition of an insured shall include the Subcontractor, and the Subcontractor's employees and volunteers.

e. Automobile Liability:

Required Not required

Automobile Liability insurance covering Subcontractor's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$1,000,000.00 for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability insurance (with separate limits for Commercial General Liability and Automobile Liability). Use of personal Automobile Liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

2. Excess/Umbrella:

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

3. Additional Insured:

The Commercial General Liability insurance and Automobile Liability insurance required under this Agreement must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing

operations and completed operations, but only with respect to Subcontractor's activities to be performed under the Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of their ongoing operations must be on ISO Form CO 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CO 20 37 04 13 or equivalent.

4. Tail Coverage:

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, Subcontractor shall maintain either Tail Coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Agreement, for a minimum of 24 months following the later of (i) Subcontractor's completion and DHS' acceptance of all Services required under this Agreement, or, (ii) DHS or Recipient termination of Agreement, or, (iii) The expiration of all warranty periods provided under this Agreement.

5. Certificate(s) and Proof of Insurance:

Recipient shall obtain from the contractor a Certificate(s) of Insurance for all required insurance before the contractor delivers any Goods and performs any Services required under the subcontract. The Certificate(s) or 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. If Excess/Umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the Excess/Umbrella insurance. As Proof of Insurance DHS has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Agreement.

6. Notice of Change or Cancellation:

The Subcontractor or its insurer must provide at least 60 days' written notice to DHS before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

7. Insurance Requirement Review:

Recipient agrees to periodic review of insurance requirements by DHS under this Agreement and to provide updated requirements as mutually agreed upon by Recipient and DHS.

8. DHS Acceptance:

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

EXHIBIT D
Federal Terms and Conditions

General Applicability and Compliance. Unless exempt under 45 Part 87 for Faith-Based Organizations (Federal Register, July 16, 2004, Volume 69, #136), or other federal provisions, Recipient 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 Recipient, or to the grant activities, 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.

Recipient 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 grant activities. Without limiting the generality of the foregoing, Recipient expressly agrees to comply and require all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Executive Order 11246, as amended, (e) the Health Insurance Portability and Accountability Act of 1996, as amended, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (j) all federal laws requiring reporting of DHS 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 grant activities in violation of 42 U.S.C. 14402.

2. Equal Employment Opportunity.

If this Agreement, including amendments, is for more than \$10,000, then Recipient 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 Recipient 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

DHS, United States Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. Recipient 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.

Recipient shall comply and require all subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42 U.S.C. 6201 et. seq. (Pub. L. 94-163).

5. Truth in Lobbying. By signing this Agreement, the Recipient certifies, to the best of the Recipient's knowledge and belief that:

- a. No federal appropriated funds have been paid or will be paid, by or on behalf of Recipient, 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 Recipient shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- c. The Recipient 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 31 U.S.C. 1352. 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 Recipient 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 Recipient 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 Recipient under this Agreement may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance of that federally sponsored clinical trials are being conducted to determine therapeutic advantage.

6. Resource Conservation and Recovery.

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

7. Audits.

- a. Recipient shall comply, and require any subcontractor to comply, with applicable audit requirements and responsibilities set forth in this Agreement and applicable state or federal law.
- b. If Recipient expends \$750,000 or more in federal funds (from all sources) in a federal fiscal year, Recipient shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR Subtitle B with guidance at 2 CFR Part 200. Copies of all audits must be submitted to DHS within 30 days of

completion. If Recipient expends less than \$750,000 in a federal fiscal year, Recipient is exempt from Federal audit requirements for that year. Records must be available as provided in Exhibit B, "Records Maintenance, Access".

8. Debarment and Suspension.

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

9. Drug-Free Workplace.

Recipient shall comply and require all subcontractors to comply with the following provisions to maintain a drug-free workplace: (i) Recipient 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 Recipient's workplace or while providing services to DHS Clients. Recipient's notice shall specify the actions that will be taken by Recipient 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, Recipient'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 DHS 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 41 U.S.C. 8104; (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 Recipient, or any of Recipient'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 Recipient or Recipient's employee, officer, agent or subcontractor has used a controlled substance, prescription or non-prescription medication that impairs the

Recipient or Recipient's employee, officer, agent or subcontractor's performance of essential job function or creates a direct threat to DHS 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.

10. Pro-Children Act.

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

11. Medicaid Services.

Recipient 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. 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. 1396a (a)(27); 42 CFR Part 431.107(b)(1) & (2).
- b. Comply with all disclosure requirements of 42 CFR Part 1002.3(a) and 42 CFR Part 455 Subpart (B).
- c. Maintain written notices and procedures respecting advance directives in compliance with 42 U.S.C. 1396(a)(57) and (w), 42 CFR Part 431.107(b)(4), and 42 CFR Part 489 Subpart I.
- d. Certify when submitting any claim for the provision of Medicaid Services that the information submitted is true, accurate and complete. Recipient shall acknowledge Recipient'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 contract) 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).

12. Agency-based Voter Registration.

If applicable, Recipient 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.

13. Disclosure.

- a. 42 CFR Part 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 Part 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. Recipient shall make the disclosures required by this Section to DHS. DHS reserves the right to take such action required by law, or where DHS 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.

14. Federal Intellectual Property Rights Notice.

The federal funding agency, as the awarding agency of the funds used, at least in part, for the activities performed 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 Recipient agrees that it has been provided the following notice:

- a. The federal funding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work, and to authorize others to do so, for Federal Government purposes with respect to:
 - (1) The copyright in any work developed under a grant, subgrant or contract under a grant or subgrant; and
 - (2) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.
- b. The parties are subject to applicable federal regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."
- c. The parties are subject to applicable requirements and regulations of the federal funding agency regarding rights in data first produced under a grant, subgrant or contract under a grant or subgrant.