



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: July 17, 2019

Department: Health & Human Services Agenda Planning Date: July 11, 2019 Time required: 10 min

Audio/Visual aids

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

Department Head Signature: [Signature]

TITLE DHS 2019-2021 Intergovernmental Agreement for the Financing of Community Developmental Disability Services #157834 (HE-2901-19)

Issue, Description & Background Consider approval of the Intergovernmental Agreement (IGA) with the Department of Human Services (DHS) to Marion County Health and Human Services Department to receive financial assistance to operate and contract for the provision of Community Developmental Disability Program (CDDP) Services, retroactive to July 1, 2019 through June 30, 2021.

Financial Impacts: Funding for this Agreement shall be awarded to the County through eXPRS (Express Payment and Reporting System) in a Service Element Prior Authorization (SEPA). Upon County's acceptance of the SEPA, County is agreeing to provide services as described in the appropriate federal regulations, Oregon Revised Statutes, Oregon Administrative Rules, the IGA's Service Element Standards and Procedures and any Special Conditions. Health & Human Services Department anticipates receiving approximately \$16,689,345 (based on FY17-19 IGA) in SEPA's for local CDDP administration, case management, and abuse investigation services provided under this agreement.

Impacts to Department & External Agencies Marion County Health & Human Services does not anticipate any impacts to other departments or external agencies as a result of this IGA.

Options for Consideration: 1. Approve the 2019-2021 IGA #157834 for the provision of Developmental Disability Services. 2. Deny approval of the 2019-2021 IGA #157834 for the provision of Developmental Disability Services. 3. Take no action at this time.

Recommendation: Health & Human Services recommends approval of the 2019-2021 IGA #157834 for the provision of Developmental Disability Services.

List of attachments: 2019-2021 IGA #157834 (HE-2901-19) for the provision of Developmental Disability Services.

Presenter: Corissa Neufeldt Program Manager, and Cydney Nestor, Division Director



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

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

Copies to:

Linda Wilson, lwilson@co.marion.or.us



Contract Review Sheet

Contract #: HE-2901-19

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: DHS IGA #157834 for the Financing of Community Developmental Disability Services

Contractor's Name: Department of Human Services

Term - Date From: retroactive to July 1, 2019

Expires: June 30, 2021

Contract Total: 16,689,345

Amendment Amount: _____

New Contract Total: _____

Source Selection Method: Special Procurement (attach approval)

Additional Considerations (check all that apply)

Board Order # _____

Feasibility Determination (attach approved form)

Incoming Funds

Federal Funds (attach sub-recipient / contractor analysis)

Independent Contractor (LECS) approval date: _____

Reinstatement (attach written justification)

Insurance Waiver (attach)

Retroactive (attach written justification)

Description of Services or Grant Award:

DHS has issued FY19-21 IGA #157834 to the County acting as the Administrator for the Community Developmental Disabilities Program (CDDP) as set forth in OAR 411-317-0000. The County shall oversee and provide services for individuals with developmental disabilities as described in the IGA's Exhibit B; Part 2 Service Element Standards and Procedures. The funding amount of \$16,689,345 is based upon SEPA's received in the FY17-19 IGA for local CDDP administration, case management and abuse investigation services.

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

**STATE OF OREGON
INTERGOVERNMENTAL GRANT AGREEMENT
FOR THE FINANCING OF
COMMUNITY DEVELOPMENTAL DISABILITIES SERVICES**

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 Intergovernmental Grant Agreement for the Financing of Community Developmental Disabilities Services (the "Agreement") is between the State of Oregon, acting by and through its Department of Human Services, hereinafter referred to as "DHS" and Marion County ("County" or "CDDP").

AGREEMENT

1. Effective Date and Duration.

This Agreement shall become effective on **July 1, 2019**. Unless extended or terminated earlier in accordance with its terms, this Agreement shall expire on **June 30, 2021**. Agreement termination or expiration shall not extinguish or prejudice either party's right to enforce this Agreement with respect to any default by the other party that has not been cured.

2. Agreement Documents, Order of Precedence.

- a.** This Agreement consists of the following documents and includes the Exhibits listed below which are by this reference incorporated herein:

This Agreement without Exhibits;
Exhibit A Definitions;
Exhibit B Part 1 Operations and Administration Terms and Conditions;
Exhibit B Part 2 Service Element Standards and Procedures;
Exhibit B Part 3 Financial Terms and Conditions;
Exhibit C Special Terms and Conditions;
Exhibit D General Terms and Conditions;
Exhibit E Standard Terms and Conditions;
Exhibit F Federal Terms and Conditions;
Exhibit G Part 1 Required Subcontractor Provisions;
Exhibit G Part 2 Subcontractor Insurance Requirements;

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

- b.** In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of the documents comprising this Agreement is as follows, the documents being listed from highest precedence to lowest precedence:

This Agreement without Exhibits;

- (1) Exhibit F Federal Terms and Conditions;
- (2) Exhibit A Definitions;
- (3) Exhibit B Part 3 Financial Terms and Conditions;
- (4) Exhibit B Part 1 Operations and Administration Terms and Conditions;
- (5) Exhibit B Part 2 Service Element Standards and Procedures;
- (6) Exhibit C Special Terms and Conditions;
- (7) Exhibit D General Terms and Conditions;
- (8) Exhibit E Standard Terms and Conditions;
- (9) Exhibit G Part 1 Required Subcontractor Provisions;
- (10) Exhibit G Part 2 Subcontractor Insurance Requirements;
- (11) Exhibit H Part 1 Privacy and Security Agreement; and
- (12) Exhibit H Part 2 Third Party Information System Access Request.

- 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 B Part 2.

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.

3. Signatures.

Marion County

By:



Authorized Signature

Cary Moller

Printed Name

Administrator

Title

7/3/19

Date

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

By:

Authorized Signature

Printed Name

Title

Date

Approved for Legal Sufficiency:

/s/ Steven Marlowe
Department of Justice

May 22, 2019
Date

EXHIBIT A DEFINITIONS

As used in this Agreement, the following words and phrases shall have the indicated meanings. Certain additional words and phrases are defined in the Service Element Standards and Procedures, and special conditions in the Service Element Prior Authorization (SEPA). When a word or phrase is defined in a particular Service Element Standards and Procedures, or special condition in the Service Element Prior Authorization, the word or phrase shall not necessarily have the ascribed meaning in any part of the Agreement other than the particular Service Element Standards and Procedures, or special condition in which it is defined.

1. **“Access”** means the ability or the means necessary to read, communicate, or otherwise use any DHS Information Asset.
2. **“Agreement Settlement”** means DHS’ final reconciliation, after termination or expiration of this Agreement, of amounts DHS actually disbursed to County from the Service Element Prior Authorization with amounts that DHS is obligated to pay in accordance with the funding calculation methodologies set forth in the Service Element Standards and Procedures. DHS reconciles disbursements and payments on an individual Service Element basis as set forth in the Service Element Standards and Procedures, and in accordance with Exhibit B Part 3, Section 1 Disbursement of Payments, and Section 6 Recovery of Funding for Misexpenditure of this Agreement.
3. **“Allowable Costs”** means the costs determined in accordance with the provisions of 2 C.F.R. Subtitle B, with guidance at 2 C.F.R. part 200, except to the extent such costs are limited or excluded by other provisions of this Agreement, whether in the applicable Service Element Standards and Procedures, or special conditions identified in the Service Element Prior Authorization.
4. **“Brokerage”** has the meaning as set forth in OAR 411-317-0000.
5. **“Career Development Plan”** or **“CDP”** has the meaning set forth in OAR 411-317-0000.
6. **“Case Management Entity”** or **“CME”** includes the following: CDDP, Brokerage, Children’s Intensive In-Home Services (CIIS), or the Children’s Residential Program of DHS.
7. **“Case Management Services”** has the meaning as set forth in OAR 411-317-0000.
8. **“CDDP Administrator”** has the meaning set forth in Exhibit C, Section 3 of this Agreement.
9. **“Claim”** has the meaning set forth in OAR 411-370-0010.
10. **“Client”** has the same meaning as Individual or Recipient, for purposes of this Agreement.
11. **“Client Prior Authorization”** or **“CPA”** means an authorization for a specific Individual to receive a particular Service, by an identified Provider, at a rate approved by

MARION COUNTY SIGNATURE
BOARD OF COMMISSIONERS:

Chair Date

Commissioner Date

Commissioner Date

Authorized Signature:  7/1/19
Cydney Nestor, Division Director Date

Authorized Signature:  7/1/19
Jeremiah Elliott, Sr. Admin Serv. Mgr. Date

Authorized Signature: _____
Chief Administrative Officer Date

Reviewed by Signature: _____
Marion County Legal Counsel Date

Reviewed by Signature: _____
Marion County Contracts & Procurement Date

DHS. The CPA is submitted by County for the Provider once an Individual and the Provider have agreed to a Service. The CPA specifies:

- a. the Service,
 - b. the Individual or Recipient,
 - c. the effective date and end date for the Services authorized in the CPA, and
 - d. the rate for the Service.
12. **“Client Record(s)”** means any client, applicant, or participant information regardless of the media or source, provided by DHS to CDDP or exchanged between the parties.
 13. **“CMS”** means Centers for Medicare and Medicaid Services.
 14. **“Common Law Employer”** means the employer referred to in OAR 411-375-0010.
 15. **“Community Developmental Disabilities Program”** or **“CDDP”** has the meaning as set forth in OAR 411-317-0000.
 16. **“Community First Choice K Plan”** or **“K Plan”** has the meaning as set forth in OAR 411-317-0000.
 17. **“Developmental Disability”** or **“DD”** has the meaning as set forth in OAR 411-317-0000.
 18. **“Developmental Disabilities Services”** or **“DD Services”** has the meaning as set forth in OAR 411-317-0000.
 19. **“Disbursement Claim”** means a document executed and delivered to DHS by a Provider or County, either electronically in eXPRS or in hard copy, with respect to a DD Service authorized in a CPA and PPA, or POC, certifying that a unit of that DD Service was delivered by a Provider identified in the CPA and PPA, or POC, to the Individual identified in the CPA or POC, during the period specified in the CPA or POC; and requesting disbursement of funds for that unit of DD Service.
 20. **“Employer”** has the meaning as set forth in OAR 411-317-0000.
 21. **“Employer Resource Connections”** or **“ERC”** means the voluntary training program provided by the Oregon Home Care Commission and offered to all Individuals receiving in-home Services. ERC meets the K Plan requirement for voluntary training on how to select, manage, and dismiss attendants, and provides activities to empower and inform Individuals receiving in-home Services regarding their rights, roles, and responsibilities as employers of personal support workers.
 22. **“Express Payment and Reporting System”** or **“eXPRS”** means an information system for managing the disbursement and tracking of DHS payments for the Developmental Disabilities Programs.
 23. **“Federal Funds”** means all funds paid to CDDP under this Agreement that DHS receives from an agency, instrumentality or program of the federal government of the United States.

24. **“Full-time Equivalent”** or **“FTE”** means a unit of measure equivalent to one person working full-time. An FTE of 1.0 is equivalent to full-time; an FTE of 0.5 is half of a full-time work load.
25. **“Functional Needs Assessment”** or **“FNA”** has the meaning as set forth in OAR 411-317-0000.
26. **“Individual”** has the meaning as set forth in OAR 411-317-0000.
27. **“Individual Support Plan”** or **“ISP”** has the meaning as set forth in OAR 411-317-0000.
28. **“Individual Support Plan Team”** or **“ISP Team”** means the Individual or their designated representative, the Services coordinator, and others chosen by the Individual to participate in service planning, as described in OAR 411-415-0070.
29. **“Information Asset(s)”** refers to all information provided through DHS, regardless of the source, which requires measures for security and privacy
30. **“Intellectual Disability”** or **“ID”** has the meaning as set forth in OAR 411-317-0000.
31. **“Intellectual or Developmental Disability”** or **“I/DD”** has the meanings as described in OAR 411-317-0000.
32. **“Level of Care”** or **“LOC”** means Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) Level of Care, Hospital Level of Care, or Nursing Facility Level of Care, as defined in OAR 411-317-0000.
33. **“Local Match”** means the opportunity for Local Government Entities, including Transit Districts, to request additional Federal Funds to recoup costs for Intellectual and Developmental Disabilities program expenditures, *exceeding allotted state funds*, in the following services, DD 53, DD 02, and DD 48. The Local Government Entity is responsible for the local fund portion and providing the necessary documentation to DHS for approval. If approved, the local funds will be submitted for federal match.
34. **“Medicaid”** means Federal Funds received by DHS under Title XIX of the Social Security Act and Children’s Health Insurance Funds administered jointly with Title XIX funds as part of state medical assistance programs by DHS.
35. **“Medicaid Fraud”** means the providing of false information to claim reimbursement for Medicaid funded services. Medicaid Fraud includes, but is not limited to, the following activities: billing for services not actually performed; billing for more expensive services than actually rendered; billing for several services that should be combined into one billing; and billing twice for the same service.
36. **“Misexpenditure”** means money, other than Overexpenditure, disbursed to County by DHS under this Agreement and expended by County or a Subcontractor that:
 - a. Is identified by the federal government as expended contrary to applicable statutes, rules, the provisions of 2 C.F.R. Subtitle B, with guidance at 2 C.F.R. part 200, or any other authority that governs the permissible expenditure of such money, for which the federal government has requested reimbursement by the

State of Oregon, whether in the form of a federal determination of improper use of Federal Funds, a federal notice of disallowance, or otherwise; or

- b. Is expended in a manner not permitted by this Agreement, including without limitation, any money expended by County, contrary to applicable statutes, rules, OMB Circulars, or any other authority that governs the permissible expenditure of such money; or
 - c. Is expended on the delivery of a DD Service in violation of the Service Element Standards and Procedures of this Agreement with respect to that DD Service.
37. **“Network and Information System(s)”** means the DHS and State of Oregon’s computer infrastructure which provides personal communications, Client Records and other sensitive Information Assets, regional, wide area, and local networks, and the internetworking of various types of networks.
38. **“ODDS”** has the meaning set forth in OAR 411-317-0000.
39. **“Office of Training, Investigation and Safety”** or **“OTIS”** means the DHS office that investigates reports of suspected abuse or neglect.
40. **“Oregon Needs Assessment”** or **“ONA”** means the normed and validated tool owned by ODDS used to meet the requirements of the FNA.
41. **“Oregon Supplemental Income Program-Medical”** or **“OSIPM”** means the Oregon Medicaid insurance coverage for an Individual who meets eligibility criteria as described in OAR Chapter 461.
42. **“Overexpenditure”** means money disbursed by DHS under this Agreement and expended by County that is in excess of the amount County is entitled to expend as determined in accordance with the funding calculation methodologies set forth in the applicable Service Element Standards and Procedures.
43. **“Personal Support Worker”** or **“PSW”** has the meaning as set forth in OAR 411-317-0000.
44. **“Plan of Care”** or **“POC”** means a service authorization feature in eXPRS that is a collection of individual Provider service authorizations for an I/DD Individual. These Service Authorizations in accepted status are required to enable the Provider of the authorized Service to successfully submit Claims for payment.
45. **“Program Area”** means the area within the State of Oregon where County is contracted to provide DD Services.
46. **“Provider”** has the meaning as set forth in OAR 411-317-0000.
47. **“Provider Enrollment Application and Agreement”** or **“PEAA”** has the meaning set forth in OAR 411-370-0030.
48. **“Provider Prior Authorization”** or **“PPA”** means an authorization, either through eXPRS or by submission to DHS of a document acceptable to DHS, for funding awarded in the SEPA for delivery of a particular DD Service by a particular Provider, and for Provider submission of Disbursement Claims for the DD Service, that specifies:

- a. the DD Service,
 - b. the Provider,
 - c. a period of time, during which the authorization may be used to support delivery of the DD Service by the Provider,
 - d. whether the PPA is an “Opt Out” PPA for those Providers that are paid through a CPA and have fluctuating amounts in a specific month; or the PPA is for a specific amount authorized to the Provider for a specified time frame. If the PPA is for an amount for a specific Provider, the total amounts authorized in the PPAs cannot exceed the total SEPA amount for that time frame for that DD Service.
49. **“Rationed Fee for Services”** or **“RFFS”** means the Case Management billings paid up to the max monthly amount of the PPA. All Case Management billings entered that meet the criteria for a successful claim yet exceed the max monthly amount of the PPA will suspend to be utilized for future payments up to the amount outlined in the Biennial Legislatively Approved Budget.
50. **“Recipient”** has the meaning as set forth in OAR 411-370-0010.
51. **“SEPA Adjustment”** means a document, acceptable to DHS, that may be presented and executed in hard copy, or electronically in eXPRS, by County, that amends the SEPA, with respect to one or more DD Services, to reflect the new maximum amount of funding that DHS will provide under this Agreement through eXPRS for the specified Service Element(s), as well as any new or modified special performance or other requirements.
52. **“SEPA Pass Phrase/Pass Code”** or **“SEPA Pass Phrase”** means a code used by eXPRS to verify the identity of the individual accepting the SEPA Adjustment on behalf of County.
53. **“Service”** means any one of the DD Services for Individuals listed in Exhibit B Part 2 of this Agreement provided directly by CDDP, authorized by CDDP or Subcontractor, pursuant to this Agreement.
54. **“Service Authorization”** means an authorization by CDDP of the DD Services that CDDP is responsible to authorize according to Exhibit B Part 2 Section 3, and as identified in an Individual’s ISP and entered for billing purposes into eXPRS via POC or a CPA.
55. **“Services Coordinator”** has the meaning as set forth in OAR 411-317-0000.
56. **“Service Element”** has the meaning as set forth in OAR 411-317-0000.
57. **“Service Element Prior Authorization”** or **“SEPA”** means the maximum amount of Service Element funding that DHS will provide to County under this Agreement through eXPRS, and any Service Element associated special performance or other requirements. The SEPA is broken down by Service Element and may be amended from time to time by a SEPA Adjustment.
58. **“Service Element Standards and Procedures”** means the description of a Service Element and the Standards and Procedures associated with the Service Element. The

Service Element Standards and Procedures apply to those DD Services funded through this Agreement and for all DD Services authorized by County.

59. **“Settlement”** means the process through which ODDS determines Underexpenditures and Overexpenditures and resolves Misexpenditures at the end of each biennium or on an interim basis during the term of this Agreement.
60. **“Subcontract”** means a contract between the County and a third party to perform one or more of the direct Service(s) required under this Agreement but does not include contracts for County ancillary services.
61. **“Subcontractor”** means a third party that contracts with the County to perform one or more Service(s) under this Agreement and may include all CDDP functions that the County is required to perform under this Agreement. “Subcontractor” does not mean ancillary services provided to County by a third party, such as support services, including, but not limited to, consulting and technical support, suppliers, training for staff, and other ancillary services.
62. **“Transmittals”** means communications that request action from, or provide policy, program, training, and other information to County. Transmittals take the form of Action Requests (AR), Information Memoranda (IM), or Policy Transmittals (PT).
63. **“Underexpenditure”** means money disbursed by DHS under this Agreement and not expended by County that is less than the amount County is entitled to expend as determined in accordance with the funding calculation methodologies set forth in the applicable Service Element Standards and Procedures.
64. **“User”** means any individual authorized by DHS to access Network and Information Systems and who has an assigned unique log-on identifier.
65. **“Written Materials”** means documents and forms created by CDDP, in connection with the Service being provided to the requestor or Client.

EXHIBIT B
PART 1
OPERATIONS AND ADMINISTRATION TERMS AND CONDITIONS

1. CDDP Administrative Responsibilities.

In performing the Work under this Agreement:

- a. CDDP shall comply with 42 CFR §447.10 as the conditions and provisions apply to an organized health care delivery system.
- b. CDDP shall participate in person, by phone, or video conference, in monthly CDDP program manager meetings as designated by ODDS. Meetings will be scheduled by DHS with representatives designated by DHS to review, clarify, and further plan the Work performed under this Agreement. These DHS-CDDP meetings shall be scheduled at a time mutually acceptable to both parties. CDDP will ensure a representative will participate in 80% of CDDP program manager meetings for the term of this Agreement.
- c. CDDP shall participate in person, by phone, or video conference in other required, scheduled meetings. ODDS shall make reasonable efforts to schedule meetings at a time and place conducive to the greatest number of participants.
- d. CDDP shall adhere to all OARs, ORS', CFRs and Service Element Standards and Procedures pursuant to this Agreement. If a CDDP refuses to take the action necessary to assure the health and safety of Individuals enrolled in DD Services, ODDS will notify the CDDP in writing that ODDS intends to perform the functions necessary for the health and safety of the Individual. DHS may reduce the funding received by the CDDP, to cover the costs of ODDS fulfilling the roles necessary for the needed actions.
- e. CDDP management is responsible for ensuring information provided by DHS, such as Transmittals, worker guides, and information gathered from the CDDP program managers meetings, is communicated effectively and timely with all applicable CDDP staff.
- f. CDDPs must comply with the use of DHS electronic systems utilized for information related to Individuals and Providers upon implementation and training.
- g. CDDP must complete the Eligibility Survey emailed from DHS in July and December within 30 calendar days of receipt. The Survey gathers information available through the 0337 process.

2. CDDP Assistance with Provider and Employer Enrollment, Credentials, and Payments.

- a.** CDDP shall assist any Individual who wishes to hire a Personal Support Worker (PSW) in the following ways:

 - (1) Assist the Individual in becoming a Common Law Employer (CLE) or identifying a designated CLE and provide resources to prospective CLEs on their role. For each CLE CDDP will:

 - (a) Initiate enrollment of the CLE into the Fiscal Management Agent Servicer (FMAS) vendor’s web portal (currently referred to as “BetterOnline”). For each new CLE, CDDP will provide the required information to successfully enroll the CLE.
 - (b) Provide assistance to the Individual or the designated CLE in completing the required paperwork. CDDP may provide this assistance or refer the CLE to the ERC program.
 - (c) Upon request, or if the CDDP identifies a need, CDDP shall refer the CLE to the ERC program.
 - (2) Assist the Individual in the enrollment process for PSWs by:

 - (a) Providing PSWs with a Provider Enrollment Application and Agreement (PEAA) and initiating a Criminal History Check (CHC).
 - (b) Initiating the PSW enrollment in the FMAS vendor’s web portal. For each new PSW, CDDP will provide the required information to successfully enroll the PSW.
- b.** For PSW Providers, CDDP shall assist Individuals by verifying that certifications, licenses, CHCs, driver’s licenses, and auto insurance are valid and up to date prior to Services being authorized.
- c.** Until DHS implements time capture tools, CDDP must review and approve or reject the PSW time sheet, progress note, and mileage log. CDDP must review and approve or reject PSW submitted Services Delivered billing entries accordingly. . CDDPs will work with PSWs or direct PSWs to work with their CLE for suspended payment claims that are unrelated to an eligibility issue.
- d.** CDDP is required to submit an Out of Cycle (OOC) request for payment for PSWs if the PSW turned in a properly completed timesheet within the dates as outlined on the approved PSW payment calendar and the timesheet was not approved due to an administrative error on the part of the CDDP. The OOC request for payment must be submitted within one business day of the CDDP verifying that an error occurred and that it was due to an administrative error. CDDP will be assessed a \$125 fee per day for initiating an OOC request no matter how many OOC requests are submitted that day by the CDDP. Fees will be removed from the CDDPs fee for service (DD 48) payment limit. ODDS may offer Technical Assistance to those CDDPs that exceed 10 submissions or 1% of

the total Client enrollment for the CDDP (whichever is greater) in three consecutive months, or upon request. Providing technical assistance will not negate the fee for those administrative errors that have occurred.

3. CDDP Responsibilities with regards to Lane v. Brown et al Settlement Agreement.

CDDP shall develop a Career Development Plan (CDP), consistent with ODDS policy and administrative rules, as well as Executive Order 15-01, as part of the ISP for all Individuals of working age, including transition age Individuals, prior to their expected exit from school or within one year of an unexpected exit from school.

- a. CDDP shall submit copies of the CDP documents to DHS upon request or cooperate with ODDS field review to verify compliance with timely development of CDPs.
- b. In the event the CDDP fails to develop a CDP for any Individual, the CDDP shall take corrective action and develop the CDP within 90 calendar days of the date the CDDP is notified by DHS, or the CDDP self identifies the absence of a required CDP. The development must meet the requirements as outlined in ODDS policy and administrative rule. These newly developed CDPs must be submitted to ODDS for a quality assurance review.
- c. If CDDP fails to respond or follow the directives as lined out in a. and b. above, a financial penalty not to exceed \$150 per identified CDP may be assessed.

4. ODDS Administrative Responsibilities.

- a. ODDS will publish Action Requests and Policy Transmittals that have an impact on the day-to-day processes and operation of a CDDP to the Innovation and Engagement website prior to publication. Website comments will be reviewed and responses to those comments posted at the time of publication of the Transmittal. ODDS reserves the right to not respond to all individual website comments.
- b. ODDS will publish Transmittals prior to the effective date of the Transmittal.
- c. ODDS will provide training to the CDDP staff prior to implementing new systems. Training(s) may be in multiple formats including but not limited to in person, webinars, iLearn, and other media sources. Trainings will be conducted, at a minimum, in four areas of the state if in person.
- d. ODDS will respond to fiscal inquiries from the CDDP within five business days of receipt of a written inquiry.
- e. ODDS will only post information from final quality assurance report results on the DHS website. ODDS will analyze widespread findings that lower the results for a large number of Case Management Entities (CMEs) and bring forward those findings to the Case Management Leadership Team prior to posting on the website for strategic messaging.

5. Quality Assurance.

a. DHS' quality assurance activities include:

- (1) Review of Case Management Services;
- (2) Review of assessments, ISPs, and LOC;
- (3) Review of CDDP's Provider monitoring, complaints, and other contracted obligations; and
- (4) Review of approved Case Management claims.

b. CDDP shall:

- (1) Comply with all DHS quality assurance reviews, plans, and processes designed to monitor and ensure CDDP's timely and accurate CMS compliance.
- (2) CDDP shall follow any and all undisputed remediation instructions, including timelines, resulting from the quality assurance review findings.
- (3) Make available to DHS' quality assurance staff, upon request, Access, including a login and password, to any electronic systems or physical documentation that contains I/DD information regarding Individuals enrolled in DD 48 Case Management Services as allowed under federal and state law.

c. DHS shall:

- (1) Notify CDDP in advance of a DHS quality assurance review.
- (2) Provide timely feedback to CDDP of quality assurance review findings and an opportunity for CDDP to dispute those findings prior to the final report.
- (3) Provide technical assistance and training to CDDP in the areas identified as needing improvement by the quality assurance review. Technical assistance and training provided by DHS will not negate necessary remediation activities by CDDP.

**EXHIBIT B
PART 2
SERVICE ELEMENT STANDARDS AND PROCEDURES**

1. Provision of Services.

The DD Services listed in subsections a. and b. below and described in this Exhibit B Part 2 must be provided as described in the appropriate federal regulations, Oregon Revised Statutes, Oregon Administrative Rules, most current ODDS Expenditure Guidelines, and Service Element Standards and Procedures for the DD Services. Requirements for Service Elements may be found in the OARs listed below. Any additional requirements may be found in this Exhibit B Part 2. Only DD Services listed in subsections a. and b. below are subject to this Agreement.

- a. Upon acceptance of the Service Element Prior Authorization in eXPRS, County agrees to directly provide or subcontract for the DD Services listed in this subsection. The DD Services provided by County whose costs are covered in whole or in part with the SEPA are:

| Service Name | Service Code | References |
|------------------------------|--------------|--|
| Eligibility and Licensing | DD 02 | Chapter 411, Division 320, Service Element Standards and Procedures |
| Case Management Operations | DD 48 | Chapter 411, Divisions 415 and 320; Service Element Standards and Procedures |
| Abuse Investigation Services | DD 55 | Chapter 411, Division 320; Service Element Standards and Procedures |

- b. DD Services authorized by County through a CPA or Plan of Care Authorization in eXPRS and performed by DHS enrolled Providers are:

| Service Name | Service Code | References |
|---|--------------|---|
| Comprehensive In-Home Support Services for Adults | DD 49 | Chapter 411, Divisions 345, 435 and 450 |
| Residential Facilities Services | DD 50 | Chapter 411, Division 325 |
| Supported Living Services | DD 51 | Chapter 411, Division 328 |
| Transportation Services | DD 53 | ODDS Transportation Worker Guide Authorizing Community Transportation; Exhibit B Part 2 |

| Service Name | Service Code | References |
|---|---------------------|------------------------------------|
| Employment and other Non-Residential Day Services | DD 54 | Chapter 411, Divisions 345 and 450 |
| Special Projects | DD 57 | Exhibit B Part 2 |
| Ancillary Services | DD 257 | Chapter 411, Division 435 |
| Adult Foster Homes | DD 158 | Chapter 411, Division 360 |
| Child Foster Homes | DD 258 | Chapter 411, Division 346 |
| Family Support Services for Children | DD 150 | Chapter 411, Division 305 |
| In-Home Support for Children | DD 151 | Chapter 411, Divisions 435 and 450 |
| Room and Board General Fund | DD 156 | Exhibit B Part 2 |

2. Service Element Standards and Procedures Review Process.

DHS shall update this Exhibit B Part 2 as follows:

- a. ODDS will engage with a standing group of stakeholders to review and, if needed, modify this Exhibit B Part 2. Stakeholders shall include CDDP staff, designated representatives, ODDS staff, and other parties identified by ODDS.
- b. Upon determining that an update is necessary, a draft of the document changes will be sent to the stakeholder group via e-mail for review and comment. The e-mail shall include a time, date, and conference line number for a discussion between DHS and CDDP’s regarding the draft Service Element Standards and Procedures being reviewed. DHS will accept comments via e-mail for 15 business days after the date of the e-mail with the changes.
- c. After the conference call and the deadline for receipt of any e-mail review and comments by CDDP staff, DHS will consider any information from CDDPs when determining the final changes to this Exhibit B Part 2.
- d. Upon completion of the review process, DHS shall follow the amendment process as outlined in Exhibit D, Section 6 of this Agreement to update this Exhibit B Part 2.

3. Authorization of Services and Rates.

CDDP must authorize Services as outlined below:

- a. All Services, regardless of service setting or unless otherwise noted, must be authorized in eXPRS in a manner consistent with rule by the CDDP in which the Individual is enrolled and is receiving DD 48 Case Management Services and found eligible for I/DD Services as outlined in OAR Chapter 411, Division 320. This authorization must be obtained and documented in accordance with OAR’s and DHS policies and procedures.
- b. All Services must be authorized at the appropriate rate for the service setting. Rates are subject to change upon notice from DHS.

- c. Payment(s) for Services will be made by DHS through the eXPRS Payment and Reporting System directly to the Provider for services delivered unless otherwise noted.
- d. CDDP's authorization to Providers must follow all applicable rules, Service Element Standards and Procedures, and DHS' policies and procedures including proper budget approvals.
- e. **In-Home Services (DD 49, DD 150, DD 151)** – Rates are set using the most recent ODDS Expenditure Guidelines. Exceptions to the published rate(s) may be allowed with prior approval by DHS. For all In-Home Services, CDDP shall:
 - (1) Enter a draft POC Service Authorization within eXPRS upon completion of the Individual's ISP.
 - (2) Add a POC Service Plan line for each Service authorized by the CDDP and agreed to by the Individual.
 - (3) Once a Service Provider is selected by the Individual, the CDDP shall add the Service Prior Authorization lines to the Individuals POC in manner consistent with the OAR and this Agreement.
- f. **Residential Facilities Services (DD 50)** – Rates are set based on the Individual's assessed tier and the licensed capacity of the home where the Individual resides as of the effective date of the CPA unless otherwise stated below. Residential rates are maintained on a public facing website.
 - (1) An Individual selecting a residential setting in accordance with OAR Chapter 411, Division 54 "Residential Care and Assisted Living Facilities" or OAR Chapter 309, Division 35 "Residential Treatment Facilities and Residential Treatment Homes for Adults with Mental Health Disorders" will have a DD 50 Service rate established by the application of the Individual's DD Functional Needs Assessment to the specific residential setting published rates for Services. The rates are subject to change upon notice from DHS. The CPA monthly rates for above are established in eXPRS by the CDDP.
 - (2) For an Individual whose DD 50 Service needs exceed the assessed tier, an exception rate may be established by DHS. Notification of the DHS approved rate, with a specific effective date, will be submitted to the CDDP and the Provider. This exception rate is considered a temporary rate enhancement and may be approved or discontinued at the discretion of DHS in conjunction with evaluation of the Individual's assessed support needs.
- g. **Supported Living Services (DD 51)** – Rates are set based on the Individual's Functional Needs Assessment and the approved DHS budget tool. The budget tool provides the approved hourly rates and limitations to other program expenses. The hourly rates and limitations may not be changed by the CDDP or Provider

when using the DHS budget tool. Individuals receiving DD 51 Services from a Provider are not eligible for rent subsidies paid by DHS through ODDS.

h. Transportation Services (DD 53) – Rates are set using the DD 53 Budget Tool or the transit providers published rate.

- (1) Rates are split into three categories:
 - (a) Mileage – Rate is set using the most current DHS rate for mileage as reflected on the DD 53 Budget Tool and rate guideline.
 - (b) Bus Passes – Rate is set according to the transit providers current published rate. DD 53 Budget Tool is not needed for Bus Passes.
 - (c) Agency – Pre-determined rates for agencies who provided transportation services prior to the implementation of mileage rates. The agency rate is a negotiated rate between DHS and the service Provider. To receive an agency rate, the Provider must have had a previous agency rate and continue to provide service to the same Individuals.
- (2) Services may only be claimed when transporting the Individual as outlined in the Providers PEAA agreement.
- (3) If DD 53 Services exceed \$500 monthly, CDDP will submit an exception request to ODDS prior to authorization.
- (4) CDDP will review Service Authorizations annually to ensure Individual ISP goals are being met.
- (5) Services are not transferable and must be reassessed if the Individual transfers to a new CDDP or Brokerage or changes Provider agencies.
- (6) Individuals enrolled in Transportation Local Match Services are not eligible for DD 53 Services without an exception.
- (7) Authorizations for DD 53 Services must follow the Transportation Contracting Matrix found in the ODDS Community Transportation Worker Guide.

i. Employment Services and other Non-Residential Day Services (DD 54) -

Rates are set using the most recent ODDS Expenditure Guidelines. Exceptions to the published rate(s) may be allowed with prior approval by DHS. Additionally, CDDP will:

- (1) Assist DHS in monitoring compliance with the following Provider special reporting requirements:
 - (a) Provider must complete such Provider assessments as requested by DHS in a timely and accurate manner.
 - (b) Provider must submit reports through the DHS Employment Outcomes System (EOS), Plan of Care in eXPRS, or other successor reporting systems developed by DHS. These reports

must include data that measures the individual and program outcomes and be completed in accordance with current instructions provided by DHS.

- (c) Provider will report to DHS any employment outcome related information (including but not limited to wages, earnings, and turnover data) to DHS using forms and procedures designated by DHS.
 - (d) Providers must at all times comply with all other legal requirements and maintain documentation evidencing compliance such as subminimum wage certificates including the US Department of Labor Section 14(c) certificate.
- (2) The Individual will receive the hours of DD 54 Services per week as agreed to by the Individual, his or her ISP team, and the Provider. DD 54 Service hours provided to the Individual may not be lowered to accommodate any DHS reductions in the Provider rate.

j. Special Projects (DD 57) – Rates and authorizations for DD 57 are set as outlined below:

- (1) General Fund (GF) Special Projects – are one-time only or time-limited Services, for Individuals with I/DD, approved in advance by DHS and ODDS. GF Special Projects include:
 - (a) Sex offender treatment through group therapy, individual therapy, or a combination of the two.
 - (b) Special Projects not otherwise defined in this Agreement.
- (2) Individuals receiving GF Special Project Services must be found eligible for I/DD Services under OAR Chapter 411, Division 320. Under extraordinary circumstances, ODDS may authorize an exception to this eligibility requirement.
- (3) All requests must be submitted to ODDS.FundingReview@state.or.us prior to authorization.
- (4) Performance Requirements for GF Special Projects Sex Offender Treatment
 - (a) The sex offender treatment funded by GF Special Projects must be court ordered, ordered as a condition of parole or probation, or an exception authorized in advance of the therapy by ODDS. Individuals under the jurisdiction of the Psychiatric Security Review Board (PSRB) do not qualify for GF Special Project funding for sex offender therapy and CDDP will not use GF Special Project funds for sex offender treatment for these Individuals.

- (b) Requests for funding must include:
- i. An agreement to the sex offender therapy by the Individual's support team prior to submission of the request to ODDS. Documentation of this agreement must be submitted with the request.
 - ii. A budget or a quote for the cost of the therapy services. Therapy rates must not exceed the usual and customary rates for the geographic service area in which the Individual receives sex offender treatment.
 - iii. The sex offender therapy Provider's name.
 - iv. The type of sex offender therapy (individual or group or individual and group therapy).
 - v. The number of sessions per week by type of therapy requested.
 - vi. The effective and end dates of the requested therapy. The term of the requested therapy cannot exceed the amount of time ordered by the court or specified by the terms of a probation or parole agreement.
 - vii. The hourly rate for each type of therapy requested.
 - viii. The total amount being requested for the Individual per month.
 - ix. Information or documentation of funds the Individual receives from any non-Supplemental Security Income (SSI) source. The Individual will be required to contribute toward the cost for sex offender treatment if receiving funds from a non-SSI source.
 - x. Documentation that the sex offender treatment is court ordered or is required by the terms of the parole or probation agreement. CDDP will make this documentation available to ODDS upon request.
- (c) When GF Special Project funds are used to pay for sex offender treatment, the therapy must be provided by a qualified Provider as determined by the applicable ODDS program rules; or recognized by a board in Oregon authorized to license or certify professionals, such as Board of Social Workers or Board of Licensed Psychologists.
- (d) CDDP shall obtain and maintain documentation regarding the Individual and the Individual's sex offender treatment. This documentation shall include but is not limited to:

- i. Clinical reports;
 - ii. Agreements to the sex offender treatment from the Individual's support team; and
 - iii. An itemization of the Individual's treatment costs.
- (5) Performance Requirements for GF Special Projects not otherwise defined in this Agreement are described below:
 - (a) Any GF Special Project must be authorized in advance by ODDS, accepted in a SEPA in eXPRS, and the GF Special Project must be performed prior to ODDS releasing funding. Funding for GF Special Projects will be paid directly to the CDDP.
 - (b) Terms and conditions of each GF Special Project will be defined in cooperation with the CDDP but must be prior authorized by ODDS before occurring.
 - (c) Start-Up Costs for new agencies or programs will be paid through DD 57 GF Special Projects. Allowable Costs and other terms and conditions will be determined through a contract with the agency or program and DHS.
- (6) All DD 57 GF Special Project funds are subject to Settlement to confirm and reconcile any discrepancies that may have occurred between actual DHS disbursements of funding and the amount actually delivered and invoiced at the end of the Agreement period or biennium in which they are authorized, whichever comes first.
- k. Foster Home Services (DD 158, DD 258) - Rates are set based on the Individual's FNA tool rate unless otherwise stated below. FNA's must be attached to the Individuals POC prior to authorization. Rates are individualized and not transferrable to another eligible Individual.**

Billing for these services should be in accordance with all OARs and policies applicable to the specific Service.
- l. Room and Board General Fund (DD 156) – Services for DD 156 are limited to those Individuals with I/DD who are not Medicaid eligible due to the Individual being undocumented but are working towards United States citizenship. DD 156 Services assist these Individuals with room and board (R&B), personal incidental items, and as necessary, allowable medical expenditures.**
 - (1) Authorizing DD 156 Services:
 - (a) Individuals must be 18 or older and concurrently receiving DD 50 Services.
 - (b) Services must be approved in advance by DHS. CDDP must submit the following documentation when requesting DD 156 Services:

- i. Individual's name;
 - ii. Individual's prime number;
 - iii. Effective date of requested DD 156 Services;
 - iv. Amount of monthly funds requested;
 - v. Information regarding Individual's citizenship status;
 - vi. Steps Individual has taken to date in obtaining citizenship;
 - vii. Steps to be taken by the Individual to obtain citizenship during the time frame requested for DD 156 Services;
 - viii. A copy of the Individual's most current Individual Support Plan (ISP), if funding for medical expenditures is requested;
 - ix. A methodology for calculating the funds for medical expenditures, if applicable;
 - x. Documentation that the Individual has been denied Citizen Alien Waived Emergent Medical (CAWEM) and Oregon Health Plan (OHP) insurance coverage.
- (c) An Individual cannot receive DD 156 medical expenditure funding if the Individual is receiving OHP or CAWEM benefits unless the ISP team determines that the Individual's medical needs exceed what is covered CAWEM benefits and requests an exception.
- (d) If the Individual has been approved to receive DD 156 medical expenditure funding and has been approved for CAWEM, CAWEM must be used for any medical expenditure covered by CAWEM. CAWEM coverage is limited to emergency medical services only. No DD 156 medical expenditure funding may be used for medical expenditures covered by CAWEM.
- (e) DD 156 funds may be used for an Individual in a medical emergency even though the emergency situation is not included in the ISP. For purposes of this Exhibit B Part 2, an emergency situation is defined as a sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the Individual's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

- (f) The following medical services are not authorized under DD 156 Services:
 - i. Routine dental care and diagnostic testing such as annual or semi-annual cleanings, fillings, root canals and routine x-rays.
 - ii. Routine eye exams, diagnostic testing, contacts, glasses and lenses.
 - (g) DD 156 authorizations may not exceed 12 months. If requesting a renewal, CDDP must submit:
 - i. Updated information about the status of the Individual's citizenship;
 - ii. Steps the Individual has taken towards citizenship since the last update;
 - iii. Steps to be taken by the Individual to obtain citizenship during the requested timeframe for renewed DD 156 Services; and
 - iv. Updated documentation on CAWEM and OHP eligibility.
- (2) Rate Setting for DD 156 Services:
- (a) The funds awarded for DD 156 Services for R&B and personal incidentals are equivalent to the anticipated federal Supplemental Security Income (SSI) as defined in Code of Federal Regulations (CFR) Part 416.101 – 416.121, 416.401 – 416.435 and 416.501 - 416.665, and the Oregon Supplemental Income Program (OSIP) Manual under “Room and Board and Personal Needs Standards”. Monthly rates are subject to change to reflect federal cost-of-living or other DHS approved adjustments. These monthly rate changes do not require a request by CDDP and approval from DHS. Any monthly rate adjustments resulting from these changes will be added by DHS to awards DHS authorized for Individuals receiving DD 156 Services.
 - (b) DD 156 funds must be used for “current maintenance” costs incurred by an Individual receiving DD 156 Services, as defined in the above-referenced CFRs, the OSIP Manual, and as outlined in this Exhibit B Part 2. Current maintenance includes the room and board fees charged by the Provider to the Individual and costs incurred for clothing, medical care authorized by DHS, and personal comfort care for the Individual, whether provided directly by, or facilitated by, the Provider of the DD 156 Services.
 - (c) DD 156 funds used for an Individual's medical expenses must only be for necessary medical expenditures for the Individual up to the amount authorized by DHS.

- (3) Disbursement of DD 156 Service Funds:
- (a) A SEPA will be created for the total amount of the DD 156 Service allowed for the Individual prior to Services being rendered.
 - (b) DD 156 funds are disbursed through a PPA in eXPRS to the CDDP.
 - (c) R&B and personal incidental funds are disbursed at the beginning of each Service month through a DHS created 12-month PPA. CDDP must remit payment to the Provider after receiving disbursement.
 - (d) Medical Expenditures are disbursed at the beginning of a service period through a DHS created three-month PPA. CDDP must remit payment to the Provider after receiving disbursement. If DHS has paid to CDDP, through the release of the PPA funding, more DD 156 medical expenditure funds than reported by the Provider and submitted by CDDP, DHS will stop releasing funds for DD 156 medical expenditures until the balance due CDDP for DD 156 medical expenditures is no less than one month of the allocated PPA funding. If a Provider's monthly medical expenditure report shows the Provider needs additional medical expenditure funds to cover future medical costs for an Individual, and the additional funds and medical expenditures are within the Individual's DHS authorized funding, then DHS will release the additional funding up to, but not to exceed, the SEPA amount.
- (4) Special Provisions of DD 156 Services:
- (a) Medical expenditure funding for an Individual for DD 156 Services paid to a Provider via CDDP may only be carried over into future months within the same biennium. When medical expenditure funding carry-over occurs, the next monthly payment to CDDP for the Individual will be reduced by DHS by the amount carried over from the previous months. CDDP may not carry over funding of DD 156 Services for medical expenditures into the next biennium. The medical expenditure funding must be returned to DHS immediately upon request by DHS, or within 45 calendar days of the end of the biennium in which the funds were paid, whichever date is sooner.
 - (b) CDDP shall notify DHS within 14 calendar days if the Individual's circumstances change and the Individual is no longer eligible for DD 156 Services.
 - (c) DHS may request at any time other information regarding the use of DD 156 Services or the justification of such Services. CDDP must respond to any request within 10 business days.

- (d) CDDP must submit to DHS quarterly, paid Provider invoices for R&B and personal incidental expenditures. Provider invoices must reflect that the Individual received the DD 156 Services during the time period covered by the invoices. If paid Provider invoices are not received by DHS, the R&B and personal incidental funds paid to Provider, and not supported by paid Provider invoices, must be recovered by CDDP and CDDP must then return this DD 156 funding to DHS.
- (e) For Medical Expenditures:
 - i. Providers shall report to CDDP the allowable medical expenditures each month on a DHS prescribed form. This monthly report will serve as the Provider invoice for medical expenditures for DD 156 Services. This monthly medical expenditure report must include the following, at minimum:
 - A. Individual's name;
 - B. Individual's prime number;
 - C. Month or timeframe for the reported DD 156 Services;
 - D. Provider's name and eXPRS Provider number;
 - E. Description of each medical expenditure listed separately;
 - F. Amount of each medical expenditure;
 - G. Name of entity actually providing the DD 156 Service, such as the name of pharmacy, doctor, or therapist.
 - H. Actual date of DD 156 Service, not the date the Service was paid for by the Provider.
 - ii. Provider must submit a monthly medical expenditure report to the CDDP within 14 calendar days of the end of each month DD 156 Services were provided. The Provider medical expenditure report for the last month in the biennium must be submitted to CDDP within 14 calendar days of the end of each biennium.
 - iii. CDDP shall submit for payment the Provider's monthly medical expenditure report on a form prescribed by DHS no later than 45 calendar days from the end of the month in which DD 156 Services were provided. DHS will review this report for accuracy and adherence to this Exhibit B Part 2. CDDP will be notified of any non-allowable expense

and will be required to recoup the funding from the Provider. CDDP will remit to DHS the recouped funding within 45 calendar days of recoupment.

- (f) DHS reserves the right to end DD 156 Services with proper notice to the Individual, Provider and CDDP.
- (g) All DD 156 funds are subject to Settlement to confirm and reconcile any discrepancies that may have occurred between actual DHS disbursements of funding and the amount actually delivered and invoiced at the end of the Agreement period or biennium in which they are authorized, whichever comes first.

m. Ancillary Services (DD 257) - Rates are set using the most recent ODDS Expenditure Guidelines. Exceptions to the published rate(s) may be allowed with prior approval by DHS. For all Ancillary Services, CDDP shall:

- (1) Draft a POC Service Authorization within eXPRS upon completion of the Individual's ISP.
- (2) Add a POC Service Plan line for each Service authorized by the CDDP and agreed to by the Individual.
- (3) Once a Service Provider is selected by the Individual, the CDDP shall add the Service Prior Authorization lines to the Individuals POC in manner consistent with OAR and this Agreement.

4. CFDA Number(s) for all Services in Exhibit B Part 2.

In accordance with the State Controller's Oregon Accounting Manual, policy 30.40.00.102, and DHS procedure "Contractual Governance," DHS' determination is that County is a Contractor.

The Catalog of Federal Domestic Assistance (CFDA) #(s) of Federal Funds to be paid through the Agreement: 93-778.

Service Element DD 02 Standards and Procedures

Effective Date: July 1, 2019
Service Name: Eligibility and Licensing
Service ID Code: DD 02

1. Overview.

Eligibility and Licensing encompasses the activities related to determination of Eligibility of Individuals and assisting in the licensing of Adult Foster Homes under OAR Chapter 411, Division 360; and assistance in certifying Child Foster Homes under OAR Chapter 411, Division 346, unless otherwise exempt under Oregon law.

2. Standards and Procedures not identified in rule.

a. CDDP will comply with Oregon Administrative Rules, DHS policies and procedures, and Transmittals, as they relate to Eligibility and Licensing.

b. Special Reporting Requirements

Upon DHS' written request, CDDP will provide data and information relative to the implementation of DD 02 Services within the time specified by DHS in its request to CDDP.

c. Billing and Payment Procedures

(1) DHS will provide CDDP with funding for DD 02 Services by entering a Service Element Prior Authorization (SEPA) and Provider Prior Authorization (PPA) based on the approved CDDP workload model or its funding level for FTE staff.

(2) DHS will disburse funding for DD 02 Services for a specified period of time equal to the monthly amount set forth in the accepted SEPA and approved in the PPA, as such amounts may be updated from time to time. Any recovery of funding will be done as outlined in Exhibit B Part 3 of this Agreement unless the recovery falls in the following section d.

d. CDDP, as a Provider of DD 02 Services that are funded by DHS, must:

(1) Employ an identified individual as an Eligibility Specialist, as defined in OAR 411-320-0020 (14) and meet qualifications outlined in OAR 411-320-0030 (5)(d) to perform the duties outlined in OAR 411-320-0030 (9)(b) and OAR 411-415-0050 or have an agreement with another county to perform eligibility determination for the CDDP receiving the DD 02 funding. If there is an agreement with another county to perform eligibility determinations, the agreement must include the provision of DD 02 Services in that county's geographic Program Area.

- (2) Employ an identified individual as a Licensor who meets qualifications indicated in OAR 411-320-0030 (5)(g) and performs the duties outlined in OAR 411-320-0030 (9)(e); or have an agreement with another county to perform foster care licensing and certification for the CDDP receiving the DD 02 funding. If there is an agreement with another county to perform foster care licensing and certification, the agreement must include the provision of DD 02 Services in that county's geographic Program Area.
- (3) Employ sufficient staff to perform the eligibility determinations and licensing duties for its own CDDP and the county with whom it is subcontracting if performing these duties for another county.
- (4) Use DHS approved systems, forms and procedures for eligibility determination services.
- (5) Inform DHS' Office of Developmental Disabilities Services (ODDS) of the name(s) of the CDDP's designated Eligibility Specialist(s) and notify ODDS if the CDDP assigns a new Eligibility Specialist.
- (6) Will determine an Individuals eligibility for Services within the time frames identified by DHS in OAR 411-415-0030 and OAR 411-320-0080.
- (7) Ensure that an Eligibility Specialist (ES) or ES processor with the appropriate training and eXPRS user role completes the appropriate eligibility paperwork and intake screens in eXPRS.
- (8) Complete the eXPRS eligibility within 10 days of any eligibility determination or change.
- (9) Complete the supplemental LOC assessment through the Oregon Needs Assessment, in compliance with OAR 411-415-0060.

Service Element DD 48 Standards and Procedures

Effective Date: July 1, 2019
Service Name: Case Management Operations
Service ID Code: DD 48

1. Overview.

Case Management Operations encompasses the activities related to the general administration and management of a Community Developmental Disability Program (CDDP). These activities include but are not limited to ensuring that all staff receive necessary training, that all services offered by the CDDP are understood by staff as well as the rules that govern those services, and that all staff comply with OAR Chapter 411, Division 320 as it describes the requirements of CDDP staff.

Case Management Services are delivered to Individuals who are eligible for Intellectual or Developmental Disabilities Services (I/DD Services) funded by DHS in an identified CDDP's geographic Program Area.

2. Standards and Procedures.

a. General Performance Requirements

- (1) For each eligible Individual receiving DD 48 Services, the CDDP shall create and submit a Client Prior Authorization (CPA) in eXPRS for DD 48 Services within five business days of the CDDP's determination that the Individual is eligible for DD 48 Services. Updates or changes to an Individual's eligibility or service period for DD 48 Services must be reflected in the Individual's CPA within five business days of the CDDP's receipt of notification of change. The DD 48 CPAs that are submitted successfully by the CDDP and are accepted through eXPRS will serve as the CDDP enrollment roster for DD 48 Services.
- (2) Providers of DD 48 Services funded by DHS shall:
 - (a) Comply with the requirements of OAR Chapter 411 Division 320 "Community Developmental Disabilities Program" and Division 415 "Case Management Services for Individuals with Intellectual or Developmental Disabilities", as such rules may be revised from time to time.
 - (b) Complete annual plan entry into eXPRS for any Plan of Care Services under the guidelines identified in OAR 411-415-0070 "Service Planning". Failure to follow the guidelines identified may result in payment withholding for services rendered or other actions as deemed appropriate by DHS.

- (c) Develop, maintain, and effectively implement systems and procedures for the timely and accurate documentation of DD 48 Services.
- (d) Comply with all DHS requirements designed to assure the timely and accurate enrollment, Service Authorization, and service payment for Individuals receiving DD 48 Services.
- (e) Provide, at minimum, one annual qualifying billable RFFS Claim for each Individual enrolled in DD 48 Services.
- (f) Ensure that all Claims billed are for activities that meet DHS guidelines as qualifying billable RFFS Claims.
- (g) Ensure each Individual receiving DD 48 Services is eligible for DD Services, with eligibility determined in accordance with OAR Chapter 411, Division 320, as such rule may be revised from time to time.
- (h) Complete and submit DD 48 Service eligibility or enrollment information via established methods, and update forms following instructions and forms(s) or method(s) designated by DHS. Failure to submit the DD 48 Service eligibility or enrollment form may delay the approval of the CPA for DD 48 Services.
- (i) Ensure that all Oregon Administrative Rules and DHS policies, procedures, and Transmittals are complied with and that CDDP staff provide Case Management Operations in compliance with Exhibit B Part 2 of the Agreement.
- (j) Assist DHS with the implementation of and compliance with Executive Order 15-01 and OAR Chapter 407, Division 025 “Employment Services” and as outlined in Exhibit B Part 1 of the Agreement.

b. Special Reporting Requirements

- (1) Upon the written request of DHS, the CDDP shall supply data and information relative to the implementation of DD 48 Services.
- (2) CDDP shall respond to DHS staff inquiries or written requests for additional information within five business days of a request pertaining to a complaint or administrative hearing to include but not be limited to eligibility or service complaints and hearings.

c. Billing and Payment Procedures

- (1) Funding for DD48 Services are:
 - (a) Based upon the amount of qualified billable RFFS Claims submitted by the Provider of DD 48 Services, up to the monthly amount authorized by the CDDP’s DD 48 Services Provider Prior Authorization (PPA);

- (b) Paid to the CDDP after the Claims processing cycle on the 15th of the month based on: Title XIX eligible Claims cleared since the first of the month; and Title XIX eligible Claims made for the previous month(s) that have cleared but have not previously been paid, will also be processed for payment at this time up to the monthly authorized amount. General fund Claims submitted for the time period between the 1st of the month and the 15th of the month will be held until the next monthly Claims processing cycle described in 2.c.(1)(c) of this DD 48 Service Element Standards and Procedures.
- (c) Paid to CDDP after the Claims processing cycle on the last day of the month based on:
 - i. If any funds remain or are available in the monthly authorized amount;
 - ii. Title XIX eligible Claims cleared since the 15th will be processed and paid first;
 - iii. Title XIX eligible Claims cleared but not yet paid for the previous month(s) will be processed and paid second up to the maximum monthly authorized amount;
 - iv. If any funds remain or are available for the month after payment of the Title XIX eligible Claims, general fund Claims that have cleared that month will be processed and paid third; and
 - v. General fund Claims cleared but not yet paid for the previous month(s) will be processed and paid fourth until the monthly authorized amount is exhausted.
- (2) DHS is not obligated to provide funding for any DD 48 Services that are not properly documented in Individual case files, or are not properly reported through eXPRS within 12 months of the DD 48 Service, and by the date 60 calendar days after the earlier of expiration or termination of the Agreement; termination of DHS' obligation to provide funding for DD 48 Services; or termination of CDDP's obligation to include the Program Area in which DD 48 Services fall.
- (3) Provider of DD 48 Services shall resolve all Provider Liability Accounts (PLA) as shown in eXPRS relating to DD 48 Services, by ensuring the PLA ending balance is zero, within 60 calendar days after the earlier of expiration or termination of the Agreement with DHS; termination of DHS' obligation to provide funding for DD 48 Services; or termination of CDDPs obligation to include the Program Area, in which DD 48 Services fall.

- (4) Each Individual receiving DD 48 Services must have an active, accepted CPA within eXPRS for the period DD 48 Services are provided to the Individual in order for Provider to submit a qualifying Claim.
- (5) For each unit of DD 48 Services reported in eXPRS as delivered to an Individual, a qualifying billable DD 48 Service must have been delivered to the Individual and sufficiently documented in progress notes within the Individual's file. DHS will not provide funding for more than one billable DD 48 Service or unit per Individual per day.

Service Element DD 55 Standards and Procedures

Effective Date: July 1, 2019
Service Name: Abuse Investigation Services
Service ID Code: DD 55

1. Overview.

Abuse Investigation Services (DD 55 Services) for adults include responding to abuse allegations, accessing protective services in coordination with case management entities, and assuring that the abuse allegations are appropriately investigated and reported. County must operate a Community Developmental Disabilities Program (CDDP), or have a service agreement with another CDDP, to perform abuse investigation activities included in the DD 55 Services.

2. Standards and Procedures.

a. General Performance Requirements

- (1) When providing DD55 Services for DHS, County will:
 - (a) Comply with OAR Chapter 411, Division 320 “Community Developmental Disabilities Program”, as such rules may be revised from time to time.
 - (b) Comply with OAR Chapter 407, Division 045 “Office of Adult Abuse Prevention and Investigations”, as such rules may be revised from time to time.
 - (c) Comply with DHS policies and procedures and DHS Transmittals requesting action or providing policy information.
- (2) County must employ, or have an agreement with an identified CDDP or Subcontractor to employ, individuals as abuse investigators to perform abuse investigation activities which includes the provision of DD 55 Services in a geographic Program Area and who will be referred to as the “Abuse Investigator”.
- (3) The County, CDDP, or Subcontractor shall employ and provide training for all staff indicated in the workload model for Abuse Investigation Services within the funding allotted.
- (4) Investigators must use OTIS approved forms and procedures for mandatory abuse reporting, accessing protective services, and investigation and documentation of findings regarding abuse allegations.
- (5) Investigators must complete the abuse investigation duties within the timelines outlined in rule. Any variance to the investigation rules in OAR

Chapter 407, Division 45 “Office of Adult Abuse Prevention and Investigations” must be reviewed and approved by OTIS.

- (6) Investigators must participate in quarterly meetings held by OTIS.
- (7) Investigators must participate in the county multidisciplinary team relative to ORS 430.739 “County multidisciplinary teams; protocols; reports” and provide any requested data and information needed to comply with ORS 403.739 and OAR Chapter 407, Division 45.
- (8) Per ORS 430.731(3) a person employed by a CDDP to provide Case Management Services may not serve as the lead investigator of an allegation of abuse of a person with a developmental disability.
- (9) A CDDP may identify a back-up Abuse Investigator who is also a case manager or Services Coordinator. Back-up Abuse Investigators must complete the Investigator Core Competencies training as delivered by OTIS. A back-up Abuse Investigator may be used in a situation where the primary Abuse Investigator is absent or temporarily unavailable. If a case manager is the back-up Abuse Investigator, the case manager cannot serve as the investigator for an allegation involving an adult they case manage.
- (10) In circumstances where a CDDP may have a potential conflict of interest, OTIS should be consulted as prescribed in OAR Chapter 407, Division 45. A conflict of interest is limited to cases where a CDDP employee is the accused person, there is a familial relationship to the investigator, or the allegation is a highly sensitive issue requiring outside investigation.
 - (a) The Abuse Investigator must consult with investigators in neighboring service areas to coordinate an out of county investigation. Investigators cannot reject a request for an out of county investigation based solely on workload impacts.
 - (b) OTIS, in consultation with the Abuse Investigator, will determine if there is an actual or potential conflict of interest that cannot be remedied through assignment to another abuse investigation provider.
 - (c) OTIS will provide a written response regarding the outcome of the formal request to the original investigator within 24 hours.

b. Special Reporting Requirements

Upon DHS’ written request, a CDDP will provide data and information relative to the implementation of DD 55 Services within the time specified by DHS in its request to County.

3. Billing and Payment Procedures.

- a.** DHS will provide County with funding for DD 55 Services by entering a Service Element Prior Authorization (SEPA) and Provider Prior Authorization (PPA) based on the approved County workload model or its funding level for FTE staff.

- b.** DHS will disburse funding for DD 55 Services, for a specified period of time, in an amount equal to the monthly amount set forth in the accepted SEPA and approved in the PPA, as such amounts may be updated from time to time, subject to the following:
- (1) If County fails to deliver DD 55 Services for part of a month, the funding for DD 55 Services for that month will be prorated and DHS may reduce future disbursements of DD 55 funds accordingly.
 - (2) If requested by DHS, County shall also accept an appropriate SEPA Adjustment to amend funding for DD 55 Services as a result of a CDDP's failure to deliver the DD 55 Services for a full month.

**Reserved
for
Centralized Abuse Management (CAM) System Standards and Procedures**

EXHIBIT B
PART 3
FINANCIAL TERMS AND CONDITIONS

1. Disbursement of Payments.

- a. Disbursement Generally. Subject to the conditions precedent to disbursement set forth in subsection c. below, DHS shall disburse the payments described in the SEPA to CDDP and Subcontractors in accordance with the procedures set forth in this Section 1 and, as applicable, in the Service Element Standards and Procedures. Disbursement procedures may vary by DD Service.
- b. Disbursements Remain Subject to Recovery. All disbursements of funds to CDDP and Subcontractors under this Agreement remain subject to recovery from CDDP, in accordance with Section 6 below, as a Misexpenditure.
- c. Conditions Precedent to Disbursement. DHS' obligation to disburse payments to CDDP and Subcontractors under this Agreement is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:
 - (1) No County default as described in Section 8 "County Default" of Exhibit E Standard Terms and Conditions has occurred.
 - (2) County's representations and warranties set forth in Section 4 "Representations and Warranties" of Exhibit E Standard Terms and Conditions are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.

2. Use of Funding. CDDP shall use the funds disbursed to CDDP under this Agreement solely to cover actual Allowable Costs reasonably and necessarily incurred to deliver DD Services during the term of this Agreement.

3. Effect of Amendments Reducing Funding. If CDDP and DHS amend the SEPA or Agreement to reduce the amount of funding awarded for a particular DD Service, CDDP is not required by this Agreement to utilize other CDDP funds to replace the funds no longer received under this Agreement as a result of the Amendment and CDDP may, from and after the date of the Amendment, reduce the quantity of that DD Service included in its CDDP commensurate with the amount of the reduction in funds awarded for that DD Service.

If a CDDP receives Local Match funding to recoup the reduced funding, Services may not be reduced. Nothing in the preceding sentence shall affect CDDP's obligations under this Agreement with respect to payments actually disbursed by DHS under this Agreement or with respect to DD Services actually delivered.

4. Carryover.

- a. Funds received by CDDP for the Service Elements DD 02 and DD 55 that remain available at the close of a State fiscal year or a biennium, may be retained by CDDP upon DHS review and approval ("Carryover"). The amount or percentage of funding to be retained by CDDP shall be determined by DHS. Any amount of

Carryover funds authorized by DHS is to be used by CDDP in support of DD Services provided to Individuals as approved by DHS and may not be co-mingled with other County programs or departments.

- b. Carryover funds retained from a previous biennium must be reported to DHS using the form provided by DHS. The report must include the following:
 - (1) Amount of awarded funds or other compensation paid directly to the CDDP under this Agreement.
 - (2) A written description of how the Carryover funds will be used by CDDP to increase DD Services or cover costs of DD Services under the same Service Element for which the funds were awarded to CDDP in the previous biennium.

5. **Process for Settlement.**

CDDP shall cooperate with DHS during the biennial, or any interim, Settlement process for those DD Services where funds are paid directly to CDDP or as defined in Exhibit B Part 2 of this Agreement.

- a. DHS will analyze the DHS paid versus CDDP expended funds, for each DD Service funded under this Agreement, for the timeframe of the Settlement process. Upon completion of the DHS analysis, DHS will notify CDDP via an e-mail addressed to the CDDP Administrator of the results of its Settlement process (“Settlement Notification”). The Settlement Notification will include the following:
 - (1) Settlement Cover Letter, and
 - (2) Initial Settlement Report.
- b. CDDP shall have 90 calendar days from the date of the Settlement Notification to respond with corrections, additional information, or acceptance of the Settlement amount as presented by DHS.
- c. CDDP shall submit any additional information or corrections on the spreadsheet provided in the Initial Settlement Report per the instructions in the Settlement packet, as well as any documentation needed to support a disputed amount (the “Response File”).
- d. DHS shall review and respond to CDDP’s Response File within 120 calendar days of receipt of the Response File. DHS shall clearly identify in a revised Settlement Notification, to the CDDP Administrator, which items DHS has accepted or denied.
- e. Any additional backup documentation provided by CDDP is subject to 42 CFR §447.45 Medicaid Claims which allows Medicaid match for new Claims if paid within 12 months from date of Service and seven quarters plus current quarter for corrections to existing Claims.

- f. If DHS and CDDP continue to disagree as to the Settlement amount, the parties may agree to further appropriate dispute resolution processes, subject to Exhibit E Section 18 “Alternative Dispute Resolution” of this Agreement.
- g. The final Settlement Notification sent by DHS to CDDP shall indicate the amount and the expected date of payment to DHS by way of a check from CDDP or recovery through future payments in the manner described in this Exhibit B Part 3. If funds are to be paid to CDDP, the final Settlement Notification shall indicate the amount and the expected date of payment by check from DHS. Any disputes to the final Settlement Notification shall be resolved through the appeals processes as outlined in this Exhibit B Part 3.

6. Recovery of Funding for Misexpenditure.

- a. If DHS identifies a Misexpenditure of moneys disbursed to CDDP under this Agreement, DHS shall provide CDDP by e-mail with written notice thereof and DHS and CDDP shall engage in the process described in subsection 6.b. below.
- b. From the date of the notice of Misexpenditure, CDDP shall have the lesser of (1) 60 calendar days, or (2) if a Misexpenditure relates to a federal government request for reimbursement, 30 calendar days fewer than the number of days (if any) that DHS has to appeal a final written decision from the federal government, to either:
 - (1) Make a payment to DHS of the full amount of the noticed Misexpenditure identified by DHS; or
 - (2) Notify DHS that CDDP wants to repay the amount of the noticed Misexpenditure from future payments pursuant to subsection 6.d. below; or
 - (3) Notify DHS that it wants to engage in the applicable appeal process set forth in subsection 6.c. below.

c. Appeal Process for Misexpenditure.

If CDDP notifies DHS that it wants to engage in an appeal process with respect to a noticed Misexpenditure, the parties shall comply with the following procedures, as applicable.

(1) Appeal from DHS-Identified Misexpenditure.

If DHS’ notice of Misexpenditure is based on a Misexpenditure solely of the type described in Section 36 b. or c. of Exhibit A “Definitions”, CDDP and DHS shall engage in the process described in this subsection to resolve a dispute regarding the noticed Misexpenditure.

- (a) CDDP and DHS shall engage in non-binding discussions to give CDDP an opportunity to present reasons why it claims that there is no Misexpenditure or that the amount of the Misexpenditure is different than the amount identified by DHS; and to give DHS the opportunity to reconsider its notice of recovery.

- (b) CDDP and DHS may negotiate an appropriate apportionment of responsibility for the recovery of a Misexpenditure. At CDDP's request, DHS will meet and negotiate with the CDDP in good faith concerning appropriate apportionment of responsibility for recovery of a Misexpenditure. In determining an appropriate apportionment of responsibility, CDDP and DHS may consider any relevant factors. An example of a relevant factor is the extent to which either party contributed to an interpretation of a statute, regulation or rule prior to the expenditure that was officially reinterpreted after the expenditure.
- (c) If DHS and CDDP reach agreement on an amount owed to DHS, CDDP shall, promptly repay that amount to DHS by issuing payment to DHS or direct DHS to withhold future payments pursuant to subsection 6.d. below.
- (d) If DHS and CDDP continue to disagree as to whether there has been a Misexpenditure or as to the amount owed, the parties may agree to further appropriate dispute resolution processes, including, subject to Department of Justice and County Counsel approval, binding arbitration.

(2) Appeal from Federal-Identified Misexpenditure.

- (a) If DHS' notice of Misexpenditure is based on a Misexpenditure of the type described in Section 36. a. of Exhibit A "Definitions" and the relevant federal agency provides a process either by statute or administrative rule to appeal the determination of improper use of Federal Funds, the notice of disallowance or other federal identification of improper use of funds, and if the disallowance is not based on a federal or state court judgment founded in allegations of Medicaid Fraud or abuse, then CDDP may, prior to 30 calendar days prior to the applicable federal appeals deadline, request that DHS appeal the determination of improper use, notice of disallowance, or other federal identification of improper use of funds, in accordance with the process established or adopted by the federal agency.
- (b) If CDDP so requests that DHS appeal the determination of improper use of Federal Funds, federal notice of disallowance, or other federal identification of improper use of funds, the amount in controversy shall, at the option of CDDP, be retained by CDDP or returned to DHS pending the final federal decision resulting from the initial appeal.
- (c) If CDDP does request, prior to the deadline set forth in (2) (a) above, that DHS appeal, DHS shall appeal the determination of improper use, notice of disallowance or other federal identification of improper use of funds in accordance with the established

process and shall pursue the appeal until a decision is issued by the Departmental Grant Appeals Board of the Department of Health and Human Services (the “Grant Appeals Board”) pursuant to the process for appeal set forth in 45 C.F.R. Subtitle A, Part 16, or an equivalent decision is issued under the appeal process established or adopted by the federal agency. CDDP and DHS shall cooperate with each other in pursuing the appeal.

- (d) If the Grant Appeals Board or its equivalent denies the appeal, then either CDDP, DHS, or both may, in their discretion, pursue further appeals. Regardless of any further appeals, within 90 calendar days of the date the federal decision resulting from the initial appeal is final, CDDP shall repay to DHS the amount of the noticed Misexpenditure (reduced, if at all, as a result of the appeal) by issuing payment to DHS or by directing DHS to withhold future payments pursuant to subsection 6.d. below. To the extent that CDDP retained any of the amounts in controversy while the appeal was pending, CDDP shall pay to DHS the interest, if any, charged by the federal government on such amount.
- (e) If the relevant federal agency does not provide a process either by statute or administrative rule to appeal the determination of improper use of Federal Funds, the notice of disallowance or other federal identification of improper use of funds or CDDP does not request that DHS pursue an appeal 30 calendar days prior to the applicable federal appeals deadline, and if DHS does not appeal, then within 90 calendar days of the date the federal determination of improper use of Federal Funds, the federal notice of disallowance, or other federal identification of improper use of funds is final, CDDP shall repay to DHS the amount of the noticed Misexpenditure by issuing a payment to DHS or by directing DHS to withhold future payments pursuant to subsection 6.d. below.
- (f) If CDDP does not request that DHS pursue an appeal of the determination of improper use of Federal Funds, the notice of disallowance, or other federal identification of improper use of funds, prior to 30 calendar days prior to the applicable federal appeals deadline, but DHS nevertheless appeals, CDDP shall repay to DHS the amount of the noticed Misexpenditure (reduced, if at all, as a result of the appeal), within 90 calendar days of the date the federal decision resulting from the appeal is final, by issuing payment to DHS or by directing DHS to withhold future payments pursuant to subsection 6.d. below.
- (g) If the Misexpenditure was expressly authorized by a DHS rule or a DHS writing that applied when the expenditure was made, but was prohibited by federal statutes or regulations that applied when the

expenditure was made, CDDP will not be responsible for repaying the amount of the Misexpenditure to DHS, provided that:

- i. Where post-expenditure official reinterpretation of federal statutes or regulations results in a Misexpenditure, CDDP and DHS will meet and negotiate in good faith an appropriate apportionment of responsibility between them for repayment of the Misexpenditure.
- ii. For purposes of this section, a DHS writing must interpret this Agreement or a DHS rule and be signed by the Director of DHS or by one of the following DHS officers concerning DD Services:

Director of the Office of Developmental Disabilities Services;

Deputy Director of the Office of Developmental Disabilities Services;

Chief Operating Officer of the Office of Developmental Disabilities Services.

DHS shall designate alternate officers in the event the offices designated in the previous sentence are abolished. Upon CDDP request, DHS shall notify CDDP of the names of individual officers with the above titles. DHS shall send DHS writings described in this paragraph to CDDP by mail and e-mail and to CDDP's directors by e-mail.

- iii. The DHS writing must be in response to a request from the CDDP for expenditure authorization, or a statement intended to provide official guidance to the CDDP or counties generally, for making expenditures under this Agreement. The DHS writing must not be contrary to this Agreement or contrary to law or other applicable authority that is clearly established at the time of the writing.
- iv. If the DHS writing is in response to a request from CDDP for expenditure authorization, the request must be in writing and signed by the director of a CDDP department with authority to make such a request or by County Counsel. It must identify the supporting data, provisions of this Agreement and provisions of applicable law relevant to determining if the expenditure should be authorized.
- v. A DHS writing expires on the date stated in the writing, or if no expiration date is stated, upon expiration of this Agreement. An expired DHS writing continues to apply to

CDDP expenditures that were made in compliance with the writing and during the term of the writing.

- vi. DHS may revoke or revise a DHS writing at any time if it determines in its sole discretion that the writing allowed expenditures in violation of this Agreement or law or any other applicable authority. However, DHS is not responsible for a Misexpenditure that was based on a DHS writing that was effective at the time of the Misexpenditure.
- vii. The DHS rule or the DHS writing does not authorize an expenditure that this Agreement prohibits.

d. Recovery of Misexpenditure from Future Payments

- (1) To the extent that DHS is entitled to recover a Misexpenditure pursuant to subsection 6.b. above, DHS may recover the Misexpenditure by offsetting the amount thereof against future amounts owed to County by DHS, including, but not limited to, any amount owed to CDDP by DHS under this Agreement, or any amount owed to County by DHS under any other contract or agreement between County and DHS, present or future.
- (2) DHS shall provide the CDDP with written notice of its intent to recover the amount of the Misexpenditure as set forth in this section from amounts owed CDDP by DHS, and DHS shall identify the amounts owed by DHS to CDDP which DHS intends to offset to recover the Misexpenditure amount, including the contracts or agreements, if any, under which the amounts owed arose and those other contracts or agreements from which DHS wishes to deduct payments.
- (3) CDDP shall then have 14 calendar days from the date of DHS' notice in which to request the deduction be made from other amounts owed to County by DHS and identified by CDDP. DHS shall comply with CDDP's request for alternate offset.
- (4) In the event that DHS and the CDDP are unable to agree on which specific amounts, owed to County by DHS, DHS may offset in order to recover the amount of the Misexpenditure, then DHS may select the particular contracts or agreements between DHS and County and amounts from which it will recover the amount of the Misexpenditure, after providing notice to County, and within the following limitations:
 - (a) DHS shall first look to amounts owed to CDDP (but unpaid) under this Agreement.
 - (b) If that amount is insufficient, then DHS may look to any other amounts currently owing or owed in the future to County by DHS.
 - (c) In no case, without the prior consent of County, shall DHS deduct from any one payment due County under the contract or agreement

from which DHS is offsetting funds an amount in excess of twenty-five percent (25%) of that payment.

- (d) DHS may look to as many future payments as necessary in order to fully recover the amount of the Misexpenditure.

7. Additional Provisions with respect to Settlement and Misexpenditures.

- a. CDDP shall cooperate with DHS in the Settlement process throughout the Agreement term and with the Agreement Settlement process upon termination or expiration of the Agreement.
- b. DHS' right to recover through Settlement and the Misexpenditure process from CDDP under this Agreement is not subject to or conditioned on CDDP's recovery of any money from any other entity.
- c. If the exercise of DHS' right to offset under this provision requires CDDP to complete a re-budgeting process, nothing in this provision shall be construed to prevent CDDP from fully complying with its budgeting procedures and obligations, or from implementing decisions resulting from those procedures and obligations.
- d. Nothing in this provision shall be construed as a requirement or agreement by CDDP to negotiate and execute any future contract with DHS.
- e. Nothing in this Section 7 shall be construed as a waiver by either party of any process or remedy that might otherwise be available.

8. Resolution of Disputes over Additional Funds Owed CDDP After Termination or Expiration.

If, after termination or expiration of this Agreement, CDDP believes that DHS disbursements of funds under this Agreement for a particular DD Service are less than the amount of funds that DHS is obligated to provide to CDDP under this Agreement for that DD Service, as determined by the Agreement Settlement and in accordance with the applicable funding calculation methodology, CDDP shall provide DHS with written notice thereof. DHS shall have 90 calendar days from the effective date of CDDP's notice to pay CDDP in full or notify CDDP that it wishes to engage in a dispute resolution process. If DHS notifies CDDP that it wishes to engage in a dispute resolution process, CDDP and DHS' Assistant Administrator shall engage in non-binding discussion to give DHS an opportunity to present reasons why it believes that it does not owe CDDP any additional funds or that the amount owed is different than the amount identified by CDDP in its notices, and to give CDDP the opportunity to reconsider its notice. If DHS and CDDP reach agreement on the additional amount owed to CDDP, DHS shall promptly pay that amount to CDDP. If DHS and CDDP continue to disagree as to the amount owed, the parties may agree to further appropriate dispute resolution processes, including, subject to Department of Justice and County Counsel approval, binding arbitration. Nothing in this Section 8 shall preclude CDDP from raising underpayment concerns at any time prior to termination or expiration of this Agreement.

EXHIBIT C
SPECIAL TERMS AND CONDITIONS

1. CDDP Authorization of Client Services.

- a. CDDP shall submit Client Prior Authorizations (CPA) for the DD Services CDDP is responsible to authorize that are identified in Section 1 Provision of Services, Exhibit B Part 2 of this Agreement.
- b. CDDP shall upload documentation supporting the Plan of Care (POC) authorization within eXPRS.
- c. CDDP shall follow current Service Element Standards and Procedures as identified in Exhibit B Part 2 of this Agreement in establishing a CPA or a POC authorization.
- d. CDDP shall end the CPA and POC authorizations within 10 business days of the date the Individual exits a DD Service or Services.
- e. CDDP shall not authorize a Provider to begin, or to continue, delivery of Services, if the Provider's enrollment in eXPRS and any required credentials for the Service are incomplete or have lapsed.

2. DHS Approval of CDDP Authorized Services.

- a. DHS may randomly review CDDP authorizations and associated documentation for DD Services. If DHS has questions or finds errors in CDDP submitted documentation, DHS shall work with CDDP and any other valid parties to remedy the outstanding issues.
- b. DHS reserves the option, in its sole discretion, to require CDDP to terminate a plan or any element of a plan entered into POC upon determining that the DD Services were authorized outside of the requirements for the Service Element; or the plan procedure code was affected by statute, rules, or DHS policies or procedures; or the Services were not authorized under this Agreement.

3. Appointment of CDDP Administrator.

The CDDP employee, identified by the CDDP via e-mail to DHS as the "CDDP Administrator", is authorized to:

- a. Amend the Service Element Prior Authorization (SEPA), on behalf of CDDP, and amend this Agreement by execution and delivery of amendments in the name of CDDP in hard copy, electronically, or, with respect to the SEPA only, through electronic acceptance of SEPA Adjustments in eXPRS.

- b.** Enable, on behalf of CDDP, the disbursement of funds under this Agreement that is described in the SEPA, through submission and modification of CPAs and PPAs, either electronically through eXPRS or by submission of hard copy documents to DHS; and to authorize Providers, to submit Disbursement Claims on behalf of CDDP, either electronically through eXPRS or by submission of hard copy documents to DHS.
- c.** Authorize others, including but not limited to CDDPs subcontracting with a County, to take one or more of the foregoing actions on behalf of County except for authorizing amendments to this Agreement and SEPAs.

EXHIBIT D
GENERAL TERMS AND CONDITIONS

1. Operation of CDDP.

- a.** County shall operate or subcontract for the operation of a CDDP during the term of this Agreement. If County uses funds provided under this Agreement for a particular DD Service, County shall include that DD Service in its CDDP from the date it begins using the funds for that DD Service until the earlier of (a) termination or expiration of this Agreement; (b) termination by DHS of DHS' obligation to provide funds for that DD Service in accordance with Section 5 of Exhibit E; or (c) termination by County, in accordance with Section 10 of Exhibit E, of County's obligation to include in its CDDP a Program Area that includes that DD Service. County shall employ and provide training for all staff indicated in the workload model that provide DD Services. CDDP must hire as many employees as possible for each identified position per the funding allocated. County shall operate their CDDP within the applicable federal and state rules, regulations and the terms of this Agreement. All funds received by the CDDP must be used for the purposes of conducting DD Services.
- b.** If County wishes to subcontract the operation of a CDDP the Subcontract must comply with the terms of this Agreement, including but not limited to, Exhibit E, Section 19. If County subcontracts the entire CDDP duties, County will be obligated to pass all funds received for the CDDP to the Subcontractor.

2. Subcontracts.

- a.** Except when the Service Element Standards and Procedures expressly require the DD Service, or a portion thereof, to be delivered by County directly and, subject to Section 19 of Exhibit E, County may use funding provided under this Agreement to purchase the Service from a Subcontractor through a Subcontract, including, but not limited to, for DD 53 Transportation Services with Local Match funding, and for DD 57 Special Projects to purchase the Service.
- b.** County shall not permit any person or entity to be a Subcontractor unless the person or entity holds all licenses, certificates, authorizations and other approvals as identified in the applicable Service Element Standards and Procedures.
- c.** If County subcontracts a DD Service, or portion thereof, from a Subcontractor, the Subcontract with County must be in writing and contain each of the provisions set forth in Exhibit G Part 1, "Required Subcontract Provisions" in substantially the form set forth therein, in addition to any other provisions that must be included to comply with applicable law, that must be included in a Subcontract with County under the terms of this Agreement, or that are necessary to implement DD Service delivery in accordance with the applicable Service Element Standards and Procedures and any special conditions.

- d. County shall maintain an originally executed copy of each Subcontract at its office and shall furnish a copy of any Subcontract to DHS within 90 days of the execution of this Agreement, 90 days of any Amendment to this Agreement, or upon request.
 - e. County shall pay for these DD Services only upon receipt of an itemized invoice, purchase order, or other proper billing instrument evidencing the DD Services rendered. County shall retain the billing instrument in accordance with Exhibit E Section 14
 - f. In accordance with ORS § 430.670 (3), any private corporation that contracts with a county or the Department of Human Services to operate a developmental disabilities program shall provide an opportunity for competition among private care providers when awarding Subcontracts for provision of services described in ORS 430.630 (1) to (3) and 430.664.
3. **Reporting Requirements.** County shall report the FTE utilized for Service Elements DD 02, DD 48, and DD 55, if applicable, to DHS semi-annually, when requested by DHS. DHS may prescribe the format to be used for this reporting.
 4. **DHS Reports.** To the extent resources are available to DHS to prepare and deliver the information, DHS shall, during the term of this Agreement, provide County with summary reports from data and other Individual data reported to DHS under this Agreement.
 5. **Technical Assistance.** During the term of this Agreement, DHS shall provide technical assistance to CDDP in the delivery of DD Services to the extent that funding is allocated to DHS for this purpose. If the provision of technical assistance to CDDP concerns a Provider or Subcontractor, DHS may require, as a condition to providing the assistance, that County take all action with respect to the Provider or Subcontractor reasonably necessary to facilitate the technical assistance.
 6. **Amendments Proposed by DHS.** Subject to Exhibit E Section 21, County shall review all pending Agreement amendments prepared and presented to County by DHS by e-mail and act within 60 calendar days of County's receipt of pending amendment. If County chooses to accept an amendment, County shall follow DHS' procedures for signing and returning the amendment to DHS. If County chooses to reject an amendment, County must submit an e-mail detailing the reason for the rejection to the DHS contact assigned to County.
 7. **eXPRS Access**
 - a. Designation of Direct Contract Chief Security Officer.
 - (1) The Case Management Entity (CME) Administrator may request in writing to designate to DHS any individual(s) authorized to perform the duties of the security role, in compliance with Exhibit H Part 1 "Privacy and Security Agreement", currently titled Direct Contract Chief Security Officer (DCCSO), or as such role may be renamed by DHS.

- (2) Upon approval of the request, DHS will send the DCCSO a UserID for accessing eXPRS. If CDDP wishes to designate a substitute DCCSO, the CME Administrator may do so by subsequent written notice to DHS.
 - (3) The individual designated as the DCCSO is responsible to ensure that CDDP is in compliance with the Security Requirements described in Exhibit H Part 1 of this Agreement.
 - (4) If the CME Administrator does not designate another CDDP employee as the DCCSO, the CME Administrator will be designated as the DCCSO and will act as the DCCSO on behalf of the CDDP.
- b. Responsibilities of Direct Contract Chief Security Officer.**
- (1) The DCCSO shall assign, maintain and, revoke all eXPRS user account securities for CDDP staff.
 - (a) The DCCSO may only assign, maintain or revoke user account securities upon receipt of the DHS eXPRS User Enrollment Form signed by the DHS manager.
 - (b) DHS eXPRS User Enrollment Form must be maintained by the CDDP.
 - (2) The DCCSO shall ensure CDDP staff are in compliance with all eXPRS policies and procedures.
- c. Revocation of UserIDs and SEPA Pass Phrase by DHS or CDDP:**
- (1) DHS may revoke a UserID or SEPA Pass Phrase if DHS determines that revocation is reasonably necessary for technical or security reasons.
 - (2) A UserID or SEPA Pass Phrase may be revoked if DHS or the CDDP determines:
 - (a) The UserID or SEPA Pass Phrase was not properly issued or created or was obtained by fraud.
 - (b) The UserID or SEPA Pass Phrase has or may have been lost, disclosed, compromised or subjected to unauthorized use.
 - (c) The CDDP has revoked or modified the authorization of the CME Administrator.
 - (d) CDDP is in default under this Agreement.
 - (3) If DHS revokes a UserID or SEPA Pass Phrase under this subsection, DHS will notify the CDDP promptly thereafter.
 - (4) DHS may, without notice to the CDDP, revoke all UserIDs and SEPA Pass Phrases upon termination or expiration of this Agreement.

8. Alternative Formats and Translation of Written Materials, Interpreter Services.

In connection with the delivery of Service Element services, County shall make available to Client, without charge, upon the Client's reasonable request:

- a. All written materials related to the services provided to the Client in alternate formats.
- b. All written materials related to the services provided to the Client in the Client's language.
- c. Oral interpretation services related to the services provided to the Client to the Client in the Client's language.
- d. Sign language interpretation services and telephone communications access services related to the services provided to the Client.

For purposes of the foregoing, "written materials" means materials created by County, in connection with the Service being provided to the requestor. The County may develop its own forms and materials and with such forms and materials the County shall be responsible for making them available to a Client, without charge to the Client in the prevalent non-English language(s) within the County service area. DHS shall be responsible for making its forms and materials available, without charge to the Client or County, in the prevalent non-English language(s) within the County service area.

9. Nothing in this Agreement shall cause or require CDDP or DHS to act in violation of state or federal constitutions, statutes, regulations or rules. The parties intend this limitation to apply in addition to any other limitation in this Agreement, including limitations in Section 1 of this Exhibit D.

EXHIBIT E
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 DHS, 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(2). County shall require all of its Subcontractors to comply with and shall ensure that each of its Subcontractors complies with, these requirements. Nothing in this Agreement shall require County or DHS to act in violation of state or federal law or the Constitution of the State of Oregon.
3. **Independent Contractors.** The parties agree and acknowledge that their relationship is that of independent contracting parties and that County is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.
4. **Representations and Warranties.**
 - a. County represents and warrants as follows:
 - (1) **Organization and Authority.** County is a political subdivision of the State of Oregon duly organized and validly existing under the laws of the State

of Oregon. County has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder.

- (2) Due Authorization. The making and performance by County of this Agreement (a) have been duly authorized by all necessary action by County and (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of County's charter or other organizational document and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which County is a party or by which County may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by County of this Agreement.
- (3) Binding Obligation. This Agreement has been duly executed and delivered by County and constitutes a legal, valid and binding obligation of County, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- (4) County has the skill and knowledge possessed by well-informed members of its industry, trade or profession and County will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in County's industry, trade or profession.
- (5) County shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the Work; and
- (6) County prepared its proposal related to this Agreement, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.
- (7) Services. To the extent DD Services are performed by County, the delivery of each DD Service will comply with the terms and conditions of this Agreement and meet the standards for such DD Service as set forth herein, including but not limited to, any terms, conditions, standards and requirements set forth in the Service Element Standards and Procedures.

h. DHS represents and warrants as follows:

- (1) Organization and Authority. DHS 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 DHS of this Agreement (a) have been duly authorized by all necessary action by DHS 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 DHS is a party or by which DHS 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 DHS 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 DHS and constitutes a legal, valid and binding obligation of DHS, 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.

a. The State of Oregon's payment obligations under this Agreement are conditioned upon DHS receiving funding, appropriations, limitations, allotment, or other expenditure authority sufficient to allow DHS, 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 DHS. 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. DHS represents that as of the date it executes this Agreement, it has sufficient appropriations and limitation for the current biennium to make payments under this Agreement.

b. Payment Method. Payments under this Agreement will be made by Electronic Funds Transfer (EFT) and shall be processed in accordance with the provisions of OAR 407-120-0100 through 407-120-0380 or OAR 410-120-1260 through OAR 410-120-1460, as applicable, and any other Oregon Administrative Rules that are program-specific to the billings and payments. Upon request, County shall provide its taxpayer identification number (TIN) and other necessary banking information to receive EFT payment. County shall maintain at its own expense a single financial institution or authorized payment agent capable of receiving and processing EFT using the Automated Clearing House (ACH) transfer method. The most current designation and EFT information will be used for all payments under this Agreement. County shall provide this designation and information on a form provided by DHS. In the event that EFT information changes or County elects to designate a different financial institution for the receipt of any payment made using EFT procedures, County shall provide the changed information or designation to DHS on a DHS-approved form. DHS is not required to make any

payment under this Agreement until receipt of the correct EFT designation and payment information from County.

6. Reserved.

7. Ownership of Intellectual Property.

- a.** Definitions. As used in this Section 7 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 DHS or County.
- b.** Except as otherwise expressly provided herein, or as otherwise required by state or federal law, DHS 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 County owns, County grants to DHS 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 7.b.(1) on DHS' behalf, and (3) sublicense to third parties the rights set forth in Section 7.b.(1).
- c.** If state or federal law requires that DHS or County grant to the United States a license to any intellectual property, or if state or federal law requires that DHS or the United States own the intellectual property, then County shall execute such further documents and instruments as DHS may reasonably request in order to make any such grant or to assign ownership in the intellectual property to the United States or DHS. To the extent that DHS becomes the owner of any intellectual property created or delivered by County in connection with the Work, DHS 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 DHS may reasonably request in order to make any grant of license or assignment of ownership that may be required by federal or state law.

8. 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 DHS 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 or substantially 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 federal Bankruptcy Code (as now or hereafter in effect), 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 calendar 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).

9. DHS Default.

DHS shall be in default under this Agreement upon the occurrence of any of the following events:

- a. DHS 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 DHS herein is untrue in any material respect when made.

10. Termination.

- a. County Termination. County may terminate this Agreement:
 - (1) For its convenience, upon at least 30 calendar days advance written notice to DHS;
 - (2) Upon 45 calendar days advance written notice to DHS, 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 calendar days advance written notice to DHS, if DHS 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 DHS, 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. DHS Termination. DHS may terminate this Agreement:

- (1) For its convenience, upon at least 30 calendar days advance written notice to County;
- (2) Upon 45 calendar days advance written notice to County, if DHS does not obtain funding, appropriations and other expenditure authorizations from federal, state or other sources sufficient to meet the payment obligations of DHS under this Agreement, as determined by DHS in the reasonable exercise of its administrative discretion. Notwithstanding the preceding sentence, DHS 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 DHS' legislative authorization for expenditure of funds to such a degree that DHS will no longer have sufficient expenditure authority to meet its payment obligations under this Agreement, as determined by DHS in the reasonable exercise of its administrative discretion, and the effective date for such reduction in expenditure authorization is less than 45 calendar 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 DHS 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 calendar 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 calendar day period or such longer period, if any, as DHS may specify in the notice;
- (5) Immediately upon written notice to County, if any license or certificate required by law or regulation to be held by County or a Subcontractor to

perform the Work is for any reason denied, revoked, suspended, not renewed or changed in such a way that County or a Subcontractor no longer meets requirements to perform the Work. This termination right may only be exercised with respect to the particular part of the Work impacted by loss of necessary licensure or certification; or

(6) Immediately upon written notice to County, if DHS 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.

11. Effect of Termination.

a. Entire Agreement.

(1) Upon termination of this Agreement, DHS 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 subsection a. above, any termination of this Agreement shall not prejudice any obligations or liabilities of either party accrued prior to such termination.

12. 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. THIS LIMITATION OF LIABILITY IS PROVIDED TO THE EXTENT ANY RESULTING CONTINGENT REPAYMENT LIABILITY IS PERMITTED BY ARTICLE XI, SECTIONS 7 AND 10 OF THE OREGON CONSTITUTION AND THE OREGON TOR CLAIMS ACT, ORS 30.260 AND 30.300.

13. Insurance. County shall require Subcontractors to maintain insurance as set forth in Exhibit G Part 2 which is attached hereto.

14. Records Maintenance; Access and Confidentiality.

a. Access to Records and Facilities. DHS, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers and records of County that are directly related to this Agreement, the funding provided hereunder, or any Service for the purpose of making audits, examinations, excerpts, copies and transcriptions. In addition, County shall permit authorized representatives of DHS to perform site reviews of all Services delivered by County.

- b. **Retention of Records.** County shall retain an Individual's records in accordance with OAR 166-005-0000 through 166-150-0215 (State Archivist). Unless OAR 166-005-0000 through 166-150-0215 requires a longer retention period, Client Records must be retained for a minimum of six years from termination or expiration of this Agreement.
 - c. **Expenditure Records.** County shall document the use and expenditure of all funds paid by DHS under this Agreement. Unless applicable federal law requires County to utilize a different accounting system, County shall create and maintain all use and expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit DHS to verify how the funds paid by DHS under this Agreement were used or expended.
 - d. **Client Records.** If County delivers a DD Service directly, County shall create and maintain an Individual record ("Client Record") for each Individual who receives that DD Service, unless the Service Element Standards and Procedures precludes delivery of the DD Service on an Individual Client basis and reporting of Service commencement and termination information is not required by the Service Element Standards and Procedures. The Client Record shall contain:
 - (1) Individual's identification;
 - (2) Assessments with problems;
 - (3) Treatment, training, and care plan, as applicable;
 - (4) Medical information when appropriate; and
 - (5) Progress notes including Service termination summary and current assessment or evaluation instrument as designated by DHS in administrative rules.
- 15. Information Privacy/Security/Access.** If the Services performed under this Agreement requires County or its Provider(s) to access or otherwise use any DHS Information Asset or Network and Information System to which security and privacy requirements apply, and DHS grants County, its Provider(s), or both access to such DHS Information Assets or Network and Information Systems, County shall comply and require its Provider(s) to which such access has been granted to comply with the terms and conditions applicable to such access or use, including 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.
- 16. Force Majeure.** Neither DHS nor County shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, natural causes, war or other cause which is beyond the reasonable control of DHS 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. DHS may terminate this Agreement upon written notice to County

after reasonably determining that the delay or breach will likely prevent successful performance of this Agreement.

17. **Assignment of Agreement, Successors in Interest.**
 - a. County shall not assign or transfer its interest in this Agreement without prior written approval of DHS. Any assignment or transfer in violation of this Agreement shall be null and void. Any such assignment or transfer, if approved, is subject to such conditions and provisions as DHS may deem necessary. 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 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.
18. **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.
19. **Subcontracts.** County shall not enter into any Subcontracts for any of the Work required by this Agreement without DHS' prior written consent. In addition to any other provisions DHS may require, County shall include in any permitted Subcontract under this Agreement provisions to require that DHS will receive the benefit of Subcontractor performance as if the Subcontractor were County with respect to this contract. DHS' consent to any Subcontract shall not relieve County of any of its duties or obligations under this Agreement.
20. **No Third-Party Beneficiaries.** DHS 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 DHS to assist and enable DHS 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.
21. **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.
22. **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.

23. **Survival.** Sections 1, 4, 5, 7, 11, 12, 13, 14, 18, 20, 21, 22, 23, 24, 25, 27, 29, and 30 of this Exhibit E shall survive Agreement expiration or termination as well as those the provisions of this Agreement that by their terms 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.

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

DHS: Office of Contracts & Procurement
635 Capitol Street NE Suite 350
Salem, Oregon 97301
Voice: (503) 945-5818
Fax: (503) 378-4324

COUNTY: Marion County
2421 Lancaster Drive NE
Salem, Oregon 97305
Phone: (503) 588-5357
Fax: (503) 588-5290

25. **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.

26. **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.

27. **Waiver.** The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision. No waiver or consent shall be effective unless in writing and signed by the party against whom it is asserted.

28. **Reserved.**

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

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

30. **Indemnification by Subcontractors.** County shall take all reasonable steps to cause its Subcontractor(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 Subcontractor or any of the officers, agents, employees or subcontractors of the Subcontractor ("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 Subcontractor from and against any and all Claims.

- 31. Stop-Work Order.** DHS may, at any time, by written notice to County, require County to stop all, or any part of the Work required by this Agreement for a period of up to 90 calendar 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 calendar days after issuance of the written notice, or within any extension of that period to which the parties have agreed, DHS 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 10. Termination.

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

32. Purchase and Disposition of Equipment.

- a. For purposes of this section, "Equipment" means tangible, non-expendable personal property having a useful life of more than one year and a net acquisition cost of more than \$5,000 per unit. However, for purposes of information technology equipment, the monetary threshold does not apply (except as provided below for software and storage devices). Information technology equipment shall be tracked for the mandatory line categories listed below:

Network

Personal Computer

Printer/Plotter

Server

Storage devices that will contain Client information.

Storage devices that will not contain Client information, when the acquisition cost is \$100 or more.

Software when the acquisition cost is \$100 or more.

- b. For any Equipment authorized by DHS for purchase with funds from this Agreement, ownership shall be in the name of County and County is required to accurately maintain the following Equipment inventory records:
 - (1) description of the Equipment;
 - (2) serial number;
 - (3) where Equipment was purchased;

- (4) acquisition cost and date; and
 - (5) location, use and condition of the Equipment.
- c. Upon termination of this Agreement, or any Service thereof, for any reason whatsoever, County shall, upon request by DHS, immediately, or at such later date specified by DHS, tender to DHS any and all Equipment purchased with funds under this Agreement as DHS may require to be returned to the State. At DHS' direction, County may be required to deliver said Equipment to a subsequent contractor for that contractor's use in the delivery of Services formerly provided by County. Upon mutual agreement, in lieu of requiring County to tender the Equipment to DHS or to a subsequent contractor, DHS may require County to pay to DHS the current value of the Equipment. Equipment value will be determined as of the date of Agreement or Service termination.
 - d. If funds from this Agreement are authorized by DHS to be used as a portion of the purchase price of Equipment, requirements relating to title, maintenance, Equipment inventory reporting and residual value shall be negotiated, and the agreement reflected in a special condition authorizing the purchase.
 - e. Notwithstanding anything herein to the contrary, County shall comply with 45 CFR 75.352, which, generally, describes the required maintenance, documentation, and allowed disposition of equipment purchased with federal grant funds.

EXHIBIT F
FEDERAL TERMS AND CONDITIONS

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

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

contracts with Subcontractors receiving more than \$100,000, language requiring the Subcontractor to comply with the federal laws identified in this section.

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

- f. No part of any Federal Funds paid to County under this Agreement shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the United States Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.
 - g. The prohibitions in subsections (e) and (f) of this section shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.
 - h. No part of any Federal Funds paid to County under this Agreement may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance of that federally sponsored clinical trials are being conducted to determine therapeutic advantage.
6. **Resource Conservation and Recovery.** County shall comply and require all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 U.S.C. 6901 et. seq.). Section 6002 of that Act (codified at 42 U.S.C. 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.
7. **Audits.**
- a. County shall comply, and require any subcontractor to comply, with applicable audit requirements and responsibilities set forth in this Agreement and applicable state or federal law.
 - b. If County expends \$750,000 or more in Federal Funds (from all sources) in a federal fiscal year, County shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR Subtitle B with guidance at 2 CFR Part 200. Copies of all audits must be submitted to DHS within 30 days of completion. If County expends less than \$750,000 in a federal fiscal year, recipient is exempt from Federal audit requirements for that year. Records must be available as provided in Exhibit B “Records Maintenance, Access”.
8. **Debarment and Suspension.** County shall not permit any person or entity to be a Subcontractor if the person or entity is listed on the non-procurement portion of the

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

9. **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 DHS 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 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 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 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.** 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.).
11. **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 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. Section 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. 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 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, 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.
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.** County shall make the disclosures required by this Section 13. 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 Work under this Agreement, may have certain rights as set forth in the federal requirements pertinent to these funds. For purposes of this subsection, the terms “grant” and “award” refer to funding issued by the federal funding agency to the State of Oregon. The County agrees that it has been provided the following notice:

- a.** The federal funding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the Work, and to authorize others to do so, for Federal Government purposes with respect to:
 - (1) The copyright in any Work developed under a grant, subgrant or agreement under a grant or subgrant; and
 - (2) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.
- b.** The parties are subject to applicable federal regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR Part 401, “Rights to Inventions Made by Nonprofit

Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.”

- c. The parties are subject to applicable requirements and regulations of the federal funding agency regarding rights in data first produced under a grant, subgrant or agreement under a grant or subgrant.

15. **Super Circular Requirements.** 2 CFR Part 200, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, including but not limited to the following:

- a. **Property Standards.** 2 CFR 200.313, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, which generally describes the required maintenance, documentation, and allowed disposition of equipment purchased with federal funds.
- b. **Procurement Standards.** When procuring goods or services (including professional consulting services), applicable state procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C or 2 CFR § 200.318 through 200.326, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, as applicable.
- c. **Contract Provisions.** The contract provisions listed in 2 CFR Part 200, Appendix II, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, that are hereby incorporated into this Exhibit, are, to the extent applicable, obligations of recipient, and recipient shall also include these contract provisions in its contracts with non-Federal entities.
- d. **Information Required by 2 CFR 200.331(a)(1).** All required data elements in accordance with 2 CFR 200.311(a)(1) are available at www.dhs.state.or.us/spd/tools/dd/cm/

EXHIBIT G
PART 1
REQUIRED SUBCONTRACT PROVISIONS

For purposes of this Exhibit G Part 1, Contractor means the individual or entity that is subcontracting directly with County for Services under this Agreement.

1. County subcontracting the CDDP Operation must include in Subcontracts all language from Exhibits A, B, C, D, E, F and G Part 2, other exhibits and amendments. Amended Subcontracts need to be forwarded to ODDS.Contracts@state.or.us.
2. County subcontracting a DD Service or portion therein, must include in Subcontracts all language from Exhibits A, B if applicable Service Element Standards and Procedures are listed, C, D if applicable, E, F and G Part 2.
3. Unless Contractor is a State of Oregon governmental agency, Contractor agrees that it is an independent Contractor and not an agent of the State of Oregon, DHS or County.

EXHIBIT G
PART 2
SUBCONTRACTOR INSURANCE REQUIREMENTS

County shall require its first tier Subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance as specified under Section 1 and meeting all the requirements under Sections 2, 3, 4, 5, 6, 7, and 8 of this Exhibit G Part 2 before the Subcontractors perform under Subcontracts between County and the Subcontractors, 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 DHS. County shall not authorize Subcontractors 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 Subcontractor 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 Subcontractor to work under a Subcontract when County is aware that the Subcontractor is not in compliance with the insurance requirements. As used in this section, a "first tier" Subcontractor is a contractor with whom County directly enters into a Subcontract. It does not include a subcontractor with whom the Subcontractor enters into a contract.

For purposes of this Exhibit G Part 2, Contractor means the individual or entity that is subcontracting directly with County for Services under this Agreement.

1. Insurance Requirements.

Contractor shall obtain at Contractor's expense the insurance specified in this Exhibit G Part 2 prior to performing under this Contract and shall maintain it in full force and at its own expense throughout the duration of this Contract, as required by any extended reporting period or tail coverage requirements, and all warranty periods that apply.

Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in State and that are acceptable to County. Coverage shall be primary and non-contributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers' Compensation. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

2. Workers' Compensation & Employers' Liability.

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements. If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain employers' liability insurance coverage with limits

not less than \$500,000 each accident. If Contractor is an employer subject to any other state's workers' compensation law, Contractor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

3. Commercial General Liability Insurance.

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, contractual liability coverage for the indemnity provided under this contract, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than \$2,000,000 per occurrence. Annual aggregate limit shall not be less than \$4,000,000.

4. Automobile Liability Insurance.

Required **Not required**

Automobile Liability Insurance covering Contractor'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 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.

5. Professional Liability Insurance.

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 Contract by the Contractor and Contractor's subcontractors, agents, officers or employees in an amount not less than \$2,000,000 per claim. Annual aggregate limit shall not be less than \$4,000,000. 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 Contractor shall provide Tail Coverage as stated below.

6. Network Security and Privacy Liability.

Required **Not required**

Contractor shall provide network security and privacy liability insurance for the duration of the contract and for the period of time in which Contractor (or its business associates or subcontractor(s)) maintains, possesses, stores or has access to agency or client data, whichever is longer, with a combined single limit of no less than \$1,000,000 per claim or incident. This insurance shall include coverage for third party claims and for losses, thefts, unauthorized disclosures, access or use of agency or client data (which may

include, but is not limited to, Personally Identifiable Information (“PII”), Payment Card Data and Protected Health Information (“PHI”)) in any format, including coverage for accidental loss, theft, unauthorized disclosure access or use of agency data.

An endorsement to the Commercial General Liability or Automobile Liability policy, covering Contractor’s or subcontractor’ liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related clean-up cost incurred by the Contractor that arise from the Goods delivered or Services (including transportation risk) performed by Contractor under this Contract is also acceptable.

7. Directors, Officers, and Organization Liability.

Required **Not required**

Directors, Officers and Organization insurance covering the Contractor’s Organization, Directors, Officers, and Trustees actual or alleged errors, omissions, negligent, or wrongful acts, including improper governance, employment practices and financial oversight - including improper oversight and/or use of use of grant funds and donor contributions which includes state or federal funds - with a combined single limit of no less than \$1,000,000 per claim.

8. Physical Abuse and Molestation Insurance Coverage.

Required **Not required**

Abuse and Molestation Insurance 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 Contractor is responsible including but not limited to Contractor and Contractor’s employees and volunteers. Policy endorsement’s definition of an insured shall include the Contractor, and the Contractor’s employees and volunteers. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Any annual aggregate limit shall not be less than \$3,000,000. Coverage can be provided by a separate policy or as an endorsement to the commercial general liability or professional liability policies. The limits shall be exclusive to this required coverage. Incidents related to or arising out of physical abuse, mental injury, or sexual molestation, whether committed by one or more individuals, and irrespective of the number of incidents or injuries or the time period or area over which the incidents or injuries occur, shall be treated as a separate occurrence for each victim. Coverage shall include the cost of defense and the cost of defense shall be provided outside the coverage limit.

9. Excess/Umbrella Insurance.

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

10. Additional Insured.

All liability insurance, except for Workers’ Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Contract must

include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 04 13 or equivalent.

11. Waiver of Subrogation.

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

12. Tail Coverage.

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

13. Certificate(s) and Proof of Insurance.

Contractor shall provide to County Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) shall also include all required endorsements or copies of the applicable policy language effecting coverage required by this contract. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance County has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Contract.

14. Notice of Change or Cancellation.

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

15. Insurance Requirement Review.

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

16. County Acceptance.

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

**Reserved for
PRIVACY AND SECURITY AGREEMENT**

**Reserved for
THIRD PARTY INFORMATION SYSTEM ACCESS REQUEST**