



Marion County
OREGON
FINANCE DEPARTMENT

Contract Review Sheet

HE-4972-22

Intergovernmental Agreement #: HE-4972-22 Amendment #: _____

Contact: Meuy Saechao Department: Health & Human Services

Phone #: 503-584-4897 Date Sent: _____

Title: FY 22/23 Intergovernmental Agreement IGA# 176910-Aid and Assist

Contractor's Name: Oregon Health Authority

Term - Date From: July 1, 2022 Expires: _____

Contract Total: \$ 901,705.00 Amendment: \$ - New Total: \$ 901,705.00

☒ Incoming Funds ☐ Federal Funds ☐ Reinstatement ☒ Retroactive ☐ Amendment greater than 25%

Source Selection Method: Exemption Rule/Statute: 50-0010

Description of Services or Grant Award

Oregon Health Authority FY 22/23 #176910 Intergovernmental Agreement for Aid and Assist.

Desired BOC Session Date: 8/31/2022 BOC Planning Date: 8/18/2022

Files submitted in CMS: 8/10/2022 Printed packet & copies due in Finance: 8/16/2022

BOC Session Presenter(s) Ryan Matthews

FOR FINANCE USE

Date Finance Received: _____ Date Legal Received: _____

Comments: _____

REQUIRED APPROVALS

Finance - Contracts _____ Date _____ Contract Specialist _____ Date _____

Legal Counsel _____ Date _____ Chief Administrative Officer _____ Date _____



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: August 31, 2022

Department: Health & Human Services Agenda Planning Date: August 18, 2022 Time required: 10

☐ Audio/Visual aids

Contact: Meuy Saechao Phone: 503-584-4897

Department Head Signature:


TITLE	Fiscal Year 2022-2023, Oregon Health Authority IGA#176910 Aid and Assist Funding
Issue, Description & Background	Fiscal Year 2022-2023, Oregon Health Authority IGA#176910 funds will provide Aid and Assist to enhance programs and services that support individuals.
Financial Impacts:	Contract total not to exceed \$901,705.00
Impacts to Department & External Agencies	Health & Human Services anticipates no financial impact to other departments.
Options for Consideration:	1. Approve of IGA #176910. 2. Deny approval of IGA #176910. 3. Take no action at this time.
Recommendation:	The Health and Human Services Department recommends approval of Oregon Health Authority IGA#176910 -Aid and Assist Funding
List of attachments:	Oregon Health Authority IGA#176910
Presenter:	Ryan Matthews

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

Copies to: Meuy Saechao; msaechao@co.marion.or.us

REQUEST FOR AUTHORIZATION OF CONTRACT

Date: August 2, 2022
To: Chief Administrative Officer
Cc: Contract File
From: Meuy Saechao

Subject: Retroactive HE-4972-22

The Marion County Health & Human Services (MCHHS) is requesting approval of a retroactive contract as described in Section 10-0580 of the Marion County Public Contracting Rules, MCHHS has established and proposed to Oregon Health Authority (OHA) to operate or contract for the operation of Aid and Assist program with a value of \$901,705.00 and will be effective retroactive to July 1, 2022 upon approval.

As required in Section 10-0580(2)(a), Department staff will provide an explanation of why the contract was not submitted before performance began:

The Intergovernmental Agreement (IGA) from OHA was received on August 2, 2022.

As required in Section 10-0580(2)(b), Department staff will provide a description of the steps being taken to prevent similar occurrences in the future:

Health & Human Services Executive Team, program staff and administration staff strive for real time notifications and conversations with OHA contracts, to attempt to resolve issues and allow for timely processing of contractual actions. Unfortunately, when the State is delinquent in sending its contractual agreements prior to the beginning of the contractual term; there is little recourse from executing a retroactive agreement.

Submitted by:

Meuy Saechao
Health and Human Services

Acknowledged by:

Department Head



Agreement Number 176910

**STATE OF OREGON
INTERGOVERNMENTAL AGREEMENT**

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

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

**Marion County
Health and Human Services
PO BOX 14500
Salem, OR 97309
Attn: Ryan Matthews
Telephone: 503-361-2670
E-mail address: rmatthews@co.marion.or.us**

hereinafter referred to as "County."

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

**Health Systems Division
500 Summer St NE
Salem, OR 97301-1118
Contract Administrator: Ben Teese
Telephone: 503.551.3147
E-mail address: benjamin.tesse@dhs-oha.state.or.us**

1. **Effective Date and Duration.**

This Agreement shall become effective on the later of: (I) **July 1, 2022** provided it is (i) approved in writing by the Oregon Department of Justice on or before such date, and (ii) when required, approved in writing by the Oregon Department of Administrative Services, and (iii) is signed by all parties, regardless of the date of the parties' signatures; or (II) the date this Agreement is approved in writing by the Oregon Department of Justice, provided it is (i) when required, approved in writing by the Oregon Department of Administrative Services, and (ii) is signed by all parties, regardless of the date of the parties' signatures. Unless extended or terminated earlier in accordance with its terms, this Agreement shall expire on **June 30, 2023**. Contract termination shall not extinguish or prejudice OHA'S right to enforce this Agreement with respect to any default by Recipient that has not been cured.

2. **Agreement Documents.**

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

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

This Agreement constitutes the entire agreement between the parties on the subject matter in it; 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 each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: this Agreement without Exhibits, Exhibits D, B, A and C.
- c. For purposes of this Agreement, "Work" means specific work to be performed or services to be delivered by County as set forth in Exhibit A.

3. **Consideration.**

- a. The maximum not-to-exceed amount payable to County under this Agreement, which includes any allowable expenses, is **\$901,705.00**. OHA will not pay County any amount in excess of the not-to-exceed amount for completing the Work, and will not pay for Work until this Agreement has been signed by all parties.
- b. OHA will pay only for completed Work under this Agreement, and may make interim payments as provided for in Exhibit A.

4. Contractor or Subrecipient Determination.

In accordance with the State Controller's Oregon Accounting Manual, policy 30.40.00.104, OHA's determination is that:

☐ County is a subrecipient ☐ County is a contractor ☒ Not applicable

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

5. County Data and Certification.**a. County Information.** This information is requested pursuant to ORS 305.385.**PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION:****County Name (exactly as filed with the IRS):** Marion CountyStreet address: PO BOX 14500City, state, zip code: SALEM, OR 97309Email address: MSAECHAO@CO.MARION.OR.USTelephone: (503) 584-4897 Facsimile: (xxx) xxxxxxxx**Proof of Insurance:** County shall provide the following information upon submission of the signed Agreement, all insurance listed herein and required by Exhibit C, must be in effect prior to Agreement execution.

Workers' Compensation Insurance Company: _____

Policy #: _____ Expiration Date: _____

b. Certification. Without limiting the generality of the foregoing, by signature on this Agreement, the County hereby certifies under penalty of perjury that:

- (1) The County is in compliance with all insurance requirements of this Agreement and notwithstanding any provision to the contrary, County shall deliver to the OHA Agreement Administrator (see page 1 of this Agreement) the required Certificate(s) of Insurance within 30 days of execution of this Agreement. By certifying compliance with all insurance as required by this Agreement, County acknowledges it may be found in breach of the Agreement for failure to obtain required insurance. County may also be in breach of the Agreement for failure to provide Certificate(s) of Insurance as required and to maintain required coverage for the duration of the Agreement;
- (2) The County acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any "claim" (as defined by ORS 180.750) that is made by (or caused by) the County and that pertains to this Agreement or to the project for which the Agreement work is being performed. The County certifies that no claim described in the previous sentence is or will be a "false claim" (as defined by ORS 180.750) or an act prohibited by ORS 180.755. County further acknowledges that in addition to the remedies under this Agreement, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the County;

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

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

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

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

Marion County

By:

<p>_____</p> <p>Authorized Signature</p> <p>Administrator</p> <p>_____</p> <p>Title</p>	<p>Matthews Ryan</p> <p>_____</p> <p>Printed Name</p> <p>_____</p> <p>Date</p>
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State of Oregon, acting by and through its Oregon Health Authority pursuant to ORS 190
By:

<p>_____</p> <p>Authorized Signature</p> <p>_____</p> <p>Title</p>	<p>_____</p> <p>Printed Name</p> <p>_____</p> <p>Date</p>
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Approved by: Director, OHA Health Systems Division

By:

<p>_____</p> <p>Authorized Signature</p> <p>_____</p> <p>Title</p>	<p>_____</p> <p>Printed Name</p> <p>_____</p> <p>Date</p>
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Approved for Legal Sufficiency:

<p>Via e-mail by Jeffrey J. Wahl, Assistant Attorney General</p> <p>Department of Justice</p>	<p>8/2/2022</p> <p>_____</p> <p>Date</p>
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Agreement# 176910

**INTERGOVERNMENTAL AGREEMENT
MARION COUNTY HEALTH AND HUMAN SERVICES AND OREGON HEALTH
AUTHORITY**

**MARION COUNTY SIGNATURE
BOARD OF COMMISSIONERS:**

Chair Date

Commissioner Date

Commissioner Date

MARION COUNTY SIGNATURES:

Authorized Signature: _____
Chief Administrative Officer Date

Reviewed by Signature: _____
Marion County Legal Counsel Date

Reviewed by Signature: _____
Marion County Contracts & Procurement Date

EXHIBIT A

Part 1 Statement of Work

1. Background and Purpose

The number of individuals being admitted to the Oregon State Hospital (OSH) after being found unfit to proceed is at an unsustainable level. While Senate Bill 295 (SB 295) calls for Community Mental Health Programs (CMHP's) to utilize community restoration options for defendants not needing a hospital level of care, whether determined directly from court or as a step-down from OSH, it is increasingly challenging for CMHP's to find the appropriate and available services outside of the hospital setting. The purpose of these funds is to increase capacity for community restoration (CR) for those found unfit to proceed. CMHP's can use these funds to create or enhance programs and services that support individuals to remain in the community and out of the hospital.

2. Goals

- a. Reduce number of individuals found unfit to proceed via diversion efforts;
- b. If unable to divert, decrease the number of those who are referred and admitted to OSH for restoration services (i.e., increase capacity for effective community restoration services directly from custody and as step-down from OSH);
- c. For those ultimately admitted to OSH, reduce lengths of stay (LOS).

3. Standards

- a. OHA requires that County meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services.

4. Definitions

As used in this Section 4 and elsewhere in this Agreement, the following terms have the meanings set forth:

- a. **"370 Aid and Assist"** refers to statute is accused of a crime, and they are unable to participate in their trial because of a qualifying mental illness; or otherwise referred to as being Unfit to Proceed. In these cases, the court may issue an order under ORS 161.370 for the defendant to be sent for Restoration Services, either taking place in the community or at the Oregon State Hospital, so he or she can become well enough to "aid and assist" in their own defense.
- b. **"CADC"** means a Certified Alcohol and Drug Counselor.
- c. **"Community Mental Health Program"** means the organization of all services for persons with mental or emotional disturbances, drug abuse problems, mental

retardation or other developmental disabilities, and alcoholism and alcohol abuse problems, operated by, or contractually affiliated with, a local mental health authority, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Division as defined in 309-039-0510(1).

- d. **“Crisis Respite”** means alternatives to psychiatric hospitalization.
- e. **“OSH”** means the Oregon State Hospital.
- f. **“QMHA”** means a Qualified Mental Health Associate as defined in 309-039-0510(9).
- g. **“QMHP”** means a Qualified Mental Health Professional as defined in 309-039-0510(10).
- h. **“Ready to Place (RTP)”** means the superintendent or director at OSH has determined that a defendant committed under ORS 161.370 is no longer dangerous to self or others as a result of a qualifying mental disorder, or that the services and supervision necessary to restore the defendant’s Fitness to Proceed are available in the community. Upon such determination, the superintendent or director files notice of that determination with the court.
- i. **“Restoration Services”** means at a minimum, a collection of services as defined in OAR 309-088-0115 that may assist in gaining or regaining an Individual’s Fitness to Proceed. Services include, but are not limited to:
 - (1) Behavioral Health Treatment;
 - (2) Medication Management;
 - (3) Care Coordination;
 - (4) Community Consultation;
 - (5) Case Management;
 - (6) Peer-Delivered Services;
 - (7) Crisis Services;
 - (8) Medical Treatment;
 - (9) Legal Skills Training;
 - (10) Housing;
 - (11) Supervision;
 - (12) Transportation;
 - (13) Incidental Supports; and
 - (14) Linkages to Benefits.

5. Tasks

- a. For the purposes of this Agreement, County will utilize funding to increase the FTE designated to support the Aid and Assist population on the following expenses:
 - (1) Conduct a Pre-Trial Monitoring Program for Aid and Assist clients identified by the Contractor and its local court system
 - (2) Hire and retain the following additional staff to serve Aid and Assist clients who are actively in community restoration:
 - (a) 1.0 FTE QMHP
 - i. QMHP will assist with performing community mental health consultations
 - ii. QMHP will carry a caseload of clients in the .370 process or transitioning out of the .370 process
 - A. Services provided will include creating individual services plans, monitor legal skills training, coordinate with local court staff, make referrals to community navigators, and connect clients to benefits and outpatient services
 - (b) 2.0 FTE QMHA
 - i. QMHA will provide legal skills training, daily living skills, more support at transitional treatment beds, assist with crisis management at transitional treatment beds, assist with connection to benefits and community resources
 - (c) 1.0 FTE Peer
 - i. Peer will either have or obtain a Peer Support Specialist or Peer Wellness Specialist certification.
 - ii. Peer, Clinical Supervisor, and Peer Supervisor will participate in a quarterly technical assistance call with OHA's Office of Recovery and Resilience.
 - A. Only positions that are staffed will be required to participate in the call for a given quarter.
 - iii. Peer will provide navigation and support services to Aid and Assist client who are actively in community restoration
 - (d) 1.0 FTE Certified Recovery Mentor
 - i. Recovery Mentor will work with Aid and Assist teams to identify clients with substance use issues, encourage them to engage in treatment, and connect them to a treatment provider within the community

- ii. Recovery Mentor will assist with crisis services
 - iii. Recovery Mentor will assist with groups through Contractor transitional treatment beds and Addictions Treatment Services
- (3) Provide after-hours psychiatric crisis services
 - (a) Positions supporting after-hours psychiatric crisis services will include:
 - i. 2.0 FTE QMHA
 - ii. 1.0 FTE Certified Recovery Mentor
- (4) Maintain a central office space for the Aid and Assist team
- b. For the purposes of this agreement, OHA will:
 - (1) Coordinate and schedule monthly meetings with County to provide technical assistance and to check-in on barriers, challenges, and successes in completing tasks and meeting deliverables. Meetings may happen by phone, videoconference, or in-person.
 - (2) OHA will provide support and referral to complete the SIM in a timely manner.

6. Deliverables

- a. Reduce overall number of Treat until Fit orders
 - (1) Decrease by 10% through increased staffing and engagement with clients
- b. Reduce overall number of referrals to OSH
 - (1) Decrease by 10% in 2022-2023 and 15% in 2023-2024 through increased staffing and pretrial monitoring program
- c. Reduce overall length of stay at OSH for those appropriate to refer
 - (1) Increase number of clients transitioned from OSH to Community restoration to 10 in 2022-2023 and 20 in 2023-2024 through pretrial monitoring program

7. Reporting Requirements

- a. County shall electronically submit a quarterly status report using a format provided by the assigned contract administrator. Submit quarterly reports via email to amhcontract.administrator@dhsosha.state.or.us.
- b. Reports are due on the dates shown in the table below, during the term of this Agreement.

Reporting Period	Reporting Due Dates
July 1 - September 15	October 15, 2022
September 16 - December 31	January 15, 2023
January 1- March 31	April 15, 2023
April 1- July 1	July 15, 2023

c. Reports shall describe the status of the County's progress toward completing tasks and meeting deliverables in a timely manner. These reports shall include:

- (1) The requested information on the CMHP's Aid and Assist program, which includes:
 - (a) Organization Point of Contact: Name and Email
 - (b) Person Completing Report: Name and Email
 - (c) Organization Name and County
 - (d) Reporting Period: Quarter/Year
 - (e) Whether or not the CMHP or one of its community partners is providing the following services: Culturally specific treatment and supportive services, and linguistically appropriate treatment and supportive services
- (2) The requested information on each client served, which includes:
 - (a) Last Name
 - (b) First Name
 - (c) Insurance Type
 - (d) Whether or not the insurance is active
 - (e) Date of Birth
 - (f) Sex
 - (g) Gender Identity
 - (h) Race
 - (i) Ethnicity
 - (j) Living Situation
 - (k) Primary Diagnosis
 - (l) Whether or not they have received substance use treatment
- (3) The requested information on the Pre-Trial Monitoring program, which includes:
 - (a) Week
 - (b) Total Number of Persons Served
 - (c) Number of New Referrals
 - (d) Number of Persons Previously on Community Restoration and Unsuccessful

- (e) Number of Persons Previously on Community Restoration and Successful
- (f) Number of Persons Deemed Never Able
- (g) Number of Persons Restored to Competency
- (h) Number of Persons who Reached End of Jurisdiction
- (i) Number of Persons Referred to Oregon State Hospital from Community Restoration/Pre-Trial Monitoring
- (j) Number of Clients who Identify as White
- (k) Number of Clients who Identify as Black or African American
- (l) Number of Clients who Identify as Asian or Asian American
- (m) Number of Clients who Identify as American Indian or Alaskan Native
- (n) Number of Clients who Identify as Native Hawaiian or Pacific Islander
- (4) The requested information on Peer Services, which includes:
 - (a) Month
 - (b) Number of Persons on Peer Caseload
 - (c) Number of Persons Screened
 - (d) Number of Persons Discharged from Peer Caseload
 - (e) Types of Services Delivered
- (5) The requested on the Certified Recovery Mentor, which includes;
 - (a) Month
 - (b) Number of Persons on Certified Recovery Mentor Caseload
 - (c) Number of Persons Screened
 - (d) Number of Persons Discharged from Certified Recovery Mentor Caseload
 - (e) Types of Services Delivered
- (6) Documentation of the SIM being at minimum in process and scheduled by June 30, 2023.

EXHIBIT A
Part 2
Payment and Financial Reporting

1. Payment Calculation, Disbursement, and Monitoring of Performance and Reporting Requirements.

a. Payment Calculation:

- (1) Payments made by OHA under this Agreement are contingent upon County's compliance with the terms and conditions of this Agreement, including without limitation all representations and warranties of County, as set forth in Exhibit B, "Standard Terms and Conditions," are true to the best of County's knowledge at the time of Agreement execution.
- (2) County understands and agrees that OHA's payments are contingent upon OHA receiving appropriations, limitations, allotments, or other expenditure authority sufficient to allow OHA, in the exercise of its reasonable administrative discretion, to continue to pay County.
- (3) Nothing in this Agreement is to be construed as permitting any violation of Articles XI, Section 7, of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon.

b. Disbursement of Payments:

For the period beginning **Contract Effective Date through June 30, 2023** the following shall apply:

- (1) The total not-to-exceed (NTE) amount paid under this Agreement is \$901,705.00 This NTE amount includes 10% of indirect administration costs.
- (2) Payments will be made on a quarterly basis. Following execution of this Agreement and contingent upon OHA's receipt and approval of County's properly prepared invoice and ongoing timely receipt of monthly status reports approved by OHA, OHA will make payment in 4 equal quarterly payments in the amount of \$224,176.25 each, per the table below.
- (3) Payment will be made upon the approval of appropriate documentation from CMHP of the SIM Process, and contingent upon OHA's receipt and approval of County's properly prepared invoice

Invoicing Period	Invoice Due Date	Invoice Amount
July 1, 2022 – September 30, 2022	October 15, 2022	\$224,176.25
October 1, 2022 – December 31, 2022	January 15, 2023	\$224,176.25
January 1, 2023 – March 31, 2023	April 15, 2023	\$224,176.25
April 1, 2023 – June 30, 2023	July 15, 2023	\$224,176.25
Documentation of SIM in process	TBD	\$5,000.00

c. Monitoring of Tasks, Deliverables, and Reporting:

- (1) County shall demonstrate, through the provisions contained in this Agreement, how payments were utilized consistent with the terms and limitations herein to meet the tasks and deliverables of the Agreement.
- (2) County shall be subject to monitoring, performance review, and quality measures – as related to tasks and deliverables, and reporting – by Contract Administrator for the Program, subject to Agreement terms and limitations.

d. Travel and Other Expenses:

OHA will not reimburse County separately for any travel or additional expenses under this Agreement.

e. Additional Payment Provisions:

- (1) County shall prepare and electronically submit invoices in a format approved by OHA, to amhcontract.administrator@dhsosha.state.or.us or to any other address as OHA may indicate in writing to County, for services provided in each calendar quarter, in the amounts reflected in the invoice chart, by the dates shown.
- (2) Agreement number and Invoicing Period designation shall be included on County's invoice and all supporting documentation.
- (3) OHA is not obligated to pay for any services that are not properly reported in accordance with the Reporting Requirements section above and where the invoice is received more than 60 calendar days after the expiration or termination date of this Agreement, whichever is earlier.
- (4) Funding provided through this Agreement may only be used for the project in the manner prescribed herein. Funding may not be used to reimburse expenses incurred prior to the effective date of this Agreement.

EXHIBIT A

Part 3 Special Terms and Conditions

1. Confidentiality of Client Information.

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

2. Amendments.

- a. OHA reserves the right to amend or extend the Agreement under the following general circumstances:
 - (1) OHA may extend the Agreement for additional periods of time up to a total Agreement period of 4 years, and for additional money associated with the extended period(s) of time. The determination for any extension for time may be based on OHA's satisfaction with performance of the work or services provided by the County under this Agreement.
 - (2) OHA may periodically amend any payment rates throughout the life of the Agreement proportionate to increases in Portland Metropolitan Consumer Price Index; and to provide Cost Of Living Adjustments (COLA) if OHA so chooses. Any negotiation of increases in rates to implement a COLA will be as directed by the Oregon State Legislature.
- b. OHA further reserves the right to amend the Statement of Work based on the original scope of work of RFA # **5389** for the following:
 - (1) Programmatic changes/additions or modifications deemed necessary to accurately reflect the original scope of work that may not have been expressed in the original Agreement or previous amendments to the Agreement;
 - (2) Implement additional phases of the Work; or
 - (3) As necessitated by changes in Code of Federal Regulations, Oregon Revised Statutes, or Oregon Administrative Rules which, in part or in combination, govern the provision of services provided under this Agreement.

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

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

- a. County shall comply with, and cause all employees to comply with, the applicable laws for mandatory reporting of abuse for certain classes of persons in Oregon, including:
 - (1) Children (ORS 419B.005 through 419B.045);
 - (2) Elderly Persons (ORS 124.055 through 124.065);
 - (3) Residents of Long Term Care Facilities (ORS 441.630 through 441.645);
 - (4) Adults with Mental Illness or Developmental Disabilities (ORS 430.735 through 430.743).
 - (5) Abuse of Individuals Living in State Hospitals (OAR 943-045-0400 through 945-045-0520)
- b. County shall make reports of suspected abuse of persons who are members of the classes established in Section 3.a. above to Oregon’s Statewide Abuse Reporting Hotline: 1-855-503-SAFE (7233), as a requirement of this Agreement.
- c. County shall immediately report suspected child abuse, neglect or threat of harm to DHS’ Child Protective Services or law enforcement officials in full accordance with the mandatory Child Abuse Reporting law (ORS 419B.005 through 419B.045). If law enforcement is notified, the County shall notify the referring DHS caseworker within 24 hours. County shall immediately contact the local DHS Child Protective Services office if questions arise as to whether or not an incident meets the definition of child abuse or neglect.
- d. County shall report suspected abuse of the elderly or abuse of patients in a medical or care facility immediately to DHS’ Aging and People with Disabilities office or to a law enforcement agency.
- e. If known, the abuse report should contain the following:
 - (1) The name and address of the abused person and any people responsible for their care;
 - (2) The abused person’s age;
 - (3) The nature and the extent of the abuse, including any evidence of previous abuse;
 - (4) The explanation given for the abuse;
 - (5) The date of the incident; and
 - (6) Any other information that might be helpful in establishing the cause of

the abuse and the identity of the abuser.

- f. County who witnesses or has information about an alleged abusive act that has occurred at Oregon State Hospital (OSH) must immediately report the incident directly to the Office of Adult Abuse Prevention and Investigations:
 - (1) Weekdays 8 a.m. – 5 p.m. at 503-945-9495.
 - (2) Weekdays 5 p.m. – 10:00 pm or weekends from noon – 10 p.m. at 503-559-1201.
- g. County who witnesses or has information about an alleged abusive act that has occurred at Oregon State must also notify OSH's Superintendent by one of the methods listed below:
 - (1) In person;
 - (2) Hand delivered memorandum;
 - (3) Email; or
 - (4) Telephone call;
 - (a) Superintendent - Weekdays 8 a.m. – 5 p.m. at 503-945-2870
 - (b) Assistant to Superintendent – Weekdays 8 a.m. – 5 p.m. at 503-945-2852.
 - (c) After hours including weekends and holidays, to Superintendent via the Oregon State Hospital Communication Center at 503-945-2800

Regardless of the manner of reporting, a written report also must be submitted which includes details of the incident, date of the report, and name of the reporter.

4. Background Checks for Employees and Volunteers.

- a. The Contractor shall ensure that all employees, volunteers and subcontractors who perform services under this Contract, or who have access to any information about clients served under this Contract, are approved by the Agency's Background Check Unit in accordance with Oregon Administrative Rules (OAR) 407-007-0200 through 407-007-0370.
- b. In addition to potentially disqualifying conditions under OAR 407-007-0290, all employees, volunteers, and subcontractors who perform services under this Contract are subject to OAR 407-007-0290(11)(b).
- c. An employee, volunteer, or subcontractor may be hired on a preliminary basis, in accordance with the requirements and limits described in OAR 407-007-0315, prior to final approval by the Agency's Background Check Unit. An employee, volunteer, or subcontractor hired on a preliminary basis shall not have unsupervised contact with individuals receiving services under this Contract and shall only participate in the limited activities described in OAR 407-007-0315. An employee, volunteer, or subcontractor hired on a preliminary basis must be actively supervised at all times as described in OAR 407-007-0315.

- d. Any current employee hired for a new position with the Contractor to perform services under this Contract, or any current employee, volunteer, or subcontractor who will have access to any information about clients served under this Contract must be approved by the Agency's Background Check Unit at the time the employee, volunteer, or subcontractor accepts the new position or Work. Notwithstanding the requirements of paragraph c. of this Section, a current employee or volunteer who accepts a new position with the Contractor to perform services under this Contract, may be hired for the new position on a preliminary basis without active supervision in accordance with the limits and requirements described in OAR 407-007-0315.
 - e. There are only two possible fitness determination outcomes of a background check: approval or denial. If the employee, volunteer, or subcontractor is denied, she or he may not have contact with Agency clients under this Contract and may not have access to information about Agency clients. Employees, volunteers, or subcontractors who are denied do have the right to contest the denial. The process for contesting a denial is described in OAR 407-007-0330.
 - f. For purposes of compliance with OAR 407-007-0200 through 407-007-0370, the Contractor is a "Qualified Entity", as that term is defined in OAR 407-007-0210, and must comply with all the provisions pertaining to Qualified Entities contained in OAR 407-007-0200 through 407-007-0370.
 - g. The criminal records check procedures listed above also apply to Contractor, its owners, managers, and board members regardless if any individual has access to Agency clients, client information or client funds. Contractor shall establish a personal personnel file and place each criminal records check in named file for possibility of future Agency review and shall be maintained pursuant to Exhibit B, "Standard Terms and Conditions", Section 14, "Records, Maintenance, Access."
5. **Equal Access to Services.** County shall provide equal access to covered services for both males and females under 18 years of age, including access to appropriate facilities, services and treatment, to achieve the policy in ORS 417.270.
 6. **Media Disclosure.** The County will not provide information to the media regarding a recipient of services purchased under this Agreement without first consulting the OHA office that referred the child or family. The County will make immediate contact with the OHA office when media contact occurs. The OHA office will assist the County with an appropriate follow-up response for the media.
 7. **Nondiscrimination.** The County must provide services to OHA clients without regard to race, religion, national origin, sex, age, marital status, sexual orientation or disability (as defined under the Americans with Disabilities Act). Contracted services must reasonably accommodate the cultural, language and other special needs of clients.

EXHIBIT B

Standard Terms and Conditions

1. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between the parties that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within a circuit court for the State of Oregon of proper jurisdiction. THE PARTIES, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Except as provided in this section, neither party waives any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. The parties acknowledge that this is a binding and enforceable agreement and, to the extent permitted by law, expressly waive any defense alleging that either party does not have the right to seek judicial enforcement of this Agreement.
2. **Compliance with Law.** Both parties shall comply with laws, regulations and executive orders to which they are subject and which are applicable to the Agreement or to the Work. Without limiting the generality of the foregoing, both parties expressly agree to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations; (b) all state laws requiring reporting of client abuse; (c) ORS 659A.400 to 659A.409, ORS 659A.145 and all regulations and administrative rules established pursuant to those laws in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the Work. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. All employers, including County and OHA, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Nothing in this Agreement shall require County or OHA to act in violation of state or federal law or the Constitution of the State of Oregon.
3. **Independent Contractors.** The parties agree and acknowledge that their relationship is that of independent contracting parties and that County is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.
4. **Representations and Warranties.**
 - a. County represents and warrants as follows:
 - (1) **Organization and Authority.** County is a political subdivision of the State of Oregon duly organized and validly existing under the laws of the State of Oregon. County has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder.
 - (2) **Due Authorization.** The making and performance by County of this

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

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

b. OHA represents and warrants as follows:

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

by OHA and constitutes a legal, valid and binding obligation of OHA, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

- c. **Warranties Cumulative.** The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

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

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

- 6. **Recovery of Overpayments.** If billings under this Agreement, or under any other Agreement between County and OHA, result in payments to County to which County is not entitled, OHA, after giving to County written notification and an opportunity to object, may withhold from payments due to County such amounts, over such periods of time, as are necessary to recover the amount of the overpayment. Prior to withholding, if County objects to the withholding or the amount proposed to be withheld, County shall notify OHA that it wishes to engage in dispute resolution in accordance with Section 19 of this Agreement.

7. **Reserved.**

8. **Ownership of Intellectual Property.**

- a. **Definitions.** As used in this Section 8 and elsewhere in this Agreement, the following terms have the meanings set forth below:
 - (1) "County Intellectual Property" means any intellectual property owned by County and developed independently from the Work.
 - (2) "Third Party Intellectual Property" means any intellectual property owned by parties other than OHA or County.
- b. Except as otherwise expressly provided herein, or as otherwise required by state or federal law, OHA will not own the right, title and interest in any intellectual property created or delivered by County or a subcontractor in connection with the Work. With respect to that portion of the intellectual property that the County owns, County grants to OHA a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to (1) use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the intellectual property, (2) authorize third parties to exercise the rights set forth in Section 8.b.(1) on OHA's behalf, and (3) sublicense to third parties the rights set forth in Section 8.b.(1).
- c. If state or federal law requires that OHA or County grant to the United States a license to any intellectual property, or if state or federal law requires that OHA or the United States own the intellectual property, then County shall execute such further documents and instruments as OHA may reasonably request in order to make any such grant or to assign ownership in the intellectual property to the United States or OHA. To the extent that OHA becomes the owner of any intellectual property created or delivered by County in connection with the Work, OHA will grant a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to County to use, copy, distribute, display, build upon and improve the intellectual property.
- d. County shall include in its subcontracts terms and conditions necessary to require that subcontractors execute such further documents and instruments as OHA may reasonably request in order to make any grant of license or assignment of ownership that may be required by federal or state law.

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

- a. County fails to perform, observe or discharge any of its covenants, agreements or obligations set forth herein;
- b. Any representation, warranty or statement made by County herein or in any documents or reports relied upon by OHA to measure the delivery of Work, the expenditure of payments or the performance by County is untrue in any material respect when made;

- c. County (1) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (2) admits in writing its inability, or is generally unable, to pay its debts as they become due, (3) makes a general assignment for the benefit of its creditors, (4) is adjudicated a bankrupt or insolvent, (5) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (6) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (7) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (8) takes any action for the purpose of effecting any of the foregoing; or
- d. A proceeding or case is commenced, without the application or consent of County, in any court of competent jurisdiction, seeking (1) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of County, (2) the appointment of a trustee, receiver, custodian, liquidator, or the like of County or of all or any substantial part of its assets, or (3) similar relief in respect to County under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive days, or an order for relief against County is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

10. OHA Default. OHA shall be in default under this Agreement upon the occurrence of any of the following events:

- a. OHA fails to perform, observe or discharge any of its covenants, agreements, or obligations set forth herein; or
- b. Any representation, warranty or statement made by OHA herein or in any documents or reports relied upon by County to measure performance by OHA is untrue in any material respect when made.

11. Termination.

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

- (4) Immediately upon written notice to OHA, if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that County no longer has the authority to meet its obligations under this Agreement.

b. OHA Termination. OHA may terminate this Agreement:

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

- c. **Mutual Termination.** The Agreement may be terminated immediately upon mutual written consent of the parties or at such time as the parties may agree in the written consent.
- d. **Notwithstanding the expiration date set forth in paragraph 1 on p. 2 of this Agreement,** OHA and County agree that this Agreement extends to August 15, 2023, but only for the purpose of submission of invoices to be paid for Services performed by County during the 2021-2023 biennial period and prior to June 30, 2023. In no event is the County authorized to provide any Services under this Agreement, and County is not required to provide any Services under this Agreement, after June 30, 2023.

12. Effect of Termination.

a. Entire Agreement.

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

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

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

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

15. Records Maintenance; Access. County shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, County shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of County, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document County's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of County whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." County acknowledges and agrees that OHA and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to all Records to perform examinations and audits and make excerpts and transcripts. County shall retain and keep accessible all Records for a minimum of six years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. County shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.

- 16. Information Privacy/Security/Access.** If the Work performed under this Agreement requires County or its subcontractor(s) to have access to or use of any OHA computer system or other OHA Information Asset for which OHA imposes security requirements, and OHA grants County or its subcontractor(s) access to such OHA Information Assets or Network and Information Systems, County shall comply and require all subcontractor(s) to which such access has been granted to comply with OAR 943-014-0300 through OAR 943-014-0320, as such rules may be revised from time to time. For purposes of this section, “Information Asset” and “Network and Information System” have the meaning set forth in OAR 943-014-0305, as such rule may be revised from time to time.
- 17. Force Majeure.** Neither OHA nor County shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, natural causes, or war which is beyond the reasonable control of OHA or County, respectively. Each party shall, however, make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. OHA may terminate this Agreement upon written notice to the other party after reasonably determining that the delay or breach will likely prevent successful performance of this Agreement.
- 18. Assignment of Agreement, Successors in Interest.**
- a.** County shall not assign or transfer its interest in this Agreement without prior written approval of OHA. Any such assignment or transfer, if approved, is subject to such conditions and provisions as OHA may deem necessary. No approval by OHA of any assignment or transfer of interest shall be deemed to create any obligation of OHA in addition to those set forth in the Agreement.
 - b.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns.
- 19. Alternative Dispute Resolution.** The parties should attempt in good faith to resolve any dispute arising out of this agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
- 20. Subcontracts.** County shall not enter into any subcontracts for any of the Work required by this Agreement without OHA’s prior written consent. In addition to any other provisions OHA may require, County shall include in any permitted subcontract under this Agreement provisions to require that OHA will receive the benefit of subcontractor performance as if the subcontractor were the County with respect to Sections 1, 2, 3, 4, 8, 15, 16, 18, 21, and 23 of this Exhibit B. OHA’s consent to any subcontract shall not relieve County of any of its duties or obligations under this Agreement.
- 21. No Third Party Beneficiaries.** OHA and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. The parties agree that County’s performance under this Agreement is solely for the benefit of OHA to assist and enable OHA to accomplish its statutory mission. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly,

indirectly or otherwise, to third persons any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

22. **Amendments.** No amendment, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and, when required, the Department of Justice. Such amendment, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given.
23. **Severability.** The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
24. **Survival.** Sections 1, 4, 5, 6, 8, 12, 13, 14, 15, 16, 19, 21, 22, 23, 24, 25, 26, 28, 29, 30 and 31 of this Exhibit B shall survive Agreement expiration or termination as well as those the provisions of this Agreement that by their context are meant to survive. Agreement expiration or termination shall not extinguish or prejudice either party's right to enforce this Agreement with respect to any default by the other party that has not been cured.
25. **Notice.** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid to County or OHA at the address or number set forth in this Agreement, or to such other addresses or numbers as either party may indicate pursuant to this section. Any communication or notice so addressed and mailed by regular mail shall be deemed received and effective five days after the date of mailing. Any communication or notice delivered by 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.

OHA: Office of Contracts & Procurement
 635 Capitol Street NE, Suite 350
 Salem, OR 97301
 Telephone: 503-945-5818
 Facsimile: 503-378-4324

26. **Headings.** The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret this Agreement.
27. **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 the County (or would be if joined in the Third Party Claim), the State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the County in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the County on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the State on the one hand and of the County on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

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

- 30. Indemnification by Subcontractors.** County shall take all reasonable steps to cause its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of County's contractor or any of the

officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by the contractor from and against any and all Claims.

- 31. Stop-Work Order.** OHA may, at any time, by written notice to the County, require the County to stop all, or any part of the work required by this Agreement for a period of up to 90 days after the date of the notice, or for any further period to which the parties may agree through a duly executed amendment. Upon receipt of the notice, County shall immediately comply with the Stop-Work Order terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the stop work order notice. Within a period of 90 days after issuance of the written notice, or within any extension of that period to which the parties have agreed, OHA shall either:
- a.** Cancel or modify the stop work order by a supplementary written notice; or
 - b.** Terminate the work as permitted by either the Default or the Convenience provisions of Section 11. Termination.

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

EXHIBIT C

Subcontractor Insurance Requirements

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

TYPES AND AMOUNTS

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 shall 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.

COMMERCIAL GENERAL LIABILITY:

☒ 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 **\$1,000,000.00** per occurrence. Annual aggregate limit shall not be less than **\$2,000,000.00**.

PROFESSIONAL LIABILITY:☒ **Required** ☐ **Not required**

Professional Liability insurance covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Contract by the Contractor and Contractor's subcontractors, agents, officers or employees in an amount not less than **\$1,000,000.00** per claim. Annual aggregate limit shall not be less than **\$2,000,000.00**. If coverage is on a claims made basis, then either an extended reporting period of not less than 24 months shall be included in the Professional Liability insurance coverage, or the Contractor and Subcontractors shall provide continuous claims made coverage as stated below.

EXCESS/UMBRELLA INSURANCE:

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

ADDITIONAL COVERAGE REQUIREMENTS:

Contractor's insurance shall be primary and non-contributory with any other insurance. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

ADDITIONAL INSURED:

All liability insurance, except for Workers' Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Subcontract 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 07 04 or equivalent.

WAIVER OF SUBROGATION:

Contractor shall waive rights of subrogation which Contractor or any insurer of Contractor may acquire against the Agency 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 Agency has received a waiver of subrogation endorsement from the Contractor or the Contractor's insurer(s).

CONTINUOUS CLAIMS MADE COVERAGE:

If any of the required liability insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, then Contractor shall maintain continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of the Contract, for a minimum of 24 months following the later of:

- (i) Contractor's completion and Agency's acceptance of all Services required under the Contract, or
- (ii) Agency or Contractor termination of this Contract, or
- (iii) The expiration of all warranty periods provided under this Contract.

CERTIFICATE(S) AND PROOF OF INSURANCE:

Local Government shall obtain from the Contractor a 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 Agency has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Contract.

NOTICE OF CHANGE OR CANCELLATION:

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

INSURANCE REQUIREMENT REVIEW:

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

STATE ACCEPTANCE:

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