



Grant Agreement Number 177342

**STATE OF OREGON
INTERGOVERNMENTAL GRANT AGREEMENT**

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

**Tillamook County
1510-B Third Street
Tillamook, OR 97141
Attention: Thomas Fiorelli
Telephone: 503-842-3408 extension 3419
E-mail address: tfiorell@co.tillamook.or.us**

hereinafter referred to as “**Recipient.**”

The Program to be supported under this Agreement relates principally to the ODHS’

**Office of Self-Sufficiency Programs
Program Design / Youth Experiencing Homelessness Program
500 Summer Street
Salem, OR 97301
Agreement Administrator: Matthew Rasmussen or delegate
Telephone: 503-602-1087
E-mail address: matthew.rasmussen@dhs.oha.state.or.us**

1. Effective Date and Duration. This Agreement shall become effective when all required signatures in Section 6., below have been obtained and this Agreement has been approved by the Oregon Department of Justice, if required (the “Effective Date”). Recipient’s performance of the program described in Exhibit A, Part 1, “Program Description” may start on **July 15, 2022**, and, subject to execution and any required approval of this Agreement, will be governed by the terms and conditions herein and eligible for reimbursement in accordance with the schedule of payments in Exhibit A, Part 2, “Disbursement and Financial Reporting”. Unless extended or terminated earlier in accordance with its terms, this Agreement shall expire on **June 30, 2023**. Agreement termination shall not extinguish or prejudice ODHS’ right to enforce this Agreement with respect to any default by Recipient that has not been cured.

2. Agreement Documents.

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

- (1) Exhibit A, Part 1: Program Description
- (2) Exhibit A, Part 2: Disbursement and Financial Reporting
- (3) Exhibit A, Part 3: Special Provisions
- (4) Exhibit B: Standard Terms and Conditions
- (5) Exhibit C: Subcontractor Insurance Requirements

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

b. In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The documents comprising this Agreement shall be in the following descending order of precedence: this Agreement less all exhibits, Exhibits B, A, and C.

3. Grant Disbursement Generally. The maximum not-to-exceed amount payable to Recipient under this Agreement, which includes any allowable expenses, is **\$145,833.00**. ODHS will not disburse grant to Recipient in excess of the not-to-exceed amount and will not disburse grant until this Agreement has been signed by all parties. ODHS will disburse the grant to Recipient as described in Exhibit A.

4. Contractor or Subrecipient Determination. In accordance with the State Controller’s Oregon Accounting Manual, policy 30.40.00.104, ODHS’ determination is that:

Recipient is a subrecipient Recipient is a contractor Not applicable

Catalog of Federal Domestic Assistance (CFDA) #(s) of federal funds to be paid through this Agreement: [Not applicable]

5. Recipient Data and Certification.

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

PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION

Recipient Name (exactly as filed with the IRS): _____

Street address: _____

City, state, zip code: _____

Email address: _____

Telephone: () _____ Facsimile: () _____

Recipient Proof of Insurance. Recipient shall provide the following information upon submission of the signed Agreement. All insurance listed herein 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 Recipient hereby certifies under penalty of perjury that:

- (1) Recipient acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any "claim" (as defined by ORS 180.750) that is made by (or caused by) the Recipient and that pertains to this Agreement or to the project for which the grant activities are being performed. Recipient certifies that no claim described in the previous sentence is or will be a "false claim" (as defined by ORS 180.750) or an act prohibited by ORS 180.755. Recipient further acknowledges that in addition to the remedies under this Agreement, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the Recipient;
- (2) The information shown in this Section 5a. "Recipient Information", is Recipient's true, accurate and correct information;
- (3) To the best of the undersigned's knowledge, Recipient has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts;

- (4) Recipient and Recipient's employees and agents are not included on the list titled "Specially Designated Nationals" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at: <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>;
- (5) Recipient is not listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal procurement or Non-procurement Programs" found at: <https://www.sam.gov/SAM>;
- (6) Recipient is not subject to backup withholding because:
 - (a) Recipient is exempt from backup withholding;
 - (b) Recipient has not been notified by the IRS that Recipient is subject to backup withholding as a result of a failure to report all interest or dividends; or
 - (c) The IRS has notified Recipient that Recipient is no longer subject to backup withholding; and
- (7) Recipient's Federal Employer Identification Number (FEIN) or Social Security Number (SSN) provided is true and accurate. If this information changes, Recipient is required to provide ODHS with the new FEIN or SSN within 10 days.

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

- 6. Signatures.** Each signatory for Recipient represents and warrants that the signatory is authorized to bind Recipient to this Agreement. This Agreement may be executed in counterparts, which collectively will constitute a single instrument. Copies of signature by facsimile, electronic scan, or other electronic means will be considered original signatures.

Tillamook County

By:

Authorized Signature

Printed Name

Title

Date

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

By:

Authorized Signature

Printed Name

Title

Date

Approved for Legal Sufficiency:

Not required per OAR 137-045-0030(1)(a)

Department of Justice

Date

EXHIBIT A

Part 1 Program Description

1. Definitions:

- a. **Coordinated Office** means the location at community partner, CARE Inc, that provides Drop-In assistance for those youth experiencing homelessness.
- b. **Drop-In** means a location that assists those experiencing homelessness in finding stable housing and to access support services. Drop-In services focus on developing relationships between staff and YEH that allow them to rebuild connections with caring adults.
- c. **LGBTQIA+** means lesbian, gay, bisexual, trans/transgender/transsexual, queer or questioning, intersex and asexual.
- d. **YEH** means youth experiencing homelessness and includes any youth or young adult under age 24, for whom it is no possible to live in a safe environment with a parent or legal guardian and meets a recognized definition of homelessness.
- e. **Youth Rapid Response Network** means a digital network for trained representative to post and obtain needed items and services across a network of participating organizations – specifically for YEH.

2. Overview and Purpose:

ODHS' Youth Experiencing Homelessness Program is responsible for coordinating statewide planning for delivery of services to runaway and homeless youth and their families. YEH often face barriers meeting their basic needs – access to food, clean clothes, a place to shower, a location to access resources, and safe and stable housing.

Recipient is launching a "[Coordinated Homelessness Response Program](#)" with representation from multiple jurisdictions and stakeholders. The purpose of the program is to identify strengths, weaknesses, opportunities, and challenges (SWOCs) that cut across the spectrum of all people experiencing homelessness countrywide.

3. Desired Outcomes:

The goal of this Agreement is to provide a youth-homelessness specific intentionality within general homelessness planning in the community. Desired outcomes in supporting the work of the Recipient are:

- a. For participating organizations in Tillamook County to be better equipped to make coordinated decisions about where to target new efforts, resources, and investments for YEH;
- b. For Recipient to incorporate and embed youth-homelessness specific discussions and initiatives into their coordinated homelessness response plan;
- c. To strengthen Youth-serving programs in Oregon by providing enhanced resources specific to YEH who are experiencing homelessness.

4. Description of Allowable of Activities:

Grant Agreement funding is supporting outreach programming and partnership strengthening by:

- a. Supporting community engagement and capacity-building planning, including at least three public events on youth homelessness, one in each of the county's school districts;
- b. Supporting staffing needs, including the hiring of .5 FTE youth-homelessness specific staff and paid interns;
- c. Securing professional technical assistance for public outreach and community engagement efforts;
- d. Planning and developing the framework for an envisioned Youth Rapid Response Network – which may include curriculum and training tool development.
- e. Development of a youth-homelessness specific strategic plan.

5. Outputs:

a. Data Reporting:

Reports are submitted to ODHS Agreement Administrator via email. Grant Administrator is not requesting any specific format for reports. Recipient's reports are due quarterly on the following between July 15, 2022 and June 30, 2023:

Total number of unduplicated YEH reached through the Collaborative Office, as well as:

- (1) Demographic information, as provided by YEH, and, to the extent applicable, in accordance with OAR Chapter 943, Division 70:
 - (a) City of Primary Residence
 - (b) Age
 - (c) Race
 - (d) Gender
 - (e) Oregon Tribal Nation Affiliation
 - (f) Identification of LGBTQIA+
- (2) Service Referrals made to:
 - (a) Family Engagement / Mediation
 - (b) Shelter / Housing
 - (c) School Enrollment / Engagement
 - (d) Mental Health / Substance Abuse Services
 - (e) Employment Services
 - (f) Culturally-Specific Resources

b. Narrative Reporting Requirements:

- (1) Dates of:
 - (a) Community Advisory Board Meetings
 - (b) Public Events Scheduled, or Held, or Both
- (2) Status Updates of:
 - (a) Cooperative Work Experience Internships, including:
 - i. Onboarding / Status of Personnel
 - ii. Housing Research Completed
 - iii. Community Advisory Board Engagement
 - (b) Technical Assistance Need Determination
 - (c) Youth Rapid Response Network Planning and Creation
 - (d) Youth-Homelessness Strategic Plan Development
- c. Positive programmatic experiences, as available; and
- d. Barriers to success, as available.

6. Evaluation:

Grant Administrator will review the reports to evaluate and determine if improvements or changes need to be made in order to achieve goal successes. Grant administrator will respond in writing to the Recipient within 30 calendar days receipt of a report whether or not the report is considered acceptable. In the response, Grant Administrator will identify any deficits and will provide a reasonable period of time for the Recipient to resolve the issues in order for the report to be accepted. This time frame shall not extend beyond 30 calendar days post notification by Grant Administrator of the deficits unless specific circumstances are identified and documented in writing and a different time period is determined.

The status report may be considered delivered and accepted if Grant Administrator fails to notify the Recipient within 30 calendar days of receipt of a report.

EXHIBIT A

Part 2 Disbursement and Financial Reporting

1. Disbursement and Quarterly Reporting.

a. Disbursement Generally; Allowable Expenses.

ODHS will disburse Grant Funds to Recipient, subject to the following:

Grant funds may be expended only in accordance with the terms and conditions of this Agreement for costs that are directly and reasonably related to activities authorized under Exhibit A, Part 1 of this Agreement.

b. ODHS shall disburse Grant Funds to Recipient, subject to receipt of the following in accordance with the schedule set forth below: (i) a properly completed request for payment, in a format approved by ODHS, which will include the period for which payment is requested and the total amount of payment requested; and (ii) any required reports with respect to the period covered by the request for payment. Recipient will submit reports to ODHS in accordance with the schedule set forth below and Section 6 of Exhibit A, Part 1 of this Agreement. Notwithstanding any other provision of this Section 1(b), Recipient may use Grant Funds for any activities authorized by and conducted in accordance with this Agreement and is not required to use Grant Funds only for activities conducted during the period for which payment is requested.

Recipient payment request and reporting schedule:

<u>Reporting Period</u>	<u>Payment & Reporting Request Date</u>	<u>Reporting Timeframe</u>	<u>Payment Request Amount (Not to Exceed)</u>
Not Applicable	Upon Execution (Invoice Only)	Not Applicable	\$ 36,458.25
1	September 30, 2022 (Report & Invoice)	July 15, 2022 – August 2022	\$ 36,458.25
2	December 31, 2023 (Report & Invoice)	September 1, 2022 – November 30, 2022	\$ 36,458.25
3	March 31, 2023 (Report & Invoice)	December 1, 2022 – February 28, 2023	\$ 36,458.25
4	June 30, 2023 (Report Only)	March 1, 2023 – June 30, 2023	Not Applicable

c. Requests for payment are due to the ODHS Grant Administrator within 15 calendar days from the end of the applicable period covered by the request for payment.

- d. On-time receipt, acceptance, and approval of the request for payment and quarterly report by ODHS will be the basis for approving payments and verifying proper expenditures.

EXHIBIT A

Part 3 Special Provisions

1. Confidentiality of Information.

a. Client Information:

- (1) All information as to personal facts and circumstances obtained by the Recipient on YEH (“Client Information”) shall be treated as privileged communications, shall be held confidential, and shall not be divulged without the written consent of the YEH, the YEH’s guardian, or the responsible parent when the client is a minor child, or except as required by other terms of this Agreement or required by applicable law. Nothing in this Agreement prohibits the disclosure of information in summaries, statistical, or other forms, which does not identify particular individuals.
- (2) The use or disclosure of Client Information shall be limited to persons directly connected with the administration of this Agreement. Recipient shall apply its confidentiality policies to all requests from outside sources.
- (3) If Recipient, or any of its officers, directors, employees, agents, or subcontractors receives or has access to confidential Social Security Administration (SSA), or Federal Tax Information (FTI) records in the performance of activities under this Agreement, Recipient shall comply, and ensure that all of Recipient’s officers, directors, employees, agents and subcontractors comply, with the following provisions:
 - (a) With respect to SSA records:
 - i. Provide a current list of officers, directors, agents, and employees and employees of any agent or subcontractor with access to SSA records;
 - ii. Adhere to the same security requirements as employees of ODHS;
 - iii. Abide by all relevant Federal laws, restrictions on access, use, disclosure, and the security requirements contained within ODHS’ agreement with SSA;
 - iv. Provide its officers, directors, employees and agents with access to SSA records the same security awareness training as ODHS employees; and
 - v. Include the provisions of this Section 1.a.(3)(a) in any subcontract.
 - (b) With respect to Federal Tax Information (FTI), as defined in IRS Publication 1075:

- i. Recipient and its officers, directors, agents, and employees with access to, or who use FTI provided by ODHS must meet the background check requirements defined in IRS Publication 1075;
 - ii. Any FTI made available to Recipient shall be used only for the purpose of carrying out the provisions of this Agreement. Recipient shall treat all information contained in FTI as confidential and that information shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Agreement or required by applicable law. Inspection by or disclosure to anyone other than an officer, director, agent, or employee of the Recipient is prohibited;
 - iii. Recipient shall account for all FTI upon receipt and shall properly store all FTI before, during, and after processing. In addition, all FTI related output and products will be given the same level of protection as required for the source material;
 - iv. No activities involving FTI furnished under this Agreement will be subcontracted without prior written approval of the IRS;
 - v. Maintain a list of officers, directors, agents, and employees who are authorized access to FTI. Such list will be provided to ODHS and, upon request, to the IRS reviewing office; and
 - vi. Include the provisions of this Section 1.a.(3)(b) in any subcontract.
- (c) Failure to abide by any of the requirements in this subsection could result in criminal or civil penalties and result in termination of this Agreement.
 - (d) Recipient may be subjected to periodic and ongoing security reviews to ensure compliance with the requirements of Section 1.a.(3).
- (4) Except as prohibited by Section 1.a.(3) above, ODHS, Recipient and any subcontractor will share information as necessary to effectively serve YEH in accordance with this Agreement.

b. Non-Client Information:

- (1) Each party acknowledges that it and any of its officers, directors, employees and agents may, in the course of performing its responsibilities under this Agreement, be exposed to or acquire information that is confidential to the other party. To the extent permitted by applicable law, any and all information of any form provided to a party or its officers,

directors, employees and agents, other than Client Information, in the performance of the Agreement that reasonably could at the time of its disclosure be understood to be confidential shall be deemed to be confidential information of the originating party (“Confidential Non-Client Information”).

- (2) Confidential Non-Client Information shall be deemed not to include information that:
 - (a) Is or becomes (other than by disclosure by the party acquiring such information) publicly known or is contained in a publicly available document except to the extent applicable law still restricts disclosure;
 - (b) Is furnished by the originating party to others without restrictions similar to those imposed on the receiving party under this Agreement;
 - (c) Is obtained from a source other than the originating party without the obligation of confidentiality;
 - (d) Is disclosed with the written consent of the originating party; or
 - (e) Is independently developed by the receiving party’s officers, directors, employees and agents who can be shown to have had no access to the Confidential Non-Client Information.
- (3) Nondisclosure. The receiving party shall hold all Confidential Non-Client Information in strict confidence, using at least the same degree of care that it uses in maintaining the confidentiality of its own confidential information and in no event less than reasonable care; and shall not sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Non-Client Information to third parties; shall not use Confidential Non-Client Information for any purposes whatsoever other than as contemplated by this Agreement or reasonably related thereto; and shall advise any of its officers, directors, employees and agents that receive or have access to the Confidential Non-Client Information of their obligations to keep Confidential Non-Client Information confidential. These confidentiality obligations do not restrict disclosure of information otherwise qualifying as Confidential Non-Client Information if the receiving party can show that either of the following conditions exists: (i) the information was disclosed in response to a subpoena or court order duly issued in a judicial or legislative process, provided the receiving party shall notify the originating party of the subpoena or order not less than five days prior to the disclosure, unless such notice could not reasonably be given; or (ii) the disclosure was required to respond to a request for the information made under the Oregon Public Records Law, ORS 192.311 to 192.478. The receiving party shall notify the originating Party of a public records request five days prior to the disclosure.

- c. Upon request and pursuant to the instructions of ODHS, Recipient shall return or destroy all copies of Client Information and Confidential Non-Client Information, and Recipient shall certify in writing the return or destruction of all Client Information and Confidential Non-Client Information.
- d. “Client” means any individual, family or provider:
 - (1) For whom ODHS must provide Services and incidental or specialized Goods, in any combination thereof (“Services and Incidental Supplies”), according to state, federal law, rule, and policy. Those Services and Incidental Supplies include but are not limited to treatment, care, protection, and support without regard to the proximity of the services being provided;
 - (2) Who in fact receives and utilizes services provided by ODHS primarily for that individual's or family's benefit;
 - (3) Who is under the custody, care, or both of ODHS; or
 - (4) Who provides direct care or Services and is a proxy or representative of the non-provider Client.

2. **Background Checks.** Recipient shall verify that any employee, volunteer, or subcontractor, working with YEH, has not been convicted of any of the following crimes: child or elder abuse, offenses against persons, sexual offenses, child neglect, or convicted with any other offense bearing a substantial relation to the qualifications, functions or duties of an employee, volunteer, or subcontractor scheduled to work with YEH. For purposes of this paragraph, “substantial relation” means the crime for which the person has been convicted of involves conduct by the person that is similar to functions the person may perform for Recipient or place the person in a position to gain access to YEH or YEH personal information so as to be in a position to cause harm to an YEH. For example, but without limitation, a person who is convicted of fraud may not be permitted to work in a position that directs, controls or disburses moneys for this Agreement or has access to YEH finances or financial information.

- a. Recipient shall establish verification by:
 - (1) Having the applicant/employee, as a condition of work, apply for and receive a fingerprint-based national criminal history check from a local Oregon State Police (OSP) office, which will be shared with Recipient;
OR
 - (2) Recipient will utilize a third-party vendor approved by ODHS to conduct a national criminal history check on the applicant/employee. The vendor must be capable of providing a national criminal history check that includes review of the National Sex Offender Public Website (NSOPW) currently found at:
<https://www.nsopw.gov/?AspxAutoDetectCookieSupport=1>.
- b. The following requirements apply to all background checks performed regardless of method (Section a.(1)-(2) above) used.

- (1) Background checks need to be completed prior to start date, upon a promotion, significant change in work duties, or if there is reason to believe a new check is needed. Examples of a reason to believe a new background check may be needed include but are not limited to:
 - (a) Any indication of possible criminal or abusive behavior by an employee, volunteer or subcontractor;
 - (b) A lapse in working or volunteering in a position under the direction and control of Recipient, but the individual is still considered in the position. For example, an extended period of leave by the individual. The Recipient determines the need for a background check.
 - (c) Quality assurance monitoring by ODHS of a previously conducted criminal records check.
- (2) Background checks will also need to be completed whenever there is a break in employment, volunteering, or subcontracting greater than 30 days.
- (3) All employees, subcontractors, and volunteers of the Recipient receiving background checks are required to report to the Recipient any new arrests, convictions or investigations for child protective service or adult protective service abuse within 5 business days.
 - (a) Within 5 business days of such notification, the Recipient is required to report to ODHS the employee's new history.
 - (b) ODHS may request a new background check to reevaluate the ongoing fitness of the employee, subcontractor, or volunteer.
- c. If the position of the applicant/employee is paid in part or in whole by funds from the Centers for Medicare and Medicaid Services (CMS), the check must also include review of the General Service Administration (GSA) System for Award Management (SAM) currently found at <https://www.sam.gov/SAM/pages/public/searchRecords/search.jsf>, and the Social Security Administration (SSA) Death Masterfile currently found at https://www.ssa.gov/dataexchange/request_dmf.html. Any applicant/employee found excluded on SAM or listed on the SSA Death Masterfile shall not be permitted to work with Youth Experiencing Homelessness under this Agreement.
- d. Recipient shall determine after receiving the criminal history and NSOPW check, whether the applicant/employee has listed convictions or sex offender status, and whether these potentially disqualifying conditions pose a risk to working safely with YEH. If Recipient notes a conviction from any of the above listed crimes on the applicant/employee's record, and Recipient chooses to hire the employee/applicant, Recipient shall confirm with ODHS in writing, the reasons for hiring or contracting with the individual. These reasons shall address how the applicant/employee is presently suitable or able to work with referred YEH in a safe and trustworthy manner. Recipient will place this information, along with the

applicant/employee's criminal history check, in the applicant's/employee's personnel file.

Upon receiving such written notification from the Recipient, ODHS reserves the right to the final denial of any employee, volunteer, or subcontractor to provide services to YEH under this Agreement. ODHS will have five business days from receiving written notification to respond to the Recipient in writing with a decision to deny the applicant/employee to provide services for YEH under this Agreement.

- e. The background check procedures listed above also apply to the Recipient. Recipient shall establish a personal personnel file and place Recipient's criminal history check in named file for possibility of future ODHS review. Criminal history records should be purged after three years.
- f. Changes to federal or state legislation and rule may impose additional requirements for background checks. These changes will be implemented by an amendment to this Agreement.

3. Media Disclosure. The Recipient will not provide information to the media regarding a recipient of services provided under this Agreement without first consulting the ODHS office that referred the recipient of such services. The Recipient will make immediate contact with the ODHS office when media contact regarding activities under this Agreement occurs. The ODHS office will assist the Recipient with an appropriate follow-up response for the media.

4. Nondiscrimination.

The Recipient must provide services to YEH 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 ODHS or any other agency or department of the State of Oregon, or both, and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of the jurisdiction of any court or of any form of defense to or immunity from any Claim, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum. This Section shall survive expiration or termination of this Agreement.
2. **Compliance with Law.** Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Recipient and this Agreement. This Section shall survive expiration or termination of this Agreement.
3. **Independent Parties.** The parties agree and acknowledge that their relationship is that of independent parties and that Recipient is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.
4. **Grant Funds; Payments.**
 - a. Recipient is not entitled to compensation under this Agreement by any other agency or department of the State of Oregon. Recipient understands and agrees that ODHS' participation in this Agreement is contingent on ODHS receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow ODHS, in the exercise of its reasonable administrative discretion, to participate in this Agreement.
 - b. **Disbursement Method.** Disbursements under this Agreement will be made by Electronic Funds Transfer (EFT), unless otherwise mutually agreed, and shall be processed in accordance with the provisions of OAR 407-120-0100 through 407-120-0380 or OAR 410-120-1260 through OAR 410-120-1460, as applicable, and any other ODHS Oregon Administrative Rules that are program-specific to the billings and payments. Upon request, Recipient must provide its taxpayer identification number (TIN) and other necessary banking information to receive EFT payment. Recipient must maintain at its own expense a single financial institution or authorized payment agent capable of receiving and processing EFT using the Automated Clearing House (ACH) transfer method. The most current designation and EFT information will be used for all disbursements under this Agreement. Recipient must provide this designation and information on a form

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

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

 - a.** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (“Third Party Claim”) against a liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party’s liability with respect to the Third Party Claim.
 - b.** With respect to a Third Party Claim for which the State is jointly liable with the Recipient (or would be if joined in the Third Party Claim), the State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Recipient in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the Recipient on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the State on the one hand and of the Recipient on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The State’s contribution amount in any instance is capped to the same extent it

would have been capped under Oregon law if the State had sole liability in the proceeding.

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

This Section shall survive expiration or termination of this Agreement.

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

9. **Default; Remedies; Termination.**

- a. Default by Recipient. Recipient shall be in default under this Agreement if:
 - (1) Recipient fails to perform, observe or discharge any of its covenants, agreements or obligations set forth herein;
 - (2) Any representation, warranty or statement made by Recipient herein or in any documents or reports relied upon by ODHS to measure compliance with this Agreement, the expenditure of disbursements or the desired outcomes by Recipient is untrue in any material respect when made;
 - (3) Recipient (1) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (2) admits in writing its inability, or is generally unable, to pay its debts as they become due, (3) makes a general assignment for the benefit of its creditors, (4) is adjudicated a bankrupt or insolvent, (5)

commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (6) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (7) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (8) takes any action for the purpose of effecting any of the foregoing; or

- (4) A proceeding or case is commenced, without the application or consent of Recipient, in any court of competent jurisdiction, seeking (1) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Recipient, (2) the appointment of a trustee, receiver, custodian, liquidator, or the like of Recipient or of all or any substantial part of its assets, or (3) similar relief in respect to Recipient under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive days, or an order for relief against Recipient is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

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

- (1) termination of this Agreement under Section 9.c.(2);
- (2) withholding all or part of monies not yet disbursed by ODHS to Recipient;
- (3) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief; or
- (4) exercise of its right of recovery of overpayments under Section 5. of this Exhibit B.

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

c. Termination.

- (1) ODHS' Right to Terminate at its Discretion. At its sole discretion, ODHS may terminate this Agreement:
 - (a) For its convenience upon 30 days' prior written notice by ODHS to Recipient;

- (b) Immediately upon written notice if ODHS fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to continue supporting the program; or
- (c) Immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that ODHS' support of the program under this Agreement is prohibited or ODHS is prohibited from paying for such support from the planned funding source.
- (d) Immediately upon written notice to Recipient if there is a threat to the health, safety, or welfare of any person receiving funds or benefitting from services under this Agreement "ODHS Client", including any Medicaid Eligible Individual, under its care.

- (2) ODHS' Right to Terminate for Cause. In addition to any other rights and remedies ODHS may have under this Agreement, ODHS may terminate this Agreement immediately upon written notice to Recipient, or at such later date as ODHS may establish in such notice if Recipient is in default under Section 9.a.
- (3) Mutual Termination. The Agreement may be terminated immediately upon mutual written consent of the parties or at such other time as the parties may agree in the written consent.
- (4) Return of Property. Upon termination of this Agreement for any reason whatsoever, Recipient shall immediately deliver to ODHS all of ODHS' property that is in the possession or under the control of Recipient at that time. This Section 9.c.(4) survives the expiration or termination of this Agreement.
- (5) Effect of Termination. Upon receiving a notice of termination of this Agreement or upon issuing a notice of termination to ODHS, Recipient shall immediately cease all activities under this Agreement unless, in a notice issued by ODHS, ODHS expressly directs otherwise.

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

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

State's Office and the federal government and their duly authorized representatives shall have access to all Records to perform examinations and audits and make excerpts and transcripts. Recipient shall retain and keep accessible all Records for the longest of:

- a. Six years following final payment and termination of this Agreement;
- b. The period as may be required by applicable law, including the records retention schedules set forth in OAR Chapter 166; or
- c. Until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement.

12. Information Privacy/Security/Access. If this Agreement requires or allows Recipient or, when allowed, its subcontractor(s), to have access to or use of any ODHS computer system or other ODHS Information Asset for which ODHS imposes security requirements, and ODHS grants Recipient or its subcontractor(s) access to such ODHS Information Assets or Network and Information Systems, Recipient shall comply and require all subcontractor(s) to which such access has been granted to comply with OAR 407-014-0300 through OAR 407-014-0320, as such rules may be revised from time to time. For purposes of this Section, "Information Asset" and "Network and Information System" have the meaning set forth in OAR 407-014-0305, as such rule may be revised from time to time.

13. Assignment of Agreement, Successors in Interest.

- a. Recipient shall not assign or transfer its interest in this Agreement without prior written consent of ODHS. Any such assignment or transfer, if approved, is subject to such conditions and provisions required by ODHS. No approval by ODHS of any assignment or transfer of interest shall be deemed to create any obligation of ODHS in addition to those set forth in this Agreement.
- b. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, and permitted assigns.

14. Resolution of Disputes. The parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation. This Section shall survive expiration or termination of this Agreement.

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

16. No Third Party Beneficiaries. ODHS and Recipient are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit

or right, whether directly, indirectly or otherwise, to third persons any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement. This Section shall survive expiration or termination of this Agreement.

- 17. Severability.** The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid. This Section shall survive expiration or termination of this Agreement.
- 18. Notice.** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, e-mail, or mailing the same, postage prepaid to Recipient or ODHS at the address or number set forth in this Agreement, or to such other addresses or numbers as either party may indicate pursuant to this Section. Any communication or notice so addressed and mailed by regular mail shall be deemed received and effective five days after the date of mailing. Any communication or notice delivered by e-mail shall be deemed received and effective five days after the date of e-mailing. Any communication or notice delivered by facsimile shall be deemed received and effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the Recipient, or on the next business day if transmission was outside normal business hours of the Recipient. Notwithstanding the foregoing, to be effective against the other party, any notice transmitted by facsimile must be confirmed by telephone notice to the other party. Any communication or notice given by personal delivery shall be deemed effective when actually delivered to the addressee.

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

This Section shall survive expiration or termination of this Agreement.

- 19. Headings.** The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret this Agreement.
- 20. Amendments; Waiver; Consent.** ODHS may amend this Agreement to the extent provided herein, the solicitation document, if any from which this Agreement arose, and to the extent permitted by applicable statutes and administrative rules. No amendment, waiver, or other consent under this Agreement shall bind either party unless it is in writing and signed by both parties and when required, approved by the Department of Justice. Such amendment, waiver, or consent shall be effective only in the specific instance and for the specific purpose given. The failure of either party to enforce any

provision of this Agreement shall not constitute a waiver by that party of that or any other provision. This Section shall survive the expiration or termination of this Agreement.

21. **Merger Clause.** This Agreement constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein, regarding this Agreement.
22. **Limitation of Liabilities.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT. NEITHER PARTY SHALL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT OR ANY PART HEREOF IN ACCORDANCE WITH ITS TERMS.

EXHIBIT C

Subcontractor Insurance Requirements

Recipient shall require its first tier contractor(s) (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 Recipient and the contractors (the "Subcontracts"), and ii) maintain the insurance in full force throughout the duration of the Subcontracts. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to ODHS. Recipient shall not authorize contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, Recipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Recipient shall incorporate appropriate provisions in the Subcontracts permitting it to enforce contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Subcontracts as permitted by the Subcontracts, or pursuing legal action to enforce the insurance requirements. In no event shall Recipient permit a contractor to work under a Subcontract when the Recipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, a "first tier" contractor is a contractor with which the 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 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.

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 \$2,000,000 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.

PROFESSIONAL LIABILITY:

Required **Not required**

NETWORK SECURITY AND PRIVACY LIABILITY:

Required **Not required**

POLLUTION LIABILITY:

Required **Not required**

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 ODHS 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 ODHS 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 ODHS’s acceptance of all Services required under the Contract, or
- (ii) ODHS or Contractor termination of this Contract, or

(iii) The expiration of all warranty periods provided under this Contract.

CERTIFICATE(S) AND PROOF OF INSURANCE:

Recipient 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 ODHS 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 Recipient 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 ODHS under this agreement and to provide updated requirements as mutually agreed upon by Contractor and ODHS.

STATE ACCEPTANCE:

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