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**Agreement Number 145854**

**STATE OF OREGON  
INTERGOVERNMENTAL AGREEMENT**

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

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

**Yamhill County, by and through its Department of Community Justice  
535 NE Fifth Street  
McMinnville, Oregon 97128  
Telephone: 503-434-7513 x4466  
Facsimile: 503-472-5216  
Email: [smietant@co.yamhill.or.us](mailto:smietant@co.yamhill.or.us)**

hereinafter referred to as "County."

Work to be performed under this Agreement relates principally to the DHS'

**Office of Child Welfare Program  
Federal Compliance Unit  
500 Summer Street NE, E-69  
Salem, Oregon 97301  
Agreement Administrator: Elizabeth Lair or delegate  
Telephone: 503-569-3815  
Email: [elizabeth.lair@state.or.us](mailto:elizabeth.lair@state.or.us)**

**1. Effective Date and Duration.**

Upon the date this Agreement is approved by the Department of Justice and signatures have been obtained by all applicable parties, this Agreement shall be effective on **January 1, 2014**. Unless extended or terminated earlier in accordance with its terms, this Agreement shall expire on **December 31, 2015**. Agreement termination or expiration shall not extinguish or prejudice either party's right to enforce this Agreement with respect to any default by the other party that has not been cured.

Accepted by Yamhill County  
Board of Commissioners on  
8-21-14 by Board Order  
# 14-512

**2. Agreement Documents.**

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

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

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, A, B, 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 **\$750,000.00**. DHS 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. DHS will pay only for completed Work under this Agreement, and may make interim payments as provided for in Exhibit A.

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

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

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

Catalog of Federal Domestic Assistance (CFDA) #(s) of federal funds to be paid through this Agreement: 93.658

**CONFIDENTIAL**  
**Contractor Tax Identification Information**  
For Accounting Purposes Only

August 12, 2014

Yamhill County Department of Community Justice

**Re: Document #: 145854**

The State of Oregon requires contractors to provide their Federal Employer Identification Number (FEIN) or Social Security Number (SSN). This information is requested pursuant to ORS 305.385 and OAR 125-246-0330(2). Social Security numbers provided pursuant to this section will be used for the administration of state, federal and local tax laws. The State of Oregon may report this information to the Internal Revenue Service (IRS). Contractors must keep this information current at all times. Contractors are required to notify the State of Oregon contract administrator within 10 business days if this information changes. The State of Oregon reserves the right to ask contractors to update this information at any time during the document term.

**Business Name (tax filing):** \_\_\_\_\_

**Billing Address:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**FEIN:** \_\_\_\_\_ **or**

**SSN:** \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

Please return this completed form to:

Tami Goertzen  
Department of Human Services  
Office of Contracts and Procurement  
250 Winter St NE  
Salem, OR 97301  
tami.j.goertzen@state.or.us  
Phone: (503) 945-6940  
Fax: (503) 373-7365

5. **County Data and Certification.**

- a. **County Information.** County shall provide information set forth below. This information is requested pursuant to ORS 305.385 and OAR 125-246-0330(1).

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

County Name (exactly as filed with the IRS): Yamhill County

Street address: 535 NE 5<sup>th</sup> Street

City, state, zip code: McMinnville, OR 97128

Email address: mendezl@co.yamhill.or.us

Telephone: (503) 434-7501 Facsimile: (503) 434-7553

Federal Employer Identification Number: 93-1002318

**Proof of Insurance:**

Workers' Compensation Insurance Company: Citycounty Insurance Services (us)

Policy #: WC-YAMC-14 Expiration Date: 6-30-2015

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

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

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

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







DHS SHARED SERVICES  
Office of Contracts and Procurement



John A. Kitzhaber, MD, Governor

250 Winter St NE, Room 306  
Salem, OR 97301  
Voice: (503) 945-5818  
FAX: (503) 373-7365

## DOCUMENT RETURN STATEMENT

August 12, 2014

**Re:** Document #: **145854**, hereinafter referred to as "Document."

Please complete the following statement and return it along with the completed signature page and the Contractor Data and Certification page and/or Contractor Tax Identification Information form (if applicable).

**Important:** If you have any questions or find errors in the above referenced Document, please contact the contract specialist, Coral Ford at (503) 947-5142.

I Allen Springer, Commissioner Chair,  
(Name) (Title)

received a copy of the above referenced Document, between the State of Oregon, acting by and through the Department of Human Services, the Oregon Health Authority, and Yamhill County Department of Community Justice, by e-mail from Tami Goertzen on August 12, 2014.

On 8/21/14, I signed the electronically transmitted Document without  
(Date)

change. I am returning the completed signature page and Contractor Data and Certification page and/or Contractor Tax Identification Information form (if applicable) with this Document Return Statement.

Allen Springer 8-20-14  
(Authorizing Signature) (Date)

Accepted by Yamhill County  
Board of Commissioners on  
8.21.14 by Board Order  
# 14-512

## EXHIBIT A

### Part 1 Statement of Work

#### 1. Purpose.

The funds to be distributed under the terms of the Title IV-E Reimbursement Program originate with the United States Department of Health and Human Services (“DHHS”) - Administration for Children and Families. DHS is the sole state agency responsible for administering Title IV-E within the State of Oregon pursuant to 42 U.S.C. §671(a)(2) and 45 CFR 1355.30(p) and 205.100 and Title IV-E State Plan. As a result, DHS will submit all claims for the Title IV-E Reimbursement Program to DHHS. After receipt of funds from DHHS, DHS will, in turn, make reimbursement payments to County.

County agrees to use any Federal Financial Participation funds (“FFP funds”) provided by this Agreement to improve the children and youth services to emphasize the development of community and neighborhood based foster care resources.

#### 2. Services to be provided by County.

a. County shall employ and supervise the following positions:

- (1) County shall designate a Title IV-E Reimbursement Program Coordinator to serve as the primary liaison between County and DHS, DHS’ representatives, providers, auditors, and any federal or other state agencies regarding programmatic and operational components of County’s participation in the Title IV-E Reimbursement Program. The Title IV-E Reimbursement Program Coordinator shall also act as County’s primary representative in any meetings related to Title IV-E programmatic and operational issues and assist the DHS staff in any manner necessary for DHS, its designee, or any federal or state governmental entity to monitor County’s participation in the Title IV-E Reimbursement Program.
- (2) County shall designate a Title IV-E Reimbursement Program Fiscal Coordinator to serve as the primary liaison between County and DHS, DHS’ representatives, providers, auditors, and any federal or other state agencies regarding the County’s Title IV-E reimbursements and/or other financial issues. The Title IV-E Reimbursement Program Fiscal Coordinator shall also act as County’s primary representative in any meetings related to Title IV-E issues and assist the DHS staff in any manner necessary for DHS, its designee, or any federal or state governmental entity to monitor County’s participation in the Title IV-E Reimbursement Program.

- b. County shall assure the following training is provided:
- (1) County's staff, contractors, subcontractors, and consultants who will be involved in the Title IV-E Program shall undergo training provided by a contractor of County's choosing in the documentation requirements for Title IV-E Foster Care eligibility compliance and documentation, both for placement and in-home foster care candidacy cases, prior to County's implementation and operation of the Title IV-E Reimbursement Program.
  - (2) County's staff, contractors, subcontractors, and consultants who will be involved in operating the Title IV-E Program shall also undergo training provided by a contractor of County's choosing in the required billing and documentation procedures.
- c. County shall assure that the following record keeping requirements are conducted:
- (1) County and all of its contractors and subcontractors shall maintain true and accurate general, financial, personnel, and licensing records appropriate to disclose the extent of all services and financial transactions under this Agreement and to support all claims County submits to DHS for a minimum of six (6) years from the date of final payment under this Agreement or the completion of the Agreement, whichever is later, due to federal claiming regulations at 45 CFR 92.42. The six (6) year period shall be automatically extended for the duration of any audit in progress at the time of that period's expiration.
  - (2) County shall make available to DHS, all fiscal and other documents necessary to ascertain County's compliance with the Title IV-E requirements and this Agreement, including, but not limited to, documents that verify the amounts and uses of all disbursements of Title IV-E reimbursement funds in conjunction with this Agreement. County shall allow authorized DHS employees, federal officials authorized by the DHS Agreement Administrator, and other qualified persons, access to all financial and programmatic records relating to County's participation in the Title IV-E Reimbursement Program. If an audit, litigation, action, or other dispute of any type involving the records is initiated before the end of the six (6) year period, County must retain the records until all issues arising out of the action are resolved. The federal government shall have the same access to financial and other documents pertaining to Title IV-E Reimbursement Program as DHS.
  - (3) County shall submit documentation evidencing their understanding of and implementation of Title IV-E requirements to DHS, including providing copies of approved policies, activities, etc., as necessary to meet Title IV-E requirements. County also has a continuing obligation to maintain all

business, professional, and other records in accordance with applicable federal and state laws, rules, and regulations, and the terms of this Agreement.

- (4) All books and records maintained by County and/or its contractors or subcontractors relating to County's participation in the Title IV-E Reimbursement Program will be available for review and/or audit by DHS, its designee, and/or DHHS upon request. County and its contractors and subcontractors shall assist DHS in its functions of reviewing financial and programmatic records and monitoring and evaluating County's participation in the Title IV-E Reimbursement Program. County and all of their contractors and subcontractors performing work under the Title IV-E Reimbursement Program shall cooperate fully with DHS, its designee, and/or DHHS during any review and/or audit.
  - (5) County shall maintain complete copies of closed records for six (6) years.
  - (6) The failure of County or any of its contractors or subcontractors performing work or delivering a service under this Title IV-E Reimbursement Program to maintain any of the required books and records shall establish a rebuttable presumption in favor of DHS for the recovery of any funds reimbursed by DHS for which the required books and records are not available.
  - (7) County shall maintain time and attendance records for all staff whose salaries are funded, in whole or in part, under the Title IV-E Reimbursement Program and in a manner consistent with generally accepted business practices.
  - (8) County shall use generally accepted accounting principles to support its claims for administrative expenses.
- d. County shall develop and implement a case plan for children and a case review system which is equivalent to that required by Title IV-E and complies with DHHS' Administrator for Children and Families' (ACF) requirements. The case plan shall include:
- (1) A description of the placement setting;
  - (2) A plan for ensuring the child receives safe and proper care and services are provided to all involved to facilitate permanency;
  - (3) Health and Education records for each child;

- (4) A description of services and programs to assist children age 16 and over to transition to independent living; and
  - (5) For children with a goal of adoption, documentation of steps taken to facilitate that goal.
- e. County shall collaborate with DHS to reach a mutually agreeable way for County to create and maintain a system to report data:
- (1) Report data about Title IV-E eligible children to DHS for inclusion in the DHS' National Adoption and Foster Care Analysis and Reporting System ("AFCARS") submissions to the DHHS. County shall utilize the OR-Kids system to report data for eligible youth. County and DHS will develop a process and once the process is finalized an addendum will be added to this document describing the process and roles of each party.
  - (2) DHS currently provides the DHHS with data for inclusion in the AFCARS, which reports various numbers concerning adoption and foster care placements to the federal government. DHHS, in turn, includes the AFCARS data in the Children's Bureau's Annual Report to Congress. DHS prepares its AFCARS data submissions twice annually, at the end of March for submission to DHHS in April and at the end of September for submission to DHHS in October. County shall maintain the necessary data on the juvenile justice populations and submit it to DHS within the time frame established by DHS, so that the DHS can include County's data in its AFCARS reports to DHHS.
  - (3) County shall maintain and report AFCARS data elements to DHS. The "AFCARS Data Elements Technical Bulletin" will be provided to County by DHS.
- f. County shall assure that its records contain the following information necessary to meet the Title IV-E Foster Care Program Eligibility requirements and shall provide copies of such records to the DHS Eligibility Determinations Unit within a time frame established by DHS:
- (1) Social history/investigative report containing information related to the household from which the youth was removed;
  - (2) A copy of the motion and/or petition for custody;
  - (3) A copy of the court order which led to the child's removal from home and containing the Court's "contrary to the welfare" determination;

- (4) A copy of the court order containing the “reasonable efforts” determination within 60 days of the child being removed from home;
  - (5) A copy of the court order giving County responsibility for placement and care or a copy of the voluntary placement agreement;
  - (6) Copies of documentation establishing AFDC-relatedness, meeting Oregon’s AFDC Plan as in effect July 16, 1996;
  - (7) Placement information; and
  - (8) Other items as the DHS deems necessary and appropriate.
- g.** County shall require that case records contain the following information necessary to meet the Title IV-E Reimbursement Program requirements:
- (1) Copies of the court orders that contain the court’s determination of reasonable efforts to finalize a permanency plan; and
  - (2) For Foster Care Maintenance (FCM) to be claimed, documentation is needed showing a child is under the age of 18, unless the youth is enrolled full-time in high school or an equivalent vocational or technical course and can reasonably be expected to complete the course prior to their nineteenth birthday.
- h.** County shall provide DHS with a copy of their policy regarding what a valid voluntary placement/custody agreement (VPA) should look like. County shall follow the County policy in regard to effective date and signatures required on the VPA. The County shall also obtain a court order within 180 days that contains the court’s determination, “contrary to welfare”.
- i.** County shall assume full and direct responsibility for each child’s placement and care:
- (1) County shall not deliberately adjudicate a child unruly or delinquent for the sole purpose of receiving FFP funds under this Agreement.
  - (2) County will not adjudicate a child to be dependent, neglected or abused who it would otherwise adjudicate as unruly or delinquent for the sole purpose of placing the child into the custody of County.
- j.** County shall provide DHS and/or the DHHS documentation that they are in compliance with the Title IV-E Reimbursement Program requirements upon request.

- k. County will assure that County and County's contractors, subcontractors and staff are up to date and in compliance with the Title IV-E federal terms and conditions.

**3. Goals of the Title IV-E Reimbursement Program.**

- a. The goal of the Title IV-E Reimbursement Program is to reduce juvenile delinquency, increasing offender accountability, and rehabilitating juvenile offenders through a comprehensive, coordinated, community-based juvenile probation system. The target population of the Title IV-E Reimbursement Program is children within the juvenile justice system who meet the eligibility requirements for federal benefits under the Social Security Act. Federal regulations require that delinquents and status offenders placed in Title IV-E eligible placements meet the same requirements as dependent children in the State of Oregon's legal custody and in placement. The objectives of the Title IV-E Reimbursement Program also include strengthening foster care services and ensuring that the needs for safety, permanency and wellbeing of foster children are met.
- b. As a condition of the receipt of FCM payments with respect to a child who meets the eligibility requirements for federal benefits under the Social Security Act, County agrees that during the period of time that County has responsibility for the placement and care of such child, County shall comply with all applicable federal regulations, state laws, Title IV-E State Plan and rules pertaining to the Title IV-E Reimbursement Program.

## EXHIBIT A

### Part 2 Payment and Financial Reporting

#### 1. Payment Provisions.

- a. The maximum not-to-exceed amount payable to County under this Agreement, which includes all allowable expenses, is identified in Section 3 "Consideration". DHS will not pay County any amount in excess of the not-to-exceed amount for completion of the services performed under this Agreement, unless the not-to-exceed amount is increased by amendment, and DHS will not pay for any services until this Agreement has been signed by all parties. DHS will pay only for completed services performed under this Agreement, and will make interim payments as provided for in this Agreement.
- b. DHS will determine the amounts of reimbursement quarterly and will submit payments to County within sixty (60) days of the end of each quarter.

#### c. Routine and Non-Routine Adjustments:

- (1) DHS may advance Title IV-E reimbursement payments to County before services are performed. If so, DHS will subsequently compare and reconcile each advanced Title IV-E reimbursement payment to qualifying reimbursements. DHS shall make adjustments to future payments based on those reconciliations. If there is a need to make adjustment to previously claimed and approved amounts, DHS shall notify County concerning adjustments to administrative and training cost reimbursements.
- (2) Routine maintenance claiming adjustments will be made by DHS without prior notification to County, but DHS will provide the detail of such adjustments to County upon request.
- (3) If maintenance adjustments are needed due to non-routine occurrences, such as an audit disallowance, DHS will notify County prior to making any said non-routine adjustments.

County may provide justification if they believe there is an error in the adjustment, but if both parties are unable to come to an agreement about the adjustment, the final decision will be made by DHS.

- d. Title IV-E Reimbursement Program Eligibility Requirements; Reimbursable Costs.

- (1) County may request reimbursement for services permitted by Title IV-E, at the rates established in 45 CFR 1356.60, which include:
  - (a) FCM expenses; and
  - (b) Administrative and other expenses, including training expenses, necessary for the administration of the Title IV-E Reimbursement Program.
- (2) County agrees to meet the following threshold requirements to claim FCM Cost Reimbursements under Title IV-E:
  - (a) All Title IV-E reimbursement claims under this Agreement must be made during the term of this Agreement. Only actual costs are reimbursable under this Agreement.
  - (b) County shall transmit or deliver all required documentation of Title IV-E eligibility to the DHS Eligibility Determinations Unit for review and final eligibility determination. All cases that County has placement and care responsibility for will be considered in determining an eligibility ratio. Cases shall be considered ineligible and shall not be sent to DHS if eligibility determination has not been made by the County.
    - (1) County and the DHS will develop a procedure for the transfer of earned federal Title IV-E Foster Care reimbursements.
    - (2) County shall transmit all payment information for claiming to the DHS in the format prescribed by DHS. Claims for Title IV-E reimbursement of eligible administrative costs must be adequately documented in a cost allocation plan approved by DHS. County shall utilize the OR-Kids system to document eligibility and enter monthly data as required by DHS.
    - (3) County shall maintain a payment system that allows County records to be transferred to DHS in a format prescribed by DHS. The payment system shall include child-specific payment records, child specific eligibility data, and shall identify claimable portions of each type of child-specific payment as mutually agreed.
- (3) County shall seek Title IV-E FCM costs reimbursements only for children for whom County has assumed care and responsibility and met all

requirements set forth in the Title IV-E State Plan. For purposes of this Section, the following documentation of the County's assumption of care and responsibility for a child is required:

- (a) Orders entered by the court must give County placement and care authority and explicitly expresses the following language: that continuation in the home would be "contrary to the child's welfare" (specific to the child, not the family or community) and that County made "reasonable efforts" to:
    - (1) Maintain the family unit and prevent the unnecessary removal of a child from the home, as long as the child's safety is ensured; and
    - (2) Make and finalize a permanency plan for delinquent youth.
  - (b) The court conducts permanency hearings for the delinquent population and makes findings related to reasonable efforts toward the permanency goal at least annually.
  - (c) County places children in the least restrictive settings and in close proximity to the child's family consistent with the best interests of the child.
- (4) County shall seek Title IV-E FCM costs reimbursement only for children the DHS has determined to be eligible for FFP funds under the Title IV-E Reimbursement Program.
  - (5) County shall seek Title IV-E FCM costs reimbursement only for children placed in facilities that are licensed by DHS and who qualify for Title IV-E Foster Care FFP. County may recruit foster homes that meet DHS' certification standards.
  - (6) County shall not submit claims for Title IV-E reimbursement for administrative or maintenance expenses related to placement of children in secured pre-adjudication detention, short-term (holdover) or secured post-adjudication correctional facilities or any related costs.
  - (7) County shall not use expenditures which are claimed under Title IV-E Foster Care as match or as maintenance of effort under any other federal program.
  - (8) County shall be liable for repayment to DHS of all payments made by the DHS for ineligible maintenance and administrative costs claims.

- (9) County shall not request Title IV-E reimbursement for services that include, but are not limited to, the following:
- (a) Physical/mental examinations;
  - (b) Medications of any type;
  - (c) Counseling of any type;
  - (d) Testing/evaluation of any type;
  - (e) Homemaker or housekeeping services;
  - (f) Education expenses, with the exception of school supplies;
  - (g) Recreational expenses (unless it is a form of child's personal incidentals);
  - (h) Social services are not reimbursable under any circumstances regardless of what type of professional/non-professional provides them. This also includes costs that are incurred for social services that provide treatment to the child, the child's family, or foster family to remedy personal problems, behaviors or home conditions; and
  - (i) Contingency fees.
- (10) DHS currently provides the Department of Justice, Division of Child Support ("DCS"), Oregon's Title IV-D Agency, with data indicating Title IV-E eligibility for all children in care. Children for whom County seeks reimbursement will be included in the DHS' data. The DCS will pursue parents of both Medicaid and Title IV-E recipients. Any amount that is collected by the DCS in a month which represents payment on the required support obligation for that month shall be retained by DHS as reimbursement for that month's foster maintenance payment. If the amount collected is in excess of the monthly amount of the foster care maintenance payment, the excess shall be paid to County for deposit in a separate fund created, to be used in the manner that the Court determines will best serve the interests of the child. DHS will provide County any excess amounts collected on a quarterly basis. DHS will make a corresponding deduction in Title IV-E reimbursement payments to County for any Title IV-D Child Support collections made on behalf of a Title IV-E eligible child under the placement and care responsibility of County. County agrees to report the necessary data to the DHS and educate parents

regarding their responsibility to cooperate with DCS in its efforts to acquire child support.

- (11) Title IV-E Administrative Costs Reimbursements; Reimbursable Costs.
  - (a) County shall comply with the procedures required to claim Title IV-E foster care administration costs based on Federal regulations and the Title IV-E State Plan.
    - (1) Prior to requesting reimbursement for claims, County shall submit an Implementation Plan to DHS for approval. County shall follow the procedures and requirements adopted in its Implementation Plan. The Implementation Plan shall include an appropriate general and/or special Court Order authorizing County's disclosure of juvenile court records to DHS for purposes of the Title IV-E Reimbursement Program. County may add procedures or requirements to the Implementation Plan on their own initiative.
    - (2) At a minimum, County's Implementation Plan shall include the following elements:
      - (i) County shall adopt the applicable DHS Random Moment Time Sampling ("RMTS") service and activity codes to account for staff time spent on Title IV-E program activities and claim administrative costs. Administrative costs are allocated based on the activity code usage and then the eligibility rate is applied to the reimbursable activity codes. The eligibility rate is based on the youth in a foster care setting.
      - (ii) County shall submit to DHS for approval, clearly defined activity codes that they must use for the RMTS as part of the Implementation Plan. Upon request, County shall modify their service and activity codes to comply with the DHS' requirements.
      - (iii) County shall train and periodically retrain all staff on how to appropriately complete the RMTS forms. The RMTS, the eligibility ratio calculation, the foster care candidacy percentages and the administrative costs pool must contain sufficient

detail to substantiate County's administrative claims. County shall maintain all documentation pertaining to the RMTS, including its verification of procedures and sample validity. County shall also maintain a summary spreadsheet of their time measurement results to substantiate the allocation percentages reported on administrative claims.

- (iv) All costs County claims as administrative costs for reimbursement are required to be documented by actual costs incurred and paid, supported by accounting records maintained by County, and prepared in accordance with a Implementation Plan submitted to either the DHS or DHHS-Division of Cost Allocation for approval.
  
- (b) County may seek reimbursement of foster care administrative costs for children who have not yet been placed in foster care per Title IV-E State Plan. To claim administrative costs based on foster care candidacy, County must demonstrate the child is at serious risk of removal due to abuse, neglect, or other egregious circumstances and will be placed in foster care if conditions do not improve. Children who are likely to enter a detention setting do not qualify as foster care candidates. Foster Care candidacy must be re-determined every 6 months. A child in an out-of-home placement setting that is not foster care cannot be considered a foster care candidate. Foster care candidacy must be documented in a case plan, an eligibility determination, or a court order indicating the child will be removed from the home when a placement becomes available. County therefore, shall:
  - (1) Implement and operate a time study which uses service and activity codes that mirror those used by DHS;
  - (2) Develop an Implementation Plan, as described above;
  - (3) For in-home cases, provide documentation of foster care candidacy that must be reviewed and approved by DHS; and
  - (4) Provide quarterly administrative claims and documentation.
  
- (c) Reimbursable administrative costs include the following:
  - (1) The referral of a child to services;

- (2) Preparation for and participation in judicial determination;
  - (3) The arrangement of the placement of the child;
  - (4) The development, on-going management and implementation, and supervision of the child's case plan, excluding the cost of any therapeutic, treatment, or counseling services required there under;
  - (5) Preparation for and participation in case reviews;
  - (6) Recruitment of eligible foster homes;
  - (7) Preparing agreements for the recruitment and licensing of foster homes;
  - (8) The supervision of the child's placement;
  - (9) Participation by casework staff in formal and organized training activities necessary to perform their duties under the Title IV-E Reimbursement Program and this Agreement. For claiming purposes, such costs are limited to the salary and fringe benefits of such staff performing work under the Title IV-E Reimbursement Program proportionate to the time spent in training reasonably related to their duties within the parameters of the Title IV-E Reimbursement Program;
  - (10) Case Management on behalf of eligible children; and
  - (11) Costs related to data collection and reporting if appropriately described in an approved Implementation Plan and documented.
- (d) Administrative activities may be performed by County staff or by contractors and subcontractors of County. To be claimable under any circumstances, the activity must be performed on behalf of children eligible to receive Title IV-E FCM payments or children determined by the Court to be at serious risk of removal from home and for whom County have undertaken a plan of reasonable efforts to prevent such removal. The original source of costs claimed for these and other administrative activities must also be solely from state or local funds appropriated by County and may not be charged to any other federal program.

- (1) County may seek reimbursement of training costs for personnel who perform claimable administrative tasks under Title IV-E, provided that the original source of costs claimed for all such activities is solely from state or local funds appropriated by County and are not charged to any other federal program.
- (2) In those cases where County seeks to claim administrative and training costs for activities performed by their staff, County agrees to do so solely with respect to staff who perform activities claimable under Title IV-E.
- (3) In those cases where County contracts with a third party to perform some or all of the claimable administrative and/or training activities, such contracts shall expressly enumerate the following requirements:
  - (i) The services to be performed by the County's contractor or subcontractor;
  - (ii) Establish a specific and discrete rate of compensation that County will pay for the performance of these services on behalf of Title IV-E eligible children, such rate of compensation not being greater than what is also charged for children who are not Title IV-E eligible;
  - (iii) County retains control and responsibility for the care, maintenance, treatment, supervision, and case planning for children to whom services are delivered or on behalf of whom the contract is entered into;
  - (iv) Specify an officer of the Juvenile Services Division of County who will be responsible for supervising their contractors and subcontractor's performance; and
  - (v) Identify the procedures County will follow for supervising the performance of their contractors and subcontractors including, but not limited to, reporting requirements by the contractors and subcontractors to County, and standards for

determining satisfactory and unsatisfactory performance.

- (e) If County contracts with another public entity for the performance of any activity claimable under the Title IV-E Reimbursement Program, payments County makes to the public entity must represent a reimbursement of actual costs of the other public entity incurred in the performance of its contractual duties.
  - (f) All administrative costs for which County seeks reimbursement under the Title IV-E Reimbursement Program shall be documented by actual costs incurred and paid by County and documented by accounting records maintained by County. Training and other administrative costs claimable under the Title IV-E Reimbursement Program are expressly limited to those articulated under Title IV-E and its implementing regulations, as amended.
- (12) Any potential Title IV-E Foster Care training costs incurred by County will only be eligible for enhanced FFP funds if County, in cooperation with DHS' Training Division, has submitted the necessary amendments to the Title IV-B State Plan which includes a description of all proposed Title IV-E trainings; a determination of the appropriate portion of the training that qualifies as Title IV-E; and, an estimated budget for said training. No training expenditures will be claimed or reimbursed until the amended Title IV-B State Plan has been approved by the DHHS ACF.
- (13) County shall repay DHS all Title IV-E reimbursement funds DHS pays to County for ineligible administrative, training and foster care maintenance claims, retroactive to the earliest date of ineligibility. County has a continuing obligation to notify DHS immediately when it is discovered a child has become ineligible for Title IV-E funding. DHS will follow the procedure described above, before seeking repayment or making adjustments. In the event County must repay funds it has already received from DHS, DHS may exercise the following options at its discretion:
- (a) DHS may deduct the amount of federal recoupment from the next scheduled Title IV-E reimbursement payment, from DHS to County;
  - (b) If DHS' next scheduled reimbursement payment to County is insufficient to satisfy the federal recoupment, DHS will require County to pay DHS the required amount within 45 calendar days of the date of written notice from DHS; or

- (c) If County fails to reimburse DHS for ineligible claims as detailed herein, DHS may withhold funds from any or all programs in which County participates, until the arrearage is paid in full.
  - e. County shall provide DHS compensation for administrative activities according to the following percentages. The percentages shall be paid to DHS based on the total sum of each quarterly claim:
    - (a) Year 1: 3% of the administrative reimbursement
    - (b) Year 2: 1% of the administrative reimbursement
- \*Note: Any additional years beyond Year 2 shall be at 1%.

Upon DHS payment on the quarterly invoice to County, DHS will issue reimbursement less the agreed upon schedule percentage for the administrative fee.

- f. County shall establish an account within County's general ledger into which the County will record Title IV-E receipts and disbursements.
- g. County agrees that any Title IV-E FFP funds received pursuant to this Agreement whether past, present or anticipated will not be treated as countervailing income or resources in the determination of current or future general appropriations made in support of the operation of County.
- h. At the close of any fiscal year, should County show a net positive balance in FFP received under this Agreement, the County shall re-appropriate such balance as available for the next subsequent fiscal year.
- i. County shall develop and implement accounting procedures and standards which will provide an audit trail adequate to assess their performance of this Agreement.

## **2. Monitoring Requirements.**

- a. DHS will monitor and periodically evaluate activities County conducts under the Title IV-E Reimbursement Program and program expenditures.
- b. DHS will have access to County's case records, reports, or other materials related to Title IV-E reimbursement claims to fulfill its responsibility to monitor Title IV-E compliance. Monitoring will take various forms, including, but not limited to, scheduled on-site monitoring visits, desk audits, and unannounced on-site monitoring visits.

- c. If unallowable expenditures are discovered through any means, County shall be required to reimburse DHS immediately and fully for any unallowable expenditure.
- d. County shall be required to repay DHS all funds paid to County for ineligible administrative and foster care claims retroactive to the earliest date of ineligibility. County shall notify DHS immediately when it is discovered a child has become ineligible for Title IV-E funding.

**3. Reporting Requirements.**

- a. County shall submit Title IV-E claiming information to DHS quarterly, in accordance with DHS' claiming procedures, federal law, and regulations pertaining to the Title IV-E Reimbursement Program. The information will be processed in the next Federal Fiscal Quarter upon receipt. Changes in placement and ongoing eligibility shall be submitted within the month in which it occurs.
- b. County shall make such reports, in such form and containing such information as DHS may from time to time require, and County will comply with such provisions as DHS deems necessary to ensure the correctness and verification of such reports consistent with federal law and regulations pertaining to the Title IV-E Reimbursement Program.
- c. Upon completion of County's participation in the Title IV-E Reimbursement Program or annually, but no later than the expiration or termination date of this Agreement, County shall provide DHS with a Title IV-E Reimbursement Program Activities Report describing and verifying the activities identified in the Implementation Plan, Cost Allocation Plan (CAP), and Indirect Costs Proposal. The Program Activities Report should also include a summary of County's assessment of the impact and effectiveness of the Title IV-E Reimbursement Program.
- d. Prior to the end of the term specified in this Agreement, County shall provide the DHS with a Title IV-E Reimbursement Program Funds Expenditure Report. The Title IV-E Reimbursement Program Funds Expenditure Report will detail the expenditure of reimbursement funds and any un-liquidated Title IV-E Reimbursement Program obligations. This Report shall be formatted similar to County's CAP and Budget submitted with the Implementation Plan, or as amended. As provided herein, County will retain records and documentation of costs reflected in the Title IV-E Reimbursement Program Funds Expenditure Report for six (6) years due to federal claiming regulations.
- e. County shall submit claims for Title IV-E reimbursement to DHS through the use of reports and forms prescribed by DHS, consistent with federal law and regulations pertaining to the Title IV-E Foster Care Reimbursement Assistance

Program. County shall file such reports and forms in accordance with such instructions and by such deadlines as DHS may adopt consistent with federal law and regulations pertaining to the Title IV-E Reimbursement Program.

## 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. DHS, County and any of their contractors and subcontractors will share information as necessary to effectively serve County clients.

#### 2. Amendments.

- a. DHS reserves the right to amend or extend the Agreement under the following general circumstances:
  - (1) DHS may extend the Agreement for additional periods of time up to a total Agreement period of 5 years, and for additional money associated with the extended period(s) of time. The determination for any extension for time may be based on DHS' satisfaction with performance of the work or services provided by the County under this Agreement.
  - (2) DHS may periodically amend any payment rates throughout the life of the Agreement proportionate to increases in Portland Metropolitan Consumer Price Index; and to provide Cost Of Living Adjustments (COLA) if DHS so chooses. Any negotiation of increases in rates to implement a COLA will be as directed by the Oregon State Legislature.
- b. DHS further reserves the right to amend the Statement of Work based on 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. **Nondiscrimination.** The County must provide services to County 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.
4. **Audits.** County shall be responsible for determining the applicability of and ensuring their compliance with the Single Audit Act of 1984, Public Law 98-502, and, as amended, by the Single Audit Act Amendments of 1996, Public Law 104-156 as it relates to reimbursements received. County will have a Single Audit performed, if applicable, and retain copies for future review by federal and state officials.

Any and all findings related to the Title IV-E Program noted in the annual Single Audit for County, if applicable, must be disclosed in the Schedule of Findings and Questioned Costs in County's Annual Independent Audit.

County must also comply with federal audit guidelines, including, but not limited to, OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations. If County is required to prepare an audit in accordance with OMB Circular A-133, the audit must still contain the information listed in Department Rule 357.120(c).

In the event any County cases are selected as part of any federal audit of DHS, County shall be required to meet performance levels set for the State of Oregon for Child and Family Services Reviews, Title IV-E Eligibility Reviews, and any other Title IV-E reviews and audits.

5. **Audit Exceptions.** DHS will be responsible for receiving, replying to, and arranging compliance with any audit exceptions found by any state or federal audit of County's participation in the Title IV-E Reimbursement Program. DHS will notify County of any adverse findings attributable to County in a timely manner. Upon County receiving notice from DHS, County shall cooperate fully with DHS and prepare and send to DHS its written response to the audit exceptions in a timely manner. County's responses will not be modified by DHS unless they adversely impact other areas of the Title IV-E program. If this occurs, mutual responses would have to be collaboratively developed by both parties. County's failure to timely and adequately respond to audit exceptions shall result in liability for any repayment necessitated by the audit exceptions. County shall be responsible for correcting audit exceptions to the satisfaction of DHS and the particular auditing County.

County shall be liable for any audit exceptions which result solely from the acts or omissions of County in the performance of its responsibilities specified in this Agreement. Similarly, DHS will be liable for any audit exceptions which result solely from the acts or omissions of DHS in the performance of its responsibilities specified in this Agreement. In the event that an audit exception results from the combined acts or omissions of DHS, County, the financial liability for the audit exception shall be shared by the parties in proportion to their relative fault.

6. **Information Assets and Security.** County shall enter into an additional agreement with DHS, which will ensure that County safeguards DHS network and information systems and information assets. DHS and County will work together to ensure that any access, network, information system or information asset agreements continue for the life of this Agreement.
7. **HIPAA Compliance.** As a Business Associate of a Covered Entity, DHS must comply with the Health Insurance Portability and Accountability Act and the federal regulations implementing the Act (collectively referred to as HIPAA), and DHS must also comply with OAR 943-014-0400 through OAR 943-014-0465. County is a Business Associate of DHS and therefore must comply with OAR 943-014-0400 through OAR 943-014-0465 and the Business Associate requirements set forth in 45 CFR 164.502 and 164.504. County's failure to comply with these requirements shall constitute a default under this Agreement and such default shall not be subject to Exhibit B, Limitation of Liabilities.
  - a. **Consultation and Testing.** If County reasonably believes that the County's or DHS' data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, County shall promptly consult the DHS Information Security Office. County or DHS may initiate a request for testing of HIPAA transaction requirements, subject to available resources and the DHS testing schedule.
  - b. **Data Transactions Systems.** If County intends to exchange electronic data transactions with DHS or the Oregon Health Authority (OHA) in connection with claims or encounter data, eligibility or enrollment information, authorizations or other electronic transaction, County shall execute an Electronic Data Interchange (EDI) Trading Partner Agreement and shall comply with EDI Rules set forth in OAR 943-120-0110 through 943-120-0160.

## 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 DHS, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126.
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

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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 County 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. DHS represents and warrants as follows:**

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

- (3) **Binding Obligation.** This Agreement has been duly executed and delivered by DHS and constitutes a legal, valid and binding obligation of DHS, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- c. **Warranties Cumulative.** The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
5. **Funds Available and Authorized Clause.**
- a. The State of Oregon's payment obligations under this Agreement are conditioned upon DHS receiving funding, appropriations, limitations, allotment, or other expenditure authority sufficient to allow DHS, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Agreement. County is not entitled to receive payment under this Agreement from any part of Oregon state government other than DHS. Nothing in this Agreement is to be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. DHS represents that as of the date it executes this Agreement, it has sufficient appropriations and limitation for the current biennium to make payments under this Agreement.
- b. **Payment Method.** Payments under this Agreement will be made by Electronic Funds Transfer (EFT), unless otherwise mutually agreed, and shall be processed in accordance with the provisions of OAR 407-120-0100 through 407-120-0380 or OAR 410-120-1260 through OAR 410-120-1460, as applicable, and any other Oregon Administrative Rules that are program-specific to the billings and payments. Upon request, County shall provide its taxpayer identification number (TIN) and other necessary banking information to receive EFT payment. County shall maintain at its own expense a single financial institution or authorized payment agent capable of receiving and processing EFT using the Automated Clearing House (ACH) transfer method. The most current designation and EFT information will be used for all payments under this Agreement. County shall provide this designation and information on a form provided by DHS. 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 DHS on a DHS-approved form. DHS is not required to make any payment under this Agreement until receipt of the correct EFT designation and payment information from the County.
6. **Recovery of Overpayments.** If billings under this Agreement, or under any other Agreement between County and DHS, result in payments to County to which County is not entitled, DHS, after giving to County written notification and an opportunity to object, may withhold from payments due to County such amounts, over such periods of time, as are necessary to recover the amount of the overpayment, subject to Section 7 below. Prior to withholding, if County objects to the withholding or the amount proposed

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

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

8. **Ownership of Intellectual Property.**

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

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

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

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

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

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 DHS to measure the delivery of Work, the expenditure of payments or the performance by County is untrue in any material respect when made;
  - c. County (1) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all 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. **DHS Default.** DHS shall be in default under this Agreement upon the occurrence of any of the following events:
- a. DHS fails to perform, observe or discharge any of its covenants, agreements, or obligations set forth herein; or
  - b. Any representation, warranty or statement made by DHS herein or in any documents or reports relied upon by County to measure performance by DHS 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 DHS;
    - (2) Upon 45 days advance written notice to DHS, if County does not obtain funding, appropriations and other expenditure authorizations from County's governing body, federal, state or other sources sufficient to permit County to satisfy its performance obligations under this Agreement,

as determined by County in the reasonable exercise of its administrative discretion;

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

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

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

longer meets requirements to perform the Work. This termination right may only be exercised with respect to the particular part of the Work impacted by loss of necessary licensure or certification;

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

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

**12. Effect of Termination**

**a. Entire Agreement.**

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

- b. **Obligations and Liabilities.** Notwithstanding 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 DHS 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 DHS computer system or other DHS Information Asset for which DHS imposes security requirements, and DHS grants County or its subcontractor(s) access to such DHS 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 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.
17. **Force Majeure.** Neither DHS 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 DHS or County, respectively. Each party shall, however, make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. DHS may terminate this Agreement upon written notice to 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 DHS. Any such assignment or transfer, if approved, is subject to such conditions and provisions as DHS may deem necessary. No approval by DHS of any assignment or transfer of interest shall be deemed to create any obligation of DHS in addition to those set forth in the Agreement.
  - b. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns.
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 DHS' prior written consent. In addition to any other provisions DHS may require, County shall include in any permitted subcontract under this Agreement provisions to require that DHS will receive the benefit of subcontractor performance as if the subcontractor were the County with respect to Sections 1, 2, 3, 4, 8, 15, 16, 18, 21, and 23 of this Exhibit B. DHS' consent to any subcontract shall not relieve County of any of its duties or obligations under this Agreement.
21. **No Third Party Beneficiaries.** DHS and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. The parties agree that County's

performance under this Agreement is solely for the benefit of DHS to assist and enable DHS to accomplish its statutory mission. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

22. **Amendments.** No amendment, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and when required the Department of Justice. Such amendment, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.
23. **Severability.** The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
24. **Survival.** Sections 1, 4, 5, 6, 7, 8, 12, 13, 14, 15, 16, 19, 21, 22, 23, 24, 25, 26, 28, 29, 30 and 31 of this Exhibit B shall survive Agreement expiration or termination as well as those the provisions of this Agreement that by their context are meant to survive. Agreement expiration or termination shall not extinguish or prejudice either party's right to enforce this Agreement with respect to any default by the other party that has not been cured.
25. **Notice.** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid to County or DHS at the address or number set forth in this Agreement, or to such other addresses or numbers as either party may indicate pursuant to this section. Any communication or notice so addressed and mailed by regular mail shall be deemed received and effective five days after the date of mailing. Any communication or notice delivered by 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 at number listed below. Any communication or notice given by personal delivery shall be deemed effective when actually delivered to the addressee.

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

**COUNTY:** As identified on page 1 of this Agreement.

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

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

With respect to a Third Party Claim for which the County is jointly liable with the State (or would be if joined in the Third Party Claim), the County shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the State in such proportion as is appropriate to reflect the relative fault of the County on the one hand and of the State on the other hand in connection with the events which resulted in such

expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the County on the one hand and of the State on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The County's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

- 31. Indemnification by Subcontractors.** County shall take all reasonable steps to cause its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of County's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.
- 32. Stop-Work Order.** DHS 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, DHS shall either:
- a. Cancel or modify the stop work order by a supplementary written notice; or
  - b. Terminate the work as permitted by either the Default or the Convenience provisions of Section 11. Termination.

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

**EXHIBIT C****Subcontractor Insurance Requirements**

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

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

2. **Professional Liability.**

Required by DHS  Not required by DHS.

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

Per occurrence limit for any single claimant:

From commencement of the Agreement term through June 30, 2015:.... \$2,000,000.

From July 1, 2015 and every year thereafter, the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.271(4).

Per occurrence limit for multiple claimants:

From commencement of the Agreement term through June 30, 2015:.... \$4,000,000.

From July 1, 2015 and every year thereafter, the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.271(4).

**3. Commercial General Liability.**

Required by DHS  Not required by DHS.

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

**Bodily Injury/Death:**

Per occurrence limit for any single claimant:

From commencement of the Agreement term through June 30, 2015:....\$2,000,000.

From July 1, 2015 and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.271(4).

Per occurrence limit for multiple claimants:

From commencement of the Agreement term through June 30, 2015: ...\$4,000,000.

From July 1, 2015 and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.271(4).

**AND**

**Property Damage:**

Per occurrence limit for any single claimant:

From commencement of the Agreement term through June 30, 2014:....\$200,000.

From July 1, 2014 and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.273(3).

Per occurrence limit for multiple claimants:

From commencement of the Agreement term through June 30, 2014:....\$600,000.

From July 1, 2014 and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.273(3).

**4. Automobile Liability.**

Required by DHS  Not required by DHS.

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

**Bodily Injury/Death:**

Per occurrence limit for any single claimant:

From commencement of the Agreement term through June 30, 2015: ...\$2,000,000.

From July 1, 2015 and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.271(4).

Per occurrence limit for multiple claimants:

From commencement of the Agreement term through June 30, 2015:....\$4,000,000.

From July 1, 2015 and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.271(4).

**AND**

**Property Damage:**

Per occurrence limit for any single claimant:

From commencement of the Agreement term through June 30, 2014:....\$200,000.

From July 1, 2014 and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.273(3).

Per occurrence limit for multiple claimants:

From commencement of the Contract term through June 30, 2014: .....\$600,000.

From July 1, 2014 and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.273(3).

5. **Additional Insured.** The Commercial General Liability insurance and Automobile Liability insurance must include the State of Oregon, its officers, employees and agents as Additional Insureds but only with respect to the contractor's activities to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.
6. **"Tail" Coverage.** If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subcontract, for a minimum of 24 months following the later of: (i) the contractor's completion and County's acceptance of all services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing 24-month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the contractor may request and DHS may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If DHS approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.
7. **Notice of Cancellation or Change.** The contractor or its insurer must provide 30 days' written notice to County before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).
8. **Certificate(s) of Insurance.** County shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract.

The certificate(s) or an attached endorsement must specify: (i) all entities and individuals who are endorsed on the policy as Additional Insured and (ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.

## EXHIBIT D

### Required Federal Terms and Conditions

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

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

Protection County. County shall include and require all subcontractors to include in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section.

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

action, or order issued by the executive branch of any State or local government itself.

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

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

**7. Audits.**

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

**8. Debarment and Suspension.** County shall not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or

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

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

10. **Pro-Children Act.** County shall comply and require all subcontractors to comply with the Pro-Children Act of 1994 (codified at 20 U.S.C. Section 6081 et. seq.).
11. **Medicaid Services.** County shall comply with all applicable federal and state laws and regulation pertaining to the provision of Medicaid Services under the Medicaid Act, Title XIX, 42 U.S.C. Section 1396 et. seq., including without limitation:
  - a. Keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving Medicaid assistance and shall furnish such information to any state or federal County responsible for administering the Medicaid program regarding any payments claimed by such person or institution for providing Medicaid Services as the state or federal County may from time to time request. 42 U.S.C. Section 1396a(a)(27); 42 CFR Part 431.107(b)(1) & (2).
  - b. Comply with all disclosure requirements of 42 CFR Part 1002.3(a) and 42 CFR Part 455 Subpart (B).
  - c. Maintain written notices and procedures respecting advance directives in compliance with 42 U.S.C. Section 1396(a)(57) and (w), 42 CFR Part 431.107(b)(4), and 42 CFR Part 489 subpart I.
  - d. Certify when submitting any claim for the provision of Medicaid Services that the information submitted is true, accurate and complete. County shall acknowledge County's understanding that payment of the claim will be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.
  - e. Entities receiving \$5 million or more annually (under this Agreement and any other Medicaid Agreement) for furnishing Medicaid health care items or services shall, as a condition of receiving such payments, adopt written fraud, waste and abuse policies and procedures and inform employees, contractors and agents about the policies and procedures in compliance with Section 6032 of the Deficit Reduction Act of 2005, 42 U.S.C. § 1396a(a)(68).
12. **County-based Voter Registration.** County shall comply with the County-based Voter Registration sections of the National Voter Registration Act of 1993 that require voter registration opportunities be offered where an individual may apply for or receive an application for public assistance.
14. **Disclosure.**
  - a. 42 CFR Part 455.104 requires the State Medicaid County to obtain the following information from any provider of Medicaid or CHIP services, including fiscal agents of providers and managed care entities: (1) the name and address (including the primary business address, every business location and P.O. Box address) of any person (individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity; (2) in the case of an individual, the date of birth and Social Security Number, or, in the case of a corporation, the tax identification number of the entity, with an ownership interest in the provider, fiscal agent or managed care entity or of any subcontractor in

which the provider, fiscal agent or managed care entity has a 5% or more interest; (3) whether the person (individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling, or whether the person (individual or corporation) with an ownership or control interest in any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling; (4) the name of any other provider, fiscal agent or managed care entity in which an owner of the provider, fiscal agent or managed care entity has an ownership or control interest; and, (5) the name, address, date of birth and Social Security Number of any managing employee of the provider, fiscal agent or managed care entity.

- b. 42 CFR Part 455.434 requires as a condition of enrollment as a Medicaid or CHIP provider, to consent to criminal background checks, including fingerprinting when required to do so under state law, or by the category of the provider based on risk of fraud, waste and abuse under federal law.
- c. As such, a provider must disclose any person with a 5% or greater direct or indirect ownership interest in the provider whom has been convicted of a criminal offense related to that person's involvement with the Medicare, Medicaid, or title XXI program in the last 10 years.
- d. County shall make the disclosures required by this Section 14. To DHS. DHS reserves the right to take such action required by law, or where DHS has discretion, it deems appropriate, based on the information received (or the failure to receive information) from the provider, fiscal agent or managed care entity.

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

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

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

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