

**THIRD AMENDMENT TO AGREEMENT  
FOR OHA/PDS PROJECT  
PROJECT ABLE**

THIS THIRD AMENDMENT TO AGREEMENT ("Amendment #3") is made effective July 1, 2021, between Yamhill County, a political subdivision of the State of Oregon acting by and through its Board of Commissioners and its Health and Human Services Department, Behavioral Health Programs ("County") and Project ABLE ("Contractor"), an Oregon nonprofit corporation, 1599 State Street NE, Salem, OR 97301.

**RECITALS:**

A. County and Contractor are parties to that certain agreement dated as of December 29, 2016 (the "Underlying Agreement"), pursuant to which Contractor performs the Services of County included in the OHA grant agreement #152027, which agreement was replaced by OHA grant agreement #159255 effective July 1, 2019, and subsequently which agreement has been replaced by grant agreement #172084 effective July 1, 2021. The Underlying Agreement is memorialized in Yamhill County records as Board Order 16-519. The Underlying Agreement was first amended on September 29, 2017, memorialized as Board Order 17-321 ("Amendment #1"). The Underlying Agreement was further amended on February 13, 2020, memorialized as Board Order 20-43 ("Amendment #2").

B. County and Contractor now desire to further amend the Underlying Agreement upon the terms and conditions as more particularly set forth herein below.

C. Capitalized terms not defined herein shall have the meanings attributed to such terms in the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein below and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, County and Contractor, intending legally to be bound, hereby agree as follows:

1. Section 1 of the Underlying Agreement is hereby amended to extend the term through June 30, 2023.

2. Section 2 of the Underlying Agreement as amended by Amendment #2 is hereby amended to include the following: "Contractor agrees to perform the services (the "Services") of County included in the OHA grant agreement #172084 Exhibit A Part 1 "Program Description" and Contractor will comply and adhere to any and all of the applicable obligations and terms and conditions of the OHA agreement #172084 (the "Grant Agreement") which is attached hereto as Exhibit A and which is incorporated herein by this reference; provided, however, this Agreement

shall not terminate or limit County's legal responsibilities to OHA for the timely and effective performance of County's duties and obligations under the Grant Agreement."

3. The balance of Section 2 of the Underlying Agreement remains unchanged.

4. Section 6 of the Underlying Agreement as amended by Amendment #2 is hereby amended as follows: "Contractor shall receive a payment of \$15,150.00 per month effective July 1, 2021, through May 30, 2023, and one payment of \$15,153.00 effective June 1, 2023, through June 30, 2023. Contractor must prepare and submit written monthly invoices to County. The maximum amount payable for the period of July 1, 2021, through June 30, 2023, is \$363,603.00. The maximum amount payable for performance of Services under this Agreement is \$1,454,412."

5. The balance of Section 6 of the Underlying Agreement remains unchanged.

6. Section 12 of the Underlying Agreement as amended by Amendment #2 is hereby amended as follows: "Contractor will maintain insurance as set forth in OHA grant agreement #172084 Exhibit C which is attached hereto as Exhibit B and which is incorporated herein by this reference."

7. The balance of the Underlying Agreement remains unchanged.

8. Ratification. Except as otherwise expressly modified by the terms of this Amendment #3, the Underlying Agreement shall remain unchanged and continue in full force and effect. All terms, covenants and conditions of the Underlying Agreement not expressly modified herein are hereby confirmed and ratified and remain in full force and effect, and, as further amended hereby, constitute valid and binding obligations of Contractor enforceable according to the terms thereof.

9. Authority. County and Contractor and each of the persons executing this Amendment #3 on behalf of County and Contractor hereby covenants and warrants that: (i) such party has full right and authority to enter into this Amendment #3 and has taken all action required to authorize such party (and each person executing this Amendment #3 on behalf of such party) to enter into this Amendment #3, and (ii) the person signing on behalf of such party is authorized to do so on behalf of such entity.

10. Binding Effect. All of the covenants contained in this Amendment #3 shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives and permitted successors and assigns.

11. Counterparts. This Amendment #3 may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute one and the same Amendment #3.

12. Recitals. The foregoing recitals are intended to be a material part of this Amendment #3 and are incorporated herein by this reference.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed on the date indicated by their duly authorized officials, this Amendment #3 in duplicate, each of which shall be deemed an original on the date executed by all parties.

DONE the last date set forth adjacent to the signatures of the parties below.

**PROJECT ABLE**

By:   
(signature)  
Date: 12/14/21

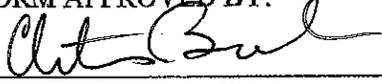
CLAY PETERSON  
(printed name)

EXECUTIVE DIRECTOR  
(title)

**YAMHILL COUNTY, OREGON**

  
**MARY STARRETT, Chair** LINDSAY BERSCHAUER  
Board of Commissioners  
Date: 1/13/22

Lindsey Manfrin  
Public Agency Policy Book  
10/1/2014 10:00 AM  
10/1/2014 10:00 AM  
10/1/2014 10:00 AM  
10/1/2014 10:00 AM  
**LINDSEY MANFRIN, Director**  
Department of Health & Human Services  
Date: \_\_\_\_\_

FORM APPROVED BY:  
  
**CHRISTIAN BOENISCH**  
County Counsel  
Date: 1/19/22

Accepted by Yamhill County  
Board of Commissioners on  
1/13/22 by Board Order  
# 22-09

## Exhibit A to Project Able OHA/PDS Project Amendment 3

### EXHIBIT A

#### Part 1 Program Description

##### 1. Background and Purpose

Peer-Delivered Services (PDS) are a vital part of health care transformation and benefit Oregonians with Substance Use Disorder (SUD), their families and communities. Peer-delivered services and peer-run organizations (PRO) that are Recovery Centers (as defined below) are essential to link those living with behavioral health conditions to behavioral health services. PDS are an instrumental tool in reforming the health care system to support recovery and wellness within a recovery-oriented system of care (ROSC).

Recipient will develop the capacity to provide enhanced PDS and technical assistance and training for PDS in SUD Recovery. The technical assistance will be provided to regional partners, including behavioral health service programs, health professionals, Community Mental Health Programs (CMHP) or Local Mental Health Authority (LMHA), Coordinated Care Organizations (CCO), interested consumers, family members, youth (under 17 years) and young adults (18 to 25), and those in recovery from mental health disorders, substance use disorders, and problem gambling within their respective service area.

OHA believes the SUD PDS Facilitating Centers (as defined below) will help promote best practices. PDS are available for the diverse members of the recovering communities. The Facilitating Centers will identify and develop specialized best practices and deliver specialized training and technical assistance for underserved and over represented populations.

Research has demonstrated that PDS improve outcomes. Examples of improved outcomes are as follows:

- a. When peers are part of hospital-based or residential care, the results include shortened lengths of stay, decreased frequency of admissions, and lower overall future treatment costs,
- b. When PDS are integrated into behavioral health care treatment teams, patients show favorable results in both health outcomes and cost savings,
- c. For people diagnosed with both mental illness and substance use disorders, peer-led interventions have shown to significantly reduce substance use, symptoms of emotional distress or disorders, and crisis events,
- d. PDS programs have shown to increase patients' participation in their treatment, resulting in better healing outcomes and greater levels of empowerment and,
- e. PDS emphasize developing and living a healthy, recovery-oriented lifestyle. This focus on wellness helps people remain in recovery and in the communities of their choice.

B.O. 22-09  
Exhibit "A"

The goal of this Agreement is to enable Recipient to develop Facilitating Centers that will serve as "mentor sites" which will provide ongoing technical assistance and training for programs providing PDS, PRO and Recovery Centers. Facilitating Centers will provide structure and support for developing and sustaining programs providing PDS in substance use disorder recovery, PROs and Recovery Centers. People in recovery will be involved in every aspect of program design and implementation, creating opportunity for peer delivered services regionally, and statewide, and allowing for greater access to services. Quality PDS statewide are essential for people with substance use disorders.

In performing Program activities below, Recipient must implement industry-recognized standards of best practices.

## 2. Definitions

- a. **Access To Recovery (ATRs)** is a recovery support services program that puts an emphasis on personal choice for substance abuse treatment which enables people who need substance abuse services to use a recovery-oriented system of care. ATR services include clinical, community-based and faith-based services.

(See [http://www.oregon.gov/oha/amh/ATR/Documents/ATR\\_Fact\\_Sheet.pdf](http://www.oregon.gov/oha/amh/ATR/Documents/ATR_Fact_Sheet.pdf).)

- b. **Facilitating Centers** or **SUD PDS Facilitating Centers** serve as "mentor sites" providing ongoing technical assistance and training, for the Recovery Centers. Facilitating Centers provide structure, and support, for developing and sustaining Recovery Centers.
- c. **Peer** means any individual who has similar life experience, either as a current or former recipient of addictions or mental health services, or as a family member of an individual who is a current recipient, or a former recipient, of addictions or mental health services.
- d. **Peer-Delivered Services** or **PDS** means a continuum of programs and supports provided by individuals, who identify themselves as having behavioral health challenges, and are receiving, or have received, behavioral health care. Peer services can include programs that are Peer-operated (planned, delivered, and administered by people with lived experience), Peer partnerships (shared governance between Peer and non-Peer organizations or staff), and Peer employees – the unique discipline of providing Peer services as a member of the target population
- e. **Peer-Run Organization** or **PRO** means organizations that are:
- (1) Independent - Owned, administratively controlled, and managed by Peers;
  - (2) Autonomous - All decisions are made by the program;
  - (3) Accountable - Responsibility for decisions rests with the program; and
  - (4) Peer – controlled - Governance board is at least 51% Peers.

- f. **Peer Support Specialist** means a person providing peer delivered services to an individual or family member, with similar life experience. A Peer Support Specialist must be;
- (1) A self-identified person currently, or formerly, receiving mental health services;
  - (2) A self-identified person in recovery from an addiction disorder, who meets the abstinence requirements for recovering staff in alcohol and other drug treatment programs;
  - (3) A self-identified person in recovery from problem gambling; or
  - (4) A family member of an individual who is a current or former recipient of addictions or mental health services.
- g. **Peer Wellness Specialist** means an individual who is responsible for assessing mental health service and support needs of the individual's Peers, through community outreach, assisting individuals with access to available services and resources, addressing barriers to services, and providing education and information about available resources and mental health issues, in order to reduce stigmas and discrimination toward consumers of mental health services, and to provide direct services, to assist individuals in creating and maintaining recovery, health and wellness.
- h. **Recovery** from alcohol and drug problems is a process of change through which an individual achieves abstinence and improved health, wellness, and quality of life.
- i. **Recovery Centers** are comprised of, and led, by people in Recovery from Substance Use Disorders, as defined in OAR 309-019-0105(120). The Recovery Centers maintain a structured daily schedule of activities where peer support services may be delivered and serve as Recovery resources for the local community.
- j. **Recovery Oriented System of Care (ROSC)** means person-centered and self-directed approaches to care that build on the strengths and resilience of individuals, families, and communities to take responsibility for their sustained health, wellness, and recovery from alcohol and drug problems.
- k. **Substance Use Disorders (SUD)** means the recurrent use of alcohol or drugs or both causing clinically and functionally significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home. According to the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5), a diagnosis of substance use disorder is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.

### 3. Program Activities

The allowable Program activities, for which funding to Recipient under this Agreement may be used, are described below. Recipient will establish Facilitating Center that will provide enhanced PDS and technical assistance on PDS to PDS providers and others that support recovery from SUD in Yamhill County, Marion, and Polk Counties.

#### a. Training Program Development

- (1) Recipient will operate a Facilitating Center site.
- (2) Recipient will conduct on-going needs assessment for each of the identified specialized populations; people using medically assisted treatment, people who have been incarcerated, people without homes and seniors.
- (3) Recipient will ensure that each identified specialized population team will work concurrently, and Recipient will conduct at least monthly meetings of all four-population teams, to discuss obstacles, opportunities and information for inclusion in the training and technical assistance materials.
- (4) Recipient will update and expand curriculum for each population, addressing the unique strength and needs of the population served. The various curricula will include self-study technology (web-streaming, videoconferencing, etc.) and self-study processes (interactive study guides, on-line coaching, etc.).
- (5) Recipient will administer assessment, and evaluation instruments to evaluate the trainings and the effects of training on services provided.

#### b. Training Program Delivery

- (1) Recipient will recruit and select cohorts of individuals to participate in the specialized peer support specialists training programs.
- (2) Recipient will deliver the specialized peer support specialists training programs to the appropriate participants. Trainers, speakers, panelists, videos must be a majority of people with shared lived experience and include those from the agency partners serving the identified populations.
- (3) Recipient will, using the instruments created by the Facilitating Center, collect data and evaluate the impact of the specialized training programs for each identified population.

**c. Refine Trainings and Technical Support**

Recipient will, based upon evaluation and feedback on the training programs, make refinements to each of the training programs including, but not limited to, development of follow-up technical support and mentoring services. This will include adding an oral health component.

**d. Develop and Deliver Training and Technical Support Tools**

(1) Based on the refinements to the specialized peer support specialist training programs, Recipient will update a training manual. This should include but is not limited to, a) outreach protocols and support materials; b) written curricula and materials; c) self- study and webinar programs; and d) remote learning participation technology.

(2) Using all materials created to meet the requirements of this Agreement, Recipient will continue to recruit cohorts for each of the specialized trainings and will deliver the trainings. Recipient will evaluate the trainings and results.

At least one cohort will use remote learning technologies.

**e. One-day Learning Collaborative Sessions**

Recipient's staff shall attend up to six one-day learning collaborative sessions inperson with OHA, other grant recipients, and stakeholders.

**f. Approved Subcontractors**

Per Section 15. of Exhibit B, OHA approves Recipient's use of the following subcontractors to perform Program activities:

Bridgeway Recovery; Champion Team; Harness Technology; Polk County Seniors; Project ABLE; Provoking Hope; and Shogren Consulting

However, Recipient is not obligated use those subcontractors and may request OHA's written approval to use other or additional subcontractors per Section 15. of Exhibit B.

**4. Reporting Requirements**

- a. Recipient's designated staff shall communicate with OHA by phone or in-person meeting on an agreed upon schedule to provide updates, share successes, and address barriers that may emerge regarding completion of grant agreement activities.
  
- b. Quarterly written progress reports: Using forms provided by OHA, Recipient shall prepare and submit a written quarterly narrative progress reports electronically to the OHA Agreement Administrator via email to [amhcontract.administrator@dhsoha.state.or.us](mailto:amhcontract.administrator@dhsoha.state.or.us) in a format approved by OHA by the following dates:

Quarter	Due
July – September	November 14 <sup>th</sup>
October – December	February 14 <sup>th</sup>
January – March	May 15 <sup>th</sup>
April – June	June 30

The quarterly written progress reports shall outline Recipient's project successes, project outcomes, barriers encountered, actions to address these barriers, and lessons learned.

- c. Invoices: Using forms provided by OHA, Recipient shall prepare and submit monthly invoices to the OHA Agreement Administrator. See payment provisions in Exhibit A, Part 2.

**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 OHA or any other agency or department of the State of Oregon, or both, and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of the jurisdiction of any court or of any form of defense to or immunity from any Claim, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum. This Section shall survive expiration or termination of this Agreement.

**2. Compliance with Law.**

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

**3. Independent Parties.**

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

**4. Grant Funds; Payments.**

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

maintain at its own expense a single financial institution or authorized payment agent capable of receiving and processing EFT using the Automated Clearing House (ACH) transfer method. The most current designation and EFT information will be used for all disbursements under this Agreement. Recipient must provide this designation and information on a form provided by OHA. In the event that EFT information changes or the Recipient elects to designate a different financial institution for the receipt of any payment made using EFT procedures, Recipient will provide the changed information or designation to OHA on a OHA-approved form.

**5. Recovery of Overpayments.**

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

**6. Ownership of Work Product. Reserved.**

**7. Contribution.**

If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a 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 Recipient (or would be if joined in the Third Party Claim), the State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Recipient in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the Recipient on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable

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

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

This Section shall survive expiration or termination of this Agreement.

#### **8. Indemnification by Subcontractors.**

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

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

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

- (1) Recipient fails to perform, observe or discharge any of its covenants, agreements or obligations set forth herein;
- (2) Any representation, warranty or statement made by Recipient herein or in any documents or reports relied upon by OHA to measure compliance with this Agreement, the expenditure of disbursements or the desired outcomes by Recipient is untrue in any material respect when made;

- (3) Recipient (1) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (2) admits in writing its inability, or is generally unable, to pay its debts as they become due, (3) makes a general assignment for the benefit of its creditors, (4) is adjudicated a bankrupt or insolvent, (5) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (6) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (7) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (8) takes any action for the purpose of effecting any of the foregoing; or
  - (4) A proceeding or case is commenced, without the application or consent of Recipient, in any court of competent jurisdiction, seeking (1) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Recipient, (2) the appointment of a trustee, receiver, custodian, liquidator, or the like of Recipient or of all or any substantial part of its assets, or (3) similar relief in respect to Recipient under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive days, or an order for relief against Recipient is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).
- b. OHA's Remedies for Recipient's Default. In the event Recipient is in default under Section 9.a., OHA may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to:
- (1) termination of this Agreement under Section 9.c.(2);
  - (2) withholding all or part of monies not yet disbursed by OHA to Recipient;
  - (3) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief; or
  - (4) exercise of its right of recovery of overpayments under Section 5. of this Exhibit B.

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

c. Termination.

- (1) OHA's Right to Terminate at its Discretion. At its sole discretion, OHA may terminate this Agreement:

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

## 10. Insurance.

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

**11. Records Maintenance, Access.**

Recipient shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Recipient shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of Recipient, whether in paper, electronic or other form, that are pertinent to this Agreement, in such a manner as to clearly document Recipient's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of Recipient whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." Recipient acknowledges and agrees that OHA and the Secretary of State's Office and the federal government and their duly authorized representatives shall have access to all Records to perform examinations and audits and make excerpts and transcripts. Recipient shall retain and keep accessible all Records for the longest of:

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

**12. Information Privacy/Security/Access.**

If this Agreement requires or allows Recipient or, when allowed, its subcontractor(s), to have access to or use of any OHA computer system or other OHA Information Asset for which OHA imposes security requirements, and OHA grants Recipient or its subcontractor(s) access to such OHA Information Assets or Network and Information Systems, Recipient shall comply and require all subcontractor(s) to which such access has been granted to comply with OAR 943-014-0300 through OAR 943-014-0320, as such rules may be revised from time to time. For purposes of this Section, "Information Asset" and "Network and Information System" have the meaning set forth in OAR 943-014-0305, as such rule may be revised from time to time.

**13. Assignment of Agreement, Successors in Interest.**

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

**14. Resolution of Disputes.**

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

**15. Subcontracts.**

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

**16. No Third Party Beneficiaries.**

OHA and Recipient are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement. This Section shall survive expiration or termination of this Agreement.

**17. Severability.**

The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid. This Section shall survive expiration or termination of this Agreement.

**18. Notice.**

Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, e-mail, or mailing the same, postage prepaid to Recipient or OHA at the address or number set forth in this Agreement, or to such other addresses or numbers as either party may indicate pursuant to this Section. Any communication or notice so addressed and mailed by regular mail shall be deemed received and effective five days after the date of mailing. Any communication or notice delivered by e-mail shall be deemed received and effective five days after the date of e-mailing. Any communication or notice delivered by facsimile shall be deemed received and effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission

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

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

This Section shall survive expiration or termination of this Agreement.

**19. Headings.**

The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret this Agreement.

**20. Amendments; Waiver; Consent.**

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

**21. Merger Clause.**

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

**22. Limitation of Liabilities.**

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

### Exhibit B to Project Able OHA/PDS Project Amendment 3

#### EXHIBIT C

#### Subcontractor Insurance Requirements

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

#### TYPES AND AMOUNTS

##### WORKERS' COMPENSATION & EMPLOYERS' LIABILITY

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements. If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If contractor is an employer subject to any other state's workers' compensation law, Contractor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

##### COMMERCIAL GENERAL LIABILITY:

Required

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this contract, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000.00 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.00.

**AUTOMOBILE LIABILITY INSURANCE:**

Required  Not required

**PROFESSIONAL LIABILITY:**

Required  Not required

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

**EXCESS/UMBRELLA INSURANCE:**

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

**ADDITIONAL COVERAGE REQUIREMENTS:**

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

**ADDITIONAL INSURED:**

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

**WAIVER OF SUBROGATION:**

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

**CONTINUOUS CLAIMS MADE COVERAGE:**

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

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

**CERTIFICATE(S) AND PROOF OF INSURANCE:**

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

**NOTICE OF CHANGE OR CANCELLATION:**

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

**INSURANCE REQUIREMENT REVIEW:**

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

**STATE ACCEPTANCE:**

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

B.O. 22-09  
Exhibit "A"