

# **YAMHILL COUNTY COMMUNITY PREPAREDNESS INTERGOVERNMENTAL AGREEMENT**

Agreement No. PO-25700-00016109

This Agreement is between the State of Oregon acting by and through its Oregon State Fire Marshal's office ("Agency") and Yamhill County each a ("Contractor") and, together, the "Parties".

## **SECTION 1: AUTHORITY**

This Agreement is authorized by ORS 190.110 and 283.110, allowing State agencies to enter into agreements with other agencies to cooperate in performing duties, exercising, or administering policies or programs.

## **SECTION 2: PURPOSE**

The purpose of this Intergovernmental Agreement is to clearly define the responsibilities of each Party. Yamhill County is requesting financial assistance to emphasize wildfire community preparedness as it relates to wildfire evacuation education, communication, and planning in the county ("the Project")

## **SECTION 3: EFFECTIVE DATE AND DURATION**

This Agreement is effective the date of the last signature, ("Effective Date") and terminates on (June 30, 2023), unless terminated earlier in accordance with Section 15.

## **SECTION 4: AUTHORIZED REPRESENTATIVES**

**4.1** Agency's Authorized Representative is:  
Fraser Wick, Community Risk Reduction Program Analyst  
Oregon State Fire Marshal's office  
3565 Trelstad Ave. SE  
Salem, OR 97317  
Phone: (503)934-8283  
Email: Fraser.Wick@osp.oregon.gov

**4.2** Yamhill County's Authorized Representative is:  
Brian Young – Director  
Yamhill County  
535 NE 5<sup>th</sup> St.  
McMinnville, Oregon 97128

Phone: 503-474-6300

Email: youngb@co.yamhill.or.us

4.3 A Party may designate a new Authorized Representative by written notice to the other Party.

## **SECTION 5: RESPONSIBILITIES OF EACH PARTY**

5.1 Yamhill County shall develop a pilot program to emphasize wildfire community preparedness as it relates to wildfire evacuation education, communication, or planning in the respective county.

5.2 Agency shall pay Yamhill County as described in Section 6.

## **SECTION 6: COMPENSATION AND PAYMENT TERMS**

Agency shall pay Yamhill County Not to Exceed ("NTE") sum of \$10,000.00 for the Project. Upon and after execution of the Agreement, Yamhill County may request in advance of expenditures up to \$10,000.00 of the reimbursements described. Funds are to be used in accordance with Exhibit A Statement of Work.

## **SECTION 7: REPRESENTATIONS AND WARRANTIES**

Yamhill County represents and warrants to Agency that:

- 7.1 Yamhill County is a County duly organized and validly existing. Yamhill County has the power and authority to enter into and perform this Agreement;
- 7.2 The making and performance by Yamhill County of this Agreement (a) have been duly authorized by Yamhill County, (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Yamhill 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 Yamhill County is party or by which Yamhill County may be bound or affected. No authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Yamhill County of this Agreement, other than those that have already been obtained;
- 7.3 This Agreement has been duly executed and delivered by Yamhill County and constitutes a legal, valid and binding obligation of Yamhill County enforceable in accordance with its terms;
- 7.4 Yamhill County shall, at all times during the term of this Agreement, be professionally competent, to perform its obligations under this Agreement.

The representations and warranties set forth in this section are in addition to, and not in lieu of, any other representations or warranties provided by Yamhill County.

## **SECTION 8: 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 Agency or any other agency or department of the State of Oregon, or both, and Yamhill County that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Yamhill 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 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, to or from any Claim or from the jurisdiction of any court. YAMHILL COUNTY, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

## **SECTION 9: CONTRIBUTION**

- 9.1. 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 (a "Third Party Claim") against a Party (the "Notified Party") with respect to which the other Party (the "Other Party") may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. Each 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 Section and a 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 contribution obligation under this Section 10 with respect to the Third Party Claim.
- 9.2. With respect to a Third Party Claim for which Agency is jointly liable with Yamhill County (or would be if joined in the Third Party Claim ), Agency 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 Yamhill County in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of Yamhill County on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of Yamhill 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. Agency'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.

- 9.3** With respect to a Third Party Claim for which Yamhill County is jointly liable with Agency (or would be if joined in the Third Party Claim), Yamhill 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 Agency in such proportion as is appropriate to reflect the relative fault of Yamhill County on the one hand and of Agency on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Yamhill County on the one hand and of Agency 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. Yamhill 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.

## **SECTION 10: YAMHILL COUNTY DEFAULT**

Yamhill County will be in default under this Agreement upon the occurrence of any of the following events:

- 10.1** Yamhill County fails to perform, observe or discharge any of its covenants, agreements or obligations under this Agreement;
- 10.2** Any representation, warranty or statement made by Yamhill County in this Agreement or in any documents or reports relied upon by Agency to measure the delivery of services, the expenditure of funds or the performance by Yamhill County is untrue in any material respect when made;
- 10.3** Yamhill County (a) 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, (b) admits in writing its inability, or is generally unable, to pay its debts as they become due, (c) makes a general assignment for the benefit of its creditors, (d) is adjudicated a bankrupt or insolvent, (e) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (f) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (g) 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 (h) takes any action for the purpose of effecting any of the foregoing; or
- 10.4** A proceeding or case is commenced, without the application or consent of Yamhill County, in any court of competent jurisdiction, seeking (a) the liquidation, dissolution or winding-up, or the composition or readjustment of debts of Yamhill County, (b) the appointment of a trustee, receiver, custodian, liquidator, or the like of Yamhill County or of all or any substantial part of its assets, or (c) similar relief in respect to Yamhill 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 Yamhill County is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

## **SECTION 11: AGENCY DEFAULT**

Agency will be in default under this Agreement if Agency fails to perform, observe, or discharge any of its covenants, agreements, or obligations under this Agreement.

## **SECTION 12: REMEDIES**

**12.1** In the event Yamhill County is in default under Section 10, Agency 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: (a) termination of this Agreement under Section 16, (b) reducing or withholding payment that Yamhill County has failed to deliver within any scheduled completion dates or has performed inadequately or defectively, (c) requiring Yamhill County to provide, at Yamhill County's expense, additional buckets necessary to satisfy its performance obligations or meet performance standards under this Agreement, (d) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, or (e) exercise of its right of recovery of overpayments under Section 13 of this Agreement or setoff, or both. These remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

**12.2** In the event Agency is in default under Section 11 and whether or not Yamhill County elects to exercise its right to terminate this Agreement under Section 15.3.3, or in the event Agency terminates this Agreement under Sections 15.2.1, 15.2.2, 15.2.3, or 15.2.5. In no event will Agency be liable to Yamhill County for any expenses related to termination of this Agreement.

## **SECTION 13: RECOVERY OF OVERPAYMENTS**

If payments to Yamhill County under this Agreement, or any other agreement between Agency and Yamhill County, exceed the amount to which Yamhill County is entitled, Agency may, after notifying Yamhill County in writing, withhold from payments due Yamhill County under this Agreement, such amounts, over such periods of times, as are necessary to recover the amount of the overpayment.

## **SECTION 14: LIMITATION OF LIABILITY**

EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTION 10, NEITHER PARTY WILL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER THE LIABILITY CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE. NEITHER PARTY WILL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS.

## **SECTION 15: TERMINATION**

**15.1** This Agreement may be terminated at any time by mutual written consent of the Parties.

**15.2** Agency may terminate this Agreement as follows:

**15.2.1** Upon 30 days advance written notice to Yamhill County;

**15.2.2** Immediately upon written notice to Yamhill County, if Agency fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in Agency's reasonable administrative discretion, to perform its obligations under this Agreement;

**15.2.3** Immediately upon written notice to Yamhill County, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Agency's performance under this Agreement is prohibited or Agency is prohibited from paying for such performance from the planned funding source;

**15.2.4** Immediately upon written notice to Yamhill County, if Yamhill County is in default under this Agreement and such default remains uncured 15 days after written notice thereof to Yamhill County; or

**15.2.5** As otherwise expressly provided in this Agreement.

**15.3** Yamhill County may terminate this Agreement as follows:

**15.3.1** Immediately upon written notice to Agency, if Yamhill County fails to receive funding, or appropriations, limitations, or other expenditure authority at levels sufficient in Yamhill County's reasonable administrative discretion, to perform its obligations under this Agreement;

**15.3.2** Immediately upon written notice to Agency, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Yamhill County's performance under this Agreement is prohibited, or Yamhill County is prohibited from paying for such performance from the planned funding source;

**15.3.3** Immediately upon written notice to Agency, if Agency is in default under this Agreement

and such default remains uncured 15 days after written notice thereof to Agency; or

**15.3.4** As otherwise expressly provided in this Agreement.

**15.4** Upon receiving a notice of termination of this Agreement, Yamhill County will immediately cease all activities under this Agreement, unless Agency expressly directs otherwise in such notice. Upon termination, Yamhill County will deliver to Agency all documents, information, product, and other property that are or would be deliverables under the Agreement. And upon Agency's reasonable request, Yamhill County will surrender all documents, research, or objects or other tangible things needed to complete the project that was to have been provided by Yamhill County under this Agreement.

## **SECTION 16: INSURANCE**

Yamhill County shall defend, save, hold harmless, and indemnify the State of Oregon and Agency and their officers, employees, and agents from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature whatsoever, including attorney's fees, resulting from, arising out of, or relating to the activities of Yamhill County or its officers, employees, subcontractors, or agents under this Agreement.

Yamhill County will have control of the defense and settlement of any claim that is subject to this Section. But neither Yamhill County nor any attorney engaged by Yamhill County may defend the claim in the name of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without first receiving from the Attorney General, in a form and manner determined appropriate by the Attorney General, authority to act as legal counsel for the State of Oregon. Nor may Yamhill County settle any claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Yamhill County is prohibited from defending the State of Oregon, or is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue at the State of Oregon desires to assume its own defense.

## **SECTION 17: NONAPPROPRIATION**

Agency's obligation to pay any amounts and otherwise perform its duties under this Agreement is conditioned upon Agency receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement. Nothing in this Agreement may be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law limiting the activities, liabilities, or monetary obligations of Agency.

## **SECTION 18: AMENDMENTS**

The terms of this Agreement may not be altered, modified, supplemented, or otherwise amended, in any manner whatsoever, except by written agreement of the Parties.

## **SECTION 19: NOTICE**

Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement shall be given in writing by email, personal delivery, facsimile, or mailing the same, postage prepaid, to a Party's Authorized Representative at the address, number or email address set forth in this Agreement, or to such other addresses or numbers as a Party may indicate pursuant to this Section 9.

## **SECTION 20: SURVIVAL**

All rights and obligations of the Parties under this Agreement will cease upon termination of this Agreement, other than the rights and obligations arising under Sections 8, 9, 10, 13, 14 and 20 hereof and those rights and obligations that by their express terms survive termination of this Agreement; provided, however, that termination of this Agreement will not prejudice any rights or obligations accrued to the Parties under this Agreement prior to termination.

## **SECTION 21: 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 will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

## **SECTION 22: COUNTERPARTS**

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.

## **SECTION 23: COMPLIANCE WITH LAW**

In connection with their activities under this Agreement, the Parties shall comply with all applicable federal, state, and local law.

## **SECTION 24: INTENDED BENEFICIARIES**

Agency and Contractor are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this Agreement.

## **SECTION 25: FORCE MAJEURE**

Neither Party is responsible for any failure to perform or any delay in performance of any obligations under this Agreement caused by fire, civil unrest, labor unrest, natural causes, or war, which is beyond that Party's reasonable control. Each Party shall, however, make all reasonable efforts to remove or eliminate such cause of failure to perform or delay in performance and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. Agency may terminate this Agreement upon written notice to Yamhill County after reasonably determining that the failure or delay will likely prevent successful performance of this Agreement.

## **SECTION 26: ASSIGNMENT AND SUCCESSORS IN INTEREST**

Yamhill County may not assign or transfer its interest in this Agreement without the prior written consent of Agency and any attempt by Yamhill County to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. Agency's consent to Yamhill County's assignment or transfer of its interest in this Agreement will not relieve Yamhill County of any of its duties or obligations under this Agreement. The provisions of this Agreement will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.

## **SECTION 27: SUBCONTRACTS**

Yamhill County shall not, without Agency's prior written consent, enter into any subcontracts for any of the work required of Yamhill County under this Agreement. Agency's consent to any subcontract will not relieve Yamhill County of any of its duties or obligations under this Agreement.

## **SECTION 28: TIME IS OF THE ESSENCE**

Time is of the essence in Yamhill County's performance of its obligations under this Agreement.

## **SECTION 29: MERGER, WAIVER**

This Agreement and all exhibits and attachments, if any, constitute 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. No waiver or consent under this Agreement binds either Party unless in writing and signed by both Parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given. EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

## **SECTION 30: RECORDS**

The Parties shall create and maintain records documenting their performance under this Agreement. The Oregon Secretary of State's Office, the federal government, the other Party, and their duly authorized representatives shall have access to the books, documents, papers, and records of a Party that are directly related to this Agreement for the purposes of making audit, examination, excerpts, and transcripts for a period of six years after termination of this Agreement.

## **SECTION 31: HEADINGS**

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

## **SECTION 32: AGREEMENT DOCUMENTS**

This Agreement consists of the following documents, which are listed in descending order of precedence: this Agreement less all exhibits, attached Exhibit A (Scope of Work), Exhibit B (Insurance), and Exhibit C (Additional Requirements).

**SECTION 33: SIGNATURES**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

**STATE OF OREGON acting by and through its Oregon State Fire Marshal's Office, Department of Oregon State Police**

*Amber Cross*

Amber Cross, Asst. Chief Deputy

3/10/2023

Date

**Yamhill County Board of Commissioners**

*Lindsay Berschauer*

Lindsay Berschauer, Chair

3.9.23

Date

**Yamhill County Emergency Management**

**Brian Young**

Digitally signed by Brian Young  
Date: 2023.02.27 09:05:46 -08'00'

Brian Young, Director

02/27/23

Date

**Exempt from Legal Sufficiency in accordance with ORS190.430**

Accepted by Yamhill County  
Board of Commissioners on  
3.9.23 by Board Order  
# B.O. 23-95

## EXHIBIT A

### STATEMENT OF WORK

#### Section 1 PILOT PROJECT:

The pilot project is to provide Yamhill County Emergency Management with a stipend to emphasize wildfire community preparedness as it relates to wildfire evacuation education, communication, or planning in the respective county.

Yamhill County may choose one or more of the following to complete the pilot project:

- May include wildfire evacuation route planning, countywide wildfire evacuation plan, wildfire evacuation zones, or other wildfire evacuation-related topics.
- May include pre-evacuation planning (i.e., Sign up for emergency alerts, developing a plan or checklist, assembling an emergency go-kit, or purchasing emergency go-kits/supplies).
- May include a public service announcement (PSA), social media, print materials, or other forms of media for marketing for wildfire evacuation.
- May include wildfire evacuation for the following target audiences or services:
  - Socially and economically vulnerable communities.
  - Translation services for persons with limited proficiency in English.
  - Persons of lower income.
  - Critical and emergency infrastructure.
  - Schools, hospitals, and facilities that serve seniors (older adults).

All projects are required to use Oregon Evacuation Levels 1-3 (Be Ready. Be Set. and Go!)

- <https://wildfire.oregon.gov/Pages/evacuations.aspx>
  
- Emergency Manager/Project Manager must submit a budget identifying how funding will be used to support the selected activities within 30 days of execution of the Agreement. Examples of expenses include, but not limited to, personnel time, equipment, product, etc.
  
- Complete pilot project by June 30, 2023. Yamhill County shall email a summary of the items completed to [Stephanie.Stafford@osp.oregon.gov](mailto:Stephanie.Stafford@osp.oregon.gov) upon completion and prior to June 30<sup>th</sup>, 2023. The county is required to meet monthly with the Fire Risk Reduction Specialist to provide status updates on the progression of this project at Agency's request.

## EXHIBIT B

# INSURANCE CERTIFICATION



State of  
Oregon-Selfins\_Cert

## EXHIBIT C

### ADDITIONAL REQUIREMENTS

#### SECTION 1: CONFIDENTIALITY AND NONDISCLOSURE

**1.1** Each Party acknowledges that it and any of its officers, directors, employees and agents may, in the course of performing its responsibilities under this Agreement, be exposed to or acquire information that is confidential to the other Party. Any and all information of any form provided to a Party or its officers, directors, employees and agents in the performance of this Agreement that reasonably could at the time of its disclosure be understood to be confidential is confidential information of the disclosing Party ("Confidential Information"). Any reports, summaries, or other documents or items (including software) that result from a receiving Party's use of Confidential Information of the disclosing Party is also confidential Information of the disclosing Party. Confidential Information does not include information that:

- a) Is or becomes (other than by disclosure by the receiving Party) publicly known or is contained in a publicly available document, except to the extent that applicable law continues to restrict or prohibit disclosure;
- b) Is furnished by the disclosing Party to others without restrictions similar to those imposed on the receiving Party under this Agreement;
- c) Is rightfully in the receiving Party's possession without the obligation of nondisclosure prior to the time of its disclosure by the disclosing Party under this Agreement;
- d) Is obtained from a source other than the disclosing Party without the obligation of confidentiality;
- e) Is disclosed with the written consent of the disclosing Party; or
- f) Is independently developed by the receiving Party's officers, directors, employees and agents who can be shown to have had no access to the Confidential Information of the disclosing Party.

**1.2** The receiving Party shall hold all Confidential Information of the disclosing Party in strict confidence, using at least the same degree of care that it uses in maintaining the confidentiality of its own confidential information; shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information of the disclosing Party to third parties; shall not use Confidential Information of the disclosing Party for any purposes whatsoever other than as contemplated by this Agreement or reasonably related thereto; and shall advise its officers, directors, employees and agents that receive or have access to the Confidential Information of their obligations to keep

Confidential Information of the disclosing Party confidential. These confidentiality obligations do not restrict disclosure of Confidential Information if the receiving Party can show that any one of the following conditions exists:

- a) The disclosure was required to respond to a subpoena or court order duly issued in a judicial or legislative process and the receiving Party notified the disclosing Party of the subpoena or court order at least five days prior to the disclosure of the disclosing Party's Confidential Information, unless such notice could not reasonably be given; or
- b) The disclosure was required to respond to a public records request made under the Oregon Public Records Law, ORS 192.410 to 192.505, and the receiving party notified the disclosing Party of the public records request at least five days prior to the disclosure of the disclosing Party's Confidential Information.

**1.3** The receiving Party shall use its best efforts to assist the disclosing Party in identifying and preventing any unauthorized use or disclosure of Confidential Information of the disclosing Party. Without limiting the generality of the foregoing, the receiving Party shall advise the disclosing Party immediately in the event it learns or has reason to believe that any person who has had access to Confidential Information of the disclosing Party has violated or intends to violate the terms of this Agreement.

**1.4** As requested by the disclosing Party, the receiving Party shall return to the disclosing Party, or destroy, all Confidential Information of the disclosing Party disclosed to the receiving Party, except that the receiving Party may retain one archival copy of the Confidential Information of the disclosing Party as and to the extent required by applicable records retention laws. Nothing in the Agreement is intended to make the receiving Party a custodian of any record or any information, documents or materials provided by the disclosing Party to the receiving Party.