

YAMHILL COUNTY GRANT AGREEMENT

THIS GRANT AGREEMENT, (“Agreement” or “Grant”) is made and entered into by and between Yamhill County, a political subdivision of the State of Oregon, acting by and through its Health and Human Services (“County”), and Yamhill Community Action Partnership, an Oregon non-profit corporation located at 1317 NE Dustin Court, McMinnville, OR 97128 (“Recipient”). Each party may hereinafter be individually referred to as the “Party” and collectively referred to as the “Parties.”

RECITALS

WHEREAS, Pursuant to funding available via State of Oregon Grant Agreement No. 177708, approved as Board Order No. 22-302 (the “Grant”), the County is authorized to enter into a grant agreement and provide funding for the purposes described in this Grant; and

WHEREAS, The Recipient applied for and received approved funding under the Grant to provide an array of supported housing and residential treatment services as further described in Exhibit A; and

WHEREAS, The receipt and use of the funding by the Recipient is subject to certain terms and conditions provided herein; and

NOW, THEREFORE, in consideration of the mutual covenants contained below, the Parties agree as follows:

AGREEMENT

1. **PURPOSE.** County and Recipient agree that Recipient shall use approved Grant Funds to provide Behavioral Health Housing Services in Yamhill County, referred to herein as the “Project”.
2. **GRANT FUNDS.** The total amount of funding awarded to Recipient is \$ 889,088.00 (“Grant Funds”). The Recipient shall receive a lump sum payment of \$889,088.00 after all documents reasonably necessary to secure the real property funded under this Agreement, as determined by the Social Determinants of Health team of OHA, including but not limited to a Declaration of Restrictive Covenant for each property, of substantially the form provided in the Grant’s Attachment 1.
3. **TERM.** The term of this Agreement is effective on July 1, 2023 and shall expire on June 30, 2024, unless otherwise extended as permitted under the Grant.
4. **PROJECT MANAGER.**
 - 4.1. Recipient’s Project Manager is Alexandra Hendgen, alexandrah@yamhillcap.org, assigned designee upon individual’s absence. Recipient shall notify County in writing or when any contact information changes during the term of this Agreement.
 - 4.2. County’s Program Manager is Lindsey Manfrin, manfrinl@co.yamhill.or.us, or assigned designee upon individual’s absence.

HHS 2401845

23-414

Board Order _____

5. RECIPIENT OBLIGATIONS.

- 5.1. Recipient shall provide Project services as described in Exhibit A, attached hereto and incorporated herein, and shall comply with all requirements as provided herein. Any changes to Project scope as detailed in Exhibit A must be approved by the County and memorialized in a written amendment to this Agreement signed by both Parties. Recipient shall not proceed with any changes to Project prior to the Amendment being approved and executed by the County.
- 5.2. Recipient shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable under this Agreement, including, without limitation, the provisions detailed in the Grant, attached hereto as Exhibit B and incorporated herein by this reference, that apply to the Project and any services provided by the Recipient hereunder.
- 5.3. Recipient shall indemnify, defend, save, and hold harmless County, its officers and employees from any and all claims, suits, or action of any nature arising out of activities of Recipient, its consultants, its contractors, its officers, subcontractors, agents, or employees under this Agreement.
- 5.4. Recipient acknowledges and agrees that County and the State of Oregon, and its duly authorized representatives, shall have access to the books, documents, papers, and records of Recipient pertinent to this Agreement for a period of six (6) years after execution of this Agreement or Recipient's expenditure or return of all the Grant Funds, whichever is longer, and Recipient shall maintain all records in accordance with state and federal law. Recipient shall work as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.
- 5.5. All employers, including Recipient, that employ subject workers who work under this Agreement 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. Recipient shall ensure that each of its Contractors complies with these requirements.
- 5.6. Recipient must obtain and maintain insurance in types and amounts customarily carried by Recipient's industry and appropriate for the Project.
- 5.7. To the extent that Grant Funds are to be used for certain purchases or renovations of real property, the Recipient is required to follow additional OHA procedures as further outlined in Exhibit B.
- 5.8. The Recipient shall comply with Health Insurance Portability and Accountability Act and the federal regulations implementing the Act (collectively referred to as HIPAA) and 42 CFR Part 2 to the extent they are applicable to the services provided by the Recipient.
- 5.9. Recipient certifies and represents that (i) the individual(s) signing this Agreement has

HHS24018GS

been authorized to enter into and execute this Agreement on behalf of Recipient, under the direction or approval of its governing body, commission, board, officers, members, or representatives, and to legally bind Recipient and shall provide County proof of such authority upon request, and (ii) there is no proceeding pending or threatened against Recipient before any court or governmental authority that if adversely determined would materially adversely affect the Project or the ability of Recipient to carry out the Project.

- 5.10. 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 Recipient.

6. COUNTY OBLIGATIONS

- 6.1. This Agreement is contingent upon County having Grant Funds sufficient to fund the Project. The Agreement is effective, and Grant Funds may be disbursed upon execution of this Agreement and the availability of Grant Funds as determined by County in its sole discretion.
- 6.2. The disbursement of Grant Funds by County is contingent upon (i) County receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow County, in the exercise of its reasonable discretion, to disburse Grant Funds under this Agreement, (ii) Recipient is not in default under this Agreement, and (iii) Recipient's representations and warranties set forth herein are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
- 6.3. County shall monitor Project for compliance and notify Recipient in writing if it appears Recipient is failing to comply with terms of this Agreement or Recipient's application and documents provided by Recipient to County prior to the execution of the Agreement.
- 6.4. County may withhold from disbursement of Grant Funds due to Recipient, or Recipient must return to County within 30 days of County's written demand any Grant Funds, if funds were: (i) paid to Recipient that exceed the amount to which Recipient is entitled, (ii) received by Recipient that remain unexpended or contractually committed for payment of the Project at the end of the Project period, (iii) determined by County or the State of Oregon to be spent for purposes other than allowable Project activities; or (iv) requested by recipient as payment for deficient activities or materials.
- 6.5. The remedies set forth in this Agreement are cumulative, are not exclusive, and are in addition to any other rights and remedies provided by law or under this Agreement.

7. GENERAL PROVISIONS

- 7.1. This Agreement may be terminated effective upon delivery of written notice to Recipient, or at such later date as may be established by County under any of the following conditions:
- 7.1.1. If Recipient fails to perform any of the provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and within ten (10) days or such longer period as County may authorize, after receipt of written notice from County, fails to correct such failures.

- 7.1.2. County or a court of competent jurisdiction determines that federal law, state law, rules, regulation or guidelines are modified, changed, or interpreted in such a way that the activities required hereunder are no longer allowable or no longer eligible for funding proposed by this Agreement.
 - 7.1.3. The County lacks lawful funding, appropriations, limitations, or other expenditure authority at levels sufficient to allow the County, in the exercise of its reasonable discretion, to pay for the Project.
- 7.2. Recipient may terminate this Agreement effective upon delivery of written notice to County under any of the following conditions:
 - 7.2.1. County fails to make payments due under this Agreement, or
 - 7.2.2. County fails to perform the provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and within ten (10) days or such longer period as Recipient may authorize, after receipt of written notice from Recipient, fails to correct such failure.
- 7.3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
- 7.4. County and Recipient are the only Parties to this Agreement and, as such, are the only Parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise to third persons unless such third persons are expressly identified by name and specifically described as intended to be beneficiaries of its terms.
- 7.5. County and Recipient hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, 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 shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
- 7.6. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement. Any Party bringing a legal action or proceeding against any other Party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Yamhill County. 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. Notwithstanding the above, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon.
- 7.7. Except as may be provided elsewhere herein, in the event that either party to this Agreement shall take any action, judicial or otherwise, to enforce or interpret any of the terms of this Agreement each party shall be wholly responsible for its own expenses which it may incur in taking such action, including costs and attorney fees, whether incurred in a suit or action or appeal from a judgment or decree therein or in connection

with any non-judicial action

- 7.8. This Agreement may be executed in several counterparts (facsimile or otherwise) 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 so executed shall constitute an original.
- 7.9. This Agreement, the Grant, and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. In the event of a conflict, Exhibit B will control over the body of this Agreement and the attachments. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification, or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, 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 part of that or any other provision.
- 7.10. All rights and obligations of the parties under this Agreement will cease upon termination of this Agreement, other than those rights and obligations that by their express terms survive termination of this Agreement; provided, however, termination of this Agreement will not prejudice any rights or obligations accrued to either party under this Agreement prior to termination.
- 7.11. Except as provided elsewhere herein, neither party will be liable for incidental, consequential or other direct damages arising out of or related to this Agreement, regardless of whether the damages or other liability is based in contract, tort (including negligence), strict liability, product liability or otherwise. Neither party will be liable for any damages or any sort arising solely from the termination of this Agreement in accordance with its terms.
- 7.12. Recipient may not assign or transfer its interest in this Agreement without the prior written consent of County and any attempt by Recipient to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. The County's consent to Recipient's assignment or transfer of its interest in this Agreement will not relieve Recipient 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.
- 7.13. Recipient shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Recipient must maintain any other records, whether in paper or other form, pertinent to this Agreement in such a manner as to clearly document Recipient's performance. All financial records and other records, whether in paper, electronic or other forms, that are pertinent to this Agreement, are collectively referred to as "Records." Recipient acknowledges and agrees County and the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. Recipient must retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following

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.

7.14. Time is of the essence in Recipient's performance of the Project activities under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed, this Agreement on the date indicated by their duly authorized officials.

**YAMHILL COMMUNITY ACTION
PARTNERSHIP**

Alexandra Hendgen
Signature

Alexandra Hendgen
Name (printed)

Executive Director
Title

11/1/23
Date

YAMHILL COUNTY

Lindsay Berschauer
Chair, LINDSAY BERSCHAUER

Mary Starrett
Commissioner, MARY STARRETT

Kit Johnston
Commissioner, KIT JOHNSTON

11/2/23
Date

APPROVED AS TO FORM:

By: *Jodi Gollehon*
Jodi Gollehon, Assistant County Counsel

Accepted by Yamhill County
Board of Commissioners on
11/2/23 by Board Order
B.O. 23-414

Exhibit A

June 8, 2023

Yamhill County Health and Human Services
Attn: Terry Malay
Behavioral Health Housing Services in Yamhill County RFP
638 NE Davis
McMinnville, OR 97128



PO Box 621
McMinnville, OR 97128

Administrative Office:
1317 NE Dustin Court
McMinnville, OR 97128
Phone: 503-472-0457
Fax: 503-472-5555

Service sites available
online at yamhillcap.org

Dear Selection Committee:

Thank you for the opportunity to submit this request for support to expand the shelter beds available at YCAP's Turnkey Program of Yamhill. The Turnkey Program of Yamhill is uniquely positioned to help increase behavioral health housing services in Yamhill County.

Operating successfully for almost two years, the Turnkey Program has an established staffing structure that in 2022 utilized 30 of the 50 rooms available to assist 83 program participants of which 65 were adults (age 18 or older) and 18 were children under the age of 18. During 2022, YCAP recognized the key to increasing the number of shelter rooms available was redesigning and upgrading the electrical, fire, life safety, and security systems from a motel model to one that is designed for individuals with significant physical and behavioral health needs.

YCAP's proposal aligns with the stated HHS goals of increasing shelter bed capacity, removing housing barriers, and providing items to meet immediate needs for houseless individuals such as hygiene kits, food, etc. Since the most significant barriers to increasing shelter beds are the capital expenses and construction management associated with the electrical, fire, life safety, and security system upgrades, those budget items are the highest priority for YCAP. Operational expenses, additional case managers, health, wellness, and food support are also priorities, but they are predicated on the capital needs first being met to expand the number of rooms being utilized and families being helped.

Enclosed please find our response to the request for proposals which includes the five page narrative and the requested budget and budget narrative. If you have any questions or require additional information, please feel free to contact me at 503-883-4172 or Ashley Parker, Housing Initiatives Director, at 503-687-1489. Thank you again for all you do for individuals who are unhoused in our community!

With gratitude,



Alexandra Hendgen
Executive Director



BEHAVIORAL HEALTH HOUSING SERVICES IN YAMHILL COUNTY RFP

Yamhill Community Action Partnership (YCAP) Proposal

A. Description of Firm or Organization's Capabilities and Experience

YCAP is a registered, non-profit 501(c)3 Resident Proposer of the State of Oregon that has been serving Yamhill County for more than 40 years by providing housing, food, energy, and youth services to individuals and families who are experiencing homelessness or are low-income. The administrative offices and Food Bank warehouse for YCAP are located at 1317 NE Dustin Court, McMinnville, Oregon 97128. YCAP is in the process of finalizing the transfer the property at 2065 OR-99W, McMinnville, OR 97128 where YCAP has been operating the Turnkey Program of Yamhill since September 2021. Originally, the Turnkey Program was intended to be short-term project, and Providence Health & Services (Providence), the current owner of the property, was planning to transition the shelter into permanent supportive housing within a couple of years. However, due to YCAP's success in helping individuals experiencing chronic homelessness move into the stable housing and the ongoing homeless crisis in Oregon, Providence and YCAP agreed the Turnkey Program will be needed as a 24/7 longer-term shelter for many years. As a result, the property is being transferred to YCAP to help streamline and localize operations. YCAP will own the property no later than September 1, 2023.

To ensure proper oversight, YCAP has increased the leadership of Housing Stabilization. Prior to 2020, YCAP had one director over both Housing and Youth Services. In 2020, a full-time director of Housing Stabilization and a full-time director of Youth Services was hired. With the addition of the Turnkey Program, one full time director of Housing Stabilization was no longer sufficient, and as such YCAP expanded to two directors, one of Housing Stabilization and

one of Housing Initiatives. Ashley Parker, the Housing Initiatives Director, came to YCAP with several years of experience running a 131 bed shelter in New Mexico, and her experience has been vital to developing the policies, procedures, and structures to make the Turnkey Program a success. Reporting to the Housing Initiative Director are the Navigation Center Manager and the Turnkey Program Manager. The Turnkey Program Manager is currently responsible for four case managers and three support staff. The Housing Initiatives Director reports to both YCAP's Deputy Director, Amber Hansen-Moore, for program elements and to the Executive Director, Alexandra Hendgen, for site development and management. The Housing Initiatives Director is also YCAP's representative to the Behavioral Health Resource Network and is actively engaged in establishing the referral systems and processes for that partnership.

YCAP has been successfully operating the Turnkey Program for almost two years with an average 70% success rate of individuals moving from homelessness into stable housing. During this time, funding for the program has been secured from a variety of local, state, and federal sources including the Yamhill Community Care Organization (YCCO), the Oregon Housing and Community Services (OHCS), Measure 110, Meyer Memorial Trust, Oregon Community Foundation, etc. Individuals who participate in the Turnkey Program are identified through YCAP's Coordinated Entry and Build for Zero By Name List. Information is maintained securely through HMIS: Homeless Management Information System and reports can be pulled as needed to provide information in aggregate form. Since the majority of YCAP's funding is from federal and state grant programs, YCAP's financial systems, insurances, policies, procedures, and data collection are designed to follow applicable federal and state laws, regulations and standards.

B. Description of the project proposed.

The Turnkey Program provides each participant with 30 nights of non-congregate shelter and food support which is renewable in 30 day increments upon completion of certain benchmarks. These benchmarks typically include meetings with case managers, developing a housing plan, addressing housing barriers including healthcare, substance use disorders, mental health, etc., and securing income (disability payments, employment, etc.). While the Turnkey Program has been operating successfully for almost two years through funding from OHCS, YCCO, and others, it has not been operating at full capacity. Originally, YCAP did not have sufficient staffing to utilize all 50 rooms; however, once that problem was resolved, a new issue arose. The electrical and fire systems at the property were originally designed for a motel and are insufficient for the Turnkey Program. For example, many Turnkey Program participants have medical equipment that require additional electrical output beyond what was designed for the motel. CPAP machines, oxygen machines, electric wheelchairs, etc. all require additional power which result in breakers being tripped if all rooms are utilized. As a result, only 30 rooms can be used for program participants leaving 20 rooms (approximately 30 beds) empty.

YCAP's construction consultant has secured estimates from electricians one of whom worked on the property previously as to the cost to redesign and install a new electrical system to enable usage of all 50 rooms. The cost is estimated to be \$380,000 with an anticipated completion date of October 2023. In addition, the room doors, cameras, and fire systems are also inadequate. The estimated cost to upgrade these essential fire, life safety, and security systems is an additional \$120,000. YCAP's construction consultant has been working for the past seven months to expedite the Navigation Center capital projects in Newberg and McMinnville and has extensive experience in non-profit construction for homeless services. She previously worked

for almost seven years as a Senior Project Manager with the non-profit Housing Development Center in Portland building low-income housing throughout Oregon. YCAP is budgeting \$25,000 for her assistance in supporting these capital improvements of the Turnkey Program to ensure the facility is fully operational by Winter 2023. These capital projects and expenses are YCAP's top priorities for funding.

Once the new systems are in place, YCAP will also need two additional case managers working on site as well as more funding for utilities, security, etc. The case managers salary and benefits will cost \$92,400 and the added operational costs are \$100,000 for the eight months following construction completion. YCAP is also in the process of converting one room into a food pantry and resource room to provide easier access to fresh produce, microwave or crock pot meals, and health/wellness supplies. The cost to secure appropriate food, health, and wellness supplies on a weekly basis is \$130,000.

The population served by the Turnkey Program are the most vulnerable in Yamhill County. They are individuals and families who have been unhoused for years and need intensive support over a longer period of time to move into stable housing. Three participants recently helped by the program were willing to share their stories. Billy's story: "In the 90s, I was convicted of two different possession charges in Multnomah and Yamhill counties. I made a lot of mistakes with my parole officer. I was an addict, missing meetings, falling deeper into the drug world. Violating my parole conditions only put me further behind in life." After entering the Turnkey Program, Billy's life took a better turn "Accept the help, Turnkey has simple guidelines to follow that's only to benefit you. I wouldn't change a thing. It is set up for success. Why do I say this? First of all, if you can't follow this simple set up with free room and board then you won't be successful in an apartment and that's what this is about. I will call it a sacrifice

to build credibility within yourself to create success. That was a big thing for me.” Two other program participants were a mother and her adult autistic son: “I became homeless in the Spring of 2018. After the loss of my mother in 2015, I cared for my aging stepfather through the end of his life in October 2017. My step siblings wanted to sell the house, and needed me out of the way. I then found myself living in my car with my autistic son. At this point, I’d lost not just my home, but part of my identity.” After years of being unhoused, the Turnkey Program was able to help: “I was fortunate to make it into the Turnkey Program through YCAP in February of 2022. Now, a year later, I am the proud holder of the keys to my own apartment in Willamina. It’s been a painful journey at times, but thanks to YCAP’s help, my son and I look forward to our lives improving every day as I take my place among the millions of hard-working people with their own space to continue their own story of excellence and perseverance.”

Even with only 30 available rooms, YCAP is now moving a little more than one family a week into stable housing. With the additional 20 rooms (approximately 30 beds) and case management support, YCAP anticipates being able to move two families a week into stable housing. YCAP can provide on a monthly basis a unit report on the success of the program that includes number of unduplicated individuals served, nights of shelter, and positive housing exits. Additional information regarding demographics and services provided can be reported on a quarterly basis.

Thank you for the opportunity to request \$889,088 to support the addition of 20 high-quality, non-congregate shelter rooms (approximately 30 beds) with wrap-around services for vulnerable families experiencing homelessness in Yamhill County.

BEHAVIORAL HEALTH HOUSING SERVICES IN YAMHILL COUNTY RFP

Yamhill Community Action Partnership (YCAP) Proposal

RFP Exhibit A – 12 month budget with narrative (July 1, 2023 – June 30, 2024)

	Amount
Capital Expenses	
Electrical Design and Upgrade Including Patching Drywall and Paint	\$ 380,000
Fire, Life Safety, and Security System Equipment and Installation	\$ 120,000
Subtotal Capital Expenses	\$ 500,000
Personnel Salaries	
Direct Staff (2 FTE case managers for eight months)	\$ 66,000
Benefits	\$ 26,400
Supplies	\$ -
Travel	\$ -
Construction Consultant	\$ 25,000
Other costs	
Staff Development	\$ -
Rent	\$ -
Security	\$ 50,000
Utilities and General Maintenance	\$ 50,000
Health, wellness and food support	\$ 130,000
Subtotal Personnel and Operational Costs	\$ 347,400
Admin (Audit, Insurance, Payroll) 12% Federal Indirect Rate	\$ 41,688
Total	\$ 889,088

\$380,000 is requested for electrical design and upgrades including the patching of drywall and painting after upgrades are completed. This amount is based on estimates provided by contractors who previously worked on the facility when it was first purchased for use as a non-congregate shelter. Updated estimates were received within the last week based on information now available regarding electrical usage necessary for individuals with high medical needs. Prior to awarding, a public RFP will be posted and multiple bids will be solicited utilizing established state and federal procurement protocols.

\$120,000 is requested for fire, life safety, and security system equipment and installation.

YCAP has secured multiple bids for work that is required by the McMinnville Fire Marshall to bring the building into compliance based on its current usage as a shelter. A portion of that work is already underway and being paid by OHCS funding which ends on June 30, 2023, and HHS funds will enable that work to continue after July 1, 2023 until completion.

\$25,000 is requested for a construction consultant to assist with expediting the work on the Turnkey property to ensure the additional rooms are available for Winter 2023. The consultant has experience managing large scale building projects and enables YCAP program personnel to stay focused on helping families experiencing homelessness.

\$92,400 is requested for personnel. This amount will pay 100% of two case managers (\$66,000) for eight months and Benefits (\$26,400) for health insurance, workers comp, retirement, unemployment, and FICA. Case Managers work directly with program participants to develop Individualized Needs Assessments (INA) and Case Management Plans (CMP) which are designed to target key barriers related to their mental and physical health, income, and housing.

\$100,000 is requested for additional operating costs. This amount includes \$50,000 for utilities and general maintenance (\$6,250/month *8 months) which will offset anticipated increases in electricity, water/sewer, gas, phone/internet, garbage, pest management services, make ready supplies, small room appliance replacement, etc. Operating costs also includes \$50,000 for increased security due to the presence of more individuals at the shelter.

\$130,000 is requested for health, wellness, and food support. Additional food support is estimated to cost \$96,000 (\$100/week*32 weeks*30 individuals). While 20 rooms are being

added, some have two beds and some have one. Health and wellness resources include general personal hygiene products, first aid supplies, etc.

\$41,688 is requested for administrative costs based on YCAP's federally approved indirect cost rate of 12%.

Additional program costs are covered through other grants or donations.



Grant Agreement Number 177708

**STATE OF OREGON
INTERGOVERNMENTAL GRANT AGREEMENT**

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

This Agreement is between the State of Oregon, acting by and through Oregon Health Authority (OHA) and the OHA's Health System Division:

**Heath Systems Division
500 Summer St SE, E86
Salem, Oregon 97301**

hereinafter referred to as "OHA," and

**Yamhill County
627 NE Davis Street
McMinnville, OR 97128
Attention: Lindsey Manfrin
Telephone: 503-434-7525
E-mail address: manfrinl@co.yamhill.or.us**

hereinafter referred to as "Recipient."

RECITALS

WHEREAS, the Oregon State Legislature, for the biennium ending June 30, 2023, appropriated \$100,000,000 out of the General Fund for increasing behavioral health housing in House Bill 5202, section 364.

WHEREAS, the Oregon State Legislature's Joint Committee On Ways and Means stated in the bill's Budget Report and Measure Summary that the OHA was appropriated money "for

distribution to community mental health programs (CMHP) and related administrative support in OHA. The goals of this funding are to provide an array of supported housing and residential treatment, relieve bottlenecks in the continuum of care, and address health inequities and housing access disparities, among others.”

WHEREAS, the OHA issued a Request for Applications to the CMHPs. The OHA has reviewed all the applications received and intends to disburse the grant awards. NOW, THEREFORE, in consideration of the premises, covenants and agreements contained herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Effective Date and Duration.

This Agreement shall become effective on the date this Agreement has been fully executed by every party and, when required, approved by the Oregon Department of Justice (the “Effective Date”). Unless extended or terminated earlier in accordance with its terms, this Agreement shall expire on April 1, 2024. Agreement termination shall not extinguish or prejudice OHA’s right to enforce this Agreement with respect to any default by Recipient that has not been cured.

2. Agreement Documents.

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

- (1) Exhibit A, Part 1: Program Description
- (2) Exhibit A, Part 2: Payment and Financial Reporting
- (3) Exhibit A, Part 3: Special Terms and Conditions (including Attachment 1)
- (4) Exhibit B: Standard Terms and Conditions
- (5) Exhibit C: Insurance Requirements
- (6) Exhibit D: Approved Budget

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

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

3. Grant Disbursement Generally.

The maximum not-to-exceed amount payable to Recipient under this Agreement, which includes any allowable expenses, is \$2,828,947.00. OHA will not disburse grant funds to Recipient in excess of the not-to-exceed amount and, notwithstanding any other provision of this Agreement, will not disburse grant funds until this Agreement has been signed by all Recipient(s) and, when required, approved by the Oregon Department of Justice. OHA will disburse the grant to Recipient as described in Exhibit A.

4. Contractor or Subrecipient Determination.

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

- Recipient is a subrecipient
- Recipient is a contractor
- Not applicable

5. Catalog of Federal Domestic Assistance (CFDA) #(s) of federal funds to be paid through this Agreement: N/A

6. Recipient Data and Certification.

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

PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION

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

Street address: 535 NE Fifth Street

City, state, zip code: McMinnville, OR 97128

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

Telephone: (503) 474-4911 Facsimile: (503) 434-7553

Business Designation: (Check one box):

- Professional Corporation
- Nonprofit Corporation
- Limited Partnership
- Limited Liability Company
- Limited Liability Partnership
- Sole Proprietorship
- Corporation
- Partnership
- Other Local Government

Recipient Proof of Insurance. Recipient shall provide proof of all insurance listed and required by Exhibit C in accordance with the deadline established in Exhibit C, Section 8.

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

- (1) Recipient is in compliance with all insurance requirements in Exhibit C of this Agreement and Recipient shall deliver to the OHA Agreement Administrator (see page 1 of this Agreement) the required Certificate(s) of Insurance in accordance with Exhibit C, Section 8. By certifying compliance with all insurance as required by this Agreement, Recipient acknowledges it may be found in breach of the Agreement for failure to obtain required insurance. Recipient may also be in breach of the

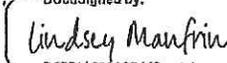
Agreement for failure to provide Certificate(s) of Insurance as required and to maintain required coverage for the duration of the Agreement;

- (2) The information shown in Section 6a. "Recipient Information", is Recipient's true, accurate and correct information;
- (3) To the best of the Recipient's knowledge, Recipient has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts;
- (4) Recipient is not subject to backup withholding because:
 - (a) Recipient is exempt from backup withholding;
 - (b) Recipient has not been notified by the IRS that Recipient is subject to backup withholding as a result of a failure to report all interest or dividends; or
 - (c) The IRS has notified Recipient that Recipient is no longer subject to backup withholding;and
- (5) Recipient Federal Employer Identification Number (FEIN) or Social Security Number (SSN) provided is true and accurate. If this information changes, Recipient shall provide OHA with the new FEIN or SSN within 10 days.

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

7. **Signatures.** This Agreement and any subsequent amendments may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement and any amendments so executed shall constitute an original. Copies of signature by facsimile, electronic scan, or other electronic means will be considered original signatures.

Yamhill County

By: DocuSigned by:

B2751A336A2B440...

Authorized Signature
HHS Director

Title

Lindsey Manfrin

Printed Name
9/22/2022

Date

State of Oregon acting by and through its Oregon Health Authority

By: DocuSigned by:

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Authorized Signature
Director of Business Operations

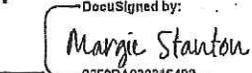
Title

Mick Mitchell

Printed Name
10/13/2022

Date

Approved by: Director, OHA Health Systems Division

By: DocuSigned by:

98520A032316422...

Authorized Signature
Director

Title

Margie Stanton

Printed Name
10/13/2022

Date

Approved for Legal Sufficiency:

Via e-mail by Wendy Johnson, Assistant Attorney General August 23, 2022; email in agreement file.

Accepted by Yamhill County
Board of Commissioners on
9/22/22 by Board Order
22-302

EXHIBIT A

Part 1 Program Description

1. **Eligible Program Activities:** Each of the following are eligible program activities and Grant funds may be expended for the costs of such activities, if such costs are in accordance with Recipient's budget approved by OHA, which is attached to this Agreement as Exhibit D, as it may be revised by Recipient and approved in writing from time to time by OHA.
 - a. Repurpose or build new secure residential treatment facilities, residential treatment homes, adult foster homes, supported housing units, and supportive housing units.
 - b. Operational and administrative costs to manage housing
 - c. Housing support services
 - d. Planning, coordination, siting, purchasing buildings/land (pre-build or renovation activities)
 - e. Subsidies for short-term shelter beds
 - f. Long-term rental assistance
 - g. Outreach and engagement items such as food or clothing to meet immediate needs for houseless individuals

2. **Reporting Requirements**
 - a. **Monthly Reports.**
 - (1) Recipient shall prepare and electronically submit written monthly compliance reports to hsd.contracts@oha.oregon.gov describing the grant activities and progress to OHA if OHA is providing grant funds in the amount of \$100,000 or more that are to be used for the purchase or renovation of real property and the Recipient is in the property acquisition, construction, or redevelopment phases of the Project. Reports must be prepared using forms and procedures prescribed by OHA. Forms are located at <http://www.oregon.gov/OHA/HSD/AMH/Pages/Reporting-Requirements.aspx>, and the procedures described in "HB 5202".
 - (2) Reports are due to OHA HSD on the 15th of the month for the previous month. The first report is due 60 days after the execution of this Agreement.

b. **Quarterly Reports.**

- (1) Recipient shall prepare and electronically submit written quarterly reports that describe the grant activities for the quarter and any other information that OHA may reasonably require
- (2) Reports are due to OHA HSD no later than April 15 (January 1- March 31), July 15 (April 1- June 30), October 15 (July 1- September 30), and January 15 (October 1-December 31) each year.
- (3) Reports shall demonstrate OHA HSD requirements of the continued use of property for the agreed purpose as defined in any Declaration of Restrictive Covenants executed and all other documents reasonably necessary to secure the performance of this Agreement, as determined by the Social Determinants of Health team of OHA.
- (4) Reports shall provide quarterly data as OHA HSD requests, including but not limited to bed/unit/client capacity by property/facility with their utilization rates and data on clients served by property/facility. OHA will provide the reporting form and instructions for completion and submission of this quarterly compliance report. Recipient may be required to provide capacity and utilization rates every 60 days or more frequently as requested by OHA HSD.

Exhibit A
Part 2
Payment and Financial Reporting

1. Payment and Financial Reporting.

- a. OHA no longer issues paper checks. To receive grant funding, Recipient must enroll in Electronic Funds Transfer (EFT), also known as direct deposit. To enroll, Recipient must submit a completed Direct Deposit Authorization Form found with OHA. If Recipient already has EFT set up for any type of payment that comes from the Oregon Health Authority, Recipient should not send in another form. Recipient may contact the EFT Coordinator at (503) 945-5710 for technical assistance. Due to the confidential nature of bank account information, Recipient should only provide bank information to the EFT Coordinator or OHA Financial Services.
- b. OHA will grant funds to Recipient, subject to the following:
 - i. Grant funds may be expended only for costs that are directly and reasonably related to Eligible Program Activities provided under this Agreement and in accordance with the terms and conditions of this Agreement.
 - ii. Grant funds may be expended only for costs in accordance with Recipient's budget approved by OHA, which is attached to this Agreement as Exhibit D, as it may be revised by Recipient and approved in writing from time to time by OHA.
 - iii. Grant funds may not be used to supplant other funding sources.
 - iv. Grant funds may be expended for travel-related costs only in accordance with the requirements of the Oregon Accounting Manual applicable to travel-related costs, as the same may be amended from time to time.
 - v. Grant funds may only be used to cover Eligible Program Activities incurred during the period beginning from the Effective Date and ending December 31, 2023. A cost is considered to have been incurred if Recipient has incurred an obligation (as defined below) with respect to such cost by December 31, 2023. An "obligation" is an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment.
 - vi. Grant funds awarded to Recipient may be adjusted among the Eligible Program Expenses as shown in Exhibit D up to 20%, without prior written approval by OHA, but Recipient shall promptly notify OHA in writing of such adjustment.
 - vii. Notwithstanding Section 1.b.vi. of this Exhibit A, Part 2, Grant funds may be used for administrative program costs up to but not to exceed 10%.

- c. OHA will disburse the grant funds to Recipient upon the Effective Date.
- d. Recipient must complete an "Oregon Health Authority Social Determinants of Health Expenditure Report" located at: <https://www.oregon.gov/OHA/HSD/AMH/Pages/Reporting-Requirements.aspx>. These reports must detail the use of grant fund expenditures with declining balances for each budget line and be submitted to OHA each quarter on the following schedule:

Fiscal Quarter	Due Date
First: July 1 – September 30	October 30
Second: October 1 – December 31	January 30
Third: January 1 – March 31	April 30
Fourth: April 1 – June 30	August 20

EXHIBIT A

**Part 3
Special Terms and Conditions**

- 1. Real Property Purchase, Renovation, or Improvement.** Before grant funds in the amount of \$100,000 and above, paid to Recipient under this Agreement, are to be used for purchase or renovation of real property, Recipient shall notify OHA and subsequently execute all documents reasonably necessary to secure the real property funded with this Agreement, as determined by the Social Determinants of Health team of OHA, including but not limited to a Declaration of Restrictive Covenant for each property, of substantially the form attached hereto as **Attachment 1**. The obligations described in the documents executed under this Exhibit A Part 3, shall continue until the expiration term in such documents, and the parties agree such terms are not merged with the term of the Agreement expiration, i.e., on April 1, 2024.

EXHIBIT B
Standard Terms and Conditions

1. Governing Law, Consent to Jurisdiction.

This Agreement shall be governed by and construed and enforced 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 consent by the State of Oregon to the jurisdiction of any court or a waiver by the State of Oregon 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. Recipient hereby consents to the exclusive jurisdiction of such courts, waives any objection to venue, and waives any claim that any such forum is an inconvenient forum.

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. Without limiting the generality of the foregoing: (i) the Recipient shall comply with Health Insurance Portability and Accountability Act and the federal regulations implementing the Act (collectively referred to as HIPAA) and 42 CFR Part 2 to the extent they are applicable to the services provided by the Recipient; and (ii) no grant funds may be used for any harm reduction activities that would violate Oregon's drug paraphernalia law, ORS 475.525, including but not limited to the purchase or delivery of safe smoking supplies, drug testing strips, or devices used to prepare controlled substances, unless the Recipient maintains documentation that demonstrates the activities fall within an exemption under ORS 475.525(4) or (5), or the Recipient is a syringe service program providing sterile needles and syringes and other items as part of their activities, in accordance with ORS 475.757. Failure to comply with any of the foregoing requirements is grounds for termination of the grant.

3. Independent Parties; Conflict of Interest.

- a. Recipient is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.
- b. If Recipient is currently performing work for the State of Oregon or the federal government, Recipient by signature to this Agreement, represents and warrants that Recipient's participation in this Agreement creates no potential or actual conflict of interest as defined by ORS Chapter 244 and that no statutes, rules or regulations of the State of Oregon or federal agency for which Recipient currently performs work would prohibit Recipient's participation under this Agreement. If disbursement under this Agreement is to be charged against federal funds, Recipient certifies that it is not currently employed by the federal government.

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 payment of grant funds under this Agreement is contingent on OHA receiving appropriations, limitations, allotments and other expenditure authority sufficient to allow OHA, in the exercise of its reasonable administrative discretion, to pay the grant funds to Recipient as set forth 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 the EFT Coordinator identified in Exhibit A, Part 2, Section I.

5. Recovery of Overpayments.

Any funds disbursed to Recipient under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") or that remain unexpended on termination or expiration of this Agreement ("Unexpended Funds") 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 termination or expiration of this Agreement, as applicable. OHA, in its sole discretion, may recover Misexpended Funds 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 Misexpended Funds or Unexpended Funds. If Recipient objects to the amount withheld or proposed to be withheld, Recipient shall notify OHA that it wishes to engage in dispute resolution in accordance with Section 13 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.

Recipient 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 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.

8. Default; Remedies; Termination.

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

- (1) Recipient institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or
- (2) Recipient no longer holds a license or certificate that is required for Recipient to perform its obligations under this Agreement and Recipient has not obtained such license or certificate within 14 calendar days after OHA's notice or such longer period as OHA may specify in such notice; or
- (3) Recipient fails to return Misexpended Funds or Unexpended Funds in accordance with Section 5 of this Exhibit B; or
- (4) Recipient commits any material breach or default of any covenant, warranty, obligation or agreement under this Agreement, fails to perform any obligation under this Agreement within the time specified herein or any extension thereof, or so fails to pursue performance of any obligation as to endanger Recipient's performance under this Agreement in accordance with its terms, and such breach, default or failure is not cured within 14 calendar days after OHA's notice, or such longer period as OHA may specify in such notice.

b. OHA's Remedies for Recipient's Default. In the event Recipient is in default under Section 8.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 8.e.(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 Misexpended Funds or Unexpended Funds 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 8.a., then Recipient shall be entitled to the same remedies as if this Agreement was terminated pursuant to Section 8.e.(1).

- c. Default by OHA. OHA shall be in default under this Agreement if OHA commits any material breach or default of any covenant, warranty, or obligation under this Agreement, and such breach or default is not cured within 30 calendar days after Recipient's notice or such longer period as Recipient may specify in such notice.
- d. Recipient's Remedies for OHA's Default. In the event OHA terminates this Agreement under Section 8.e.(1), or in the event OHA is in default under Section 8.c. and whether or not Recipient elects to exercise its right to terminate this Agreement under Section 8.e.(3), Recipient's sole remedy will be a claim for payment of grant funds for costs or expenses incurred and for which payment is authorized by this Agreement. In no event shall OHA be liable to Recipient for any expenses related to termination of this Agreement or for anticipated profits or loss.

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 sufficient to allow OHA, in the exercise of its reasonable administrative discretion, to pay the grant funds to Recipient as set forth in this Agreement;
 - (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, 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 8.a.
- (3) Recipient's Right to Terminate for Cause. Recipient may terminate this Agreement upon 30 days' prior written notice to OHA or at such later date as Recipient may establish in such notice, if OHA is in default under Section 8.c. and OHA fails to cure such default within 30 calendar days after OHA receives Recipient's notice or such longer period as Recipient may specify in such notice.

- (4) Mutual Termination. This 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.
- (5) 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.
- (6) Effect of Termination. Upon termination of this Agreement, Recipient shall immediately cease all activities under this Agreement unless, in a written notice issued by OHA, OHA expressly directs otherwise.

9. Insurance.

Recipient shall maintain insurance as set forth in Exhibit C, attached hereto.

10. 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.

11. 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 meanings set forth in OAR 943-014-0305, as such rule may be revised from time to time.

12. 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.

13. Resolution of Disputes.

The parties shall attempt in good faith to resolve any dispute arising out of or related to 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.

14. 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, 9, 10, 11, 12, 14, 15, and 16 of this Exhibit B. OHA's consent to any subcontract shall not relieve Recipient of any of its duties or obligations under this Agreement.

15. 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.

16. 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.

17. 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: Oregon Health Authority
Health Systems Division
500 Summer St SE, E86
Salem, Oregon 97301

18. Headings; Interpretation.

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. This Agreement will be interpreted according to its fair meaning and not strictly for or against any party to this Agreement. Any provision of this Agreement that would reasonably be expected to survive its termination or expiration will do so, including but not limited to Sections 1, 2, 5, 7, 8(e)(5), 13, 15, 16, 17, 18, and 19 of Exhibit B of this Agreement.

19. Amendments; Waiver; Consent.

No amendment, waiver, or consent under this Agreement shall bind either party unless it is in writing and signed by both parties and when required, approved by the Oregon 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.

20. Prohibition on Supplanting.

Grant funds may not supplant or replace other funds that have been contracted for the same purpose. Recipient shall ensure that the activities provided under this Agreement will be in addition to, and not in substitution for, comparable activities.

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. The obligations contained in this Agreement shall not be merged with the Covenant and other documents provided for in Exhibit A Part 3.

EXHIBIT C

Insurance Requirements

Recipient shall require its first tier contractor(s) (each, a "Contractor") that are not units of local government as defined in ORS 190.003, if any, to obtain the insurance specified in this Exhibit C prior to performing under this Agreement and maintain it in full force throughout the duration of this Agreement, as required by any extended reporting period or tail coverage requirements, and all warranty periods that apply. Contractor shall obtain the following insurance from 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 OHA. Coverage shall be primary and non-contributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers' Compensation. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

1. 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 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.

2. 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 Agreement, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.

3. PROFESSIONAL LIABILITY:

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 Agreement by the Contractor and Contractor's subcontractors, agents, officers or employees in an amount not less than \$1,000,000 per claim. Annual aggregate limit shall not be less than \$2,000,000. 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 Recipient shall provide Tail Coverage as stated below.

4. EXCESS/UMBRELLA INSURANCE:

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

5. ADDITIONAL INSURED:

All liability insurance, except for Workers' Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Agreement 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 Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance. Insurance must have an endorsement providing that the insurer may not invoke sovereign immunity up to the limits of the policy in any court. The Additional Insured endorsement with respect to liability arising out of Contractor's 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.

6. WAIVER OF SUBROGATION:

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

7. TAIL COVERAGE:

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, 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 this Agreement, for a minimum of 24 months following the later of (i) Contractor's completion and OHA's acceptance of all Services required under this Agreement, or, (ii) OHA or Recipient's termination of this Agreement, or, (iii) The expiration of all warranty periods provided under this Agreement.

8. CERTIFICATE(S) AND PROOF OF INSURANCE:

Contractor shall provide to OHA Certificate(s) of Insurance for all required insurance before conducting any activities required under this Agreement. 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 Agreement. 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 OHA has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Agreement.

9. NOTICE OF CHANGE OR CANCELLATION:

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

10. INSURANCE REQUIREMENT REVIEW:

Recipient agrees to periodic review of insurance requirements by OHA under this Agreement and to provide updated requirements as mutually agreed upon by Recipient and OHA.

11. STATE ACCEPTANCE:

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

EXHIBIT D

Projects or Services	Description and use of other Funds	Expected Impact	Cost Estimate	Any Other Funding
<p>Repurpose or build new secure residential treatment facilities, residential treatment homes, adult foster homes, supported housing units, and supportive housing units.</p> <p>Operational and administrative costs to manage housing</p>	<p>Recipient will use grant funds to assist with paying for the following costs:</p> <ol style="list-style-type: none"> 1. Transitional Treatment Recovery Services stabilization house expansion with 24/7 on site recovery support. 2. Non-congregate transitional housing with on-site support services expansion. 3. Congregate sheltering with on-site behavioral health support and services expansion. 	<p>Provide needed staffing and supports for people in the programs which includes wrap around supports, case management, mental health treatment and substance use disorder treatment.</p>	<p>\$0</p> <p>\$1,335,000</p>	
<p>Housing support services</p>	<p>Recipient will use grant funds for barrier removal support to pay for deposits, previous unpaid fines, and basic furniture support.</p>	<p>Support for approximately 90-120 individuals or families to secure rentals who would not otherwise be able to due to financial barriers.</p>	<p>\$180,000</p>	
<p>Planning, coordination, siting, purchasing buildings/land (pre-build or renovation activities)</p>	<p>Recipient will use grant funds for:</p> <ol style="list-style-type: none"> 1. Transitional Treatment Residential Services expansion. 2. Non-congregate transitional 	<ol style="list-style-type: none"> 1. Double capacity for stabilization housing. 2. Increase non-congregate sheltering 	<p>\$1,255,000</p>	

D.O. 22-502
Exhibit D

	housing with on-site support services expansion. 3. Congregate sheltering with on-site behavioral health support and services expansion. 4. Peer Assisted Crisis House renovation to ensure ADA accessibility and provide security improvements.	for roughly 30 people. 3. Increase congregate sheltering by 11-20 beds. 4. Ensure ADA accessibility within the Peer Assisted Crisis House.	
Subsidy for short term shelter beds			\$0
Long term rental assistance			\$0
Outreach and engagement items such as food or clothing to meet immediate needs for houseless individuals	Recipient will use grant funds for the purchase of portable showers, food, clothes, battery-operated fans, blankets, hygiene kits, etc.	Provide needed concrete supports for people	\$58,947
Total Grant Amount:			\$2,828,947.00

ATTACHMENT 1

*

After Recording Return to:

Oregon Health Authority
Health Systems Division
500 Summer St SE, E86
Salem, OR 97301

SPACE ABOVE FOR RECORDER'S USE

SAMPLE SAMPLE SAMPLE SAMPLE SAMPLE SAMPLE SAMPLE
(for use with Oregon governmental entity Declarants)

STATE OF OREGON OREGON HEALTH AUTHORITY

DECLARATION OF RESTRICTIVE COVENANTS

This Declaration of Restrictive Covenants (this "Declaration") is made and entered into this [] day of [] 2022 (the "Effective Date") by and between [], an Oregon [] ("Declarant") and the State of Oregon ("State"), acting by and through the Oregon Health Authority and its Health System Division ("OHA") pursuant to House Bill 5202, section 364. OHA and Declarant may be referred to herein jointly as the "Parties" or individually as a "Party".

RECITALS

- A. Whereas, the Oregon State Legislature's Joint Committee On Ways and Means stated in the Budget Report and Measure Summary for House Bill 5502 that the OHA was appropriated funds "for distribution to community mental health programs (CMHP) and related administrative support in OHA. The goals of this funding are to provide an array of supported housing and residential treatment, relieve bottlenecks in the continuum of care, and address health inequities and housing access disparities, among others."
- B. Whereas, the OHA issued a Request for Applications (RFA) to the CMHPs for receiving this funding and Declarant applied for a grant award.
- C. Declarant is a CMHP and was awarded an amount not to exceed [] (\$[]) (the "Grant") from the State General Fund for the purpose of increasing behavioral health housing by [] (collectively, the "Improvements") situated on certain real property located in the city of [], [] County (the "County"), State of Oregon, as more particularly described in Exhibit A attached hereto (the "Property"). The Property, together with the Improvements, is referred to herein as the "Project" and is further described in Exhibit B attached hereto.
- D. Terms and conditions of the Grant for the Project are set forth in that certain Intergovernmental Grant Agreement dated [], 2022 by and between the Parties (the "Grant Agreement").

E. A condition of the Grant Agreement provides that to the extent that grant funds are to be used for certain purchases or renovations of real property, Declarant is required to follow additional OHA procedures. Pursuant to that condition, provided in Exhibit A, Part 3 of the Grant Agreement, OHA has required Declarant to execute this Declaration, as a condition to Declarant's use of Grant funds for the purchase or renovation of real property for purposes of the Project.

F. The Parties desire that this Declaration be recorded in the relevant county records at Declarant's cost and that certain terms herein constitute restrictive covenants and equitable servitudes running with the Property and governing, among other things, the maintenance, monitoring, and operation of the Project.

AGREEMENT

NOW, THEREFORE, for good and sufficient consideration, including the terms, conditions, covenants, warranties, and undertakings set forth herein, the Parties agree as follows:

1. INCORPORATION.

The foregoing recitals and exhibit(s) to this Declaration are incorporated into this Declaration by reference to the same extent and with the same force and effect as if fully set forth herein, provided, however, that the incorporated items do not modify the express provisions of this Declaration.

2. REPRESENTATIONS, WARRANTIES AND COVENANTS OF DECLARANT.

Declarant represents, warrants and covenants that:

2.1. Organization and Authority. Declarant has all necessary right, power and authority under its organizational documents to (a) execute, deliver and record this Declaration, and (b) incur and perform its obligations under this Declaration.

2.2. Use of Grant Funds. Declarant has used or will use the Grant funds only for the Project costs as provided for in the Grant Agreement.

2.3. Full Disclosure. Declarant has disclosed in writing to OHA all facts that may materially adversely affect the Project, or the ability of Declarant to perform all obligations required by this Declaration. Declarant has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading, regarding the Grant, the Project and this Declaration. The information contained in this Declaration is true and accurate in all respects.

2.4. Pending Litigation. Declarant has disclosed in writing to OHA all proceedings, environmental or otherwise, pending (or to the knowledge of Declarant, threatened) against or affecting Declarant, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project or the ability of Declarant to perform all obligations required by this Declaration.

2.5. No Defaults.

(a) No Defaults or Events of Default exist or occur upon authorization, execution or delivery of this Declaration.

(b) Declarant has not violated and has not received notice of any claimed violation of, any agreement or instrument to which it is a party or by which the Project or its property may be bound, that would materially

adversely affect the Project or the ability of Declarant to perform all obligations required by this Declaration.

2.6. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Declaration will not: (i) cause a breach of a material agreement, indenture, mortgage, deed of trust, or other instrument, to which Declarant is a party or by which the Project or any of Declarant's property or assets may be bound; (ii) violate any provision of the applicable enabling statutes, code, charter, ordinances or other Oregon law pursuant to which Declarant was organized or established; or (iii) violate any laws, regulations, ordinances, resolutions, or court orders related to Declarant, the Project or Declarant's properties or operations.

2.7. Governmental Consent. Declarant has obtained or will obtain all permits and approvals, and has made or will make all notifications, declarations, filings or registrations, required for the making and performance of its obligations under this Declaration and undertaking and completion of the Project, including without limitation, all land use approvals and development permits required under local zoning or development ordinances, state law and federal law for the use of the land on which the Project will be located.

2.8. Responsibility. Declarant assumes full responsibility for timely and appropriate completion of the Project, for ownership of the Project, for its operation in accordance with this Declaration and the Grant Agreement and acknowledges that OHA has no direct or contractual responsibility for the Project, for ownership of the Project, or for its operation.

3. ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF DECLARANT.

Declarant also represents, warrants, and covenants that:

3.1. Fair Housing and Other Civil Rights Compliance. Declarant shall comply with all applicable state and federal nondiscrimination laws, including but not limited to the Fair Housing Act and the Americans with Disabilities Act;

3.2. Use Restrictions.

(a) [_____]

(b) [_____]

(c) **Use Restriction Period.** For a period of twenty (20) years from December 31st of the year that the Project is completed or until **December 31, 2042**, whichever is later (the "Use Restriction Period"), Declarant is required to provide and comply with the requirements of the [_____], together, the "Use Restrictions".

3.3. Habitability; Other Compliance. Throughout the Use Restriction Period, Declarant will manage the Project in a safe, sanitary, and habitable condition satisfactory to OHA and in accordance with applicable zoning and code requirements.

3.4. Financial Records. Declarant shall keep accurate books and records regarding use of the Grant and maintain them according to generally accepted accounting principles applicable to Declarant in effect at the time.

3.5. Inspections; Information. Declarant shall permit the State and any party designated by the State: (i) to inspect the Project and (ii) to inspect and make copies of any accounts, books and records, including, without limitation, Declarant's records regarding receipts, disbursements, contracts, investments and any other related matters.

3.6. Reports.

(a) Declarant shall prepare and electronically submit written quarterly reports that satisfy OHA requirements of the continued use of the Project for the agreed purpose as defined in this Declaration.

(b) The quarterly reports are due to OHA no later than April 15 (January 1-March 31), July 15 (April 1-June 30), October 15 (July 1- September 30), and January 15 (October 1-December 31) each year.

(c) The quarterly reports shall provide data as OHA requests, including but not limited to bed/unit/client capacity with their utilization rates and data on clients served by the property/facility. OHA will provide the reporting form and instructions for completion and submission of this quarterly compliance report. Declarant may be required to provide capacity and utilization rates every 60 days or more frequently as requested by OHA.

(d) Declarant shall supply any other reports and information related to the Project as the State may reasonably require.

3.7. Records Maintenance. Declarant shall retain and keep accessible all books, documents, papers, and records that are directly related to this Declaration, the Project, or the Grant throughout the Use Restriction Period and for a minimum of six (6) years, or such longer period thereafter, as may be required by OHA.

3.8. Corrective Action. As a consequence of its monitoring, review of quarterly reports or otherwise, OHA may identify deficiencies in Declarant's compliance with this Declaration. OHA may require action by Declarant (satisfactory to OHA) to correct such deficiencies. Declarant must correct such deficiencies within thirty (30) days of notice by OHA of such deficiencies unless earlier correction is required by OHA to address material health or safety needs of Project users. The reasonableness of such corrective actions is subject to OHA in its sole discretion. Nothing in this Section 3.8 is intended or may be construed to impose any duty on OHA to identify deficiencies in Declarant's compliance with this Declaration or to require any action by Declarant to correct such deficiencies, and Declarant remains solely responsible for compliance with this Declaration.

3.9. Insurance, Damage. Declarant shall maintain insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by entities constructing, operating and maintaining similar properties/facilities.

4. FURTHER ASSURANCES.

4.1. Further Acts. Declarant, at any time upon request of OHA, will do, make, execute and deliver all such additional and further acts, instruments or papers as OHA may require in its sole discretion to protect OHA's rights under this Declaration.

4.2. Reliance. OHA may rely upon statements, certificates, and other records of Declarant and its agents and assigns, including as to accuracy, genuine nature, and proper execution of such statements, certificates, and other records.

5. COVENANTS AND EQUITABLE SERVITUDES TO RUN WITH THE LAND.

5.1. **Inducement.** Declarant represents, covenants and warrants that the issuance to it of the Grant described herein by OHA is an inducement to Declarant to complete the Project and to operate the Project in accordance with the Grant Agreement and this Declaration. In consideration of the issuance of the Grant, Declarant has entered into this Declaration and has agreed to restrict the operation of and uses to which the Project can be put on the terms and conditions set forth herein. Therefore, Declarant covenants, agrees and acknowledges that OHA has relied on this Declaration in determining to issue the Grant.

5.2. Covenants; Equitable Servitudes.

(a) OHA and Declarant hereby declare their express intent that throughout the Use Restriction Period the covenants, restrictions, charges and easements set forth herein, including the Use Restrictions, will be deemed covenants running with the Property and will create equitable servitudes running with the Property, and will pass to and be binding upon OHA's and Declarant's successors in title including any purchaser, grantee or lessee of any portion of the Project and any other person or entity having any right, title or interest therein and upon the respective heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee or lessee of any portion of the Project and any other person or entity having any right, title or interest therein.

(b) Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof or interest therein (*other than a residential rental agreement or residential lease for a Housing Unit*) will contain an express provision making such conveyance subject to the covenants, restrictions, charges and easements contained herein; provided, however, that any such contract, deed or other instrument will conclusively be held to have been executed, delivered and accepted subject to such covenants, regardless of whether or not such covenants are set forth or incorporated by reference in such contract, deed or other instrument.

(c) Any and all legal requirements for the provisions of this Declaration to constitute restrictive covenants running with the Property and applying to the Project as a whole, or to create equitable servitudes with respect to same in favor of OHA, are deemed satisfied in full.

(d) The consent of any recorded prior lien holder on the Project, including the Property, is not required in connection with recording this Declaration, or if required, such consent has been or will be obtained by Declarant.

5.3. Burden and Benefit.

(a) Declarant hereby declares its understanding and intent that the burdens of the covenants and equitable servitudes, including the Use Restrictions, set forth herein touch and concern the Property, and the Project as a whole, in that Declarant's legal interest in the Project is rendered less valuable thereby.

(b) Declarant hereby further declares its understanding and intent that the benefits of such covenants and equitable servitudes touch and concern the Property, and the Project as a whole, by enhancing and increasing the enjoyment and use of the Project by tenants, intended beneficiaries (in addition to OHA) of such covenants, reservations and restrictions, and by furthering the public purposes for which the Grant was issued.

5.4. **Right of Modification.** OHA may compromise, waive, amend or modify the terms of this Declaration including, but not limited to the restrictive covenants and equitable servitudes created hereby, with the written consent of Declarant or subsequent Project owners, as it so determines in OHA's sole discretion to be to the benefit of OHA, the Project, or OHA efforts to provide or maintain safe and sanitary conditions of the Project

and affordability of the Housing Units in the State of Oregon. To be effective, any compromise, waiver, amendment or modification of this Declaration must be in writing, signed by an authorized OHA representative.

6. GENERAL PROVISIONS.

6.1. Compliance with Applicable Laws and Requirements.

- (a) **Compliance.** Declarant shall comply with and shall ensure that the Project complies with all federal, state and local laws, rules regulations, codes, ordinances, and orders applicable to the Project from time to time.
- (b) **Contracts; Subcontracts.** Declarant shall ensure that all contracts and subcontracts related to the Project or this Declaration comply with the terms and conditions hereof, including containing a provision to that effect therein.
- (c) **Endurance of Obligations.** Declarant will remain fully obligated under the provisions of this Declaration notwithstanding its designation of any third-party or parties for the undertaking of all or any part of the Project with respect to which Grant funding is being provided.

6.2 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 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 Declarant (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 Declarant in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the Declarant 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 Declarant 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 Declarant is jointly liable with the State (or would be if joined in the Third Party Claim), the Declarant 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 Declarant 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 Declarant 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 Declarant'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.

6.3. Indemnification by Subcontractors.

Declarant 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 Declarant'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.

6.4. Time of the Essence. Time is of the essence in the performance by Declarant of the terms of this Declaration.

6.5. No Discrimination; Marketing. Except as permitted by law, Declarant will not inappropriately discriminate in the provision of housing on the basis of race, creed, color, sex, national origin, religion, marital status, sexual orientation, family status, age, disability or the receipt of public assistance.

6.6. Notice. Except as otherwise expressly provided in this Declaration, any notices required or permitted to be given under this Declaration will be given in writing, by personal delivery, or mailing the same, postage prepaid, to OHA or Declarant at the following addresses:

If to OHA:

[_____]

If to Declarant:

[_____]

or to such other address a party may indicate to the other pursuant to this Section. Any notice so addressed and mailed will be effective five (5) days after mailing. Any notice by personal delivery will be deemed to be given when actually delivered.

6.7. No Third-Party Beneficiaries. Unless and only to the degree expressly provided otherwise in this Declaration, OHA and Declarant are the only Parties to this Declaration and are the only Parties entitled to rely on and enforce the terms of this Declaration. Nothing in this Declaration gives, is intended to give, or will be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly indirectly or otherwise, to third persons unless such third persons are expressly identified in this Declaration and only to the degree they are expressly described as intended beneficiaries of particular terms of this Declaration and only with such remedies as expressly given herein with respect to such interests.

6.8. Declarant Status.

(a) **Independent Contractor.** Declarant shall perform all obligations under this Declaration and will timely satisfy its obligations hereunder as an independent contractor. Declarant is not an officer, employee or

agent of the State, as those terms are used in ORS 30.265 or otherwise, with respect to performance under this Declaration.

(b) **Declarant Responsible for Insurance Coverage.** Declarant agrees that insurance coverage, whether purchased or by self-insurance, for Declarant's agents, employees, officers and/or subcontractors is the sole responsibility of Declarant.

(c) **Non-Federal Employment Certification.** Declarant certifies that it is not employed by or contracting with the Federal Government for performance covered by this Declaration.

(d) **Good Standing Certification.** Declarant certifies to the best of its knowledge and belief that neither Declarant nor any of its principals, officers, directors or employees:

(i) Is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any state or federal department or agency;

(ii) Has within a three (3) year period preceding this Declaration been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract related to a public transaction; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;

(iii) Is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in subsection (d)(ii) of this Section;

(iv) Has within a three (3) year period preceding this Declaration had one or more public transactions (federal, state or local) terminated for cause or default; and

(v) Is 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:

<https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>

6.9. Termination. OHA may terminate this Declaration in whole or in part, without further liability and without impairment of its remedies, effective upon delivery of written notice to Declarant, under any of the following conditions:

(a) If funding from federal, state, or other sources is not obtained or is not continued at levels sufficient to allow for delivery of full Grant funding; or

(b) If federal or state laws, regulations, rules or other requirements are modified or interpreted in such a way that the intended use of Grant funding for the Project is no longer allowable or appropriate or the Project is no longer eligible for the Grant funding identified in this Declaration from the planned funding source(s); or

(c) If any authority required by law or regulation to be held by Declarant to complete the Project ends for any reason; or

(d) If Declarant is unable or fails to commence the Project within six (6) months from the date of this Declaration; or

(e) If Declarant breaches or fails to timely perform any of its obligations under this Declaration, or any other applicable Grant document and such breach is not cured within the grace period, if any, provided for cure in the applicable document; or

(f) If OHA determines that any representation, warranty or covenant of Declarant, whether in whole or in part, is false, invalid, or in default; or

(g) If Declarant (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all or substantially all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) is adjudicated as bankrupt or insolvent, (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, winding-up, or composition or adjustment of debts, (vii) 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 Federal Bankruptcy Code (as now or hereafter in effect), or (viii) takes any action for the purpose of effecting any of the foregoing.

(h) Termination of this Declaration does not terminate or otherwise impair or invalidate any remedy available to OHA or to Declarant hereunder, at law, or otherwise.

6.10. Declarant Default. Any of the following constitutes an "Event of Default" of Declarant:

(a) Any false or misleading representation is made by or on behalf of Declarant, in this Declaration or in any document provided by Declarant to OHA related to this Grant or the Project.

(b) Declarant fails to perform any obligation required under this Declaration and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Declarant by OHA, or such longer period as OHA may agree to in writing, if OHA determines in its sole discretion that Declarant has instituted and is diligently pursuing corrective action.

(c) Declarant: (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) is adjudicated a bankrupt or insolvent, (v) commences a voluntary case under the Federal Bankruptcy Code, (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vii) 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 (viii) takes any corporate action for the purpose of effecting any of the foregoing.

(d) A proceeding or case is commenced, without the application or consent of Declarant, in any court of competent jurisdiction, seeking: (i) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Declarant, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of Declarant or of all or any substantial part of its assets, or (iii) similar relief in respect to Declarant 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 (60) consecutive days, or an order for relief against Declarant is entered in an involuntary case under the Federal Bankruptcy Code.

6.11. OHA Default. OHA will be in default under this Declaration if it fails to perform, observe or discharge

any of its covenants, agreements, or obligations under this Declaration.

6.12. Remedies.

(a) **Repayment.** If this Declaration or any part hereof, terminates prior to the term of the Use Restriction Period, Declarant will, within thirty (30) days of written demand for repayment by OHA, repay to OHA \$ [_____], multiplied by a fraction, the numerator of which is 20 minus the number of full years that have transpired between the year the Project is completed and the year of Payee's demand and the denominator of which is 20.

(b) **Deficiencies.** OHA may, from time to time, identify and direct Declarant to correct deficiencies (including deficiencies by the Owner) in its compliance with this Declaration, which it shall correct as so directed.

(c) **Extension of Use Restriction Period.** OHA may by written notice extend the Use Restriction Period described in this Declaration for periods of time matching corresponding periods of time during which OHA determines the Declarant to be in material noncompliance with any of the terms of this Declaration.

(d) **Additional Remedies.** If the Declarant defaults in the performance or observance of any covenant, agreement or obligation set forth in this Declaration (including correction of deficiencies), and if such default remains uncured by the Declarant for a period of thirty (30) days or less (depending upon the requirements of the notice, lesser notice periods being reserved for matters that OHA determines in its sole discretion relate to material health or safety needs of Project occupants) after notice thereof shall have been given by OHA, or if such default runs for a period of thirty (30) days from the date the Declarant should, with due diligence, have discovered such default, then OHA may declare an Event of Default to have occurred hereunder provided, however, if a default is not reasonably capable of being cured within thirty (30) days or any lesser notice period provided by OHA, OHA may, in its sole discretion, extend the correction period for up to six (6) months, but only if OHA determines in its sole discretion there is good cause for granting the extension; and provided further, however, in the event of a foreclosure, deed in lieu of foreclosure, or similar event with respect to the Project or the Property, the correction period for the successor for an existing default shall be no less than thirty (30) days from the earlier of the date the successor obtains control or becomes the owner of the Project. To the extent that the default is not corrected within the above-described period including extensions, if any, granted by OHA, an Event of Default shall be deemed to occur and OHA may exercise its rights and remedies under this Section. Following the occurrence of an Event of Default hereunder OHA may, at its option, take any one or more of the following steps in addition to all other remedies provided in this Declaration, by law, or in equity:

i. By mandamus or other suit, action or proceeding at law or in equity, require Declarant specifically to perform its obligations under this Declaration or enjoin any acts or things that may be unlawful or in violation of the rights of OHA under this Declaration;

ii. Obtain the appointment of a receiver to operate the Project in compliance with this Declaration;

iii. Withhold from Declarant, suspend or terminate, or (upon thirty (30)-days written demand) require the repayment of all or part of any disbursed Grant funds or other funding assistance provided by OHA to Declarant with respect to the Project;

iv. Declare Declarant, its owners, principals, employees, and agents ineligible to receive further OHA funds or other OHA financial assistance, including with respect to other projects or requests for same, for such period as OHA determines in its sole discretion;

v. Offset amounts due from repayment of the Grant against other funding awarded or to be awarded to Declarant;

vi. Have access to, and inspect, examine and make copies of, all of the books and records of Declarant pertaining to the Project and to inspect the Project itself;

vii. Enter onto the Property and correct Events of Default with respect to the Project at Declarant's expense, which expense Declarant will repay to OHA within ten (10) days of any presentment of charges for same; and

viii. Take such other action under this Declaration, at law, in equity, or otherwise as may be available to OHA.

(e) **Survival of Remedies; Remedies Not Exclusive; Non-Waiver.** The rights and remedies of OHA provided for in this Declaration, which by their nature are intended to survive termination of this Declaration, will survive the termination of the Use Restriction Period and of this Declaration. Furthermore, such remedies will not be exclusive and are in addition to any other rights and remedies available at law, in equity or otherwise. No failure of or delay by OHA to enforce any provision of this Declaration will constitute a waiver by OHA of that or any other provision, nor will any single or partial exercise of any right, power or privilege under this Declaration preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.

6.13. Severability. If any term or provision of this Declaration 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 this Declaration did not contain the particular term or provisions held to be invalid.

6.14. Survival of Obligations. The obligations of Declarant as set forth in this Declaration will survive the expiration or termination of the Grant Agreement.

6.15. Attorney Fees. Subject to Article XI, Section 7, of the Oregon Constitution, in the event a lawsuit or other proceeding is instituted regarding this Declaration, the prevailing party in any dispute arising under this Declaration will, to the extent permitted by law, be entitled to recover from the other(s) its reasonable attorney fees and all costs and disbursements incurred at trial, in mediation, and on appeal. Reasonable attorney fees will not exceed the rate charged to OHA by its attorneys. This provision does not apply to lawsuits or other proceedings instituted or maintained by or against tenants or other third-party beneficiaries hereunder, if any, for which lawsuits or other proceedings no award of attorney fees is permitted.

6.16. Construction. The Parties to this Declaration acknowledge that each party and its counsel have participated in the drafting and revision of this Declaration (or knowingly and voluntarily waived the party's right to do so). Accordingly, the Parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not apply in the interpretation of this Declaration or any amendment, modification, supplementation or restatement of the foregoing or of any exhibit to this Declaration.

6.17. Captions. The captions or headings in this Declaration are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Declaration.

6.18. Execution and Counterparts. This Declaration may be executed in several counterparts, each of which will be an original, all of which will constitute but one and the same instrument.

6.19. Governing Law; Venue; Consent to Jurisdiction. This Declaration will be governed by the laws of the

State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") related to this Declaration will be conducted exclusively within the Circuit Court of Marion County, Oregon (unless Oregon law requires that it be brought and conducted where the real property is located) or, if necessary, the United States District Court for the District of Oregon. In no event will this provision be construed as a waiver by OHA or the State of Oregon of any form of defense or immunity, whether it is 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. OHA and the State of Oregon expressly reserve all sovereignty rights. **DECLARANT, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**

6.20. Merger Clause. This Declaration, along with the Grant Agreement constitutes the entire agreement between the Parties on the subject matter hereof. No modification or amendment of this Declaration will bind either Party unless in writing and signed by the Parties (and the necessary approvals obtained), and no waiver or consent will be effective unless signed by the party against whom such waiver or consent is asserted. Such waiver or consent, if given, will be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Declaration.

6.21. No Limitations on Actions of OHA in Exercise of Its Governmental Powers. Nothing in this Declaration is intended, nor will it be construed, to in any way limit the actions of OHA in the exercise of its governmental powers. It is the express intention of the Parties hereto that OHA will retain the full right and ability to exercise its governmental powers with respect to Declarant, the Project, this Declaration, and the transactions contemplated by this Declaration to the same extent as if it were not a party to this Declaration or the transactions contemplated hereby, and in no event will OHA have any liability in contract arising under this Declaration, or otherwise by virtue of any exercise of its governmental powers.

(Signature Pages Follow)

IN WITNESS WHEREOF, OHA and Declarant have caused this Declaration to be signed by their duly authorized officers on the Effective Date.

OHA:

STATE OF OREGON, acting by and through its
OREGON HEALTH AUTHORITY,

By: _____

STATE OF OREGON)
 : ss
County of Marion)

This instrument was acknowledged before me this ____ day of ____ 2022,
by _____, for and on behalf of the State of Oregon, acting by and through its
_____.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

DECLARANT:

[Name of Grant Recipient]

By: _____

STATE OF OREGON)
 : ss
County of [_____]

This instrument was acknowledged before me this ____ day of ____ 2022,
by _____, for and on behalf of _____ acting by and through its
_____.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

EXHIBIT A
Legal Description

[]

EXHIBIT B
Project Description

Use Restrictions:

A. [_____]

B. [_____] ...

B.O. 22-302
Exhibit "D"