

FOR COUNCIL MEETING OF:  
AGENDA ITEM NO.:

December 3, 2012  
3.3 (b)

TO: MAYOR AND CITY COUNCIL  
THROUGH:  LINDA NORRIS, CITY MANAGER  
FROM:  PETER FERNANDEZ, P.E., PUBLIC WORKS DIRECTOR  
SUBJECT: INTERGOVERNMENTAL AGREEMENT BETWEEN STATE OF OREGON  
DEPARTMENT OF HUMAN SERVICES AND CITY OF SALEM

**ISSUE**

Shall Council authorize the City Manager to execute the IGA between the State of Oregon Department of Human Services and the City of Salem through September 30, 2014, whereby the City will provide Respite Care Services to DHS Medicaid Eligible clients at Center 50+?

**RECOMMENDATION**

Staff recommends Council authorize the City Manager to execute the IGA between the State of Oregon Department of Human Services and the City of Salem through September 30, 2014, whereby the City will provide Respite Care Services to DHS Medicaid Eligible clients at Center 50+.

**BACKGROUND**

The City of Salem Center 50+ has been providing Respite Care Services for more than 15 years. The program is designed to give caregivers a much needed break while offering quality programming to individuals with moderate stage Alzheimer's disease or other related dementias. This program is the only one of its kind in Marion and Polk counties. The City's Respite Program is certified and licensed by DHS to provide care to Medicaid clients at the rate of \$40 per session. Five-hour sessions are offered three days per week. Clients may choose how many sessions they wish to attend each week.

**FACTS AND FINDINGS**

1. Center 50+ will continue to offer Respite Care Services and through this agreement will be able to accept Medicaid clients. Medicaid reimbursements are considered a small portion of the overall program revenue with approximately 2 to 3 Medicaid clients enrolled at any given time. This contract is estimated to provide an average of \$5,000 annually in revenue.
2. This agreement establishes the responsibilities of the DHS and City of Salem in providing reimbursable Respite Care Services to qualified DHS Clients.

  
Mark Becketl, AICP  
Parks and Transportation Services Manager

Attachment: IGA between State of Oregon Department of Human Services and City of Salem  
Wards All  
Prepared by: Marilyn Daily, Senior Center Supervisor  
November 28, 2012



**Agreement Number 140084**

**State of Oregon  
Intergovernmental Agreement**

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

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

**City of Salem  
2615 Portland Road NE  
Salem, OR 97301  
Telephone: 503-588-6303  
Facsimile: 503-588-6377  
E-mail Address: [mdaily@cityofsalem.net](mailto:mdaily@cityofsalem.net)**

hereinafter referred to as "Agency."

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

**Aging and Seniors with Disabilities  
Office of Home & Community Support  
500 Summer Street NE, E-10  
Salem, OR 97301  
Agreement Administrator: Darwin Frankenhoff or delegate  
Telephone: 503-947-5162  
Facsimile: 503-947-4245  
E-mail Address: [darwin.j.frankenhoff@state.or.us](mailto:darwin.j.frankenhoff@state.or.us)**

1. **Effective Date and Duration.** Upon signature by all applicable parties, this Agreement shall be effective on the later of: (i) September 30, 2012 or, (ii) when required, the date this Agreement is approved by Department of Justice, regardless of the date it is actually signed by all other parties. Unless extended or terminated earlier in accordance with its terms, this Agreement shall terminate on September 30, 2014. Agreement termination or expiration shall not extinguish or prejudice either party's right to enforce this Agreement with respect to any default by the other party that has not been cured.

2. **Agreement Documents.**

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

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

There are no understandings, agreements, or representations, oral or written, regarding this Agreement that are not specified in it.

- b. In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: this Agreement without Exhibits, Exhibits D, A, B, and C.
    - c. For purposes of this Agreement, "Work" means specific work to be performed or services to be delivered by Agency as set forth in Exhibit A.

3. **Consideration.**

- a. The maximum not-to-exceed amount payable to Agency under this Agreement, which includes any allowable expenses, is \$50,000.00. DHS will not pay Agency any amount in excess of the not-to-exceed amount for completing the Work, and will not pay for Work until this Agreement has been signed by all parties.
  - b. DHS will pay only for completed Work under this Agreement, and may make interim payments as provided for in Exhibit A.

4. **Vendor or Sub-Recipient Determination.** In accordance with the State Controller's Oregon Accounting Manual, policy 30.40.00.102, DHS' determination is that:

☐ Agency is a sub-recipient; **OR** ☒ Agency is a vendor.

Catalog of Federal Domestic Assistance (CFDA) #(s) of federal funds to be paid through this Agreement: 93.778

**5. Agency Data and Certification.**

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

**Please print or type the following information**

Name (exactly as filed with the IRS): City of Salem, OR  
Address: 555 Liberty Street SE, Salem OR 97301  
E-mail: mdaily@cityofsalem.net  
Telephone: (503) 588 - 6161 Fax: ( ) -   
Non-resident alien? ☐ YES ☐ NO  
Federal Employer Identification Number: 93-6002249

**Proof of Insurance:**

Workers Compensation Insurance Company: Safety National Casualty Corporation  
Policy # SP4046510 Expiration Date: July 1, 2013

The above information must be provided prior to Agreement execution. Agency shall provide proof of insurance upon request by DHS or DHS designee.

- b. Certification. By signature on this Agreement, the undersigned hereby certifies under penalty of perjury that:

- (1) The undersigned is authorized to act on behalf of Agency and that Agency is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620;
- (2) The information shown in Section 5., Agency Data and Certification, above is Agency's true, accurate and correct information;
- (3) To the best of the undersigned's knowledge, Agency 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) Agency and Agency's employees and agents are not included on the list titled "Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>;
  - (5) Agency is not listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal procurement or Nonprocurement Programs" found at <https://www.sam.gov/portal/public/SAM/>;
  - (6) Agency is not subject to backup withholding because:
    - (a) Agency is exempt from backup withholding;
    - (b) Agency has not been notified by the IRS that Agency is subject to backup withholding as a result of a failure to report all interest or dividends; or
    - (c) The IRS has notified Agency that Agency is no longer subject to backup withholding.
- c. Agency is required to provide its Federal Employer Identification Number (FEIN). By Agency's signature on this Agreement, Agency hereby certifies that the FEIN provided to DHS is true and accurate. If this information changes, Agency is also required to provide DHS with the new FEIN within 10 days.

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

**AGENCY: YOU WILL NOT BE PAID FOR SERVICES RENDERED PRIOR TO  
NECESSARY STATE APPROVALS**

**6. Signatures.**

**City of Salem**

**By:**

_____ Authorized Signature	_____ Title	_____ Date
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**State of Oregon acting by and through its Department of Human Services**

**By:**

_____ Authorized Signature	_____ Title	_____ Date
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**Approved for Legal Sufficiency:**

_____ Not Required per OAR 125-246-0170(2)(d)(D)		_____ Date
Assistant Attorney General		

**Office of Contracts and Procurement:**

_____ Contract Specialist	_____ Date
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**EXHIBIT A**  
**Part 1**  
**Statement of Work**

**1. Eligibility Criteria:**

- a. Adult Day Services will be purchased by DHS or an Area Agency on Aging (Referring Agency) only for those clients for whom the service is appropriate and are:
  - (1) Current recipients of SSI, General Assistance or Title XIX;
  - (2) Adults who are physically, intellectually, socially, or emotionally impaired resulting in inability to live totally independently;
  - (3) Adults who are at risk of institutionalization due to physical condition; and
  - (4) Adults who require activities of daily living (ADL) assistance, social and rehabilitative services upon discharge from acute or long term care facilities.
- b. The case manager shall evaluate each client's eligibility and establish a service plan.
- c. DHS will have no financial responsibility for clients receiving Adult Day Services until such time as a service plan is developed, eligibility determined, and payment authorized.

**2. Admission Criteria:**

- a. Potential clients shall:
  - (1) Be able to benefit from a social/psychological/nursing, restorative/rehabilitative plan of care;
  - (2) Not require continuous nursing care;
  - (3) Not require feeding, or gastrostomy or nasogastric tube feeding;
  - (4) Not be violent toward self or others;
  - (5) Meet other admission criteria established by mutual consent of all parties to this Contract.
- b. Contractor shall determine whether a client meets Contractor's admission requirements and is accepted into the program. If placement of an eligible client is to occur, a conference with the case manager and program staff, and when appropriate and feasible the client and/or client's caregiver, will be arranged.

The purpose of the conference is to:

- (1) Establish Contractor's roles and responsibilities regarding the client;
- (2) Agree upon the client's roles and responsibilities, including the responsibility to apply resources towards the cost of care;
- (3) Establish the case manager's roles and responsibilities; and
- (4) Confirm planning to meet the individual care needs of the client.

**3. Referral Process:**

Referral of a client for placement may be made when:

- a. Client meets the requirements of Eligibility and Admission criteria as outlined above;
- b. Medical, nursing, social and restorative planning can be carried out through this placement;
- c. Family caregiver is in need of respite from care giving; or
- d. Case manager has approved such referral.

**4. Location of Services:**

Services will be provided at Contractor's facility located at: 2615 Portland Rd NE, Salem, Oregon, 97301

**5. Staffing Requirements:**

- a. Assure coverage to meet required staffing;
- b. Develop a job description for each staff person and provide pre-service and in-service training as appropriate for all staff; and
- c. Hire qualified staff to carry out the services described in this Contract.

**6. Services to be Performed:**

**Contractor shall:**

- a. Provide all services according to Oregon Administrative Rules (OAR) 411-066-0000 through 411-066-0020.
- b. Provide staff, facilities, and equipment sufficient to perform services identified in each client's service plan.

Services include:

- (1) Assistance with basic personal care, hygiene, grooming, and care of the hair;
- (2) Assistance with bladder and/or bowel requirements, including retraining,



behavior management and supervision as needed;

- (3) Assistance with medications ordered by the client's physician;
- (4) Assistance with ambulation;
- (5) Assistance with behavioral problems, cognitive deficiencies, and other disorders associated with dementia and functional disorders;
- (6) Assistance with adaptive equipment;
- (7) Assistance with diet activities via a noon meal;
- (8) Provision of a nursing assessment and evaluation of each client;
- (9) Provision of educational programs for the management of diabetes;
- (10) Provision of appropriate non-skilled activities related to occupational, physical and speech therapy;
- (11) Provision of planned activities suited to the needs of the client and designed to encourage physical exercise, to prevent deterioration, and to stimulate social interaction as a part of the service plan;
- (12) Provision of social services including intake assessment, client counseling, service plan monitoring and service coordination;
- (13) Provision of social and emotional support;
- (14) Provision of other necessary assistance, retraining and support with activities of daily living; and
- (15) Assistance with the development of the service plan for each client which includes:
  - (a) Completing an intake screening for each client;
  - (b) Obtaining and updating enrollment information for each client;
  - (c) Completing a psycho-social and health assessment of each client; and
  - (d) Recommending an individual plan of care for each client.

## **7. Termination of Services:**

- a. Develop termination procedures that include discussion between the Case manager, Contractor, client (if feasible), and any client caregivers.

The goal of the discussion is to:

- (1) Consult with all parties regarding the appropriateness of services;
- (2) Determine if the needs of the clients can be met by Contractor's services; and
- (3) Identify alternative resources in the community.

- b. Designated case manager will be consulted prior to the issuance of the notice. Clients will be terminated from the program when:
  - (1) Client's condition changes to the point where service/medical needs can no longer be met, as determined by the staff and the case manager;
  - (2) Client does not contribute his/her share of cost;
  - (3) Client wishes to leave the program;
  - (4) Client's caregiver has no further need for respite, as determined by the staff and the case manager;
  - (5) Contractor is not providing agreed upon services;
  - (6) Client has observable behavior which is deemed detrimental to the Client or other participants beyond the ability to be safely managed by Contractor's staff.
- c. Written termination notices confirming the date, reason for termination and recommendations for alternative resources will be issued to the Client upon determination that services are no longer appropriate.
- d. Temporary absence, including periods of hospitalization or visits, are not to be considered termination if the intent is to return to the facility. Absences longer than seven days must be prior approved by the case manager.

**8. Contract Administration and Reporting:**

- a. Provide name(s) and phone numbers of Contractor's administrative staff to Referring Agency;
- b. Provide space and opportunity for the case manager to meet with clients in privacy;
- c. Allow for visits by other agencies to assure appropriate site for service delivery;
- d. Notify the case manager when a client's condition changes significantly enough to require a change in the frequency or type of service so a joint case review can be scheduled; and
- e. Notify the case manager when a client fails to use the Contractor's services for three consecutively scheduled appointments or when a client repeatedly does not utilize the services on pre-scheduled day.

**EXHIBIT A**  
**Part 2**  
**Payment and Financial Reporting**

**1. Payment Provisions:**

- a. As Consideration for the services provided by the Contractor during the period specified Section 1., **Effective Date and Duration**, of this Contract, DHS will pay to the Contractor, a maximum not-to-exceed amount as specified in Section 3., **Consideration** of this Contract, to be paid as follows:
  - (1) \$40.00 per eligible client per day.
- b. DHS establishes and publishes a standard maintenance cost total and a standard personal incidental allowance. Clients whose monthly income exceeds the total of those two figures, as published by policy transmittal letter, and in effect for the month in which service is provided, must apply any balance to the cost of the authorized service payment.
- c. Rent, utilities, food and any other authorized special needs are the responsibility of each Client and are not a part of this contract. DHS agrees to pay Contractor the rate indicated in section 1.a. above less any income available to cover costs previously described.
- d. Contractor shall submit completed, signed and dated invoices (SDS 598) to the Referring Agency office by the 10<sup>th</sup> day of each month for the previous month in which services were provided.

**2. Travel and Other Expenses:**

DHS will not separately reimburse Contractor for any travel or additional expenses under this Contract.

**EXHIBIT A**  
**Part 3**  
**Special Terms and Conditions**

**1. Confidentiality of Client Information.**

- a. All information as to personal facts and circumstances obtained by the Agency on the client shall be treated as privileged communications, shall be held confidential, and shall not be divulged without the written consent of the client, the responsible parent of a minor child, or his or her guardian except as required by other terms of this Agreement. Nothing prohibits the disclosure of information in summaries, statistical, or other form, which does not identify particular individuals.
- b. The use or disclosure of information concerning clients shall be limited to persons directly connected with the administration of this Agreement. Confidentiality policies shall be applied to all requests from outside sources.
- c. DHS, Agency and any subcontractor will share information as necessary to effectively serve DHS clients.

**2. Amendments.**

- a. DHS reserves the right to amend or extend the Agreement under the following general circumstances:
  - (1) DHS may extend the Agreement for additional periods of time up to a total Agreement period of 5 years, and for additional money associated with the extended period(s) of time. The determination for any extension for time may be based on DHS' satisfaction with performance of the work or services provided by the Agency under this Agreement.
  - (2) DHS may periodically amend any payment rates throughout the life of the Agreement proportionate to increases in Portland Metropolitan Consumer Price Index; and to provide Cost Of Living Adjustments (COLA) if DHS so chooses. Any negotiation of increases in rates to implement a COLA will be as directed by the Oregon State Legislature.
- b. DHS further reserves the right to amend the Statement of for the following:
  - (1) Programmatic changes/additions or modifications deemed necessary to accurately reflect the original scope of work that may not have been expressed in the original Agreement or previous amendments to the Agreement;
  - (2) Implement additional phases of the Work; or

(3) As necessitated by changes in Code of Federal Regulations, Oregon Revised Statutes, or Oregon Administrative Rules which, in part or in combination, govern the provision of services provided under this Agreement.

c. Upon identification, by any party to this Agreement, of any circumstance which may require an amendment to this Agreement, the parties may enter into negotiations regarding the proposed modifications. Any resulting amendment must be in writing and be signed by all parties to the Agreement before the modified or additional provisions are binding on either party. All amendments must comply with Exhibit B, Section 21. "Amendment" of this Agreement.

### **3. Disclosure.**

a. 42 CFR 455.104 requires the State Medicaid agency to obtain the following information from any provider of Medicaid or CHIP services, including fiscal agents of providers and managed care entities: (1) the name and address (including the primary business address, every business location and P.O. Box address) of any person (individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity; (2) in the case of an individual, the date of birth and Social Security Number, or, in the case of a corporation, the tax identification number of the entity, with an ownership interest in the provider, fiscal agent or managed care entity or of any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest; (3) whether the person (individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling, or whether the person (individual or corporation) with an ownership or control interest in any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling; (4) the name of any other provider, fiscal agent or managed care entity in which an owner of the provider, fiscal agent or managed care entity has an ownership or control interest; and, (5) the name, address, date of birth and Social Security Number of any managing employee of the provider, fiscal agent or managed care entity.

b. 42 CFR 455.434 requires as a condition of enrollment as a Medicaid or CHIP provider, to consent to criminal background checks, including fingerprinting when required to do so under state law, or by the category of the provider based on risk of fraud, waste and abuse under federal law. As such, a provider must disclose any person with a 5% or greater direct or indirect ownership interest in the provider whom has been convicted of a criminal offense related to that person's involvement with the Medicare, Medicaid, or title XXI program in the last 10 years.

- c. DHS reserves the right to take such action required by law, or where DHS has discretion, it deems appropriate, based on the information received (or the failure to receive) from the provider, fiscal agent or managed care entity.
- 4. **Nondiscrimination.** Agency must provide services to DHS clients without regard to race, religion, national origin, sex, age, marital status, sexual orientation or disability (as defined under the Americans with Disabilities Act). Agency services must reasonably accommodate the cultural, language and other special needs of clients.

**EXHIBIT B**  
**Standard Terms and Conditions**

1. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between the parties that arise from or relate to this Agreement shall be brought and conducted solely and exclusively within a circuit court in the State of Oregon of proper jurisdiction. THE PARTIES, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Except as provided in this section, neither party waives any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. The parties acknowledge that this is a binding and enforceable agreement and, to the extent permitted by law, expressly waive any defense alleging that either party does not have the right to seek judicial enforcement of this Agreement.
2. **Compliance with Law.**
  - a. Agency shall comply with and require all subcontractors to comply with all state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the delivery of services. Without limiting the generality of the foregoing, Agency expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (1) all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations; (2) all state laws requiring reporting of Agency Client abuse; (3) ORS 659A.400 to 659A.409, ORS 659A.145, and all regulations and administrative rules established pursuant to those laws in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the delivery of services. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. All employers, including Agency, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126.
  - b. Agency shall comply with the federal laws as set forth or incorporated, or both, in this Agreement and all other federal laws applicable to Agency's performance under this Agreement as they may be adopted, amended or repealed from time to time.
3. **Independent Contractors.** The parties agree and acknowledge that their relationship is that of independent contracting parties and that Agency is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.

#### **4. Representations and Warranties.**

a. Agency's Representations and Warranties. Agency represents and warrants to DHS that:

- (1) Agency has the power and authority to enter into and perform this Agreement;
- (2) This Agreement, when executed and delivered, shall be a valid and binding obligation of Agency enforceable in accordance with its terms;
- (3) Agency has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Agency will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in Agency's industry, trade or profession;
- (4) Agency shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the Service; and
- (5) Agency prepared its proposal related to this Agreement, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.

b. Warranties Cumulative. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

#### **5. Funds Available and Authorized; Payments.**

a. The State of Oregon's payment obligations under this Agreement are conditioned upon DHS receiving funding, appropriations, limitations, allotment, or other expenditure authority sufficient to allow DHS, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Agreement. Agency is not entitled to receive payment under this Agreement from any part of Oregon state government other than DHS. Nothing in this Agreement is to be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. DHS represents that as of the date it executes this Agreement, it has sufficient appropriations and limitation for the current biennium to make payments under this Agreement.

b. Payment Method. Payments under this Agreement will be made by Electronic Funds Transfer (EFT), unless otherwise mutually agreed, and shall be processed in accordance with the provisions of OAR 407-120-0100 through 407-120-0380 or OAR 410-120-1260 through OAR 410-120-1460, as applicable, and any other



Oregon Administrative Rules that are program-specific to the billings and payments. Upon request, Agency shall provide its taxpayer identification number (TIN) and other necessary banking information to receive EFT payment. Agency shall maintain at its own expense a single financial institution or authorized payment agent capable of receiving and processing EFT using the Automated Clearing House (ACH) transfer method. The most current designation and EFT information will be used for all payments under this Agreement. Agency shall provide this designation and information on a form provided by DHS. In the event that EFT information changes or the Agency elects to designate a different financial institution for the receipt of any payment made using EFT procedures, the Agency shall provide the changed information or designation to DHS on a DHS-approved form. DHS is not required to make any payment under this Agreement until receipt of the correct EFT designation and payment information from the Agency.

6. **Recovery of Overpayments.** IF BILLINGS UNDER THIS AGREEMENT, OR UNDER ANY OTHER AGREEMENT BETWEEN AGENCY AND DHS, RESULT IN PAYMENTS TO AGENCY TO WHICH AGENCY IS NOT ENTITLED, DHS, AFTER GIVING WRITTEN NOTIFICATION TO AGENCY, MAY WITHHOLD FROM PAYMENTS DUE TO AGENCY SUCH AMOUNTS, OVER SUCH PERIODS OF TIME, AS ARE NECESSARY TO RECOVER THE AMOUNT OF THE OVERPAYMENT. NOTHING IN THIS SECTION SHALL REQUIRE AGENCY OR DHS TO ACT IN VIOLATION OF STATE OR FEDERAL LAW OR THE CONSTITUTION OF THE STATE OF OREGON.

7. **Ownership of Work Product.**

- a. Definitions. As used in this Section 7 and elsewhere in this Agreement, the following terms have the meanings set forth below:
- (1) "Agency Intellectual Property" means any intellectual property owned by Agency and developed independently from the Work.
  - (2) "Third Party Intellectual Property" means any intellectual property owned by parties other than DHS or Agency.
  - (3) "Work Product" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein that Agency is required to deliver to DHS pursuant to the Work.
- b. Original Works. All Work Product created by Agency pursuant to the Work, including derivative works and compilations, and whether or not such Work Product is considered a "work made for hire," shall be the exclusive property of DHS. DHS and Agency agree that all Work Product is "work made for hire" of which DHS is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created pursuant to the Work is not "work made for hire," Agency hereby irrevocably assigns to DHS any and all of its rights, title, and interest in all original Work Product created pursuant to the

Work, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon DHS' reasonable request, Agency shall execute such further documents and instruments necessary to fully vest such rights in DHS. Agency forever waives any and all rights relating to original Work Product created pursuant to the Work, including without limitation, any and all rights arising under 17 U.S.C. §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

- c. In the event that Work Product created by Agency under this Agreement is Agency Intellectual Property, a derivative work based on Agency Intellectual Property or a compilation that includes Agency Intellectual Property, Agency hereby grants to DHS an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display Agency Intellectual Property and the pre-existing elements of the Agency Intellectual Property employed in the Work Product, and to authorize others to do the same on DHS' behalf.
- d. In the event that Work Product created by Agency under this Agreement is Third Party Intellectual Property, a derivative work based on Third Party Intellectual Property or a compilation that includes Third Party Intellectual Property, Agency shall secure on DHS' behalf and in the name of DHS an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property and the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, and to authorize others to do the same on DHS' behalf.

8. **Agency Default.** Agency shall be in default under this Agreement upon the occurrence of any of the following events:

- a. Agency fails to perform, observe or discharge any of its covenants, agreements or obligations set forth herein.
- b. Any representation, warranty or statement made by Agency herein or in any documents or reports relied upon by DHS to measure the delivery of services, the expenditure of payments or the performance by Agency is untrue in any material respect when made;
- c. Agency (1) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (2) admits in writing its inability, or is generally unable, to pay its debts as they become due, (3) makes a general assignment for the benefit of its creditors, (4) is adjudicated a bankrupt or insolvent, (5) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (6) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency,

reorganization, winding-up, or composition or adjustment of debts, (7) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (8) takes any action for the purpose of effecting any of the foregoing; or

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

**9. DHS Default.** DHS shall be in default under this Agreement upon the occurrence of any of the following events:

- a. DHS fails to perform, observe or discharge any of its covenants, agreements, or obligations set forth herein; or
- b. Any representation, warranty or statement made by DHS herein is untrue in any material respect when made.

**10. Termination.**

- a. Agency Termination. Agency may terminate this Agreement in whole or in part:

- (1) For its convenience, upon at least 90 days advance written notice to DHS;
- (2) Upon 45 days advance written notice to DHS, if Agency does not obtain funding, appropriations and other expenditure authorizations from Agency's governing body, federal, state or other sources sufficient to permit Agency to satisfy its performance obligations under this Agreement, as determined by Agency in the reasonable exercise of its administrative discretion; or
- (3) Upon 30 days advance written notice to DHS, if DHS is in default under the Agreement and such default remains uncured at the end of said 30-day period or such longer period, if any, as Agency may specify in the notice.

- b. DHS Termination. DHS may terminate this Agreement in whole or in part:

- (1) For its convenience, upon at least thirty days advance written notice to Agency;

- (2) Upon 45 days advance written notice to Agency, if DHS does not obtain funding, appropriations and other expenditure authorizations from federal, state or other sources sufficient to meet the payment obligations of DHS under this Agreement, as determined by DHS in the reasonable exercise of its administrative discretion. Notwithstanding the preceding sentence, DHS may terminate this Agreement in whole or in part, immediately upon written notice to Agency or at such other time as it may determine if action by the Oregon Legislative Assembly or Emergency Board reduces DHS' legislative authorization for expenditure of funds to such a degree that DHS will no longer have sufficient expenditure authority to meet its payment obligations under this Agreement, as determined by DHS in the reasonable exercise of its administrative discretion, and the effective date for such reduction in expenditure authorization is less than 45 days from the date the action is taken;
- (3) Immediately upon written notice to Agency if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that DHS no longer has the authority to meet its obligations under this Agreement or no longer has the authority to provide payment from the funding source it had planned to use;
- (4) Upon 30 days advance written notice to Agency, if Agency is in default under this Agreement and such default remains uncured at the end of said 30-day period or such longer period, if any, as DHS may specify in the notice;
- (5) Immediately upon written notice to Agency, if any license or certificate required by law or regulation to be held by Agency or a subcontractor is for any reason denied, revoked, suspended, not renewed or changed in such a way that Agency or a subcontractor no longer meets requirements to deliver the service. This termination right may only be exercised with respect to the particular part of the Work impacted by the loss of necessary licensure or certification; or
- (6) Immediately upon written notice to Agency, if DHS determines that Agency or any of its subcontractors have endangered or are endangering the health or safety of an Agency client or others.

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

d. Return of Property. Upon termination of this Agreement for any reason whatsoever, Agency shall immediately deliver to DHS all of the DHS' property (including without limitation any Work Products for which DHS has made payment in whole or in part) that are in the possession or under the control of Agency in whatever stage of development and form of recordation such DHS property is expressed or embodied at that time. Upon receiving a notice of termination of this Agreement, Agency shall immediately cease all activities

under this Agreement, unless DHS expressly directs otherwise in such notice of termination. Upon DHS' request, Agency shall surrender to anyone DHS designates, all documents, research or objects or other tangible things needed to complete the Work Products.

**11. Effect of Termination.**

**a. Entire Agreement.**

- (1) Upon termination of this Agreement in its entirety, DHS shall have no further obligation to pay Agency under this Agreement.
- (2) Upon termination of this Agreement in its entirety, Agency shall have no further obligation to perform work under this Agreement.

**b. Obligations and Liabilities.** Notwithstanding Section 11.a. above, any termination of this Agreement shall not prejudice any obligations or liabilities of either party accrued prior to such termination.

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

**13. Indemnity/Hold Harmless Provision.** DHS and Agency shall be responsible exclusively with respect to their employees, for providing for employment-related benefits and deductions that are required by law, including but not limited to federal and state income tax deductions, workers compensation coverage, and PERS contributions. Agency shall perform the services under this Agreement as an independent contractor. Agency and DHS each shall be responsible, to the other, to the extent permitted by the Oregon Constitution, subject to the limitations of the Tort Claims Act (ORS 30.260-30.300), only for the acts, omissions or negligence of its own officers, employees or agents.

**14. Insurance.** Agency shall require subcontractors to maintain insurance as set forth in Exhibit C, which is attached hereto.

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

as "Records." Agency acknowledges and agrees that DHS and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to all Records to perform examinations and audits and make excerpts and transcripts. Agency shall 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 final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. Agency shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.

16. **Information Privacy/Security/Access.** If the Work performed under this Agreement requires Agency or its subcontractor(s) to have access to or use of any DHS computer system or other DHS Information Asset for which DHS imposes security requirements, and DHS grants Agency or its subcontractor(s) access to such DHS Information Assets or Network and Information Systems, Agency shall comply and require all subcontractor(s) to which such access has been granted to comply with OAR 407-014-0300 through OAR 407-014-0320, as such rules may be revised from time to time. For purposes of this section, "Information Asset" and "Network and Information System" have the meaning set forth in OAR 407-014-0305, as such rule may be revised from time to time.
17. **Force Majeure.** Neither DHS nor Agency shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, act of nature, or war which is beyond the reasonable control of DHS or Agency, respectively. Each party shall, however, make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. DHS may terminate this Agreement upon written notice to the other party after reasonably determining that the delay or default will likely prevent successful performance of this Agreement.
18. **Assignment of Agreement, Successors in Interest.**
  - a. Agency shall not assign or transfer its interest in this Agreement without prior written approval of DHS. Any such assignment or transfer, if approved, is subject to such conditions and provisions as DHS may deem necessary. No approval by DHS of any assignment or transfer of interest shall be deemed to create any obligation of DHS in addition to those set forth in the Agreement.
  - b. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns.
19. **Subcontracts.** Agency shall not enter into any subcontracts for any of the Work required by this Agreement without DHS' prior written consent. In addition to any other provisions DHS may require, Agency shall include in any permitted subcontract under this Agreement provisions to ensure that DHS will receive the benefit of subcontractor performance as if the subcontractor were the Agency with respect to Sections 1, 2, 3, 4, 7,

15, 16, 18, 19, 20, and 22 of this Exhibit B. DHS' consent to any subcontract shall not relieve Agency of any of its duties or obligations under this Agreement.

- 20. No Third Party Beneficiaries.** DHS and Agency are the only parties to this Agreement and are the only parties entitled to enforce its terms. The parties agree that Agency's performance under this Agreement is solely for the benefit of DHS to assist and enable DHS to accomplish its statutory mission. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- 21. Amendment.** DHS may amend this Agreement to the extent permitted by applicable statutes and administrative rules. No amendment, waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and when required the Department of Justice. Such amendment, waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.
- 22. 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.
- 23. Survival.** Sections 1, 4, 5, 6, 7, 10, 11, 12, 13, 14, 15, 16, 20, 23, 28, 29 and 30 of this Exhibit B shall survive Agreement expiration or termination as well as those the provisions of this Agreement that by their context are meant to survive. Agreement expiration or termination shall not extinguish or prejudice DHS' right to enforce this Agreement with respect to any default by Agency that has not been cured.
- 24. Notice.** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid to Agency or DHS at the address or number set forth below, or to such other addresses or numbers as either party may indicate pursuant to this section. Any communication or notice so addressed and mailed shall be effective five (5) days after mailing. Any communication or notice delivered by facsimile shall be 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. To be effective against DHS, any notice transmitted by facsimile must be confirmed by telephone notice to DHS' Office of Contracts and Procurement at number listed below. Any communication or notice given by personal delivery shall be effective when actually delivered to the addressee.

DHS: Office of Contracts & Procurement

Department of Human Services  
250 Winter St NE, Room 306  
Salem, OR 97301  
Telephone: 503-945-5818  
Facsimile Number: 503-378-4324

25. **Headings.** The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret this Agreement.
26. **Counterparts.** This Agreement and any subsequent amendments may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement and any amendments so executed shall constitute an original.
27. **Construction.** The parties agree and acknowledge that the rule of construction that ambiguities in a written agreement are to be construed against the party preparing or drafting the agreement shall not be applicable to the interpretation of this Agreement.
28. **Alternative Dispute Resolution.** The parties should attempt in good faith to resolve any dispute arising out of this agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
29. **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 Agency (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 Agency in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the Agency 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 Agency on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. 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 Agency is jointly liable with the State (or would be if joined in the Third Party Claim), the Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the State in such proportion as is appropriate to reflect the relative fault of the Agency 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 Agency 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 Agency'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.

30. **Indemnification by Subcontractors.** Agency 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 ("Indemnatee") 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 Agency'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 Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by the contractor from and against any and all Claims.
31. **Stop-Work Order.** DHS may, at any time, by written notice to the Agency, require the Agency to stop all, or any part of the work required by this Agreement for a period of up to 90 days after the date of the notice, or for any further period to which the parties may agree through a duly executed amendment. Upon receipt of the notice, Agency shall immediately comply with the Stop-Work Order terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the stop work order notice. Within a period of 90 days after issuance of the written notice, or within any extension of that period to which the parties have agreed, DHS shall either:
- a. Cancel or modify the stop work order by a supplementary written notice; or
  - b. Terminate the work as permitted by either the Default or the Convenience provisions of Section 10, Termination.

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

## **EXHIBIT C**

### **Subcontractor Insurance Requirements**

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

#### **TYPES AND AMOUNTS.**

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

2. **Professional Liability:**  
☒ Required by DHS   ☐ Not required by DHS.

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

- ☒ \$4,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence)

**3. Commercial General Liability:**

☒ Required by DHS ☐ Not required by DHS.

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

**Bodily Injury, Death and Property Damage:**

☒ \$4,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

**4. Automobile Liability Insurance:**

☐ Required by DHS ☒ Not required by DHS.

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

**Bodily Injury, Death and Property Damage:**

☐ \$4,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

- 5. Additional Insured.** The Commercial General Liability insurance and Automobile Liability insurance must include the State of Oregon, its officers, employees and agents as Additional Insureds but only with respect to the contractor's activities to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.

- 6. "Tail" Coverage.** If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subcontract, for a minimum of 24 months following the later of : (i) the contractor's completion and Agency's acceptance of all Services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing 24-month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the contractor may request and DHS may grant approval of the maximum "tail" coverage period

reasonably available in the marketplace. If DHS approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

7. **Notice of Cancellation or Change.** The contractor or its insurer must provide 30 days' written notice to Agency before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).
8. **Certificate(s) of Insurance.** Agency shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.

**EXHIBIT D**  
**Required Federal Terms and Conditions**

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

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

Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. Agency shall include and require all subcontractors to include in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section.

4. **Energy Efficiency.** Agency shall comply and require all subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act U.S.C. 6201 et. seq. (Pub. L. 94-163).
5. **Truth in Lobbying.** The Agency certifies, to the best of the Agency's knowledge and belief that:
  - a. No federal appropriated funds have been paid or will be paid, by or on behalf of Agency, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
  - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Agency shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
  - c. The Agency shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.
  - d. This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by section 1352, Title 31 of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

6. **HIPAA Compliance.** As a Business Associate of a Covered Entity, DHS must comply with the Health Insurance Portability and Accountability Act and the federal regulations implementing the Act (collectively referred to as HIPAA), and DHS must also comply with OAR 125-055-0100 through OAR 125-055-0130 to the extent that any Work or obligations of DHS related to this Agency are covered by HIPAA. Agency shall determine if Agency will have access to, or create any protected health information in the performance of any Work or other obligations under this Agency. To the extent that Agency will have access to, or create any protected health information to perform functions, activities, or services for, or on behalf of, DHS as specified in the Agency, Agency shall comply and cause all subcontractors to comply with the following:
- a. Privacy and Security of Individually Identifiable Health Information. Individually Identifiable Health Information about specific individuals is confidential. Individually Identifiable Health Information relating to specific individuals may be exchanged between Agency and DHS for purposes directly related to the provision of services to Clients which are funded in whole or in part under this Agreement. To the extent that Agency is performing functions, activities, or services for, or on behalf of DHS, in the performance of any Work required by this Agreement, Agency shall not use or disclose any Individually Identifiable Health Information about specific individuals in a manner that would violate DHS Privacy Rules, OAR 407-014-0000 et. seq., or DHS Notice of Privacy Practices. A copy of the most recent DHS Notice of Privacy Practices can be found on the DHS web site at <https://apps.state.or.us/cf1/FORMS/> (enter form number 2090,) or may be obtained from DHS.
  - b. Data Transactions Systems. If Agency intends to exchange electronic data transactions with DHS or the Oregon Health Authority (OHA) in connection with claims or encounter data, eligibility or enrollment information, authorizations or other electronic transaction, Agency shall execute an EDI Trading Partner Agreement and shall comply with EDI Rules.
  - c. Consultation and Testing. If Agency reasonably believes that the Agency's or DHS' data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, Agency shall promptly consult the DHS Information Security Office. Agency or DHS may initiate a request for testing of HIPAA transaction requirements, subject to available resources and the DHS testing schedule.
  - d. Business Associate Requirements. Agency and all subcontractors shall comply with the same requirements for Business Associates set forth in OAR 125-055-0100 through OAR 125-055-0130 as a contractor of a Business Associate.
7. **Resource Conservation and Recovery.** Agency shall comply and require all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act



(codified at 42 U.S.C. 6901 et. seq.). Section 6002 of that Act (codified at 42 U.S.C. 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.

**8. Audits.**

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

**9. Debarment and Suspension.** Agency shall not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Non-procurement Programs" in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and Suspension". (See 2 CFR Part 180.) This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Subcontractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

**10. Drug-Free Workplace.** Agency shall comply and cause all subcontractors to comply with the following provisions to maintain a drug-free workplace: (i) Agency certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in Agency's workplace or while providing services to DHS clients. Agency's notice shall specify the actions that will be taken by Agency against its employees for violation of such prohibitions; (ii) Establish a drug-free awareness program to inform its employees about: The dangers of drug abuse in the workplace, Agency's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations; (iii) Provide each employee to be engaged in the performance of services under this Agreement a copy of the statement mentioned in paragraph (i) above; (iv) Notify each employee in the statement required by paragraph (i) above that, as a condition of employment to provide services under this Agreement, the employee will: abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; (v) Notify DHS within ten (10) days after receiving notice under subparagraph (iv) above from an employee or otherwise receiving actual

notice of such conviction; (vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988; (vii) Make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs (i) through (vi) above; (viii) Require any subcontractor to comply with subparagraphs (i) through (vii) above; (ix) Neither Agency, or any of Agency's employees, officers, agents or subcontractors may provide any service required under this Agreement while under the influence of drugs. For purposes of this provision, "under the influence" means: observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the Agency or Agency's employee, officer, agent or subcontractor has used a controlled substance, prescription or non-prescription medication that impairs the Agency or Agency's employee, officer, agent or subcontractor's performance of essential job function or creates a direct threat to DHS clients or others. Examples of abnormal behavior include, but are not limited to: hallucinations, paranoia or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to: slurred speech, difficulty walking or performing job activities; and (x) Violation of any provision of this subsection may result in termination of the Agreement.

11. **Pro-Children Act.** Agency shall comply and require all subcontractors to comply with the Pro-Children Act of 1994 (codified at 20 U.S.C. section 6081 et. seq.).
12. **Medicaid Services.** Agency shall comply with all applicable federal and state laws and regulation pertaining to the provision of Medicaid Services under the Medicaid Act, Title XIX, 42 U.S.C. Section 1396 et. seq., including without limitation:
  - a. Keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving Medicaid assistance and shall furnish such information to any state or federal agency responsible for administering the Medicaid program regarding any payments claimed by such person or institution for providing Medicaid Services as the state or federal agency may from time to time request. 42 U.S.C. Section 1396a (a)(27); 42 CFR 431.107(b)(1) & (2).
  - b. Comply with all disclosure requirements of 42 CFR 1002.3(a) and 42 CFR 455 Subpart (B).
  - c. Maintain written notices and procedures respecting advance directives in compliance with 42 U.S.C. Section 1396(a)(57) and (w), 42 CFR 431.107(b)(4), and 42 CFR 489 subpart I.
  - d. Certify when submitting any claim for the provision of Medicaid Services that the information submitted is true, accurate and complete. Agency shall acknowledge Agency's understanding that payment of the claim will be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.

- e. Entities receiving \$5 million or more annually (under this Agreement and any other Medicaid contract) for furnishing Medicaid health care items or services shall, as a condition of receiving such payments, adopt written fraud, waste and abuse policies and procedures and inform employees, contractors and agents about the policies and procedures in compliance with Section 6032 of the Deficit Reduction Act of 2005, 42 U.S.C. § 1396a(a)(68).

- 13. **Agency-based Voter Registration.** If applicable Agency shall comply with the Agency-based Voter Registration sections of the National Voter Registration Act of 1993 that require voter registration opportunities be offered where an individual may apply for or receive an application for public assistance.