



**Agreement Number 185418**

**STATE OF OREGON  
INTERGOVERNMENTAL AGREEMENT**

You can get this document in other languages, large print, braille, or a format you prefer free of charge. Contact the Agreement Administrator at the contact information found below. We accept all relay calls.

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

**Deschutes County  
Acting by and through its Juvenile Department  
633063 NW Britta St Bldg. #1  
Bend, OR 97703  
Attention: Amy Nortrom  
Telephone: 541.316.0269  
E-mail address: amy.nortrom@deschutes.org**

hereinafter referred to as “County.”

Work to be performed under this Agreement relates principally to ODHS’

**Office of Child Welfare Programs  
Family First and Integrated Policy  
500 Summer Street NE  
Salem, OR 97301  
Agreement Administrator: Alex Palm or delegate  
Telephone: 503.884.3292  
E-mail address: alex.j.palm@odhs.oregon.gov**

1. **Effective Date and Duration.** This Agreement shall become effective on the date this Agreement is approved in writing by the Oregon Department of Justice, provided it is (i) when required, approved in writing by the Oregon Department of Administrative Services, and (ii) is signed by all parties, regardless of the date of the parties' signatures. Unless extended or terminated earlier in accordance with its terms, this Agreement shall expire on **September 30, 2026**. Agreement termination shall not extinguish or prejudice ODHS' right to enforce this Agreement with respect to any default by County 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:

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

This Agreement constitutes the entire agreement between the parties on the subject matter in it; there are no understandings, agreements, or representations, oral or written, regarding this Agreement that are not specified herein.

- b. In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: this Agreement without Exhibits, Exhibits D, B, A, and C.

3. **Consideration.**

- a. The maximum not-to-exceed amount payable to County under this Agreement, which includes any allowable expenses, is **\$435,886.00**. ODHS will not pay County any amount in excess of the not-to-exceed amount for completing the Work, and will not pay for Work until this Agreement has been signed by all parties.
  - b. ODHS will pay only for completed Work under this Agreement, and may make interim payments as provided for in Exhibit A. For purposes of this Agreement, "Work" means specific work to be performed or services to be delivered by County as set forth in Exhibit A.

4. **Contractor Determination.** In accordance with the State Controller's Oregon Accounting Manual, policy 30.40.00.104, ODHS' determination is that:

☒ County is a contractor                      ☐ Not applicable

Assistance Listings number(s) of federal funds to be paid through this Agreement: 93.658

**5. County Information and Certification.**

**a. County Information.** This information is requested pursuant to ORS 305.385.

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

**County Name (exactly as filed with the IRS):** \_\_\_\_\_

Street address: \_\_\_\_\_

City, state, zip code: \_\_\_\_\_

Email address: \_\_\_\_\_

Telephone: (     )                      Fax: (     )

**Proof of Insurance.** County shall provide the following information upon submission of the signed Agreement. All insurance listed herein must be in effect prior to Agreement execution.

Workers' Compensation Insurance Company: \_\_\_\_\_

Policy #: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

**b. Certification.** Without limiting the generality of the foregoing, by signature on this Agreement, County hereby certifies under penalty of perjury that:

- (1) County acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any "claim" (as defined by ORS 180.750) that is made by (or caused by) County and that pertains to this Agreement or to the project for which the Agreement work is being performed. County certifies that no claim described in the previous sentence is or will be a "false claim" (as defined by ORS 180.750) or an act prohibited by ORS 180.755. The Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against County, in addition to any remedies that may be available to ODHS under this Agreement;
- (2) The information shown in Section 5.a. "County Information", is County's true, accurate and correct information;
- (3) To the best of the undersigned's knowledge, County has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts;
- (4) County and County's employees and agents are not included on the list titled "Specially Designated Nationals" 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>;
- (5) County is not listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal

procurement or Non-procurement Programs” found at:  
<https://www.sam.gov/SAM>;

- (6) County is not subject to backup withholding because:
  - (a) County is exempt from backup withholding;
  - (b) County has not been notified by the IRS that County is subject to backup withholding as a result of a failure to report all interest or dividends; or
  - (c) The IRS has notified County that County is no longer subject to backup withholding; and
- (7) County’s Federal Employer Identification Number (FEIN) provided to ODHS is true and accurate. If this information changes, County shall provide ODHS with the new FEIN within 10 days.

***Remainder of Page Intentionally Left Blank***

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

**COUNTY: YOU WILL NOT BE PAID FOR WORK PERFORMED PRIOR TO  
NECESSARY STATE APPROVALS.**

**6. 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.

**Deschutes County  
Acting by and through its Juvenile Department  
By:**

_____	_____
Authorized Signature	Printed Name
_____	_____
Title	Date

**State of Oregon, acting by and through its Oregon Department of Human Services  
By:**

_____	_____
Authorized Signature	Printed Name
_____	_____
Title	Date

**Approved for Legal Sufficiency:**

Approved via email by Jeffrey J. Wahl, Attorney-in-Charge	05/30/2025
Oregon Department of Justice	Date

## **EXHIBIT A**

### **Part 1 Statement of Work**

#### **1. Purpose**

- a.** The purpose of this Agreement is to provide Functional Family Therapy (FFT) Services (“Services”). County shall provide FFT to families in Deschutes County and the surrounding areas that may benefit from FFT. This work is part of Oregon’s implementation of the federal Family First Prevention Services Act (FFPSA) and is a part of ODHS’s efforts to prevent children from being removed to foster care and ensure families are able to remain together.
- b.** County shall serve families with youth or young adults living in the home that have behavioral health needs. County shall work closely with ODHS to understand the needs of the families they are working with for overall Service development and improvement.

#### **2. Definitions**

- a.** “**Fidelity**” means the adherence to the FFT model based on standardized criteria that is monitored regularly.
- b.** “**Functional Family Therapy Clinician**” or “**FFT Clinician**” means a therapist employed by an agency certified to provide FFT who has completed required training to deliver FFT.
- c.** “**Functional Family Therapy (FFT)**” means an evidence-based model that serves families with adolescents and is part of Oregon’s Family First Prevention Services Act Plan.

#### **3. Staffing Qualifications.** Staff shall be trained according to the FFT model. The County shall ensure that clinical staff and supervisors have completed required trainings in compliance with the FFT.

#### **4. Location of Services and Service Capacity**

- a.** Services are primarily intended to be delivered in the family home, however, may take place at a community location, in a public setting, or County’s office if preferable to the family.
- b.** County shall maintain a service staff of three (3) FFT clinicians. Each clinician will maintain a caseload sufficient to meet FFT fidelity requirements as determined by ODHS contracted training entity. If County’s total caseload falls below 10 families for over 14 consecutive days, County shall notify ODHS in writing.

#### **5. Referrals/Admission Decisions**

- a.** County shall accept referrals from all sources from families that reside in Deschutes County. Referral sources may include:

- (1) County Juvenile Departments
    - (2) Hospitals;
    - (3) School or education systems;
    - (4) ODHS staff;
    - (5) pediatrician offices;
    - (6) family self-referral, etc.
  - b.** County shall develop a process to accept referrals from ODHS for families that are involved with Child Welfare or at risk of becoming involved with Child Welfare.
  - c.** County shall maintain ultimate decision making on accepting or denying referrals.
  - d.** County may not deny Services to a family with an open Child Welfare case without written approval from ODHS. For referrals made by ODHS staff, County shall review within three (3) business days. If County intends to deny Services, County shall notify ODHS within three (3) business days of the intent to deny. ODHS will provide a written response within two (2) business days of receiving request from County.
  - e.** County may maintain a waitlist. County shall notify ODHS if waitlist exceeds ten (10) families to determine if ODHS should fund an additional FFT Clinician.
- 6. Services to be Provided.**
- a.** County shall provide FFT to families with children, youth and young adults appropriate for FFT
  - b.** County shall provide FFT to Fidelity and will participate in regular Fidelity reviews by the FFT training entity contracted by ODHS.
  - c.** Following admission to the FFT program, County shall conduct an intake assessment and establish a service plan based on the family needs. The plan shall meet FFT requirements and shall be tracked through FFT training entity's fidelity management software.
  - d.** Frequency of Services will be dependent on family needs and FFT standards, will be conducted according to the
  - e.** County shall meet all requirements of an FFT site, at no cost to County. If County's Services do not meet FFT Fidelity standards, County shall work with ODHS and FFT training entity to develop a remediation plan.
- 7. Other Service Requirements.**
- a.** Travel costs are built into the overall rate in this Agreement. County shall reimburse staff for travel based on organization policies, and travel will not be reimbursed separately.
  - b.** County shall utilize a Participation Agreement with families to include language agreed upon by both County and ODHS. ODHS shall provide a draft Agreement to be adapted to the satisfaction of both parties' needs.

**8. Reporting Requirements.**

- a.** County shall report family specific information into the ODHS approved data system supported by the ODHS selected FFT technical assistance provider. County shall remain current with reporting timelines and Fidelity requirements of the program. This will be the primary mechanism that ODHS uses to monitor County's service delivery.

  - (1) Some data entered into the data system will be shared with a third-party evaluator for purposes of evaluation and claiming under the Families First Preservation Services Act (FFPSA). The contracted services have been selected by ODHS as Title IV-E Prevention Services and are therefore subject to evaluation requirements. With the execution of this Agreement, the County permits the third-party evaluator to access needed data through: the data system supported by the technical assistance provider, the County's data, and primary data collection that the third-party evaluator will conduct with a sample of families served by the County. A summary of the data to be collected by the third-party evaluator includes:

    - (a) Fidelity data
    - (b) Service outcome data
    - (c) Data gathered from consenting families documenting their experience with services.
- b.** County shall submit monthly reports along with monthly invoices to the ODHS Agreement Administrator or delegate outlining the following:

  - (1) Any challenges to FFT implementation.
  - (2) Any needs from ODHS to improve FFT implementation.
  - (3) Any major staffing changes to FFT program, including:

    - (a) Changes to FFT Clinicians;
    - (b) Changes to FFT clinical supervisor (who has completed all required trainings to provide supervision to FFT Clinicians); and
    - (c) County's plan to ensure service continuity during transition.
  - (4) An overview of all referrals, including:

    - (a) Total number of referrals; and
    - (b) The number of denials, including:

      - i. Denial reason;
      - ii. Referral source; and
      - iii. Race/ethnicity information for the family denied



- (5) An overview of children currently in Services
  - (a) Caseload for each FFT Clinician
  - (b) Number of families on a waitlist
  - (c) Referral source

***Remainder of Page Intentionally Left Blank***

## EXHIBIT A

### Part 2

#### Payment and Financial Reporting

##### 1. Payment Provisions:

- a. As consideration for the Services provided by the County during the period specified in **Section 1, “Effective Date and Duration”**, ODHS will pay to the County, a maximum not-to-exceed amount as specified in **Section 3. “Consideration”**, for the provision of all Services as described in Exhibit A, Part 1, “Statement of Work” County shall be paid as follows:
  - (1) County shall submit a monthly invoice, as outlined below, for \$24,167.00 for Services provided.
  - (2) Should County have fewer than 10 families receiving Services for one full calendar month, ODHS reserves the right to reduce the monthly payment up to 25%.
- b. County Invoice:
  - (1) County shall submit signed invoices on a form that has been created by County, to ODHS Agreement Administrator, no more than monthly, at the address specified on page one (1) or to any other address as ODHS may indicate in writing to County. County's claims to ODHS for overdue payments on invoices are subject to ORS 293.462.
  - (2) Invoices must include the following information:
    - (a) County name;
    - (b) Invoice number;
    - (c) Date of invoice;
    - (d) This Agreement number; and
    - (e) The total amount due and the payment address.

##### 2. Travel and Other Expenses. ODHS will not reimburse County for any travel or additional expenses under this Agreement.

## **EXHIBIT A**

### **Part 3 Special Provisions**

#### **1. Confidentiality of Client Information.**

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

#### **2. Amendments.**

- a.** ODHS reserves the right to amend or extend the Agreement under the following general circumstances:
  - (1) ODHS 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 ODHS' satisfaction with performance of the work or services provided by County under this Agreement.
  - (2) ODHS 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 ODHS so chooses. Any negotiation of increases in rates to implement a COLA will be as directed by the Oregon State Legislature.
- b.** ODHS further reserves the right to amend the Statement of Work 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 22., “Amendments” of this Agreement.

**3. County Requirements to Report Abuse of Certain Classes of Persons.**

- a. County shall comply with, and cause all employees to comply with, the applicable laws for mandatory reporting of abuse for certain classes of persons in Oregon, including:
  - (1) Children (ORS 419B.005 through 419B.045);
  - (2) Elderly Persons (ORS 124.055 through 124.065);
  - (3) Residents of Long Term Care Facilities (ORS 441.630 through 441.645);
  - (4) Adults with Mental Illness or Developmental Disabilities (ORS 430.735 through 430.743).
- b. County shall immediately make reports of suspected abuse of persons who are members of the classes established in Section 3.a. above to Oregon’s Statewide Abuse Reporting Hotline: 1-855-503-SAFE (7233) or local law enforcement, as a requirement of this Agreement. The County does not need to know abuse occurred, just suspect abuse, to be required to report.
- c. In addition to the requirements of Sections 3.a. and 3.b. above, if law enforcement is notified regarding a report of child abuse, neglect, or threat of harm, County shall also notify the local Child Protective Services Office of the Oregon Department of Human Services within 24 hours. If law enforcement is notified regarding a report of abuse of elderly, long term care facility residents, adults with mental illness or developmental disabilities, County shall also notify the local Aging and People with Disabilities Office of the Oregon Department of Human Services within 24 hours.
- d. If known, the abuse report must contain the following:
  - (1) The name and address of the abused person and any people responsible for that person’s care;
  - (2) The abused person’s age;
  - (3) The nature and the extent of the abuse, including any evidence of previous abuse;
  - (4) The explanation given for the abuse;
  - (5) The date of the incident; and
  - (6) Any other information that might be helpful in establishing the cause of the abuse and the identity of the abuser.

**4. Background Checks.**

- a.** County shall ensure that all employees, volunteers, subcontractors, owners, managers, and board members who perform services under this Agreement or have access to ODHS-referred clients, client information, or client funds are approved by the ODHS's Background Check Unit in accordance with Oregon Administrative Rules (OAR) 407-007-0200 through 407-007-0370.
- b.** In addition to potentially disqualifying conditions under OAR 407-007-0290, all employees, volunteers, subcontractors, owners, managers, and board members who perform services under this Agreement, or who have access to ODHS-referred clients, client information, or client funds are subject to OAR 407-007-0290(11)(c).
- c.** An employee, volunteer, subcontractor, owner, manager, or board member who performs services under this Agreement or has access to ODHS-referred clients, client information, or client funds may be hired or placed on a preliminary basis, in accordance with the requirements and limits described in OAR 407-007-0315, prior to final approval by the ODHS's Background Check Unit. An employee, volunteer, subcontractor, owner, manager, or board member who performs services under this Agreement or has access to ODHS-referred clients, client information, or client funds hired or placed on a preliminary basis shall not have unsupervised access to ODHS-referred clients, client information, or client funds and shall only participate in the limited activities described in OAR 407-007-0315.
- d.** Any current employee, volunteer, subcontractor, owner, manager, or board member of the County who changes positions with the County and will perform services under this Agreement or have access to ODHS-referred clients, client information, or client funds must have a new background check initiated through the ODHS's Background Check Unit before the individual begins the new position, regardless of whether the individual had a previous criminal background check approval. Current employees, volunteers, subcontractors, owners, managers, and board members who change positions with the County and will perform services under this Agreement or have access to ODHS-referred clients, client information, or client funds must adhere to preliminary hire rules described in OAR 407-007-0315.
- e.** There are only two possible fitness determination outcomes of a background check: approval or denial. If the employee, volunteer, subcontractor, owner, manager, or board member is denied, the individual may not have contact with ODHS clients, or access to client information or client funds. Employees, volunteers, subcontractors, owners, managers, or board members who are denied do have the right to contest the denial. The process for contesting a denial is described in OAR 407-007-0330.
- f.** For purposes of compliance with OAR 407-007-0200 through 407-007-0370, County is a "Qualified Entity", as that term is defined in OAR 407-007-0210, and must comply with all the provisions pertaining to Qualified Entities contained in OAR 407-007-0200 through 407-007-0370.

- g.** County shall establish a personal personnel file and place each criminal records check in named file for possibility of future ODHS review and shall be maintained pursuant to Exhibit B, “Standard Terms and Conditions”, Section 14, “Records, Maintenance, Access.”
  - h.** Regardless of whether or not any employee, subcontractor, owner, manager, or board member of County has access to ODHS-referred clients, client information, or client funds, if County discovers the individual is included on the list titled “Specially Designated Nationals” 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>, or is listed on the non-procurement portion of the General Service Administration’s “List of Parties Excluded from Federal procurement or Non-procurement Programs” currently found at: <https://www.sam.gov/SAM> County shall notify the ODHS Agreement Administrator via e-mail within one business day of such discovery.
- 5. Equal Access to Services.** County shall provide equal access to covered services for both males and females under 18 years of age, including access to appropriate facilities, services, and treatment, to achieve the policy in ORS 417.270.
- 6. Media Disclosure.** County will not provide information to the media regarding a recipient of services purchased under this Agreement without first consulting the ODHS office that referred the child or family. County will make immediate contact with the ODHS office when media contact occurs. The ODHS office will assist County with an appropriate follow-up response for the media.
- 7. Nondiscrimination.** County must provide services to ODHS clients without regard to race, religion, national origin, sex, age, marital status, sexual orientation or disability (as defined under the Americans with Disabilities Act). Contracted services must reasonably accommodate the cultural, language and other special needs of clients.

## EXHIBIT B

### Standard Terms and Conditions

1. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, “Claim”) between the parties that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within a circuit court for the State of Oregon of proper jurisdiction. THE PARTIES, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Except as provided in this section, neither party waives any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. The parties acknowledge that this is a binding and enforceable agreement and, to the extent permitted by law, expressly waive any defense alleging that either party does not have the right to seek judicial enforcement of this Agreement.
2. **Compliance with Law.** Both parties shall comply with laws, regulations, and executive orders to which they are subject and which are applicable to the Agreement or to the Work. Without limiting the generality of the foregoing, both parties expressly agree to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations; (b) all state laws requiring reporting of client abuse; (c) ORS 659A.400 to 659A.409, ORS 659A.145 and all regulations and administrative rules established pursuant to those laws in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the Work. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. All employers, including County and ODHS, 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. Nothing in this Agreement shall require County or ODHS to act in violation of state or federal law or the Constitution of the State of Oregon.
3. **Independent Contractors.** The parties agree and acknowledge that their relationship is that of independent contracting parties and that County is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.
4. **Representations and Warranties.**
  - a. County represents and warrants as follows:
    - (1) **Organization and Authority.** County is a political subdivision of the State of Oregon duly organized and validly existing under the laws of the State of Oregon. County has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder.

- (2) Due Authorization. The making and performance by County of this Agreement (a) have been duly authorized by all necessary action by County and (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of County's charter or other organizational document and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which County is a party or by which County may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by County of this Agreement.
  - (3) Binding Obligation. This Agreement has been duly executed and delivered by County and constitutes a legal, valid and binding obligation of County, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
  - (4) County has the skill and knowledge possessed by well-informed members of its industry, trade or profession and County will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in County's industry, trade or profession;
  - (5) County shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the Work; and
  - (6) County prepared its proposal related to this Agreement, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.
- b.** ODHS represents and warrants as follows:
  - (1) Organization and Authority. ODHS has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder.
  - (2) Due Authorization. The making and performance by ODHS of this Agreement (a) have been duly authorized by all necessary action by ODHS and (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which ODHS is a party or by which ODHS may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by ODHS of this Agreement, other than approval by the Oregon Department of Justice if required by law.



- (3) **Binding Obligation.** This Agreement has been duly executed and delivered by ODHS and constitutes a legal, valid and binding obligation of ODHS, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

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

**5. Funds Available and Authorized Clause.**

- a. The State of Oregon's payment obligations under this Agreement are conditioned upon ODHS receiving funding, appropriations, limitations, allotment, or other expenditure authority sufficient to allow ODHS, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Agreement. County is not entitled to receive payment under this Agreement from any part of Oregon state government other than ODHS. 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. ODHS 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). Upon request, County shall provide its taxpayer identification number (TIN) and other necessary banking information to receive EFT payment. County shall maintain at its own expense a single financial institution or authorized payment agent capable of receiving and processing EFT using the Automated Clearing House (ACH) transfer method. The most current designation and EFT information will be used for all payments under this Agreement. County shall provide this designation and information on a form provided by ODHS. In the event that EFT information changes or the County elects to designate a different financial institution for the receipt of any payment made using EFT procedures, the County shall provide the changed information or designation to ODHS on an ODHS-approved form. ODHS is not required to make any payment under this Agreement until receipt of the correct EFT designation and payment information from the County.

- 6. Recovery of Overpayments.** If billings under this Agreement, or under any other Agreement between County and ODHS, result in payments to County to which County is not entitled, ODHS, after giving to County written notification and an opportunity to object, may withhold from payments due to County such amounts, over such periods of time, as are necessary to recover the amount of the overpayment. Prior to withholding, if County objects to the withholding or the amount proposed to be withheld, County shall notify ODHS that it wishes to engage in dispute resolution in accordance with Section 18 of this Agreement.

**7. Ownership of Intellectual Property.**

- a. Definitions.** As used in this Section, and elsewhere in this Agreement, the following terms have the meanings set forth below:
  - (1) “County Intellectual Property” means any intellectual property owned by County and developed independently from the Work.
  - (2) “Third Party Intellectual Property” means any intellectual property owned by parties other than ODHS or County.
- b.** Except as otherwise expressly provided herein, or as otherwise required by state or federal law, ODHS will not own the right, title and interest in any intellectual property created or delivered by County or a subcontractor in connection with the Work. With respect to that portion of the intellectual property that County owns, County grants to ODHS a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to (1) use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the intellectual property, (2) authorize third parties to exercise the rights set forth in Section 7.b.(1) on ODHS’ behalf, and (3) sublicense to third parties the rights set forth in Section 7.b.(1).
- c.** If state or federal law requires that ODHS or County grant to the United States a license to any intellectual property, or if state or federal law requires that ODHS or the United States own the intellectual property, then County shall execute such further documents and instruments as ODHS may reasonably request in order to make any such grant or to assign ownership in the intellectual property to the United States or ODHS. To the extent that ODHS becomes the owner of any intellectual property created or delivered by County in connection with the Work, ODHS will grant a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to County to use, copy, distribute, display, build upon and improve the intellectual property.
- d.** County shall include in its subcontracts terms and conditions necessary to require that subcontractors execute such further documents and instruments as ODHS may reasonably request in order to make any grant of license or assignment of ownership that may be required by federal or state law.

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

- a.** County fails to perform, observe or discharge any of its covenants, agreements or obligations set forth herein;
- b.** Any representation, warranty or statement made by County herein or in any documents or reports relied upon by ODHS to measure the delivery of Work, the expenditure of payments or the performance by County is untrue in any material respect when made;

- c. County (1) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (2) admits in writing its inability, or is generally unable, to pay its debts as they become due, (3) makes a general assignment for the benefit of its creditors, (4) is adjudicated a bankrupt or insolvent, (5) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (6) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (7) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (8) takes any action for the purpose of effecting any of the foregoing; or
      - d. A proceeding or case is commenced, without the application or consent of County, in any court of competent jurisdiction, seeking (1) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of County, (2) the appointment of a trustee, receiver, custodian, liquidator, or the like of County or of all or any substantial part of its assets, or (3) similar relief in respect to County under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive days, or an order for relief against County is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).
- 9. **ODHS Default.** ODHS shall be in default under this Agreement upon the occurrence of any of the following events:
  - a. ODHS 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 ODHS herein or in any documents or reports relied upon by County to measure performance by ODHS is untrue in any material respect when made.
- 10. **Termination.**
  - a. **County Termination.** County may terminate this Agreement:
    - (1) For its convenience, upon at least 30 days advance written notice to ODHS;
    - (2) Upon 45 days advance written notice to ODHS, if County does not obtain funding, appropriations and other expenditure authorizations from County's governing body, federal, state or other sources sufficient to permit County to satisfy its performance obligations under this Agreement, as determined by County in the reasonable exercise of its administrative discretion;
    - (3) Upon 30 days advance written notice to ODHS, if ODHS is in default under this Agreement and such default remains uncured at the end of said

30-day period or such longer period, if any, as County may specify in the notice; or

- (4) Immediately upon written notice to ODHS, if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that County no longer has the authority to meet its obligations under this Agreement.

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

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

- (6) Immediately upon written notice to County, if ODHS determines that County or any of its subcontractors have endangered or are endangering the health or safety of a client or others in performing work covered by this Agreement.
  - c. **Mutual Termination.** The Agreement may be terminated immediately upon mutual written consent of the parties or at such time as the parties may agree in the written consent.
- 11. **Effect of Termination.**
  - a. **Entire Agreement.**
    - (1) Upon termination of this Agreement, ODHS shall have no further obligation to pay County under this Agreement.
    - (2) Upon termination of this Agreement, County shall have no further obligation to perform Work under this Agreement.
  - b. **Obligations and Liabilities.** Notwithstanding Section 11.a., 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. **Insurance.** County shall require subcontractors to maintain insurance as set forth in Exhibit C, which is attached hereto.
- 14. **Records Maintenance; Access.** County shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, County shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of County, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document County's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of County whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." County acknowledges and agrees that ODHS and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to all Records to perform examinations and audits and make excerpts and transcripts. County shall retain and keep accessible all Records for a minimum of six years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. County shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.

- 15. Information Privacy/Security/Access.** If the Work performed under this Agreement requires County or its subcontractor(s) to access or otherwise use any ODHS Information Asset or Network and Information System in which security or privacy requirements apply, and ODHS grants County, its subcontractor(s), or both access to such ODHS Information Assets or Network and Information Systems, County shall comply and require its subcontractor(s) to which such access has been granted to comply with the terms and conditions applicable to such access or use, including 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.
- 16. Force Majeure.** Neither ODHS nor County shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, natural causes, or war which is beyond the reasonable control of ODHS or County, respectively. Each party shall, however, make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. ODHS may terminate this Agreement upon written notice to the other party after reasonably determining that the delay or breach will likely prevent successful performance of this Agreement.
- 17. Assignment of Agreement, Successors in Interest.**

  - a.** County shall not assign or transfer its interest in this Agreement without prior written approval of ODHS. Any such assignment or transfer, if approved, is subject to such conditions and provisions as ODHS may deem necessary. No approval by ODHS of any assignment or transfer of interest shall be deemed to create any obligation of ODHS 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.
- 18. 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.
- 19. Subcontracts.** County shall not enter into any subcontracts for any of the Work required by this Agreement without ODHS’ prior written consent. In addition to any other provisions ODHS may require, County shall include in any permitted subcontract under this Agreement provisions to require that ODHS will receive the benefit of subcontractor performance as if the subcontractor were County with respect to Sections 1, 2, 3, 4, 7, 15, 16, 18, 19, 20, and 22 of this Exhibit B. ODHS’ consent to any subcontract shall not relieve County of any of its duties or obligations under this Agreement.
- 20. No Third Party Beneficiaries.** ODHS and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. The parties agree that County’s performance under this Agreement is solely for the benefit of ODHS to assist and enable ODHS 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. **Amendments.** No amendment, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and, when required, approved by the Oregon Department of Justice. Such amendment, 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, 12, 13, 14, 15, 18, 20, 21, 22, 23, 24, 25, 26, 27, and 28 of this Exhibit B shall survive Agreement expiration or termination as well as those the provisions of this Agreement that by their context are meant to survive. Agreement expiration or termination shall not extinguish or prejudice either party's right to enforce this Agreement with respect to any default by the other party that has not been cured.
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 County or ODHS at the address or number set forth in this Agreement, or to such other addresses or numbers as either party may indicate pursuant to this section. Any communication or notice so addressed and mailed by regular mail shall be deemed received and effective five days after the date of mailing. Any communication or notice delivered by facsimile shall be deemed received and effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the recipient, or on the next business day if transmission was outside normal business hours of the recipient. Notwithstanding the forgoing, to be effective against the other party, any notice transmitted by facsimile must be confirmed by telephone notice to the other party. Any communication or notice given by personal delivery shall be deemed effective when actually delivered to the addressee.

**ODHS:** Office of Contracts & Procurement  
500 Summer Street NE, E-03  
Salem, OR 97301  
Telephone: 503-945-5818  
Fax: 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. Waiver.** The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision. No waiver or consent shall be effective unless in writing and signed by the party against whom it is asserted.

**27. Contribution.**

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



- 28. Indemnification by Subcontractors.** County shall take all reasonable steps to cause its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents (“Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys’ fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of County’s contractor or any of the officers, agents, employees or subcontractors of the contractor (“Claims”). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.
- 29. Stop-Work Order.** ODHS may, at any time, by written notice to County, require the County to stop all, or any part of the work required by this Agreement for a period of up to 90 days after the date of the notice, or for any further period to which the parties may agree through a duly executed amendment. Upon receipt of the notice, County shall immediately comply with the Stop-Work Order terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the stop work order notice. Within a period of 90 days after issuance of the written notice, or within any extension of that period to which the parties have agreed, ODHS 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, ODHS may, after receiving and evaluating a request by County, make an adjustment in the time required to complete this Agreement and the Agreement price by a duly executed amendment.

## **EXHIBIT C**

### **Subcontractor Insurance Requirements**

County shall require its first-tier Contractor(s) (Contractor) that are not units of County as defined in ORS 190.003, if any, to:

- i) obtain the insurance specified under TYPES AND AMOUNTS and meet the requirements under ADDITIONAL INSURED, CONTINUOUS CLAIMS MADE COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before the Contractor(s) perform under contracts between County and the Contractors (the "Subcontracts"), and
- ii) maintain the insurance in full force throughout the duration of the Subcontracts. The insurance must be provided by insurance companies or entities authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to ODHS.

County shall not authorize Contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, County shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. County shall incorporate appropriate provisions in the Subcontracts permitting it to enforce Contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force, terminating the Subcontracts as permitted by the Subcontracts, or pursuing legal action to enforce the insurance requirements. In no event, shall County permit a Contractor to work under a Subcontract when the County is aware that the Contractor is not in compliance with the insurance requirements. As used in this section, a "first-tier" Contractor is a Contractor with which the County directly enters into a contract. It does not include a subcontractor with which the Contractor enters into a contract.

If Contractor maintains broader coverage and/or higher limits than the minimums shown in this insurance requirement exhibit, ODHS requires and shall be entitled to the broader coverage and/or higher limits maintained by Contractor.

### **INSURANCE TYPES AND AMOUNTS**

#### **WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY:**

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide Workers' Compensation Insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements. If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain Employers' Liability Insurance coverage with limits not less than \$500,000 each accident.

If Contractor is an employer subject to any other state's workers' compensation law, Contractor shall provide Workers' compensation Insurance coverage for its employees as required by

applicable workers' compensation laws including Employers' Liability Insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

As applicable, Contractor shall obtain coverage to discharge all responsibilities and liabilities that arise out of or relate to the Jones Act with limits of no less than \$5,000,000 and/or the Longshoremen's and Harbor Workers' Compensation Act.

**COMMERCIAL GENERAL LIABILITY:**

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

**AUTOMOBILE LIABILITY:**

☐ Required ☒ Not required

**PROFESSIONAL LIABILITY:**

☒ Required ☐ Not required

Contractor shall provide Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts related to the services to be provided under the Contract/Subcontract by the Contractor and Contractor's subcontractors, agents, officers or employees in an amount not less than \$1,000,000.00 per claim and not less than \$2,000,000.00 annual aggregate limit.

If coverage is provided on a claims made basis, then either an extended reporting period of not less than 24 months shall be included in the Professional Liability Insurance coverage, or the Contractor and subcontractors shall provide continuous claims made coverage as stated below.

**NETWORK SECURITY AND PRIVACY LIABILITY:**

☐ Required ☒ Not required

**POLLUTION LIABILITY:**

☐ Required ☒ Not required

**EXCESS/UMBRELLA INSURANCE:**

A combination of primary and Excess/Umbrella insurance may be used to meet the required limits of insurance. When used, all of the primary and Excess or Umbrella policies must provide all of the insurance coverages required herein, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Excess or Umbrella policies must be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying insurance.

No insurance policies maintained by the Additional Insureds, whether primary or Excess, and which also apply to a loss covered hereunder, are to be called upon to contribute to a loss until the Contractor's primary and Excess liability policies are exhausted.

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.

**ADDITIONAL COVERAGE REQUIREMENTS:**

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

**ADDITIONAL INSURED:**

All liability insurance, except for Workers' Compensation, Professional Liability, Directors and Officers Liability and Network Security and Privacy Liability (if applicable), required under the Subcontract must include an Additional Insured Endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor's services to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.

Regarding Additional Insured status under the General Liability policy, the State of Oregon requires Additional Insured status with respect to liability arising out of ongoing operations and completed operations. The Additional Insured Endorsement with respect to liability arising out of Contractor's ongoing operations must be on or at least as broad as ISO Form CG 20 10 and the Additional Insured endorsement with respect to completed operations must be on or at least as broad as ISO form CG 20 37.

**WAIVER OF SUBROGATION:**

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

**CONTINUOUS CLAIMS MADE COVERAGE:**

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

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

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

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

**NOTICE OF CHANGE OR CANCELLATION:**

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

**INSURANCE REQUIREMENT REVIEW:**

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

**STATE ACCEPTANCE:**

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

## EXHIBIT D

### Federal Terms and Conditions

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

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

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

officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.

- [illegible]



9. **Pro-Children Act.** County shall comply and require all subcontractors to comply with the Pro-Children Act of 1994 (codified at 20 U.S.C. Section 6081 et. seq.).
10. **Medicaid Services.** Reserved.
11. **Agency-based Voter Registration.** If applicable, County 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.
12. **Disclosures.** Reserved.
13. **Federal Intellectual Property Rights Notice.** The federal funding agency, as the awarding agency of the funds used, at least in part, for the Work under this Agreement, may have certain rights as set forth in the federal requirements pertinent to these funds. For purposes of this subsection, the terms “grant” and “award” refer to funding issued by the federal funding agency to the State of Oregon. County agrees that it has been provided the following notice:
  - a. The federal funding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the Work, and to authorize others to do so, for Federal Government purposes with respect to:
    - (1) The copyright in any Work developed under a grant, subgrant or contract under a grant or subgrant; and
    - (2) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.
  - b. The parties are subject to applicable federal regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.”
  - c. The parties are subject to applicable requirements and regulations of the federal funding agency regarding rights in data first produced under a grant, subgrant or contract under a grant or subgrant.
14. **Super Circular Requirements.** 2 CFR Part 200, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, including but not limited to the following:
  - a. **Property Standards.** 2 CFR 200.313, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, which generally describes the required maintenance, documentation, and allowed disposition of equipment purchased with federal funds.
  - b. **Procurement Standards.** When procuring goods or services (including professional consulting services), applicable state procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C or 2 CFR § 200.318 through 200.326, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, as applicable.

- c. Contract Provisions.** The contract provisions listed in 2 CFR Part 200, Appendix II, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, that are hereby incorporated into this Exhibit, are, to the extent applicable, obligations of County, and County shall also include these contract provisions in its contracts with non-Federal entities.
- 15. Federal Whistleblower Protection.** County shall comply, and ensure the compliance by subcontractors or subgrantees, with 41 U.S.C. 4712, Enhancement of contractor protection from reprisal for disclosure of certain information.