

Agreement for Services for Sweet Home Homeless

THIS AGREEMENT is made by and between the City of Sweet Home, an Oregon municipal corporation, hereinafter "City" and Family Assistance and Resource Center Group aka. FAC hereinafter "Contractor," jointly referred to as "Parties."

IN CONSIDERATION of the terms and conditions contained herein, the Parties agree as follows:

1. Work to Be Performed. Contractor shall provide all labor, services, and material to satisfactorily complete the Scope of Services, attached as Exhibit A.

- A. **Administration.** The City Manager or designee shall be the primary contact for Contractor. Upon notice from the City Manager or designee, Contractor shall commence work, perform the requested tasks in the Scope of Services, stop work, and promptly cure any failure in performance under this Agreement.
- B. **Representations.** City has relied upon the qualifications of Contractor in entering into this Agreement. By execution of this Agreement, Contractor represents it possesses the ability, skill, and resources necessary to perform the work and is familiar with all current laws, rules, and regulations which reasonably relate to the Scope of Services.
- C. **Standard of Care.** Contractor shall exercise the degree of skill and diligence normally employed by non-profit contractors engaged in the same activities and performing the same or similar services through its employees and volunteers at the time such services are performed.
- D. **Modifications.** The Parties may modify this contract, including Scope of Services, by mutual agreement.

2. Term of Contract. This Agreement shall be in full force and effect upon execution and shall remain in effect until its expiration on December 31, 20__ or until terminated by either party upon ____ days written notice to the other party.

3. Compensation. City will provide the land area for the Sweet Home sleep center and facilities at _____ Sweet Home OR 97386 (or at another location) and in exchange Contractor will operate the facility on a day-to-day basis as an independent contractor as stated herein. This Agreement shall function as a lease of said premises by City to Contractor with the terms thereof as stated herein.

4. Payment. The Parties agree that the City will not and is not responsible for payment to Contractor for its services at the facility and that it will look to its own sources of income to pay for the operation of the facility.

5. Notice. Notices shall be given in writing as follows:

TO THE CITY:

Name: Ray Towry, City Manager
Phone: (541) 367-8969
Address: 3225 Main Street
Sweet Home, OR 97386

TO THE CONTRACTOR:

Name:

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6. Applicable Laws and Standards. The Parties, in the performance of this Agreement, agree to comply with all applicable federal, state, and local laws and regulations.

7. Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions.

A. By executing this Agreement, the Contractor certifies to the best of its knowledge and belief that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (A)(2) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state, or local) terminated for cause or default.
5. B Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this Agreement.

8. Relationship of the Parties. It is understood and agreed that Contractor shall be an independent contractor and not the agent or employee of City. Any and all employees or volunteers who provide services to Contractor under this Agreement shall be deemed employees or volunteers solely of Contractor. The Contractor shall be solely responsible for the conduct and actions of all its employees or volunteers under this Agreement and any liability that may attach thereto.

9. Insurance. Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Contractor, its agents, representatives, employees, or subcontractors.

- A. Minimum Scope of insurance. Contractor shall obtain insurance of the types described below:
1. Automobile liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage.
 1. Commercial general liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from Contractor's, operations, stop-gap independent contractors and personal injury, and advertising injury. City shall be named as an additional insured under Contractor's commercial

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general liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO CG 20 26.

2. Workers' compensation coverage as required by the industrial insurance laws of the State of Oregon.

B. B. Minimum Amounts of Insurance. Contractor shall maintain the following insurance limits:

1. Automobile liability insurance with a minimum combined single limit for bodily injury and property damage of no less than \$2,000,000 per accident.
2. Commercial general and umbrella liability insurance shall be written with limits no less than \$2,000,000 for each occurrence, and \$3,000,000 for general aggregate.

C. C. Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions for automobile liability and commercial general liability insurance:

1. Contractor's insurance coverage shall be primary insurance with respect to the City as to Contractor's actions. Any insurance, self-insurance, or insurance pool coverage maintained by City shall be in excess of Contractor's insurance and shall not contribute with it.
2. Contractor shall fax or send electronically in .pdf format a copy of insurer's cancellation notice within two business days of receipt by Contractor.
3. If Contractor maintains higher insurance limits than the minimums shown above, City shall be insured for the full available limits of automobile and commercial general and excess or umbrella liability maintained by Contractor, irrespective of whether such limits maintained by Contractor are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidence limits of liability lower than those maintained by Contractor.
4. Failure on the part of Contractor to maintain the insurance as required shall constitute a material breach of the Agreement, upon which the City may, after giving at least five business days' notice to Contractor to correct the breach, immediately terminate the Agreement, or at its sole discretion, procure or renew such insurance and pay any and all premiums in connection therewith, offset against funds due Contractor from the City.

D. Acceptability of insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Evidence of Coverage. As evidence of the insurance coverages required by this

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Agreement, Contractor shall furnish acceptable insurance certificates to the City Clerk at the time Contractor returns the signed Agreement. The certificate shall specify all of the parties who are additional insureds, and shall include applicable policy endorsements, and the deduction or retention level. Insuring companies or entities are subject to City acceptance. If requested, complete copies of insurance policies shall be provided to City. Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

10. Indemnification and Hold Harmless. Contractor shall, at its sole expense, defend, indemnify, and hold harmless City and its officers, agents, and employees, from any and all claims, actions, suits, liability, loss, costs, attorney's fees, costs of litigation, expenses, injuries, and damages of any nature whatsoever relating to or arising out of the wrongful or negligent acts, errors, or omissions in the services provided by Contractor, Contractor's agents, subcontractors, and employees to the fullest extent permitted by law, subject only to the limitations provided below.

Contractor's duty to defend, indemnify, and hold City harmless shall not apply to liability for damages arising out of such services caused by or resulting from the sole negligence of City or City's agents or employees.

Contractor's duty to defend, indemnify, and hold City harmless against liability for damages arising out of such services caused by the concurrent negligence of (a) City or City's agents or employees, and (b) Contractor, Contractor's agents, subcontractors, and employees, shall apply only to the extent of the negligence of Contractor, Contractor's agents, subcontractors, and employees.

Contractor's duty to defend, indemnify, and hold City harmless shall include, as to all claims, demands, losses, and liability to which it applies, City's personnel-related costs, reasonable attorneys' fees, the reasonable value of any services rendered by the office of the City Attorney, outside Contractor costs, court costs, fees for collection, and all other claim-related expenses.

Contractor specifically and expressly waives any immunity that may be granted it under the laws of the State of Oregon as allowed by said laws. These indemnification obligations shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under workers' compensation acts, disability benefit acts, or other employee benefits acts. Provided, that Contractor's waiver of immunity under this provision extends only to claims against Contractor by City, and does not include, or extend to, any claims by Contractor's employees directly against Contractor.

Contractor hereby certifies that this indemnification provision was mutually negotiated.

11. Non-Discrimination. During the performance of this contract, Contractor agrees as follows:

- A. Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, sexual orientation, genetic information, marital status, age, Vietnam era veteran status, disabled veteran condition, disability, or

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national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin.

- B. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor will not, on grounds of any of the protected class indicators listed in subsection A of this Section:
1. Deny an individual any services or other benefits provided under this agreement.
 2. Provide any service(s) or other benefits to an individual(s), which are different, or are provided in a different manner from those provided to others under this agreement.
 3. Subject an individual to segregation or separate treatment in any manner related to the receipt of any service(s) or other benefits provided under this agreement.
 4. Deny any individual an opportunity to participate in any program provided by this agreement through an opportunity to do which is different from that afforded others under this agreement. Contractor in determining (1) the types of services or other benefits to be provided, or (2) the class of individuals to whom or the situation in which, such services or other benefits will be provided, or (3) the class of individuals to be afforded an opportunity to participate in any services or other benefits, will not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination due to any of the protected class indicators listed in subsection A. of this Section.

12. Waiver. No officer, employee, agent, or other individual acting on behalf of either Party has the power, right, or authority to waive any of the conditions or provisions of this Agreement. A waiver in one instance shall not be held to be a waiver of any other subsequent breach or nonperformance. All remedies afforded in this Agreement or by law shall be taken and construed as cumulative and in addition to every other remedy provided herein or by law. Failure of either Party to enforce at any time any of the provisions of this Agreement or to require at any time performance by the other Party of any provision hereof shall in no way be construed to be a waiver of such provisions nor shall it affect the validity of this Agreement or any part thereof.

13. Assignment and Delegation. Contractor may not assign, transfer, or delegate any or all of the responsibilities of this Agreement or the benefits received hereunder without prior written consent of the City.

14. Subcontracts. Except as otherwise provided herein, Contractor shall not enter into subcontracts for any of the work contemplated under this Agreement without obtaining prior written approval of City.

15. Confidentiality. Contractor may, from time-to-time, receive information which is deemed by City to be confidential. Contractor shall not disclose such information without the prior

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express written consent of City or upon order of a court of competent jurisdiction.

16. Jurisdiction and Venue. This Agreement is entered into in Linn County, Oregon. Disputes between City and Contractor shall be resolved in the Circuit Court of the State of Oregon in Linn County.

17. Cost and Attorney's Fees. The prevailing party in any litigation or arbitration arising out of this Agreement shall be entitled to its attorney's fees and costs of such litigation (including expert witness fees).

18. Entire Agreement. This written Agreement constitutes the entire and complete agreement between the Parties and supersedes any prior oral or written agreements. This Agreement may not be changed, modified, or altered except in writing signed by the Parties hereto. Time is of the essence in this Agreement.

19. Anti-kickback. No officer or employee of City, having the power or duty to perform an official act or action related to this Agreement shall have or acquire any interest in this Agreement, or have solicited, accepted, or granted a present or future gift, favor, service, or other thing of value from any person with an interest in this Agreement.

20. Severability. If any section, sentence, clause, or phrase of this Agreement should be held to be invalid for any reason by a court of competent jurisdiction, such invalidity shall not affect the validity of any other section, sentence, clause, or phrase of this Agreement.

21. Maintenance of Records. Contractor shall maintain record on a current basis to support its billings to City. City, or its authorized representative, shall have the authority to inspect, audit and copy, on reasonable notice and from time to time, any records of Contractor regarding its billings or its performance hereunder, for a period of three (3) years after completion or termination of this Contract.

22. Exhibits. Exhibits attached and incorporated into this Agreement are:

A. Scope of Services