

T.9.a.

AGENDA COVER MEMO

AGENDA DATE: August 2, 2005

TO: Board of County Commissioners

DEPARTMENT: Children and Families

PRESENTED BY: Alicia Hays, Director

AGENDA TITLE: IN THE MATTER OF DELEGATING AUTHORITY TO
THE COUNTY ADMINISTRATIVE OFFICER TO
EXECUTE THE OREGON COMMISSION ON CHILDREN
AND FAMILIES INTERGOVERNMENTAL AGREEMENT
IN THE AMOUNT OF \$175,658.

I. MOTION

TO DELEGATE AUTHORITY TO THE COUNTY ADMINISTRATIVE
OFFICER TO EXECUTE THE OREGON COMMISSION ON CHILDREN
AND FAMILIES INTERGOVERNMENTAL AGREEMENT IN THE
AMOUNT OF \$175,658.

II. DISCUSSION

A. Background

The Oregon Commission on Children and Families (OCCF) is authorized by the Oregon Legislative Assembly to set statewide policies for services to children and families and to insure that funds for such services are available where the services are needed. OCCF supports local Commission on Children and Families in each county as they develop plans and mobilize their communities to enable families and communities to help children reach their full potential. The OCCF is further authorized to grant funds to local Commissions on Children and Families to implement research based best or promising practices that are outcome driven and aligned with the local comprehensive plan. The Oregon Legislature has approved a continuing resolution to provide funding for OCCF until a final budget is approved. (Attachment A)Upon approval of a final budget for the 2005-2007 biennium by the Oregon State Legislature, OCCF will amend this agreement to provide additional funding.

B. Alternatives/Options

1. Adopt the order and delegate authority to the County Administrative Officer to execute the revenue agreement.
2. Reject the order and provide direction to the Lane County Commission on Children and Families (LCCCF) for revisions and resubmission of the order.
3. Reject the order and the state funds.

C. Recommendation

Option 1 – Adopt the order and delegate authority to the County Administrative Officer to execute the revenue contract.

III. IMPLEMENTATION/TIMING

Following Board approval, the County Administrative Officer will sign the revenue contract and an executed copy will be returned to OCCF.

IV. ATTACHMENTS

A. OCCF 2005-2007 Intergovernmental Agreement

THE BOARD OF COUNTY COMMISSIONERS, LANE COUNTY, OREGON

RESOLUTION) IN THE MATTER OF DELEGATING AUTHORITY
AND ORDER) TO THE COUNTY ADMINISTRATIVE OFFICER
) **TO EXECUTE THE OREGON COMMISSION ON**
) **CHILDREN AND FAMILIES INTERGOVERN-**
) **MENTAL AGREEMENT IN THE AMOUNT OF**
) **\$175,658**

WHEREAS, the Oregon Commission on Children and Families (OCCF) is authorized to grant funds to local Commissions on Children and Families to implement research based, best or promising practices that are outcome driven and aligned with the local comprehensive plan; and

WHEREAS, the Oregon State legislature has passed a continuing resolution to provide funding until a final budget is approved, and

WHEREAS, ORS 190.010 provides that units of local government may enter into agreements; COUNTY and the STATE OF OREGON are both units of local government; and

NOW THEREFORE, IT IS HEREBY ORDERED that the Board of County Commissioners delegate authority to the County Administrative Officer to execute the Oregon Commission on Children and Families Intergovernmental Agreement in the amount of \$175,658.

APPROVED this ____ day of August, 2005.

Anna Morrison, Chair
BOARD OF COUNTY COMMISSIONERS

APPROVED AS TO FORM
Date 7/26/05 Jane County
J. Zaidlaw
OFFICE OF LEGAL COUNSEL

**TO DELEGATE AUTHORITY TO THE COUNTY ADMINISTRATIVE OFFICER TO
EXECUTE THE OREGON COMMISSION ON CHILDREN AND FAMILIES
INTERGOVERNMENTAL AGREEMENT IN THE AMOUNT OF \$175,658.**

CONTRACT #0507LANE**OREGON COMMISSION ON CHILDREN AND FAMILIES
2005-2007 COUNTY INTERGOVERNMENTAL AGREEMENT**

This Oregon Commission on Children and Families 2005-2007 County Intergovernmental Agreement (the "Contract") is between the State of Oregon acting by and through its State Commission on Children and Families ("Agency") and Lane County, a political subdivision of the State of Oregon, acting by and through its Local Commission on Children and Families ("County").

RECITALS

WHEREAS, ORS 417.735 authorizes Agency to assist Oregon counties in enabling families and communities to protect, nurture, and realize the full physical, social, emotional, cognitive and cultural development potential of children in Oregon;

WHEREAS, County has requested financial assistance from Agency for the foregoing purposes; and

WHEREAS, Agency is willing, upon the terms and conditions of this Contract, to provide financial assistance to County for the foregoing purposes;

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. **Effective Date and Duration.** Upon execution by each of the parties hereto and approval as required by applicable law, this Contract shall become effective as of July 1, 2005. Unless terminated earlier in accordance with its terms, this Contract shall terminate on June 30, 2007.
2. **Contract Documents, Order of Precedence.** This Contract consists of the following documents, which are listed in descending order of precedence. In the event of a conflict between two or more of these documents, the language in the document with the highest precedence shall control.

This Contract without Exhibits

Exhibit G	Required Federal Terms and Conditions
Exhibit F	Standard Terms and Conditions
Exhibit E	General Terms and Conditions
Exhibit D	Special Terms and Conditions
Exhibit A	Definitions
Exhibit C	Award
Exhibit B	Funding Area Descriptions

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be duly executed as of the dates set forth below their respective signatures.

STATE OF OREGON ACTING BY AND THROUGH ITS
STATE COMMISSION ON CHILDREN AND FAMILIES

By: *Pickey Lansing*
Name: _____
Title: *Director*
Date: *6-30-05*

LANE COUNTY ACTING BY AND THROUGH ITS LOCAL
COMMISSION ON CHILDREN AND FAMILIES

By: _____
Name: _____
Title: _____
Date: _____

**OREGON COMMISSION ON CHILDREN AND FAMILIES
2005-2007 COUNTY INTERGOVERNMENTAL AGREEMENT
EXHIBIT A
DEFINITIONS**

As used in this Contract, the following words and phrases shall have the indicated meanings.

1. **"Activity"** means an activity falling within a Funding Area, whose costs are covered in whole or in part with financial assistance Agency pays to County pursuant to this Contract.
2. **"Agency"** has the meaning set forth in the first paragraph of this Contract.
3. **"Claim"** has the meaning set forth in section 4 of Exhibit F.
4. **"Contract"** means this 2005-2007 County Intergovernmental Agreement.
5. **"County"** has the meaning set forth in the first paragraph of this Contract
6. **"Federal Funds"** means all funds paid to County under this Contract that Agency receives from an agency, instrumentality or program of the federal government of the United States.
7. **"Funding Area"** means any one of the areas enumerated and further described in Exhibit B.
8. **"Funding Area Description"** means the description of a Funding Area set forth on Exhibit B.
9. **"Misexpenditure"** has the meaning set forth in section 1 of Exhibit E.
10. **"Provider"** has the meaning set forth in section 5 of Exhibit E. As used in a Funding Area Description, Provider also includes County if County conducts an Activity within that Funding Area directly.
11. **"Underexpenditure"** has the meaning set forth in section 1 of Exhibit E.
12. **"Work Product"** has the meaning set forth in section 14 of Exhibit F.

**OREGON COMMISSION ON CHILDREN AND FAMILIES
2003-2005 COUNTY INTERGOVERNMENTAL AGREEMENT
EXHIBIT B
FUNDING AREA DESCRIPTIONS**

1. **Great Start.** Great Start activities are described in OAR 423-010-0024(1).
2. **Children, Youth and Families** Children, Youth and Families activities are described in OAR 423-010-0024(3).
3. **Child Care and Development Fund.** Child Care and Development Fund activities are described in OAR 423-010-0024(2).
4. **Court Appointed Special Advocates.** Court Appointed Special Advocates activities are described in OAR 423-010-0024(4).
5. **Youth Investment.** Youth Investment activities are described in OAR 423-010-0024(5). At least 25% of Youth Investment Funds must be invested in Evidence Based Practices as defined in ORS 182.525 Note: Sec.5.
6. **Family Preservation and Support.** Family Preservation and Support activities are described in OAR 423-010-0024(7).
7. **Basic Capacity.** Basic Capacity activities are described in OAR 423-010-0023(1).
8. **Relief Nurseries.** Relief Nurseries activities are described in OAR 423-010-0024(8).
9. **Healthy Start.** Healthy Start activities are described in OAR 423-010-0024(6) and OAR 423-045-0015.

**OREGON COMMISSION ON CHILDREN AND FAMILIES
2005-2007 COUNTY INTERGOVERNMENTAL AGREEMENT
EXHIBIT C
AWARD**

FUNDING AREA	GEN FUND	FED FUNDS	CFDA NUMBER
1. Great Start	\$ 7,742	\$	
2. Children Youth and Families	\$ 8,064	\$	
3. Child Care and Development Fund	\$	\$ 8,940	93.575
4. Court Appointed Special Advocates	\$ 3,956	\$	
5. Youth Investment	\$	\$ 20,874	93.667
6. Family Preservation and Support	\$	\$ 6,452	93.556
7. Basic Capacity	\$ 19,693	\$	
8. Relief Nurseries	\$ 19,396	\$ 20,750	93.667
9. Healthy Start	\$ 59,791	\$	

EXPLANATION OF AWARD

The Award set forth above reflects the maximum amount of financial assistance that Agency will provide to County under this Contract in support of Activities in each of the specified Funding Areas. The CFDA (Catalog of Federal Domestic Assistance) Number specifies the source of federal funds as follows: CFDA Number 93.667 specifies Title XX block grant funds, CFDA Number 93.556 specifies Title IV-B2 Family Preservation and Support grant funds, CFDA Number 93.575 specifies Child Care and Development grant funds.

**OREGON COMMISSION ON CHILDREN AND FAMILIES
2005-2007 COUNTY INTERGOVERNMENTAL AGREEMENT
EXHIBIT D
SPECIAL TERMS AND CONDITIONS**

1. **Special Restrictions on Expenditure of Award.** In addition to any other restriction or limitation on County's expenditure of financial assistance, County may expend financial assistance provided under this Contract only in accordance with the limitations set forth in OAR 423-010-0040 and 423-010-0027(2) and, with respect to Activities within a specific Funding Area, the limitations set forth in OAR 423-010-0023 and 423-010-0024. County may not expend financial assistance provided under this Contract in excess or contravention of the foregoing limits.
2. **Carryover.** Notwithstanding section 1 of Exhibit E, if authorized by Agency in writing in accordance with OAR 423-010-0027, County may retain and expend in accordance with OAR 423-010-0027(5) financial assistance disbursed to County under this Contract that is not expended at Contract termination. In no event will Agency permit financial assistance disbursed to County for Basic Capacity, that is not expended by County at Contract termination, to be retained by County. All financial assistance retained by County in accordance with this section that is not expended within six months after the termination of this Contract shall be deemed an Underexpenditure subject to recovery under section 1 of Exhibit E.
3. **Reporting.** County shall submit reports to Agency as required by OAR 423-010-0027(7-9).

**OREGON COMMISSION ON CHILDREN AND FAMILIES
2005-2007 COUNTY INTERGOVERNMENTAL AGREEMENT
EXHIBIT E
GENERAL TERMS AND CONDITIONS**

1. Disbursement and Recovery of Award.

a. Disbursement Generally. Subject to the conditions precedent set forth below, Agency shall disburse the financial assistance described in the Award to County in accordance with OAR 423-010-0027(1) and on an expense reimbursement basis or, at Agency's discretion, in periodic proportional allotments. The mere disbursement of financial assistance to County does not vest in County any right to retain those funds. Disbursements are considered an advance of funds to County which County may retain only if properly expended, in accordance with terms and conditions of this Contract, prior to the termination of this Contract.

b. Conditions Precedent to Disbursement. Agency's obligation to disburse financial assistance to County under this Contract is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:

(i) Agency has received sufficient funding, appropriations and other expenditure authorizations to allow Agency, in the exercise of its reasonable administrative discretion, to make the disbursement.

(ii) No default as described in section 7 of this Exhibit has occurred.

(iii) County's representations and warranties set forth in section 2 of this Exhibit are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.

c. Recovery of Award.

(i) **Notice of Underexpenditure or Misexpenditure.** In the event of an Underexpenditure or a Misexpenditure (each as defined below) of any moneys disbursed to County under this Contract, Agency and County shall engage in the process described in this Section 1.c to determine the appropriate amount that Agency may recover from County, and the appropriate method for implementing such recovery. For purposes of this Section 1.c, an "Underexpenditure" means money disbursed to County by Agency under this Contract that has not been expended by County at Contract termination, other than money, if any, that County is expressly permitted to retain and expend in the future under other provisions of this Contract, and "Misexpenditure" means money disbursed to County by Agency under this Contract and expended by County that:

(a) Is identified by the federal government as expended contrary to applicable statutes, rules, OMB Circulars or any other authority that governs the permissible expenditure of such money, for which the federal government has requested reimbursement by the State of Oregon; or

(b) Is identified by the State of Oregon or Agency as expended in a manner other than that permitted by this Contract, including without limitation, any money expended by County,

contrary to applicable statutes, rules, OMB Circulars or any other authority that governs the permissible expenditure of such money; or

(c) Is identified by the State of Oregon or Agency as expended on an Activity that did not meet the standards and requirements of this Contract with respect to that Funding Area.

In the event of an Underexpenditure or a Misexpenditure, Agency shall provide to County notice thereof.

(ii) **County's Response.** From the date of County's receipt of the notice of Underexpenditure or Misexpenditure, County shall have the lesser of (i) 60 calendar days, or (ii) if an Underexpenditure or Misexpenditure relates to a federal government request for reimbursement, 30 calendar days fewer than the number of days (if any) the Agency has to appeal a final written decision from the federal government, to either:

(a) Make a payment to the Agency in the full amount of the Underexpenditure or Misexpenditure identified by the Agency; or

(b) Notify the Agency that County wishes to repay the amount of the Underexpenditure or Misexpenditure from future payments pursuant to Section 1.c(iv) below; or

(c) Notify the Agency that it wishes to engage in the applicable appeal process set forth in Section 1.c(iii) below.

If County fails to respond within the time required under Section 1.c(ii) above, Agency may recover the amount of the Underexpenditure or Misexpenditure from future payments as set forth in Section 1.c(iv) below.

(iii) **Appeals Process.** If County notifies Agency that it wishes to engage in an appeal process with respect to a noticed Underexpenditure or Misexpenditure, the parties shall comply with the following procedures, as applicable:

(a) **Appeal from Agency-Identified Underexpenditure or Misexpenditure.** If the Agency's notice of Underexpenditure or Misexpenditure is based on an Underexpenditure or Misexpenditure other than a Misexpenditure of the type identified in Section 1.c(i)(a) above, County and the Agency's Director shall engage in non-binding discussions to give the County an opportunity to present reasons why it believes that there is, in fact, no Underexpenditure or Misexpenditure or that the amount of the Underexpenditure or Misexpenditure is different than the amount identified by the Agency, and to give the Agency the opportunity to reconsider its notice based on such presentation and discussion. If after such discussions Agency and County disagree as to whether there has been an Underexpenditure or Misexpenditure or to the amount thereof, the parties may either agree to consider further appropriate dispute resolution processes, or if they are unable to agree upon such processes, the Agency may notify County that it intends to recover the amount of noticed Underexpenditure or Misexpenditure from future payments pursuant to Section 1.c(iv) below.

(b) **Appeal from Federal-Identified Misexpenditures.** In the event that the notice of Misexpenditure is based on a federal determination of an improper use of federal funds or a federal notice of disallowance and the relevant federal agency provides a process either by statute or administrative rule to appeal the determination of improper use or notice of disallowance, then County may request that Agency appeal the determination of improper use or notice of disallowance in accordance with the process established or adopted by the federal agency. County shall cooperate with

Agency in pursuing the appeal. Agency shall pursue the appeal until a decision is issued by the Departmental Grant Appeals Board of the Department of Health and Human Services (the "Grant Appeals Board") pursuant to the process for appeal set forth in 45 C.F.R. Subtitle A, Part 16, or an equivalent decision is issued under the appeal process established or adopted by the federal agency. In the event that the Grant Appeals Board or its equivalent denies the appeal Agency may, in its sole discretion, either pursue further appeals in cooperation with County, or notify County that it will recover the Misexpenditure from future payments pursuant to Section 1.c(iv) below. County may choose to pursue any further appeals that might be available to it, and Agency will participate to the extent it determines, at its sole discretion, that its further participation is reasonable and practical.

(iv) Recovery From Future Payments. Upon determination that it will recover an Underexpenditure or Misexpenditure from future payments as permitted in this Section 1.c, Agency may recover the Underexpenditure or Misexpenditure by offsetting the amount thereof against future amounts owed to County by Agency, including, but not limited to, any amount owed to County by Agency under this Contract or any amount owed to County by Agency under any other contract or agreement between County and Agency, present or future. Agency shall provide County written notice of its intent to recover the amount of the Underexpenditure or Misexpenditure from amounts owed County by Agency as set forth in this Section 1.c(iv), and shall identify the amounts owed by Agency which the Agency intends to offset (including the contract or contracts, if any, under which the amounts owed arose). County shall then have 14 calendar days from the date of Agency's notice in which to request the deduction be made from other amounts owed to County by Agency and identified by County. Agency shall comply with County's request for alternate offset, unless the County's proposed alternative offset would cause the Agency to violate federal or state statutes, administrative rules or other applicable authority. In the event that Agency and County are unable to agree on which specific amounts owed to County by Agency the Agency may offset in order to recover the amount of the Underexpenditure or Misexpenditure, then the Agency may select the particular amounts from which it will recover the amount of the Underexpenditure or Misexpenditure, within the following limitations: Agency shall first look to amounts owed to County (but unpaid) under this Contract. If that amount is insufficient, then Agency may look to any other amounts currently owing or owed in the future to County by Agency. In no case, without the prior consent of County, shall the Agency deduct from any one payment due County under the contract or agreement from which Agency is offsetting funds an amount in excess of twenty-five percent (25%) of that payment. The Agency may look to as many future payments as necessary in order to fully recover the amount of the Underexpenditure or Misexpenditure.

(v) Additional Provisions related to parties rights/obligations with respect to Underexpenditures or Misexpenditures.

(a) Agency's right to recover Underexpenditures and Misexpenditures from County under this Contract is not subject to or conditioned on County's recovery of any money from any other entity.

(b) If the exercise of the Agency's right to offset under this provision requires the County to complete a re-budgeting process, nothing in this provision shall be construed to prevent the County from fully complying with its budgeting procedures and obligations, or from implementing decisions resulting from those procedures and obligations.

(c) Nothing in this provision shall be construed as a requirement or agreement by the County to negotiate and execute any future contract with the Agency.

(d) Nothing in this Section 1.c shall require County or Agency to act in violation of state or federal law or the Constitution of the State of Oregon.

(e) Nothing in this Section 1.c shall be construed as a waiver by either party of any process or remedy that might otherwise be available.

2. Representations and Warranties. County represents and warrants to Agency as follows:

a. 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 Contract and to incur and perform its obligations hereunder.

b. Due Authorization. The making and performance by County of this Contract (1) have been duly authorized by all necessary action of County and (2) 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 (3) 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 or any of its properties 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 Contract.

c. Binding Obligation. This Contract 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.

d. Accuracy of Information. The statements made in and the information provided in connection with any applications, requests or submissions to Agency hereunder or in connection with the financial assistance provided to County hereunder are true and accurate in all materials respects.

e. Activities. The performance of each Activity will comply with the terms and conditions of this Contract and meet the standards for such Activity as set forth herein, including but not limited to, any terms, conditions, standards and requirements set forth in the Award and applicable Funding Area Description.

The warranties set forth above are in addition to, and not in lieu of, any other warranties set forth in this Contract or implied by law.

3. Expenditure of Award. County may expend the financial assistance provided to County under this Contract solely on Activities, subject to the following limitations (in addition to any other restrictions or limitations imposed by this Contract, whether in the applicable Funding Area Descriptions, special conditions identified in the Award, or otherwise):

a. County may not expend and shall prohibit all Providers from expending on any Activity any financial assistance provided to County under this Contract in excess of the amount reasonable and necessary for quality performance of that Activity.

b. County may not expend and shall prohibit all Providers from expending financial assistance awarded to County under this Contract for a particular Funding Area (as reflected in the Award) on any Activities other than Activities falling within that Funding Area.

c. County may not use financial assistance provided to County under this Contract to reimburse any person or entity for expenditures made, or to pay for goods or services provided, prior to the effective date of this Contract.

4. **Reports.** County shall prepare and deliver to Agency written reports on the expenditure of the financial assistance provided to County hereunder. The reports shall be prepared and submitted in accordance with OAR 423-010-0027(7) through (9).

5. **Provider Contracts.** Except when the Funding Area Description requires Activities falling within that Funding Area to be provided or conducted by County directly, County may expend financial assistance provided under this Contract for a particular Activity to purchase services comprising that Activity from a third person or entity (a "Provider") through a contract (a "Provider Contract"). County may permit a Provider to purchase services comprising an Activity, from another person or entity under a subcontract and such subcontractors shall also be considered Providers for purposes of this Contract. County shall not permit any person or entity to be a Provider unless the person or entity holds all licenses, certificates, authorizations and other approvals required by applicable law to deliver the services. The Provider Contract must be in writing and contain each of the provisions that must be included in a Provider Contract under the terms of this Contract or in order to permit County to comply with its obligations under this Contract with respect to the Activities conducted by the Provider. County shall maintain an originally executed copy of each Provider Contract at its office and shall furnish a copy of any Provider Contract to Agency upon request.

6. **Records Maintenance, Access and Confidentiality.**

a. **Access to Records and Facilities.** The Agency, the Secretary of State's Office of the State of Oregon, the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers and records of the County and all Providers that are directly related to this Contract, the financial assistance provided hereunder, or any Activity for the purpose of making audits, examinations, excerpts, copies and transcriptions. County shall include this provision in all Provider Contracts and cause all Providers to include this provision in all subcontracts. In addition, County shall permit, and cause all Providers to permit, authorized representatives of Agency to perform site reviews of all Activities of County or a Provider.

b. **Retention of Records.** County shall retain and keep accessible and cause all Providers to retain and keep accessible all books, documents, papers, and records, that are directly related to this Contract, the financial assistance provided hereunder or any Activity, for a minimum of three (3) years, or such longer period as may be required by other provisions of this Contract or applicable law, following the termination of this Contract. If there are unresolved audit or other questions at the end of the three-year period, County shall retain the records until the questions are resolved.

c. **Expenditure Records.** County shall document and cause all Providers to document the expenditure of all financial assistance paid by Agency under this Contract. Unless applicable federal law requires County or a Provider to utilize a different accounting system, County shall create and maintain and cause all Providers to create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit Agency to verify how the financial assistance paid by Agency under this Contract was expended.

7. **County Default.** County shall be in default under this Contract 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 Agency to measure the conduct of Activities, the expenditure of financial assistance or the performance by County is untrue in any material respect when made;

c. County (i) 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, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) is adjudicated a bankrupt or insolvent, (v) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (viii) takes any 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 (i) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of County, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of County or of all or any substantial part of its assets, or (iii) 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).

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

a. Agency fails to perform, observe or discharge any of its covenants, agreements, or obligations set forth herein; or

b. Any representation, warranty or statement made by Agency herein is untrue in any material respect when made.

9. Termination.

a. **County Termination.** County may terminate this Contract in its entirety as follows:

(i) At its sole discretion upon 60 days advance written notice to Agency, or

(ii) Upon 30 days advance written notice to Agency, if Agency is in default under this Contract 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.

b. **Agency Termination.** Agency may terminate this Contract in its entirety or may terminate its obligation to provide financial assistance under this Contract for a particular Funding Area described in the Award:

(i) Upon 60 days advance written notice to County, if Agency determines, in its sole discretion, to end all or any portion of the financial assistance to County under this Contract.

(ii) Immediately upon written notice to County, if Agency does not obtain funding, appropriations and other expenditure authorizations from federal, state or other sources sufficient to meet the payment obligations of Agency under this Contract.

(iii) Immediately upon written notice to County if state or federal laws, regulations or guidelines are modified, changed or interpreted in such a way that the Agency does not have the authority to provide financial assistance for one or more Funding Areas or no longer has the authority to provide the financial assistance from the funding source it had planned to use.

(iv) Upon 30 days advance written notice to County, if County is in default under this Contract and such default remains uncured at the end of said 30 day period or such longer period, if any, as Agency may specify in the notice.

(v) Immediately upon written notice to County, if any license or certificate required by law or regulation to be held by County or a Provider to conduct an Activity is for any reason denied, revoked, suspended, not renewed or changed in such a way that County or a Provider no longer meets requirements to conduct that Activity. This termination right may only be exercised with respect to the Funding Area impacted by loss of necessary licensure or certification.

(vi) Immediately upon written notice to County, if Agency determines that County or any of its Providers have endangered or are endangering the health or safety of individuals.

10. Effect of Termination

a. **Generally.** If Agency disbursements of financial assistance under this Contract for a particular Funding Area are reduced under section 1(a) and 1(b)(i) of Exhibit E, or as a result of Agency's exercise of its rights under section 11 of Exhibit E, or as a result of an amendment to this Contract reducing the amount of financial assistance awarded for that Funding Area, County is not required by this Contract to utilize other County funds to replace the funds no longer received under this Contract as a result of the disbursement reduction. Furthermore, County may, from and after the date of a disbursement reduction described in the preceding sentence, reduce or eliminate the quantity of Activities within that Funding Area commensurate with the size of the disbursement reduction for that Funding Area. Nothing in this section 10(a) shall affect the County's obligations under this Contract with respect to financial assistance actually received by County under this Contract or with respect to Activities actually performed.

b. **Entire Contract.** Upon termination of this Contract in its entirety, Agency shall have no further obligation to pay or disburse financial assistance to County under this Contract, whether or not Agency has paid or disbursed to County all financial assistance described in the Award.

c. **Award for Individual Funding Area.** Upon termination of Agency's obligation to provide financial assistance under this Contract for a particular Funding Area, Agency shall have no further obligation to pay or disburse any financial assistance to County under this Contract for that Funding Area, whether or not Agency has paid or disbursed to County all financial assistance described in the Award for that Funding Area.

d. **Survival.** Termination of this Contract shall not extinguish or prejudice Agency's right to enforce this Contract in accordance with its terms with respect to financial assistance disbursed to

County under this Contract prior to the termination. Specifically, but without limiting the generality of the preceding sentence, termination of this Contract shall not affect Agency's right to recover from County, in accordance with the terms of this Contract, any financial assistance disbursed to County that is identified as an Underexpenditure or Misexpenditure.

11. Unilateral Modification of Award. If the Oregon Legislative Assembly, Legislative Emergency Board or Oregon Department of Administrative Services increases or decreases the amount of money appropriated, authorized or allotted to Agency, Agency may, by written notice to County, unilaterally increase or decrease the amount of the Award in this Contract, in proportion to the increase or decrease in the appropriation, authorization or allotment, provided that Agency increases or decreases, in the same proportion, the financial assistance awarded to all other counties under similar contracts. If requested by Agency, County shall execute and deliver to Agency an amendment to this Contract reflecting an increase or decrease in the Award implemented under this section. Nothing in this section shall limit or restrict Agency's rights under this Contract to suspend disbursement of financial assistance or to terminate this Contract (or portion thereof as provided in section 9 of this Exhibit E) as a result of a reduction in appropriations or allotments.

**OREGON COMMISSION ON CHILDREN AND FAMILIES
2005-2007 COUNTY INTERGOVERNMENTAL AGREEMENT
EXHIBIT F
STANDARD TERMS AND CONDITIONS**

1. **Notice.** Except as otherwise expressly provided in this Contract, 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 Agency at the address or number set forth below, or to such other addresses or numbers as either party may indicate pursuant to this section. Any communication or notice so addressed and mailed shall be effective five (5) days after mailing. Any communication or notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the recipient, or on the next business day, if transmission was outside normal business hours of the recipient. To be effective against Agency, any notice transmitted by facsimile must be confirmed by telephone notice to Agency's Business Services Office at (503) 373-1283. To be effective against County, any notice transmitted by facsimile must be confirmed by telephone notice to County's Local Commission on Children and Families Office. Any communication or notice given by personal delivery shall be effective when actually delivered.

Notices to Agency: State Commission on Children and Families
 Business Services Office
 530 Center Street NE, #405
 Salem, OR 97301-3754

Notices to County: Lane County Commission on Children and Families
 125 E Eighth Avenue
 Eugene, OR 97401

2. **Severability.** The parties agree that if any term or provision of this Contract 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 Contract did not contain the particular term or provision held to be invalid.

3. **Counterparts.** This Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Contract so executed shall constitute an original.

4. **Governing Law, Consent to Jurisdiction.** This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between Agency (and/or any other agency of the State of Oregon) and County that arises from or relates to this Contract shall be brought and conducted solely and exclusively within a circuit court in the State of Oregon of proper jurisdiction. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. COUNTY, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

5. **Compliance with Law.** County shall comply and cause all Providers to comply with all state and local laws, regulations, executive orders and ordinances applicable to the Contract or to the conduct of Activities. Without limiting the generality of the foregoing, County expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations; (b) all state laws requiring reporting of client abuse; (d) ORS 30.670 to 30.685, ORS 659.430 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 conduct of Activities. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated. All employers, including County, that employ subject workers who conduct Activities 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. County shall ensure that all Providers comply with these requirements and obtain any insurance required elsewhere in this Contract.

6. **Assignment of Contract, Successors in Interest.**

a. County shall not assign or transfer its interest in this Contract without prior written approval of Agency. Any such assignment or transfer, if approved, is subject to such conditions and provisions as the Agency may deem necessary. No approval by the Agency of any assignment or transfer of interest shall be deemed to create any obligation of the Agency in addition to those set forth in the Contract.

b. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns.

7. **No Third Party Beneficiaries.** Agency and County are the only parties to this Contract and are the only parties entitled to enforce its terms. The parties agree that County's performance under this Contract is solely for the benefit of Agency to assist and enable Agency to accomplish its statutory mission. Nothing in this Contract 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 Contract.

8. **Integration and Waiver.** This Contract, including all of its Exhibits, constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. The failure of either party to enforce any provision of this Contract shall not constitute a waiver by that party of that or any other provision. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

9. **Amendment.** Except as provided in Section 11 of Exhibit E, no waiver, consent, modification or change of terms of this Contract shall bind either party unless in writing and signed by both parties and when required the Department of Administrative Services and Department of Justice. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. County, by signature of its authorized representative, hereby acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.

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

11. Construction. The parties agree and acknowledge that the rule of construction that ambiguities in a written agreement are to be construed against the party preparing or drafting the agreement shall not be applicable to the interpretation of this Contract.

12. Indemnity

a. To the extent permitted by Article XI, Section 10, of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, County shall defend, save, hold harmless, and indemnify the State of Oregon and Agency and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature resulting from or arising out of, or relating to the activities of County or its officers, employees, contractors, or agents under this Contract, except for liability arising solely out of the wrongful acts of employees or agents of the State of Oregon or Agency. Notwithstanding the foregoing limitations, County's obligation to indemnify the State of Oregon and Agency, although still existing only to the extent permitted by Article XI, Section 10 of the Oregon Constitution, shall not be limited by the Oregon Tort Claims Act for any claims, suits, actions, losses, damages, liabilities, costs and expenses related to a cause of action based upon 42 USC § 1983, the Constitution of the United States or any other federal law.

b. To the extent permitted by Article XI, Section 7, of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, Agency shall indemnify within the limits and subject to the restrictions in the Oregon Tort Claims Act, the County against liability for personal injury or damage to life or property arising from Agency's activity under the Contract, provided, however, that the Agency shall not be required to indemnify the County for any such liability arising out of the wrongful acts of the County, its officers, employees or agents.

c.. 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.

13. Limitation of Liabilities. EXCEPT FOR LIABILITY OF DAMAGES ARISING OUT OF OR RELATED TO SECTION 12 OF THIS EXHIBIT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS CONTRACT. NEITHER PARTY SHALL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS CONTRACT OR ANY PART HEREOF IN ACCORDANCE WITH ITS TERMS.

14. Ownership of Work Product. Except as otherwise expressly provided herein, all work products of the County created in connection with the conduct of Activities are the exclusive property of the Agency. For purposes of this section, "work product" shall not include client files. Agency and County intend that such work product be deemed "work made for hire" of which Agency shall be deemed the author. If for any reason the work product is not deemed "work made for hire," County hereby irrevocably assigns to Agency all of its right, title, and interest in and to any and all of the work product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. County shall execute such further documents and instruments as Agency may reasonably request in order to fully vest such rights in Agency. In the event that federal law requires Agency or County to grant to the United States a license to any work product developed or acquired under this Contract, Contractor shall execute such further documents and instruments as Agency may

reasonably request in order to make such grant. County forever waives any and all rights relating to the work product, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

15. Force Majeure. Neither Agency nor County shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, natural causes and war which is beyond respectively, the Agency's or County's reasonable control. 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 Contract.

**OREGON COMMISSION ON CHILDREN AND FAMILIES
2005-2007 COUNTY INTERGOVERNMENTAL AGREEMENT
EXHIBIT G
REQUIRED FEDERAL TERMS AND CONDITIONS**

In addition to the requirements of section 5 of Exhibit F, County shall comply and, as indicated, cause all Providers to comply with the following federal requirements. For purposes of this Contract, 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 cause all Providers to comply with all federal laws, regulations, and executive orders applicable to the Contract or to the conduct of Activities. Without limiting the generality of the foregoing, County expressly agrees to comply and cause all Providers to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (a) Titles 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) Executive Order 11246, as amended, (d) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (e) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (f) all regulations and administrative rules established pursuant to the foregoing laws, (g) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, (h) 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 Contract and required by law to be so incorporated. No federal funds may be used to conduct Activities in violation of 42 USC 14402.
- 2. Title XX Block Grant Funds.** When utilizing Title XX block grant funds, County shall comply and cause all Providers to comply with the additional federal requirements applicable to Title XX block grant funds in 42 USC 1397 et seq., including but not limited to: maintaining and providing to Agency such documentation as Agency shall require to comply with federal reporting requirements, 45 CFR Part 96, and the limitations on the uses of Title XX grants in 42 USC 1397d.
- 3. Title IV-B2 Family Preservation and Support Services Funds.** When utilizing federal Title IV-B2 Family Preservation and Support Services funds, County shall comply and cause all Providers to comply with the additional federal requirements applicable to Title IV-B2 Family Preservation and Support Services funds in 42 USC 629 et seq., including but not limited to: maintaining and providing to Agency such documentation as Agency shall require to comply with federal reporting requirements, 45 CFR Part 92, and the limitations on the use of Title IV-B2 funds in 42 USC 629d.
- 4. Child Care and Development Block Grant Funds.** When utilizing federal Child Care and Development block grant funds, County shall comply and cause all Providers to comply with the federal and state requirements applicable to Child Care and Development block grant funds in 42 USC 9858 et seq., and 45 CFR Part 98, including but not limited to: maintaining and providing to Agency such documentation as Agency shall require to comply with federal reporting requirements, and the limitations on the use of such funds in 42 USC 9858d and 45 CFR 98.54 and OAR 423-010-0024(2).

5. Cost Principles. With respect to federal funds received by County under this Contract from the sources identified in sections 2 through 4 above, County shall comply and cause all Providers to comply with the cost principles determined in accordance with the provisions of OMB Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments." Federal funds received by County under this Contract from the sources identified in sections 2 through 4 above are subject to the audit requirements under the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." County shall comply and, if applicable, cause a Provider to comply, with the applicable audit requirements and responsibilities set forth in OMB Circular A-133.

6. Equal Employment Opportunity. If this Contract, including amendments, is for more than \$10,000, then County shall comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Agency of Labor regulations (41 CFR Part 60). OMB Circular A - 102, ¶ 14.c.

7. Clean Air, Clean Water, EPA Regulations. If this Contract, including amendments, exceeds \$100,000 then County shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), 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 the Agency and to the U.S.E.P.A. Assistant Administrator for Enforcement (EN-329). County shall include and cause all Providers to include in all contracts with Providers receiving more than \$100,000 in Federal Funds, language requiring the Provider to comply with the federal laws identified in this section. OMB Circular A-102, ¶14.i.

8. Energy Efficiency. County shall 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 (Pub. L. 94-165). OMB Circular A-102, ¶ 14.j.

9. Truth in Lobbying. The 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 any agency, a Member of Congress, an officer or employee of Congress, or any 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 any such officer, employee or member in connection with this federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

c. The County shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.

d. The County is solely responsible for all liability arising from a failure by the County to comply with the terms of this certification. Additionally, the undersigned promises to indemnify the Agency for any damages suffered by the Agency as a result of the County's failure to comply with the terms of this certification.

This certification is a material representation of facts upon which reliance was placed when this Contract was made or entered into. Submission of this certification is a prerequisite for making or entering into this Contract imposed by section 1352, Title 31, 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.

10. HIPAA Compliance. If the Activities funded in whole or in part with financial assistance provided under this Contract are covered by the Health Insurance Portability and Accountability Act or the federal regulations implementing the Act (collectively referred to as HIPAA), County agrees to conduct the Activities in compliance with HIPAA.

11. Resource Conservation and Recovery. County shall comply and cause all Providers to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 USC 6901 et. seq.). Section 6002 of that Act (codified at 42 USC 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Parts 247-253.

12. Debarment and Suspension. County shall not permit any person or entity to be a Provider if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Executive Orders No. 12,549 and No. 12,689, "Debarment and Suspension". (See 45 CFR part 76). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Providers with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

13. ADA. County shall comply and cause all Providers to comply with Title II of the Americans with Disabilities Act of 1990 (codified at 42 USC 12131 et. seq.) 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 conduct of Activities.

14. Pro-Children Act. County shall comply and cause all Providers to comply with the Pro-Children Act of 1995 (codified at 20 USC section 6081 et. seq.).

T. G. a.

FILE NOTE

AGENDA DATE: August 2, 2005

TO: Board of Commissioners

DEPARTMENT: Office of Legal Counsel

BY: Trina Laidlaw, Assistant County Counsel

AGENDA TITLE: IN THE MATTER OF DELEGATING AUTHORITY TO THE COUNTY ADMINISTRATIVE OFFICER TO EXECUTE THE OREGON COMMISSION ON CHILDREN AND FAMILIES INTERGOVERNMENTAL AGREEMENT IN THE AMOUNT OF \$175, 658

The intergovernmental agreement with the Oregon Commission on Children and Families raises the fundamental question: Should Lane County be executing a two year contract effective July 1, 2005 (IGA, paragraph 1) when OCCF is only committing one month of funding and requiring the County to agree that one month of funding is "the maximum amount of financial assistance that Agency [OCCF] will provide to County under this Contract in support of Activities in each of the specified Funding Areas?" (See IGA, Exhibit C). The continuation of the Legislative Session creates a challenge in terms of trying to continue to provide services without final budget approval and yet execute 2 year biennium contracts. There are a number of contractual solutions which are probably workable and acceptable to both parties to deal with the interim of uncertainty. However, the language developed by OCCF in this agreement is probably not a good example.

In looking at page 1, paragraph 1 of the IGA as well as Exhibit C Award, I would recommend one of two options (there may be others):

1. **Option #1**: On Exhibit C, under Explanation of Award, handwrite "...through July 31, 2005" at the end of the first sentence. Have the County Administrator initial the change, execute the contract, and send it back to OCCF with the attached cover letter for Option #1. This cover letter is a standard one Lane County sends to state agencies, including to OCCF in the past, to document our protest of potential unconstitutional language in state contracts.

a. We received this IGA from OCCF on July 7, 2005, or after the start of the one month of services/funding covered by Exhibit C. On July 14, 2005, we proposed a similar change to Exhibit C to OCCF, and they rejected it by letter dated July 22, 2005 stating that Lane County had the ability to use the one month of funding in any of the 24 months covered by the intergovernmental agreement, not necessarily the first month (July 1, 2005 - July 31, 2005). They also agreed by letter that the County was not obligated to perform services beyond the amount of funding provided by OCCF. But, they refused to state this in the contract.

b. Option # 1 could place OCCF in the position of not accepting the contract, including not funding the services already performed from July 1, 2005 through July 31, 2005. OCCF placed the County and its subcontracted providers in the position of having to choose to continue services with the risk of not being paid by forwarding this intergovernmental agreement to the County after the effective start date of the contract, and into the month that funding was needed. There is political risk to OCCF, and perhaps also to the County.

c. OCCF could also accept the County's handwritten change in Option #1. This would likely not have any adverse financial impact on OCCF, and it would avoid any political ramifications to both parties. The two parties would both have contract language which would protect their budgets.

d. OCCF may want to add one more month of funding with similar contract language. It is uncertain whether they would accept the same handwritten change again.

2. **Option #2** - Not change the intergovernmental agreement, execute it "as is", but send the attached letter for Option #2, indicating execution is based on OCCF's representation by letter that the County should be obligated to perform services only to the level of availability of funds provided by OCCF. We would also request that the contract be amended to reflect what they agreed by letter.

a. This approach would probably not risk OCCF refusing to provide funds to the County for services between July 1, 2005 and July 31, 2005.

b. The County would have made a record that it intends to hold OCCF to its representations made by letter. But, it is questionable whether this is enforceable as part of the contract. The chances of OCCF following up with a contract provision limiting performance obligations to funds provided are not good, but could occur. During the 2003 Legislative Session, counties did have limited success with a bill in that "subject to availability of funds" was adopted into certain mental health service statutes covering counties. One of the reasons counties have reached the point of introducing HB 3303 is signing problematic contract provisions such as this, and not having the state agencies follow up and make acceptable changes. Counties seem to have few bargaining chips at this point.

c. It is more likely that the County simply accepts any legal risk in having agreed that one month of funding is sufficient for 2 years of performance, and hopes that OCCF ultimately develops contract amendments after conclusion of the Legislative Session adding 2 years of funding to match the existing 2 years of performance. We heard after making our request for changes that OCCF had received approval for one more month of funding, or from August 1, 2005 to August 31, 2005.

Recommendation: The safest approach for continuing receipt of funds without interruption of service is likely Option #2. However, this places the County in an unnecessarily difficult legal position in agreeing that one month of funding is sufficient to meet its Local Plan goals for 2 years. This is avoidable. There are a number of workable contract solutions which would probably be acceptable to both

parties. Convincing OCCF that their solution is not one of these is going to be difficult. After the Governor signs the new budget, OCCF will probably eventually amend this contract to reflect fairness: 2 years of funding for 2 years of service.

(In addition to the change requested above, the Department of Children and Families also submitted another 3 1/2 pages of other requested changes to this IGA.. A number of these changes are similar to those requested from DHS, and either pending with DHS or agreed to and changed by DHS. Several are the same changes requested and rejected two years ago. Several are covered in HB 3303. Several requested changes would increase reciprocity beyond specific provisions of HB 3303. OCCF rejected all of these requested changes stating they would await the outcome of HB 3303 and the DHS process and consider further amendments after this.)

July 27, 2005

Marsha Clark, Business Services Manager
Oregon Commission on Children and Families
530 Center St. NE, Ste. 405
Salem, Oregon 97301

RE: Lane County/Oregon Commission on Children and Families 2005-07
Intergovernmental Agreement

Dear Ms. Clark:

In executing this agreement, it is the understanding of Lane County that all of the terms will be construed by both parties as in compliance with all applicable law, including the Oregon Constitution. Lane County does not waive its right to assert claims, or seek all available legal remedies against the State for its acts in violation or in causing the County to violate any law, rule, regulation, constitutional provision, court decision, Attorney General opinion, or other requirement imposed by the state or federal government. Lane County's execution is not intended as a waiver of any right to assert claims or seek all available remedies for interference with any subcontracts for services covered by this Agreement. In executing this agreement it is our intent to agree that any state right to withhold payments from any other contract is subject to Lane County's duty and ability to comply with applicable budget law, including local budget law, and any relevant constitutional limitations and other legal limitations relating to the Lane County Board of Commissioners' ability to commit budgeted funds.

We look forward to discussing the additional changes which Lane County requested to this IGA and which are necessary in order to continue to provide vital services to children and families in this community.

Thank you for your cooperation and assistance.

Sincerely yours,

William A. VanVactor
Lane County Administrator

July 27, 2005

Marsha Clark, Business Services Manager
Oregon Commission on Children and Families
530 Center St. NE, Ste. 405
Salem, Oregon 97301

RE: Lane County/Oregon Commission on Children and Families 2005-07
Intergovernmental Agreement

Dear Ms. Clark:

Thank you for your July 22, 2005 letter in response to Lane County contract provision concerns. We understand OCCF is not willing to make any changes in this intergovernmental agreement at this time. Lane County is executing this agreement based on the statement in your July 22, 2005 letter that the County is not obligated to perform beyond the funds made available by OCCF.

We request reconsideration and further discussion of a clear and express contract provision protecting the County from potential obligations beyond the funds provided by OCCF. Lane County requested two changes addressing OCCF's one month funding commitment (Exhibit C Award), and the contract term being two years (Paragraph 1). The changes proposed by Lane County would have expressly protected the County and clarified that our potential two year obligation to perform services/activities was subject to the availability of funds from OCCF.

Generally, the activities financed through this intergovernmental agreement (except Basic Capacity) are supposed to support the implementation of "Lane County's Comprehensive Plan" for services to Children, Youth and Families (most recently updated in June 2004). Funding Area Descriptions (Exhibit B) are expressly premised on this and are incorporated by reference into this intergovernmental agreement. See OAR 423-010-0024.

The 2005-07 Intergovernmental Agreement requires the County to agree that the performance of each "...[a]ctivity will comply with the terms and conditions of this Contract and meet the standards for such Activity as set forth herein, including but not limited to, any terms, conditions, standards and requirements set forth in the Award and applicable Funding Area Description." Exhibit E, paragraph 2.e. It also requires the County to agree to a two year term with only one month of funds committed, and to agree that such funds reflect "the maximum amount of financial assistance that Agency will provide to County under this Contract in support of Activities in each of the specified Funding Areas (emphasis added)." See Exhibit C. The implication of this language is that the County agrees that one month of funding is sufficient to support Lane County's Comprehensive Plan and measurable outcomes for services in the Funding Area Descriptions for two years. Our proposed language addressed the first month of the two-year contract period because we were already into this month at the time OCCF forwarded this contract for execution; we are almost through that month now. Accordingly, an ability to use the one month of funding in month 22 or 23 of the two year

term, while perhaps theoretically possible, does not seem relevant under these circumstances.

We understand the difficulty of OCCF agreeing to a funding level commitment during a Legislative Session and its interest in an agreement which allows the ability to continue to add financing as funds become available. There are already contract provisions which appear to protect OCCF from a financial commitment to services/activities subject to availability of funds. Exhibit E, paragraph 1.b.(i) makes OCCF disbursements subject to receiving sufficient funding, appropriations and other expenditure authorizations. Exhibit E, paragraph 11 provides that if the Oregon Legislative Assembly, Legislative Emergency Board or DAS increases or decreases the amount of money appropriated, OCCF may by written notice to County, unilaterally increase or decrease the amount of the award. OCCF has a contractual right to immediate termination of the contract due to non-appropriation or failure to receive expenditure authorization from a funding source. However, the only express protection for the County appears to be when OCCF's disbursements of financial assistance are reduced; the County is not required to use other County funds to replace funds no longer received under this agreement. Exhibit E, paragraph 10. There is no protection for the County when, at the outset, there is clearly insufficient funding to make the two year level of measurable impacts on Priorities and Strategies in our Local Comprehensive Plan or outcomes connected to the Funding Area Descriptions. We would appreciate further discussion on amended contract language which reflects the flexibility for both of the parties, and clearly provides protections to both parties when two year contracts are desired, but the level of funding has not been finally determined by the Legislature at the time of execution. Given that OCCF appears to agree by letter, one basic question is what harm does it cause OCCF to have express contract language that the County may be protected from any obligation to perform beyond the funds made available by OCCF?

In addition to this issue, we would also welcome the opportunity to discuss the other list of concerns which were forwarded to you for possible future amendments to this intergovernmental agreement. One of these other concerns is with the absence of reference to legal limitation limits in the "Recovery of Award" provision in Exhibit E, paragraph 1.c. and an indemnity provision. In executing this agreement, it is the understanding of Lane County that all of the terms will be construed by both parties as in compliance with all applicable law, including the Oregon Constitution. Lane County does not waive its right to assert claims, or seek all available legal remedies against the State for its acts in violation or in causing the County to violate any law, rule, regulation, constitutional provision, court decision, Attorney General opinion, or other requirement imposed by the state or federal government. Lane County's execution is not intended as a waiver of any right to assert claims or seek all available remedies for interference with any subcontracts for services covered by this Agreement. In executing this agreement it is our intent to agree that any state right to withhold payments from any other contract is subject to Lane County's duty and ability to comply with applicable budget law, including local budget law, and any relevant constitutional limitations and other legal limitations relating to the Lane County Board of Commissioners' ability to commit budgeted funds.

Thank you for your cooperation and assistance.

Sincerely yours,

William A. VanVactor
Lane County Administrator