

W. S. B. I.

MEMORANDUM DATE: March 5, 2007

ORDER DATE: March 21, 2007



TO: Board of County Commissioners

DEPARTMENT: Health & Human Services

PRESENTED BY: Rob Rockstroh

AGENDA ITEM TITLE: ORDER IN THE MATTER OF RATIFYING THE COUNTY ADMINISTRATOR'S DECISION TO SIGN A CONTRACT WITH MCKESSON IN THE AMOUNT OF \$405,288 AND TO EXTEND THE WELLPARTNER CONTRACT UNTIL DECEMBER 31, 2008.

I. MOTION

To Ratify The County Administrator's Decision To Sign The McKesson Contract In The Amount Of \$405,288 And To Extend The Wellpartner Contract Until December 31, 2008.

II. AGENDA ITEM SUMMARY

The purpose of this agenda packet is twofold. The first purpose is to ratify the County Administrator's signature on an agreement that was beyond his authority. The County Administrator executed a contract with McKesson, though only Wellpartner was named in the two "340B" Board Orders (cited below) establishing the County's pharmaceutical system in support of the Community Health Centers (CHCs). The McKesson contract referenced only the monthly maximum payment obligation (\$11,258), without presenting the aggregate amount, which could potentially exceed \$100,000 per annum.

The second purpose of this packet is as an informational item on the implementation/status of the 340B pharmaceutical program.

III. BACKGROUND/IMPLICATIONS OF ACTION

A. BOARD ACTION AND OTHER HISTORY

The Community Health Centers (CHCs) qualify for special pharmaceutical prices under Section 340B of Public Law 102-585, the Veterans' Health Care Act of 1992.

The Board delegated authority to the County Administrator to sign a 340B contract with Wellpartner. Wellpartner was selected to provide 340B pharmaceutical services through a request for proposal process, under BOs 06-3-22-5 and 06-6-21-2.

Prime Provider: The federal pharmaceutical system, as originally envisioned and put in place, involved the issuance of a total of four contracts, to access this preferential pricing system, though only one was to be a payment contract, the other three were required to gain access to the system. The four agreements were:

- (1) A contract with the Prime Vendor, currently Health Care Purchasing Partners International, LLC (HPPI), to gain access to the low-cost medications contracted for by the federal government's authorized agent.
- (2) A self-certification form with the federal Office of Pharmacy Affairs, indicating the pharmacy being used by each CHC site and enjoining both the CHC and the pharmacy to abide by the "requirements and restrictions of Section 340B",
- (3) One with a dispensing agent, who would actually dispense the pharmaceuticals to patients or the FQHC; and
- (4) One with a restocking agent from whom the dispensing agent would purchase replacement supplies of pharmaceuticals.

At the time of the RFP for pharmaceutical services, it was the understanding of staff that Lane County would enter into a single financial agreement for these services which would cover both the dispensing and the restocking. WellPartner was selected through the RFP process and the Board approved the contract with WellPartner for dispensing and restocking services, via BO 06-3-22-5, in the amount of \$450,350. The Board subsequently added an additional \$644,260 to the Wellpartner agreement via BO 06-6-21-2.

As a part of contract negotiations with WellPartner, it became evident that Lane County would need to enter into a financial agreement with WellPartner's dispensing agent, McKesson. Currently, the agreement with Wellpartner provides for the payment of a \$10/medication dispensing fee and the agreement with McKesson provides for the payment of the actual costs associated with restocking the medications, issued on behalf of the CHCs, by Wellpartner. A purchasing agreement was executed with McKesson and signed by the County Administrator. Although the Board had approved a contract with WellPartner that would result in, per staff's original intent, McKesson being reimbursed for 340B medications, they had not granted authority to the County Administrator to sign a financial agreement with McKesson. The three year estimated value of the purchasing agreement with McKesson went beyond the delegated authority of the County Administrator and his

signature must be ratified.

Revenue-generating: Clients seen at the CHCs purchase medications from Wellpartner. The amounts paid by the clients cover the full cost of the medication, plus the dispensing fee that the County is liable for, under its contract with Wellpartner (a small portion of that dispensing fee is an administrative fee that accrues to the benefit of the Clinic). Additionally, as some CHC clients have medical insurance, the program generates a very modest amount of annual revenue for the CHC (approximately \$2,000/annum).

Current System: A subsequent change to the federal system, disengaged the "dispensing" agent from the "restocking" agent, as regards the payment systems. The County now pays WellPartner the dispensing fee and directly reimburses McKesson for restocking..

B. POLICY ISSUES

Contract Duration: The Wellpartner agreement is annual and carries the standard provision for termination on 30 days' notice, but the McKesson contract has a current end date of 3/31/09. Although there is no provision for earlier termination in the McKesson agreement, it is a purchasing agreement and the County is not obligated to continue to make purchases through the agreement. As these agreements work in tandem, consideration should be given to extending the term of the Wellpartner contract and seeking curtailment of the McKesson contract; to have both end on 31 December, 2008. The County Administrator has the authority to reduce the term of the McKesson agreement, we are asking the Board to delegate authority to extend the term of the WellPartner agreement. This extension is within the original selection dates defined in the RFP process.

Actual Costs: Now that the system has been functioning for five months, it has become apparent that the amount of Board delegated authority for Wellpartner, and the contracted amount for McKesson are both excessive. Considering the current emphasis on accurate budgeting by all County Departments, both of these agreements should have more realistic expenditure amounts associated with them, as per the following estimates:

	<u>FY 07</u>	<u>FY 08</u>	<u>FY 09</u>
Wellpartner	\$100,000	\$120,000	\$ 72,000 (6 months)
McKesson	\$ 30,000	\$ 39,000	\$ 31,500 (9 months)

(Assumes annual growth rate of Clinic utilization of 20% and annual increase of pharmaceutical costs of 10%, McKesson only.)

C. BOARD GOALS

This project meets two board goals: Strategic objectives 4.1 (developing balanced revenue strategies) and 4.2 (identifying and recovering user fees and charges), apply. The pharmaceutical program at the CHC is fully funded by client fees which is both a balanced revenue strategy and recovers user fees and charges.

D. FINANCIAL AND/OR RESOURCE CONSIDERATIONS

There is no need to seek additional fiscal authorizations for the 340B program, but rather to re-apportion and align the amounts already assigned.

E. ANALYSIS

The impetus for bringing this issue before the Board is to ratify the McKesson contract and extend the WellPartner agreement. We have also used the agenda memo to update the Board on the history of the process and the issues related to the Wellpartner and McKesson agreements.

Failure to ratify the McKesson contract will nullify it. However, once the County Administrator's signature has been ratified, a revised agreement could be executed by the County Administrator, within his delegated authority (per LM 21.145). Staff will notify the contractor of the need to amend the agreement.

F. ALTERNATIVES/OPTIONS

1. To accept the motion and ratify the County Administrator's decision to sign the McKesson contract..
2. To delegate authority to the County Administrator to extend the Wellpartner contract until 12/31/08, the maximum duration permitted under its competitive selection process.
3. To accept the motion and ratify the County Administrator's decision to sign the McKesson contract, leaving the Wellpartner contract intact.
4. Not to accept the motion to ratify, nor to revise the Wellpartner contract delegated authority.

IV. RECOMMENDATION

To approve the actions specified in numbers one and two above and to approve the required Board Order.

If Board approves of the changes proposed by staff in items F (1) and (2), the County Administrator's signature on the McKesson contract will be ratified. Staff will then amend the agreement reducing the term to 04/01/2006 through 12/31/2008 and reducing the contract amount to \$100,500. The Wellpartner contract will be extended for the term 04/01/2006 through 12/31/2008, and the contract amount will be reduced to \$292,000.

VI. FOLLOW-UP

Action will be taken to ensure that all future contracts for the CHCs' 340B program will seek to link the contracts let for the "dispensing" and "restocking" agents, to ensure the duration of the contracts are similar. Action will also be taken, now that a cost history has been established, to accurately base the expenditure projections on the historical usage of this program.

VII. ATTACHMENTS

Board Order
Attachment A – McKesson contract

THE BOARD OF COUNTY COMMISSIONERS, LANE COUNTY, OREGON

RESOLUTION)
AND ORDER:)
)
)
)

IN THE MATTER OF RATIFYING THE COUNTY
ADMINISTRATOR'S DECISION TO SIGN A CONTRACT
WITH MCKESSON IN THE AMOUNT OF \$405,288
AND TO EXTEND THE WELLPARTNER CONTRACT
UNTIL DECEMBER 31, 2008.

WHEREAS, the County Administrator executed a contract with McKesson for payment of pharmaceuticals to restock the Community Health Center's dispensing agent, Wellpartner, in the amount of \$405,288; and

WHEREAS, the McKesson contract is part of the Federal 340B program to provide low-cost pharmaceuticals to Community Health Center clients, with the Wellpartner contract providing the other required element for this program; and

WHEREAS, the Community Health Center's pharmaceuticals program is revenue-generating, as the amounts paid by the Clinic's clients and their insurance providers cover all cost related to the purchase, dispensing and restocking of the pharmaceuticals; and

WHEREAS, the two contracts for this program, McKesson and Wellpartner have different termination dates, though they work in tandem; and

WHEREAS, it has been determined that the original amounts assigned to both contracts were too high;

NOW, THEREFORE, IT IS HEREBY RESOLVED AND ORDERED that the Board of County Commissioners ratify the County Administrator's decision to sign the McKesson contract in the amount of \$405,288 for the term April 1, 2006 through December 31, 2008, and that the Wellpartner contract be extended until December 31, 2008.

DATED this _____ day of March, 2007.

Faye Stewart, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM
Date 3/13/07 Lane County
[Signature]
Office of Legal Counsel

Purchase Order

LANE COUNTY
PURCHASING
3040 N DELTA HIGHWAY
EUGENE OR 97408

Purchase Order	Date	Revision	Page
0000224736	05/02/2006		1
Freight Terms		Ship Via	
FOB-DEST FREIGHT PREPAY&ADD		BEST WAY	

Ship To: HEALTH & HUMAN SERVICES ADMIN
541-682-4035
125 East 8th Avenue
EUGENE OR 97401-2966

Vendor: 0000006228
MCKESSON
ATTN: CASEY ANTONSON
MHS ACCOUNT MANAGER
4038 NE 16TH AVE
PORTLAND OR 97212

Bill To: HEALTH & HUMAN SERVICES ADMIN
541-682-4035
125 East 8th Avenue
EUGENE OR 97401-2966

Tax Exempt? N **Tax Exempt ID:**

Line-Sch	Item/Description	Quantity UOM	PO Price	Extended Amt
1- 1	340B PHARMACY WHOLESALE	1.00 EA	0.0000	0.00

LCITS TRACKING NUMBER -

Department Contact Name Brian K Johnson /Phone # 3086

Account: 512111 Fund: 285 Org: 3427080

Term: From: 4/1/06 To: 3/31/09

Performance Bond attached? NO IF YES \$

Insurance Certificate attached? NO

Quote/Bid/RFP/None(Q,B,R,N): none DBE or user initials? Board Order # n/a

Reason no Quotes: Selected by Pharmacy that was selected by RFP # 20236

Please add your signature and the date processed below.

Budget: _____ Legal Counsel: _____

Risk Management: _____ County Administrator: _____

Purchasing Manager: _____

Total PO Amount

0.00

Unauthorized

5176

McKESSON

Empowering Healthcare

Purchasing Commitment Form

Applicant's Legal Name: Lane County by and through Community Health Centers of Lane County
DBA or Business trade Name: _____
Business Physical Address: 1640 G Street, Springfield, OR 97477
Business Telephone Number: (541) - 682-3550
Business Fax Number: (541) - 682-3551
Business DEA License Number and expiration Date: Am 2134839 Expires 01/31/2007

Customer Type of Business:

- ☐ Hospital, not-for-profit
- ☐ Hospital, for profit
- ☐ Hospital, government
- ☐ Long Term Care Pharmacy ("closed" pharmacy)
- ☐ Home Care/Home Infusion Pharmacy
- ☐ HMO Pharmacy
- ☒ Physician office
- ☐ Retail Pharmacy
- ☐ Mail Order Pharmacy
- ☐ Other: (please specify)

Name of the McKesson Distribution Agreement under which your business intends to purchase from McKesson (the "Agreement"): <u>PHS Prime Vendor Agreement</u>	Start date of the Agreement: <u>04/01/2006</u>
Estimated monthly purchases from McKesson: <u>\$ 11,258⁰⁰</u>	End date of the Agreement: <u>05/31/2009</u>

Please check the box that is applicable to you, as determined under the Agreement:

☒ **Primary Vendor Purchase Commitment:** The undersigned agrees to utilize McKesson as first choice for the purchase of all Pharmaceutical Products normally purchased through wholesale pharmaceutical distributors and to be bound by the terms and conditions of the Agreement with respect to its purchases from McKesson. (*)

☐ **Secondary Vendor Purchase Commitment:** The undersigned agrees to be bound by the terms and conditions of the Agreement with respect to its purchases from McKesson.

Customer acknowledges that (i) membership in a buying group or group purchasing organization ("GPO") does not of itself entitle Customer to purchase from McKesson; (ii) Customer's right to purchase from McKesson is subject to credit approval; and (iii) Customer has received and read the Agreement.

William A. Underaker
Authorized Signature

County Administrator
Title

6/1/06
Date

* Applies only to the Applicant's 340b program through Wellpartner.

Commitment Form.doc

APPROVED AS TO FORM

Date 5/31/06 Lane County Updated 8/20/01

Jessie J. Smith
OFFICE OF LEGAL COUNSEL

Type of Business: ☐ Acute ☒ Primary Care ☐ Specialty ☐ Home Health ☐ Extended ☐ Long Term ☐ Pharmacy ☐ Closed Door ☐ Internet ☐ Mail Order ☐ Supplier ☒ Government ☐ Other

Legal Company Name Lane County

Website Address

Lanecounty.org/HSC/chclc.htm

Federal Tax ID

93-6002303

Legal Address (Main Office) 125 E. 8th Ave.

City Eugene

State OR Zip 97401

Contact Name we may call for questions regarding this application

Brian K. Johnson

Title

Program Services Coordinator

Phone

(541) 682-3084

Billing / Statement Address (if different than Main Office)

CHCLC - Riverstone Clinic 1640 'G' St.

City

Springfield

State

OR

Zip

97477

Accounts Payable Contact Person Barbara Shrauger

Accounts Payable Telephone (541) 682-3767

Accounts Payable Fax (541) 682-9838

Shipping Information: ☒ If more than 1 Ship-to, please attach multiple Ship-to's Information

DBA or Business Trade Name of Account

See attached

Ship to Address

City

State

Zip

Ship to Contact Person

Ship to Telephone

Estimated Monthly Purchases

Years in Business

State Org/Charter ID/License#

Name of State

DEA#

HIN#

Medical License# & Name of State

Ownership Type: ☐ Proprietorship ☐ Partnership ☐ Limited Partnership ☐ LLC ☐ (S) Corp ☐ (C) Corp ☐ Professional Corp ☐ Non-Profit Corp

Principal Owner(s) or Stockholder(s)

Has applicant, applicant's parent or affiliates ever filed for bankruptcy? ☐ No ☐ Yes, attach explanation

% Ownership(s)

Social Security Number(s)

NAME OF CONTROLLING ENTITY (if any)

Applicant's relationship to controlling entity

Phone

Address of Controlling Entity

City

State

Zip

REFERENCES:

US Bank

153600289133

Joan Wessinger

(503) 401-7458

Primary Bank/Financial Institution

Account Number

Contact Name

Phone

N/A

Primary Supply Provider

Account Number

Contact Name

Phone

County's internal IT dept

Primary Technology Provider

Account Number

Contact Name

Phone

Additional Information Required (If applicable, please attach these documents to this application):

☐ Copy of Resale Certificate, DEA Registration and State Pharmacy License

☐ Copies of 3 most recent and consecutive primary supplier statements

☐ Annual Financial Statements for the past 2 years (including balance sheets, income statements, and cash flow statements)

See Lane County's website for financials:

www.lanecounty.org/MS-Finance/default.htm

This section applies to all accounts with MCKESSON CORPORATION or an affiliated company

Customer represents to McKesson that it is entitled to discounted prices from certain manufacturers of which it has notified McKesson ("Contract Prices"). To the extent that McKesson grants Customer the right to purchase products at prices based on such Contract Prices and in consideration of McKesson's granting such right, (i) Customer acknowledges that McKesson will expect to receive from the appropriate manufacturer the difference between McKesson's cost and the Contract Price (a "Chargeback") and (ii) Customer agrees that in the event any manufacturer denies a Chargeback because Customer was not eligible for such Contract Price, Customer shall be invoiced for and will become liable to McKesson in the amount of such Chargeback. In addition, in the event a manufacturer (i) makes an assignment for the benefit of creditors, files a petition in bankruptcy, is adjudicated insolvent or bankrupt, or if a receiver or trustee is appointed with respect to a substantial part of the vendor's property or a proceeding is commenced against it which will substantially impair its ability to pay on chargebacks or (ii) otherwise fails to pay Chargebacks to McKesson for any reason other than McKesson's gross negligence or willful misconduct, Customer shall be invoiced and become liable to for any unpaid chargebacks allocable to its purchases from such manufacturer.

The Customer agrees to abide by the Standard Terms of Sale as shown on McKesson's invoices or by any agreement with McKesson governing Customer's account, or any other terms of sale upon which McKesson and the Customer should agree in writing. The Customer agrees to pay for all purchases, fees and other charges incurred by Customer or an authorized user on any account of customer with McKesson, including service charges on past due amounts at the highest rate permitted by law.

McKesson reserves the right, in its sole discretion, to change a payment term (including imposing the requirement of cash payment upon delivery) or limit total credit, if (i) McKesson concludes there has been a material change in the Customer's financial condition or any unsatisfactory payment performance; or (ii) Customer ceases to meet McKesson's credit requirements or McKesson determines that the Customer is likely to cease meeting such requirements. Upon the occurrence of any of the above-specified events, McKesson shall be entitled to suspend or discontinue the shipment of additional orders to Customer.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit Customers on the basis of race, color, religion, national origin, sex, marital status, age; (provided the Customer has the capacity to enter into a binding contract); because all or part of the Customer's income derives from any public assistance program; or because the Customer has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

The Customer represents and warrants to McKesson that Customer has read and understands this form. Customer further represents and warrants that Customer has reviewed the information provided herein in its entirety, including any responses completed on Customer's behalf by a McKesson representative, and that all such information is complete and correct. Customer will advise McKesson of any material changes in the statements and information provided to McKesson.

Customer agrees to provide McKesson with financial statements at McKesson's request. This form is subject to approval by the McKesson Credit Department. Customer acknowledges that McKesson will be relying on this information if it determines to create an account for and/or extend credit to Customer. Customer authorizes McKesson, its employees, representatives, and agents to investigate any information contained herein. Customer also authorizes McKesson to investigate Customer's credit and financial records, including banking records. Customer understands that, as part of this investigation, McKesson or its agent may request Customer's credit bureau report in considering this application and, if credit is extended, for the purpose of an update, renewal, extension of credit, review or collection of the Account. Furthermore, Customer authorizes McKesson to share with its affiliates experiential and transactional information regarding Customer and Customer's Account. McKesson is authorized to retain any information obtained as part of the application process whether or not the requested account and/or credit is granted. The undersigned agrees to pay all reasonable attorney fees and expenses or cost incurred by McKesson in enforcing its rights to collect any amounts due from Customer.

By signing below, the undersigned authorized McKesson to order a consumer report related to the business principal(s) to determine credit eligibility.

Authorized Signature

Print Name William A VanVactor

Title County Administrator

Date 6/1/06

APPROVED AS TO FORM

Date

5/31/06

lane county

OFFICE OF LEGAL COUNSEL

Lane County
Customer Application
Shipping Information
for
Community Health Centers of Lane County (CHCLC)

CHCLC – Riverstone Clinic
1640 'G' Street
Springfield, OR 97477

Ship to contact person: Felicia Chapman
Ship to telephone: (541) 682-3575
Estimated Monthly Purchases: \$8,444

CHCLC – Springfield Health Clinic
1050 10th Street
Springfield, OR 97477

Ship to contact person: Mary Beedle
Ship to telephone: (541) 744-4130
Estimated Monthly Purchases: \$1,688

CHCLC – Safe & Sound Medical Clinic
941 West 7th Avenue
Eugene, OR 97402

Ship to contact person: Kathryn Sturdivant
Ship to telephone: (541) 968-8487
Estimated Monthly Purchases: \$1,125

McKESSON

Empowering Healthcare

MHS- Payment Terms Selection

Lane County ("Customer") hereby elects, subject to the terms of the McKesson Corporation ("McKesson") distribution agreement under which such Customer intends to purchase from McKesson (the "Agreement"), from the payment terms set forth below the manner in which it will pay for purchases from McKesson. Customer may request a change in its manner of paying McKesson with thirty (30) days' prior written notice to McKesson. **All such elections shall be subject to credit approval by McKesson.** These terms are extended on an order by order basis only and may be altered or revoked at any time at McKesson's complete discretion. To the extent of any inconsistency between this form and the Agreement, the terms of the Agreement shall control.

Please select one of the following ten standard payment terms (subject to credit approval by McKesson):

Prepayment Options: The prepayment is a one-time payment based on the most recent three-month purchase history, which is held as a deposit by McKesson. The amount of the required deposit will be adjusted quarterly, and may be adjusted as often as monthly, to cover increases or decreases in purchase volume. All purchases are payable as set forth below.

- ☐ 30 day Prepayment Terms (45 day deposit and monthly statement payment terms)
- ☐ 30 day Prepayment Terms (45 day deposit and 30-day invoice payment terms)
- ☐ 15 day Prepayment Terms (30 day deposit and semi-monthly statement payment terms)
- ☐ 15 day Prepayment Terms (30 day deposit and 15-day invoice payment terms)
- ☐ 7 day Prepayment Terms (15 day deposit and weekly statement payment terms)
- ☐ 7 day Prepayment Terms (15 day deposit and 7-day invoice payment terms)

- ☐ **Weekly Payment Terms:** Purchases for invoices from Monday - Friday are due by Tuesday of the following week via Automated Clearinghouse (ACH) or other Electronic Funds Transfer (EFT) method acceptable to McKesson. The debit will be initiated by McKesson.
- ☐ **Semi-Monthly Payment Terms:** Payment is made from statement, with invoices dated from the 1st - 15th due at McKesson's "remit to" address on the 22nd and invoices dated from the 16th - 30/31st due at McKesson's "remit to" address on the 7th of the following month.
- ☒ **15 Day Invoice Payment Terms:** Customer may elect to pay from invoice date, with each invoice due to the McKesson "remit to" address within fifteen (15) calendar days of each invoice date
- ☐ **Monthly Payment Terms:** Payment is made from statement, with invoices dated from the 1st to end of the month are due to McKesson's "remit to" address on the 7th of the following month.

Late Payment Fees. Any payments made after the due date shall result in a two percent (2%) (or the maximum amount permissible under applicable law, if lower) increase in the purchase price of the merchandise. A one percent (1%) service charge (or the maximum amount permissible under applicable law, if lower) will be imposed semi-monthly on all balances delinquent more than fifteen (15) days.

Adjustment by McKesson. McKesson reserves the right to adjust pricing to the term that most closely matches Customer's demonstrated payment history.

Customer agrees to the above terms.

William A. Underwood
Authorized Signature

Title
County Administrator

6/11/06
Date

Updated 9/29/03

APPROVED AS TO FORM
Date 5/31/06 Lane County
Teresa J. Smith
OFFICE OF LEGAL COUNSEL