

W.3.C.1.

AGENDA COVER MEMO

AGENDA DATE: October 17, 2007
TO: Board of County Commissioners
DEPARTMENT: Health & Human Services
PRESENTED BY: Rob Rockstroh



AGENDA TITLE: ORDER IN THE MATTER OF DELEGATING AUTHORITY TO THE COUNTY ADMINISTRATOR TO EXECUTE A FOODBORNE ILLNESS PREVENTION PROGRAM PAYBACK AGREEMENT IN THE AMOUNT OF \$119,698.08 BETWEEN LANE COUNTY AND THE STATE OF OREGON, ACTING BY AND THROUGH ITS DEPARTMENT OF HUMAN SERVICES, FOR THE PERIOD OCTOBER 1, 2007 THROUGH JUNE 30, 2009.

I. MOTION

Order _____ / In The Matter Of Delegating Authority To The County Administrator To Execute A Foodborne Illness Prevention Program Payback Agreement In The Amount Of \$119,698.08 Between Lane County And The State Of Oregon, Acting By And Through Its Department Of Human Services, For The Period October 1, 2007 Through June 30, 2009.

II. AGENDA ITEM SUMMARY

Delegation of authority to the County Administrator is sought to execute the requisite IGA that will permit DHS and Lane County Health & Human Services to comply with the dictates of ORS 624.510, related to the foodborne illness prevention program, under which the local public health authority assumes responsibility for the inspection of restaurants (and related establishments); for the licensing of these establishments, for enforcement related to these functions and for the collection and distribution of the fees thereby generated.

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History

The Health & Human Services (Fund 286) FY 07-08 budget was approved via BO 07-6-27-3. Approved in conjunction with that budget-adoption BO was delegated authority to the County Administrator to execute Amendment 5 to State Agreement 113057, in the amount of \$59,849, for the Foodborne Illness

Prevention Program (FIPP). The County Administrator signed Amendment 5 on 9 July, 2007.

On September 27, 2007; DHS notified Lane County of its intention to terminate State Agreement 113057 and to substitute Agreement 122775 (attached) in the amount of \$119,698.08; with effective dates of October 1, 2007 through June 30, 2009.

B. Policy Issues

In approving Amendment 5, Lane County sought to clarify the intent of the payback portion of the agreement, by inserting the word "annual" to paragraph 2.b. (see attached) Lane County's attempt to clarify the language of the agreement resulted in DHS' decision to terminate Agreement 113057 and to issue the new agreement, 122775, for which delegated signatory authority is now sought.

C. Board Goals

Meets Board objectives of protecting the health of Lane County residents.

D. Financial and/or Resource Considerations

Anticipated gross revenue for Environmental Health services, for the specific services delineated under this agreement (inspection and licensing fees for restaurants, commissaries/warehouses, temporary restaurants, bed and breakfasts) is \$1,333,974, for the period 1 July, 2007 through 30 June, 2009. The \$1,214,276 retained by the Environmental Health program covers all salaries and costs related to the administration and delivery of the foodborne illness prevention program.

Please note that this agreement also authorizes Lane County Public Health to "assure the provision of a food handler training program" (Exhibit A, Part 2, Statement of Work, a.2), a program for which County Environmental Health is authorized to retain all fees collected (approximately \$70,000 per year); the food handler fees are not subject to the payback policy established under this agreement.

This agreement does not impact other services/fees or paybacks provided by Environmental Health, such as swimming pool and tourist facility inspections.

E. Analysis

The new agreement made no changes to the foodborne illness prevention program, nor to the relationship between DHS and Lane County Public Health/Environmental Health.

The new agreement brings Exhibit D (Required Federal Terms and Conditions) into alignment with the similar exhibits attached to other DHS contracts (the prior agreement dated from FY 06), adds a "mutual termination" clause (Exhibit B, Standard Terms and Conditions, Termination, 11.c) and includes appropriate "County-specific" verbiage, related to self-insurance.

F. Alternatives / Options

1. To delegate authority to the County Administrator to execute State Agreement 122775.
2. To decline the proposed agreement, negating Public Health's authority to conduct the foodborne illness prevention program and to collect fees for the functions related to this program; as well as the food handlers' testing program.

IV. TIMING/IMPLEMENTATION

Assuming Board approval, the new agreement would be placed into retroactive effect as of October 1, 2007.

VI. RECOMMENDATION

To approve option number 1, above.

VII. FOLLOW-UP

None anticipated.

VIII. ATTACHMENTS

Board Order
Agreement 122775
Amendment 5 to Agreement 113057

THE BOARD OF COUNTY COMMISSIONERS, LANE COUNTY, OREGON

RESOLUTION) IN THE MATTER OF DELEGATING AUTHORITY TO THE
AND ORDER:) COUNTY ADMINISTRATOR TO EXECUTE A FOODBORNE
) ILLNESS PREVENTION PROGRAM PAYBACK AGREEMENT
) IN THE AMOUNT OF \$119,698.08 BETWEEN LANE COUNTY
) AND THE STATE OF OREGON, ACTING BY AND THROUGH
) ITS DEPARTMENT OF HUMAN SERVICES, FOR THE PERIOD
) OCTOBER 1, 2007 THROUGH JUNE 30, 2009.

WHEREAS, the Lane County Board of County Commissioners is recognized as the local public health authority under the provisions of ORS 431.410; and

WHEREAS, promoting, protecting, and preserving the health and quality of life for people in Lane County is a major County goal; and

WHEREAS, environmental health activities protect Lane County residents from foodborne illnesses and promote better public health;

NOW, THEREFORE, IT IS HEREBY ORDERED that the Board of Commissioners delegate authority to the County Administrator to execute Agreement 122775 in the amount of \$119,698.08 with the State of Oregon for the period 1 October, 2007 through June 30, 2009.

DATED this _____ day of October, 2007.

Faye Stewart, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM

Date 10/8/07

Lane County J. Haidlaw

OFFICE OF LEGAL COUNSEL

Agreement Number 122775

**State of Oregon
Intergovernmental Agreement**

In compliance with the Americans with Disabilities Act, this document is available in alternate formats such as Braille, large print, audiotape, oral presentation, and electronic format. To request an alternate format call the State of Oregon, Department of Human Services, Office of Forms and Document Management at (503) 373-0333, Fax (503) 373-7690, or TTY (503) 947-5330.

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

**Lane County
Lane County Administration
125 East 8th Avenue
Eugene, OR 97401
Phone number: (541) 682-4203
Fax number: (541) 682-4616**

hereafter referred to as "Agency or LPHA".

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

**Office of Health Services
Office of Public Health Services
Agreement Administrator: Eric Pippert or delegate
800 Northeast Oregon Street, Suite 608
Portland, OR 97232
Phone number: (971) 673-0453
Fax number: (971) 673-0457**

RECITALS

WHEREAS, ORS 431.375 authorizes DHS and the Agency to collaborate and cooperate in providing for basic public health services in the state, and in maintaining and improving public health services through county or district administered public health programs;

WHEREAS, ORS 431.250 and 431.380 authorize DHS to receive and disburse funds made available for public health purposes;

WHEREAS, Agency has established and proposes, during the term of this Contract, to operate or contract for the operation of public health programs in accordance with the policies, procedures and administrative rules of DHS;

WHEREAS, DHS is authorized and bears the responsibility to establish standards under which Local Public Health Authorities will provide Foodborne Illness Prevention Program (FIPP) services to facilities licensed under ORS Chapter 624;

WHEREAS, DHS, pursuant to ORS 624.510 delegates authority to Agency to administer DHS' rules and policies relating to activities such as the fee collection, licensing, inspection, enforcement of civil penalties, and issuance and revocation of permits and certificates that govern the operation of FIPP services;

WHEREAS, DHS, pursuant to ORS 624.510, shall assess a remittance from Agency to DHS for administering Foodborne Illness Prevention Program (FIPP) services;

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:

I. EFFECTIVE DATE AND DURATION

This Agreement shall be effective October 1, 2007 through June 30, 2009, regardless of the date it is actually signed by all applicable parties. This Agreement shall replace Agreement number 113057. Agreement termination or expiration shall not extinguish or prejudice DHS's right to enforce this Agreement with respect to any default by Agency that has not been cured.

Note: Agreement number 113057 is terminated in whole by mutual consent on September 30, 2007.

II. AGREEMENT DOCUMENTS

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

- Exhibit A, Part 1: Definitions
- Exhibit A, Part 2: Statement of Work
- Exhibit A, Part 3: Payment and Financial Reporting
- Exhibit A, Part 4: Special Terms and Conditions - RESERVED
- Exhibit B: Standard Terms and Conditions
- Exhibit C: Insurance
- Exhibit D: Required Federal Terms and Conditions
- Exhibit E: Required Subcontractor Provisions

There are no other agreement documents unless specifically referenced and incorporated in this Agreement.

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

III. CONSIDERATION

- A. Consideration is as set forth in Exhibit A, Part 3 of this Agreement.
- B. DHS will pay only for completed Work under this Agreement.

IV. COUNTY DATA AND CERTIFICATION

- A. County Tax Identification and Insurance Information. County shall provide County's federal tax ID number and the additional information set forth below. This information is requested pursuant to ORS 305.385. Social Security Numbers provided pursuant to this Section IV will be used for the administration of state, federal and local tax laws.

Please print or type the following information.

If County is self-insured for any of the Insurance Requirements specified in Exhibit C of this Agreement, County may so indicate by writing "Self-Insured" on the appropriate line(s).

Name (exactly as filed with the IRS) _____ Lanc County, _____
Address 125 East 8th. Av^{me}, Rogⁿ, Or^{grm} _____ 97401
Telephone: () (541) - 682-4035 Facsimile: () 541 - _____ 682-3804

Proof of Insurance:

Workers Compensation – Insurance Company _____ Self-Insured _____

Policy # _____ Expiration Date: _____

Professional Liability Insurance Company _____ Self-Insured _____

Policy # _____ Expiration Date: _____

General Liability Insurance Company _____ Self-Insured _____

Policy # _____ Expiration Date: _____

Auto Insurance Company _____ Self-Insured _____

Policy # _____ Expiration Date: _____

Federal Tax I.D.# 93 _____ 2006303

The above information must be provided prior to Agreement approval. County shall provide proof of Insurance upon request by DHS or DHS designee. DHS may report the information set forth above to the Internal Revenue Service (IRS) under the name and taxpayer identification number provided.

- B. Certification.** By signature on this Agreement, the undersigned hereby certifies under penalty of perjury that:
1. The number shown in Section IV(A) is County's correct taxpayer identification and all other information provided in Section IV(A) is true and accurate; and
 2. County is not subject to backup withholding because:
 - i. County is exempt from backup withholding;
 - ii. County has not been notified by the IRS that County is subject to backup withholding as a result of a failure to report all interest or dividends; or
 - iii. The IRS has notified County that County is no longer subject to backup withholding.

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

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

Approved By Agency

Authorized Signature Title Date

Approved By DHS

Signature Title Date Authorized

Approved for Legal Sufficiency:

(Required for Agreements in excess of \$ 75,000, unless exempt)

APPROVED By e-mail dated 09/26/2007, Shannon O'Fallon, Assistant Attorney General, E-mail filed in contract folder.

Assistant Attorney General Date

DHS Program Signature:

Signature Name (printed) Date

Office of Contracts and Procurement:

Signature Name (printed) Date

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EXHIBIT A
Part 1
Definitions
General Program Definitions

The following definitions are set forth for the purpose of interpreting this Contract:

- a. **"Administrative Costs"** means those costs that are incurred by LPHA in addition to the direct costs of providing delegated program services. These administrative costs include actual Departmental, agency or central government charges such as, but not limited to, accounting, purchasing, human resources, data management, legal counsel and central mail functions.
- b. **"Administrator"** means the Assistant Director for Health Services of the Department of Human Services or an authorized representative.
- c. **"Bed and breakfast facility"** means any establishment located in a structure designed for a single family residence and structures appurtenant thereto, regardless of whether the owner or operator of the establishment resides in any of the structures, that:
 - (1) Has more than two rooms for rent on a daily basis to the public; and
 - (2) Offers a breakfast meal as part of the cost of the room.
- d. **"Commissary"** means commissary catering establishment, restaurant or any other place in which food, beverage, ingredients, containers or supplies are kept, handled, prepared or stored, and from which vending machines or mobile units are serviced.
- e. **"Complete Inspection"** means the evaluation of an establishment or facility licensed by the LPHA for compliance with all applicable regulations.
- f. **"Consultation Services Remittance"** means the biennial assessment of the DHS for consultation services and maintenance of the Foodborne Illness Prevention.
- g. **"Delegated Program Services"** means those services for which DHS has entered into an Intergovernmental Agreement under ORS 624 with the LPHA.
- h. **"DHS"** means the Oregon Department of Human Services.
- i. **"Direct Costs"** mean those costs for salaries and benefits of field and support staff and their associated costs including, but not limited to, rent, vehicles and travel, equipment, data management, training, phone, office supplies and the pro-rated portion of direct costs relating to supervision.
- j. **"Field Staff"** means an Environmental Health (FIPP) Sanitarian registered by the State of Oregon as required by ORS 700 and qualified to perform FIPP services.
- k. **"Fiscal Audit"** means a comprehensive audit using standard audit procedures of the financial records of the Local Public Health Authority related to licenses and fees.

- l. **"Foodborne Illness Prevention Program"** (hereinafter, "FIPP") means a program within DHS that works in partnership with local health Departments, the food service industry, and the public to reduce or eliminate the known causes of foodborne illness in restaurants; it is a critical component of local environmental health programs.
- m. **"Inspection"** means the regulatory authority inspects a licensed facility to evaluate compliance with statutory and rule requirements for preventing foodborne illness.
- n. **"Licensed Establishment or Facility"** means, in accordance with ORS 621.020 and 621.320, a restaurant, a vending machine, warehouse, commissary or mobile unit that meets the requirements of the applicable statutes and rules is licensed to operate from the Department of Human Services. A Licensed Establishment or Facility is an establishment where food or drink is prepared for consumption by the public or any establishment where the public obtains food or drink so prepared in form or quantity consumable then and there, whether or not it is consumed within the confines of the premises where prepared, and also includes establishments that prepare food or drink in consumable form for service outside the premises where prepared.
- o. **"Local Public Health Authority"** (LPHA) means county governments or health districts established under ORS 431.414 that are responsible for management of local public health services.
- p. **"Mobile unit"** means any vehicle on which food is prepared, processed or converted or which is used in selling and dispensing food to the ultimate consumer.
- q. **"Pre-operational Inspections"** means those new facilities, such as restaurants, commissaries, and mobile units, for which an inspection conducted before the food service operation is issued a license to operate.
- r. **"Recheck Inspection"** means an inspection to determine whether specified corrections have been made or alternative procedures maintained for violations identified in previous inspections. In food service establishments, a recheck inspection also means an inspection to determine whether specific corrections have been maintained for critical violations creating a significantly increased risk for foodborne illness. Recheck inspections may be conducted either on pre-announced dates or unannounced.
- s. **"Restaurant"** includes any establishment where food or drink is prepared for consumption by the public or any establishment where the public obtains food or drink so prepared in form or quantity consumable then and there, whether or not it is consumed within the confines of the premises where prepared, and also includes establishments that prepare food or drink in consumable form for service outside the premises where prepared, but does not include railroad dining cars, bed and breakfast facilities or temporary restaurants as defined herein.
- t. **"Temporary restaurant"** means any establishment operating temporarily in connection with any fair, carnival, circus or similar public gathering or entertainment, food product promotion or any other event where food is prepared or served for consumption by the public. "Temporary restaurant" does not include:

- (1) An establishment where food is prepared and served by a fraternal, social or religious organization only to its own members and guests.

- (2) An approved school lunchroom where food is prepared and served for school and community activities, where the preparation and service are under the direction of the school lunchroom supervisor.
- (3) A food product promotion where only samples of a food or foods are offered to demonstrate the characteristics of the food product. For the purposes of this paragraph, a sample shall not include a meal, an individual hot dish or a whole sandwich.
- (4) A private residence, or part, including the grounds, areas and facilities held out for the use of the occupants generally, for which a temporary sales license is issued under ORS 471.190 for a period not exceeding one day.

u. **"Vending machine"** means any self-service device offered for public use which, upon insertion of a coin, coins, currency or token, or by other means, dispenses unit servings of food or beverage, either in bulk or package, without the necessity of replenishing the device between each vending operation.

v. **"Warehouse"** means any place where food, utensils, single-service articles, cleaning or servicing supplies for vending machines, mobile units or commissaries are stored.

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(II) 16-50 seats, one and three quarter hours.

(III) 51-150 seats, two hours.

(IV) Over 150 seats, two and one half hours.

For purposes of establishing program budget and staffing, LPHA shall assume an average recheck inspection rate of forty percent of the total number of inspections conducted by the LPHA. A critical item recheck shall require an average of 45 minutes, including travel time

(H) LPHA shall observe the following standards, which are established to reflect the levels of effort and resources required to conduct the delegated activities and functions pursuant to the applicable sections of ORS 624:

(I) LPHA shall utilize the staffing standards established in section a.(F) of this Exhibit to determine LPHA budget for field inspection activities.

(II) LPHA shall limit administrative costs for the FIPP program to fifteen percent (15%) of direct costs for the FIPP program.

(III) LPHA staffing for the FIPP program shall not exceed a ratio .35 FTE for clerical support staff and .25 FTE for supervisory staff relative to the FTE ratio established for LPHA field staff.

(IV) LPHA shall not claim expenditures for services and supplies for administering the FIPP program that exceed a ratio of .25 of personnel salary for direct program costs

(I) In lieu of the administrative standards outlined in this Exhibit section, LPHA may determine staffing standards and actual costs of providing FIPP program services. In instances in which LPHA decides to determine its actual costs, LPHA must document and report to DHS actual time spent and expenses incurred. DHS, at its sole discretion, will conduct a fiscal audit of the costs of providing FIPP services claimed by LPHA.

(2) Food Handler Training

LPHA shall assure the provision of a food handler training program using minimum criteria developed by DHS, pursuant to OAR 333.175. LPHA shall secure DHS approval before deviating from the criteria of the training program for food handlers, and shall document in a manner satisfactory to DHS the training methods used for food handler training.

(3) Establishment of Licensing and Fee Schedule

LPHA shall establish a schedule by which LPHA shall assess fees and issue licensing certificates to the licensed establishments and facilities located in the LPHA administrative area in accordance with the standards set forth as follows:

(A) LPHA shall establish a single license fee per establishment or facility type. LPHA shall not

establish and implement added fees based on local determination of unique features of an establishment or facility.

(B) LPHA shall establish and implement licensing categories based upon those specified in ORS 624.020. LPHA shall not create additional licensing categories.

(C) LPHA may, with DHS approval, establish and implement the following:

(I) A fee schedule for licensed establishments and licensed facilities that require more than two (2) recheck inspections per year.

(II) A fee schedule for costs associated with plan review conducted under guidelines established by DHS.

(III) A reinstatement fee for late license reinstatement of licensed establishments and licensed facilities.

(IV) A schedule for pro-rated licensing and inspection fees for partial year operation of licensed establishments and facilities as follows: From January 1 through September 30, a full license fee is required. From October 1 through December 31, half the annual fee must be assessed.

(D) LPHA shall not represent the fees remitted to DHS pursuant to section b.(1) of this Contract Exhibit as a surcharge or added charge to the FIPP inspection and licensing fees that LPHA requires licensed establishments and facilities to pay for FIPP inspection and licensing services.

(4) Record Keeping and Reporting

LPHA shall establish, implement and monitor standards and practices for record keeping and periodic reporting to DHS on the provision of FIPP services, set forth as follows:

(A) LPHA shall, in accordance with ORS 183.415(7) and (8), record, and maintain for at least three years, documentation of all administrative matters delegated under ORS 624.510, including a record of any hearings; the time, date, place and copies of the complaint; all intended actions and orders; and the final disposition of the hearing proceedings.

(B) LPHA shall, at a minimum, maintain records according to the Archive Division rules of the following:

(I) Inspection reports.

(II) Complaints and their disposition.

(III) Communicable disease or suspected food-borne illness investigations.

(IV) License applications and licenses issued.

(V) Food service inspection scores.

(VI) Changes in public notice placards.

(VII) Food handler training materials.

(VIII) Plan review records

(IX) Records of all license denials, revocations, suspensions or other temporary closures and of Failed to Comply notices posted or any other enforcement actions taken.

(C) LPHA shall provide program information to DHS such as:

(I) Inspections conducted.

(II) Workload indicators and staffing patterns, as set forth in section a.(F) and a.(H) of this Exhibit.

(III) Fee schedules and violation summaries.

(D) LPHA shall respond to surveys conducted by DHS.

(E) LPHA shall submit program information and surveys to DHS in a form required by DHS.

(5) Minimum Standards, Program Review and Penalties

LPHA shall be subject to the minimum standards, program review, and penalty provisions set forth below:

(A) The LPHA may request approval from DHS to implement alternative inspection or enforcement procedures. The LPHA must submit a plan that includes expected performance measures and outcomes and the procedure must be included in the annual Intergovernmental Agreement.

(B) The LPHA must be subject to a performance review of both office and field activities to determine compliance with these rules. A review of each LPHA will be conducted at least once every three years. DHS will submit the results of the review to the LPHA.

(C) LPHA shall cooperate with DHS in a triennial fiscal audit that will be conducted by DHS. LPHA may also be subject to additional fiscal audits if deemed necessary by DHS.

(D) At least once each calendar year, LPHA shall cooperate with DHS in the completion and submission of a DHS survey that is designed to determine accomplishments of LPHA performance of FIPP services and of anticipated needs for further refinements in the performance of these services. The information obtained by DHS from the survey is intended to assist DHS in providing assistance, guidance, training, consultation and support for the FIPP services as needed.

(E) If a review reveals that LPHA is not complying with the provisions of this Contract or applicable FIPP program rules or regulations, DHS will inform LPHA of the action required to correct performance deficiencies, and of the time frame by which the corrective action must be completed. LPHA shall correct the deficiencies within the time frames required and report the corrections to DHS.

(F) If DHS determines that the deficiencies result in a serious human health hazard, DHS shall require immediate compliance of LPHA. If DHS determines that the deficiencies do not result in a serious human health hazard, a longer period of time may be allowed for compliance, however, the maximum time allowed for compliance, after notice is issued by DHS, shall be as follows:

- (I) Up to 90 days to correct administrative deficiencies such as, but not limited to, accounting reports and records.
- (II) Up to 180 days to correct program deficiencies such as, but not limited to, inadequate frequency of inspections, scoring, staffing and lack of enforcement action.
- (III) Notwithstanding paragraph (I) of this section, DHS, at its sole discretion, may allow a longer time frame for compliance if deemed necessary;
- (IV) If DHS determines that the Local Public Health Authority did not use the proper cost elements in determining the fee or that the amount of the fee is not justified, DHS may order the Local Public Health Authority to adjust any fee, as soon as is possible, to a level supported by DHS's analysis of the fee.

(G) In instances in which DHS notifies LPHA of an emergency health hazard, and LPHA is either unwilling or unable to administer or enforce delegated standards, DHS may, pursuant to ORS 431.170, immediately take responsibility of the functions and collect the monies necessary to protect public health. When the health hazard has been resolved or is no longer an emergency, DHS may return authority to the LPHA, and may initiate a review to determine if delegation is to be continued.

(H) DHS may deny or revoke the delegation of a program in instances in which the LPHA:

- (I) Does not have sufficient qualified personnel to conduct the program.
- (II) Has failed to perform its delegated duties satisfactorily.
- (III) Has engaged in deceit or fraud in the conduct of the program or maintenance of its associated records.

(I) DHS will impose suspension or rescission of a delegation in accordance with ORS Chapter 183 relating to contested cases.

(J) DHS will immediately respond to a request by the LPHA for personnel or equipment during an emergency. If DHS is unable to assist as requested, DHS will immediately notify the LPHA and provide such assistance as is available to DHS.

(K) The Local Public Health Authority may adopt ordinances on applicable matters provided they are not less stringent than the Oregon Administrative Rules adopted pursuant to ORS Chapters 183, 446, 448 and 624. Any ordinance proposed for adoption on matters applicable to food service operators more stringent than those set forth in ORS 624 and rules adopted thereunder must be approved by DHS and the cost of implementing any ordinance so adopted may not be charged to license fees adopted pursuant to ORS 624.510(2). Notwithstanding the provisions of the section, when an emergency exists

and delay will result in an immediate danger to public health, Local Public Health Authorities may adopt ordinances without prior DHS approval. This section does not affect ordinances that are required to be adopted as specified in these rules.

(6) Establishment of Enforcement Procedures

In accordance with the requirements of ORS Chapter 183, LPHA shall comply with its own rules for conducting administrative hearings for permit and license denial for those applicants for permits and licenses that have been denied permits and licenses, and for the suspension or revocation of licensed establishments or facilities for which LPHA suspends or revokes licenses.

b. Required Tasks and Activities

LPHA shall perform the tasks and activities required under this Contract, set forth as follows:

(1) Licensing and Fees

LPHA shall license and collect fees from licensed establishments and licensed facilities in accordance with the LPHA licensing and fee standards set forth in section a.(3) of this Exhibit, and with the provisions set forth as follows:

(A) LPHA shall ensure that license applications and licenses are issued on forms provided or approved by DHS.

(B) LPHA may elect to recover the cost of the extra inspections by charging a fee of up to one-half of the annual licensing fee otherwise assessable to the restaurant for each additional inspection.

(C) LPHA shall issue a license to an establishment or facility only after the LPHA has received the fee from the facility and has determined that the facility meets the FIPP requirements set forth in the applicable statutes, ORS Chapter 624.020, 320 and applicable rules.

(D) LPHA shall document and report to DHS the actual time spent and expenses incurred on program services and may be subject to a fiscal audit, in instances in which the license fees assessed by the LPHA are more than 20 % above or below the fees established in ORS 624.020. If LPHA requests a fiscal audit be conducted by a private auditing agency, LPHA shall, subject to DHS approval of the conduct of the audit by a private auditing agency, pay the costs and shall provide a copy of the audit report to DHS.

(E) Pursuant to ORS 624.510, LPHA shall pay all license fees collected by LPHA into the county treasury and placed in a special revenue fund or the general fund of the county treasury and placed to the credit of the LPHA. Such monies must be used only for program services pursuant to ORS 624.510. LPHA shall ensure on an annual basis that all fees collected are used solely for the purposes of administering the programs as described in this section.

(2) Inspection Standards and Procedures

LPHA shall conduct FIPP inspections of licensed establishment or facility applicants in accordance with the inspection standards and procedures set forth as follows:

EXHIBIT A
Part 2
Statement of Work

LPHA shall perform the work, hereinafter "Work", of this Contract in accordance with the following operational requirements and standards and required tasks and activities:

a. Operational Requirements and Standards

In performing the FIPP services required under this Contract, LPHA shall observe the following operational requirements and standards set forth as follows:

(1) Staffing and Training

LPHA shall observe the following requirements for LPHA staffing for the performance of services:

(A) LPHA shall provide the staff, facilities, materials, and equipment necessary to perform the environmental health services required by this Contract.

(B) LPHA shall ensure that inspections are conducted by field staff who are registered as required by ORS Chapter 700.

(C) LPHA shall ensure that at least one FIPP Specialist who provides Contract services relating to the food licensing and inspection program attends an annual training session, either sponsored or approved by DHS

(D) Within one year of hiring an FIPP Specialist, the LPHA shall ensure that the FIPP Specialists attend an orientation provided by DHS. This requirement does not apply to field staff who have previously attended the training while employed in another LPHA.

(E) LPHA shall ensure that at least one Environmental Health Specialist is employed by LPHA, or providing FIPP services under sub-contract with LPHA, who has a current certification from DHS as a Food Service Standardization Officer. LPHA shall ensure that Specialists are certified within 18 months of employment or within 18 months after becoming registered as an Environmental Health Specialist. Notwithstanding the time limits specified in this Exhibit subsection, the LPHA may elect to develop a training plan, subject to approval by the DHS, that allows for a longer time limit to comply with the certification requirement.

(F) LPHA shall ensure that annual work hours available for a dedicated full time equivalent (FTE) for field staff in the FIPP program, is be based on a 40 hour week, and totals at least 1640 hours per annum, of which no more than 25% of this total per annum amount of hours is allocated for office and administrative duties and consultation, and of which 75% is for field inspection activities.

(G) LPHA shall ensure that average standards, relative to the size of the licensed establishment or facility under inspection, for completing inspection functions by field staff, including travel time, are established as follows:

(I) 0-15 seats, one and one half hours.

(A) LPHA shall conduct a minimum of one complete inspection once each six months of operation, or fraction thereof in instances in which the facility receiving inspection is a seasonal or other facility that does not operate on a full-year basis, for each licensed establishment, with the exception of bed and breakfast facilities and temporary restaurants. LPHA shall evaluate at least 10% of the vending machines of each licensed vending machine operator during each inspection

(B) LPHA shall inspect each licensed bed and breakfast facility once per year.

(C) LPHA shall inspect each Temporary Restaurant at least once during the period in which the Temporary Restaurant operation is licensed.

(D) LPHA shall inspect, or provide a technical consultation in lieu of an inspection to each Benevolent Temporary Restaurant during the period in which the Benevolent Temporary Restaurant operation is licensed.

(E) LPHA may, subject to DHS approval, substitute an alternative inspection procedure or intervention once per year in place of an inspection.

(F) LPHA shall implement an increased inspection schedule for licensed establishments or facilities in accordance with OAR 333-157-0027. LPHA may, conduct two of the quarterly inspections based upon a menu review consultation, an announced inspection, a Risk Control Plan or other method sanctioned by DHS.

(G) LPHA shall conduct a pre-operational or construction inspection following review of the operational plan of a particular licensed establishment or facility, and shall conduct a pre-operational or construction inspection prior to the operation of a new, remodeled, converted, renovated or altered establishment or facility. The pre-operational inspection is in addition to the requirement for a complete inspection in section b.(2)(A) of this Contract Exhibit.

(H) LPHA shall conduct a complete inspection to assign a public notice of sanitation within forty-five (45) days after opening for a restaurant or bed and breakfast facility. This inspection counts toward one of the inspections required in section b.(2)(A) of this Contract Exhibit.

(I) LPHA shall ensure that inspection reports are filled out completely and include at least the following information:

(I) Specific problem and correction statements for all violations including Oregon Administrative Rule references.

(II) For all non-critical violations, unless directly linked to an imminent threat to health, time limits for correction must not be specified.

(III) FIPP Inspections must be documented as specified OAR 333 Division 157 Inspection and Licensing Procedures. In addition, LPHA shall indicate on the inspection report the means and manner by which a critical violation has been corrected during complete and recheck inspections.

(J) LPHA shall conduct recheck inspections of licensed establishments and facilities to determine if timely corrective action has been taken on noted critical violations or public health hazards.

(K) LPHA shall, at a minimum, furnish each FIPP Specialist with the following equipment or materials to conduct inspections:

(I) Temperature measuring devices, flashlight, inspection forms and/or computer inspection equipment, identification and business cards, rules, stickers and forms;

(II) Food Service - Sanitizing swabs, test strips for chlorine and quaternary ammonium;

(L) LPHA shall provide food and waterborne illness investigation materials, specified in guidelines provided by DHS, and a light meter for use by field staff. The Food Program Policy Manual must be maintained and updated as well as other information required by DHS.

(M) LPHA shall, upon request by a licensee or member of the public, provide FIPP technical information and consultation to the public and those licensed establishments and facilities currently holding permits and licenses.

(3) Enforcement Procedures

LPHA shall utilize all administrative and legal means necessary to enforce Oregon Revised Statutes ("ORS") Chapter 624 and Oregon administrative rules developed there under and implement DHS policies relating to the FIPP. DHS will consider failure to adhere to ORS Chapter 624 and Oregon administrative rules developed there under as unacceptable surveillance and enforcement.

(4) Determination and Remittance of LPHA Assessed Annual Fee

LPHA shall comply with the provisions for collecting fees from licensed establishments and facilities located in the LPHA for FIPP inspection services; remitting the assessed fee amount to DHS; and assisting DHS in determining the annual assessed fee amounts, set forth as follows:

(A) LPHA shall collect fees on behalf of DHS from food service establishments and remit to DHS the monies necessary to perform DHS's statewide FIPP consultation. For the purposes of this Contract Exhibit provision, food service establishments are full and limited service restaurants, bed and breakfast facilities, mobile food units, commissaries and warehouses. LPHA shall retain the remainder of the fees obtained from food service establishments to cover FIPP administration and enforcements costs.

(B) LPHA shall collaborate and cooperate with DHS in consultations with LPHA and industry representatives in determining the annual fee amount that each LPHA shall remit to DHS to support DHS administration of the statewide FIPP.

(C) LPHA shall collaborate and cooperate with DHS in arranging for the consultation to determine LPHA fee remittance amounts, which will take place no later than April 1st of each legislative year. During the fee assessment consultation, DHS, in collaboration with LPHA, will calculate and project Program expenditures; develop the Program work plan and the activities associated with carrying out the Program work plan, and calculate current food service establishment inventories to determine the amount of the remittance amount for each LPHA for the following biennium. LPHA shall assist DHS

in determining the annual fee remittance amount for the following biennium.

(D) The LPHA shall provide a remittance to DHS as follows:

- (I) DHS will establish a biennial fee assessment for each LPHA.
 - (a) The remittance amount must be determined by first projecting statewide food service license revenue for the biennium using state marker fees.
 - (b) Then, the biennial budget of the FIPP is divided by the revenue projection to yield a percentage factor.
 - (c) Each local public health authority's revenue projection for food service facilities, using state marker fees, is then multiplied by that factor to yield the remittance amount.
- (II) Fifty percent (50%) of the biennial fee assessment is payable to DHS each year unless otherwise negotiated with DHS.
- (III) The annual amount remitted to DHS in the first year of the biennium may not be less than thirty-five percent (35%) of the biennial fee assessment.
- (IV) The LPHA must provide to DHS a quarterly remittance payment, in accordance with the time frames and procedures set forth in section b. of Contract Exhibit C

(E) In April of even-numbered years, DHS, in consultation with LPHA and applicable advisory groups, may recalculate the fee assessment amount for LPHA during the second year of the biennium, based on updated facility counts and program expenditures. In instances in which DHS revises the fee assessment amount for a LPHA during the second year of the biennium, DHS will provide notice to LPHA of the revision, and will establish the revised second-year fee assessment amount pursuant to a duly executed amendment to this Contract.

(5) Epidemiology Investigation and Reporting

LPHA shall investigate all suspected illnesses connected with food facilities. The reports of all investigations of confirmed illnesses must be submitted to DHS as required by OAR 333-018. LPHA shall also notify DHS of investigations expected to result in confirmed foodborne illness.

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EXHIBIT A
Part 3
Payment and Financial Reporting

- a. The maximum, not-to-exceed compensation payable to DHS under this Agreement, which includes any allowable expenses, is \$119,698.08. DHS will not receive payment in the form of periodic disbursements of the inspection fees that Agency obtains from licensed food service facilities in any amount in excess of the not-to-exceed compensation of this Agreement associated with the performance of the Work. DHS will not receive payment for Work performed before the date this Agreement becomes effective or after the termination or expiration of this Agreement. If the maximum compensation is increased by amendment of this Agreement, the amendment must be fully effective before Agency performs Work subject to the amendment.
- b. Interim remittances shall be made to DHS and shall be subject to ORS 293.462, and shall be made in accordance with the requirements set forth in section b.(4) of Exhibit B of this Agreement.
 - 1. Not later than thirty (30) days following the last day of a particular calendar quarter, Agency shall remit \$14,962.26 to DHS which is a portion of the fees collected by Agency pursuant to the Work performed under this Agreement that is approximately twenty-five percent (25%) of the fees assessed for Agency for a particular calendar year, or as negotiated and modified by amendment to this agreement.
 - 2. The remittance to DHS shall be accompanied by a written remittance summary report that shall describe all Work performed with particularity and by whom it was performed and shall itemize and explain each remittance category contained in the report.
 - 3. Each remittance summary report also shall include the total amount remitted to date by Agency prior to the current remittance Agency shall send remittances to DHS's Agreement Administrator.

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EXHIBIT B

STANDARD TERMS & CONDITIONS

1. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between the parties that arise from or relate to this Agreement shall be brought and conducted solely and exclusively within a circuit court in the State of Oregon of proper jurisdiction. **THE PARTIES, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS.** Except as provided in this section, neither party waives any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. The parties acknowledge that this is a binding and enforceable Agreement and, to the extent permitted by law, expressly waive any defense alleging that either party does not have the right to seek judicial enforcement of this Agreement.
2. **Compliance with Law.** Both parties shall comply with all state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the Work. Without limiting the generality of the foregoing, both parties expressly agree to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations; (b) all state laws requiring reporting of Client abuse; (c) ORS 659A.400 to 659A.409, ORS 659A.145 and all regulations and administrative rules established pursuant to those laws in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the Work. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. All employers, including County and DHS, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126.
3. **Independent Contractors.** The parties agree and acknowledge that their relationship is that of independent contracting parties and that County is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.
4. **Representations and Warranties**
 - a. County represents and warrants as follows:
 - (i) **Organization and Authority.** County is a political subdivision of the State of Oregon duly organized and validly existing under the laws of the State of Oregon. County has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder.
 - (ii) **Due Authorization.** The making and performance by County of this Agreement (1) have been duly authorized by all necessary action by 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 may be bound or affected. No authorization, consent, license, approval of filing or registration

with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by County of this Agreement.

- (iii) **Binding Obligation.** This Agreement has been duly executed and delivered by County and constitutes a legal, valid and binding obligation of County, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- (iv) County has the skill and knowledge possessed by well-informed members of its industry, trade or profession and County will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in County's industry, trade or profession;
- (v) County shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the Work; and
- (vi) County prepared its proposal related to this Agreement, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.

b. DHS represents and warrants as follows:

Organization and Authority. DHS has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder. **Due Authorization.** The making and performance by DHS of this Agreement

(1) have been duly authorized by all necessary action by DHS 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 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 DHS is a party or by which DHS 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 DHS of this Agreement, other than approval by the Department of Justice if required by law.

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

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

5. **Funds Available and Authorized; Payments.** County shall not be compensated for Work performed under this Agreement by any other agency or department of the State of Oregon or the federal government. DHS certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Agreement within DHS' current biennial appropriation or limitation. County understands and agrees that DHS' payment of amounts under this Agreement is contingent on DHS receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow DHS, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement, subject to Section 7 below.

6. **Recovery of Overpayments.** If billings under this Agreement, or under any other Agreement between County and DHS, result in payments to County to which County is not entitled, DHS, after giving to County written notification and an opportunity to object, may withhold from payments due to County such amounts, over such periods of time, as are necessary to recover the amount of the overpayment, subject to Section 7 below. Prior to withholding, if County objects to the withholding or the amount proposed to be withheld, County shall notify DHS that it wishes to engage in dispute resolution in accordance with Section 19 of this Agreement.
7. Nothing in this Agreement shall require County or DHS to act in violation of state or federal law or the Constitution of the State of Oregon.
8. **Ownership of Intellectual Property.**
 - a. Except as otherwise expressly provided herein, or as otherwise required by state or federal law, DHS will not own the right, title and interest in any intellectual property created or delivered by County or a subcontractor in connection with the Work. With respect to that portion of the intellectual property that the County owns, County grants to DHS a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to (i) use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the intellectual property, (ii) authorize third parties to exercise the rights set forth in Section 8.a(i) on DHS' behalf, and (iii) sublicense to third parties the rights set forth in Section 8.a(i).
 - b. If state or federal law requires that DHS or County grant to the United States a license to any intellectual property, or if state or federal law requires that the DHS or the United States own the intellectual property, then County shall execute such further documents and instruments as DHS may reasonably request in order to make any such grant or to assign ownership in the intellectual property to the United States or DHS. To the extent that DHS becomes the owner of any intellectual property created or delivered by County in connection with the Work, DHS will grant a perpetual, worldwide, nonexclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to County to use, copy, distribute, display, build upon and improve the intellectual property.
 - c. County shall include in its subcontracts terms and conditions necessary to require that subcontractors execute such further documents and instruments as DHS may reasonably request in order to make any grant of license or assignment of ownership that may be required by federal or state law.
9. **County Default.** County shall be in default under this Agreement upon the occurrence of any of the following events:
 - a. County fails to perform, observe or discharge any of its covenants, Agreements or obligations set forth herein;
 - b. Any representation, warranty or statement made by County herein or in any documents or reports relied upon by DHS to measure the delivery of Work, the expenditure of payments or the performance by County is untrue in any material respect when made;
 - c. County (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).

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

- a. DHS fails to perform, observe or discharge any of its covenants, Agreements, or obligations set forth herein; or
- b. Any representation, warranty or statement made by DHS herein or in any documents or reports relied upon by County to measure performance by DHS is untrue in any material respect when made.

11. Termination.

- a. **County Termination.** County may terminate this Agreement:
 - (i) For its convenience, upon at least 30 days advance written notice to DHS;
 - (ii) Upon 45 days advance written notice to DHS, if County does not obtain funding, appropriations and other expenditure authorizations from County's governing body, federal, state or other sources sufficient to permit County to satisfy its performance obligations under this Agreement, as determined by County in the reasonable exercise of its administrative discretion;
 - (iii) Upon 30 days advance written notice to DHS, if DHS is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as County may specify in the notice; or
 - (iv) Immediately upon written notice to DHS, if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that County no longer has the authority to meet its obligations under this Agreement.
- b. **DHS Termination.** DHS may terminate this Agreement:
 - (i) For its convenience, upon at least 30 days advance written notice to County;
 - (ii) Upon 45 days advance written notice to County, if DHS does not obtain funding, appropriations and other expenditure authorizations from federal, state or other sources sufficient to meet the payment obligations of DHS under this

Agreement, as determined by DHS in the reasonable exercise of its administrative discretion. Notwithstanding the preceding sentence, DHS may terminate this Agreement, immediately upon written notice to County or at such other time as it may determine if action by the Oregon Legislative Assembly or Emergency Board reduces DHS' legislative authorization for expenditure of funds to such a degree that DHS will no longer have sufficient expenditure authority to meet its payment obligations under this Agreement, as determined by DHS in the reasonable exercise of its administrative discretion, and the effective date for such reduction in expenditure authorization is less than 45 days from the date the action is taken;

- (iii) Immediately upon written notice to County if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that DHS no longer has the authority to meet its obligations under this Agreement or no longer has the authority to provide payment from the funding source it had planned to use;
 - (iv) Upon 30 days advance written notice to County, if County is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as DHS 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 subcontractor to perform the Work is for any reason denied, revoked, suspended, not renewed or changed in such a way that County or a subcontractor no longer meets requirements to perform the Work. This termination right may only be exercised with respect to the particular part of the Work impacted by loss of necessary licensure or certification;
 - (vi) Immediately upon written notice to County, if DHS determines that County or any of its subcontractors have endangered or are endangering the health or safety of a client or others in performing work covered by this Agreement.
- c. **Mutual Termination.** This Agreement may be terminated immediately upon mutual written consent of the parties or at such other time as the parties may agree in the written consent.

12. Effect of Termination

- a. **Entire Agreement.**
 - (i) Upon termination of this Agreement, DHS shall have no further obligation to pay County under this Agreement.
 - (ii) Upon termination of this Agreement, County shall have no further obligation to perform Work under this Agreement.
- b. **Obligations and Liabilities.** Notwithstanding Section 12(a), any termination of this Agreement shall not prejudice any obligations or liabilities of either party accrued prior to such termination.

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

14. **Insurance.** COUNTY shall maintain insurance as set forth in Exhibit C, which is attached hereto.
15. **Records Maintenance; Access.** County shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, County shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of County, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document County's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of County whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." County acknowledges and agrees that DHS and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to all Records to perform examinations and audits and make excerpts and transcripts. County shall retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. County shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.
16. **Information Privacy/Security/Access -**
- a. If the Work performed under this Agreement requires County to have access to or use of any DHS computer system or other DHS Information Asset for which DHS imposes security requirements, and DHS grants County access to DHS Information Assets or Systems, County shall comply and require any subcontractors to comply with the information security requirements imposed under this section. For purposes of this section, the following terms have the following meanings. All other terms not defined in this section shall have the meaning used in the HIPAA Security Rules, 45 CFR § 164.304:
- (i) "Access" means the ability or the means necessary to read, communicate data/information, or otherwise use any Information Asset(s) and DHS Network and Information System(s).
 - (ii) "Client Record(s)" means any client, applicant, or participant information regardless of the media or source, provided by DHS to the County.
 - (iii) "DHS Network and Information System(s)" is the DHS computer infrastructure which provides personal communications, Client Records, regional, wide area, and local networks, and the internetworking of various types of networks.
 - (iv) "Incident" means the attempted or successful unauthorized access, use, disclosure, modification or destruction of DHS Network and Information System(s) and DHS Information Asset(s) including, but not limited to: unauthorized disclosure of information, failure to protect user ID's, theft of computer equipment or Client Records, etc.
 - (v) "Individual User Profile (IUP)" refers to DHS form(s) used to authorize a User, identify their job assignment and the required access to DHS Network and Information System(s). It generates a unique alpha/numeric code used to access the DHS Network and Information Systems.
 - (vi) "Information Asset(s)" refers to all information provided through DHS, regardless of the source, which requires measures for security and privacy of the

information.

- (vii) "User" means any individual authorized by DHS to access Network and Information Systems and who has a DHS assigned unique log-on identifier. User may be County, or an employee, officer or agent of County, including a subcontractor of County at the request of County.

b. **Access.**

- (i) If County, including any subcontractor of County when authorized by DHS, requires Access to the DHS Network and Information System, County shall complete an IUP request for each person for whom Access is requested. DHS shall notify County whether an IUP is approved or denied and when approved, provide User with any unique log-on identifier necessary for Access. County shall immediately notify DHS when County or its Users no longer require Access.
- (ii) Except as provided in this subsection (16)(b)(i) of this Exhibit B, Access to Information Asset(s) may be by IUP or such other process as DHS may establish.

c. **Security and Privacy.**

- (i) No User shall Access Information Assets for any purpose other than those specifically authorized under this Agreement and outlined in the User's IUP or other DHS Access-controlled process.
- (ii) Except as specified or approved by DHS, neither the County nor its Users shall alter, delete or destroy any Information Assets.
- (iii) County shall prohibit any unauthorized access to DHS Network and Information Systems by its Users and by unauthorized persons.
- (iv) County shall develop a security risk management plan (the "Plan"). The County shall ensure the Plan:
 - (aa) Will have established in place privacy and security measures that meet or exceed the standards established by this Agreement and in accordance with DHS Privacy and Information Security Incident policies, policy number AS-090-005, available at: http://www.dhs.state.or.us/policy/admin/security/090_005.htm and HIPAA Security Rules, 45 CFR Parts 160 and 164, applicable to Users regarding the security and privacy of Client Records, all Information Assets, and Network and Information Systems; and
 - (bb) Documents County's privacy and security measures.County shall make its Plan available to DHS for review upon request.
- (v) County shall maintain security of equipment and storage of all Information Assets accessed through this Agreement to prevent inadvertent destruction, disclosure or loss.
- (vi) County shall safeguard and ensure the security of all Information Assets, regardless of the media.
- (vii) County shall keep any DHS-assigned access control requirements such as

identification of authorized user(s) and access-control information in a secure location until access is terminated. County shall make available to DHS upon request all information about County's use or application of access-controlled DHS computer systems or Information Assets.

- (viii) County shall, and shall require each subcontractor and agent, to properly handle, store, and dispose of any Information Assets obtained or reproduced, when the authorized use of that information ends, consistent with the record retention requirements otherwise applicable to this Agreement.
- (ix) County and its Users shall comply with all security and privacy federal and state laws, rules, and regulations applicable to the Access granted under this Agreement.
- (x) DHS reserves the right to request additional information from County related to County's security measures. If DHS determines that County's security measures or actions required under this section are inadequate to address the security requirements of DHS, DHS will notify the County. DHS and County agree to discuss appropriate security measures or action. If security measures or corrective actions acceptable to DHS cannot be agreed upon, DHS reserves the right to take such actions as it determines appropriate under the circumstances. Actions may include, but are not limited to: restricting County or User access, or amending or terminating the Agreement or the individual User access granted there under.

d. **User Disclosure of Information.**

- (i) Wrongful use of DHS Network and Information System(s), or wrongful use or disclosure of Information Assets by County, its officers, employees, or agents, including County's subcontractors, may cause the immediate suspension or revocation of any Access granted through this Agreement, in the sole discretion of DHS. DHS may also pursue any other legal remedies provided under the law.
- (ii) County will report to the DHS, Information Security Office, at the following contact information: dhsinfo.security@state.or.us, and to the DHS contract administrator, any privacy or security Incidents by County, its officers, employees, agents or subcontractors that compromise, damage, or cause a loss of protection to the DHS Information Assets or DHS Network and Information System(s). County shall report in the following manner:
 - (aa) Report to the DHS, Information Security Office, and to the DHS contract administrator, as soon as possible, but not later than five (5) business days from the date on which County becomes aware of such Incident; and,
 - (bb) Provide the DHS, Information Security Office, and the DHS contract administrator, the results of the Incident assessment findings and resolution strategies.County will comply with DHS requests for corrective action concerning a privacy or security incident, and with laws requiring mitigation of harm caused by the unauthorized use or disclosure of confidential information, if any.
- (iii) The County shall have established privacy and security measures in place that meet or exceed the standards set in the DHS Privacy and Information Security

Policies regarding County's disclosure of Information Asset(s).

- (iv) County's use and disclosure of any Information Asset(s) is strictly limited to the minimum information necessary to perform the Work required under the Agreement.
- (v) County shall administer, control, and monitor its Users' Access. County shall require that any User the County includes in the request for Access is held to the same confidentiality standards as the County.
- (vi) County shall be a custodian of any Information Assets it maintains in its possession. Nothing in this provision shall be construed as requiring the County to violate Oregon Public Records law or a court or administrative order to disclose, or prohibiting authorized disclosures under the law covered by this Agreement.

e. **Costs.** Costs related to the acquisition of all County equipment, software, data lines or connections necessary to provide County with Access are the sole responsibility of the County, unless otherwise agreed to by all parties in writing.

17. **Force Majeure.** Neither DHS nor County shall be held responsible for delay or default caused by fire, riot, acts of nature, power outage, government fiat, terrorist acts or other acts of political sabotage, civil unrest, labor unrest, or war, where such cause is beyond the reasonable control of DHS or County. Each party shall, however, make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. For purposes of this section, an "act of nature" is a natural occurrence of extraordinary and unprecedented proportions not foreshadowed by the usual course of nature, whose magnitude and destructiveness could not have been anticipated or provided against by exercise of ordinary foresight.

18. **Assignment of Agreement, Successors in Interest.**

- a. County shall not assign or transfer its interest in this Agreement without prior written approval of DHS. Any such assignment or transfer, if approved, is subject to such conditions and provisions as DHS may deem necessary. No approval by DHS of any assignment or transfer of interest shall be deemed to create any obligation of DHS in addition to those set forth in the Agreement.
- b. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns.

19. **Resolution of Disputes, Generally.** In the event a dispute arises under this Agreement, either party may notify the other party that it wishes to engage in a dispute resolution process. Upon such notification, the parties shall engage in non-binding discussion to resolve the dispute. If the parties do not reach Agreement as a result of non-binding discussion, the parties may agree to consider further appropriate dispute resolution processes, including, subject to Department of Justice and County Counsel approval, binding arbitration. The rights and remedies set forth in the Agreement are not intended to be exhaustive and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies at law or in equity.

20. **Subcontracts.** County shall not enter into any subcontracts for any of the Work required by this Agreement without DHS' prior written consent. In addition to any other provisions DHS

may require, County shall include in any permitted subcontract under this Agreement provisions to require that DHS will receive the benefit of subcontractor performance as if the subcontractor were the County with respect to Sections 1, 2, 3, 4, 8, 15, 16, 18, 21, and 23 of this Exhibit B. DHS' consent to any subcontract shall not relieve County of any of its duties or obligations under this Agreement.

21. **No Third Party Beneficiaries.** DHS and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. The parties agree that County's performance under this Agreement is solely for the benefit of DHS to assist and enable DHS to accomplish its statutory mission. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
22. **Amendment.** No amendment, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and when required the Department of Administrative Services and Department of Justice. Such amendment, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The parties, by signature of its authorized representative, hereby acknowledge that they have read this Agreement, understand it, and agree to be bound by its terms and conditions.
23. **Severability.** The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
24. **Survival.** Sections 1, 4, 5, 6, 7, 8, 12, 13, 14, 15, 16, 19, 21, 22, 23, 24, 25, 26, 28, and 29 of this Exhibit B shall survive Agreement expiration or termination as well as those the provisions of this Agreement that by their context are meant to survive. Agreement expiration or termination shall not extinguish or prejudice either party's right to enforce this Agreement with respect to any default by the other party that has not been cured.
25. **Notice.** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid to County or DHS at the address or number set forth below, or to such other addresses or numbers as either party may indicate pursuant to this section. Any communication or notice so addressed and mailed shall be effective five (5) days after mailing. Any communication or notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the recipient, or on the next business day, if transmission was outside normal business hours of the recipient. To be effective against the other party, any notice transmitted by facsimile must be confirmed by telephone notice to the other party at number listed below. Any communication or notice given by personal delivery shall be effective when actually delivered to the addressee.

DHS: Office of Contracts & Procurement
Department of Human Services
500 Summer St NE, E-03
Salem, OR 97301-1080
Telephone: 503-945-5818
Facsimile Number: 503-378-4324

COUNTY: Lane County
Lane County Administration
125 East 8th Avenue
Eugene, OR 97401
Phone number: (541) 682-4203
Fax number: (541) 682-4616

26. **Headings.** The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret this Agreement.
27. **Counterparts.** This Agreement may be executed in several counterparts, all of which when taken together shall constitute one Agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
28. **Waiver.** The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision. No waiver or consent shall be effective unless in writing and signed by the party against whom it is asserted.
29. **Construction.** Reserved

(remainder of page intentionally blank)

EXHIBIT C INSURANCE REQUIREMENTS

During the term of this Agreement, County shall maintain in force at its own expense, each kind of insurance noted below:

1. **Required by DHS of Agencies with one or more workers, as defined by ORS 656.027.**

Workers' Compensation: All employers, including County, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). County shall require and ensure that each of its subcontractors complies with these requirements.

2. ☐ **Required by DHS** ☒ **Not required by DHS.**

Professional Liability insurance with a combined single limit, or the equivalent, of not less than \$0.00 each claim, incident or occurrence, and \$0.00 in the aggregate. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Agreement.

3. ☐ **Required by DHS** ☒ **Not required by DHS.**

General Liability insurance with a combined single limit, or the equivalent, of not less than \$0.00 each occurrence for Bodily Injury and Property Damage. It shall provide that the State of Oregon, Department of Human Services and their divisions, officers and employees are Additional Insureds but only with respect to the County's Work to be provided under this Agreement;

4. ☐ **Required by DHS** ☒ **Not required by DHS.**

Automobile Liability insurance with a combined single limit, or the equivalent, of not less than Oregon Financial Responsibility Law (ORS 806.060), each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable. It shall provide that the State of Oregon, Department of Human Services and their divisions, officers and employees are Additional Insureds but only with respect to the County's Work to be provided under this Agreement;

5. **Notice of cancellation or change.** There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days prior written notice from the County or its insurer(s) to Department of Human Services;

6. **Certificates of insurance.** As evidence of the insurance coverages required by this Agreement, the County shall furnish acceptable insurance certificates to Department of Human Services upon request. The certificate will specify all of the parties who are Additional Insureds. Insuring companies or entities are subject to State acceptance. If requested, complete copies of insurance policies, trust Agreements, etc. shall be provided to the State. The County shall be financially responsible for all pertinent deductibles, self-insured retentions or self-insurance, as applicable.

7. **Self-insurance.** County may fulfill its insurance obligations herein through a program of self insurance, provided that County's self insurance program complies with all applicable laws, and provides insurance coverage equivalent in both type and level of coverage to that in ORS 30.270.

EXHIBIT D

REQUIRED FEDERAL TERMS AND CONDITIONS

In addition to any other requirements prescribed in Exhibit A, County shall comply and, as indicated, require all subcontractors to comply with the following federal requirements. For purposes of this Agreement, all references to federal and state laws are references to federal and state laws as they may be amended from time to time.

1. Miscellaneous Federal Provisions

County shall comply and require all subcontractors to comply with all federal laws, regulations, executive orders applicable to the Agreement or to the delivery of Work. Without limiting the generality of the foregoing, County expressly agrees to comply and require all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Executive Order 11246, as amended, (e) the Health Insurance Portability and Accountability Act of 1996, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, (j) all federal law governing operation of Community Mental Health Programs, including without limitation, all federal laws requiring reporting of Client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. No federal funds may be used to provide Work in violation of 42 USC 14402.

2. Equal Employment Opportunity

If this Agreement, including amendments, is for more than \$10,000, then County shall comply and require all subcontractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

3. Clean Air, Clean Water, EPA Regulations

If this Agreement, including amendments, exceeds \$100,000 then County shall comply and require all subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 3), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to DHS, HHS and the appropriate Regional Office of the Environmental Protection Agency. County shall include and require all subcontractors to include in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section.

4. **Energy Efficiency**

County shall comply and require all subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

5. **T r u t h i n L o b b y i n g**

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 an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative Agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative Agreement.
- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection_ with this federal contract, grant, loan or cooperative Agreement, the County 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 subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative Agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

6. **HIPAA Compliance**

If the Work provided under this Agreement 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 deliver the Work in compliance with HIPAA. Without limiting the generality of the foregoing, Work funded in whole or in part with payment provided under this Agreement is covered by HIPAA. County shall comply and require all subcontractors to comply with the following:

- a. **Privacy and Security Of Individually Identifiable Health Information** Individually Identifiable Health Information about specific individuals is confidential. Individually Identifiable Health Information relating to specific individuals may be exchanged between County and DHS for purposes directly related to the provision of services to Clients which are funded in whole or in part under this Agreement. However, County

shall not use or disclose any Individually Identifiable Health Information about specific individuals in a manner that would violate DHS Privacy Rules, OAR 410-014-0000 *et. seq.*, or DHS Notice of Privacy Practices, if done by DHS. A copy of the most recent DHS Notice of Privacy Practices is posted on the DHS web site at <http://www.dhs.state.or.us/policy/admin/infosecuritylist.htm>, or may be obtained from DHS.

- b. **Data Transactions Systems.** If County intends to exchange electronic data transactions with DHS in connection with claims or encounter data, eligibility or enrollment information, authorizations or other electronic transaction, County shall execute an EDI Trading Partner Agreement with DHS and shall comply with DHS EDI Rules.
- c. **Consultation and Testing** If County reasonably believes that the County's or DHS' data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, County shall promptly consult the DHS Information Security Office. County or DHS may initiate a request for testing of HIPAA transaction requirements, subject to available resources and the DHS testing schedule.

7. **Resource Conservation and Recovery**

County shall comply and require all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 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 247253.

8. **Audits**

County shall comply and, if applicable, require a subcontractor to comply, with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations."

9. **Debarment and Suspension**

County shall not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Executive Orders No. 12549 and No. 12689, "-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. Subcontractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

10. Drug-Free Workplace

County shall comply and require all subcontractors to comply with the following provisions to maintain a drug-free workplace: (i) County certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in County's workplace or while providing services to the DHS Clients. County's notice shall specify the actions that will be taken by County against its employees for violation of such prohibitions; (ii) Establish a drug-free awareness program to inform its employees about: The dangers of drug abuse in the workplace, County's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations; (iii) Provide each employee to be engaged in the performance of Work under this Agreement a copy of the statement mentioned in paragraph (i) above; (iv) Notify each employee in the statement required by paragraph (i) that, as a condition of employment to perform Work under this Agreement, the employee will: abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; (v) Notify DHS within ten (10) days after receiving notice under subparagraph (iv) from an employee or otherwise receiving actual notice of such conviction; (vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988; (vii) Make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs (i) through (vi); (viii) Require any subcontractor to comply with subparagraphs (i) through (vii); (ix) Neither County, or any of County's employees, officers, agents or subcontractors may perform any Work required under this Agreement while under the influence of drugs. For purposes of this provision, "under the influence" means: observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the County or County's employee, officer, agent or subcontractor has used a controlled substance, prescription or non-prescription medication that impairs the County or County's employee, officer, agent or subcontractor's performance of essential job function or creates a direct threat to the DHS Clients or others. Examples of abnormal behavior include, but are not limited to: hallucinations, paranoia or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to: slurred speech, difficulty walking or performing job activities; (x) Violation of any provision of this subsection may result in termination of the Agreement.

11. Pro-Children Act

County shall comply and require all subcontractors to comply with the Pro-Children Act of 1994 (codified at 20 USC section 6081 et. seq.).

12. Medicaid Services

County shall comply with all applicable federal and state laws and regulation pertaining to the provision of Medicaid Services under the Medicaid Act, Title XIX, 42 USC Section 1396 et. seq., including without limitation:

- a. Keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving Medicaid assistance and shall furnish such information to any state or federal agency responsible for administering the Medicaid program regarding any payments claimed by such person or institution for providing Medicaid Services as

- the state or federal agency may from time to time request. 42 USC Section 1396a(a)(27); 42 CFR 431.107(b)(1) & (2).
- b. Comply with all disclosure requirements of 42 CFR 1002.3(a) and 42 CFR 455 Subpart (B).
 - c. Maintain written notices and procedures respecting advance directives in compliance with 42 USC Section 1396a(a)(57) and (w), 42 CFR 431.107(b)(4), and 42 CFR 489 subpart I.
 - d. Certify when submitting any claim for the provision of Medicaid Services that the information submitted is true, accurate and complete. County shall acknowledge County's understanding that payment of the claim will be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.
 - e. Entities receiving \$5 million or more annually (under this contract and any other Medicaid contract) for furnishing Medicaid health care items or services shall, as a condition of receiving such payments, adopt written fraud, waste and abuse policies and procedures and inform employees, contractors and agents about the policies and procedures in compliance with Section 6032 of the Deficit Reduction Act of 2005, 42 USC § 1396a(a)(68).

13. Agency-based Voter Registration

County shall comply with the Agency-based Voter Registration sections of the National Voter Registration Act of 1993 that require voter registration opportunities be offered to applicants for services.

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EXHIBIT E
Required Sub-Contractor Provisions

1. Subcontractor shall comply with all applicable provisions of that certain Agreement (the "agreement") between the State of Oregon acting by and through its Department of Human Services ("DHS") and **Lane County** ("Agency").
2. Subcontractor shall comply with all applicable federal, state and local laws, administrative rules, ordinances, and regulations.
3. Subcontractor shall make available to DHS or to any Client, any and all written materials in alternate formats in compliance with DHS's policies or administrative rules. For the purposes of the foregoing, "written materials" includes, without limitation, all work product and subcontracts related to this contract.
4. Unless Subcontractor is a State of Oregon governmental agency, Subcontractor agrees that it is an independent contractor and not an agent of the State of Oregon, DHS or Agency.
5. To the extent permitted by applicable law, Subcontractor shall defend, save and hold harmless the State of Oregon, DHS, Agency, and their officers, employees, and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of or relating to the operations of the Subcontractor, including but not limited to the activities of Subcontractor or its officers, employees, subcontractors or agents under this contract.
6. Subcontractor shall obtain, at Subcontractor's expense, and maintain in effect with respect to all occurrences taking place during the term of the contract, automobile liability insurance with a combined single limit per occurrence of not less than \$500,000.
7. Subcontractor shall obtain, at Subcontractor's expense, and maintain in effect with respect to all occurrences taking place during the term of the contract, comprehensive or commercial general liability insurance covering bodily injury and property damage. This insurance shall include personal injury coverage and contractual liability coverage for the indemnity provided under this contract. The combined single limit per occurrence shall not be less than \$500,000 or the equivalent. Each annual aggregate limit shall not be less than \$500,000 when applicable.
8. All employers, including Subcontractor, that employ subject workers who work under this contract 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. Subcontractor shall ensure that each of its subcontractors complies with these requirements.
9. Subcontractor shall name the State of Oregon, DHS, Agency, and their divisions, officers, and employees as additional insureds on any insurance policies required herein with respect to Subcontractor's activities being performed under the contract. Such insurance shall be evidenced by a certificate of insurance, issued by an insurance company licensed to do business in the State of Oregon and shall contain a 30-day notice of cancellation endorsement. Subcontractor shall forward a copy of the certificate(s) of insurance to County prior to commencement of the services under this contract. In addition, in the event of unilateral

cancellation or restriction by Subcontractor's insurance company of any insurance coverage required herein, Subcontractor shall immediately notify Agency orally of the cancellation or restriction and shall confirm the oral notification in writing within three days of notification by the insurance company to Subcontractor.

9. Subcontractor may fulfill its obligations set forth in Sections 6 through 9 through a program of self insurance; provided that Subcontractor's self insurance program complies with all applicable laws, and provides insurance coverage equivalent in both type and level of coverage to that specified in Sections 6 through 9.

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Oregon
Theodore R. Kulongoski, Governor

Department of Human Services Administrative Services

Office of Contracts & Procurement

500 Summer Street NE, E-03

Salem, OR 97301-1.080

(503) 945-5818

Purchasing Fax (503) 373-7365

Contracts Fax (503) 373-7889

TTY (503) 947-5330

Agreement Number 113057

DHS

M^D.Zt^{e,t}

**Amendment to
State of Oregon
Intergovernmental Agreement**

In compliance with the Americans with Disabilities Act, this document is available in alternate formats such as Braille, large print, audiotape, oral presentation, and electronic format. To request an alternate format call the State of Oregon, Department of Human Services, Office of Forms and Document Management at (503) 373-0333, Fax (503) 373-7690, or ITY (503) 947-5330.

This is amendment number 05 to Agreement Number 113057 between the State of Oregon, acting by and through its Department of Human Services, hereinafter referred to as "DHS" and

**Lane County
Lane County Administration
125 East 8th Avenue
Eugene, OR 97401
Phone number: (541) 682-4203
Fax number: (541) 682-4616**

hereinafter referred to as "Agency or LPHA."

1. This amendment shall become effective on the date this Amendment has been fully executed by every party and, when required, approved by Department of Justice and any other necessary approvals or on June 30, 2007.
2. The Agreement is hereby amended as follows:
 - a. **L EFFECTIVE DATE AND DURATION** - The expiration date is changed from June 30, 2007 to June 30, 2008.
 - b. **EXHIBIT A, Part 3, Payment and Financial Reporting-I.** The maximum, not-to-exceed annual,

compensation payable to DHS under this Agreement, which includes any allowable expenses, is increased from \$48,579.55 to \$59,849.04.

"Assisting People to Become Independent, Healthy and Safe"
An Equal Opportunity Employer

3. Except *as* expressly amended above, all other terms and conditions of the original agreement and any previous amendments are still in full force and effect. Agency certifies that the representations, warranties and certifications contained in the original agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this amendment.
4. **Certification.** By signature on this Amendment, the undersigned hereby certifies under penalty of perjury that:
 - A. The number shown in Section W(A) of original Agreement is Agency's correct taxpayer identification and all other information provided in Section IV(A) is true and accurate;
 - B. Agency is not subject to backup withholding because:
 - i. Agency is exempt from backup withholding;
 - ii. Agency has not been notified by the IRS that Agency is subject to backup withholding as a result of a failure to report all interest or dividends; or
 - iii. The IRS has notified Agency that Agency is no longer subject to backup withholding; and
 - C. Agency is an independent contractor as defined in ORS 670.600.

5. SIGNATURES

AGENCIES YOU WILL NOT BE PAID FOR SERVICES RENDERED PRIOR TO NECESSARY
STATE APPROVALS

Approved By Agency

<hr style="border: none; border-top: 1px solid black;"/>			Authorized
Signature	Title	Date	

Approved By DHS

<hr style="border: none; border-top: 1px solid black;"/>			Authorized
Signature	Title	Date	

Approved for Legal Sufficiency:

(Required for Agreements in excess of \$ 75,000, unless exempt) N / A u n d e r

\$ 7 5 K

Assistant Attorney General

Date

DHS Program Signature:

Signature

Office of Contracts and Procurement:

Signature