



**Agreement Number XXXXX**

**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, audio recordings, Web-based communications and other electronic formats. To request an alternate format, please send an e-mail to [dhsalt@state.or.us](mailto:dhsalt@state.or.us) or call 503-378-3486 (voice) or 503-378-3523 (TTY) to arrange for the alternative format.

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

Type B Contract

hereinafter referred to as "County."

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

Seniors & People with Disabilities Division  
State Unit on Aging  
Contract Administrator: DeAnna Hartwig  
500 Summer Street NE  
Salem OR 97301  
Telephone: 503-947-1180  
Facsimile: 503-947-5357

**1. Effective Date and Duration**

This Agreement shall become effective on October 1, 2011 when date this Agreement has been fully executed by every party and, when required, approved by Department of Justice. Unless extended or terminated earlier in accordance with its terms, this Agreement shall terminate on June 30, 2013. Agreement termination or expiration 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.

**2. Agreement Documents**

a. This Agreement without exhibits consists of:

- Exhibit A, Part 1: Definitions
- Exhibit A, Part 2: Statement of Work (Section 1 - OAA, OPI);  
(Section 2 - Medicaid, SNAP, Other)
- Exhibit A, Part 3: Payment and Financial Reporting
- Exhibit A, Part 4: Special Terms and Conditions
- Exhibit B: Standard Terms and Conditions
- Exhibit C: Subcontractor Insurance Requirements
- Exhibit D: Required Federal Terms and Conditions

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

- b. In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: this Agreement without Exhibits, Exhibits D, A, B, and C.
- c. For purposes of this Agreement, “Work” means specific work or services to be performed by County as set forth in Exhibit A.

**3. Consideration**

- a. The maximum not-to-exceed amount payable to County under this Agreement, which includes any allowable expenses, is \$XXXXXX. DHS will not pay County any amount in excess of the not-to-exceed amount for completing the Work, and will not pay for Work until this Agreement has been signed by all parties.
- b. DHS will pay only for completed Work under this Agreement, and may make interim payments as provided for in Exhibit A.

**4. Vendor or Sub-Recipient Determination**

In accordance with the State Controller’s Oregon Accounting Manual, policy 30.40.00.102, DHS’ determination is that:

Agency is a sub-recipient; and  Agency is a vendor, depending on funding source.

Catalog of Federal Domestic Assistance (CFDA) #(s) of federal funds to be paid through this Agreement:

Federal funding source:	100% fed. pass-thru grant?	CFDA #:	Vendor/ Sub-recipient*:	Service/ program element:
Older Americans Act	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	93.044	Sub-recipient	Title IIIB
Older Americans Act	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	93.045	Sub-recipient	Titles IIICI and IIICII
Older Americans Act	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	93.043	Sub-recipient	Title IIID
Older Americans Act	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	93.052	Sub-recipient	Title IIIE
Older Americans Act	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	93.041	Sub-recipient	Title VIIB
Older Americans Act	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	93.053	Sub-recipient	NSIP
Medicaid	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	93.778	Vendor	Title XIX
USDA	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	10.580	Sub-recipient	SNAP

**5. County Data and Certification**

- a. County Information. County shall provide information set forth below. This information is requested pursuant to ORS 305.385 and OAR 125-246-0333(5).

**Please print or type the following information.**

Name (exactly as filed with the IRS) \_\_\_\_\_

Address, City, State & ZIP \_\_\_\_\_

E-mail address: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_ - \_\_\_\_\_ Facsimile: ( ) \_\_\_\_\_ - \_\_\_\_\_

**Federal Employer Identification Number:** \_\_\_\_\_

**Proof of Insurance:**

Workers Compensation – Insurance Company \_\_\_\_\_

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

The above information must be provided prior to Agreement approval. County shall provide proof of Insurance upon request by DHS or DHS designee.

- b. **Certification.** By signature on this Agreement, the undersigned hereby certifies under penalty of perjury that:
  - (1) The undersigned is authorized to act on behalf of County and that County is, to the best of the undersigned’s knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, “Oregon Tax Laws” means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620;

- (2) The data information in Section 5.a. is County's true and accurate information;
  - (3) To the best of the undersigned's knowledge, County has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts;
  - (4) County and County's employees and agents are not included on the list titled "Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at:  
<http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>;
  - (5) County is not listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal procurement or Nonprocurement Programs" found at: <http://www.epls.gov/>; and
  - (6) County is not subject to backup withholding because:
    - (a) County is exempt from backup withholding;
    - (b) County has not been notified by the IRS that County is subject to backup withholding as a result of a failure to report all interest or dividends; or
    - (c) The IRS has notified County that County is no longer subject to backup withholding.
- c. County is required to provide its Federal Employer Identification Number (FEIN). By County's signature on this Agreement, County hereby certifies that the FEIN provided to DHS is true and accurate. If this information changes, County is also required to provide DHS with the new FEIN within 10 days.

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

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

**County: Douglas County**

**By:**

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Authorized Signature	Title	Date
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**State of Oregon acting by and through its Department of Human Services**

**By:**

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Authorized Signature	Title	Date
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**Approved for Legal Sufficiency:**

Approved by email per ORS 291.047 by Jeff Wahl, Assistant Attorney General 9/7/2011

Assistant Attorney General Date

**DHS Program Office Review:**

Approved via email September 8, 2011

Don Fries Date

**DHS Office of Contracts and Procurement Review:**

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Vincent Dunn, Contract Specialist	Date
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**EXHIBIT A**  
**Part 1**  
**Definitions**

- a. Area Agency on Aging (AAA) – means the designated entity with which the DHS contracts to meet the requirements of the Older Americans Act and ORS Chapter 410 in planning and providing services to the senior or senior and disabled population for a designated Planning and Service Area.
- b. Case Management - means the service provided by a DHS or Area Agency on Aging employee, which assists eligible clients to effectively obtain services through the following activities: comprehensive assessment; development (and revision at least annually) of a specific care plan; referral and related activities; and monitoring and follow-up.
- c. Case Manager - means a person who assists eligible clients to effectively obtain services through the following activities: comprehensive assessment; development (and revision at least annually) of a specific care plan; referral and related activities; and monitoring and follow-up.
- d. Client Assessment/Planning System (CA/PS) – is a single entry data system used for completing a comprehensive and holistic client assessment, surveying the individual's physical, mental, and social functioning, and identifying risk factors, individual choices and preferences and the status of service needs. The CA/PS calculates the individual's service priority level in accordance with OAR chapter 411, division 015, calculates the service payment rates, and accommodates client participation in care planning.
- e. Home and Community Based Care Waiver Services - means services approved for Oregon by the Centers for Medicare and Medicaid Services for aged and physically disabled persons in accordance with Sections 1915(c) of the Social Security Act as an alternative to placement in a nursing facility. These include the following, as defined by DHS administrative rules:
  - (1) Non-relative adult foster care;
  - (2) Relative foster care;
  - (3) Residential care;
  - (4) Assisted living;
  - (5) Specialized living;
  - (6) Home-delivered meals;
  - (7) In-home services (home-care worker hourly, home-care worker live-in, spousal pay, agency);
  - (8) Adult day care;
  - (9) Home accessibility adaptations;
  - (10) Non-medical transportation; and
  - (11) Community transition services.
- f. In-home services – means those services that assist a client to stay in his/her own home.

- g. Medicaid administration - are those administration activities that are necessary for the proper and efficient administration of the Medicaid state plan or waiver services. Federal financial participation (FFP) is allowed for salary or other compensation, fringe benefits, travel, per diem, services and supplies and training at rates determined on the basis of the individual's position. The Centers for Medicare & Medicaid Services (CMS) allows FFP to be claimed against salary or other compensation, fringe benefits, travel, per diem, services and supplies and training at rates determined on the basis of the individual's position. The FFP claims include an appropriate proportion of general administrative charges, consistent with DHS policy and OMB A-87 principles.
- h. Medicare Prescription Drug Program (Part D) Enrollment Assistance – means the process by which a worker contacts clients or client representatives to determine if the Medicare prescription drug benefits program is understood; assistance in determining choices available; assistance in completing application and other relevant paperwork. Assistance may be as wide-ranging as entering prescription drugs into a thorough Internet database to determine which Medicare Prescription Drug Plans (PDP) provide coverage in the client's area, then aiding the client in enrollment in the plan that the client chooses.
- i. Oregon ACCESS - is a single entry data system used for gathering client demographic information, completing a comprehensive and complete client assessment, calculating the individual's service priority status, level of care and service payment rates, and accommodating client participation in care planning.
- j. Planning and Service Area - means the geographical area, consisting of one or more counties, for which one Area Agency on Aging is designated by DHS to plan for and provide services under the Older Americans Act and Oregon Revised Statute (ORS) Chapter 410.
- k. Service Priority - means the order in which DHS clients are found eligible for nursing home, HCB waivers, spousal pay program, and Oregon Project Independence.
- l. Supplemental Nutrition Assistance Program (SNAP) – means the program operated by the United States Department of Agriculture, Food and Nutrition Service, which helps low-income people and families buy the food they need for good health. The program was formerly called Food Stamps.
- m. Type B Area Agency on Aging – means a designated entity that meets the definition of an area agency on aging, and is administered by a unit or combination of units of general purpose local government, and administers the Medicaid and SNAP Programs, financial and adult protective services, and regulatory programs for elderly or elderly and adults with physical disabilities.
  - (1) A Type B Area Agency on Aging may contract with DHS for services of state employees (Type B Contract); or

- (2) A Type B Area Agency on Aging may have such employees transferred to employment by the Area Agency by transfer agreement (Type B Transfer).

**EXHIBIT A**  
**Part 2**  
**Statement of Work**

**PROGRAM DESCRIPTION**

1. **SERVICES TO BE PROVIDED.** AAA agrees to provide services consistent with the purposes, conditions, and restrictions of Title III and Title VII of the Older Americans Act of 1965, Pub.L. 89-73, 79 Stat. 218, July 14, 1965, as amended (“Older Americans Act”) and 45 CFR Part 1321 (Older Americans Act and 45 CFR Part 1321 collectively “OAA”), , as amended, Oregon Project Independence (“OPI”) program as set out in OAR Chapter 411, Division 032, and ORS 410.210 through 410.250 under which AAA receives funding. AAA agrees to refer the public to local DHS Senior & People with Disabilities office for Medicaid-related issues.
2. **AREA PLAN.** AAA shall submit for approval to DHS, as instructed, a comprehensive and coordinated four-year service delivery plan (hereafter referred to as the “Area Plan”). The Area Plan will be developed in accordance with Section 306 of the Older Americans Act and OAR 411-032-0005. AAA shall annually submit upon direction of DHS an electronically updated Area Plan. The DHS approved Area Plan will be held on file with the DHS State Unit on Aging (“SUA”). Request for the Area Plan and subsequent updates will be announced through established DHS Action Request procedure. No funds will be authorized for use by AAA without submission and approval of the Area Plan.
3. **PROGRAM REPORTING REQUIREMENTS.** AAA shall collect and report National Aging Program Information System (“NAPIS”) data as directed by DHS for all OAA and OPI services provided, using DHS provided software or a DHS approved alternative collection and reporting method. AAA shall at a minimum reconcile reported service data to reported expenditures by end of business day on September 30th of each year. Request for said data will be announced using DHS Action Request procedure.
4. **PROGRAM MONITORING.** DHS will conduct periodic monitoring and evaluation of AAA program activities/projects and administrative practices in accordance with Section 307(a)(4) of the Older Americans Act and OAR 411-32-0015.
  - a. DHS agrees to notify AAA in writing of intent to conduct selected program monitoring at a minimum of six weeks prior to a visit and agrees to work with AAA on a mutually agreeable date for the monitoring visit.
  - b. DHS agrees to conduct an entrance interview with AAA. At conclusion of its visit DHS will conduct an exit interview to discuss observations and provide AAA a draft copy of the monitoring report.
  - c. DHS shall provide AAA a final report and summary of findings within 45 days of exit.
  - d. AAA agrees to provide DHS access to its facility(ies) and staff, all related program and

fiscal documentation, AAA's sub recipient reports and any other related documentation and such other access as requested by DHS.

- e. AAA agrees to, within 21 days of the exit interview, submit in writing to DHS any concern regarding the content of the draft report.
- f. AAA agrees upon the written request of DHS and within 45 days of receipt of the final report, to submit a written plan of action to remedy all findings that do not meet minimum standards.

## 5. MANAGEMENT CONTROL FUNCTIONS.

- a. **Criminal Records and Abuse Checks.** AAA agrees to meet provider requirements set forth in OAR 407-007-0210 through 407-007-0370 and ORS 181.534 through 181.537 and ORS 443.004. Subject individuals, as defined in OAR 407-007-0210, include employees of the AAA; volunteers of the AAA; employees and volunteers of AAA's subcontractors and direct care providers of clients for which AAA provides service authorization.
- b. **Competitive Procurement.** AAA in accordance with OAR 411-011-0005, agrees to competitively award funds by grant or contract to community service providers agencies and organizations, except where by means of AAA's Area Plan, DHS has granted a waiver in accordance with 45 CFR Part 1321.63b.
- c. **Americans with Disabilities Act.** AAA will ensure public facilities used for the provision of OAA funded services meet the requirements as stated in Title II of the Americans with Disabilities Act of 1990, as amended ("ADA"), Section 504 of the Rehabilitation Act and DHS Policy #010-005.
- d. **Grievance Procedure.** AAA shall post the policy and procedure regarding how a client or family member may present a grievance concerning the operation of the Older Americans Act and Oregon Project Independence service programs.
- e. **Mandatory Reporting of Elder Abuse.** AAA shall ensure compliance with the mandatory reporting requirements of ORS 124.050 through 124.095 and OAR Chapter 411, Division 20 for employees and volunteers of AAA as well as employees and volunteers of AAA's subcontractors and direct care providers for clients for whom AAA provides service authorization.

## 6. INFORMATION SYSTEMS.

- a. DHS shall provide AAA with access to DHS-owned applications necessary for the proper operation of NAPIS collection databases and administration of the Older Americans Act and Oregon Project Independence programs. Maintenance or trouble shooting services for the DHS applications will be provided remotely; no on-site services will be available. Ownership of said software shall at all times remain with DHS.

- b.** AAA shall be responsible for obtaining such internet access and LAN/WAN connectivity as are necessary to access DHS-owned applications. Notwithstanding the provisions set forth in Exhibit B (Standard Terms and Conditions), paragraph 16 (Information Privacy/Security/Access) of this Agreement, when AAA is connected to the DHS network, DHS internet and network use policies apply, and as such, County's use of DHS-owned applications is subject to monitoring by the DHS-OIS-Information Security Office.
- c.** DHS shall provide an allocation for the purchase of information technology necessary for NAPIS reporting. DHS shall not be responsible for maintenance of said technology.
- d.** DHS will provide the required specifications for computer compatibility with DHS applications.

**EXHIBIT A**  
**Part 2, Section 2**  
**Statement of Work**

**MEDICAID, SNAP, and RELATED PROGRAMS**  
**FOR THE AGED, BLIND AND DISABLED**

1. **Program Eligibility.** County shall correctly determine and, as necessary, re-determine eligibility for the following Medicaid programs:
  - a. The Oregon Supplemental Income Program (OSIP) and OSIP-Medical Programs (OSIPM) by either verifying the client receives Supplemental Security Income (SSI) and meets other non-financial criteria (e.g., is a resident of Oregon, has not made a disqualifying transfer, etc.) or does not receive SSI but is aged, blind or disabled and meets the non-financial and income and resource requirements of the program.
  - b. Service eligibility for OSIP or OSIPM clients receiving nursing facility or community-based care services, using in addition to the basic OSIP/OSIPM non-financial criteria, the CA/PS assessment to determine service level and the 300% of SSI income limit unless the client obtains an Income Cap Trust along with the appropriate resource limit.
  - c. The Oregon Health Plan (OHP-OPU) when eligibility is not based on being aged, blind or disabled, adjusted income is within the 100% of federal poverty level, the resources are within the limit and non-financial criteria are met.
  - d. The Qualified Beneficiary Program (QMB) to pay the client's Medicare Part B costs for clients who receive Medicare Part A with adjusted income within 100% of the federal poverty level or within 120% or 135% of the federal poverty level for the QMB sub-programs.
  
2. **Specific Authorizing Statutes and Regulations**
  - a. SSI individuals – Oregon Administrative Rule (OAR) 461-135-0010(7)
  - b. Service Clients at 300% of SSI – OAR 461-135-0750
  - c. Oregon Health Plan – OAR 461-135-1100 and 461-135-1102
  - d. Qualified Medicare Beneficiary – OAR 461-135-0730
  
3. **County Performance Requirements:**
  - a. Conduct outreach and initial screenings for Medicaid, SNAP, Medicare Part D, and other programs;
  - b. Process intake applications and determine eligibility for Medicaid, SNAP, Medicare Part D and other programs;
  - c. Maintain ongoing caseloads and perform annual reviews or more often as necessary;
  - d. Make timely determinations of applications;
  - e. Correctly calculate eligibility requirements;
  - f. Review the potential eligibility of individuals for non-Medicaid programs (such as SNAP) and refer the applications to the appropriate worker or program.
  - g. Coordinate cases with the OHP central processing unit and local Self Sufficiency offices;
  - h. Enter the application information and subsequent updates and changes in the Oregon ACCESS application and integrate to the mainframe CMS system;
  - i. Code each case correctly to reflect the client's current eligibility; and

- j. Coordinate with the Medicare Buy-In Unit on cases with Medicare and buy-in enrollment problems.
- k. Support the reporting of staff activity and expenditures for the Medicaid, SNAP and related programs under this contract in one of two ways:
  - A. Use of the on-line Random Day Sampling System (RDSS); or
  - B. Use of daily time and effort reporting.
 DHS will approve, and periodically review, the procedures used under either of these reporting methodologies to assure accuracy and completeness.
- l. Assure all clients entitled to enroll or currently are enrolled in Medicare programs have been offered Medicare Modernization Act Part D Prescription Drug Program counseling and enrollment assistance. DHS will make or refer Medicare prescription drug Low Income Subsidy determinations under Section 1935(a) of the Social Security Act and screen individuals for Medicare cost-sharing as described in Section 1905 (p)(3) of the Act.
  - (1) Specific Authorizing Statutes
    - 1. Payment to states: Section 1903(a) of the Social Security Act
    - 2. Rates of Federal Financial Participation (FFP) for administration: 42 CFR, Part 433.15
    - 3. Staffing and training costs: 42 CFR, Part 432.504.
    - 4. Medicare prescription drug low-income subsidies and Medicare transitional Prescription drug assistance: Sections 1935(a) and 1902(2)(66) of the Social Security Act.

**4. Required Activities:**

County shall provide services in the following areas:

- a. Medicaid, SNAP and other Program Eligibility:
 

Securing information needed to make decisions on eligibility for Medicaid, SNAP, and other programs administered by DHS. This category includes gathering recipient information, intake, data coding eligibility forms and all other activities related to eligibility determinations. For Medicaid, in addition to generic financial eligibility, this category also includes:

  - (1) Presumptive Medicaid eligibility determination activities; and
  - (2) CA/PS assessments for persons who are not categorically eligible (aged, blind, or disabled individuals who are not receiving or deemed to be receiving SSI) with incomes between 100-300% of SSI).
- b. Medicare Part D Low-Income Subsidy (LIS) Screenings/Referrals and Choice Counseling:
  - (1) Screen Medicare beneficiaries not already deemed eligible for Medicare Part D Low income subsidy (LIS) and refer them to DHS or the Social Security Administration for LIS eligibility determination; and
  - (2) Offer Medicare Part D choice counseling for persons who are already eligible for both Medicare and Medicaid.

- c. Outreach:  
Methods to inform or persuade recipients or potential recipients to enter into care through the Medicaid, SNAP and other systems. Outreach primarily includes active discussion of the benefits offered by the programs, using prepared materials as appropriate. CMS will allow charges for Medicaid discussion, regardless of the audience members' current Medicaid status.
- d. Initial Screening:  
Activities to screen persons for appropriate referral to a worker for an eligibility decision.
- e. MMIS: Medicaid Management Information System (MMIS) Reporting:  
Data coding, data entry and other activities that initiate payment or update the accuracy of the Medicaid payment system for managed care enrollment, and provider enrollment (example: entering providers into the MMIS system). Making program management decisions on specific claims entered into MMIS that have suspended are allowed, but prior authorization of services for payment and generic claims research are Medicaid administration functions (see the definition of Medicaid administration below at subpart I).
- f. Skilled Professional Medical Personnel (SPMP) Reporting:

SPMP conduct assessments and medical evaluations and make medical judgments or recommendations related to the quality and utilization of direct care services provided to Medicaid applicants or recipients. They advise and assist case management and medical workers in securing and interpreting essential medical data regarding client eligibility for Medicaid and for Medical Review Team documentation.

Report time of the SPMP and directly supporting staff of the Medicaid (or other public) agency in this category if *all* of the following criteria, as applicable, are met:

- (1) The expenditures are for activities directly related to the administration of the Medicaid program, and as such do not include expenditures for medical assistance;
- (2) The SPMP have professional education and training in the field of medical care or appropriate medical practice. "Professional education and training" means the completion of a two (2) year or longer program leading to an academic degree or certificate in a medically related profession. SPMP possess a medical license, certificate, or other document issued by a recognized national or state medical licensure or certifying organization or a degree in a medical field issued by a college or university certified by a professional medical organization. (Note: Experience in the administration, direction, or implementation of the Medicaid program is not considered the equivalent of professional training in a field of medical care);
- (3) The SPMP are in positions that have duties and responsibilities that require those professional medical knowledge and skills;
- (4) A state-documented employer-employee relationship exists between the Medicaid agency and the SPMP and direct support staff; and
- (5) Any direct support staff (such as secretarial, stenographic, copying and file and records clerks) perform duties that are directly necessary for the completion of the

professional medical responsibilities and functions of the SPMP medical staff. The SPMP staff must directly supervise the supporting staff and the performance of the supporting staff's work.

g. Pre-Admission Screening/ Resident Review (PASRR) Level I Screening:

- (1) The federal requirement to screen all individuals that will be admitted to a Medicaid-certified nursing facility for indicators of serious mental illness, mental retardation or developmental disabilities. The results of PASRR Level I screening are documented using form SDS 0460. Individuals identified with indicators that do not meet the criteria of exempted hospital discharge [OAR 411-070-0043(2)(a)] must be referred for further evaluation prior to nursing facility admission; this evaluation will determine if nursing facility services are required [OAR 411-070-0043(3)(b)]. Individuals that are hospitalized prior to nursing facility admission may receive PASRR Level I screening at the hospital [OAR 411-070-0043(3)(a)(A)]. Medicaid-eligible individuals that will be admitted to a nursing facility from a home or community-based setting must receive PASRR Level I screening from a Medicaid case manager or other trained staff.
- (2) If the Medicaid case manager suspects the possible existence of serious mental illness or a developmental disability, the worker must request a PASRR Level II evaluation from a local community mental health program or the Health Support Unit of Central SPD. A PASRR Level II evaluator will confirm the existence of serious mental illness or a developmental disability, recommend the most appropriate living situation and, if required, recommend specialized services.

h. Oregon Health Plan:

Time spent on Medicaid activities directly related to Oregon Health Plan enrollment or acute medical services coverage (not long-term care), enrolling a client in a health plan, or setting up medical transportation.

i. Medicaid Administration:

Examples: Prior Authorization of services for Medicaid payment; generic claims research; Medicaid data entry on Mainframe or Oregon ACCESS, policy reviews, screen corrections, batch coding, and consultation on Medicaid issues. Medicaid Administration includes Medicaid-specific staff training. As with all Medicaid administrative activities, these activities must be required for the proper and efficient administration of the Medicaid State Plan or waived services.

j. Medicaid Case Management:

Assisting Medicaid-enrolled clients in obtaining and using medical care and services covered by Medicaid. County shall provide case management to ensure Medicaid eligible clients access to long-term care programs administered by DHS. Case managers assist clients with access to and coordination of services, service providers and health care resources. Current recipients of OSIPM who reside in community-based settings and are eighteen (18) years of age and Temporary Assistance for Needy Families (TANF) eligible adults who would otherwise need nursing facility placement may be eligible. Service eligibility is determined by the Priority Service Rule OAR 411, Division 15.

Examples: Comprehensive assessment of care needs; development (and revision at least annually) of a specific care plan based upon information collected through the assessment, referral and related activities; and monitoring and follow-up.

k. SNAP and other Non-Medicaid Administration

As with Medicaid Administration above, conduct similar eligibility, outreach, screening and prior authorization functions for federal programs such as SNAP, Older Americans Act, and state-funded programs such as Oregon Project Independence.

l. Other (non-Medicaid) Case Management

- (1) Protective Services / Elder Abuse / Patient Abuse: Conduct protective service, elder abuse and patient abuse investigations for Medicaid or other applicants or recipients.
- (2) Relocation: Assessment, pre-placement visits, advice and assistance, and provider preparation during the process of assisting a person in moving from a familiar environment and adapting to a new physical and social setting. Includes post placement visits.

## 5. Community-Based Services

Community-based services refers to licensed Adult Foster Homes, Residential Care Facilities, Assisted Living Facilities and Specialized Living Facilities and In-Home Services. County shall:

- a. Determine financial and service eligibility;
- b. Assess individual care needs using the Client Assessment/Planning System (CA/PS) and determine the existing support network;
- c. Develop a plan of care with the participation of the client or client's representative using the CA/PS system;
- d. Implement the plan of care ensuring the least restrictive, most cost effective plan within the established DHS payment rates;
- e. Authorize services to be provided, payment rates for such services, and computation of client liability, if applicable;
- f. Make referrals for contract RN Services as defined in OAR 411-030-0050(b) and (c);
- g. Provide ongoing monitoring and reassessment of client needs as necessary, no less than annually; with modifications to the plan as client conditions or care needs indicate;
- h. Provide assistance to the client with obtaining service providers as needed or requested by the client or the client's legal representative; and

i. Maintain documentation that supports the service eligibility decision.

**6. In addition to the Medicaid-covered assessment, care plan coordination and implementation, there may be additional (non-Medicaid) case management needs as follows:**

- a. Case managers are mandated to report any suspected abuse or neglect and are responsible to refer cases of abuse to Adult Protective Services for those adults who are unable to protect themselves from harm or neglect;
- b. For those clients who meet the legal definitions for incapacitation, the case manager will collaborate with the client's legal representative, guardian or conservator in care planning and case monitoring. Should the client be without a legal representative or personal support and meets the criteria listed in OAR 411-026-0020 through 411-026-0040, the case manager may assist in the initiation of guardianship proceedings. See:
  - (1) Risk Intervention Services – OAR Chapter 411, Divisions 20 & 26
  - (2) Adult Protective Services – OAR Chapter 411, Divisions 20 & 26

**7. Case Management Performance Requirements - County shall ensure:**

- a. Clients have current assessments in CA/PS
- b. CA/PS is updated whenever there is a change in the client's needs.
- c. Case file contains a current signed plan of care.
- d. The plan of care is modified when significant changes in the client's care needs are identified.
- e. CA/PS reassessments are performed no less than annually
- f. Requests for services are determined within forty-five (45) days of the request for services.
- g. Provider has knowledge and skills to provide care (waiver) and has an approved background check (OAR 407, Division 007).
- h. Case Managers document the client's preferences and goals in the CA/PS System.
- i. Client is provided choice of living situation within the DHS' payment limitation standards and has the right to a fair hearing if this right is denied.
- j. Case file contains a signed client choice form (914).
- k. Assessment and utilization of cost effective medical equipment, assistive devices and housing accommodations (OAR 411-030-0070(5)).
- l. Coordination with medical providers and Exceptional Needs Care Coordinator (ENCC).
- m. Calculation of correct client contribution amount for all living settings and monitor that client contribution amount is paid each month; if not, respond per policy.
- n. Provider vouchers are reviewed by the Case Manager or designee for approval prior to payment issuance.
- o. Monitoring progress of the client and when needed develop a relocation plan, and assist clients in relocation to a community-based living situation that reflects the client's choice and need and within DHS payment standards.
- p. Use of approved DHS forms. (An exempt county may use forms that meet or

exceed individual DHS form requirements.)

- q. Closing, reduction or denial of benefits when client is longer eligible.
- r. Represent DHS in hearings.

## **8. Exception Payments**

For service plans that exceed the CA/PS assessed service payment levels for individuals residing in community-based care facilities or the maximum hours of services as described in OAR 411-030-0070 for individuals residing in their own homes, County must submit payment requests to the DHS Central Office for authorization per the procedure outlined in the Exception Rule (OAR 411, Division 27).

## **9. Pre-Admission Screening (PAS)**

For persons who are requesting or who are being referred for long term care nursing home services County shall conduct an on-site PAS assessment of an individual's health, functional, psychosocial, and economic status to establish the most appropriate placement/services. PAS is available to any person upon request or referral and is provided without regard to income. PAS is mandatory for all requests or referrals for long term care nursing home services by DHS. No payment for long term care nursing home services will be authorized by DHS until Pre-Admission Screening has established that it is the most appropriate service for the client. PAS must first assess Title XIX and OHP eligibility for those who will be eligible for either upon admission.

- a. PAS includes timely completion of a Client Assessment and Planning System (CA/PS) assessment to determine the needs of individuals. This is a “snapshot in time” assessment and should provide functioning capacity of the individual (including behavior, coping abilities, attitude toward illness, injury disability, medical diagnosis, condition and needs).
- b. For individuals receiving Medicaid who are not entering a Nursing facility through an exemption process, DHS or hospital staff shall complete the PAS form 460 prior to admission to a Nursing Facility.
- c. For individuals with Managed Health Care coverage, or who are entering a nursing facility on an exemption, County shall complete the CA/PS assessment prior to the time in which an individual receives Title XIX Long Term Services authorization.
- d. The CA/PS assessment must show that the individual meets the SPL survivability levels for services and is therefore eligible to have those services paid for through Medicaid.
- e. The assessment must identify less restrictive community-based service options, and if appropriate, County will share with the patient and their natural supports those options for consideration.
- f. If indicators of mental illness or developmental disabilities exist, County will make a referral to either the local community health program or the DHS Health Support Unit of Seniors and People with Disabilities for a comprehensive assessment, known as a Level II Assessment. The Level II Assessment will identify the specific needs as related to the mental illness or developmental disability, and will be used in determining the appropriateness of nursing facility placement and, if required, specialized services.
- g. County shall consult and collaborate with the Level II screener in the identification and provision of specialized services.

- h. County shall complete DHS designated forms related to PAS and distribute such forms to the appropriate parties.

## **10. Case Management for Nursing Home Clients**

Case management is a service to ensure eligible clients access to appropriate long-term care programs administered by DHS. For nursing home clients, case management includes: assessment, evaluation for potential diversion or transition to community-based care, with ongoing monitoring and care plan development.

- a. County shall:

- (1) Determine financial eligibility for OSIPM service eligibility.
- (2) Comprehensively assess the individual's care needs using the Client Assessment/Planning System (CA/PS).
- (3) Develop a plan of care with the participation of the client or the client's representative using the CA/PS system.
- (4) Reassess client needs as necessary, but not less than annually.
- (5) Implement diversion and relocation activities with clients to ensure the least restrictive, most cost effective plan of care that is consistent with client choice and relevant to needed care.
- (6) Refer clients to other services, and related activities.
- (7) Monitor clients and follow up.

- b. County shall comply with the following Performance Requirements

- (1) Record calculated client liability and personal incidental fund (PIF) allowance on Financial Planning Title XIX form, sign and disburse to client, facility, and client file for nursing home clients.
- (2) Ensure clients have current Title XIX assessment in CA/PS.
- (3) Ensure CA/PS is updated whenever there is a change in the client's needs.
- (4) Ensure CA/PS reassessments are performed yearly for service eligibility.
- (5) Ensure Case Managers document the client's preference and goals in the CA/PS system.
- (6) When there is a relocation plan, assist the client in relocation to a community-based living situation that reflects the client's choice and is in keeping with DHS' payment standards.
- (7) Calculate correct client contribution amount.
- (8) Use approved SPD forms.
- (9) If the client is incapable of managing personal incidental funds (PIF), find a delegate or delegate the facility if necessary (OAR 411-070-0095(9)(c)).
- (10) Review PIF expenditures quarterly and ensure appropriate expenditures (OAR 411-070-0095(9)(a)).

## 11. State Plan Personal Care

Case Managers may authorize State Plan State Plan Personal Care Services, which are essential supportive services that enable a person to move into or remain in their own home. Services are limited to 20 hours per month per client. State Plan Personal Care policies are found in OAR 411-034-0000 through 411-034-0090.

a. County shall:

- (1) Use OAR 411-034-0000 - 411-034-0090 and 42 CFR 440.167 to determine client eligibility for State Plan Personal Care Services; Medicaid medical benefit eligibility shall be determined by OAR 411-034-0030.
- (2) Find clients requiring assistance with mobility, toileting, personal hygiene, nutrition, medications/oxygen, or delegated nursing tasks to be eligible for Personal Care service payment authorization.
- (3) Ensure clients residing in a licensed care setting are not receiving waived care services.
- (4) Conduct eligibility reassessments as necessary, but not less than annually.

b. County shall:

- (1) Authorize State Plan Personal Care Services to be performed by only Homecare Workers or contracted In-Home Care Agency providers for State Plan Personal Care Services.
- (2) Ascertain that the provider is not a legally responsible family member, such as a spouse.
- (3) Refer appropriate cases to the contract R.N. for assessment, delegation and monitoring in addition to the 20 hours of Personal Care service.

c. County shall:

- (1) Ensure that financial eligibility determined for OSIPM or OHP (Standard or Plus) is met.
- (2) Conduct an assessment of the individual's care needs using the Client Assessment/Planning System (CA/PS) for verification that such service needs meet the Personal Care criteria.
- (3) Ensure that the 20 hours or less, assigned to a provider are authorized through the CA/PS Service Plan form, and the voucher is reviewed prior to payment, by the case manager.
- (4) Verify that, if the provider is a home-care worker (HCW), the provider is given a copy of the Task List, outlining what personal care tasks the provider is authorized to perform.
- (5) Ensure that appropriate referrals are made for contract RN Services when indicators, as listed in OAR 411-030-0050(b)(c), are present and as found and described in Executive Letter SPD-EL-03-018 (<http://www.dhs.state.or.us/policy/spd/transmit/pt/2003/el03018.pdf>)
- (6) Verify that ongoing monitoring and reassessment of client needs, as necessary, are conducted no less than every twelve months.
- (7) Ensure that the client receives assistance with obtaining service providers, if needed or as requested by the client.

- d. County shall:
- (1) Determine financial eligibility for clients in accordance with the income and resource standards for OSIPM or OHP (Standard or Plus).
  - (2) Determine non-financial eligibility in accordance with OSIPM, OHP Standard, OHP Plus and Personal Care program criteria.
  - (3) Evaluate clients, under age 65, who request State Plan Personal Care Services to assure that service needs originate from a medical diagnosis or physical condition. Clients, age 65 and older, are waived from requirement of medical diagnosis or physical condition.
  - (4) Make referrals for clients under age 65, with a primary diagnosis of Mental Illness or Developmental Disability to the local Mental Health or Developmental Disabilities Offices to receive State Plan Personal Care Services from those agencies as described in Informational Memorandum SPD-IM-03-036.
  - (5) Ensure that clients receiving State Plan Personal Care Services have a current assessment in CA/PS.
  - (6) Determine eligibility for State Plan Personal Care Services within 45 days of the request.
  - (7) Ensure CA/PS reassessments are performed no less than annually.
  - (8) Ensure that each provider has the knowledge and skills to provide care and has a criminal record clearance (407-007-0020 through 407-007-0370).
  - (9) Use appropriate DHS forms and MMIS coding for authorization and review billing prior to payment approval.
  - (10) Ensure that services provided fall within the scope of State Plan Personal Care Services (OAR 411-034-0020) and that eligibility criteria in OAR 411-034-0030 are met.

## **12. Adult Protective Services**

DHS has responsibility to provide Adult Protective Services (APS) to older adults and to adults with physical disabilities whose situation is within DHS' jurisdiction. The intent of the program is to provide protection and intervention for older adults and adults with physical disabilities who are unable to protect themselves from harm or neglect. (OAR 411-020-0000(2)). These services are provided by APS staff in local offices, in conjunction with other agencies and with law enforcement as appropriate.

a. County Requirements:

- (1) Without regard to income, County shall provide protective services to residents of the community as well as to residents of licensed facilities who are alleged to be victims of “abuse” as defined in the following Oregon Administrative Rules: Adult Protective Services 411-020-0002; Nursing Facilities 411-085-0005; Room and Board Facilities 411-068-1993.
- (2) County shall require the APS Specialist to attend core trainings as identified by the division within the timeframes established by the division.
- (3) County shall direct all calls or contacts involving the possibility of abuse or neglect to APS screening.
- (4) If the complaint meets the definition(s) of abuse, County’s screening activities shall include, but are not limited to:
  - A. Gathering information about the reported victim’s current level of functioning;
  - B. Gathering demographic information and the history of the current problem;
  - C. Reviewing any agency records related to the complaint;
  - D. Gathering information from collateral sources.
- (5) If the complaint does not meet the definition(s) of abuse or require intervention, County’s response will include consultation or referral to other resources, including case management, licensing, or other services as appropriate.
- (6) Clients receiving case management services from County Developmental Disability Services Programs or the Office of Mental Health and Addiction Services will receive appropriate protective services from those entities. Certain instances of reported abuse in nursing facilities will be investigated by the Client Care Monitoring Unit. Depending upon the site of the reported abuse or reported perpetrator characteristics, County shall investigate and also refer certain cases to the Oregon Health Authority (OHA) Oregon Health Licensing Agency, the Oregon State Police, Veterans’ Administration, the Oregon State Board of Nursing, the Department of Justice Medicaid Fraud Control Unit, or the Board of Medical Examiners, as appropriate.

b. Specific authorizing statutes:

- |  |                      |
|--|----------------------|
| (1) General Adult Protective Services            | ORS 410.070(1)(k)    |
| (2) Alleged Abuse in Adult Foster Homes          | ORS 443.767          |
| (3) Alleged Abuse in Residential Care Facilities | ORS 443.435          |
| (4) Alleged Abuse in Nursing Facilities          | ORS 443.640, 441.650 |
| (5) Alleged Abuse in Room and Board Facilities   | ORS 443.500          |
| (6) Alleged Elderly Abuse                        | ORS 124.055, 124.070 |

c. County shall:

- (1) Follow procedural guidelines consistent with DHS policies guiding protective service response activities as defined in OAR 411-020-0000 through 411-020-0130. The adult protective services function consists of a standard series of activities that include: screening, triage or consultation, on-site assessment, investigation, intervention, documentation, preparation of investigative report and APS risk management. Deviations from these activities shall be staffed and properly

- documented in the investigative record.
- (2) Develop a protocol for tracking the outcome of every APS screening referral. A call number or other identifier will be assigned and shared with the complainant at the time of screening so the disposition of the report can be determined.
  - (3) Ensure screening/APS staff will document, respond appropriately to, and document the response to all referrals alleging suspected abuse/neglect.
  - (4) Screen complaints to determine eligibility for protective services and to secure adequate information to determine the reasonable level of intervention needed to offer protection to the adult identified as at risk.
  - (5) Take appropriate steps upon completion of the investigation by arranging for immediate protection of the victim(s) and providing direction to the provider to correct any substantiated problem immediately.
  - (6) Ensure APS staff will use required or approved SPD forms and systems to document investigations. Community-based non-facility investigations are to be completed on the Oregon Access System or other system previously approved by SPD. Facility investigations are to be completed using the Web 723 system or other system previously approved by DHS.
  - (7) Ensure APS staff refer Nursing Facility cases to the Client Care Monitoring Unit (CCMU) for investigation, complete necessary documentation to accomplish such referrals, and abide by CCMU's decision as to whether such cases can be accepted for investigation as defined in Policy Transmittal SPD-PT-05-021 (<http://www.dhs.state.or.us/policy/spd/transmit/pt/2005/pt05021.pdf>).
  - (8) Provide advocacy where the at-risk adult lacks the capacity to self-direct and make informed decisions. Advocacy may include seeking legal resources, such as guardianship/conservatorship where less restrictive options are not sufficient.
  - (9) Within seven days of the completion of the Facility APS investigation reports for RCf, ALF and AFH, distribute a non-confidential copy of community-based care facility report to the complainant (unless complainant requests anonymity), and to the licensee. The report must be accompanied by a notice informing such persons of the right to give additional information about the content of the report to the local office within ten days of receipt. The local office must review the responses and reopen the investigation if additional evidence relevant to the allegation is received.
  - (10) Maintain case files in compliance with OAR 166-300-0010 through 166-300-0030.
  - (11) In completing the investigation, the adult protective services specialist is responsible for concluding whether the preponderance (majority) of the evidence indicates whether the incident occurred and whether wrongdoing was substantiated or unsubstantiated or inconclusive as defined by DHS. The determination as to whether substantiated wrongdoing meets the definition of abuse will be determined by the DHS Central Office.
  - (12) Local AAA offices will notify DHS Central Office by e-mail when a report is complete. The DHS Corrective Action Unit will distribute the complaint investigation report, a Notification of Finding (NOF) or Letter of Determination (LOD) and any related sanction at the same time according to internal distribution policy. The NOF or LOD will include the right to submit additional information as part of a general statement of appeal rights.

d. Performance Measures (in licensed facilities)

- (1) The percentage of case investigations initiated in compliance with statutory timelines.
- (2) The percentage of case investigations completed within timelines required by statute.

**13. Presumptive Medicaid Disability Determination Process**

The State of Oregon is required to make Medicaid disability determinations within ninety (90) days for applicants alleging a disability that would meet the Social Security Administration (SSA) disability requirements for Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) and, in which SSA has not made a disability determination. The disability determination is one of the requirements an applicant must meet in order to establish eligibility for the Oregon Supplemental Income Medicaid Program (OSIPM/Presumptive).

a. Specific Authorizing Statutes and Regulations:

- (1) Disability as the Basis of Need: OAR 461-125-0370
- (2) Determinations of Disability: 42 CFR 435.541

b. Presumptive Medicaid Services to Be Provided

County shall process applications for OSIPM/Presumptive determinations when an individual alleges a disabling condition by doing the following:

- (1) Accept referrals for OSIPM/Presumptive from Self Sufficiency offices, Oregon Health Plan Statewide Processing Centers and Aging Services offices, as agreed upon in your local areas;
- (2) Process intake applications, determine OHP-Standard eligibility while OSIPM/Presumptive decision is pending; and
- (3) Maintain ongoing caseload and perform yearly financial reviews or as necessary and medical reviews, as necessary.

c. Presumptive Medicaid Performance Requirements

- (1) Gather accurate information, within mandated timeframes, for new applicants and ongoing recipients and provide appropriate notices.
- (2) Correctly calculate and code cases to assure correct benefits are issued.
- (3) Review the potential of other programs such as SNAP or other medical assistance programs when there is a change in OSIPM/Presumptive eligibility.
- (4) Refer cases to PMDDT for disability decisions utilizing applicable Forms SDS620, SDS708, DHS2099(s), SDS620A and SDS620B.
- (5) Complete necessary action upon denial or approval of disability by PMDDT or DDS.
- (6) Make disability decisions for cases meeting “expedited” criteria. Forward decision and documentation to PMDDT for Medical Consultant sign off.
- (7) Enter application information and subsequent updates and changes in the Oregon ACCESS application and integrate to the mainframe CMS system.
- (8) Monitor and track all SSA disability decisions and provide clients with timely

notice to assure they are aware of the need to file necessary SSA appeals in order to continue eligibility.

#### **14. Employed Persons with Disabilities (EPD)**

The Employed Persons with Disabilities Program (EPD) was designed to enable people who have disabilities to work while maintaining their Medicaid coverage. Loss of Medicaid coverage (including Personal Attendant Services) has been identified as a major barrier for those persons with a disabling condition who desire employment. EPD was established to provide medical and attendant care services under Medicaid. EPD is a subprogram of OSIP/OSIPM. Unless specifically identified otherwise, OSIP/OSIPM administrative rules will apply to EPD. EPD clients receive the OHP Plus medical package. They may also receive attendant care services, if they meet the State's service priority level, as determined with a CA/PS assessment.

- a. County shall provide the following EPD services:
  - (1) Process applications and determine eligibility for OSIP-EPD and OSIPM-EPD
  - (2) Perform ongoing caseload management and act on reported changes.
  - (3) Conduct eligibility reviews and recertify the case as required, but not less than annually (rule 461-115-0540).
  - (4) Calculate, bill and collect for the client contribution.
  - (5) Process applications for the OSIP-EPD and OSIPM-EPD according to the timeframes established in OSIP policy (rule 461-115-0190).
  - (6) Correctly determine program eligibility.
  - (7) Enter eligibility data into the Oregon ACCESS system and integrate to the mainframe CMS system.
  - (8) Accurately calculate and bill for the client contribution.
  - (9) Collect client contribution on a monthly basis, as a condition of eligibility.
  - (10) Act on reported changes and non-payment of client contribution.
  
- b. EPD/OSIP Performance Measures - County shall report and make progress towards improving:
  - (1) Percent of OSIP-EPD and OSIPM-EPD clients above the federal poverty level.
  - (2) Percent of OSIP-EPD and OSIPM-EPD cases where program eligibility was accurately determined.
  - (3) Percent of OSIP-EPD and OSIPM-EPD cases accurately coded in Oregon ACCESS.
  - (4) Percent of client contributions that are calculated accurately.
  - (5) Percent of client contributions that are being collected monthly or appropriate action has been taken.
  - (6) Percent of EPD clients that maintain attendant care.

#### **15. SNAP Program**

The SNAP Program is a federal program based on the Department of Agriculture's Thrifty Food Plan. The intent of the program is to improve the health and well being of low-income individuals, elderly and persons with disabilities and other groups of people by providing them a means to meet their nutritional needs. SNAP benefits are issued via an electronic

Oregon Trail Card. County shall:

- a. Determine eligibility for clients applying for SNAP benefits in compliance with the DHS' Oregon Administrative Rules (OAR) in chapter 461 and 7 CFR Part 210-299.
- b. Process applications within the mandated federal timelines (OAR 461-115-210, 7 CFR § 273.2(g) and (h)).
- c. Screen for expedited SNAP eligibility (OAR 461-115-210, 7 CFR § 273.2(i)).
- d. Process all SNAP applications implementing DHS/Seniors & People with Disabilities' "No Wrong Door" policy for SNAP applicants as found and defined in OAR 461-115-0150; 7 CFR § 273.2(c)(2)); and Executive Letter SPD-EL-01-013 (<http://www.dhs.state.or.us/policy/spd/transmit/pt/2001/el01013.pdf>).
- e. Maintain payment accuracy and maintain an error rate and review process as agreed upon and established by participation with the DHS/SPD SNAP Quality Control /Process.
- f. Correctly code the SNAP Information System (FSMIS) for income, shelter, number in household, medical deductions and utility allowance.
- g. Provide a complete and accurate narration of case information entered in Oregon ACCESS.
- h. Update all changes provided by the client in the FSMIS system in a timely manner.
- i. Maintain records in compliance with OAR 166-300-0010 through OAR 166-300-0030.

## **16. Adult Foster Homes**

DHS has responsibility to license, regulate and provide technical assistance to the operators of DHS Adult Foster Homes (AFH). Adult foster homes are homes where a licensed provider lives in the home and provides compensated care to five or fewer adults who are elderly or physically disabled.

- a. ORS 443.720 sets forth the findings of the Legislative Assembly that are the foundation for the adult foster home program.
  - (1) The Legislative Assembly found:
    - A. Adult foster homes provide needed care and services to thousands of elderly and disabled Oregonians who might otherwise be institutionalized.
    - B. The protection of the health, safety and well-being of the residents of adult foster homes is an important function of DHS.
    - C. Consistent interpretation, application and enforcement of regulatory standards is necessary and desirable for the protection of adult foster home residents.
  - (2) It is legislative intent that:
    - A. DHS will provide training and guidelines for employees assigned to licensing and enforcement to encourage consistency; and
    - B. DHS will take vigorous action to ensure that inspections and investigations are carried out as required by law.
- b. County shall:
  - (1) License and monitor adult foster homes in which care and services are provided to adults who are elderly or physically disabled.
  - (2) Issue an adult foster home license and monitor the service provided to the

residents in accordance with the Oregon Administrative Rules for Adult Foster Homes that set forth provider qualifications, facility standards and the standards for care and services. Counties with exempt status under ORS 443.780 shall license adult foster homes and assure they are operated in compliance with the applicable County rules and ordinances.

- (3) Endeavor to safeguard the health and welfare of the individuals served in adult foster homes by monitoring the care and services provided and identifying problems in an appropriate and timely manner.
- (4) Maintain a licensing program that provides technical and problem solving assistance to providers and promotes continuous improvement in the quality of care and services provided to the residents of the adult foster homes.
- (5) Ensure the use of the required DHS forms for license applications, inspections, violations and notice of license conditions. Counties with exempt status under ORS 443.780 may use forms that meet or exceed DHS form requirements.
- (6) Provide information about the AFH program to the public, prospective providers, other office staff and other interested parties.
- (7) Conduct the required orientation to the AFH program for prospective providers prior to licensure.
- (8) Review license applications from prospective providers for complete and accurate information. Evaluate references, work experience, training and other application documentation in accordance with the applicable Oregon Revised Statutes and Administrative Rules or applicable county rules and ordinances in counties with an exempt status.
- (9) Ensure all subject individuals have approved criminal record checks and abuse checks as required by applicable Oregon Revised Statutes and Administrative Rules.
- (10) Conduct and document onsite inspections of the AFHs for initial licensing, annual e-licensing and follow-up monitoring using the required form 517, 517A and 517B and following the time lines prescribed in the applicable OARs. Counties with exempt status under ORS 443.780 may use forms that meet or exceed DHS form requirements.
- (11) Issue initial license when onsite inspection has been conducted and all requirements have been met
- (12) Send a reminder notice and application for license renewal to providers at least 60 days prior to the expiration of their current license.
- (13) Advise providers of the Medicaid provider enrollment agreement and make it available to those providers who wish to provide care and services to Medicaid recipients.
  - A. Conduct periodic monitoring visits to Adult Foster Homes (AFH) to evaluate provider compliance with the OARs or applicable county rules of an exempt county, and the quality of care being provided to the residents.
  - B. Provide rule interpretation and technical assistance to providers, local office staff and other interested parties.
- (14) Initiate corrective action for providers who fail to achieve or maintain compliance with the administrative rules by submitting a request for corrective action to the AFH Corrective Action Team at DHS central office with the

necessary licensing documentation to support the administrative sanction.  
Exempt County staff shall comply with applicable County ordinances to initiate and complete necessary corrective action and sanctions for providers who fail to achieve or maintain compliance with rules.

- (15) Conduct training or provide information on training resources for providers. Compile and maintain licensing and public disclosure files for each Adult Foster Home (AFH).
- (16) Maintain a current list of licensed AFHs to be used by staff and members of the public.
- (17) Act on complaints of abuse or neglect of residents or violations of administrative rules as quickly as possible and in compliance with OAR 411, Division 20 and ORS 443.767 to protect residents and bring about correction.

c. Adult Foster Home (AFH) Program Performance Measures

- (1) Applications for licensure will be processed within the required 60 day time frame.
- (2) The home inspection and any required corrections will be completed and the initial license issued 60 days from receipt of the completed application.
- (3) Renewal inspections and verification of correction of any noted violations will be completed before the expiration date of the existing license.
- (4) Medicaid provider enrollment agreements will be signed in a timely manner to avoid suspension of service payments to providers.
- (5) Complaints of abuse and/or neglect of residents or violations of rule will receive prompt attention and appropriate and timely correction.
- (6) Exempt County agencies will maintain an AFH program that is equal or superior to the requirements of ORS 443.705 through 443.825 and OAR Chapter 411, Division 50 that protects the health, safety and well-being of the residents.

d. Specific authorizing statute and rules

- (1) ORS 443.705 through 443.825, Adult Foster Homes
- (2) OAR 411-050-0400 through 411-050-0491, Adult Foster Homes
- (3) ORS 443.002, Providers with Multiple Facilities
- (4) OAR 411, Division 20, Adult Protective Services
- (5) ORS 181.534 through 181.537, Criminal Records Checks and Fingerprints
- (6) ORS 443.004, Criminal Records Checks
- (7) OAR 407-007-0200 through 407-007-0370, Criminal Records and Abuse Checks.

**17. Contract Registered Nurse Services**

DHS contracts with individual registered nurses to provide services to elderly clients, adults with physical disabilities and persons with developmental disabilities who are eligible to receive Long Term Care Services per OAR 411-015-0100.

- a. County shall conduct day-to-day oversight and management of DHS Contract Registered Nurses in accordance with OAR 411-048-0000 through 411-048-0130.
- b. County shall develop systems and protocols as defined in the DHS Contract RN

Service Policy and Procedure Manual.

**18. Medicaid Services partially funded with local match:**

- a. County (Type B Transfer only) shall submit a proposal for Medicaid services partially funded with public local match funds prior to initiating local match services. County will assure that Medicaid services partially funded with public local match funds meet all state and federal statutory requirements, including the assurance that all Local Matching Funds are from non-federal sources eligible for use as Medicaid match.
- b. County shall provide only those services authorized by DHS in this Agreement.

For Medicaid enhancement projects (activities currently required above under this contract), County may expend up to the expansion and area differential limits specified by DHS.

For Medicaid expansion projects (for activities that are *not* currently required under this contract), the approved proposal shall include service description(s) as part of the Medicaid local match proposal.

**19. SPD Quality Assurance/Improvement - Program Evaluation Process**

The purpose of Program Evaluation is to support continuous improvement in the quality of services for seniors and people with disabilities throughout Oregon. The process provides a quality assurance system that reviews level of care assessments, service plans, health and welfare of clients and compliance with requirements from the Centers for Medicare & Medicaid Services, the Secretary of State Audit Division, the DHS Internal Audit Unit, and any applicable federal and state laws and policies. The Program Evaluation process is designed to benefit the consumer by providing the SPD/AAA field structure with performance feedback on required assurances, and tracking trends to develop training and technical assistance.

- a. County shall provide the Program Evaluation Team with access to clients and to records requested as part of the ongoing program evaluation process.
- b. County will adhere to timelines requested by DHS for improvements or corrective actions deemed necessary, which may include technical assistance.

**20. Supervision of State Employees**

Supervision of and communication regarding the day-to-day supervision and management of State employees shall be conducted as stated in OAR 411-002-0155.

**21. Contract Expectations for Quality Assurance**

County shall conduct quality assurance activities that address at least one of the components of the CMS Quality Management Strategies as described in 42 CFR 441.302. This may include level of care, service planning, client health and welfare, financial accountability for Medicaid programs and provider qualifications. County shall prepare and submit a brief plan to DHS outlining how quality assurance activities will be conducted.

**22. Accessibility to Programs, Services and Activities**

County shall meet the requirements of Title II of the ADA, Section 504 of the Rehabilitation Act and DHS Policy 010-005. County shall ensure the following for all programs, services and activities provided through this contract:

- a. Public meetings, hearings and public events are held in locations that meet ADA accessibility requirements;
- b. Services, programs and activities provided are readily accessible to and usable by individuals with disabilities;
- c. When communicating with individuals make available:
  - (1) written materials in alternate format
  - (2) qualified interpreters or auxiliary aids and services, and
  - (3) access via text telephone (TTY);
- d. When a location for a service, program or activity is not physically accessible, the County shall have a plan for making that service, program or activity available at an alternate location, either with County or with a sub-contractor;
- e. Display notices in the County's public areas and provide information to individuals about the availability of auxiliary aids and services and the legal rights of individuals with disabilities;
- f. Cooperate with periodic DHS reviews for compliance with the ADA and Section 504 and follow DHS policy to address complaints and noncompliance.

**23. Background Checks**

County shall meet the requirements of ORS 181.533 through ORS 181.538, ORS 443.004, OAR 407-007-0210 through OAR 407-007-0370 and DHS Policy 060-010. County shall fulfill the responsibilities of a qualified entity as defined in OAR 407-007-0210.

County shall ensure that background checks are conducted on individuals that meet the regulatory definition of a subject individual and are:

- a. Employees of County;
- b. Volunteers for County;
- c. Sub-contractor for County, including employees and volunteers of the sub-contractor;  
or
- d. Direct care providers of clients for which County provides service authorization.

**EXHIBIT A**  
**Part 3**  
**Payment and Financial Reporting**

**OLDER AMERICANS ACT, OREGON PROJECT INDEPENDENCE  
AND MEDICAID  
FISCAL CONTROL AND COORDINATION  
AS PROVIDED BY  
AAA**

**1. FUNDING APPROPRIATIONS.** The total sum payable for the period of October 1, 2011, through June 30, 2013, shall not exceed the amount described on page 2, item 2, which is the Oregon Project Independence funding determined and authorized by the State of Oregon Legislature and the Older Americans Act funding as awarded by the U.S. Administration on Aging as determined by DHS.

- a.** DHS, in accordance with Section 305(a)(2)(C-D) of the Older Americans Act, agrees to disburse grant funds to AAA as outlined in Oregon’s Intrastate Funding Formula..
- b.** Payment for all work performed under this Agreement shall be subject to the provisions of ORS 293.462 and disbursements under this Agreement shall be as set forth below:

Medicaid, SNAP, Other Base funds .....	\$ xxxxxx (CFDA 93.778)
Medicaid Local Match funds .....	\$ xxxx(CFDA 93.778)
Oregon Project Independence .....	\$ xxxxx
NSIP .....	\$ xxxxx (CFDA 93.053)
Other State Funds .....	\$ xxxxxxxx
Older Americans Act .....	\$ xxxxxxxxx (CFDA 93.044, 93.045, 93.043, 93.052, 93.041)

- c.** AAA will be allowed to carry-forward into the 2013 – 2015 biennium no more than ten (10) percent of the full 2011-2013 biennial allocation of Older American Act Title IIIB, IIIC1, IIIC2, IIID, IIIE and VIIB funds not fully expended during the Agreement period.
- d.** Funds carried forward from the prior biennium shall be expended prior to use of the current biennial allocation for the same Older Americans Act title.
- e.** AAA shall, in accordance with Section 311(d)(4) of the Older Americans Act, promptly and equitably disburse Nutrition Services Incentive Program (“NSIP”) funds to its sub-contractors. NSIP funds shall only be used for purchase of domestically produced food for AAA’s nutrition service programs. NSIP funds must be fully expended during the Agreement period. NSIP funds cannot be carried forward into the 2013-2015 biennium..

## **2. FISCAL CONTROL FUNCTIONS.**

### **a. FEDERAL REQUIREMENTS.**

- i.** AAA shall maintain a financial management system that assures that state and federal funds used for activities under this Agreement are expended and accounted for in accordance with applicable state and federal requirements.
- ii.** If AAA is organized as local government, it will comply with:
  - a. A-87 for cost principles, Relocated to 2 CFR, Part 225 (362k)
  - b. A-102 for administrative requirements and
  - c. A-133 for audit requirements.
- iii.** If AAA is organized as a non-profit organization, it will comply with:
  - a. A-122 for cost principles, Relocated to 2 CFR, Part 230
  - b. A-110 for administrative requirements, Relocated to 2 CFR, Part 215 and
  - c. A-133 for audit requirements.

### **b. PROGRAM INCOME.**

- i.** AAA shall ensure as required in OAA 315(b)(3) that no means testing for service eligibility will be conducted and as per OAA 315(b)(4)(A-D), all recipients of OAA services will be provided opportunity to voluntarily contribute towards cost of service and AAA has appropriate safeguards in place to account for all contributions. Said contribution, hereby referred to as program income shall be used by the AAA or sub-AAA(s) for the sole purpose of expanding services in the program area in which collected in accordance with Section 315(b)(4)(E) of the Older Americans Act.
- ii.** AAA shall ensure that no fee, or cost-sharing practices, unless authorized by DHS and permitted under Section 315(a)(1) of the Older Americans Act, will be assessed or imposed for OAA services.
- iii.** AAA shall, in accordance with OAR 411-032-0044, expend all annual fees, monthly fees for service, and all contributions to expand OPI services.

### **c. ACCESS TO FISCAL RECORDS.** AAA shall provide access to all fiscal records and to all other books, documents, papers, and records of AAA which are pertinent to this Agreement, and shall, without prior notification, allow DHS the making of excerpts, photocopies, and transcripts, and allow performance of audits and examination of all pertinent fiscal records and books, documents, papers, and records of AAA. Such access shall be freely allowed to state and federal personnel, including the Oregon Secretary of State's Office, and their duly authorized agents.

### **d. FISCAL REPORTING.**

- i.** AAA shall, when requesting working capital, submit Form SPD 150-WC to DHS Accounting and Financial Services at a minimum 7 days prior to requisite receipt of funds. AAA shall estimate program expenses separate from estimated administrative expenses and detail such expenses by fund source (i.e., Title IIIB, IIIC1, IIIC2, IIID, IIIE, and VIIB of the Older Americans Act and OPI).
- ii.** AAA shall submit electronically to DHS Accounting and Financial Services at the electronic address below using DHS Form 148/150 (“Form 148/150”) a monthly reimbursement request for OAA and OPI expenditures no later than the 25th day of the following month. AAA agrees that DHS may decrease AAA’s OPI allocation for home-care worker (“HCW”) expenses based on an hourly rate of \$11.36; this hourly rate is subject to change based on the HCW collective bargaining agreement. DHS agrees to process all reimbursement requests within 30 days following receipt of an approved request.
- iii.** AAA shall, no later than 90 days (September 30) from the conclusion of the state fiscal year end (June 30), submit a FINAL fiscal year-end Form 148/150 and no later than 180 days (December 31) from the conclusion of the state fiscal year-end (June 30), submit one (1) electronic copy of such report at the electronic address below and one (1) signed hardcopy of AAA’s FINAL AUDITED Form 148/150 to:

DHS Accounting and Financial Services  
 Attn: Brenda Stuiivenga  
 500 Summer Street, NE, E-91  
 Salem OR 97301  
[brenda.s.stuiivenga@state.or.us](mailto:brenda.s.stuiivenga@state.or.us)

- iv.** AAA shall submit one hardcopy of the AAA’s fiscal year-end financial audit no later than 180 days (December 31) from the conclusion of the state fiscal year-end (June 30) to:

DHS Seniors & People with Disabilities, State Unit on Aging  
 Attn: Elaine Kruger-Young, Manager  
 676 Church Street, NE  
 Salem OR 97301

- e.** OAA FUND TRANSFERS. AAA may, as authorized by DHS and when necessary to meet the needs of the area served, request to transfer Title IIIB, Title IIIC1 and Title IIIC2 funds as authorized in Section 308(b)(4)(A) and (5)(A) of the Older Americans Act. A request for transfer shall be electronically submitted using a form provided by DHS and shall be received by the State Unit on Aging no later than end of business on September 30th of a fiscal year. Maximum transfers shall be as follows:
  - i.** Not to exceed thirty percent (30%) for any fiscal year between Title IIIB into Title IIIC1 and/or IIIC2, or thirty percent (30%) between Title IIIC and/or IIIC2 into Title IIIB;



- h.** OAA MATCH REQUIREMENTS. AAA shall, as required in Sections 309(b)(1) and 373(g)(2) of the Older Americans Act , match expenditures with cash or in-kind resources of non-Federal means such as local or state sources as follows:
- i.** Federal funds may not pay for more than 75% of the total administrative expenditures for Title IIIB, IIIC1, IIIC2 and IIIE services. The required match is calculated using the following formula:  $(\text{Total Administrative Expenditures to be charged to Federal funds} / .75) - (\text{Total Administrative Expenditures to be charged to Federal funds})$ . Example:  $100 / .75 = 133$ ;  $133 - 100 = 33$ ; the required match is 33.
  - ii.** Federal funds may not pay for more than 85% of the total expenditures for Title IIIB, IIIC1 and IIIC2 services. AAA is required to meet 2/3 of the required match which is calculated using the following formula:  $(\text{Total Service Expenditures to be charged to Federal funds} / .85) - (\text{Total Service Expenditures to be charged for Title IIIB, IIIC1, and IIIC2 services}) \times .67$ . Example:  $100 / .85 = 118$ ;  $118 - 100 = 18$ ;  $18 \times .67 = 12$ ; the required match is 12.
  - iii.** Federal funds may not pay for more than 75% of expenditures for Title IIIE services. The required match is calculated using the following formula:  $(\text{Total Service Expenditures for Title IIIE services} / .75) - (\text{Total Service Expenditures for Title IIIE services})$ . Example:  $100 / .75 = 133$ ;  $133 - 100 = 33$ ; the required match is 33.

**EXHIBIT A**  
**Part 4**  
**Special Terms and Conditions**

**1. Confidentiality of Client Information**

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

**2. Amendments**

- a. DHS reserves the right to amend or extend the Agreement under the following general circumstances:
  - (1) DHS may extend the Agreement for additional periods of time up to a total Agreement period of five (5) years, and for additional money associated with the extended period(s) of time. The determination for any extension for time may be based on DHS' satisfaction with performance of the work or services provided by the County under this Agreement.
  - (2) DHS may periodically amend any payment rates throughout the life of the Agreement proportionate to increases in Portland Metropolitan Consumer Price Index; and to provide Cost Of Living Adjustments (COLA) if DHS so chooses. Any negotiation of increases in rates to implement a COLA will be as directed by the Oregon State Legislature.
- b. DHS further reserves the right to amend the Statement of Work based on the original scope of work for the following:
  - (1) Programmatic changes/additions or modifications deemed necessary to accurately reflect the original scope of work that may not have been expressed in the original Agreement or previous amendments to the Agreement;
  - (2) Implement additional phases of the Work; or
  - (3) As necessitated by changes in Code of Federal Regulations, Oregon Revised Statutes, or Oregon Administrative Rules which, in part or in combination, govern the provision of services provided under this Agreement.

- c.. Upon identification, by any party to this Agreement, of any circumstance which may require an amendment to this Agreement, the parties may enter into negotiations regarding the proposed modifications. Any resulting amendment must be in writing and be signed by all parties to the Agreement before the modified or additional provisions are binding on either party. All amendments must comply with Exhibit B, Section 22 “Amendments” of this Agreement.

**EXHIBIT B**  
**Standard Terms and Conditions**

- 1. Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, “Claim”) between the parties that 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 laws, regulations and executive orders to which they are subject and which are applicable to the Agreement or to the Work. Without limiting the generality of the foregoing, both parties expressly agree to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations; (b) all state laws requiring reporting of Client abuse; (c) ORS 659A.400 to 659A.409, ORS 659A.145 and all regulations and administrative rules established pursuant to those laws in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the Work. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. All employers, including County and 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:

    - (1) Organization and Authority. County is a political subdivision of the State of Oregon duly organized and validly existing under the laws of the State of Oregon. County has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder.
    - (2) Due Authorization. The making and performance by County of this Agreement (a) have been duly authorized by all necessary action by County and (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board,

or other administrative agency or any provision of County's charter or other organizational document and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which County is a party or by which County may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by County of this Agreement.

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

b. DHS represents and warrants as follows:

- (1) Organization and Authority. DHS has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder.
- (2) Due Authorization. The making and performance by DHS of this Agreement (a) have been duly authorized by all necessary action by DHS and (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which 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.
- (3) 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 Clause.**

- a. The State of Oregon's payment obligations under this Agreement are conditioned upon DHS receiving funding, appropriations, limitations, allotment, or other expenditure authority sufficient to allow DHS, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Agreement. County is not entitled to receive payment under this Agreement from any part of Oregon state government other than DHS. Nothing in this Agreement is to be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. DHS represents that as of the date it executes this Agreement, it has sufficient appropriations and limitation for the current biennium to make payments under this Agreement.
- b. Payment Method. Payments under this Agreement will be made by Electronic Funds Transfer (EFT), unless otherwise mutually agreed, and shall be processed in accordance with the provisions of OAR 407-120-0100 through 407-120-0380 or OAR 410-120-1260 through OAR 410-120-1460, as applicable, and any other Oregon Administrative Rules that are program-specific to the billings and payments. Upon request, County shall provide its taxpayer identification number (TIN) and other necessary banking information to receive EFT payment. County shall maintain at its own expense a single financial institution or authorized payment agent capable of receiving and processing EFT using the Automated Clearing House (ACH) transfer method. The most current designation and EFT information will be used for all payments under this Agreement. County shall provide this designation and information on a form provided by DHS. In the event that EFT information changes or the County elects to designate a different financial institution for the receipt of any payment made using EFT procedures, the County shall provide the changed information or designation to DHS on a DHS-approved form. DHS is not required to make any payment under this Agreement until receipt of the correct EFT designation and payment information from the County.

- 6. **Recovery of Overpayments.** If billings under this Agreement, or under any other Agreement between County and 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 (1) use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the intellectual property, (2) authorize third parties to exercise the rights set forth in Section 8.a.(1) on DHS' behalf, and (3) sublicense to third parties the rights set forth in Section 8.a.(1).
- 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, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to County to use, copy, distribute, display, build upon and improve the intellectual property.
- 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 (1) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (2) admits in writing its inability, or is generally unable, to pay its debts as they become due, (3) makes a general assignment for the benefit of its creditors, (4) is adjudicated a bankrupt or insolvent, (5) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (6) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (7) fails to

controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (8) takes any action for the purpose of effecting any of the foregoing; or

- d. A proceeding or case is commenced, without the application or consent of County, in any court of competent jurisdiction, seeking (1) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of County, (2) the appointment of a trustee, receiver, custodian, liquidator, or the like of County or of all or any substantial part of its assets, or (3) similar relief in respect to County under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive days, or an order for relief against County is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

**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:

- (1) For its convenience, upon at least 30 days advance written notice to DHS;
- (2) 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;
- (3) 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
- (4) 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:

- (1) For its convenience, upon at least 30 days advance written notice to County;
- (2) 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;
- (3) Immediately upon written notice to County if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that 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;
- (4) Upon 30 days advance written notice to County, if County is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as DHS may specify in the notice;
- (5) Immediately upon written notice to County, if any license or certificate required by law or regulation to be held by County or a subcontractor to perform the Work is for any reason denied, revoked, suspended, not renewed or changed in such a way that County or a subcontractor no longer meets requirements to perform the Work. This termination right may only be exercised with respect to the particular part of the Work impacted by loss of necessary licensure or certification;
- (6) 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.** The Agreement may be terminated immediately upon mutual written consent of the parties or at such time as the parties may agree in the written consent.

**12. Effect of Termination**

- a. Entire Agreement.
  - (1) Upon termination of this Agreement, DHS shall have no further obligation to pay County under this Agreement.
  - (2) Upon termination of this Agreement, County shall have no further obligation to perform Work under this Agreement.
- b. Obligations and Liabilities. Notwithstanding Section 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 require subcontractors to 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 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.** If the Work performed under this Agreement requires County or its subcontractor(s) 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 or its subcontractor(s) access to such DHS Information Assets or Network and Information Systems, County shall comply and require all subcontractor(s) to which such access has been granted to comply with OAR 407-014-0300 through OAR 407-014-0320, as such rules may be revised from time to time. For purposes of this section, "Information Asset" and "Network and Information System" have the meaning set forth in OAR 407-014-0305, as such rule may be revised from time to time.

17. **Force Majeure.** Neither DHS nor County shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, natural causes, or war which is beyond the reasonable control of DHS or County, respectively. Each party shall, however, make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. DHS may terminate this Agreement upon written notice to the other party after reasonably determining that the delay or breach will likely prevent successful performance of this Agreement.
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. **Alternative Dispute Resolution.** The parties should attempt in good faith to resolve any dispute arising out of this agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
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 Justice. Such amendment, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.
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, 29, 30 and 31 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 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  
                  250 Winter St NE, Room 306  
                  Salem, OR 97301-1080  
                  Telephone: 503-945-5818  
                  Facsimile Number: 503-378-4324

COUNTY:      (see page one)

- 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 and any subsequent amendments may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement and any amendments 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

- 30. Contribution.** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

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

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

- 31. Indemnification by Subcontractors.** County shall take all reasonable steps to cause its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in

part, by the negligent or willful acts or omissions of County's contractor or any of the officers, agents, employees or subcontractors of the contractor( "Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.

- 32. Stop-Work Order.** DHS may, at any time, by written notice to the County, require the County to stop all, or any part of the work required by this Agreement for a period of up to 90 days after the date of the notice, or for any further period to which the parties may agree through a duly executed amendment. Upon receipt of the notice, County shall immediately comply with the Stop-Work Order terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the stop work order notice. Within a period of 90 days after issuance of the written notice, or within any extension of that period to which the parties have agreed, DHS shall either:
- a. Cancel or modify the stop work order by a supplementary written notice; or
  - b. Terminate the work as permitted by either the Default or the Convenience provisions of Section 11. Termination.

If the Stop Work Order is canceled, DHS may, after receiving and evaluating a request by the County, make an adjustment in the time required to complete this Agreement and the Agreement price by a duly executed amendment.

**EXHIBIT C**  
**Subcontractor Insurance Requirements**

County shall require its first tier contractor(s) that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before the contractors perform under contracts between County and the contractors (the "Subcontracts"), and ii) maintain the insurance in full force throughout the duration of the Subcontracts. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to DHS. County shall not authorize contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, County shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. County shall incorporate appropriate provisions in the Subcontracts permitting it to enforce contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Subcontracts as permitted by the Subcontracts, or pursuing legal action to enforce the insurance requirements. In no event shall County permit a contractor to work under a Subcontract when the County is aware that the contractor is not in compliance with the insurance requirements. As used in this section, a "first tier" contractor is a contractor with whom the county directly enters into a contract. It does not include a subcontractor with whom the contractor enters into a contract.

**TYPES AND AMOUNTS.**

1. **WORKERS COMPENSATION.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employers Liability insurance with coverage limits of not less than \$500,000 must be included.

2. **PROFESSIONAL LIABILITY**

**Required by DHS**    **Not required by DHS.**

Professional Liability Insurance covering any damages caused by an error, omission or negligent act related to the services to be provided under the Subcontract.

3. **COMMERCIAL GENERAL LIABILITY.**

**Required by DHS**    **Not required by DHS.**

Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to DHS. This

insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by DHS:

**Bodily Injury, Death and Property Damage:**

Amount described below per occurrence (for all claimants for claims arising out of a single accident or occurrence).

Service Provider Contract not-to-exceed under this Agreement:	Service Provider Required Insurance Amount:
\$0 - \$1,000,000.	\$1,000,000.
\$1,000,001. - \$2,000,000.	\$2,000,000.
\$2,000,001. - \$3,000,000.	\$3,000,000.
In excess of \$3,000,001.	\$4,000,000.

4. **AUTOMOBILE LIABILITY INSURANCE: AUTOMOBILE LIABILITY.**

**Required by DHS if County transports DHS clients**  **Not required by DHS.**

Automobile Liability Insurance covering all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for “Commercial General Liability” and “Automobile Liability”). Automobile Liability Insurance must be in not less than the following amounts as determined by DHS:

**Bodily Injury/Death:**

- per occurrence (for all claimants for claims arising out of a single accident or occurrence).
- \$4,000,000 per occurrence limit for any single claimant; and
- \$4,000,000 per occurrence limit for multiple claimants.

**AND**

**Property Damage:**

- \$4,000,000 per occurrence limit for any single claimant; and
- \$4,000,000 per occurrence limit for multiple claimants.

5. **ADDITIONAL INSURED.** The Commercial General Liability insurance and Automobile Liability insurance must include the State of Oregon, its officers, employees and agents as Additional Insureds but only with respect to the contractor's activities to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.

- 6. "TAIL" COVERAGE.** If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subcontract, for a minimum of 24 months following the later of : (i) the contractor's completion and County 's acceptance of all Services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing 24-month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the contractor may request and DHS may grant approval of the maximum "tail " coverage period reasonably available in the marketplace. If DHS approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.
- 7 NOTICE OF CANCELLATION OR CHANGE.** The contractor or its insurer must provide 30 days' written notice to County before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).
- 8. CERTIFICATE(S) OF INSURANCE.** County shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.

## **EXHIBIT D**

### **Required Federal Terms and Conditions**

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

#### **1. Miscellaneous Federal Provisions**

County shall comply and require all subcontractors to comply with all federal laws, regulations, and executive orders applicable to the Agreement or to the delivery of Work. Without limiting the generality of the foregoing, County expressly agrees to comply and require all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Executive Order 11246, as amended, (e) the Health Insurance Portability and Accountability Act of 1996, as amended, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (j) all federal 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 U.S.C. 14402.

#### **2. Equal Employment Opportunity**

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

#### **3. Clean Air, Clean Water, EPA Regulations**

If this Agreement, including amendments, exceeds \$100,000 then County shall comply and require all subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to

DHS, United States Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. County shall include and require all subcontractors to include in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section.

**4. Energy Efficiency**

County shall comply and require all subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42 U.S.C. 6201 et. seq. (Pub. L. 94-163).

**5. Truth in Lobbying**

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 of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**6. HIPAA Compliance**

As a Business Associate of a Covered Entity, DHS must comply with the Health Insurance Portability and Accountability Act and the federal regulations implementing the Act (collectively referred to as HIPAA), and DHS must also comply with OAR 125-055-0100 through OAR 125-055-0130 to the extent that any Work or obligations of DHS related to this Agreement are covered by HIPAA. County shall determine if County will

have access to, or create any protected health information in the performance of any Work or other obligations under this Agreement. To the extent that County will have access to, or create any protected health information to perform functions, activities, or services for, or on behalf of, DHS as specified in the Agreement, County shall comply and cause 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 Contractor and DHS for purposes directly related to the provision of services to Clients which are funded in whole or in part under this Contract. To the extent that Contractor is performing functions, activities, or services for, or on behalf of DHS, in the performance of any Work required by this Contract, Contractor shall not use or disclose any Individually Identifiable Health Information about specific individuals in a manner that would violate DHS Privacy Rules, OAR 407-014-0000 *et. seq.*, or DHS Notice of Privacy Practices. A copy of the most recent DHS Notice of Privacy Practices is posted on the DHS web site at: <https://apps.state.or.us/cf1/FORMS/> enter form number 2090 or may be obtained from DHS.
- b. **Data Transactions Systems.** If County intends to exchange electronic data transactions with DHS or the Oregon Health Authority (OHA) in connection with claims or encounter data, eligibility or enrollment information, authorizations or other electronic transaction, County shall execute an EDI Trading Partner Agreement and shall comply with 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.
- d. County and all subcontractors shall comply with the same requirements for Business Associates set forth in OAR 125-055-0100 through OAR 125-055-0130 as a contractor of a Business Associate.

## **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 U.S.C. 6901 *et. seq.*). Section 6002 of that Act (codified at 42 U.S.C. 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 Part 247.

## **8. Audits**

- a. 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.”
- b. Sub-recipients shall also comply with applicable Code of Federal Regulations (CFR) sections and OMB Circulars governing expenditure of federal funds. State, local and Indian Tribal Governments and governmental hospitals must follow OMB A-102. Non-profits, hospitals, colleges and universities must follow 2 CFR Part 215. Sub-recipients shall monitor any organization to which funds are passed for compliance with CFR and OMB requirements.

**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 2 CFR Part 180.) 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 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 services under this Agreement a copy of the statement mentioned in paragraph (i) above; (iv) Notify each employee in the statement required by paragraph (i) above that, as a condition of employment to provide services 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) above 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) above; (viii) Require any subcontractor to comply with subparagraphs (i) through (vii) above; (ix) Neither County, or any of County's employees, officers, agents or subcontractors may provide any service 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 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 this Agreement.

## **11. Pro-Children Act**

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

## **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 U.S.C. 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 U.S.C. 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 U.S.C. Section 1396(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 Agreement and any other Medicaid Agreement) 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 U.S.C. § 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 where an individual may apply for or receive an application for public assistance.