



# **CROOK COUNTY BOARD OF COMMISSIONERS AGENDA**

**Wednesday, August 21, 2024 at 9:00 am**

**Crook County Annex | 320 NE Court St. | Prineville OR**

Members of the public and media are welcome to attend in person or via Zoom: 1-253-215-8782;

Meeting ID: 981 7361 2010; Passcode: 033745

## **PUBLIC COMMENT**

## **CONSENT AGENDA**

(Consent agenda items are routine matters - e.g. minutes, appropriations orders, contracts, agreements, completion of previously discussed matters and decisions requiring Board ratification which are not expected to generate discussion. Any member of the Board may request removal of an item for separate discussion or vote. All remaining items are approved in a single motion.)

- 1. OHA Medicaid Administrative Claiming IGA #182949**
- 2. Approve Professional Services Agreement with Precision Approach Engineering Inc.**
- 3. Transportation System Plan Update - Change of Scope (Juniper Canyon Egress Feasibility)**
- 4. 3rd Amendment to Intergovernmental Agreement between Crook County and Jefferson County for Jail Bed Rental**

## **DISCUSSION**

### **5. Airport Runway Project Update**

Requester: Kelly Coffelt

Airport Manager

### **6. Lapine Community Health Center**

Requester: Katie Plumb

Health and Human Services Director

## **INTERIM MANAGER REPORT**

## **COMMISSIONER UPDATES**

# **PUBLIC COMMENT**

## **EXECUTIVE SESSION**

### **NOTICE AND DISCLAIMER**

The Crook County Board of Commissioners is the governing body of Crook County, Oregon, and holds public meetings (generally on the first and third Wednesday of each month) to deliberate upon matters of County concern. As part of its efforts to keep the public apprised of its activities, the Crook County Board of Commissioners has published this PDF file. This file contains the material to be presented before the Board of Commissioners for its next scheduled regular meeting.

Please note that while County staff members make a dedicated effort to keep this file up to date, documents and content may be added, removed, or changed between when this file is posted online and when the Board of Commissioner meeting is held. The material contained herein may be changed at any time, with or without notice.

CROOK COUNTY MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, ACCURACY, FITNESS FOR A PARTICULAR PURPOSE, OR FOR ANY OTHER MATTER. THE COUNTY IS NOT RESPONSIBLE FOR POSSIBLE ERRORS, OMISSIONS, MISUSE, OR MISINTERPRETATION.

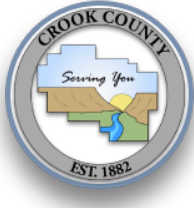
Please also note that this file does not contain any material scheduled to be discussed at an executive session, or material the access to which may be restricted under the terms of Oregon law.

If you are interested in obtaining additional copies of any of the documents contained herein, they may be obtained by completing a Crook County Public Records Request form. Request forms are available on the County's website or at the County Administration office at 203 NE Court Street, in Prineville.

### **Additional Items**

Additional items may be discussed that arise too late to be included as a part of this notice. For information about adding agenda items, please contact the County Administration office at 447-6555. Assistance to handicapped individuals is provided with advance notice.

## AGENDA ITEM REQUEST



**Date:**

*August 12, 2024*

**Meeting date desired:**

*August 14, 2024*

**Subject:**

*OHA Medicaid Administrative Claiming IGA #182949*

**Background and policy implications:**

*The enclosed IGA with Oregon Health Authority is a five-year agreement in which the County will provide outreach and application assistance for Medicaid and Non-Medicaid programs, as well as referral, coordination, monitoring, and training of said services. Through the IGA, the County is to work with Multnomah Education Service District (MESD) for eligibility lists; the County renewed the MESD IGA on August 5, 2024.*

**Budget/fiscal impacts:**

*Not to exceed \$1,000,000 over the life of the IGA.*

**Requested by:**

*Katie Plumb – Health & Human Services Director*

*[kplumb@crookpublichealthor.gov](mailto:kplumb@crookpublichealthor.gov)*

*541-447-5165 x206*

**Presenters:**

*Katie Plumb*

**Legal review (only if requested):**

*Yes*

**Elected official sponsor (if applicable):**

*N/A*



**Agreement Number 182949**

**STATE OF OREGON  
INTERGOVERNMENTAL AGREEMENT**

You can get this document in other languages, large print, braille, or a format you prefer free of charge. Contact the Agreement Administrator at the contact information found below. We accept all relay calls.

This Agreement is between the State of Oregon, acting by and through its Oregon Health Authority, hereinafter referred to as “OHA,” and

**Crook County**  
**375 NW Beaver St., Suite 100**  
**Prineville, OR 97754**  
**Telephone: (541) 447-5165**  
**Facsimile: (541) 447-3093**  
**E-mail: [kplumb@crookpublichealthor.gov](mailto:kplumb@crookpublichealthor.gov)**

hereinafter referred to as “County.”

Work to be performed under this Agreement relates principally to OHA’s

**Public Health Division**  
**Maternal and Child Health, Center for Prevention and Health Promotion**  
**800 NE Oregon Street, Suite 825**  
**Portland, OR 97232**  
**Agreement Administrator: David V. Anderson, or delegate**  
**Telephone: (971) 276-0412**  
**Email: [david.v.anderson@state.or.us](mailto:david.v.anderson@state.or.us)**

**1. Effective Date and Duration.** This Agreement shall become effective on the later of: (I) the last date all required signatures in Section 6., below have been obtained, or (II) **July 1, 2024** provided it is (i) signed by all parties on or before such date, and (ii) when required, approved in writing by the Oregon Department of Justice on or before such date, and (iii) when required, approved in writing by the Oregon Department of Administrative Services. Unless extended or terminated earlier in accordance with its terms, this Agreement shall expire on **June 30, 2029**. Agreement termination shall not extinguish or prejudice OHA’s right to enforce this Agreement with respect to any default by County that has not been cured.

**2. Agreement Documents.**

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

- (1) Exhibit A, Part 1: Statement of Work
- (2) Exhibit A, Part 2: Payment and Financial Reporting
- (3) Exhibit A, Part 3: Special Provisions
- (4) Exhibit B: Standard Terms and Conditions
- (5) Exhibit C: Subcontractor Insurance Requirements
- (6) Exhibit D: 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 herein.

**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, B, A, and C.

**3. Consideration.**

**a.** The maximum not-to-exceed amount payable to County under this Agreement, which includes any allowable expenses, is **\$1,000,000.00**. OHA 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.** OHA will pay only for completed Work under this Agreement, and may make interim payments as provided for in Exhibit A. For purposes of this Agreement, “Work” means specific work to be performed or services to be delivered by County as set forth in Exhibit A.

**4. Contractor or Subrecipient Determination.** In accordance with the State Controller’s Oregon Accounting Manual, policy 30.40.00.104, OHA’s determination is that:

County is a subrecipient     County is a contractor     Not applicable

Catalog of Federal Domestic Assistance (CFDA) #(s) of federal funds to be paid through this Agreement: 93.778

**5. County Information and Certification.**

**a. County Information.** This information is requested pursuant to ORS 305.385.

**PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION:**

**County Name (exactly as filed with the IRS):** County of Crook

Street address: 300 NE Third St.

City, state, zip code: Prineville, OR 97754

Email address: kplumb@crookpublichealthor.gov

Telephone: ( 541 ) 447-5165 ext 206 Fax: ( )

**Proof of Insurance:** County shall provide the following information upon submission of the signed Agreement. All insurance listed herein must be in effect prior to Agreement execution.

**Workers' Compensation Insurance Company:** SAIF

Policy #: 791761 Expiration Date: 7/1/2025

**b. Certification.** Without limiting the generality of the foregoing, by signature on this Agreement, County hereby certifies under penalty of perjury that:

- (1) County acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any "claim" (as defined by ORS 180.750) that is made by (or caused by) County and that pertains to this Agreement or to the project for which the Agreement work is being performed. County certifies that no claim described in the previous sentence is or will be a "false claim" (as defined by ORS 180.750) or an act prohibited by ORS 180.755. County further acknowledges that in addition to the remedies under this Agreement, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against County;
- (2) The information shown in Section 5.a. "County Information", is County's true, accurate and correct 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" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury

and currently found at: <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>;

- (5) County is not listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal procurement or Non-procurement Programs" found at: <https://www.sam.gov/SAM>;
- (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; and
- (7) County's Federal Employer Identification Number (FEIN) provided to OHA is true and accurate. If this information changes, County shall provide OHA 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.**

**6. Signatures.** 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 the Agreement and any amendments so executed shall constitute an original.

**Crook County**

**By:**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**State of Oregon, acting by and through its Oregon Health Authority**

**By:**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Approved for Legal Sufficiency:**

Via e-mail by Jeffrey J. Wahl, Assistant Attorney General

April 4, 2024

Oregon Department of Justice

\_\_\_\_\_  
Date



## EXHIBIT A

### Part 1 Statement of Work

#### 1. Public Health MAC Time Study Activity Codes

- A1. Outreach and Application Assistance for the Medicaid Program:** means interviews, group meetings, phone contacts or home visits that inform Medicaid eligible and potentially Medicaid eligible individuals and their families about the benefits and availability of services provided by the Medicaid program. Additionally informing individuals and their families on how to access, use and maintain participation in all health care resources (i.e. Medicaid, Early Periodic Screening and Diagnostic Testing, etc), creating and/or disseminating materials to inform children and families about Medicaid and assisting them to make application for Medicaid eligibility (i.e. collecting information for the Medicaid application, helping to complete necessary forms for the Medicaid application, and updating of forms as necessary if a child or family's circumstances change), related staff travel and paperwork.
- A2. Outreach and Application Assistance for Non-Medicaid Programs:** means activities that assist the patient/client in gaining access to non-Medicaid services, effectively utilizing social services and community wellness programs. (Included are housing, commodities, food banks, Women's Infant and Children Program ("WIC"), foster care, financial assistance, exercise and weight loss programs, energy assistance, childcare, after school programs, friendly visitor and vocational services). Activities that assist the client in applying for these services, including form preparation, related staff travel and paperwork.
- B1. Referral, Coordination, Monitoring, and Training of Medicaid Services:** means making referrals for and coordinating the delivery of diagnostic and preventive service and treatment for health, vision, dental, developmental, mental health, substance abuse and other Medicaid services. Includes staffing to coordinate Medicaid case plan services (participation in multidisciplinary team meetings, conferencing on health, developmental issues, consultations), gathering background information and supportive information, such as medical histories, writing case plans, or summaries and preparing and/or presenting materials for case review, arranging for health services and coordinating services (i.e. psychological counseling, health, substance abuse counseling and consultation, inpatient services), related staff travel and paperwork.
- B2. Referral, Coordination, Monitoring, and Training of Non-Medicaid Services:** means making referrals for and coordinating the delivery of social services and community wellness programs (including housing,

commodities, food banks, WIC, foster care, financial assistance, exercise and weight loss programs, energy assistance, childcare, after school programs, friendly visitor and vocational services) arranging transportation for these services and related staff travel and paperwork.

- C1. Medicaid/OHP transportation and translation** means assisting an individual to obtain transportation to services covered by OHP, arranging for or providing translation services to facilitate access to OHP services. Include related paperwork, clerical activities or staff travel required to perform these activities.
- C2. Non-Medicaid/OHP transportation and translation:** means assisting an individual to obtain transportation to services not covered by Medicaid/OHP, or arranging for or providing translation services related to social, vocational, or educational programs. Include related paperwork, clerical activities or staff travel time required to perform these activities.
- D1. System Coordination Related to Medicaid Services:** means working internally and with other agencies to improve Medicaid health services, identify gaps in services, expand health and medical services; and improve capacity to engage in medical assistance services and to expand access and linkage to medical and health services and their utilization by medical assistance target populations, gathering information about the target population to improve early identification of health and developmental problems; related staff travel and paperwork.
- D2. System Coordination Related to Non-Medicaid Services:** means working internally and with other agencies to improve social services, identify gaps in services, expand and improve capacity to engage in non-Medicaid activities, expand access and linkage to non-Medicaid services, their utilization by target populations; related staff travel and paperwork.
- E. Direct Health Care Services:** means providing direct health care services to a patient, such as well baby checkups, immunizations, disease management, counseling, and including medical case management or other activities that are an integral part or extension of a patient's visit. Included is all related paperwork, clerical activities, staff time, or travel required performing these services
- F. Other Work Activities:** means all other paid work activities that do not fall under one of the above categories. Time off for vacation, sick leave, family leave, holidays, jury duty, paid lunchtime, comp time, and any other time away from work if the time is paid. Such activities may include payroll, maintaining inventories, developing budgets, general supervision, etc. All related paperwork, clerical activities, or staff travel would also be included.

## 2. Statement of Work

### Background

Under Title XIX of the Social Security Act (“the Act”), the federal government and states share the cost of funding the Medicaid program, which provides medical assistance to certain low-income individuals. Federal Financial Participation (“FFP”) is the federal government’s share for states’ Medicaid program expenditures. States may claim FFP for providing administrative activities that are found to be necessary by the Secretary of the U.S. Department of Health and Human Service for proper and efficient administration of the state Medicaid plan. The process applicable to claiming administrative costs is referred to herein as Medicaid Administrative Claiming or MAC.

OHA and County intend to improve health services access and availability for children and families eligible for medical assistance under Medicaid and who reside in the geographic area(s) served by the County. Under the Agreement, County will perform Title XIX administrative activities, and OHA will reimburse County for the cost of performing these administrative activities. County will provide, through its own staff and through subcontracts, outreach, health care coordination, and other medical assistance related administrative activities that support OHA’s administration of the Title XIX Medicaid Oregon State Plan (the “State Medicaid Plan.”).

### Statement of Work

County shall directly and through subcontracts approved by OHA provide to Medicaid-eligible clients allowable Title XIX administrative activities as follows: (a) Outreach and Application Assistance for the Medicaid Program; (b) Referral, Coordination, Monitoring, and Training of Medicaid Services; (c) Medicaid/Oregon Health Plan (“OHP”) transportation and translation; and (d) System Coordination Related to Medicaid Services, (collectively, the “Work”), which are further defined in Exhibit A Part 1, attached and hereby incorporated by reference as part of this Agreement.

#### a. County Responsibilities. The County shall perform the following:

- (1) No later than one working day prior to the first day of an upcoming quarter, send to the Multnomah Education Service District (“MESD”) a list of those eligible county employees and/or subcontractor employees designated to complete and submit required time study surveys during the subject quarter, hereinafter referred to as the “cost pool”. Eligible employees are those whose training / retraining in MAC is current, as defined by OHA and certified according to OHA requirements.
- (2) Utilize the specific Time Study Activity Codes as set forth in Exhibit A, Part 1 (“Activity Codes”), approved by OHA and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid (“CMS”) to document all time spent by cost pool on all activities listed in Exhibit A and to claim all costs under this Agreement for allowable Medicaid administrative activities. Specifically, County shall use the Activity Codes to document all time spent on all activities listed in

Exhibit A (“Documented Time”) throughout four (4) specifically identified days per claiming quarter (“Survey Days”). OHA shall randomly select the Survey Days and notify County in advance of the Survey Days selected.

- (3)** Adhere to OHA protocols and policies pertaining to adequate and proper completion of time study surveys, as stated in the Medicaid Administrative Claiming Public Health Manual, Version 5.0, and provided to the County by OHA.
- (4)** Facilitate training to its employees and subcontractors on the implementation of the Time Study and Activity Codes to ensure County’s employees and subcontractors make claims only for allowable Medicaid administrative activities, availing training tools and training sessions as provided by OHA.
- (5)** Submit all MAC information to the Multnomah Education Service District (“MESD”) for MESD’s preparation of claiming information documents and subsequent MAC claims to OHA. In accordance with its agreement with OHA, MESD will post on secure Internet site quarterly claiming information for County’s review and approval. Steps in the approval process shall be as follows:
  - (a)** Within one week of posting by MESD of a County’s claim, OHA shall send an electronic invoice to a designated contact at County. Invoice shall bill County for State match portion of Medicaid funds, more specifically described in Exhibit A, Part 3. County shall have one week from the date it receives the invoice to review and notify the OHA Contract Administrator in writing of its disapproval—if any—of the document. At the time County disapproves a quarterly claiming information document, County must provide corrected information to OHA Contract Administrator. County shall send such notices to OHA Agreement Administrator at the address indicated on the face page of this Agreement.
  - (b)** If the County’s total Documented Time throughout a quarter’s Survey Days is equal to or greater than fifty percent (50%) of the total time County spends on all activities throughout the Survey Days, whether Documented Time or otherwise (“Total Time”), County shall provide OHA with an acceptable explanation for the percentage of Documented Time to Total Time.

If the explanation is acceptable to OHA and remains the same over time even through County’s total Documented Time throughout the Survey Days continues to be equal to or greater than fifty percent (50%) of the total time County spends on all activities throughout the Survey Days, then upon approval by

OHA, County shall maintain supporting documentation and will not be required to provide an explanation to OHA unless circumstances supporting the explanation change significantly. In that case County shall submit acceptable documentation prior to payment. OHA reserves the right to request at any time documentation concerning County's Documented Time and an explanation for that documentation.

Notwithstanding that actual percentage of Documented Time throughout the Survey Days, County shall document explanation of Documented Time for any individual that is equal to or exceeds fifty percent (50%) of that individual's Total Time throughout any Survey Day.

- (c)** County shall signify its approval of the claim by signing and dating the invoice and sending it with enclosed payment of the 50% match (as explained in Exhibit A, Part 3, paragraph 5 of this Agreement) to the address given on the invoice.
- (6)** Be responsible for creating its own claiming information documents in order to document the bases for MAC claims submitted to OHA, in the event that the Agreement between OHA and MESD expires or terminates prior to the expiration or termination of this Agreement.
- (7)** Provide OHA with its actual and current cost pool data, and Medicaid eligible percentage for the claimed quarter, within 30 days after the end of each quarterly claiming period, in the form of a quarterly report submitted in required pro forma. Cost pool data includes: the name, title, job description, salary, benefits, and other personnel expenses for each individual employee who met eligibility requirements for participation in the claimed quarter's cost pool.
- (8)** Ensure that all MAC claims for the Work are in accordance with requirements applicable to MAC claims in 2 CFR Part 200 *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* as stated in the "Standard Grant/Cooperative Agreement Terms and Conditions" of the Centers for Medicare & Medicaid Services, and the State Medicaid Plan, which are incorporated herein by this reference. The Work for which County claims reimbursement must be directly related to the administration of the State Medicaid Plan for FFP to be available.
- (9)** Obtain OHA's prior written approval of any subcontracts proposed by County for the purpose of carrying out the Work under this Agreement, by:

  - (a)** Providing OHA with a draft copy of each subcontract; and
  - (b)** Upon obtaining OHA verbal approval of each subcontract, submitting to OHA a copy of the signed subcontract.

- (10) Monitor subcontracts to ensure that the Medicaid administrative activities and costs being tracked and billed to County by subcontractors are allowable and related to the purpose of this Agreement.
- (11) Monitor compliance with the requirements of this Agreement and maintain such records that support the quarterly claiming information documents and MAC claims for the Work performed, including but not limited to: position data, and salary and benefit information pertaining to relevant cost pool members, to include clear identification of federal portions of salary and benefits and the process by which those federal funds are removed from cost pool information prior to the information's submittal to MESD. As specified by OHA, other information applicable to the Work provided under this Agreement may be required in order for OHA to approve a claim.
- (12) Upon request from OHA, the Oregon Department of Justice, Medicaid Fraud Unit, the Secretary of State's Office, or the federal government, make available all records that support the quarterly MAC claims to OHA for Work performed.
- (13) Assure that Medicaid eligible children and families receiving assistance under this Agreement are free to accept or reject Medicaid services and are free to receive such services from an enrolled provider of their choice unless otherwise restricted to a provider of the Oregon Health Plan by OHA.
- (14) Pay OHA for the State match portion of Medicaid funds for MAC claims submitted to OHA, and the OHA intergovernmental charge, as more specifically described in Exhibit A, Part 3.
- (15) Use the OHA-provided Medicaid-eligible percentage for County in its cost calculations unless another statistically based calculation has been approved by OHA.

**b. OHA responsibilities. OHA will:**

- (1) In accordance with Section 2.a.(3) of this Exhibit, upon receipt of a signed invoice and payment from County of its 50 percent match in accordance with its approval of the claiming information produced by MESD, submit the resulting MAC claim to the federal government for payment.
- (2) Within 30 days of receipt of the County's match, pay the County's claim for the quarter.
- (3) When requested by County, provide technical assistance and training to County, its employees, all County subcontractors and County subcontractors' employees on the use of MESD's web-based Time

Study tool and Activity Codes, and all other processes and claiming information documents necessary for County's MAC claims.

- (4)** Assist County in the review of and provide comments on the subcontracts between County and its subcontractors to carry out Work under this Agreement. OHA's review of subcontracts is not made for the purpose of providing legal advice to County. OHA will provide written approval of any subcontracts proposed by the County.
- (5)** Provide assistance to County in the identification of Medicaid administrative activities eligible for reimbursement under this Agreement and reimburse County as described in Exhibit A, Part 3.
- (6)** Provide County—through access to Medicaid Administrative Claiming Public Health Manual Version 5.0, and materials available on the MAC Support page of the Multnomah Education Services District website—with clear and up-to-date guidance on rules, protocols, and procedures required for accurate and timely execution of its MAC program in support of its claims.
- (7)** Assist County in responding to any federal Medicaid compliance issues.

## **EXHIBIT A**

### **Part 2 Payment and Financial Reporting**

#### **1. Summary of Medicaid Payment Methodology**

County shall send all invoices to OHA Receiving Unit at the address specified on invoice, or to any other address as OHA may indicate in writing to County. County's claims to OHA for overdue payments on invoices are subject to ORS 293.462.

Under Title XIX of the Act, the federal government and states share the cost of providing allowable Medicaid administrative activities. The State share for Medicaid administrative activities County will provide under this Agreement is 50% (fifty percent) of the total allowable costs attributable to Medicaid administrative activities. County shall pay to OHA, through an Intergovernmental Transfer (IGT) that is in accordance with Section 1903(w)(7)(G) of the Act, 50% (fifty percent) of the total allowable costs of providing Medicaid administrative activities, which represents the State match portion of the Medicaid expenditures.

The State match funds County transfers to OHA shall be public funds that are not federal funds, or shall be federal funds authorized by federal law to be used to match other federal funds. OHA shall then pay County the total allowable costs of providing Medicaid administrative activities in arrears on a quarterly basis. OHA shall claim the FFP amount from CMS.

Allowable administrative Medicaid costs are separate from any other direct Medicaid or other services that may be provided by County pursuant to separate Medicaid funding agreements or authorizations. Duplicate payments are not allowable when determining administrative costs under Medicaid. Payments for allowable activities must not duplicate payments that have been or should have been included and paid as part of a rate for services, part of a capitation rate, or through some other local, State or federal program. Medicaid administrative costs may not be claimed for activities that are integral parts or extensions of medical services. Furthermore, in no case shall County be reimbursed more than the actual cost of the activities claimed by County under this Agreement.

- 2.** Payment for all Work performed under this Agreement shall be subject to the provisions of ORS 293.462. The maximum, not to exceed amount payable to County for providing Medicaid administrative activities under this Agreement is specified in Section 3 of this Agreement. OHA will only pay for Work performed and documented in accordance with Exhibit A, Part 2, Section 2.a., of this Agreement, and otherwise permitted by Medicaid.
- 3.** County shall reimburse OHA 50% (fifty percent) of the amounts paid to County under this Agreement for the State match portion, as specified in Paragraph 5 below.
- 4.** For purposes of this Agreement, all MAC claims submitted to OHA are deemed to be submitted by County. County shall submit MAC claims for Medicaid allowable administrative activities only. Medicaid does not pay for administrative expenditures



related to, or in support of, services that are not included in the State Medicaid Plan, the Oregon Health Plan, or services which are not reimbursed under Medicaid.

- 5.** County shall submit to MESD quarterly, in arrears, all cost pool data, utilizing the MESD web-based time study tool, for the Medicaid administrative costs claimed under this Agreement. County shall review the amount of Medicaid administrative costs as calculated by the MESD web-based time study tool, and shall approve these costs as the County's claim, when the County agrees that the calculation is correct. The costs shall be calculated by the MESD tool, according to the federal formula, which is found in the Medicaid Administrative Claiming Public Health Manual, Version 5.0, and provided to the County by OHA.

  - a.** County shall pay by IGT to OHA quarterly upon invoice from OHA for:

    - (1)** The State match portion which is equal to 50% (fifty percent) of the amount claimed by County and accepted by OHA for the total allowable Medicaid administrative costs; and
    - (2)** An OHA quarterly intergovernmental charge of \$65.00 per cost pool member, this charge to be assessed for all quarters.
  - b.** OHA will reimburse County in arrears on a quarterly basis for the total allowable costs of providing Medicaid administrative activities.
- 6.** County certifies by its signature to this Agreement that for the purposes of 42 CFR § 433.51, the funds it transfers to OHA pursuant to this Agreement are public funds that are not federal funds, or are federal funds authorized by federal law to be used to match other federal funds. County further certifies by its signature to this Agreement that these funds will not be committed or earmarked for non-Medicaid activities, nor will be contractually obligated for provision of health care services to the indigent or for any other non-Medicaid activity.
- 7.** County shall be financially responsible for the final amount of any claim for services provided under this Agreement that CMS or OHA finds unallowable under the Medicaid program. In the event CMS or OHA finds any costs claimed by County unallowable, OHA shall provide County written notice identifying the amount that must be refunded to CMS or OHA. Within thirty (30) calendar days of OHA's notice, County shall either (1) Make a payment to OHA for the full amount of the unallowable cost identified by OHA in its notice; or (2) Notify OHA in writing that County wishes to repay the unallowable amount from future payments or other means. OHA may then offset the unallowable amount from future payments owed to County under this Agreement, or any payment to County from OHA under any other contract or agreement between County and OHA, present or future. Nothing in this section shall be construed as a waiver by either party of any process or remedy that might otherwise be available. The rights and remedies of OHA set forth in this section shall not be exclusive and are in addition to any other rights and remedies provided to OHA by law or under this Agreement.
- 8.** OHA will not reimburse County for any additional expenses under this Agreement.

## EXHIBIT A

### Part 3 Special Provisions

#### 1. Confidentiality of Client Information.

- a. All information as to personal facts and circumstances obtained by 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 client's guardian, or the responsible parent when the client is a minor child, or 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. OHA, County and any subcontractor will share information as necessary to effectively serve OHA clients.

#### 2. Amendments.

- a. OHA reserves the right to amend or extend the Agreement under the following general circumstances:
  - (1) OHA may extend the Agreement for additional periods of time up to a total Agreement period of **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 OHA's satisfaction with performance of the work or services provided by County under this Agreement.
  - (2) OHA 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 OHA so chooses. Any negotiation of increases in rates to implement a COLA will be as directed by the Oregon State Legislature.
- b. OHA further reserves the right to amend the Statement 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.

**3. County Requirements to Report Abuse of Certain Classes of Persons.**

- a. County shall comply with, and cause all employees to comply with, the applicable laws for mandatory reporting of abuse for certain classes of persons in Oregon, including:
  - (1) Children (ORS 419B.005 through 419B.045);
  - (2) Elderly Persons (ORS 124.055 through 124.065);
  - (3) Adults with Mental Illness or Developmental Disabilities (ORS 430.735 through 430.743);
- b. County shall immediately make reports of suspected abuse of persons who are members of the classes established in Section 3.a. above to Oregon’s Statewide Abuse Reporting Hotline: 1-855-503-SAFE (7233) or local law enforcement, as a requirement of this Agreement. The County does not need to know abuse occurred, just suspect abuse, to be required to report.
- c. In addition to the requirements of Sections 3.a. and 3.b. above, if law enforcement is notified regarding a report of child abuse, neglect, or threat of harm, County shall also notify the local Child Protective Services Office of the Oregon Department of Human Services within 24 hours. If law enforcement is notified regarding a report of abuse of elderly, long term care facility residents, adults with mental illness or developmental disabilities, County shall also notify the local Aging and People with Disabilities Office of the Oregon Department of Human Services within 24 hours.
- d. If known, the abuse report must contain the following:
  - (1) The name and address of the abused person and any people responsible for that person’s care;
  - (2) The abused person’s age;
  - (3) The nature and the extent of the abuse, including any evidence of previous abuse;
  - (4) The explanation given for the abuse;
  - (5) The date of the incident; and
  - (6) Any other information that might be helpful in establishing the cause of the abuse and the identity of the abuser.

**4. Background Checks. Reserved.**

5. **Equal Access to Services.** County shall provide equal access to covered services for both males and females under 18 years of age, including access to appropriate facilities, services and treatment, to achieve the policy in ORS 417.270.
6. **Media Disclosure.** County will not provide information to the media regarding a recipient of services purchased under this Agreement without first consulting the OHA office that referred the child or family. County will make immediate contact with the OHA office when media contact occurs. The OHA office will assist County with an appropriate follow-up response for the media.
7. **Nondiscrimination.** County must provide services to OHA clients without regard to race, religion, national origin, sex, age, marital status, sexual orientation or disability (as defined under the Americans with Disabilities Act). Contracted services must reasonably accommodate the cultural, language and other special needs of clients.

## 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 arises from or relates to this Agreement shall be brought and conducted solely and exclusively within a circuit court for 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 OHA, 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. Nothing in this Agreement shall require County or OHA to act in violation of state or federal law or the Constitution of the State of Oregon.
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.** OHA represents and warrants as follows:

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

(3) **Binding Obligation.** This Agreement has been duly executed and delivered by OHA and constitutes a legal, valid and binding obligation of OHA, 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 OHA receiving funding, appropriations, limitations, allotment, or other expenditure authority sufficient to allow OHA, 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 OHA. 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. OHA 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). 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 OHA. 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 OHA on an OHA-approved form. OHA 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 OHA, result in payments to County to which County is not entitled, OHA, 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. Prior to withholding, if County objects to the withholding or the amount proposed to be withheld, County shall notify OHA that it wishes to engage in dispute resolution in accordance with Section 18 of this Agreement.

**7. Ownership of Intellectual Property.**

- a. Definitions.** As used in this Section and elsewhere in this Agreement, the following terms have the meanings set forth below:
- (1) “County Intellectual Property” means any intellectual property owned by County and developed independently from the Work.
  - (2) “Third Party Intellectual Property” means any intellectual property owned by parties other than OHA or County.
- b.** Except as otherwise expressly provided herein, or as otherwise required by state or federal law, OHA 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 County owns, County grants to OHA 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 7.b.(1) on OHA’s behalf, and (3) sublicense to third parties the rights set forth in Section 7.b.(1).
- c.** If state or federal law requires that OHA or County grant to the United States a license to any intellectual property, or if state or federal law requires that OHA or the United States own the intellectual property, then County shall execute such further documents and instruments as OHA may reasonably request in order to make any such grant or to assign ownership in the intellectual property to the United States or OHA. To the extent that OHA becomes the owner of any intellectual property created or delivered by County in connection with the Work, OHA 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.
- d.** County shall include in its subcontracts terms and conditions necessary to require that subcontractors execute such further documents and instruments as OHA may reasonably request in order to make any grant of license or assignment of ownership that may be required by federal or state law.

**8. 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 OHA 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).

9. **OHA Default.** OHA shall be in default under this Agreement upon the occurrence of any of the following events:

- a. OHA 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 OHA herein or in any documents or reports relied upon by County to measure performance by OHA is untrue in any material respect when made.

10. **Termination.**

a. **County Termination.** County may terminate this Agreement:

- (1) For its convenience, upon at least 30 days advance written notice to OHA;
- (2) Upon 45 days advance written notice to OHA, 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 OHA, if OHA 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 OHA, 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. OHA Termination.** OHA 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 OHA does not obtain funding, appropriations and other expenditure authorizations from federal, state or other sources sufficient to meet the payment obligations of OHA under this Agreement, as determined by OHA in the reasonable exercise of its administrative discretion. Notwithstanding the preceding sentence, OHA 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 OHA's legislative authorization for expenditure of funds to such a degree that OHA will no longer have sufficient expenditure authority to meet its payment obligations under this Agreement, as determined by OHA 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 OHA 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 OHA 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; or
- (6) Immediately upon written notice to County, if OHA 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.
- 11. Effect of Termination.**
- a. **Entire Agreement.**
    - (1) Upon termination of this Agreement, OHA 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 11.a., any termination of this Agreement shall not prejudice any obligations or liabilities of either party accrued prior to such termination.
- 12. 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.
- 13. Insurance.** County shall require subcontractors to maintain insurance as set forth in Exhibit C, which is attached hereto.
- 14. 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 OHA 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.
- 15. 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 OHA computer system or other OHA Information Asset for which OHA imposes security requirements, and OHA grants County or its subcontractor(s) access to such OHA 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 943-014-0300 through OAR 943-014-0320, 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 943-014-0305, as such rule may be revised from time to time.

- 16. Force Majeure.** Neither OHA 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 OHA 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. OHA 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.
- 17. Assignment of Agreement, Successors in Interest.**

  - a.** County shall not assign or transfer its interest in this Agreement without prior written approval of OHA. Any such assignment or transfer, if approved, is subject to such conditions and provisions as OHA may deem necessary. No approval by OHA of any assignment or transfer of interest shall be deemed to create any obligation of OHA 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.
- 18. 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.
- 19. Subcontracts.** County shall not enter into any subcontracts for any of the Work required by this Agreement without OHA’s prior written consent. In addition to any other provisions OHA may require, County shall include in any permitted subcontract under this Agreement provisions to require that OHA will receive the benefit of subcontractor performance as if the subcontractor were County with respect to Sections 1, 2, 3, 4, 7, 15, 16, 18, 19, 20, and 22 of this Exhibit B. OHA’s consent to any subcontract shall not relieve County of any of its duties or obligations under this Agreement.
- 20. No Third Party Beneficiaries.** OHA 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 OHA to assist and enable OHA 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.
- 21. Amendments.** 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, approved by the Oregon Department of Justice. Such amendment, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given.

22. **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.
23. **Survival.** Sections 1, 4, 5, 6, 7, 10, 12, 13, 14, 15, 18, 20, 21, 22, 23, 24, 25, 26, 27 and 28 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.
24. **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 OHA at the address or number set forth in this Agreement, or to such other addresses or numbers as either party may indicate pursuant to this section. Any communication or notice so addressed and mailed by regular mail shall be deemed received and effective five days after the date of mailing. Any communication or notice delivered by facsimile shall be deemed received and 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. Notwithstanding the forgoing, to be effective against the other party, any notice transmitted by facsimile must be confirmed by telephone notice to the other party. Any communication or notice given by personal delivery shall be deemed effective when actually delivered to the addressee.

**OHA:** Office of Contracts & Procurement  
500 Summer Street NE, E-03  
Salem, OR 97301  
Telephone: 503-945-5818

25. **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.
26. **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.
27. **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 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 County in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of 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 County is jointly liable with the State (or would be if joined in the Third Party Claim), 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 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 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. 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.

- 28. 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.
- 29. Stop-Work Order.** OHA may, at any time, by written notice to 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, OHA 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 10. Termination.

If the Stop Work Order is canceled, OHA may, after receiving and evaluating a request by 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**

Local Government shall require its first-tier Contractor(s) (Contractor) that are not units of local government as defined in ORS 190.003, if any, to:

- i) obtain the insurance specified under TYPES AND AMOUNTS and meet the requirements under ADDITIONAL INSURED, CONTINUOUS CLAIMS MADE COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before the Contractor(s) perform under contracts between Local Government 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 authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Agency.

Local Government shall not authorize Contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, Local Government shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Local Government 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, terminating the Subcontracts as permitted by the Subcontracts, or pursuing legal action to enforce the insurance requirements. In no event, shall Local Government permit a Contractor to work under a Subcontract when the Local Government 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 which the Local Government directly enters into a contract. It does not include a subcontractor with which the Contractor enters into a contract.

If Contractor maintains broader coverage and/or higher limits than the minimums shown in this insurance requirement exhibit, Agency requires and shall be entitled to the broader coverage and/or higher limits maintained by Contractor.

### **INSURANCE TYPES AND AMOUNTS**

#### **WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY:**

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide Workers' Compensation Insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements. If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain Employers' Liability Insurance coverage with limits not less than \$500,000 each accident.

If Contractor is an employer subject to any other state's workers' compensation law, Contractor shall provide Workers' compensation Insurance coverage for its employees as required by applicable workers' compensation laws including Employers' Liability Insurance coverage with limits not less



than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

As applicable, Contractor shall obtain coverage to discharge all responsibilities and liabilities that arise out of or relate to the Jones Act with limits of no less than \$5,000,000 and/or the Longshoremen's and Harbor Workers' Compensation Act.

**COMMERCIAL GENERAL LIABILITY:**

Contractor shall provide Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State of Oregon. This insurance must include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this Contract, and have no limitation of coverage to designated premises, project, or operation. Coverage must be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence and not less than \$2,000,000 annual aggregate limit.

**EXCESS/UMBRELLA INSURANCE:**

A combination of primary and Excess/Umbrella insurance may be used to meet the required limits of insurance. When used, all of the primary and Excess or Umbrella policies must provide all of the insurance coverages required herein, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Excess or Umbrella policies must be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying insurance. No insurance policies maintained by the Additional Insureds, whether primary or Excess, and which also apply to a loss covered hereunder, are to be called upon to contribute to a loss until the Contractor's primary and Excess liability policies are exhausted.

If Excess/Umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the Excess/Umbrella insurance.

**ADDITIONAL COVERAGE REQUIREMENTS:**

Contractor's insurance shall be primary and non-contributory with any other insurance. Contractor shall pay for all deductibles, self-insured retention (SIR), and self-insurance, if any.

**ADDITIONAL INSURED:**

All liability insurance, except for Workers' Compensation, Professional Liability, Directors and Officers Liability and Network Security and Privacy Liability (if applicable), required under the Subcontract must include an Additional Insured Endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor's services to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.

Regarding Additional Insured status under the General Liability policy, the State of Oregon requires Additional Insured status with respect to liability arising out of ongoing operations and completed operations. The Additional Insured Endorsement with respect to liability arising out of Contractor's ongoing operations must be on or at least as broad as ISO Form CG 20 10 and the Additional Insured

endorsement with respect to completed operations must be on or at least as broad as ISO form CG 20 37.

**WAIVER OF SUBROGATION:**

Contractor shall waive rights of subrogation which Contractor or any insurer of Contractor may acquire against the Agency or State of Oregon by virtue of the payment of any loss. Contractor must obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Agency or State of Oregon has received a waiver of subrogation endorsement from the Contractor or the Contractor’s insurer(s).

**CONTINUOUS CLAIMS MADE COVERAGE:**

If any of the required liability insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, then Contractor shall maintain Continuous Claims Made coverage, provided the effective date of the Continuous Claims Made coverage is on or before the effective date of the Contract, for a minimum of 24 months following the later of:

- (i) Contractor’s completion and Agency/Local Government’s acceptance of all Services required under the Contract, or
- (ii) Agency or Contractor’s termination of this Contract, or
- (iii) The expiration of all warranty periods provided under this Contract.

**CERTIFICATE(S) AND PROOF OF INSURANCE:**

Local Government shall obtain from the Contractor a Certificate(s) of Insurance for all required insurance before Contractor delivers any goods and performs any Services required under this Contract. The Certificate(s) must list the State of Oregon, its officers, employees, and agents as a certificate holder and as an endorsed Additional Insured. The Certificate(s) of Insurance must also include all required endorsements or copies of the applicable policy language effecting coverage required by this Contract. If Excess/Umbrella Insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the Excess/Umbrella Insurance. As proof of insurance, Agency/Local Government has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Contract.

**NOTICE OF CHANGE OR CANCELLATION:**

The Contractor or its insurer must provide at least 30 days’ written notice to Local Government before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

**INSURANCE REQUIREMENT REVIEW:**

Contractor agrees to periodic review of insurance requirements by Agency/Local Government under this agreement and to provide updated requirements as mutually agreed upon by Contractor and Agency/Local Government.

**STATE ACCEPTANCE:**

All insurance providers are subject to Agency/Local Government acceptance. If requested by Agency/Local Government, Contractor shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to Agency/Local Government’s representatives responsible for verification of the insurance coverages required under this Exhibit.

## EXHIBIT D

### Federal Terms and Conditions

**General Applicability and Compliance.** Unless exempt under 45 CFR 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 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 Oregon 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 OHA, 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.** By signing this Agreement, 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, County shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
  - c.** 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.
  - d.** 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.
  - e.** No part of any federal funds paid to County under this Agreement shall be used, other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the United States Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government itself.

- f. No part of any federal funds paid to County under this Agreement shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the United States Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.
  - g. The prohibitions in subsections (e) and (f) of this Section shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.
  - h. No part of any federal funds paid to County under this Agreement may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under Section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance of that federally sponsored clinical trials are being conducted to determine therapeutic advantage.
- 6. 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.
- 7. Audits.**
- a. County shall comply, and require all subcontractors to comply, with applicable audit requirements and responsibilities set forth in this Agreement and applicable state or federal law.
  - b. If County expends \$750,000 or more in federal funds (from all sources) in a federal fiscal year, County shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR Subtitle B with guidance at 2 CFR Part 200. Copies of all audits must be submitted to DHS within 30 days of completion. If County expends less than \$750,000 in a fiscal year, County is exempt from Federal audit requirements for that year. Records must be available as provided in Exhibit B, “Records Maintenance, Access”.
- 8. 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

Non-procurement 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.

9. **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.).
10. **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 Part 431.107(b)(1) & (2).
  - b. Comply with all disclosure requirements of 42 CFR Part 1002.3(a) and 42 CFR Part 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 Part 431.107(b)(4), and 42 CFR Part 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 contract) for furnishing Medicaid health care items or services shall, as a condition of receiving such payments, adopt written fraud, waste and abuse policies and procedures and inform employees, contractors and agents about the policies and procedures in compliance with Section 6032 of the Deficit Reduction Act of 2005, 42 U.S.C. Section 1396a(a)(68).
11. **Agency-based Voter Registration.** If applicable, 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.
12. **Disclosures.**
  - a. 42 CFR Part 455.104 requires the State Medicaid agency to obtain the following information from any provider of Medicaid or CHIP services, including fiscal agents of providers and managed care entities: (1) the name and address

(including the primary business address, every business location and P.O. Box address) of any person (individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity; (2) in the case of an individual, the date of birth and Social Security Number, or, in the case of a corporation, the tax identification number of the entity, with an ownership interest in the provider, fiscal agent or managed care entity or of any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest; (3) whether the person (individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling, or whether the person (individual or corporation) with an ownership or control interest in any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling; (4) the name of any other provider, fiscal agent or managed care entity in which an owner of the provider, fiscal agent or managed care entity has an ownership or control interest; and, (5) the name, address, date of birth and Social Security Number of any managing employee of the provider, fiscal agent or managed care entity.

- b.** County shall furnish to the State Medicaid agency or to the Health and Human Services (HHS) Secretary, within 35 days of the date of the request, full and complete information about the ownership of any subcontractor with whom County has had business transactions totaling more than \$25,000 during the previous 12 month period ending on the date of the request, and any significant business transactions between County, and any wholly owned supplier or between County and any subcontractor, during the five year period ending on the date of the request. See, 42 CFR 455.105.
- c.** 42 CFR Part 455.434 requires as a condition of enrollment as a Medicaid or CHIP provider, to consent to criminal background checks, including fingerprinting when required to do so under state law, or by the category of the provider based on risk of fraud, waste and abuse under federal law.
- d.** As such, County must disclose any person with a 5% or greater direct or indirect ownership interest in County whom has been convicted of a criminal offense related to that person's involvement with the Medicare, Medicaid, or Title XXI program in the last 10 years.
- e.** County shall make the disclosures required by this Section 12. to OHA. OHA reserves the right to take such action required by law, or where OHA has discretion, as it deems appropriate, based on the information received (or the failure to receive information) from the provider, fiscal agent or managed care entity.

**13. Federal Intellectual Property Rights Notice.** The federal funding agency, as the awarding agency of the funds used, at least in part, for the Work under this Agreement, may have certain rights as set forth in the federal requirements pertinent to these funds.

For purposes of this subsection, the terms “grant” and “award” refer to funding issued by the federal funding agency to the State of Oregon. County agrees that it has been provided the following notice:

- a. The federal funding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the Work, and to authorize others to do so, for Federal Government purposes with respect to:
  - (1) The copyright in any Work developed under a grant, subgrant or contract under a grant or subgrant; and
  - (2) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.
- b. The parties are subject to applicable federal regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.”
- c. The parties are subject to applicable requirements and regulations of the federal funding agency regarding rights in data first produced under a grant, subgrant or contract under a grant or subgrant.

**14. Super Circular Requirements.** 2 CFR Part 200, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, including but not limited to the following:

- a. **Property Standards.** 2 CFR 200.313, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, which generally describes the required maintenance, documentation, and allowed disposition of equipment purchased with federal funds.
- b. **Procurement Standards.** When procuring goods or services (including professional consulting services), applicable state procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C or 2 CFR §§ 200.318 through 200.326, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, as applicable.
- c. **Contract Provisions.** The contract provisions listed in 2 CFR Part 200, Appendix II, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, that are hereby incorporated into this Exhibit, are, to the extent applicable, obligations of County, and County shall also include these contract provisions in its contracts with non-Federal entities.

**15. Federal Whistleblower Protection.** County shall comply, and ensure the compliance by subcontractors or subgrantees, with 41 U.S.C. 4712, Enhancement of contractor protection from reprisal for disclosure of certain information.



## AGENDA ITEM REQUEST



**Date:** 8/06/2024

**Meeting date desired:** 8/14/2024

**Subject:**

**Airport – Professional Services Agreement / Precision Approach Engineering Inc.**

**Background and policy implications:**

FAA requires airport sponsors to contract with qualified consultants for planning, engineering, design and construction management as they relate to FAA/AIP funded projects. The airport has selected a qualified consultant through an RFQ procurement process and has selected Precision Approach Engineering Inc. to contract services for five years.

**Budget/fiscal impacts:**

Consultant fees for services will typically be paid with a Task order/contract for specific FAA funded projects approved by the County.

**Requested by:**

*Kelly Coffelt Airport Manager.*

**Presenters:**

*Kelly Coffelt – Airport Manager*

**Legal review (only if requested):**

*John Eisler*

## **PERSONAL SERVICES CONTRACT**

This Personal Services Contract (Agreement) by and between Precision Approach Engineering, Inc. (“Consultant” or “Contractor”) and Crook County, a political subdivision of the State of Oregon (“County” or “Owner”), effective \_\_\_\_\_, 2024 , authorizes Consultant to carry out and complete the services as described below in consideration of the mutual covenants set forth herein. County and Consultant may hereinafter be referred to as the “Parties” or individually as a “Party.”

### RECITALS

WHEREAS, County intends to utilize professional airport consulting and engineering assistance to be accomplished over the course of one or more projects and is seeking to obtain airport consulting, planning, engineering, and construction management services from the Consultant; and

WHEREAS, the County intends to identify specific work items, hereinafter called Task Order(s), for the Consultant to perform for which the Consultant will provide cost estimates for each Task Order and said estimates, upon agreement by County, will be attached and become a part of this Agreement, and that said attachment(s) are hereinafter called the Project; and

WHEREAS, County intends to seek appropriate state agency and federal assistance for the PROJECT(s) and the Consultant will assist County in these endeavors.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto do mutually agree as follows:

#### **I. ENGAGEMENT OF CONSULTANT**

The County hereby engages the Consultant and the Consultant accepts and agrees to perform professional project assistance for County. Upon receipt of a signed Task Order including scope of work from the County, the Consultant will prepare a Scope of Work and associated project estimates. Upon acceptance of the Project by County, the Consultant will assist County in obtaining any available state agency and federal funding assistance. The Task Orders to be issued by the County include, but are not limited to, the following:

- (a) Design of airfield improvements;
- (b) Services during construction; and
- (c) General consulting services.

County reserves the right to issue all, some, or none of these Task Orders.

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## II. COUNTY'S RESPONSIBILITIES

County, in consideration of the above commitments by the Consultant, does hereby agree as follows:

- (a) To offer by Task Order any and all requirements the County might have for professional aviation consulting and engineering assistance to the Consultant.
- (b) The County shall make available to the Consultant all technical data, including maps, surveys, property descriptions, borings, and other information in the County's possession that contains pertinent information required by the Consultant relating to his work.
- (c) The County shall provide access to the site as necessary to perform the engineering services.
- (d) The County agrees to cooperate with the Consultant in the approval of all plans and specifications. Timely decisions shall be made, should the County disapprove of any part of said plans and specifications in order that no undue expenses will be caused the Consultant. If the Consultant is caused extra drafting or other expenses due to changes ordered by the County after the completion and approval of the plans and specifications, the Consultant shall be paid for such extra expenses and services involved.

## III. COMPENSATION FOR CONSULTANT'S SERVICES

The County will pay the Consultant the appropriate fee as complete compensation for all services rendered as herein agreed:

### A. Services.

County will pay the Consultant for the services set forth in Article I, a lump sum fee or on an hourly basis, in accordance with the Consultant's Hourly Rates attached to the appropriate Task Order agreement and direct nonsalary expenses at actual cost for each project, unless another compensation expense type is agreed upon and as established in the Task Order. Consultant fee and work effort will be included as part of any state agency or federal grant and Consultant's fee will be reimbursed and work effort defined to the extent approved and reimbursed by the grant. Notwithstanding the foregoing, County shall pay Consultant for services rendered.

### B. Requested Services.

County shall pay the Consultant for any specific service requested in writing by County set forth in Article I, in accordance with the compensation described in each Task Order and direct nonsalary expenses, as defined below. It is understood that the Consultant will be compensated only for specific requests by County for services.

### C. Additional Services.

Any amount over the estimated cost for the services as set forth in a Task Order or work beyond the scope of each Project will be negotiated and agreed upon between County and the Consultant in writing. A Task Order amendment prepared prior to the beginning of additional work shall be signed by the parties.

**D. Direct Nonsalary Expenses.**

The Consultant's direct nonsalary expenses are defined as the costs incurred on or directly for the Project, other than payroll cost. Such direct nonsalary expenses shall be computed on the basis of actual purchase price for items obtained from commercial sources and on the basis of usual commercial charges for items provided by the Consultant. Direct nonsalary expense shall include, but not be limited to, necessary transportation cost, including mileage at the rate per mile as specified in the appropriate Task Order when automobiles are used and standard rates when aircraft are used, meals and lodging, laboratory tests and analyses, equipment rental, postage, shipping, printing, binding, and copying charges.

**E. Special Services.**

In the event of legal or other controversy not directly caused in whole or in part by the Consultant's negligence, but requiring the services of the Consultant, County shall pay the Consultant for services rendered in regard to such legal or other controversy, in accordance with the Consultant's Hourly Rates attached to the associated Task Order agreement or as amended and approved by the County for subsequent years, accordingly, and direct nonsalary expenses at actual cost, in addition to other sums of money payable under this Agreement.

**F. Standard of Care.**

The standard of care applicable to Consultant's services will be the degree of skill and diligence normally employed by professional engineers or consultants performing the same, or similar, services. The Consultant will re-perform services not meeting this standard without additional compensation.

**G. Payment by County.**

County shall pay the Consultant for professional services performed under this Agreement for services performed during monthly billing periods within 45 days of receipt of invoice for services. No reduction shall be made from the Consultant's fee on account of penalty, liquidated damages, or other sums withheld from payment to any other party.

**H. Submittal of W-9 before Payment.**

Consultant must provide County with a fully completed W-9 form upon execution of the Agreement and prior to beginning services. Consultant will not be paid until a fully completed W-9 form is submitted.

**IV. RESERVATIONS AND COMPLIANCE**

**A. Access to Books and Records.**

County, the funding state agency, and the FAA or any of their duly authorized representatives shall have access to any books, documents, papers, and all other records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts. All documents shall be retained a minimum of five (5) years or as required by law. All documents produced under this Agreement become the property of the County.

**B. Compliance with Laws.**

In performing its services under the Agreement, Consultant shall comply with applicable federal, state, and local laws, ordinances, and regulations in effect at the time the services are performed, including the public contract laws of the State of Oregon, the provisions of which are hereby incorporated by reference.

**C. No Collusion.**

County and the Consultant hereby certify that the Consultant has not been required, directly or indirectly, as an express implied condition in connection with obtaining or carrying out this contract to:

- (a) Employ or retain, or agree to employ or obtain, any firm or persons.
- (b) Pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind.

**D. Contractor Status.**

Consultant certifies it is a “Contractor” under ORS 670.600 and relevant law as it pertains to this contract and as further described in incorporated Exhibit B.

**E. Title VI Assurances.**

During the performance of this Agreement, the Consultant for itself, its assignees, and successors in interest (hereinafter referred to as the Consultant), agrees as follows:

***1. Compliance with Regulations.***

The Consultant shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulation, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

***2. Nondiscrimination.***

The Consultant, with regard to the work performed by Consultant during the Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Title 49, Part 21, Section 21.5 of the Code of Federal Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulation.

***3. Solicitation for Subcontracts, Including Procurements of Materials and Equipment.***

In all solicitations, either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Consultant of the Consultant’s obligations

under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

**4. *Information and Reports.***

The Consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County, state agency, or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, order, and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses this information, the Consultant shall so certify to the County or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

**5. *Grant Funds Subrecipient.***

If this project is funded in whole or in part with grant funds received by County, Consultant, as a sub-recipient of those funds, shall fully comply with all applicable terms, conditions, and requirements of the Grant Agreement. County is required to provide the executed Grant Agreement to Consultant.

**6. *Sanctions for Noncompliance.***

In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, the County shall impose such contract sanctions as it or the FAA may determine to be appropriate including, but not limited to, withholding of payments to the Consultant under the Agreement until the Consultant complies.

**F. *Disadvantaged Business Enterprise (DBE) Assurances.***

**1. *Policy.***

It is the policy of the Department of Transportation (DOT) that disadvantaged business enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this Agreement.

**2. *DBE Obligations.***

The Consultant agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this Agreement. In this regard, the Consultant shall make all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contract. Consultant shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.

**V. *INSURANCE AND INDEMNIFICATION***

Insurance provided by Consultant will be primary and non-contributory over any other insurance provided to the Additional Insured.

**A. Required Insurance.**

Consultant shall, at its own expense, provide the following insurance:

- (a) Worker's Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers.
- (b) Professional Liability insurance with a combined single limit, or the equivalent, of not less than \$2,000,000 for each claim or incident. This is to cover damages caused by error, omission, or negligent acts related to the professional services to be provided under this contract.
- (c) Commercial General Liability insurance including Products & Completed Operations coverage with a combined single limit, or the equivalent, of not less than \$2,000,000 per occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this contract.
- (d) Automobile Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each accident for Bodily Injury and Property Damage, including coverage for owned, hired, or non-owned vehicles, as applicable.
- (e) Umbrella/Excess Liability insurance with combined single limits/or the equivalent, of not less than \$1,000,000 for Bodily Injury and Property Damage.

**B. Notice of Change or Cancellation.**

There shall be no cancellation or intent not to renew the insurance coverage(s) without 30 days' written notice from the Consultant or its insurer(s) to the County.

**C. Certificates.**

In respect to General and Automobile Liability, and Professional Liability, and as evidence of the insurance coverage required by this Agreement, the Consultant shall furnish acceptable insurance certificates, if requested by County. Consultant shall name Crook County, the City of Prineville and its elected officials, officers, and employees as Additional Insureds on any insurance policies (not including workers compensation and professional liability) required herein, but only with respect to Consultant's services to be provided under this Agreement. A copy of the Additional Insured Endorsement will be provided to the County with the Certificate of Insurance. The certificate will specify all of the parties who are additionally insured. Insuring companies or entities are subject to County's acceptance. If requested, complete copies of insurance policies, trust agreements, etc., shall be provided to the County. The Consultant shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

**D. Indemnification and Hold Harmless.**

The Consultant agrees to indemnify the County, its officers, and employees, and will hold them harmless from any and all claims, damages, losses, or liabilities to the extent caused by the negligent acts, errors, or omissions of the Consultant in the performance of services under this Agreement, but only for that portion of such claims, costs, suits, or damages that reflect the percentage of negligence of the Consultant compared to the total negligence of all persons, firms, or corporations that result in

said damage to the County. Consultant shall not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished.

On Task Order(s) issued to Consultant's subconsultants, this Agreement and relevant addendums, Task Orders, and attachments shall be included as Exhibits and incorporated into Consultant's subconsultants agreement(s). Therefore, the indemnification requirements between Consultant and Crook County will be passed through to Consultant's subconsultants.

The County agrees to indemnify the Consultant, its officers, and employees, and will hold them harmless from any and all claims, damages, losses, or liabilities to the extent caused by the negligent acts, errors, or omissions of the County in the performance of this Agreement, but only for that portion of such claims, costs, suits, or damages that reflect the percentage of negligence of the County compared to the total negligence of all persons, firms, or corporations that result in said damage to the Consultant.

If the negligent act or omission of both parties (or an entity they are legally liable for) is a cause of such damage or injury, the loss, cost, or expense shall be shared between Parties in proportion to their relative degrees of negligence. In no event shall the indemnification obligation extend beyond the date professional negligence would be barred by any applicable statute of repose or statute of limitation.

## **VI. BREACH AND DISPUTE RESOLUTION**

### **A. Breach of Contract Terms.**

Any violation or breach of terms of this Agreement on the part of the Consultant or its subcontractors may result in the suspension or termination of this Agreement or such other action that may be necessary to enforce the rights of the Parties.

County will provide Consultant written notice that describes the nature of the breach and corrective actions the Consultant must undertake in order to avoid termination of the Agreement. County reserves the right to withhold payments to Consultant until such time the Consultant corrects the breach or the County elects to terminate the Agreement. The County's notice will identify a specific date by which the Consultant must correct the breach. County may proceed with termination of the Agreement if the Consultant fails to correct the breach by the deadline indicated in the County's notice.

The duties and obligations imposed by the Agreement and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights, and remedies otherwise imposed or available by law.

### **B. Dispute Resolution.**

County and Consultant agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the provision of this Agreement or exercising their rights under law. If the parties fail to resolve a dispute through negotiation, then either or both may invoke their rights under law.



## **VII. TERMINATION**

### **A. Termination for Convenience.**

The County may, by written notice to the Consultant, terminate this Agreement for its convenience and without cause or default on the part of Consultant. Upon receipt of the notice of termination, except as explicitly directed by the County, the Consultant must within 3 business days discontinue all services affected.

Upon termination of the Agreement, the Consultant must deliver to the County all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

County agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services. County further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

### **B. Termination for Cause.**

Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the work per the terms and conditions of the Agreement. The party initiating the termination action must allow the breaching party an opportunity to dispute or cure the breach.

The terminating party must provide the breaching party seven days' advance written notice of its intent to terminate the Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this agreement.

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#### ***1. Termination by County.***

The County may terminate this Agreement for cause in whole or in part, for the failure of the Consultant to:

- (a) Perform the services within the time specified in this contract or by County approved extension;
- (b) Make adequate progress so as to endanger satisfactory performance of the Project; or
- (c) Fulfill the obligations of the Agreement that are essential to the completion of the Project.

Upon receipt of the notice of termination, the Consultant must within 3 business days discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, the Consultant must deliver to the County all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

County agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services. County further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

If, after finalization of the termination action, the County determines the Consultant was not in default of the Agreement, the rights and obligations of the parties shall be the same as if the County issued the termination for the convenience of the County.

## ***2. Termination by Consultant.***

The Consultant may terminate this Agreement for cause in whole or in part, if the County:

- (a) Defaults on its obligations under this Agreement;
- (b) Fails to make payment to the Consultant in accordance with the terms of this Agreement; or
- (c) Suspends the project for more than 180 days due to reasons beyond the control of the Consultant.

Upon receipt of a notice of termination from the Consultant, County agrees to cooperate with Consultant for the purpose of terminating the agreement or portion thereof, by mutual consent. If County and Consultant cannot reach mutual agreement on the termination settlement, the Consultant may, without prejudice to any rights and remedies it may have, proceed with terminating all or parts of this Agreement based upon the County's breach of the contract.

In the event of termination due to County breach, the Consultant is entitled to invoice County and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by the Consultant through the effective date of termination action. County agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

## ***3. Sufficient Appropriation.***

Notwithstanding any other provision of this Agreement, County shall not be obligated for Contractor's performance hereunder or by any provision of this Agreement during any of County's future fiscal years unless and until Crook County appropriates funds for this Agreement in County's budget for such future fiscal year. In the event that funds are not appropriated for this Agreement, then this Agreement shall terminate as of June 30 of the last fiscal year for which funds were appropriated.

## **VIII. GENERAL PROVISIONS**

### **A. Notices.**

The Parties are required to update the information in this section. Notices required pursuant to the provisions of this Agreement shall be conclusively determined to have been delivered (i) when hand-delivered to the other Party at such addresses listed below, or at such other addresses as the receiving Party may designate by proper notice to the sending Party, or (ii) three days after being deposited in the United States Mail, postage prepaid, addressed as follows:

To County:  
Crook County  
Attn: Commissioner Brian Barney  
300 NE 3<sup>rd</sup> St.  
Prineville, OR 97754

To Consultant:  
  
Precision Approach Engineering, Inc.  
Attn: Corley McFarland, President  
5125 SW Hout Street  
Corvallis, OR 97333

With a copy to:  
Crook County Counsel  
300 NE 3<sup>rd</sup> Street  
Prineville, OR 97754

### **B. Entire Agreement.**

This Agreement signed by both parties is the final and entire agreement and supersedes all prior and contemporaneous oral or written communications between the parties, their agents, and representatives.

### **C. Amendments.**

The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever, without prior written approval of County. No modification of this Agreement shall bind either party unless reduced to writing and subscribed by both parties or ordered by a court of competent jurisdiction.

### **D. Assignment.**

Consultant shall not assign, sell, transfer, or sublet rights under this agreement, in whole or in part, without the prior written approval of County. No such written approval shall relieve Consultant of any obligations of this Agreement, and any transferee or subcontractor shall be considered the agent of Consultant. Consultant shall remain liable as between the original parties to this Agreement as if no such assignment had occurred.

### **E. Sub-Agreements.**

If this project is funded in whole or in part with grant funds received by County, Consultant, as a sub-recipient of those funds, shall fully comply with all applicable terms, conditions, and

requirements of the Grant Agreement, including but not limited to procurement regulations, property and equipment management and records, indemnity, and insurance provisions.

**F. Successors in Interest.**

The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties to this Agreement and their respective successors and assigns.

**G. Authorized Signatures Required.**

Only those persons authorized by the Crook County Purchasing Rules and Procedures may enter into a binding agreement or contract, including a purchase order, for the purchase or sale of goods or services on the part of the County. All persons doing business with the County shall be responsible for being familiar with the Crook County Purchasing Rules and Procedures and for ensuring that the person purporting to act for the County has been duly authorized.

**H. No Encumbrances.**

Any property delivered or granted to County under this Agreement, and Consultant's Services rendered in the performance of Consultant's obligations under this Agreement, shall be provided to County free and clear of any and all restrictions on, or conditions of, use, transfer, modification, or assignment, and shall be free and clear of any and all liens, claims, mortgages, security interests, liabilities, charges, and encumbrances of any kind.

**I. No Authority to Bind Crook County.**

Consultant has no authority to enter into contracts on behalf of County. This Agreement does not create a partnership between the parties.

**J. Governing Law and Venue.**

Any dispute under this Agreement shall be governed by Oregon law, with venue being located in Crook County, Oregon.

**K. Attorney Fees.**

In the event an action, lawsuit, or proceeding, including appeal therefrom, is brought for failure to observe any of the terms of this Agreement, each party shall bear its own attorney fees, expenses, costs, and disbursements for said action, lawsuit, proceeding, or appeal.

**L. Waiver.**

The failure of either Party, at any time, or from time to time, to enforce any of the terms of this Agreement shall not be construed to be a waiver of such term, or of such Party's right to thereafter enforce each and every provision of the Agreement.

**M. Severability.**

If any provision of this Agreement is declared by a court 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 provision held to be invalid.

**N. Confidentiality.**

With respect to any information supplied in connection with this Agreement, and designated by either Party as confidential, the recipient agrees, subject to Oregon Public Records Laws, to protect the confidential information in a reasonable and appropriate manner, and use and reproduce the confidential information only as necessary to perform its obligations under this Agreement or as otherwise required by law, rule, or regulation, or to fulfill professional obligations and standards and for no other purpose. For clarity, confidential information shall include all Personal Data, and County Data. Notwithstanding the foregoing, the obligations in this section will not apply to information which is: (a) publicly known; (b) already known to the recipient; (c) lawfully disclosed by a third party; (d) independently developed by the recipient without benefit of the disclosing Party's confidential information; or (e) disclosed pursuant to legal requirement or order.

If either Party receives a subpoena or other validly issued administrative or judicial demand requiring it to disclose the other Party's confidential information, recipient shall, unless prohibited by law, provide prompt written notice to disclosing Party of such demand in order to permit it to seek a protective order. So long as recipient gives notice as provided herein, recipient shall be entitled to comply with such demand to the extent required by law, subject to any protective order or the like that may have been entered in the matter.

**O. Federal Employment Status.**

In the event payment made pursuant to this Agreement is to be charged against federal funds, Consultant hereby certifies that it is not currently employed by the Federal Government and the amount charged does not exceed Consultant's normal charge for the type of services provided.

**P. Compliance with All Government Regulations.**

Consultant shall comply with all Federal, State, and local laws, codes, regulations, and ordinances applicable to the work performed under this Agreement. Failure to comply with such requirements shall constitute a breach of contract and shall be grounds for termination of this Agreement. Damages or costs resulting from noncompliance shall be the sole responsibility of Consultant.

**Q. Force Majeure.**

Neither Party to this Agreement shall be held responsible for delay or default caused by fire, riot, acts of God, and/or war which is beyond that Party's reasonable control. County may terminate this Agreement upon written notice after determining such delay or default will unreasonably prevent successful performance of the Agreement.

**R. Rights in Data.**

All original written material, including programs, card decks, tapes, listings, and other documentation originated and prepared for County pursuant to this Agreement, shall become exclusively the property of County. The ideas, concepts, know-how, or techniques developed during the course of

this Agreement by Consultant personnel can be used by either Party in any way it may deem appropriate. Material already in Consultant's possession, independently developed by Consultant, outside the scope of this Agreement, or rightfully obtained by Consultant from third parties, shall belong to Consultant. This Agreement shall not preclude Consultant from developing materials which are competitive, irrespective of their similarity to materials which might be delivered the County pursuant to this Agreement. Consultant shall not, however, use any written materials development under this Agreement in developing materials for others, except as provided in this section.

**S. Assistance Regarding Patent and Copyright Infringement.**

In the event of any claim or suit against County on account of any alleged patent or copyright infringement arising out of the performance of this Agreement or out of the use of any material furnished or work or services performed hereunder, Consultant shall defend County against any such suit or claim and hold County harmless from any and all expenses, court costs, and attorney's fees in connection with such claim or suit.

**T. Counterparts.**

This Agreement may be executed in one or more counterparts, including electronically transmitted counterparts, which, when taken together, shall constitute one in the same instrument. Facsimiles and electronic transmittals of the signed document shall be binding as though they were an original of such signed document.

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**U. Exhibits.**

The following documents which are attached to this Agreement are incorporated herein and by this reference made part hereof:

Exhibit A: Required Terms for All Public Contracts

Exhibit B: Independent Contractor Status

Exhibit C: Protected Information

Exhibit D: Required Federal Terms  
Exhibit E: Rate Sheet

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective the date first set forth above.

For Consultant

Precision Approach Engineering, Inc.

By:

Corley McFarland

Signature

Corley McFarland

Printed Name

Title:

President

Date:

5/23/2024

For Crook County

BOARD OF COMMISSIONERS

\_\_\_\_\_  
Seth Crawford, Commissioner

Date: \_\_\_\_\_

\_\_\_\_\_  
Brian Barney, Commissioner

Date: \_\_\_\_\_

\_\_\_\_\_  
Susan Hermreck, Commissioner

Date: \_\_\_\_\_

## **EXHIBIT A**

### **REQUIRED TERMS FOR ALL PUBLIC CONTRACTS**

#### **1. PAYMENTS AND DEBTS:**

- 1.1. Contractor shall promptly, as due, make payment to:
  - 1.1.1. Any person, co-partnership, association, or corporation furnishing medical, surgical, and hospital care services, or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums that Contractor agrees to pay for the services and all moneys and sums that Contractor collected or deducted from the wages of employees under any law, contract, or agreement for the purpose of providing or paying for the services;
  - 1.1.2. All persons supplying to Contractor labor or material for the performance of the work provided for in the Agreement;
  - 1.1.3. All contributions or amounts due the Industrial Accident Fund from Contractor or subcontractor incurred in the performance of this Agreement; and
  - 1.1.4. The Department of Revenue all sums withheld from employees under ORS 316.167.
- 1.2. Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished under this Agreement.

#### **IX. EMPLOYEES:**

- 1.3. Contractor and subcontractors shall either be employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- 1.4. Contractor shall comply with the prohibition on wage discrimination of ORS 652.220; failure to do so is a material element of the contract and a breach that entitles County to terminate this Agreement for cause.
- 1.5. For all work under this Agreement, Contractor may not employ an employee for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or when the public policy absolutely requires otherwise, and in such cases, Contractor shall pay the employee at least time-and-a-half pay for:
  - (a) All overtime in excess of eight hours in any one day or 40 hours in any one week if the work week is five consecutive days, Monday through Friday; or all overtime in excess of 10 hours in any one day or 40 hours in any one week if the work week is four consecutive days, Monday through Friday; and
  - (b) All work the employee performs on Saturday and on any legal holiday specified in ORS 279B.020;
- 1.5.1. If this Agreement is for services, Contractor shall pay employees at least time-and-a-half pay for work the employees perform under this Agreement on the legal holidays specified in a collective bargaining agreement or in 279B.020 (1)(b)(B) to (G) and for all time the employees work in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater;
- 1.5.2. If this Agreement is for personal services, as described in ORS 279A.055, Contractor shall pay its employees who work under this Agreement at least time-and-a-half for all overtime the employees work in excess of 40 hours in any one week, unless said employees are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime;
- 1.5.3. If this Agreement is for services at a county fair, or for another event that Crook County Fair Board authorizes, Contractor shall pay employees who work under this Agreement at least time-and-a-half for work in excess of 10 hours in any one day or 40 hours in any one week.



- 1.6. Contractor may not prohibit any of Contractor's employees from discussing the employee's rate of wage, salary, benefits, or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits, or other compensation with another employee or another person.
- 1.7. Contractor shall give notice in writing to employees who work under this Agreement, either at the time of hire or before work begins on the Agreement, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that Contractor may require the employees to work.

**X. OTHER PROVISIONS:**

- 1.1. By executing this Agreement, Contractor represents and warrants that it has complied with the tax laws of this state or a political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318; Contractor further covenants to continue with said compliance during the term of this Agreement. Noncompliance with this provision is a default for which County may terminate the Agreement, in whole or part, and seek damages under the terms of this Agreement or applicable law.
- 1.2. If this Agreement involves lawn and landscape maintenance, Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

## EXHIBIT B

### INDEPENDENT CONTRACTOR STATUS

Contractor states and represents that contractor is an Independent Contractor as that term is defined in Oregon Revised Statute 670.600 and more specifically represents, states, and agrees that in providing the services and scope of work specified in this Agreement:

1. Contractor provides services for remuneration; and
2. Contractor is free from direction and control over the means and manner of providing the services and scope of work, subject only to the right of County to specify the desired results; and
3. Contractor is customarily engaged in an independently established business; and
4. Contractor is licensed within the state of Oregon to provide any services for which a license is required under ORS Chapter 672 or 701 and is responsible for obtaining other licenses or certificates necessary to provide the service or scope of work; and
5. Contractor complies with at least three of the following requirements:
  - (a) A business location is maintained that is separate from the business or work location of County; or is in a portion of the Contractor's residence and that portion is used primarily for the business.
  - (b) The Contractor bears the risk of loss related to the provision of services or scope of work, such as entering into a fixed price contract, defective work is required to be corrected, the services provided are warranted or indemnification agreements, liability insurance and performance bonds and errors and omissions insurance are provided.
  - (c) Contracted services for two or more different persons or entities within a twelve month period have been obtained, or routinely engaged in business advertising, solicitation, or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
  - (d) Significant investment in the business has been made such as purchasing tools or equipment, paying for premises or facilities where services are provided, paying for licenses, certificates, or specialized training.
  - (e) Possesses authority to hire other persons to assist in providing their services and has the authority to fire those persons.
6. Contractor will immediately inform County in the event that it fails to conduct its services in one or more particulars as represented in 1 through 5 above.

## EXHIBIT C

### PROTECTED INFORMATION

If Contractor obtains any personal information as defined in ORS 646A.602(12) related to this Agreement or concerning any County employee, Contractor agrees to provide appropriate safeguards to protect the security of this information. Contractor shall have provided appropriate safeguards by meeting or exceeding the requirements stated in ORS 646A.622. Furthermore:

1. **“Protected Information”** shall be defined as *data or information* that has been designated as private or confidential by law or by the County. Protected Information includes, but is not limited to, employment records, medical records, personal financial records (or other personally identifiable information), trade secrets, and classified government information. To the extent there is any uncertainty as to whether any data constitutes Protected Information, the data in question shall be treated as Protected Information until a determination is made by the County or proper legal authority.
2. **Data Confidentiality.** Contractor shall implement appropriate measures designed to ensure the confidentiality and security of Protected Information, protect against any anticipated hazards or threats to the integrity or security of such information, protect against unauthorized access or disclosure of information, and prevent any other action of unauthorized disclosure that could result in substantial harm to the County or an individual identified with the data or information in Contractor’s custody or access.

## **EXHIBIT D**

### **REQUIRED FEDERAL TERMS**

#### **I. ACCESS TO RECORDS AND REPORTS**

The Consultant must maintain an acceptable cost accounting system. The Consultant agrees to provide the Owner, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers and records of the Consultant which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Consultant agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

#### **II. GENERAL CIVIL RIGHTS PROVISIONS**

In all its activities within the scope of its airport program, the Consultant agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

##### **Title VI List of Pertinent Nondiscrimination Acts and Authorities**

During the performance of this contract, the Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the “Consultant”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);

49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);

The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);

Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and Consultants, whether such programs or activities are Federally funded or not);

Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, *et seq.*) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;

The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities

with disproportionately high and adverse human health or environmental effects on minority and low-income populations);

Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];

Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, et seq).

### III. COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS:

During the performance of this contract, the Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the “Consultant”), agrees as follows:

**Compliance with Regulations:** The Consultant (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

**Nondiscrimination:** The Consultant, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Consultant will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

**Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Consultant of the Consultant’s obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

**Information and Reports:** The Consultant will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Consultant will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

**Sanctions for Noncompliance:** In the event of a Consultant’s noncompliance with the non-discrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the Consultant under the contract until the Consultant complies; and/or
- b. Cancelling, terminating, or suspending a contract, in whole or in part.

**Incorporation of Provisions:** The Consultant will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Consultant will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Consultant becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Consultant may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Consultant may request the United States to enter into the litigation to protect the interests of the United States.

### IV. CLEAN AIR AND WATER POLLUTION CONTROL

Consultant agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 USC §§ 1251-1387). The Consultant agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

Consultant must include this requirement in all subcontracts that exceed \$150,000.

## **V. COPELAND “ANTI-KICKBACK” ACT**

Consultant must comply with the requirements of the Copeland “Anti-Kickback” Act (18 USC 874 and 40 USC 3145), as supplemented by Department of Labor regulation 29 CFR part 3. Consultant and subcontractors are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled. The Consultant and each Subcontractor must submit to the Owner, a weekly statement on the wages paid to each employee performing on covered work during the prior week. Owner must report any violations of the Act to the Federal Aviation Administration.

## **VI. TEXTING WHEN DRIVING**

In accordance with Executive Order 13513, “Federal Leadership on Reducing Text Messaging While Driving”, (10/1/2009) and DOT Order 3902.10, “Text Messaging While Driving”, (12/30/2009), the Federal Aviation Administration encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or subgrant.

In support of this initiative, the Owner encourages the Consultant to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Consultant must include the substance of this clause in all sub-tier contracts exceeding \$10,000 that involve driving a motor vehicle in performance of work activities associated with the project.

## **VII. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

Consultant and Subcontractor agree to comply with mandatory standards and policies relating to use and procurement of certain telecommunications and video surveillance services or equipment in compliance with the National Defense Authorization Act [Public Law 115-232 § 889(f)(1)].

## **VIII. EQUAL OPPORTUNITY CLAUSE**

During the performance of this contract, the Consultant agrees as follows:

(1) The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Consultant will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Consultant's legal duty to furnish information.

(4) The Consultant will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Consultant's commitments under this section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Consultant's noncompliance with the nondiscrimination clauses of this contract or with any such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Consultant may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Consultant will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Consultant will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: *Provided*, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

## **IX. CERTIFICATION REGARDING LOBBYING**

The Bidder or Offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, 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.

(2) 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 undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

## **X. PROHIBITION OF SEGREGATED FACILITIES**

(a) The Consultant agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Consultant agrees that a breach of this clause is a violation of the Equal Employment Opportunity clause in this contract.

(b) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(c) The Consultant shall include this clause in every subcontract and purchase order that is subject to the Equal Employment Opportunity clause of this contract.

## **XI. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (29 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

## **XII. TRADE RESTRICTION CERTIFICATION**

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror –

- 1) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR);
- 2) has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and
- 3) has not entered into any subcontract for any product to be used on the Federal project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18 USC § 1001.

The Offeror/Consultant must provide immediate written notice to the Owner if the Offeror/Consultant learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Consultant must require subcontractors provide immediate written notice to the Consultant if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR § 30.17, no contract shall be awarded to an Offeror or subcontractor:

- 1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR; or
- 2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list; or
- 3) who incorporates in the public works project any product of a foreign country on such USTR list.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The Consultant may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the Offeror has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Consultant or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration (FAA) may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

## **XIII. VETERAN'S PREFERENCE**

In the employment of labor (excluding executive, administrative, and supervisory positions), the Consultant and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small



business concerns (as defined by 15 USC § 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

#### **XIV. CERTIFICATION OF OFFEROR/BIDDER REGARDING DEBARMENT**

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

##### **CERTIFICATION OF LOWER TIER CONTRACTORS REGARDING DEBARMENT**

The successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a “covered transaction”, must confirm each lower tier participant of a “covered transaction” under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. The successful bidder will accomplish this by:

1. Checking the System for Award Management at website: <http://www.sam.gov>.
2. Collecting a certification statement similar to the Certification of Offeror /Bidder Regarding Debarment, above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract.

If the Federal Aviation Administration later determines that a lower tier participant failed to disclose to a higher tier participant that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedies, including suspension and debarment of the non-compliant participant.

#### **XV. DISADVANTAGED BUSINESS ENTERPRISE**

##### **DISADVANTAGED BUSINESS ENTERPRISES**

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of Department of Transportation-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Owner deems appropriate, which may include, but is not limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the Contractor from future bidding as non-responsible.

##### **Prompt Payment (49 CFR § 26.29; acceptable/sample text provided) –**

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from Crook County. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor’s work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Crook County. This clause applies to both DBE and non-DBE subcontractors.

##### **Termination of DBE Subcontracts (49 CFR § 26.53(f); acceptable/sample text provided) –**

The prime contractor must not terminate a DBE subcontractor listed in response to include Solicitation paragraph number where paragraph 12.3.1, Solicitation Language appears or an approved substitute DBE firm without prior written consent of Crook County. This includes, but is not limited to, instances in which the prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

The prime contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains written consent Crook County. Unless Crook County consent is provided, the prime contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

Crook County may provide such written consent only if Crook County agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the circumstances listed in 49 CFR §26.53.

Before transmitting to Crook County its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to Crook County, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise Crook County and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why Crook County should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), Crook County may provide a response period shorter than five days.

In addition to post-award terminations, the provisions of this section apply to preaward deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

## **XVI. FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)**

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, et seq, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

The Contractor has full responsibility to monitor compliance to the referenced statute or regulation. The Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

## **XVII. TAX DELINQUENCY AND FELONY CONVICTIONS**

### **CERTIFICATION OF OFFEROR/BIDDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS**

The applicant must complete the following two certification statements. The applicant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (✓) in the space following the applicable response. The applicant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

#### **Certifications**

1) The applicant represents that it is ( ) is not (✓) a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

2) The applicant represents that it is ( ) is not (✓) a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

#### **Note**

If an applicant responds in the affirmative to either of the above representations, the applicant is ineligible to receive an award unless the Sponsor has received notification from the agency suspension and debarment official (SDO) that the SDO has considered suspension or debarment and determined that further action is not required to protect the Government's interests. The applicant therefore must provide information to the owner about its tax liability or conviction to the Owner, who will then notify the FAA Airports District Office, which will then notify the agency's SDO to facilitate completion of the required considerations before award decisions are made.

#### **Term Definitions**

**Felony conviction:** Felony conviction means a conviction within the preceding twenty four (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. Code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 USC § 3559.

**Tax Delinquency:** A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

## **XVIII. DOMESTIC PREFERENCES FOR PROCUREMENTS**

### **CERTIFICATION REGARDING DOMESTIC PREFERENCES FOR PROCUREMENTS**

The Bidder or Offeror certifies by signing and submitting this bid or proposal that, to the greatest extent practicable, the Bidder or Offeror has provided a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to, iron, aluminum, steel, cement, and other manufactured products) in compliance with 2 CFR § 200.322.

**OREGON**  
**2024 STANDARD LABOR RATES**

Classification	2024 Rate
ADMIN 1	\$88.60
ADMIN 2	\$103.40
ADMIN 3	\$119.00
ADMIN 4	\$132.60
ADMIN 5	\$148.00
ADMIN 6	\$163.00
TECHNICIAN 1	\$118.80
TECHNICIAN 2	\$132.60
TECHNICIAN 3	\$148.00
TECHNICIAN 4	\$166.00
TECHNICIAN 5	\$185.60
TECHNICIAN 6	\$208.20
TECHNICIAN 7	\$231.00
ENGINEER 1	\$148.60
ENGINEER 2	\$166.80
ENGINEER 3	\$182.00
ENGINEER 4	\$201.80
ENGINEER 5	\$231.00
ENGINEER 6	\$262.00
ENGINEER 7	\$294.80
ENGINEER 8	\$329.00
ENGINEER 9	\$368.80

*All meals and incidentals shall be at the current federal government rate and government per diem price(s) in effect at the time the charge(s) are incurred. Consultant shall have the option to charge actual meals and incidentals, on the basis of the actual purchase price in no case shall actual purchase price exceed the per diem rate, unless otherwise agreed upon in writing.* Expense items that are incurred that are not meal and incidental related shall be expensed on the basis of the **actual purchase price** for items obtained from commercial sources and on the basis of usual commercial charges for items provided by the Consultant. Direct nonsalary expense shall include, but not be limited to, necessary transportation cost, including mileage when automobiles are used and standard rates when aircraft are used, meals and lodging, laboratory tests and analyses, equipment rental, postage, shipping, printing, binding, and copying charges.

In the event that the engineering services are required in connection with this project beyond 2024, the Consultant's Hourly Rates shall be adjusted to conform with the CONSULTANT's standard rates as established for the subsequent years.

## AGENDA ITEM REQUEST



**Date:** August 8, 2024

**Meeting date desired:** August 14, 2024

**Subject:** Transportation System Plan Update – Change of Scope (Juniper Canyon Egress Feasibility)

**Background and policy implications:** The County is working on an update to its Transportation Plan, with a focus on safety concerns and Juniper Canyon. This change of scope will ensure alternative access options are vetted to ensure the County and public understand the alternative access options as well as a general idea of the cost associated with the different options.

**Budget/fiscal impacts:** The proposed change in scope will cost \$41,751. The FY '25 Budget states that the Road Department budget includes an appropriation "of \$60,000 for a transfer to the Community Development Fund is for a feasibility study of the Juniper Canyon ingress/egress and completion of the TSP."

**Requested by:**

Will Van Vactor

will.vanvactor@crookcountyor.gov | 541.447.3211

**Presenters:**

Will Van Vactor

**Legal review (only if requested):**

**Elected official sponsor (if applicable):**

**AMENDMENT**  
To Personal Services Contract

This Amendment to Personal Services Contract is entered into by **Parametrix, Inc.** (hereinafter “Contractor”), and **Crook County**, a political subdivision of the State of Oregon (hereinafter “County”); collectively, Contractor and County may be referred to as “the Parties.”

**RECITALS**

**WHEREAS**, Contractor and County are parties to that certain Personal Services Contract (hereinafter “the Agreement”) effective August 16, 2023, for the provision of consultant services to update the County’s Transportation Systems Plan as more fully described in the Agreement; and

**WHEREAS**, the Parties wish to supplement the terms of the Agreement as modified by this Amendment.

**AGREEMENT**

**NOW, THEREFORE**, in exchange for the mutual covenants contained below, Contractor and County agree as follows:

Section One: The Recitals listed above are incorporated herein by reference.

Section Two: The Agreement’s Scope of Services in Exhibit D is hereby amended to incorporate the Juniper Canyon Egress Study, attached herein as Exhibit D-1.

Section Three: Paragraph 4 of the Agreement is hereby amended to increase the total not-to-exceed compensation by \$41,751.00, from \$204,949.00 to \$246,700.00.

Section Four: Except as altered by this Amendment, all other terms of the Agreement remain in full force and effect.

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**Section Five:** This Amendment may be executed in one or more counterparts, including electronically transmitted counterparts, which when taken together shall constitute one in the same instrument. Electronic transmittals of the signed document shall be binding as though they were an original of such signed document

IN WITNESS WHEREOF, Contractor and County have executed this Amendment effective the date last signed below.

CONTRACTOR

COUNTY

Parametrix, Inc.

Crook County Court

By: \_\_\_\_\_  
Signature

Richard Roché  
\_\_\_\_\_  
Print Name

Its  Sr. Vice President

Date:  8/14/2024

\_\_\_\_\_  
Seth Crawford, County Commissioner

\_\_\_\_\_  
Susan Hermreck, County Commissioner

\_\_\_\_\_  
Brian Barney, County Commissioner

Date: \_\_\_\_\_

8/14/24

## Juniper Canyon Egress Study Scope (Task 9)

Consultant shall develop a short memo and conceptual design(s) exploring potential egress routes from the Juniper Canyon residential area in unincorporated Crook County. The memo and associated design documents will become an appendix to *Technical Memorandum #4: Solutions Analysis* being developed separately. The purpose of this study is to establish the feasibility and costs of different egress options responding to differing needs; the needs as established through prior public outreach and staff discussions are as follows. Addressing these needs would potentially require different approaches to a new egress road:

- **Fire/emergency evacuation:** residents have longstanding concerns about the lack of redundant routes in the event of a fire or similar emergency requiring evacuation.
- **Redundant route needs in the event of incidents on Juniper Canyon Road:** the existing road is occasionally closed as a result of collisions, resulting in long backups and an inability to get to/leave the Juniper Canyon area.
- **Addressing traffic on OR 380/3<sup>rd</sup> Street/OR 126:** Juniper Canyon has been and continues to experience substantial growth. With one egress road and virtually no services in the Juniper Canyon area itself, residents drive to Prineville and beyond to reach jobs and destinations. This causes increased traffic on already congested roadways within Prineville and on OR 126 more broadly.

Consultant shall prepare up to three alternative routes that address one or more of the needs addressed above based on prior route identification and new potential connections identified in collaboration with the County.

Consultant shall use existing topographic and other data to develop a conceptual routing for each alternative. This work shall include identification of existing federal (e.g., BLM) rights-of-way within the area. Class 5 construction cost estimates will also be prepared for each estimate.

Consultant shall consider both a paved 24' (2-12' travel lanes) road and 24' gravel-surfaced road in development of the alternatives and costs, except where a gravel road would not address the need (e.g., a road intended to provide congestion reduction as an alternative to OR 380/OR 126). The feasibility assessment will include narrative and commentary on:

- Constructability issues
- Potential environmental impacts and associated permitting
- Qualitative assessment of benefit relative to cost
- Assessment of how much traffic might be drawn off of Juniper Canyon Road based on existing origin-destination information from Replica and existing traffic counts developed for the Crook County and Prineville TSPs
- ROW/property impacts

This scope assumes one virtual workshop with County staff to review previously-identified routes, identify potential new connections, and confirm approach/evaluation parameters. Up to 3

consultant staff will attend. Consultant will convene up to two additional one-hour meetings with the County and/or other parties to discuss the work.

Deliverables:

- Up to 3 meetings, including one virtual workshop, to facilitate project delivery.
- Draft and Final concept exhibits depicting up to three plan and profile alternatives with annotation/notes.
- Class 5 cost estimates (-50% to +100%) for each alternative.
- Draft and Final memo documenting the design criteria/assumptions, discussion of the feasibility of each alternative, and a recommendation for County consideration

Assumptions:

- Consultant shall not collect any new data and will rely solely on existing available data.
- County will provide data and documentation of previously-identified routes.
- No new traffic analysis will be conducted.
- No quantitative benefit/cost analysis will be conducted.

Crook County		Staff Name	R. Farncomb	E. David	J. Rykels-Wilkon	T. MacLean	K. Ely	L. Benjamin	K. Pitts	M. Pyszka	E. Needham	Labor Summary		TOTAL
Juniper Canyon Egress Study		Title/Category	Regional Division Manager	Sr Planner	Sr Engineer	Sr Scientist/Biologists	Engineer IV	GIS Technician	Sr Project Control Specialist	Sr Engineer	Planner IV	Hours	Dollars	
Project # 274-2825-006		Billing Rate	278.24	191.58	233.13	228.94	160.81	102.88	145.50	258.96	170.13			
<b>TOTAL FEE ESTIMATE</b>			\$ 3,895	\$ 9,962	\$ 2,331	\$ 2,747	\$ 16,402	\$ 2,469	\$ 582	\$ 2,072	\$ 1,701	236	\$ 42,163	\$ 42,163
<b>Task 9</b>	<b>Egress Study</b>		14	52	10	12	102	24	4	8	10	236	\$ 42,163	\$ 42,163
9.1	Meetings		4	4			6		4			18	\$ 3,426	\$ 3,426
9.2	Alternatives Development/Exhibits		4	8	8		88	16		8		132	\$ 22,379	\$ 22,379
9.3	Draft and Final Memo		6	40	2	12	8	8			10	86	\$ 16,357	\$ 16,357
<b>Total Hours</b>			14	52	10	12	102	24	4	8	10	236		
<b>TOTALS</b>			\$ 3,895	\$ 9,962	\$ 2,331	\$ 2,747	\$ 16,402	\$ 2,469	\$ 582	\$ 2,072	\$ 1,701	236	\$ 42,163	\$ 42,163



## AGENDA ITEM REQUEST



**Date:**

*August 7, 2024*

**Meeting date desired:**

*August 21, 2024*

**Subject:**

*3<sup>rd</sup> Amendment to Intergovernmental Agreement between Crook County and Jefferson County for Jail Bed Rental*

**Background and policy implications:**

*Continuation of rental bed agreement with no changes.*

**Budget/fiscal impacts:**

*None*

**Requested by:**

*Alex Solterbeck, Office Manager, Crook County Counsel*

**Presenters:**

*N/A – Consent Agenda*

**Legal review (only if requested):**

*Legal drafted*

**Elected official sponsor (if applicable):**

*N/A*

**3<sup>rd</sup> AMENDMENT TO INTERGOVERNMENTAL AGREEMENT**

This 3rd Amendment to Intergovernmental Agreement (the "3rd Amendment") is executed as of the date last signed below and effective as of June 1, 2024, by and between Crook County and Jefferson County, both political subdivisions of the State of Oregon (hereinafter collectively, the "Counties").

**RECITALS**

**WHEREAS**, the Counties entered into an Intergovernmental Agreement dated July 7, 2021 (the "IGA"), concerning the temporary housing and supervision of individual inmates from one county to the other county; and

**WHEREAS**, the term of the IGA was extended twice through Amendments 1 and 2; and

**WHEREAS**, the Counties desire to extend the term of the IGA an additional year, to May 31, 2025.


**AGREEMENT**

NOW, THEREFORE, in consideration of the matters described above and of the mutual benefits and obligations set forth in this 3rd Amendment, the parties agree as follows:

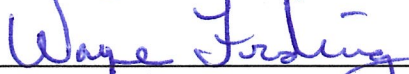
1. The term of the Agreement is hereby extended an additional year to terminate on May 31, 2025.
2. This 3rd Amendment may be executed in one or more counterparts, including electronically transmitted counterparts, which when taken together shall constitute one in the same instrument and be binding as though they were an original of such signed document.
3. In all other respects, the IGA shall remain in full force and effect.

**JEFFERSON COUNTY**

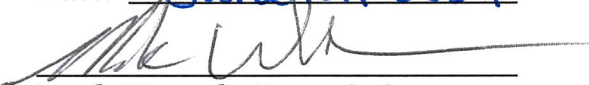
**CROOK COUNTY**

  
 \_\_\_\_\_  
 Kelly Simmelink, Commissioner  
 Date: June 12, 2024

\_\_\_\_\_  
 Seth Crawford, County Commissioner  
 Date: \_\_\_\_\_

  
 \_\_\_\_\_  
 Wayne Fording, Commissioner  
 Date: June 12, 2024

\_\_\_\_\_  
 Susan Hermreck, County Commissioner  
 Date: \_\_\_\_\_

  
 \_\_\_\_\_  
 Mark Wunsch, Commissioner  
 Date: June 12, 2024

\_\_\_\_\_  
 Brian Barney, County Commissioner  
 Date: \_\_\_\_\_

# PRINEVILLE / CROOK COUNTY AIRPORT

8/21/2024

## RUNWAY 33 / 15 RECONSTRUCTION PROJECT

- Completely demo and reconstruction of runway 33/15
- Widen from 40ft. To 60ft.
- Approximately 500'ft shorter for Highway 26 protection
- New runway lighting, signage and markings
- Magnetic variation change to 34/16



# PRINEVILLE / CROOK COUNTY AIRPORT

8/21/2024

## RUNWAY 33 / 15 RECONSTRUCTION PROJECT

- Design, Engineering and construction consultant - Precision Approach Engineering.
- Contractor - Apparent low bidder – Taylor NW



# Runway reconstruction Nov. 2024 – July 2025

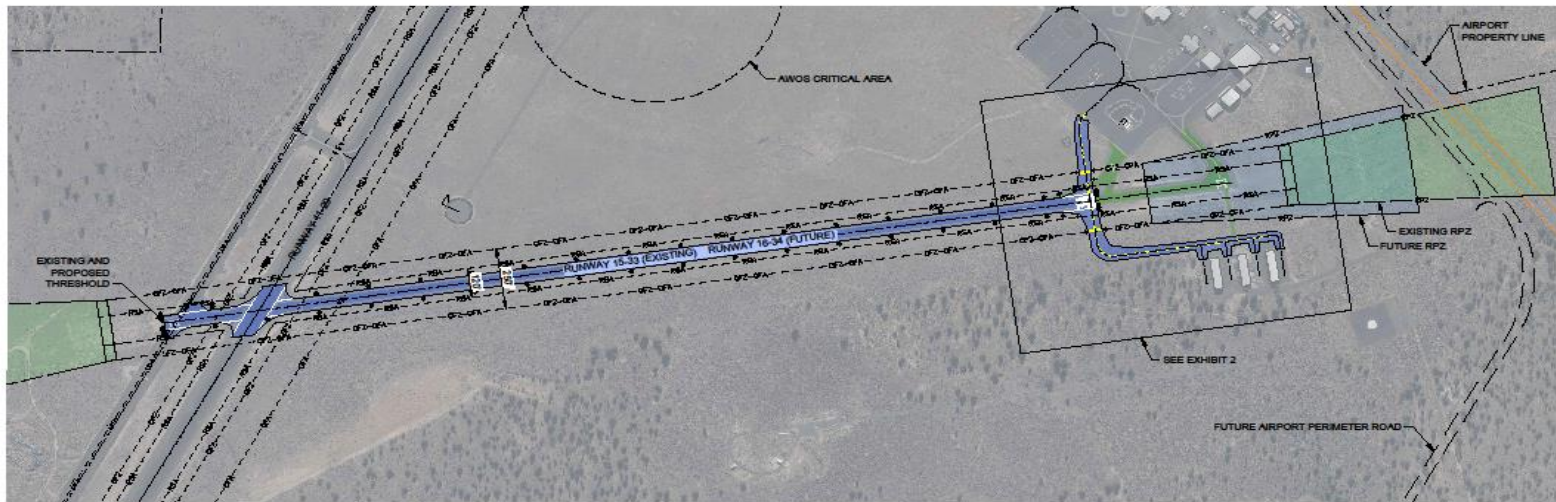


# Airport overview



2011

# Project Overview

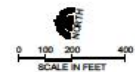


### PROJECT DESCRIPTION

- RUNWAY 15-33 RECONSTRUCTION: FULL DEPTH PAVEMENT RECONSTRUCTION
- RUNWAY 15-33 WIDENING: EXISTING 40', WIDENED TO 60' (PER ALP)
- RUNWAY 33 THRESHOLD RELOCATION: RELOCATED NORTH 517' (PER ALP)
- RUNWAY 33 CONNECTOR TAXIWAYS RELOCATED DUE TO THRESHOLD RELOCATION
- NEW PARALLEL TAXIWAY TO EXISTING HANGAR TAXILANES
- RUNWAY 15-33 MAGVAR CHANGE TO 16-34 (PER ALP)
- NEW RUNWAY 15-33 (16-34) MRE
- NEW RUNWAY 15-33 (16-34) SIGNAGE
- RUNWAY 15-33 (16-34) SHOULDER/RSA GRADING (RSA, ROFA, RSA BEYOND RUNWAY ENDS
- NEW PAVEMENT MARKING
- ASSOCIATED ELECTRICAL IMPROVEMENTS
- ASSOCIATED DRAINAGE IMPROVEMENTS INCLUDING RIW/TW UNDERDRAINS

### LEGEND

- EXISTING PAVEMENT TO BE REMOVED
- PROPOSED PAVEMENT
- PROPOSED LIGHTING



**PRELIMINARY**  
**NOT FOR CONSTRUCTION**

PRINEVILLE - CROOK COUNTY AIRPORT  
RUNWAY 15-33 RECONSTRUCTION AND ASSOCIATED IMPROVEMENTS

PROPOSED PROJECT ITEMS



EXHIBIT 1

MAY 2023

# Project Overview

Runway 33/15 project

**Legend**

- Feature 1
- Locked gate
- Untitled Path

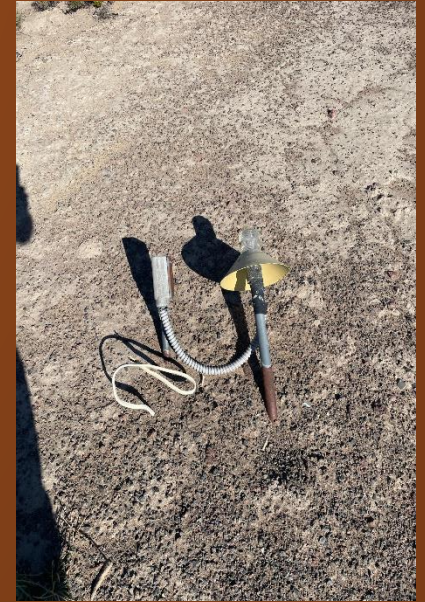




# Funding for project

- \$4,472,522 - Total project
- \$4,025,270 – FAA funded
- \$250,000 - CORE/State funds
- \$197,252 – Local / Crook County (Funds generated from airport surplus property)

# Site conditions



# Project Improvements



# Thank you



## AGENDA ITEM REQUEST



**Date:**

8/14/2024

**Meeting date desired:**

8/21/2024

**Subject:**

LaPine Community Health subcontract for Rural Behavioral Health Access – Central Oregon Health Council Pass through Grant

**Background and policy implications:**

The Central Oregon Health Council received community behavioral health funding that needed to go into the region for behavioral health. Through this pass-through grant, LaPine will be able to host a peer support specialist to build capacity of hiring, home visiting, appointment support, and other services.

**Budget/fiscal impacts:**

None

\\

**Requested by:**

Katie Plumb, Health & Human Services Director  
kplumb@crookpublichealthor.gov 541-447-5165

**Presenters:**

Katie Plumb, Health & Human Services Director

**Legal review (only if requested):**

Legal has reviewed

**Elected official sponsor (if applicable):**

## Scope of Work

Host a Peer Support Specialist to build capacity for hiring, appointment support, groups, and warm handoffs.

\*Peer Support services would be billed for and grant funds would cover any uncovered expenses related to the position.

Reduce transportation barriers to accessing in-person behavioral health services.

Provide access to a welcoming, private, and comfortable space for on-site behavioral telehealth services.

Increase community awareness of in-person behavioral health resources in LaPine

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## PROFESSIONAL SERVICES CONTRACT

CONTRACTOR: LaPine Community Health Center DATE: \_\_\_\_\_

ADDRESS: 51600 Huntington Road LaPine OR 97739  
Street Address City State Zip

PHONE NUMBER: \_\_\_\_\_ EMAIL: \_\_\_\_\_

This Professional Services Contract (Agreement) by and between LaPine Community Health Center, an Oregon nonprofit corporation (Contractor) and Crook County, a political subdivision of the State of Oregon (County), entered into this date written above, authorizes Contractor to carry out and complete the services as described below in consideration of the mutual covenants set forth herein.

1. **PROJECT:** The services as described on Exhibit D to this Agreement are to be provided by Contractor in connection with a Project identified as follows: Hosting a peer support specialist to build capacity of hiring, home visiting, appointment support, and other services.
2. **DURATION:** This Agreement shall run from the date when signed by both Parties (“effective date”) through June 30, 2025 unless terminated or extended according to the provisions of this Agreement.
3. **SCOPE OF SERVICES:** Contractor will perform the services as described on Exhibit D attached hereto.
4. **FEE FOR SERVICES:** Contractor’s fee for the services identified on Exhibit D to this Agreement shall not exceed One Hundred Sixty Six Thousand Six Hundred Sixty Seven and no/100 Dollars (\$166,667.00). Contractor will submit invoices to County for review, and will promptly submit such additional documentation, reports, and submissions as County may reasonably request.
5. **EXTRA SERVICES:** Contractor may also perform Extra Services (services not specified in the Scope of Services), provided Contractor and County have agreed in advance and in writing to the scope and fees for such Extra Services.
6. **EXHIBITS:** The following documents which are attached to this Agreement are incorporated herein and by this reference made part hereof:  
  
Exhibit A: Required Terms for All Public Contracts  
Exhibit B: Independent Contractor Status  
Exhibit C: Protected Information  
Exhibit D: Scope of Services
7. **TAX DUTIES AND LIABILITIES:** Contractor shall be responsible for all taxes applicable to any payments received pursuant to this Agreement and is currently and will remain fully compliant with tax laws, as certified in Exhibit A. County shall not withhold, pay, or in any other manner be responsible for payment of any taxes on behalf of Contractor.

8. SUBMITTAL OF W-9 BEFORE PAYMENT: Contractor must provide County with a fully completed W-9 form upon execution of the Agreement and prior to beginning services. Contractor will not be paid until a fully completed W-9 form is submitted.
9. REIMBURSEMENT OF EXPENSES: Contractor shall not be entitled to reimbursement by County for any expenses incurred by Contractor unless otherwise agreed in writing.
10. PAYMENT BY COUNTY: Unless otherwise agreed to within this Agreement, County will pay invoices on the 10th or 25th days of the month based upon date the invoice is received.
11. INDEMNIFICATION AND HOLD HARMLESS: The Contractor shall assume all responsibilities for the work, and bear all losses and damages directly or indirectly resulting to the Contractor, the County, or to others on account of the character or performance of the work, unforeseen difficulties, accidents, or any other cause whatsoever. The Contractor shall assume defense of, indemnify and save harmless the County, its officials, agents, and employees from all claims, liability, loss, damage and injury of every kind, nature and description, directly or indirectly resulting from activities in the performance of the Agreement, the ownership, maintenance or use of motor vehicles in connection therewith, or the acts, omissions, operations, or conduct of the Contractor or any subcontractor under the Agreement or any way arising out of the Agreement, irrespective of whether any act, omission or conduct of the County connected with the Agreement is a condition or contributory cause of the claim, liability loss, damage or injury and irrespective of whether act, omission, or conduct of the Contractor or subcontractor is merely a condition rather than a cause of a claim, liability, loss damage or injury. The Contractor shall not be liable for nor be required to defend or indemnify, the County relative to claims for damage or damages resulting solely from acts or omissions of the County, its officials, agents or employees. The absence of or inadequacy of the liability insurance required in section 15 below shall not negate Contractor's obligations in this paragraph.
12. CONTRACTOR STATUS: Contractor certifies it is a "Contractor" under ORS 670.600 and relevant law as it pertains to this contract and as further described in incorporated Exhibit B.
13. CONFORMANCE WITH OREGON PUBLIC CONTRACT LAWS: Contractor shall fully comply with Oregon law for public contracts, as more fully set forth in the Exhibits.
14. TERMINATION:
  - 14.1. Either party may terminate this Agreement after giving thirty (30) days' prior written notice to the other of intent to terminate without cause. The parties shall deal with each other in good faith during the thirty (30) day period after notice of intent to terminate without cause has been given;
  - 14.2. With reasonable cause, either party may terminate this Agreement effective immediately after giving written notice of termination for cause. Reasonable cause shall include material violation of this Agreement or any act exposing the other party to liability to others for personal injury or property damage;
  - 14.3. Notwithstanding any other provision of this Agreement, County shall not be obligated for Contractor's performance hereunder or by any provision of this Agreement during any of County's future fiscal years unless and until the Crook County Court appropriates funds for this Agreement in County's budget for such future fiscal year. In the event that funds are



not appropriated for this Agreement, then this Agreement shall terminate as of June 30 of the last fiscal year for which funds were appropriated.

## 15. INSURANCE:

- 15.1. **GENERAL INSURANCE:** Contractor shall maintain in force for the duration of this agreement a Commercial General Liability insurance policy written on an occurrence basis with limits not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate for bodily injury or property damage. The policy will contain a “per project” Aggregate endorsement. Automobile Liability (owned, non-owned and hired) insurance with limits not less than \$2,000,000 per occurrence shall be maintained. The County, its employees, officials and agents will be named as an Additional Insured where operations are being conducted related to this Agreement, on the General Liability policy as respects to work or services performed under this Agreement to the extent that the death or bodily injury to persons or damage to property arises out of the fault of Contractor or the fault of Contractor’s agents, representatives or subcontractors. This insurance will be primary over any insurance the County may carry on its own. Contractor understands that County is a public entity subject to the requirements of the Oregon Governmental Tort Claims Act, ORS 30.260 et seq. In the event that County’s financial obligations or liabilities are modified by any amendment to the liability limits imposed by the Oregon Governmental Tort Claims Act, Contractor agrees that the limits regarding liability insurance set forth in this section 15.1 will be modified to conform to such limits. Contractor and County shall sign an amendment to this Agreement incorporating such modification.
- 15.2. **WORKERS’ COMPENSATION:** Contractor shall provide and maintain workers’ compensation coverage with limits not less than \$500,000 for its employees, officers, agents, or partners, as required by applicable workers’ compensation laws as defined in ORS 656.027 and ORS 701.035(5). If Contractor is exempt from coverage, a written statement signed by Contractor so stating the reason for exemption shall be provided to the County.
- 15.3. **EVIDENCE OF INSURANCE COVERAGE:** Evidence of the required insurance coverages issued by an insurance company satisfactory to the County shall be provided to the County by way of a County approved certificate of insurance before any work or services commence.
  - 15.3.1. **NOTICE OF CANCELLATION OR MATERIAL CHANGE IN COVERAGE:** The certificate of insurance shall contain a requirement that the insurance company notify the County 30 days prior to any cancellation or material change in coverage. If the approved insurance company will not provide this 30-day notice, Contractor shall provide written notice to County within 2 calendar days after Contractor becomes aware that its coverage has been canceled or has been materially changed. Regardless of what circumstances caused Contractor’s insurance coverage to cease or be modified, it is Contractor’s responsibility to notify County. Failure to maintain proper insurance or provide notice of cancellation or modification shall be grounds for immediate termination of this contract.
- 15.4. **EQUIPMENT AND MATERIAL:** Contractor shall be responsible for any loss, damage, or destruction of its own property, equipment, and materials used in conjunction with the work.

- 15.5. SUBCONTRACTOR: The Contractor shall require all subcontractors to provide and maintain general liability, auto liability, professional liability (as applicable), and workers' compensation insurance with coverage's equivalent to those required of the general contractor in this Agreement. Contractor shall require certificates of insurance from all subcontractors as evidence of coverage.
  - 15.6. EXCEPTION OR WAIVERS: Any exception or waiver of these requirements shall be subject to review and approval from the County.
  - 15.7. [RESERVED]
16. GENERAL PROVISIONS:
- 16.1. ENTIRE AGREEMENT: This Agreement signed by both parties is the final and entire agreement and supersedes all prior and contemporaneous oral or written communications between the parties, their agents, and representatives
  - 16.2. AMENDMENTS: The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever, without prior written approval of County. No modification of this Agreement shall bind either party unless reduced to writing and subscribed by both parties, or ordered by a Court.
  - 16.3. ASSIGNMENT/SUBCONTRACT: Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this agreement, in whole or in part, without the prior written approval of County. No such written approval shall relieve Contractor of any obligations of this Agreement, and any transferee or subcontractor shall be considered the agent of Contractor. Contractor shall remain liable as between the original parties to this Agreement as if no such assignment had occurred.
  - 16.4. SUB-AGREEMENTS: If this project is funded in whole or in part with grant funds received by County, Contractor, as a sub-recipient of those funds, shall fully comply with all applicable terms, conditions, and requirements of the Grant Agreement, including but not limited to procurement regulations, property and equipment management and records, indemnity, and insurance provisions.
  - 16.5. SUCCESSORS IN INTEREST: The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties to this Agreement and their respective successors and assigns.
  - 16.6. AUTHORIZED SIGNATURES REQUIRED: Only those persons authorized by the Crook County Purchasing Rules and Procedures may enter into a binding agreement or contract, including a purchase order, for the purchase or sale of goods or services on the part of the County. All persons doing business with the County shall be responsible for being familiar with the Crook County Purchasing Rules and Procedures and for ensuring that the person purporting to act for the County has been duly authorized.
  - 16.7. NO ENCUMBRANCES: Any property delivered or granted to County under this Agreement, and Contractor's Services rendered in the performance of Contractor's obligations under this Agreement, shall be provided to County free and clear of any and all restrictions on or conditions of use, transfer, modification, or assignment, and shall be free and clear of any and all liens, claims, mortgages, security interests, liabilities, charges, and encumbrances of any kind.

- 16.8. **NO AUTHORITY TO BIND CROOK COUNTY:** Contractor has no authority to enter into contracts on behalf of County. This Agreement does not create a partnership between the parties.
- 16.9. **HOW NOTICES SHALL BE GIVEN:** Any notice given in connection with this Agreement must be in writing and be delivered either by hand to the party or by certified mail, return receipt requested, to the party at the party's address as stated on the work authorization or to Crook County at 300 NE 3<sup>rd</sup> Street, Prineville, OR 97754, attention "Legal Department."
- 16.10. **GOVERNING LAW AND VENUE:** Any dispute under this Agreement shall be governed by Oregon law, with venue being located in Crook County, Oregon.
- 16.11. **SEVERABILITY:** If any provision of this Agreement is declared by a court 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 provision held to be invalid.
- 16.12. **ACCESS TO RECORDS:** County and its duly authorized representatives shall have access to books, documents, papers, and records of Contractor which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts.
- 16.13. **CONFIDENTIALITY:** During the course of performance of work under this Agreement, Contractor may receive information regarding organizations and County's business practices, employees, clients, etc. Contractor agrees to maintain the confidentiality of such information and to safeguard such information against loss, theft or other inadvertent disclosure
- 16.14. **FEDERAL EMPLOYMENT STATUS:** In the event payment made pursuant to this Agreement is to be charged against federal funds, Contractor hereby certifies that it is not currently employed by the Federal Government and the amount charged does not exceed Contractor's normal charge for the type of services provided.
- 16.15. **COMPLIANCE WITH ALL GOVERNMENT REGULATIONS:** Contractor shall comply with all Federal, State and local laws, codes, regulations and ordinances applicable to the work performed under this Agreement. Failure to comply with such requirements shall constitute a breach of contract and shall be grounds for termination of this Agreement. Damages or costs resulting from noncompliance shall be the sole responsibility of Contractor.
- 16.16. **FORCE MAJEURE:** Neither party to this Agreement shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. County may terminate this Agreement upon written notice after determining such delay or default will unreasonably prevent successful performance of the Agreement.
- 16.17. **RIGHTS IN DATA:** All original written material, including programs, card decks, tapes, listings, and other documentation originated and prepared for County pursuant to this Agreement, shall become exclusively the property of County. The ideas, concepts, know-how, or techniques developed during the course of this Agreement by Contractor personnel can be used by either party in any way it may deem appropriate. Material already in Contractor's possession, independently developed by Contractor, outside the scope of this Agreement, or rightfully obtained by Contractor from third parties, shall belong to Contractor. This Agreement shall not preclude Contractor from developing materials

which are competitive, irrespective of their similarity to materials which might be delivered the County pursuant to this Agreement. Contractor shall not, however, use any written materials development under this Agreement in developing materials for others, except as provided in this section.

- 16.18. ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT: In the event of any claim or suit against County on account of any alleged patent or copyright infringement arising out of the performance of this Agreement or out of the use of any material furnished or work or services performed hereunder, Contractor shall defend County against any such suit or claim and hold County harmless from any and all expenses, court costs, and attorney's fees in connection with such claim or suit.
- 16.19. EQUIPMENT, TOOLS, MATERIALS, AND/OR SUPPLIES: Contractor will provide all equipment, tools, materials or supplies necessary to fulfill Contractor's obligations under the terms of this Agreement.
- 16.20. ATTORNEY FEES: In the event an action, lawsuit, or proceeding, including appeal therefrom, is brought for failure to observe any of the terms of this Agreement, each party shall bear its own attorney fees, expenses, costs, and disbursements for said action, lawsuit, proceeding, or appeal.
- 16.21. WAIVER: The failure of either party at any time or from time to time to enforce any of the terms of this Agreement shall not be construed to be a waiver of such term or of such party's right to thereafter enforce each and every provision of the Agreement.
- 16.22. [RESERVED]
- 16.23. COUNTERPARTS: This Professional Services Contract may be executed in one or more counterparts, including electronically transmitted counterparts, which when taken together shall constitute one in the same instrument. Facsimiles and electronic transmittals of the signed document shall be binding as though they were an original of such signed document.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective the date first set forth above.

**For Contractor, LaPine Community Health Center**

**For Crook County**

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**  
**REQUIRED TERMS FOR ALL PUBLIC CONTRACTS**

**1. PAYMENTS AND DEBTS:**

- 1.1. Contractor shall promptly, as due, make payment to:
  - 1.1.1. Any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums that Contractor agrees to pay for the services and all moneys and sums that Contractor collected or deducted from the wages of employees under any law, contract, or agreement for the purpose of providing or paying for the services;
  - 1.1.2. All persons supplying to Contractor labor or material for the performance of the work provided for in the Agreement;
  - 1.1.3. All contributions or amounts due the Industrial Accident Fund from Contractor or subcontractor incurred in the performance of this Agreement; and
  - 1.1.4. The Department of Revenue all sums withheld from employees under ORS 316.167.
- 1.2. Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished under this Agreement.

**2. EMPLOYEES:**

- 2.1. Contractor and subcontractors shall either be employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- 2.2. Contractor shall comply with the prohibition on wage discrimination of ORS 652.220; failure to do so is a material element of the contract and a breach that entitles County to terminate this Agreement for cause.
- 2.3. For all work under this Agreement, Contractor may not employ an employee for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or when the public policy absolutely requires otherwise, and in such cases, Contractor shall pay the employee at least time-and-a-half pay for:
  - (a) All overtime in excess of eight hours in any one day or 40 hours in any one week if the work week is five consecutive days, Monday through Friday; or all overtime in excess of 10 hours in any one day or 40 hours in any one week if the work week is four consecutive days, Monday through Friday; and
  - (b) All work the employee performs on Saturday and on any legal holiday specified in ORS 279B.020;
- 2.3.1. If this Agreement is for services, Contractor shall pay employees at least time-and-a-half pay for work the employees perform under this Agreement on the legal holidays specified in a collective bargaining agreement or in 279B.020 (1)(b)(B) to (G) and for all time the employees work in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater;
- 2.3.2. If this Agreement is for personal services, as described in ORS 279A.055, Contractor shall pay its employees who work under this Agreement at least time-and-a-half for all overtime the employees work in excess of 40 hours in any one week, unless said employees are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime;
- 2.3.3. If this Agreement is for services at a county fair, or for another event that Crook County Fair Board authorizes, Contractor shall pay employees who work under this Agreement at least time-and-a-half for work in excess of 10 hours in any one day or 40 hours in any one week.
- 2.4. Contractor may not prohibit any of Contractor's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.
- 2.5. Contractor shall give notice in writing to employees who work under this Agreement, either at the time of hire or before work begins on the Agreement, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that Contractor may require the employees to work.

**3. OTHER PROVISIONS:**

- 3.1. By executing this Agreement, Contractor represents and warrants that it has complied with the tax laws of this state or a political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318; Contractor further covenants to continue with said compliance during the term of this Agreement. Noncompliance with this provision is a default for which County may terminate the Agreement, in whole or part, and seek damages under the terms of this Agreement or applicable law.
- 3.2. If this Agreement involves lawn and landscape maintenance, Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

## **EXHIBIT B**

### **INDEPENDENT CONTRACTOR STATUS**

Contractor states and represents that contractor is an Independent Contractor as that term is defined in Oregon Revised Statute 670.600 and more specifically represents, states and agrees that in providing the services and scope of work specified in this Agreement:

1. Contractor provides services for remuneration; and
2. Contractor is free from direction and control over the means and manner of providing the services and scope of work subject only to the right of County to specify the desired results; and
3. Contractor is customarily engaged in an independently established business; and
4. Contractor is licensed within the state of Oregon to provide any services for which a license is required under ORS Chapter 671 or 701 and is responsible for obtaining other licenses or certificates necessary to provide the service or scope of work; and
5. Contractor complies with at least three of the following requirements:
  - (a) A business location is maintained that is separate from the business or work location of County; or is in a portion of the Contractor's residence and that portion is used primarily for the business.
  - (b) The Contractor bears the risk of loss related to the provision of services or scope of work such as entering into a fixed price contract, defective work is required to be corrected, the services provided are warranted or indemnification agreements, liability insurance and performance bonds and errors and omissions insurance are provided.
  - (c) Contracted services for two or more different persons or entities within a twelve month period have been obtained, or routinely engaged in business advertising, solicitation, or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
  - (d) Significant investment in the business has been made such as purchasing tools or equipment, paying for premises or facilities where services are provided, paying for licenses, certificates or specialized training.
  - (e) Possesses authority to hire other persons to assist in providing their services and has the authority to fire those persons.
6. Contractor will immediately inform County in the event that it fails to conduct its services in one or more particulars as represented in 1 through 5 above.

## EXHIBIT C

### PROTECTED INFORMATION

If Contractor obtains any personal information as defined in ORS 646A.602(11) related to this Agreement or concerning any County employee, Contractor agrees to provide appropriate safeguards to protect the security of this information. Contractor shall have provided appropriate safeguards by meeting or exceeding the requirements stated in ORS 646A.622. Furthermore:

1. **“Protected Information”** shall be defined as *data or information* that has been designated as private or confidential by law or by the County. Protected Information includes, but is not limited to, employment records, medical records, personal financial records (or other personally identifiable information), trade secrets, and classified government information. To the extent there is any uncertainty as to whether any data constitutes Protected Information, the data in question shall be treated as Protected Information until a determination is made by the County or proper legal authority.
2. **Data Confidentiality.** Contractor shall implement appropriate measures designed to ensure the confidentiality and security of Protected Information, protect against any anticipated hazards or threats to the integrity or security of such information, protect against unauthorized access or disclosure of information, and prevent any other action of unauthorized disclosure that could result in substantial harm to the County or an individual identified with the data or information in Contractor’s custody or access.

To the extent that Contractor may have access to County protected health information (as the same is defined in the privacy regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and the implementing regulations known and referred to as Privacy Rule, Security Rule, Enforcement Rule and Breach Notification Rule, referred to herein collectively as “HIPAA”), Contractor agrees to protect such information in compliance with HIPAA and represents that it has the processes, systems and training to assure compliance with the same.

3. **Data and Network Security.** Contractor agrees at all times to maintain commercially reasonable network security that, at a minimum, includes: network firewall provisioning, intrusion detection/prevention and periodic third party penetration testing. Likewise Contractor agrees to maintain network security that at a minimum conforms to current standards set forth and maintained by the National Institute of Standards and Technology, including those at: <http://checklists.nist.gov/repository>. Contractor agrees to protect and maintain the security of data with protection security measures that include maintaining secure environments that are patched and up to date with all appropriate security updates as designated by a relevant authority.
4. **Security Breach.** In the unlikely event of a security breach or issue, Contractor will notify the appropriate County contact no later than one hour after they are aware of the breach. Contractor will be responsible for all remedial action necessary to correct the breach; provided however, that Contractor will not undertake litigation on behalf of the County without prior written consent.
5. **Data Storage and Backup.** Contractor agrees that any and all County data will be stored, processed, and maintained solely on designated servers and that no County data at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium, unless that storage medium is in use as part of the Contractor's designated backup and recovery processes. All servers, storage, backups, and network paths utilized in the delivery of the service shall be contained within the states, districts, and territories of the United States unless specifically agreed to in writing by a County officer with designated data, security, or signature authority. An appropriate officer with the necessary authority can be identified by the County Information Security Officer for any general or specific case.

Contractor agrees to store all County backup data stored as part of its backup and recovery processes in encrypted form, using no less than AES 256.

6. **Data Re-Use.** Contractor agrees that any and all data exchanged shall be used expressly and solely for the purposes enumerated in the Agreement. Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. Contractor further agrees that no County data of any kind shall be revealed, transmitted, exchanged or otherwise passed to other Contractor or interested parties except on a case-by-case basis as specifically agreed to in writing by a County officer with designated data, security, or signature authority.
7. **PCI Compliance.** Contractor agrees to comply with PCI DSS (Payment Card Industry Data Security Standard). As evidence of compliance, Contractor shall provide upon request a current attestation of compliance signed by a PCI QSA (Qualified Security Assessor).
8. **End of Agreement Data Handling.** Contractor agrees that upon termination of this Agreement it shall erase, destroy, and render unreadable all County data in its entirety in a manner that prevents its physical reconstruction through the use of commonly available file restoration utilities, and certify in writing that these actions have been completed within 30 days of the termination of this Agreement or within 7 days of the request of an agent of County whichever shall come first.
9. **Mandatory Disclosure of Protected Information.** If Contractor becomes compelled by law or regulation (including securities' laws) to disclose any Protected Information, Contractor will provide County with prompt written notice so that County may seek an appropriate protective order or other remedy. If a remedy acceptable to County is not obtained by the date that Contractor must comply with the request, Contractor will furnish only that portion of the Protected Information that it is legally required to furnish, and the Contractor shall require any recipient of the Protected Information to exercise commercially reasonable efforts to keep the Protected Information confidential.
10. **Remedies for Disclosure of Confidential Information.** Contractor and County acknowledge that unauthorized disclosure or use of the Protected Information may irreparably damage County in such a way that adequate compensation could not be obtained from damages in an action at law. Accordingly, the actual or threatened unauthorized disclosure or use of any Protected Information shall give County the right to seek injunctive relief restraining such unauthorized disclosure or use, in addition to any other remedy otherwise available (including reasonable attorneys' fees). Contractor hereby waives the posting of a bond with respect to any action for injunctive relief. Contractor further grants County the right, but not the obligation, to enforce these provisions in Contractor's name against any of Contractor's employees, officers, board members, owners, representatives, agents, contractors, and subcontractors violating the above provisions.
11. **Non-Disclosure.** Contractor is permitted to disclose Confidential Information to its employees, authorized subcontractors, agents, consultants and auditors on a need-to-know basis only, provided that all such subcontractors, agents, consultants and auditors have written confidentiality obligations to both Contractor and County.
12. **Criminal Background Check.** County shall perform criminal background checks on all talent assigned to this project before a person is allowed to work on any of the County's Criminal Justice Information System (CJIS) protected data, software systems or facilities.
13. **Survival.** The confidentiality obligations shall survive termination of any agreement with Contractor for a period of ten (10) years or for so long as the information remains confidential, whichever is longer and will inure to the benefit of County.



## EXHIBIT D

### BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BA Agreement”) between County of Crook (County) and Contractor is adopted to ensure that Contractor will appropriately safeguard protected health information (“PHI”) that is created, received, maintained, or transmitted on behalf of County in compliance with the applicable provisions of Public Law 104-191 of August 21, 1996, known as the Health Insurance Portability and Accountability Act of 1996, Subtitle F – Administrative Simplification, Sections 261, *et seq.*, as amended (“HIPAA”), and with Public Law 111-5 of February 17, 2009, known as the American Recovery and Reinvestment Act of 2009, Title XII, Subtitle D – Privacy, Sections 13400, *et seq.*, the Health Information Technology and Clinical Health Act, as amended (the “HITECH Act”).

#### A. General Provisions

1. **Meaning of Terms.** The terms used in this BA Agreement shall have the same meaning as those terms defined in HIPAA.
2. **Regulatory References.** Any reference in this BA Agreement to a regulatory section means the section currently in effect or as amended.
3. **Interpretation.** Any ambiguity in this BA Agreement shall be interpreted to permit compliance with HIPAA.

#### B. Obligations of Business Associate

Contractor agrees that it will:

1. Not use or further disclose PHI other than as permitted or required by this BA Agreement or as required by law;
2. Use appropriate safeguards and comply, where applicable, with Subpart C of 45 CFR Part 164 to prevent use or disclosure of PHI other than as provided for by this BA Agreement;
3. Report to County any use or disclosure of PHI not provided for by this BA Agreement of which it becomes aware, including any security incident (as defined in 45 CFR 164.304) and any breaches of unsecured PHI as required by 45 CFR §164.410. Breaches of unsecured PHI shall be reported to County without unreasonable delay but in no case later than 60 days after discovery of the breach;
4. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Contractor agree to the same restrictions, conditions, and requirements that apply to Contractor with respect to such information;
5. Make available PHI in a designated record set to County as necessary to satisfy County’s obligation under 45 CFR 164.524 in no more than 30 days of a request;
6. Make any amendment(s) to PHI in a designated record set as directed by County, or take other measures necessary to satisfy County’s obligations under 45 CFR §164.526 in no more than 30 days of a request;
7. Maintain and make available information required to provide an accounting of disclosures to County or an individual who has a right to an accounting within 60 days and as necessary to satisfy County’s obligations under 45 CFR §164.528;
8. To the extent that Contractor is to carry out any of County’s obligations under Subpart E of 45 CFR Part 164, Contractor shall comply with the requirements of Subpart E of 45 CFR Part 164 that apply to County when it carries out that obligation;

9. Make its internal practices, books, and records available to the Secretary of the Department of Health and Human Services for purposes of determining compliance with the HIPAA rules;
10. County shall notify Contractor of any restriction on the use or disclosure of PHI that County has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Contractor's use or disclosure of PHI; and
11. If County is subject to the Red Flags Rule (found at 16 CFR §681.1 *et seq.*), Contractor agrees to assist County in complying with its Red Flags Rule obligations by: (a) implementing policies and procedures to detect relevant Red Flags (as defined under 16 C.F.R. §681.2); (b) taking all steps necessary to comply with the policies and procedures of County's Identity Theft Prevention Program; (c) ensuring that any agent or third party who performs services on its behalf in connection with covered accounts of County agrees to implement reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft; and (d) alerting County of any red flag incident (as defined by the Red Flag Rules) of which it becomes aware, the steps it has taken to mitigate any potential harm that may have occurred, and provide a report to County of any threat of identity theft as a result of the incident.
12. If Contractor is part of a larger organization, Contractor will implement policies and procedures to protect PHI from unauthorized access by the larger organization.

**C. Permitted Uses and Disclosures by Business Associate**

The specific uses and disclosures of PHI that may be made by Contractor on behalf of County are limited to:

1. The review of patient care information in the course of Contractor conducting risk and compliance assessment activities, or providing County with a Control Activity Gap Analysis, or the review of PHI and other information necessary to assist County in developing its HIPAA compliance program; and
2. Other uses or disclosures of PHI as permitted by the HIPAA rules as necessary to perform the services set forth in the Agreement.
3. Uses or disclosures of protected health information as required by law.

**D. Termination**

1. County may terminate this Agreement if County determines that Contractor has violated a material term of the BA Agreement.
2. If either party knows of a pattern of activity or practice of the other party that constitutes a material breach or violation of the other party's obligations under this BA Agreement, that party shall take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are unsuccessful, terminate the Agreement, if feasible.
3. Upon termination of this Agreement for any reason, Contractor shall return to County or destroy all PHI received from County, or created, maintained, or received by Contractor on behalf of County that Contractor still maintains in any form. Contractor shall retain no copies of the PHI. If return or destruction is infeasible, the protections of this BA Agreement will extend to such PHI.
4. The obligations under section D are perpetual and shall survive termination of this Agreement.