John S. Foote, District Attorney for Clackamas County
Clackamas County Courthouse, 807 Main Street, Room 7, Oregon City, Oregon 97045
503 655-8431, FAX 503 650-8943, www.co.clackamas.or.us/da/

May 14, 2015

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of
INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF OREGON, CLACKAMAS COUNTY, AND THE CLACKAMAS COUNTY DISTRICT ATTORNEY'S OFFICE FOR DEPENDENCY LEGAL SERVICES

Purpose/Outcomes	Obtain Title IV-E reimbursement for allowable legal services provided by the District Attorney's Office in Child Welfare dependency cases.
Dollar Amount and Fiscal Impact	The maximum payable amount of IGA #148537 IS $155,000 as reimbursement to the District Attorney's Office for allowable Title VI-E expenditures. No match is required.
Funding Source	Federal Title IV-E Funding that is passed through the State of Oregon, acting by and through the Department of Human Services
Safety Impact	The District Attorney's Office has two full-time deputy district attorneys dedicated to providing legal support for juvenile dependency cases. Both DDA's focus on the safety, permanency and well-being of the children involved.
Duration	Effective July 1, 2015 through June 30, 2017
Previous Board Action/Review	The Board approved an amendment to add Title IV-E reimbursement to the Juvenile Dependency IGA #143643 on February 12, 2013.
Contact Person	Sarah Brown, Administrative Services Manager for the District Attorney
County Counsel	Approved as to form on May 6, 2015

BACKGROUND:
On February 12, 2013, the Board approved an amendment to add Federal Title IV-E funding to the 2013-2015 Juvenile Dependency IGA.

Since then, the Department of Human Services made the decision to separate the 2015-2017 agreements by funding source, i.e., State General Fund and Federal Fund. The Board approved the 2015-2017 State Funded IGA on April 2, 2015. The maximum reimbursement in the 2015-2017 Title IV-E for legal services provided under this agreement has not been reduced.

RECOMMENDATION:
I respectfully recommend that the Board approve the attached IGA # as submitted and authorize District Attorney John S. Foote to sign on behalf of the County.

Respectfully submitted,

John S. Foote

Agreement Number 148537

DHS
Oregon Department
of Human Services

STATE OF OREGON
INTERGOVERNMENTAL AGREEMENT

In compliance with the Americans with Disabilities Act, this document is available in alternate formats such as Braille, large print, audio recordings, Web-based communications and other electronic formats. To request an alternate format, please send an e-mail to dhs-oha.publicationrequest@state.or.us or call 503-378-3486 (voice) or 503-378-3523 (TTY) to arrange for the alternative format.

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

Clackamas County
John Ludlow, Commission Chair
2051 Kaen Road
Oregon City, Oregon 97045
Telephone: 503-655-8581
Facsimile: 503-742-5919

hereinafter referred to as "County."

Clackamas County District Attorney
John Foote
807 Main Street, Room 7
Oregon City, Oregon 97045
Telephone: 503-655-8431
Facsimile: 503-650-8943
Email: johnfoote@co.clackamas.or.us

hereinafter referred to as "District Attorney."

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

Office of Child Welfare Programs
500 Summer Street NE, E16
Salem, Oregon 97301
Agreement Administrator: Elizabeth Lair or delegate
Telephone: (503) 569-3815
Facsimile: (503) 373-7492
E-mail address: elizabeth.lair@state.or.us

1. **Effective Date and Duration.**

This Agreement shall become effective on the date this Agreement has been fully executed by every party and, when required, approved by Department of Justice or on **July 1, 2015**, whichever date is later. Unless extended or terminated earlier in accordance with its terms, this Agreement shall expire on **June 30, 2017**. Agreement termination or expiration shall not extinguish or prejudice any party's right to enforce this Agreement with respect to any default by any other party 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:

Exhibit A, Part 1:	Statement of Work
Exhibit A, Part 2:	Payment and Financial Reporting
Exhibit A, Part 3:	Special Terms and Conditions
Exhibit B:	Standard Terms and Conditions
Exhibit C:	Subcontractor Insurance Requirements
Exhibit D:	Required Federal Terms and Conditions
Attachment 1:	Example Title IV-E Claim Form and Instructions

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, A, B, and C.

c. For purposes of this Agreement, "Work" means specific work to be performed or services to be delivered by County and District Attorney as set forth in Exhibit A.

3. **Consideration.**

a. The maximum not-to-exceed amount payable to County and District Attorney under this Agreement, which includes any allowable expenses, is **$155,000**. DHS will not pay County or District Attorney any amount in excess of the not-to-exceed amount for completing the Work, and will not pay for Work until this Agreement has been signed by all parties.

b. DHS will pay only for completed Work under this Agreement, and may make interim payments as provided for in Exhibit A.

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

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

☐ County is a sub-recipient ☒ County and District Attorney are vendors

Catalog of Federal Domestic Assistance (CFDA) #(s) of federal funds to be paid through this Agreement: **93.658**

5. **County Data and Certification.**

a. **County Information.** County shall provide information set forth below. This information is requested pursuant to ORS 305.385 and OAR 125-246-0330(1).

PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION:

County Name (exactly as filed with the IRS): Clackamas County

Street address: 2051 Kaen Road

City, state, zip code: Oregon City, OR 97045

Email address: marcg@co.clackams.or.ur

Telephone: (503) 742-5400 Facsimile: (503) 742-5401

Federal Employer Identification Number: 936002286

Proof of Insurance:

Workers' Compensation Insurance Company: Self Insured

Policy #: _____ Expiration Date: _____

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

b. **District Attorney Information.** District Attorney shall provide information set forth below. This information is requested pursuant to ORS 305.385 and OAR 125-246-0330(1).

PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION:

District Attorney Name (exactly as filed with the IRS):
Clackamas County District Attorney's Office

Street address: 807 Main Street

City, state, zip code: Oregon City, OR 97045

Email address: JohnFoote@co.clackamas.or.us

Telephone: (503) 655-8431 Facsimile: (503) 650-8943

Federal Employer Identification Number: 936002286

Proof of Insurance:

Workers' Compensation Insurance Company: Self Insured

Policy #: _____ Expiration Date: _____

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

c. **Certification.** The County and District Attorney acknowledge 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) the County or District Attorney and that pertains to this Agreement or to the project for which the Agreement work is being performed. The County and District Attorney certify 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 and District Attorney further acknowledges that in addition to the remedies under this Agreement, if either 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 the County or District Attorney. Without limiting the generality of the foregoing, by signature on this Agreement, the County and District Attorney hereby certify that:

(1) The information shown in this Section 5., County Data and Certification and District Attorney Data and Certification, is County and District Attorney's true, accurate and correct information;

(2) To the best of the undersigned's knowledge, County and District Attorney have 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;

(3) County, County's employees and agents, District Attorney, and District Attorney's employees and agents are not included on the list titled "Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at: *http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf*;

(4) County and District Attorney are 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/portal/public/SAM/*; and

(5) County and District Attorney are not subject to backup withholding because:

(a) County and District Attorney are exempt from backup withholding;

(b) County and District Attorney have not been notified by the IRS that County or District Attorney are subject to backup withholding as a result of a failure to report all interest or dividends; or

(c) The IRS has notified County or District Attorney that County or District Attorney are no longer subject to backup withholding.

d. County and District Attorney are required to provide their Federal Employer Identification Numbers (FEIN). By signature on this Agreement, County and District Attorney hereby certify that the FEIN provided to DHS is true and accurate. If this information changes, County and District Attorney are also required to provide DHS with the new FEIN within 10 days.

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

COUNTY AND DISTRICT ATTORNEY: YOU WILL NOT BE PAID FOR WORK PERFORMED PRIOR TO NECESSARY STATE APPROVALS

6. Signatures.

Clackamas County
By:

Authorized Signature | Title | Date

Clackamas County District Attorney

John Foote | 5/5/15
Date

State of Oregon, acting by and through its Department of Human Services
By:

Authorized Signature | Title | Date

Approved by the Department of Administrative Services
Not required per OAR 125-246-0170(2)(d)(E) and OAR 125-247-0288(2)

Approved for Legal Sufficiency

Jeffrey J. Wahl, Sr. Assistant Attorney General /s/ email | April 24, 2015
Assistant Attorney General | Date

Office of Contracts and Procurement

Jewelee Bell, Contract Specialist | Date

EXHIBIT A

Part 1
Statement of Work

The District Attorney's (DA) will provide the following services in accordance with the necessary requirements to obtain Title IV-E reimbursement for allowable legal services for Child Welfare dependency cases.

Legal Services

For the purpose of this Agreement, legal services include the following:

a. Initial disposition and extension or revision of Jurisdictional orders;
b. Placement of children in out-of-home care, including temporary physical custody, change of placement, revision, and extension orders;
c. Voluntary placements of children into out-of-home care and conversion of voluntary placements to court-ordered placements;
d. Establish guardianship for children in out-of-home care.

Legal Services may be performed by attorneys, paralegals, investigators, and clerical or other staff. Within the broad types of legal services identified above, specific legal services may include:

a. Consulting with Child Welfare case workers;
b. Determining potential cases for court action;
c. Receiving and organizing information about cases;
d. Petitioning the court;
e. Preparation for court hearings (Shelter, Jurisdictional, Dispositional, Permanency or Review);
f. Participation in court hearings;
g. Providing legal notice of hearings;
h. Issuing subpoenas;
i. Preparing legal briefs and orders;
j. Obtaining signed court orders; and
k. Appellate Activities; and related legal support of county Child Welfare agency.

Legal services related to the following DO NOT qualify for Title IV-E Reimbursement:

a. Delinquency cases, juvenile probation, restitution, and placement of children in security detention or juvenile corrections; and
b. Criminal prosecution of persons charged with child abuse and neglect.

EXHIBIT A

Part 2
Payment and Financial Reporting

Oregon District Attorney's (DAs) may claim Title IV-E reimbursement for dependency legal services. The biennial amounts are based on projected expenditures and may be revised based on actual allowable Title IV-E expenditures throughout the biennium. To claim each quarterly payment, the county must submit a "Title IV-E Claim Form" for the quarter in which services were performed.

Allowable Expenses

The allowable expenses that may be considered for Title IV-e reimbursement:

a. Salary and fringe benefit costs for attorneys and paralegals in DA offices who work on Child Welfare cases.
b. Salary and fringe benefits for investigators, witness coordinators, and related staff who work on Child Welfare cases.
c. Salary and fringe benefits for clerical support staff preparing petitions, court orders, and other documents for Child Welfare cases.
d. Costs associated with legal actions for Child Welfare cases including filing fees, costs for expert witnesses, and transcription costs.
e. Costs for travel and training for legal staff who work on Child Welfare cases, including participating in Child Welfare training.
f. Services and supplies necessary for legal staff working on Child Welfare cases.
g. Genetic testing to determine paternity to expedite a court case.

The Title IV-E reimbursement DOES NOT apply to the costs of judges, clerks of courts, guardian's ad litem, public defenders, or other court-related staff who may be involved in Child Welfare legal proceedings for legal services to a child or parent. Court operating expenses and overhead (such as rental of computers, other equipment or vehicles) cannot be claimed under the Title IV-E legal services reimbursement.

Amount of Title IV-E Reimbursement

The amount of reimbursement is based on the actual amount of reimbursable costs and percentage of time staff spent on Child Welfare dependency cases. Therefore, the actual amount of Title IV-E reimbursement that a DA's office can receive will not be projected, but will be based on actual expenditures.

The net amount of Title IV-E reimbursement for legal services is based on the federal Title IV-E administrative cost reimbursement rate of 50% multiplied by the percentage of Title IV-E eligible children in out-of-home care in Oregon. This eligibility ratio is also known as the Title IV-E "eligibility rate" and varies from quarter to quarter. When the Average Daily Population Report becomes available, DHS will notify the DAs of the current eligibility rate.

Allocation of Legal Staff Time

Attorneys and other legal staff must be either dedicated full-time to Child Welfare cases or the specific portion of time for legal staff working part-time on Child Welfare cases must be identified. DAs must ensure that the amount of legal staff time and other expenses reported for Title IV-E reimbursement corresponds with the amount of legal services performed for Child Welfare dependency cases.

DAs may determine the specific method used to allocate legal staff time and other expenses to the legal services reimbursement. DHS must approve the time reporting methodology used by the DAs office. DHS is responsible for ensuring that the legal staff time allocation method used meets single state audit requirements and other applicable audit requirements.

In order to determine the amount of time spent on allowable legal services, it is recommended that some form of time tracking on DHS cases be completed. The chosen tracking methodology used must be consistent with cost allocation methods used by the DA for other funding sources (i.e. federal grants, time funds and other funds). If legal staff are providing dependency services 100% of their work hours, no time tracking is necessary if a letter from the District Attorney stating such is on file with DHS.

Sources of Match

The match expenses used to claim Title IV-E reimbursement must be from non-federal public funds and be based on expenditures by a public agency from those public funds. Expenses used to claim Title IV-E reimbursement for legal services cannot be used as match for other federal funding sources.

Audits

Title IV-E is audited routinely by the Secretary of State. Documentation must be maintained to support the reimbursement claims. DA is responsible for reimbursing IV-E funds if any negative finding is made.

The contact for the Oregon Department of Human Services for processing Title IV-E Claim Forms is:

Oregon Department of Human Services
Office of Child Welfare Program
Attn: Liz Lair
500 Summer Street NE E-16
Salem, OR 97301-1097
Elizabeth.lair@state.or.us
Phone: 503-569-3815

EXHIBIT A

Part 3
Special Terms and Conditions

1. Confidentiality of Client Information.

a. Except when required by law, all information as to personal facts and circumstances obtained by the County and District Attorney 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, his or her 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. DHS, County, District Attorney, and any subcontractor will share information as necessary to effectively serve DHS clients.

2. Amendments.

a. DHS reserves the right to amend or extend the Agreement under the following general circumstances:

(1) DHS may extend the Agreement for additional periods of time up to a total Agreement period of 5 years, and for additional money associated with the extended period(s) of time. The determination for any extension for time may be based on DHS' satisfaction with performance of the work or services provided by the County and District Attorney under this Agreement.

(2) DHS may periodically amend any payment rates throughout the life of the Agreement proportionate to increases in Portland Metropolitan Consumer Price Index; and to provide Cost Of Living Adjustments (COLA) if DHS so chooses. Any negotiation of increases in rates to implement a COLA will be as directed by the Oregon State Legislature.

b. DHS further reserves the right to amend the Statement of Work and Payment and Financial Reporting 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 all parties. All amendments must comply with Exhibit B, Section 22 "Amendments" of this Agreement.

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

a. County and District Attorney 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 Children (ORS 419B.005 through 419B.045).

b. County and District Attorney shall 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), as a requirement of this Agreement.

c. County and District Attorney shall immediately report suspected child abuse, neglect or threat of harm to DHS' Child Protective Services or law enforcement officials in full accordance with the mandatory Child Abuse Reporting law (ORS 419B.005 through 419B.045). If law enforcement is notified, the County or District Attorney shall notify the referring DHS caseworker within 24 hours. County or District Attorney shall immediately contact the local DHS Child Protective Services office if questions arise as to whether or not an incident meets the definition of child abuse or neglect.

d. If known, the abuse report should contain the following:

(1) The name and address of the abused person and any people responsible for their 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.**

a. The County or DA shall verify that any County or District Attorney employee working with children who are the subject of a dependency petition that is covered by this Agreement has not been convicted of any of the following crimes: child abuse, offenses against persons, sexual offenses, child neglect, or any other offense bearing a substantial relation to the qualifications, functions or duties of an employee scheduled to work with such children. The County or District Attorney shall establish verification by:

(1) For applicants for employment, having the applicant, as a condition of employment, apply for and receive a criminal history check from a local Oregon State Police (OSP) office, which shall be shared with the County or District Attorney,

(2) For applicants and employees, obtaining from the OSP for an "Oregon only" criminal history check on the applicant or employee. The County or District Attorney shall give OSP the applicant's or employee's name, birth date and social security number, or

(3) Any other process by which the County or District Attorney obtains the employee's or applicant's criminal history.

b. The County or District Attorney shall determine, after receiving the applicant's or employee's criminal history, whether the applicant or employee has been convicted of any crime listed above, and whether these convictions pose a risk to working safely with such children. If the County or District Attorney learns of a conviction of any of the above listed crimes from the applicant or employee's record, and the County or District Attorney chooses to hire the employee or applicant, the County or District Attorney shall confirm in writing the reasons for hiring the individual. These reasons shall address how the applicant/employee is presently suitable or able to work with such children in a safe and trustworthy manner. The County or District Attorney shall place this information, along with the applicant's or employee's criminal history check, in the employee's personnel file, and make it available upon request in a review or audit.

5. **Equal Access to Services.** County and District Attorney 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.** The County and District Attorney will not provide information to the media regarding a recipient of services purchased under this Agreement without first consulting the DHS office that referred the child or family. The County and District Attorney will make immediate contact with the DHS office when media contact occurs. The DHS office will assist the County and District Attorney with an appropriate follow-up response for the media.

7. **Nondiscrimination.** The County and District Attorney must provide services to DHS 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.** All 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, District Attorney and DHS, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Nothing in this Agreement shall require County, District Attorney or DHS 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 and District Attorney are not officers, employees, or agents of the State of Oregon as those terms are used in ORS 30.265 or otherwise.

4. **Representations and Warranties.**

   a. County and District Attorney represents and warrants as follows:

      (1) Organization and Authority. County and District Attorney are political subdivisions of the State of Oregon duly organized and validly existing under the laws of the State of Oregon. County and District Attorney have full power, authority and legal right to make this Agreement and to incur and perform the obligations hereunder.

      (2) Due Authorization. The making and performance by County and District Attorney of this Agreement (a) have been duly authorized by all necessary action by County and District Attorney 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 or District Attorney'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 or District Attorney are a party or by which County or District Attorney 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 or District Attorney of this Agreement.

(3) Binding Obligation. This Agreement has been duly executed and delivered by County and District Attorney and constitutes a legal, valid and binding obligation of County and District Attorney, 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 and District Attorney have the skill and knowledge possessed by well-informed members of its industry, trade or profession and County and District Attorney 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 and District Attorney's industry, trade or profession;

(5) County and District Attorney shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the Work; and

(6) County and District Attorney prepared its proposal related to this Agreement, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.

b. DHS represents and warrants as follows:

(1) Organization and Authority. DHS has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder.

(2) Due Authorization. The making and performance by DHS of this Agreement (a) have been duly authorized by all necessary action by DHS and (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which DHS is a party or by which DHS may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by DHS of this Agreement, other than approval by the Department of Justice if required by law.

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

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

5. **Funds Available and Authorized Clause.**

a. The State of Oregon's payment obligations under this Agreement are conditioned upon DHS receiving funding, appropriations, limitations, allotment, or other expenditure authority sufficient to allow DHS, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Agreement. County and District Attorney are not entitled to receive payment under this Agreement from any part of Oregon state government other than DHS. Nothing in this Agreement is to be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. DHS represents that as of the date it executes this Agreement, it has sufficient appropriations and limitation for the current biennium to make payments under this Agreement.

b. **Payment Method.** Payments under this Agreement will be made by Electronic Funds Transfer (EFT) and shall be processed in accordance with the provisions of OAR 407-120-0100 through 407-120-0380 or OAR 410-120-1260 through OAR 410-120-1460, as applicable, and any other Oregon Administrative Rules that are program-specific to the billings and payments. Upon request, County and District Attorney shall provide its taxpayer identification numbers (TIN) and other necessary banking information to receive EFT payment. County and District Attorney 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 and District Attorney shall provide this designation and information on a form provided by DHS. In the event that EFT information changes or the County or District Attorney elects to designate a different financial institution for the receipt of any payment made using EFT procedures, the County or District Attorney shall provide the changed information or designation to DHS on a DHS-approved form. DHS is not required to make any payment under this Agreement until receipt of the correct EFT designation and payment information from the County or District Attorney.

6. **Recovery of Overpayments**. If billings under this Agreement, or under any other Agreement between County, District Attorney and DHS, result in payments to County or District Attorney to which County or District Attorney is not entitled, DHS, after giving to County and District Attorney written notification and an opportunity to object, may withhold from payments due to County or District Attorney such amounts, over such periods of time, as are necessary to recover the amount of the overpayment, subject to Section 7 below. Prior to withholding, if County or District Attorney object to the withholding or the amount proposed to be withheld, County or District Attorney shall notify DHS that it wishes to engage in dispute resolution in accordance with Section 19 of this Agreement.

7. **Reserved.**

8. **Ownership of Intellectual Property.**

a. **Definitions.** As used in this Section 8 and elsewhere in this Agreement, the following terms have the meanings set forth below:

(1) "County Intellectual Property" and "District Attorney Intellectual Property" means any intellectual property owned by County or District Attorney and developed independently from the Work.

(2) "Third Party Intellectual Property" means any intellectual property owned by parties other than DHS, County or District Attorney.

b. Except as otherwise expressly provided herein, or as otherwise required by state or federal law, DHS will not own the right, title and interest in any intellectual property created or delivered by County, District Attorney or a subcontractor in connection with the Work. With respect to that portion of the intellectual property that the County or District Attorney owns, County and District Attorney grant to DHS a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to (1) use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the intellectual property, (2) authorize third parties to exercise the rights set forth in Section 8.b.(1) on DHS' behalf, and (3) sublicense to third parties the rights set forth in Section 8.b.(1).

c. If state or federal law requires that DHS, County or District Attorney grant to the United States a license to any intellectual property, or if state or federal law requires that DHS or the United States own the intellectual property, then County or District Attorney shall execute such further documents and instruments as DHS may reasonably request in order to make any such grant or to assign ownership in the intellectual property to the United States or DHS. To the extent that DHS becomes the owner of any intellectual property created or delivered by County or District Attorney in connection with the Work, DHS will grant a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to County or District Attorney to use, copy, distribute, display, build upon and improve the intellectual property.

d. County and District Attorney shall include in its subcontracts terms and conditions necessary to require that subcontractors execute such further documents and instruments as DHS may reasonably request in order to make any grant of license or assignment of ownership that may be required by federal or state law.

9. County or District Attorney Default. County or District Attorney shall be in default under this Agreement upon the occurrence of any of the following events:

a. County or District Attorney 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 or District Attorney herein or in any documents or reports relied upon by DHS to measure the delivery of Work, the expenditure of payments or the performance by County or District Attorney is untrue in any material respect when made;

c. County or District Attorney (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 or District Attorney, in any court of competent jurisdiction, seeking (1) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of County or District Attorney, (2) the appointment of a trustee, receiver, custodian, liquidator, or the like of County or District Attorney or of all or any substantial part of its assets, or (3) similar relief in respect to County District Attorney 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 or District Attorney is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

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

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

b. Any representation, warranty or statement made by DHS herein or in any documents or reports relied upon by County or District Attorney to measure performance by DHS is untrue in any material respect when made.

11. Termination.

a. County or District Attorney Termination. County or District Attorney may terminate this Agreement:

(1) For its convenience, upon at least 30 days advance written notice to DHS;

(2) Upon 45 days advance written notice to DHS, if County or District Attorney does not obtain funding, appropriations and other expenditure authorizations from County or District Attorney's governing body, federal, state or other sources sufficient to permit County or District Attorney to satisfy its performance obligations under this Agreement, as determined by County or District Attorney in the reasonable exercise of its administrative discretion;

(3) Upon 30 days advance written notice to DHS, if DHS is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as County or District Attorney may specify in the notice; or

(4) Immediately upon written notice to DHS, if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that County or District Attorney no longer has the authority to meet its obligations under this Agreement.

b. DHS Termination. DHS may terminate this Agreement:

(1) For its convenience, upon at least 30 days advance written notice to County and District Attorney;

(2) Upon 45 days advance written notice to County and District Attorney, if DHS does not obtain funding, appropriations and other expenditure authorizations from federal, state or other sources sufficient to meet the payment obligations of DHS under this Agreement, as determined by DHS in the reasonable exercise of its administrative discretion. Notwithstanding the preceding sentence, DHS may terminate this Agreement, immediately upon written notice to County and District Attorney or at such other time as it may determine if action by the Oregon Legislative Assembly or Emergency Board reduces DHS' legislative authorization for expenditure of funds to such a degree that DHS will no longer have sufficient expenditure authority to meet its payment obligations under this Agreement, as determined by DHS in the reasonable exercise of its administrative discretion, and the effective date for such reduction in expenditure authorization is less than 45 days from the date the action is taken;

(3) Immediately upon written notice to County and District Attorney if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that DHS no longer has the authority to meet its obligations under this Agreement or no longer has the authority to provide payment from the funding source it had planned to use;

(4) Upon 30 days advance written notice to County and District Attorney, if County or District Attorney is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as DHS may specify in the notice;

(5) Immediately upon written notice to County and District Attorney, if any license or certificate required by law or regulation to be held by County or District Attorney 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 District Attorney 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 and District Attorney, if DHS determines that County or District Attorney or any of its subcontractors have endangered or are endangering the health or safety of a client or others in performing work covered by this Agreement.

c. Mutual Termination. The Agreement may be terminated immediately upon mutual written consent of the parties or at such time as the parties may agree in the written consent.

12. Effect of Termination.

a. Entire Agreement.

(1) Upon termination of this Agreement, DHS shall have no further obligation to pay County or District Attorney under this Agreement.

(2) Upon termination of this Agreement, County shall have no further obligation to perform Work under this Agreement.

b. **Obligations and Liabilities.** Notwithstanding Section 12.a., any termination of this Agreement shall not prejudice any obligations or liabilities of any party accrued prior to such termination.

13. **Limitation of Liabilities.** EACH PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT. EACH PARTY SHALL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT OR ANY PART HEREOF IN ACCORDANCE WITH ITS TERMS.

14. **Insurance.** County and District Attorney shall require subcontractors to maintain insurance as set forth in Exhibit C, which is attached hereto.

15. **Records Maintenance; Access.** County and District Attorney shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, County and District Attorney shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of County and District Attorney, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document County and District Attorney's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of County and District Attorney whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." County and District Attorney acknowledges and agrees that DHS and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to all Records to perform examinations and audits and make excerpts and transcripts. County and District Attorney 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 and District Attorney shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.

16. **Information Privacy/Security/Access.** If the Work performed under this Agreement requires County, District Attorney or its subcontractor(s) to have access to or use of any DHS computer system or other DHS Information Asset for which DHS imposes security requirements, and DHS grants Count, District Attorney or its subcontractor(s) access to such DHS Information Assets or Network and Information Systems, County and District Attorney shall comply and require all subcontractor(s) to which such access has been granted to comply with OAR 407-014-0300 through OAR 407-014-0320, as such rules may be revised from time to time. For purposes of this section, "Information Asset" and "Network and Information System" have the meaning set forth in OAR 407-014-0305, as such rule may be revised from time to time.

17. **Force Majeure.** DHS, County and District Attorney shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, natural causes, or war which is beyond the reasonable control of DHS, County or District Attorney, respectively. Each party shall, however, make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. DHS may terminate this Agreement upon written notice to the other parties after reasonably determining that the delay or breach will likely prevent successful performance of this Agreement.

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

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

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

19. **Alternative Dispute Resolution.** The parties should attempt in good faith to resolve any dispute arising out of this agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

20. **Subcontracts.** County and District Attorney shall not enter into any subcontracts for any of the Work required by this Agreement without DHS' prior written consent. In addition to any other provisions DHS may require, County and District Attorney shall include in any permitted subcontract under this Agreement provisions to require that DHS will receive the benefit of subcontractor performance as if the subcontractor were the County or District Attorney with respect to Sections 1, 2, 3, 4, 8, 15, 16, 18, 21, and 23 of this Exhibit B. DHS' consent to any subcontract shall not relieve County or District Attorney of any of its duties or obligations under this Agreement.

21. **No Third Party Beneficiaries.** DHS, County and District Attorney are the only parties to this Agreement and are the only parties entitled to enforce its terms. The parties agree that County and District Attorney's performance under this Agreement is solely for the benefit of DHS to assist and enable DHS to accomplish its statutory mission. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

22. **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, the Department of Justice. Such amendment, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given.

23. **Severability.** The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

24. **Survival.** Sections 1, 4, 5, 6, 7, 8, 12, 13, 14, 15, 16, 19, 21, 22, 23, 24, 25, 26, 28, 29, 30 and 31of 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 each party's right to enforce this Agreement with respect to any default by the other parties that has not been cured.

25. **Notice.** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid to County, District Attorney or DHS 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 parties, any notice transmitted by facsimile must be confirmed by telephone notice to the other parties. Any communication or notice given by personal delivery shall be deemed effective when actually delivered to the addressee.

DHS: Office of Contracts and Procurement
250 Winter Street NE, Room 306
Salem, Oregon 97301
Telephone: 503-945-5818
Facsimile: 503-378-4324

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

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

28. **Waiver.** The failure of the parties 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 parties against whom it is asserted.

29. **Reserved.**

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

With respect to a Third Party Claim for which the State is jointly liable with the County or District Attorney (or would be if joined in the Third Party Claim), the State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the County in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the County or District Attorney 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 or District Attorney on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the

circumstances resulting in such expenses, judgments, fines or settlement amounts. The State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

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

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

32. **Stop-Work Order.** DHS may, at any time, by written notice to the County and District Attorney, require the County or District Attorney 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 and District Attorney shall immediately comply with the Stop-Work Order terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the stop work order notice. Within a period of 90 days after issuance of the written notice, or within any extension of that period to which the parties have agreed, DHS shall either:

a. Cancel or modify the stop work order by a supplementary written notice; or

b. Terminate the work as permitted by either the Default or the Convenience provisions of Section 11. Termination.

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

EXHIBIT C

Insurance Requirements

Agencies shall agree to maintain insurance levels or self-insurance in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.270.

EXHIBIT D

Required 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 and District Attorney 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 and District Attorney, 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 and District Attorney 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 and District Attorney expressly agree 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 and District Attorney shall comply and require all subcontractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

3. **Clean Air, Clean Water, EPA Regulations.** If this Agreement, including amendments, exceeds $100,000 then County and District Attorney shall comply and require all subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to DHS, United States Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. County shall include and require all subcontractors to include in all contracts with subcontractors receiving more than $100,000, language requiring the subcontractor to comply with the federal laws identified in this section.

4. **Energy Efficiency.** County and District Attorney 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, the County and District Attorney certify, to the best of the County and District Attorney's knowledge and belief that:

   a. No federal appropriated funds have been paid or will be paid, by or on behalf of County or District Attorney, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

   b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the County and District Attorney shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

   c. The County and District Attorney 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 or District Attorney 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 or District Attorney 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 an 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 or District Attorney 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 and District Attorney 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 and District Attorney shall comply, and require any subcontractor to comply, with applicable audit requirements and responsibilities set forth in this Agreement and applicable state or federal law.

b. Sub-recipients shall also comply with applicable Code of Federal Regulations (CFR) and OMB Circulars governing expenditure of federal funds including, but not limited, to OMB A-133 Audits of States, Local Governments and Non-Profit Organizations.

8. **Debarment and Suspension.** County and District Attorney 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. **Drug-Free Workplace.** County and District Attorney shall comply and require all subcontractors to comply with the following provisions to maintain a drug-free workplace: (i) County certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in County and District Attorney's workplace or while providing services to DHS clients. County and District Attorney's notice shall specify the actions that will be taken by County or District Attorney against its employees for violation of such prohibitions;

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

10. **Pro-Children Act.** County and District Attorney 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.).

11. **Medicaid Services.** County and District Attorney 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 and District Attorney shall

acknowledge County and District Attorney'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. § 1396a(a)(68).

12. Agency-based Voter Registration. If applicable, County and District Attorney 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.

13. Disclosure.

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. 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.

c. As such, a provider must disclose any person with a 5% or greater direct or indirect ownership interest in the provider 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.

d. County and District Attorney shall make the disclosures required by this Section 13. to DHS. DHS reserves the right to take such action required by law, or where DHS has

discretion, it deems appropriate, based on the information received (or the failure to receive information) from the provider, fiscal agent or managed care entity.

14. 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. The County and District Attorney agree that they have 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 agreement 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 agreement under a grant or subgrant.

Attachment 1
Example Title IV-E Reimbursement Form and Instructions

Instructions for Department of Human Services Juvenile Dependency "Title IV-E Claim Form":

The claim form has been developed in Excel and should be completed electronically, then printed for signature and submitted via email/electronically. **Please submit the completed claim form to DHS** to the email address listed on the last page of these instructions. Each claim form must include an identifying number assigned by your accounting office to ensure the funds are routed to the appropriate department (invoice, grant or fund). DHS will provide confirmation of receipt of claim form and the date the form is submitted for payment. The DA must maintain documentation to support the information reported on the form. The supporting documentation is subject to review, upon request by DHS, and is subject to audit by state and federal auditors (does not have to be attached to quarterly claim form). DHS may update and modify the claim form as needed for accounting and federal compliance.

The methodology for tracking the percentage of time staff spent on Child Welfare dependency cases must be approved by DHS. A daily time tracking methodology is recommended, but must be no less than one random five consecutive day period per quarter. A time tracking methodology has been developed in Excel and is available for use. The DA must maintain this documentation in support of claim all forms submitted.

Please complete the blue shaded sections of the claim form as follows:

A. **County Identification and Amount Claimed.** Record the county name and mailing address. Include the date the form is completed, the quarter for which the claim is being submitted, and the amount of the quarterly claim. The first quarter of the Federal Fiscal Year is the month of October. The Total Quarterly Reimbursement amount is calculated automatically after all data has been input

B. **Qualifying children's cases worked**. For each **Qualified Child** who had Work performed on the Child's case during the reporting quarter, record the Child's name and birth date. A **Qualifying Child** is a child who, at the time Work was performed on the child's case, was at any point in the juvenile dependency process between the filing of a dependency petition and entry of a disposition order on the merits on all allegations in that petition.

   Work includes any of the acts to be performed and requirements to be fulfilled by the District Attorney as described in the Agreement. List a Qualified Child only once each quarter, regardless of the number of time Work was performed on the Child's case. If work is performed on a case involving multiple Qualified Children, list all children on the form. If the District Attorney's office prefers, a separate list of Qualified Children and their birth dates may be attached as long as reference to it is made on the claim form.

C. **Eligible personnel costs**. Record the name of each staff member who worked on the qualifying cases. Record their "Salary and Fringe Benefits" for the quarter and the "Percentage of Time Spent on CW Cases" worked for the quarter on the qualifying cases. The "Eligible Cost" field will automatically calculate.

Personnel costs include the salary (including any overtime or other differential) and other personnel expenses such as health insurance, retirement, and other employee benefits paid for the quarter to, or on behalf of, the staff member listed.

Enter the number of staff members listed to calculate the average percentage of time spent working on CW Cases during the quarter.

D. **Other Operating Expenses.** Record the amount of "Other Operating Expenses" for the quarter for each staff person reported in section C above.

Other operating expenses includes:

a. Service and supplies necessary for legal staff working on Child Welfare cases.
b. Costs associated with legal actions for Child Welfare cases including filing fees, costs for expert witnesses, and transcription costs.
c. Costs for travel and training for legal staff who work on Child Welfare cases, including participating in Child Welfare training.
d. Genetic testing to determine paternity to expedite a court case.

Note: The *eligible cost* for Other Operating Expenses (averaged) is automatically calculated by the total average percentage of time spent on child welfare cases multiplied by the Operating Expenses reported. The eligible cost is 100% for Other Operating Expenses (traceable, such as Witness Expenses) before required federal calculations.

E. **Total Reimbursable Costs.** The field represents the total costs that will be used to calculate the Title IV-E reimbursement for the quarter.

F. **DHS Foster Care IV-E Eligibility Rate.** The "Eligibility Rate" is automatically multiplied by the "Total Reimbursable Costs" which is then multiplied by the Federal IV-E Administrative Reimbursement Rate.

G. **Federal IV-E Administrative Reimbursement Rate.** The federal reimbursement rate for Title IV-E administrative costs is 50%. The federal reimbursement rate of 50% is automatically multiplied by the results of the "Eligibility Rate" multiplied by the "Total Reimbursable Costs". **The result of this calculation will be the total Title IV-E reimbursement for the quarter.**

H. **Total Reimbursement for Quarter.** This total will also automatically fill the cell at the top right portion of the form named "Total Quarterly Reimbursement".

I. **Certification**. The District Attorney must sign the certification and submit the claim form to DHS after the close of each calendar quarter. The first quarter for which a claim can be submitted will be the quarter ending September 30, 2015. Claim forms should be submitted within 30 days of the end of the quarter. Include the name of the person responsible for preparing the report and their contact phone number. Federal Compliance utilizes the Federal Fiscal Year beginning October 1st.

J. **DHS Validation.** For DHS use only.

DHS will verify the county claim forms, request the funds from the federal government, and retain the official claim documentation submitted by the counties. Upon approval of the claims, DHS will then make the appropriate payments to the participating counties.

The contact for the Oregon Department of Human Services for processing Title IV-E Claim Forms is:

Oregon Department of Human Services
Office of Child Welfare Program
Attn: Liz Lair
500 Summer Street NE E-16
Salem, OR 97301-1097
Elizabeth.lair@state.or.us
Phone: 503-569-3815

DEPARTMENT OF HUMAN SERVICES
JUVENILE DEPENDENCY
TITLE IV-E CLAIM FORM

A.	County:	Your County		Report Date:	Sample
	Mailing Address:	Your Address		Quarter Ended:	
	City, State, Zip:	Your City, State, Zip	**Total Quarterly Reimbursement**		$ **8,659.81**

B. Qualifying Children's cases worked during quarter:

See attached:

C.	Employee Name	Quarterly Salaries and Fringe Benefits	% of Time Spent on CW Cases	Eligible Cost
	Person 1	$ 35,000.00	25%	$ 8,750.00
	Person 2	$ 35,000.00	25%	$ 8,750.00
	Person 3	$ 35,000.00	25%	$ 8,750.00
				$ -
				$ -
				$ -
				$ -
# Employees Listed	3	Average % in Qtr	25%	$ 26,250.00
D.	**Other Operating Expenses (averaged)**	100		$ 25.00
	Expert Witness Expenses (tracked)	1000		$ 1,000.00
E.	**Total Reimbursable Costs**			**$ 27,275.00**
F.	**DHS Foster Care IV-E Eligibility Rate**		63.50%	$ 17,319.63
G.	**Federal IV-E Admininstrative Reimbursement Rate**		50%	**$ 8,659.81**
H.	**Total Reimbursement for Quarter (Title IV-E)**			**$ 8,659.81**

I. Certification:

The District Attorney performed all work for which reimbursement is sought in accordance with Title IV-E Intergovernmental Agreement

Signature:	District Attorney	Prepared by:	Office Manager
Typed Name:	District Attorney	Name:	Office Manager
Title:	District Attorney	Contact Phone:	541/999-9999

K. DHS Validation

	Date:
Sign:	
Calculation correct:	
Amount claimed correct:	
Date paid to County:	