

July 9, 2015

Board of County Commissioner
 Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement #148991 with The State of Oregon,
 Department of Human Services, Aging and People with Disabilities Division for the
Provision of Services to Clackamas County Residents age 60 and over

Purpose/Outcomes	To provide Older American Act (OAA) and Oregon Project Independence (OPI) funded services for persons age 60 and over in Clackamas County.
Dollar Amount and Fiscal Impact	The total agreement is \$5,004,716. Funded by Federal OAA Funds and State General Funds designated for the OPI Program.
Funding Source	Federal Older American Act & State General Fund - no County General Funds are involved.
Safety Impact	None
Duration	Effective July 1, 2015 and terminates on June 30, 2017
Previous Board Action	
Contact Person	Brenda Durbin, Director, Social Services Division 503-655-8641
Contract No.	7282

BACKGROUND:

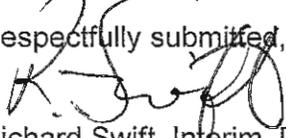
This agreement provides funding for the Social Services Division of the Health, Housing & Human Services Department to administer Older American Act (OAA) and Oregon Project Independence (OPI) funded services for persons 60 and over living in Clackamas County. The services provided include nutrition programs, health promotion activities, transportation, information and referral activities, and In-home services. These services link residents with resources to meet their individual needs. This helps them to remain independent and involved in the community as long as possible.

Social Services Division is the designated Area Agency on Aging for the Clackamas Planning and Service area designated by the State of Oregon, Department of Human Services, Aging and People with Disabilities Division, State Unit on Aging. . This agreement reflects the Older American Act (OAA) and Oregon Project Independence (OPI) funding for July 1, 2015 through June 30, 2017 of the 2015-2017 biennial agreement period. The agreement was reviewed and approved by County Council on June 29, 2015

RECOMMENDATION:

Staff recommends the Board approval of this agreement and authorizes Richard Swift, H3S Interim Director to sign on behalf of Clackamas County.

Respectfully submitted,



Richard Swift, Interim, Director

Healthy Families. Strong Communities.

2051 Kaen Road, Oregon City, OR 97045 • Phone (503) 650-5697 • Fax (503) 655-8677

www.clackamas.us



Grant Agreement Number 148991

**STATE OF OREGON
INTERGOVERNMENTAL GRANT 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 Social Services Division (CCSS)
District 2, Type A
Serving: Clackamas County
PO Box 2950 - 2051 Kaen Road
Oregon City, Oregon 97045
Telephone: 503-655-8640
Facsimile: 503-655-8889
E-mail address: stefanierei@co.clackamas.or.us**

hereinafter referred to as "Recipient" or "AAA".

The Program to be supported under this Agreement relates principally to the DHS'

**Department of Human Services
Aging and People with Disabilities
State Unit on Aging
Agreement Administrator: Sarah Hout or delegate
500 Summer Street NE
Salem, Oregon 97301
Telephone: 503-945-6140
Facsimile: 503-373-1133**

- 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 DHS' right to enforce this Agreement with respect to any default by Recipient 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:Program Description for OAA and OPI Services
- (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:.....Required Federal Terms and Conditions
- (7) Exhibit E:Information Required by 2 CFR Subtitle B with guidance at 2 CFR Part 200

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

b. In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The documents comprising this Agreement shall be in the following descending order of precedence: this Agreement less all exhibits, Exhibits D, A, B, C, and E.

3. **Grant Disbursement Generally.** The maximum not-to-exceed amount payable to Recipient under this Agreement, which includes any allowable expenses, is **\$5,004,716.00**. DHS will not disburse grant to Recipient in excess of the not-to-exceed amount and will not disburse grant until this Agreement has been signed by all parties. DHS will disburse the grant to Recipient as described 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:

- Recipient is a sub-recipient Recipient is a vendor Not applicable

Catalog of Federal Domestic Assistance (CFDA) #(s) of federal funds to be paid through this Agreement: *See Exhibit E for information regarding separate awards of federal funding under this agreement to include CFDA numbers.*

5. **Recipient Data and Certification.**

a. Recipient Information. Recipient shall provide the information set forth below.

PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION

Recipient Name (as filed with the IRS): Clackamas, County of

Street address: 2051 Kaen Rd

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

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

Telephone: (503)655-8330 Facsimile: (503)655-8889

Federal Employer Identification Number: 93-6002296

Recipient Proof of Insurance:

All insurance listed must be in effect at the time of provision of services under this Contract.

Workers' Compensation Insurance Company:

Policy #: _____ Expiration Date: _____

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

b. Certification. The Recipient 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) the Recipient and that pertains to this Agreement or to the project for which the grant activities are being performed. The Recipient 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. Recipient 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 the Recipient. Without limiting the generality of the foregoing, by signature on this Agreement, the Recipient hereby certifies that:

- (1) Under penalty of perjury the undersigned is authorized to act on behalf of Recipient and that Recipient is, to the best of the undersigned’s knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, “Oregon Tax Laws” means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620;
- (2) The information shown in this Section 5., Recipient Data and Certification, is Recipient’s true, accurate and correct information;
- (3) To the best of the undersigned’s knowledge, Recipient 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) Recipient and Recipient’s employees and agents are not included on the list titled “Specially Designated Nationals and Blocked Persons” maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at:
<http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>;
- (5) Recipient 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/portal/public/SAM/>; and
- (6) Recipient is not subject to backup withholding because:
 - (a) Recipient is exempt from backup withholding;
 - (b) Recipient has not been notified by the IRS that Recipient is subject to backup withholding as a result of a failure to report all interest or dividends; or
 - (c) The IRS has notified Recipient that Recipient is no longer subject to backup withholding.

- c. Recipient is required to provide its Federal Employer Identification Number (FEIN) to DHS. By Recipient's signature on this Agreement, Recipient hereby certifies that the FEIN provided to DHS is true and accurate. If this information changes, Recipient is also required to provide DHS with the new FEIN within 10 days.

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

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.

Clackamas County Social Services Division (CCSS) (Recipient)

By:

Authorized Signature	Title	Date
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State of Oregon acting by and through its Department of Human Services (DHS)

By:

Authorized Signature	Title	Date
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Approved for Legal Sufficiency:

Reviewed and approved for legal sufficiency via email by AAG Steven Marlowe on June 25, 2015. A copy of the emailed group approval is on file at OCP.

DHS, Aging and People with Disabilities, State Unit on Aging

Approved for release by Rhonda Buedefeldt on June 9, 2015 via email.

DHS Office of Contracts and Procurement:

Reviewed by:

Phillip G. McCoy, OPBC, OCAC	Contract Specialist	Date
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EXHIBIT A
Part 1
Program Description

for

Older Americans Act and Oregon Project Independence Services

1. **Services to be Provided.** Area Agency on Aging (AAA) agrees to provide services consistent with the purposes, conditions, and restrictions of:
 - a. ORS 410.210 through 410.250 under which AAA receives funding as applicable to Type A AAAs and ORS 410.270 through 410.300 applicable to Type B agencies and,
 - b. Title III and Title VII of the Older Americans Act of 1965, Pub. L. 89-73, 79 Stat. 218, July 14, 1965, as amended (“Older Americans Act”) and 45 CFR Part 1321 (Older Americans Act and 45 CFR Part 1321 collectively “OAA”),
 - c. Oregon Project Independence (“OPI”) program as set out in OAR Chapter 411, Division 032. Adult consumers with physical disabilities and presently receiving services from an AAA participating in the OPI Expansion pilot shall continue to receive services.
 - d. Legislatively Special Purpose Allocation funding as appropriated to support programs to serve individuals with long-term services and supports regardless of eligibility for entitlement programs.
2. **Area Plan.** AAA shall submit for approval to DHS, as instructed, a comprehensive and coordinated four-year service delivery plan (hereafter referred to as the “Area Plan”). The Area Plan will be developed in accordance with Section 306 of the Older Americans Act and OAR 411-032-0005. AAA shall annually submit upon direction of DHS an electronically updated Area Plan. The DHS approved Area Plan will be held on file with the DHS State Unit on Aging (“SUA”). Request for the Area Plan and subsequent updates will be announced through established DHS Action Request procedure. No funds will be authorized for use by AAA without submission and approval of the Area Plan.
3. **Program Reporting Requirements.** AAA shall collect and report National Aging Program Information System (“NAPIS”) data as directed by DHS for all OAA and OPI services provided, using DHS provided software or a DHS approved alternative collection and reporting method. AAA shall at a minimum reconcile reported service data to reported expenditures by end of business day on September 30th of each year. Request for said data will be announced using DHS Action Request procedure.
4. **Program Monitoring.** DHS will conduct periodic monitoring and evaluation of performance management system for program activities and administrative practices conducted in accordance with Section 307(a)(4) of the Older Americans Act and OAR 411-032-0015 and Oregon Project Independence OAR-411-032 and ORS 410.210 through 410.310.
 - a. AAA agrees to participate with DHS to develop a performance management framework to include objectives and metrics based on adherence to program standards as demonstrated through self-monitoring.

- b. AAA agrees to report progress towards these objectives and metrics utilizing agreed upon format and intervals.
- c. DHS agrees to notify AAA in writing of intent to conduct onsite evaluation of reported performance management data and AAA agrees to provide DHS access to its facility(ies) and staff, all related program and fiscal documentation, AAA's sub recipient reports and any other related documentation to substantiate performance management reporting data.

5. Management Control Functions.

- a. Criminal Records and Abuse Checks. AAA agrees to utilize the DHS Criminal Records Information Management System (CRIMS) to meet provider requirements set forth in OAR 407-007-0200 through 407-007-0370 and ORS 181.534 through 181.537 and ORS 443.004. Subject individuals are employees of the AAA; volunteers of AAA; employees and volunteers of AAA's subcontractors and direct care providers of clients for which AAA provides service authorization.
- b. Mandatory Reporting of Elder Abuse. Agency shall ensure compliance with the mandatory reporting requirements of ORS 124.050 through 124.095 and OAR Chapter 411, Division 20 for employees and volunteers of the Agency as well as sub-contractor employees, volunteers and direct care providers for clients for whom the Agency provides service authorization.
- c. Americans with Disabilities Act. AAA will ensure public facilities used for the provision of OAA funded services meet the requirements as stated in Title II of the Americans with Disabilities Act of 1990, as amended ("ADA"), Section 504 of the Rehabilitation Act and DHS Policy #010-005.
- d. Grievance Procedure. AAA shall post the policy and procedure regarding how a client or family member may present a grievance concerning the operation of the Older Americans Act and Oregon Project Independence service programs.
- e. Competitive Procurement. AAA in accordance with OAR 411-011-0005, agrees to competitively award funds by grant or contract to community service providers agencies and organizations, except where by means of AAA's Area Plan, DHS has granted a waiver in accordance with 45 CFR Part 1321.63(b).

6. Information Systems.

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

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

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EXHIBIT A
Part 2
Payment and Financial Reporting
for
Older Americans Act and Oregon Project Independence services

1. Funding Appropriations. The total sum payable for the period of July 1, 2015, through June 30, 2017, shall not exceed the amount described in Section 2. (Grant Disbursement, Generally), which is the Oregon Project Independence funding and any other special purpose appropriation as determined and authorized by the State of Oregon Legislature and the Older Americans Act funding as awarded by the U.S. Administration on Community Living as determined by DHS.

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

Older Americans Act	\$2,651,779.00	CFDA 93.044, 93.045, 93.043, 93.052, 93.041
NSIP	\$343,290.00	CFDA 93.053
Oregon Project Independence	\$2,002,354.00	
Other State Funds	\$7,293.00	

- c. AAA will be allowed to carry-forward into the 2017-2019 biennium no more than ten (10) percent of the full 2015-2017 biennial allocation of Older American Act Title IIIB, IIIC1, IIIC2, IIID, IIIE and VIIB funds not fully expended during the Agreement period.
- d. Funds carried forward from the prior biennium shall be expended prior to use of the current biennial allocation for the same Older Americans Act title.
- e. AAA shall, in accordance with Section 311(d)(4) of the Older Americans Act, promptly and equitably disburse Nutrition Services Incentive Program (“NSIP”) funds to its sub-contractors. NSIP funds shall only be used for purchase of domestically produced food for AAA’s nutrition service programs. NSIP funds must be fully expended during the Agreement period. NSIP funds are not eligible to carry-forward into next biennium.

2. Fiscal Control Functions.

- a. Federal Requirements. AAA shall maintain a financial management system that assures that state and federal funds used for activities under this Agreement are expended and accounted for in accordance with applicable state and federal requirements as outlined in 2 CFR, Subtitle B, with guidance at 2 CFR, Part 200.

b. Program Income.

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

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

d. Fiscal Reporting.

- i. AAA shall, when requesting working capital, submit Form SPD 150-WC to DHS Accounting and Financial Services at a minimum 7 days prior to requisite receipt of funds. AAA shall estimate program expenses separate from estimated administrative expenses and detail such expenses by fund source (i.e., Title IIIB, IIIC1, IIIC2, IIID, IIIE, and VIIB of the Older Americans Act and OPI).
- ii. AAA shall submit electronically to APD State Unit on Aging and DHS Accounting and Financial Services at the electronic address below using DHS Form 148/150 ("Form 148/150") a monthly reimbursement request for OAA and OPI expenditures no later than the 25th day of the following month. DHS agrees to process all reimbursement requests within 30 days following receipt of an approved request.
- iii. AAA agrees that DHS may decrease AAA's OPI allocation for incurred home-care worker ("HCW") expenses which includes the hourly rate of salary (subject to change based on the HCW collective bargaining agreement) and Federal and State Unemployment Tax Act (FUTA/SUTA), Workman's Compensation tax (WC/WCD) and Federal Insurance Contributions Act (FICA).
- iv. AAA shall, no later than 90 days (September 30) from the conclusion of the state fiscal year end (June 30), electronically submit a FINAL fiscal year-end Form 148/150 to DHS Aging & People with Disabilities, State Unit on Aging's e-mail

address of sua.email@state.or.us and,

- v. AAA shall, no later than 180 days (December 31) from the conclusion of the state fiscal year-end (June 30), electronically submit a FINAL AUDITED Form 148/150 signed by AAA Director to DHS Aging & People with Disabilities, State Unit on Aging's e-mail address of sua.email@state.or.us and,
- vi. AAA shall submit one electronic copy of the AAA's fiscal year-end Financial Audit no later than 180 days (December 31) from the conclusion of the state fiscal year-end (June 30) to DHS Aging & People with Disabilities, State Unit on Aging's e-mail address of sua.email@state.or.us and,

e. Special Funding Requests.

- i. OAA Fund Transfers. Beginning October 1st, but not later than June 30th of each fiscal year AAA may, as authorized by DHS and when necessary to meet the needs of the area served, request to transfer Title IIIB, Title IIIC1 and Title IIIC2 funds as permitted in Section 308(b)(4)(A) and (5)(A) of the Older Americans Act.
 - (a) Request for transfer shall be electronically submitted using a form provided by DHS and submitted to sua.email@state.or.us.
 - (b) Upon receipt of transfer authorization, AAA shall post transfer amounts on Form 150, page 1. Failure to do so will result in disqualification of transferred funds.
 - (c) Maximum transfers shall be as follows:
 - i. Not to exceed thirty percent (30%) for any fiscal year from Title IIIB into Title IIIC; or thirty percent (30%) from Title IIIC into Title IIIB; and
 - ii. Not to exceed forty percent (40%) for any fiscal year between Title IIIC1 and Title IIIC2; and
 - (d) When in the best interest of the OAA service recipients, AAA may elect to submit a written explanation of necessity and request DHS to provide a waiver of the maximum percentage limits.
- ii. Fund Matrix #20-3 Program Coordination & Development. Beginning July 1 of year one of the biennium, AAA may request to utilize OAA Title IIIB funds for program coordination and development activities.
 - (a) Request for transfer shall be electronically submitted using a form provided by DHS and submitted to sua.email@state.or.us.
 - (b) In accordance with 45 CFR 1321.17(14)(ii) the AAA will submit details of program coordination and development to the general public for review and comment.

- (c) Authorization from State is consistent with biennial budget cycle.
- iii. Oregon Project Independence Other Authorized Services. At any time during the biennial funding period, AAA may request to utilize OPI funding for services other than those detailed in OAR 411-032-0010(1)(a).
- (a) Request to utilize OPI funding for other services shall be electronically submitted using a form provided by DHS and submitted to sua.email@state.or.us.
 - (b) Other authorized services may include services to support community caregivers, evidence-based health promotion services, options counseling, and transportation services.
 - (c) Authorization shall terminate at the end of each fiscal year.
- f. OAA Minimum Expenditure Requirements. AAA shall in accordance with OAA Section 307(a)(2) of the Older Americans Act and as established by DHS:
- i. Expend, at a minimum, 3% of Title IIIB funds for In-Home Services as defined in Section 102(a)(30)(A-G) of the Older Americans Act.
 - ii. Expend, at a minimum, 3% of Title IIIB funds for legal assistance as described in Section 307(a)(11)(E) of the Older Americans Act,
 - iii. Expend, at a minimum, 18% of Title IIIB funds for access services as described in Section 306(a)(2)(A) of the Older Americans Act and;
 - iv. The required minimum Title IIIB fund expenditure shall be based on total funds after transfer if AAA employed the transfer options as outlined in Exhibit A, Part 3, paragraph E (i) and (ii) titled OAA Fund Transfers.
 - v. Funding for Title IIID, Section 361 of the Older Americans Act for Disease Prevention and Health Promotion may only be used for programs and activities which have been demonstrated through rigorous evaluation to be evidence-based and effective.
- g. OAA Maximum Expenditure Requirements. AAA shall in accordance with Section 304(d)(1)(A) of the Older Americans Act not exceed a maximum 10% of Title III expenditures for administration and such amount can only be taken from funds allocated for Title IIIB, IIIC1, IIIC2 and IIIE services.
- i. AAA shall, in accordance with 45 CFR Part 1321.17(f)(14)(i) and as authorized by DHS, only fund program development and coordination activity after first expending the full 10% in administrative expenses and when such expenditure will have a direct and positive impact on the enhancement of services and only after the general public has been provided with notification to review and comment. A request for program development and coordination funding shall be electronically

submitted using a form provided by DHS and shall be received by the State Unit on Aging no later than end of business on September 30th of a fiscal year.

- ii. AAA shall in accordance with Section 373(g)(2)(C) of the Older Americans Act expend no more than 10% of the total Federal and non-Federal share of the Title III E funds to support services to grandparents and older relatives who are relative caregivers of a child no more than 18 years of age.

- h. OAA Match Requirements. AAA shall, as required in Sections 309(b)(1) and 373(g)(2) of the Older Americans Act, match expenditures with cash or in-kind resources of non-federal means such as local or state sources as follows:
 - i. Federal funds may not pay for more than 75% of the total administrative expenditures for Title IIIB, IIIC1, IIIC2 and III E services. The required match is calculated using the following formula: $(\text{Total Administrative Expenditures to be charged to Federal funds}/.75) - (\text{Total Administrative Expenditures to be charged to Federal funds})$. Example: $100/.75=133$; $133-100=33$; the required match is 33.

 - ii. Federal funds may not pay for more than 85% of the total expenditures for Title IIIB, IIIC1 and IIIC2 services. AAA is required to meet 2/3 of the required match which is calculated using the following formula: $(\text{Total Service Expenditures to be charged to Federal funds}/.85) - (\text{Total Service Expenditures to be charged for Title IIIB, IIIC1, and IIIC2 services}) \times .67$. Example: $100/.85=118$; $118-100=18$; $18 \times .67=12$; the required match is 12.

 - iii. Federal funds may not pay for more than 75% of expenditures for Title III E services. The required match is calculated using the following formula: $(\text{Total Service Expenditures for Title III E services}/.75) - (\text{Total Service Expenditures for Title III E services})$. Example: $100/.75=133$; $133-100=33$; the required match is 33.

EXHIBIT A

Part 3 Special Provisions

1. **HIPAA Compliance.** As a Business Associate of a Covered Entity, DHS must comply with the Health Insurance Portability and Accountability Act and the federal regulations implementing the Act (collectively referred to as HIPAA), and DHS must also comply with OAR 943-014-0400 through OAR 943-014-0465. Recipient is a Business Associate of DHS and therefore must comply with OAR 943-014-0400 through OAR 943-014-0465 and the Business Associate requirements set forth in 45 CFR 164.502 and 164.504.

Recipient shall be liable to DHS for any and all costs incurred by DHS, including, but not limited to, costs of issuing any notices required by HIPAA, HITECH or any other applicable law and damages to third parties as a result of Recipient's Breach of Unsecured Protected Health Information.

- a. Consultation and Testing. If Recipient reasonably believes that the Recipient's or DHS' data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, Recipient shall promptly consult the DHS Information Security Office. Recipient or DHS may initiate a request for testing of HIPAA transaction requirements, subject to available resources and the DHS testing schedule.
- b. Data Transactions Systems. If Recipient intends to exchange electronic data transactions with DHS or the Oregon Health Authority (OHA) in connection with claims or encounter data, eligibility or enrollment information, authorizations or other electronic transaction, Recipient shall execute an Electronic Data Interchange (EDI) Trading Partner Agreement and shall comply with EDI Rules set forth in OAR 943-120-0110 through 943-120-0160.

2. **Confidentiality of Client Information.**

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

3. **Amendments.** DHS reserves the right to amend or extend the Agreement under the following general circumstances:
- a. DHS may extend the Agreement for additional periods of time up to a total Agreement period of five (5) years, and for additional money associated with the extended period(s) of time. The determination for any extension for time may be based on DHS' satisfaction with performance of the work or services provided by the Recipient under this Agreement.
 - b. 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.
 - c. DHS further reserves the right to amend the Statement of Work based on the original scope of work for the following:
 - (1) Programmatic changes/additions or modifications deemed necessary to accurately reflect the original scope of work that may not have been expressed in the original Agreement or previous amendments to the Agreement;
 - (2) Implement additional phases of the Work; or
 - (3) As necessitated by changes in Code of Federal Regulations, Oregon Revised Statutes, or Oregon Administrative Rules which, in part or in combination, govern the provision of services provided under this Agreement.
 - d. Upon identification, by any party to this Agreement, of any circumstance which may require an amendment to this Agreement, the parties may enter into negotiations regarding the proposed modifications. Any resulting amendment must be in writing and be signed by all parties to the Agreement before the modified or additional provisions are binding on either party. All amendments must comply with Exhibit B, Section 22 "Amendments" of this Agreement.

EXHIBIT B

Standard Terms and Conditions

1. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between DHS or any other agency or department of the State of Oregon, or both, and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of the jurisdiction of any court or of any form of defense to or immunity from any Claim, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum. This Section shall survive expiration or termination of this Agreement.
2. **Compliance with Law.** Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Agreement or to the implementation of the project. Without limiting the generality of the foregoing, Recipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. This Section shall survive expiration or termination of this Agreement.
3. **Independent Parties.** The parties agree and acknowledge that their relationship is that of independent parties and that Recipient is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.
4. **Grant Funds; Payments.**
 - a. Recipient is not entitled to compensation under this Agreement by any other agency or department of the State of Oregon. Recipient understands and agrees that DHS' participation in this Agreement is contingent on DHS receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow DHS, in the exercise of its reasonable administrative discretion, to participate in this Agreement.
 - b. **Disbursement Method.** Disbursements under this Agreement will be made by Electronic Funds Transfer (EFT), unless otherwise mutually agreed, and shall be processed in accordance with the provisions of OAR 407-120-0100 through 407-120-0380 or OAR 410-120-1260 through OAR 410-120-1460, as applicable, and any other DHS Oregon Administrative Rules that are program-specific to the billings and payments. Upon request, Recipient must provide its taxpayer identification number (TIN) and other necessary banking information to receive EFT payment. Recipient must 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 disbursements under this Agreement. Recipient must provide this designation and information on a form provided by DHS. In the event that EFT information changes or the Recipient elects to designate a different financial institution for the receipt of any payment made using EFT procedures, Recipient will provide the changed information or designation to DHS on a DHS-approved form.

5. **Recovery of Overpayments.** ANY FUNDS DISBURSED TO RECIPIENT UNDER THIS AGREEMENT THAT ARE EXPENDED IN VIOLATION OR CONTRAVENTION OF ONE OR MORE OF THE PROVISIONS OF THIS AGREEMENT "MISEXPENDED FUNDS" OR THAT REMAIN UNEXPENDED ON THE EARLIER OF TERMINATION OR EXPIRATION OF THIS AGREEMENT MUST BE RETURNED TO DHS. RECIPIENT SHALL RETURN ALL MISEXPENDED FUNDS TO DHS PROMPTLY AFTER DHS' WRITTEN DEMAND AND NO LATER THAN 15 DAYS AFTER DHS' WRITTEN DEMAND. RECIPIENT SHALL RETURN ALL UNEXPENDED FUNDS TO DHS WITHIN 14 DAYS AFTER THE EARLIER OF TERMINATION OR EXPIRATION OF THIS AGREEMENT. DHS, IN ITS SOLE DISCRETION, MAY RECOVER MISEXPENDED OR UNEXPENDED FUNDS BY WITHHOLDING FROM PAYMENTS DUE TO RECIPIENT SUCH AMOUNTS, OVER SUCH PERIODS OF TIME, AS ARE NECESSARY TO RECOVER THE AMOUNT OF THE OVERPAYMENT. PRIOR TO WITHHOLDING, IF RECIPIENT OBJECTS TO THE WITHHOLDING OR THE AMOUNT PROPOSED TO BE WITHHELD, RECIPIENT SHALL NOTIFY DHS THAT IT WISHES TO ENGAGE IN DISPUTE RESOLUTION IN ACCORDANCE WITH SECTION 13 OF THIS EXHIBIT.
6. **Ownership of Work Product.** In accordance with Code of Federal Regulations 45 CFR 75.320 ownership of equipment purchased with Federal funds, shall vest in the Recipient, subject to the following conditions: 1) Equipment records, including description, serial number, model number, acquisition date and location, shall be maintained; 2) Recipient shall take a physical inventory of equipment and reconcile with equipment records at least once every two years; 3) Recipient shall maintain a control system to ensure adequate protection against damage or theft or both, and to implement adequate maintenance procedures to keep the equipment in good condition. Regulations regarding the transfer, sale or disposal of such items can be found in 45 CFR 75.320.
7. **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 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 Recipient (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 Recipient in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the Recipient 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 Recipient 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 Recipient is jointly liable with the State (or would be if joined in the Third Party Claim), the Recipient 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 Recipient 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 Recipient 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 Recipient'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.

This Section shall survive expiration or termination of this Agreement.

8. **Indemnification by Subcontractors.** Recipient shall take all reasonable steps to require 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 Recipient'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. This Section shall survive expiration or termination of this Agreement.

9. **Default; Remedies; Termination.**

- a. Default by Recipient. Recipient shall be in default under this Agreement if:
- (1) Recipient fails to perform, observe or discharge any of its covenants, agreements or obligations set forth herein;
 - (2) Any representation, warranty or statement made by Recipient herein or in any documents or reports relied upon by DHS to measure compliance with this

Agreement, the expenditure of disbursements or the desired outcomes by Recipient is untrue in any material respect when made;

- (3) Recipient (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
- (4) A proceeding or case is commenced, without the application or consent of Recipient, in any court of competent jurisdiction, seeking (1) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Recipient, (2) the appointment of a trustee, receiver, custodian, liquidator, or the like of Recipient or of all or any substantial part of its assets, or (3) similar relief in respect to Recipient 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 Recipient is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

b. DHS' Remedies for Recipient's Default. In the event Recipient is in default under Section 9.a., DHS may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to:

- (1) termination of this Agreement under Section 9.e.(2);
- (2) withholding all or part of monies not yet disbursed by DHS to Recipient;
- (3) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief; or
- (4) exercise of its right of recovery of overpayments under Section 5. of this Exhibit B.

These remedies are cumulative to the extent the remedies are not inconsistent, and DHS may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If a court determines that Recipient was not in default under Section 9.a., then Recipient shall be entitled to the same remedies as if this Agreement was terminated pursuant to Section 9.e.(1).

c. Termination.

- (1) **DHS' Right to Terminate at its Discretion.** At its sole discretion, DHS may terminate this Agreement:
 - (a) For its convenience upon 30 days' prior written notice by DHS to Recipient;
 - (b) Immediately upon written notice if DHS fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to continue supporting the program; or
 - (c) Immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that DHS' support of the program under this Agreement is prohibited or DHS is prohibited from paying for such support from the planned funding source.
 - (d) Immediately upon written notice to Recipient if there is a threat to the health, safety, or welfare of any person receiving funds or benefitting from services under this Agreement "DHS Client", including any Medicaid Eligible Individual, under its care.
- (2) **DHS' Right to Terminate for Cause.** In addition to any other rights and remedies DHS may have under this Agreement, DHS may terminate this Agreement immediately upon written notice to Recipient, or at such later date as DHS may establish in such notice if Recipient is in default under Section 9.a.
- (3) **Mutual Termination.** The Agreement may be terminated immediately upon mutual written consent of the parties or at such other time as the parties may agree in the written consent.
- (4) **Return of Property.** Upon termination of this Agreement for any reason whatsoever, Recipient shall immediately deliver to DHS all of DHS' property that is in the possession or under the control of Recipient at that time. This Section 9.c.(4) survives the expiration or termination of this Agreement.
- (5) **Effect of Termination.** Upon receiving a notice of termination of this Agreement or upon issuing a notice of termination to DHS, Recipient shall immediately cease all activities under this Agreement unless, in a notice issued by DHS, DHS expressly directs otherwise.

10. Insurance. All employers, including Recipient, 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). Recipient shall require subcontractors to maintain insurance as set forth in Exhibit C, which is attached hereto.

11. Records Maintenance, Access. Recipient shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Recipient

shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of Recipient, whether in paper, electronic or other form, that are pertinent to this Agreement, in such a manner as to clearly document Recipient's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of Recipient whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." Recipient acknowledges and agrees that DHS and the 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. Recipient shall retain and keep accessible all Records for the longest of:

- a. Six years following final payment and termination of this Agreement;
 - b. The period as may be required by applicable law, including the records retention schedules set forth in OAR Chapter 166; or
 - c. Until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement.
12. **Information Privacy/Security/Access.** If this Agreement requires or allows Recipient or, when allowed, 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 Recipient or its subcontractor(s) access to such DHS Information Assets or Network and Information Systems, Recipient 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.
13. **Assignment of Agreement, Successors in Interest.**
- a. Recipient shall not assign or transfer its interest in this Agreement without prior written consent of DHS. Any such assignment or transfer, if approved, is subject to such conditions and provisions required by DHS. 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 this Agreement.
 - b. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, and permitted assigns.
14. **Resolution of Disputes.** The parties shall attempt in good faith to resolve any dispute arising out of this 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. This Section shall survive expiration or termination of this Agreement.
15. **Subcontracts.** Recipient shall not enter into any subcontracts for any part of the program supported by this Agreement without DHS' prior written consent. In addition to any other provisions DHS may require, Recipient shall include in any permitted subcontract under this

Agreement provisions to ensure that DHS will receive the benefit of subcontractor activity(ies) as if the subcontractor were the Recipient with respect to Sections 1, 2, 3, 6, 7, 8, 10, 11, 12, 13, 15, 16, and 17 of this Exhibit B. DHS' consent to any subcontract shall not relieve Recipient of any of its duties or obligations under this Agreement.

16. **No Third Party Beneficiaries.** DHS and Recipient are the only parties to this Agreement and are the only parties entitled to enforce its terms. 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. This Section shall survive expiration or termination of this Agreement.
17. **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. This Section shall survive expiration or termination of this Agreement.
18. **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, e-mail, or mailing the same, postage prepaid to Recipient 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 e-mail shall be deemed received and effective five days after the date of e-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 foregoing, 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.

DHS: Office of Contracts & Procurement
250 Winter St. NE, Room 306
Salem, OR 97301
Telephone: 503-945-5818
Facsimile: 503-378-4324

This Section shall survive expiration or termination of this Agreement.

19. **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.

20. **Amendments; Waiver; Consent.** DHS may amend this Agreement to the extent provided herein, the solicitation document, if any from which this Agreement arose, and to the extent permitted by applicable statutes and administrative rules. No amendment, waiver, or other consent under this Agreement shall bind either party unless it is in writing and signed by both parties and when required, the Department of Justice. Such amendment, waiver, or consent shall be effective only in the specific instance and for the specific purpose given. 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. This Section shall survive the expiration or termination of this Agreement.
21. **Merger Clause.** This Agreement constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein, regarding this Agreement.
22. **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.

EXHIBIT C

Subcontractor Insurance Requirements

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

1. **Workers Compensation.** All employers, 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). Recipient shall require and ensure that each of its subcontractors complies with these requirements.

2. **Professional Liability.**

Required by DHS Not required by DHS

Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Agreement. Recipient shall provide proof of insurance of not less than the following amounts as determined by DHS.

3. **Commercial General Liability.**

Required by DHS Not required by DHS

Commercial General Liability Insurance covering bodily injury, death and property damage in a form and with coverages that are satisfactory to the State. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence basis. Recipient shall provide proof of insurance of not less than the following amounts as determined by the DHS:

Bodily Injury, Death and Property Damage:

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

If Subcontractor agreement has a <i>Not-to-Exceed</i> amount of:	Contractor is required to procure a minimum coverage amount of:
\$0 - \$1,000,000	\$1,000,000
\$1,000,001. - \$2,000,000	\$2,000,000
\$2,000,001. - \$3,000,000	\$3,000,000
In excess of \$3,000,001	\$4,000,000

4. Automobile Liability Insurance.

Required by DHS if Agency transports DHS clients

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

Bodily Injury, /Death and Property Damage:

If Subcontractor agreement has a <i>Not-to-Exceed</i> amount of:	Contractor is required to procure a minimum coverage amount of:
\$0 - \$1,000,000	\$1,000,000
\$1,000,001. - \$2,000,000	\$2,000,000
\$2,000,001. - \$3,000,000	\$3,000,000
In excess of \$3,000,001	\$4,000,000

5. Additional Insured. The Commercial General Liability insurance and Automobile Liability insurance required under this Agreement shall include the State of Oregon, its officers, employees and agents as Additional Insureds but only with respect to Recipient’s activities to be performed under this Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

6. Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without 60 days’ written notice from this Recipient or its insurer(s) to DHS. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Agreement and shall be grounds for immediate termination of this Agreement by DHS.

7. **Proof of Insurance.** Recipient shall provide to DHS information requested in Data Certification for all required insurance before delivering any Goods and performing any Services required under this Agreement. Recipient shall pay for all deductibles, self-insured retention and self-insurance, if any.

8. **“Tail” Coverage.** If any of the required liability insurance is on a “claims made” basis, Recipient shall either maintain either “tail” coverage or continuous “claims made” liability coverage, provided the effective date of the continuous “claims made” coverage is on or before the effective date of this Agreement, for a minimum of 24 months following the later of (i) Recipient’s completion and DHS’ acceptance of all Services required under this Agreement, or, (ii) The expiration of all warranty periods provided under this Agreement. Notwithstanding the foregoing 24-month requirement, if Recipient elects to maintain “tail” coverage and if the maximum time period “tail” coverage reasonably available in the marketplace is less than the 24-month period described above, then Recipient shall maintain “tail” coverage for the maximum time period that “tail” coverage is reasonably available in the marketplace for the coverage required under this Agreement. Recipient shall provide to DHS, upon DHS’ request, certification of the coverage required under this section 8.

9. **Self-Insurance.** Recipient may fulfill its insurance obligations herein through a program of self-insurance, provided that Recipient’s self-insurance program complies with all applicable laws, and provides insurance coverage equivalent in both type and level of coverage to that required in this Exhibit C. Notwithstanding section 7. of this Exhibit C, Recipient shall furnish an acceptable insurance certificate to DHS for any insurance coverage required by this Agreement that is fulfilled through self-insurance.

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EXHIBIT D
Required Federal Terms and Conditions

General Applicability and Compliance. Unless exempt under 45 Part 87 for Faith-Based Organizations (Federal Register, July 16, 2004, Volume 69, #136), or other federal provisions, Recipient 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 Recipient, or to the grant activities, 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.** Recipient 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 grant activities. Without limiting the generality of the foregoing, Recipient 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 DHS 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 grant activities in violation of 42 U.S.C. 14402.
2. **Equal Employment Opportunity.** If this Agreement, including amendments, is for more than \$10,000, then Recipient 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 Recipient 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. Recipient 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.** Recipient 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 Recipient certifies, to the best of the Recipient's knowledge and belief that:
 - a. No federal appropriated funds have been paid or will be paid, by or on behalf of Recipient, 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 Recipient shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
 - c. The Recipient 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 31 U.S.C. 1352. 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 Recipient 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 Recipient 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 Recipient 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. Recipient 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.** Recipient 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.** If Recipient expends \$500,000 or more in Federal funds (from all sources) in its fiscal year beginning prior to December 26, 2014, Recipient shall have a single organization-wide audit conducted in accordance with the Single Audit Act. If Recipient expends \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014, Recipient 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 Recipient expends less than \$500,000 in Federal funds in a fiscal year beginning prior to December 26, 2014, or less than \$750,000 in a fiscal year beginning on or after that date, Recipient 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. Recipient shall not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or

Nonprocurement Programs” in accordance with Executive Orders No. 12549 and No. 12689, “Debarment and Suspension” (See 2 CFR Part 180). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Subcontractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

9. **Drug-Free Workplace.** Recipient shall comply and require all subcontractors to comply with the following provisions to maintain a drug-free workplace: (i) Recipient 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 Recipient’s workplace or while providing services to DHS Clients. Recipient’s notice shall specify the actions that will be taken by Recipient 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, Recipient’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 41 U.S.C. 8104; (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 Recipient, or any of Recipient’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 Recipient or Recipient’s employee, officer, agent or subcontractor has used a controlled substance, prescription or non-prescription medication that impairs the Recipient or Recipient’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.** Recipient shall comply and require all subcontractors to comply with the Pro-Children Act of 1994 (codified at 20 U.S.C. 6081 et. seq.).
11. **Medicaid Services.** Recipient 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. 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. 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. 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. Recipient shall acknowledge Recipient'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, Recipient 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. Recipient shall make the disclosures required by this Section 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 activities performed 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 Recipient 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.

EXHIBIT F

Information Required by 2 CFR Subtitle B with guidance at 2 CFR Part 200

All required data elements in accordance with 2 CFR 200.331 are available at <http://www.oregon.gov/dhs/spwpd/pages/sua/info-aaa.aspx> under Fiscal / Budgetary / Contractual section.