

July 09, 2015

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of Renewal Intergovernmental Agreement with State of Oregon, Oregon Health Authority, for the Foodborne Illness Prevention Program

Purpose/Outcomes	This agreement allows the Public Health Division to provide complete environmental health food licensing and inspections to safeguard the health of residents in Clackamas County.
Dollar Amount and Fiscal Impact	The contract maximum value is \$108,408.32
Funding Source	No County General Funds are involved.
Safety Impact	None
Duration	Effective July 01, 2015 and terminates on June 30, 2017
Previous Board Action	The BCC approved the following items: FY 2013 – 2015 contract on June 25, 2008 agenda item 062509-A31. Amendment #01 on June 23, 2011 agenda item 062311-A9. And Amendment #02 on June 20, 2013 agenda item 062013-A2
Contact Person	Dana Lord, Public Health Director – 503-655-8479
Contract No.	7184

BACKGROUND:

The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of an Intergovernmental Agreement with State of Oregon, Oregon Health Authority for the Food Borne Illness Prevention Program. This agreement allows CCPHD to provide complete environmental health food licensing and inspections to safeguard the health of residents in Clackamas County.

This Agreement is effective July 01, 2015 and continues through June 30, 2017. The contract was reviewed by County Counsel on June 22, 2015.

RECOMMENDATION:

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

Respectfully submitted,



Richard Swift, Interim Director

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.

AGREEMENT # 148148

**OREGON HEALTH AUTHORITY
2015-2017 INTERGOVERNMENTAL AGREEMENT
FOR ENVIRONMENTAL HEALTH SERVICES**

This Oregon Health Authority 2015-2017 Intergovernmental Agreement for the provision of Environmental Health Services (the “**Agreement**”) is between the State of Oregon acting by and through its Oregon Health Authority (“**OHA**”) and Clackamas County acting by and through its Health, Housing and Human Services Department, the entity designated, pursuant to ORS 431.375(2), as the Local Public Health Authority (“**LPHA**”).

RECITALS

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

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

WHEREAS, OHA is authorized and bears the responsibility to establish standards under which LPHAs will provide Environmental Health Services to facilities licensed under ORS Chapter 624, ORS Chapter 448 and ORS Chapter 446;

WHEREAS, OHA, pursuant to ORS 624.510, ORS 448.100 and ORS 446.425 delegates authority to LPHA to administer OHA’s rules and policies relating to activities such as the fee collection, licensing, inspection, enforcement of civil penalties, and issuance and revocation of permits and certificates that govern the operation of Environmental Health services;

WHEREAS, OHA, pursuant to ORS 624.510, ORS 448.100 and ORS 446.425 shall assess a remittance from LPHA to OHA for administering Environmental Health Services;

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

I. EFFECTIVE DATE AND DURATION

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 terminated earlier in accordance with its terms, this Agreement shall terminate on **June 30, 2017**. Agreement termination or expiration shall not extinguish or prejudice OHA's right to enforce this Agreement with respect to any default by LPHA that has not been cured.

II. AGREEMENT DOCUMENTS

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

Exhibit A, Part 1 ... Definitions
Exhibit A, Part 2 ... Statement of Work
Exhibit A, Part 3 ... Payment and Financial Reporting
Exhibit A, Part 4 ... State Food Pool and Lodging Section Oversight Activities
Exhibit B Standard Terms and Conditions
Exhibit C Subcontractor Insurance Requirements
Exhibit D Required Subcontractor Provisions

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

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

III. LPHA DATA AND CERTIFICATION

a. **LPHA Tax Identification and Insurance Information.** LPHA shall provide information set forth below. This information is requested pursuant to ORS 305-385.

Please print or type the following information.

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

Name (exactly as filed with the IRS) Clackamas County
Address, City, State & ZIP 2051 Karen Rd., Oregon City, OR 97045
E-mail address: _____
Telephone: () 503 - 742 - 5411 Facsimile: () 503 - 742 - 5401
Federal Employer Identification Number: 93-6002286

Proof of Insurance:

Workers Compensation Insurance Company Self-Insured
Policy # N/A Expiration Date: N/A

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

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

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth below their respective signatures.

APPROVED:

STATE OF OREGON ACTING BY AND THROUGH ITS OREGON HEALTH AUTHORITY:

By: _____
Name: _____
Title: Deputy Public Health Director
Date: _____

CLACKAMAS COUNTY ACTING BY AND THROUGH ITS HEALTH AND HUMAN SERVICES DEPARTMENT (LPHA)

By: _____
Name: Richard Swift
Title: Interim Director
Date: _____

DEPARTMENT OF JUSTICE – APPROVED FOR LEGAL SUFFICIENCY

By: Shannon O’Fallon via email
Name: Shannon O’Fallon
Title: Sr. AAG
Date: April 13, 2015

REVIEWED:

OREGON HEALTH AUTHORITY, PUBLIC HEALTH DIVISION

By: _____
Name: _____
Title: Program Manager
Date: _____

OFFICE OF CONTRACTS & PROCUREMENT

By: _____
Name: Megan Eagleson
Title: Contract Specialist
Date: _____

**2015-2017 INTERGOVERNMENTAL AGREEMENT
FOR ENVIRONMENTAL HEALTH SERVICES**

**EXHIBIT A
Part 1**

Definitions

As used in this Agreement, the following words and phrases shall have the indicated meanings. Certain additional words and phrases may be defined elsewhere in the Agreement in relation to a specific topic or context. When a word or phrase is defined elsewhere in this Agreement, the word or phrase shall not necessarily have the ascribed meaning in any part of the Agreement other than the specific subject area or context in which it is defined.

1. **“Administrative Costs”** means those costs that are over the direct costs of providing delegated program services. These include actual departmental, agency or central government charges such as, but not limited to, accounting, purchasing, human resources, data management, legal counsel and central mail functions.
2. **"Administrator"** means the Assistant Director for Public Health of the Oregon Health Authority, or an authorized representative.
3. **"Bed and Breakfast Facility"** means any establishment located in a structure designed for a single family residence and structures appurtenant thereto, regardless of whether the owner or operator of the establishment resides in any of the structures, that:
 - a. Has more than two rooms for rent on a daily basis to the public; and
 - b. Offers a breakfast meal as part of the cost of the room.
4. **"Commissary"** means Commissary catering establishment, Restaurant or any other place in which food, beverage, ingredients, containers or supplies are kept, handled, prepared or stored, and from which Vending Machines or Mobile Units are serviced.
5. **“Complete Inspection”** means the evaluation of a licensed establishment or facility conducted at the election of the Local Public Health Authority for compliance with all applicable regulations.
6. **“Construction inspection”** means a pre-operational inspection conducted after plan review and prior to operation of a new, remodeled, converted, renovated or altered establishment or facility to determine if the facility meets the requirements of the statutes and rules.
7. **"Consultation Services Remittance"** means the biennial assessment of the Authority for consultation services and maintenance of the Foodborne Illness Prevention, Public Swimming Pool and Tourist Facility Programs.

8. **“Core Item”** means a provision in the Oregon Food Sanitation Rules OAR 333-150, 333-157, 333-158, 333-160, that is not designated as a priority item or a priority foundation item. Core item includes an item that usually relates to general sanitation, operational controls, sanitation standard operating procedures (SSOPs), facilities or structures, equipment design, or general maintenance.
9. **"Delegated Program Services"** means those services for which OHA has entered into an Intergovernmental Agreement under ORS 624, 448 or 446 with the LPHA.
10. **"Direct Costs"** mean those costs for salaries and benefits of field and support staff and their associated costs including, but not limited to, rent, vehicles and travel, equipment, data management, training, phone, office supplies and the pro-rated portion of Direct Costs relating to supervision.
11. **"Environmental Health Services"** means the licensing, Inspection and enforcement functions of the Foodborne Illness Prevention, Public Swimming Pool and Tourist Facility programs identified in ORS 624, 448 and 446.
12. **"Field Staff"** means an Environmental Health Specialist registered by the State of Oregon as required by ORS 700 and qualified to perform Environmental Health Services.
13. **"Fiscal Audit"** means a comprehensive audit using standard audit procedures of the financial records of the LPHA related to licenses and fees.
14. **"Foodborne Illness Prevention Program (or ‘FIPP)’"** means a program within OHA that works in partnership with local health Departments, the food service industry, and the public to reduce or eliminate the known causes of foodborne illness in Restaurants and Temporary Restaurants.
15. **“Food Service Standardization Officer”** - is a lead food inspector who is responsible for standardizing other food inspection personnel within the LPHA.
16. **"Inspection"** means the evaluation of a licensed Facility to evaluate compliance with statutory and rule requirements that is not a Complete Inspection or a Recheck Inspection.
17. **"Licensed Establishment” or “Facility"** means those establishments or facilities licensed in accordance with ORS 624.020 and 624.320, including but not limited to a Restaurant, a Vending Machine, Warehouse, Commissary or Mobile Unit. A Licensed Establishment or Facility is an establishment where food or drink is prepared for consumption by the public or any establishment where the public obtains food or drink so prepared in form or quantity consumable then and there, whether or not it is consumed within the confines of the premises where prepared, and also includes establishments that prepare food or drink in consumable form for service outside the premises where prepared.
18. **"Local Public Health Authority” or “LPHA”** means county governments or health districts established under ORS 431.414 that are responsible for management of local

public health services.

19. **"Mobile Unit"** means any vehicle on which food is prepared, processed or converted or which is used in selling and dispensing food to the ultimate consumer.
20. **"Organizational Camp"** includes any area designated by the person establishing, operating, managing or maintaining the same for recreational use by groups or organizations that include but are not limited to youth camps, scout camps, summer camps, day camps, nature camps, survival camps, athletic camps, camps that are operated and maintained under the guidance, supervision or auspices of religious, public and private educational systems and community service organizations.
21. **"Picnic Park"** means any Recreation Park that is for day use only and provides no recreation vehicle or overnight camping spaces.
22. **"Pre-Operational Inspections"** means those new facilities licensed under ORS 624, such as Restaurants, commissaries, and Mobile Units, for which an Inspection conducted before the food service operation is issued a license to operate.
23. **Priority item** means a provision in the Oregon Food Sanitation Rules OAR 333-150, 333-157, 333-158, 333-160, whose application contributes directly to the elimination, prevention or reduction to an acceptable level, hazards associated with foodborne illness or injury and there is no other provision that more directly controls the hazard. Priority item includes items with a quantifiable measure to show control of hazards such as cooking, reheating, cooling, and handwashing. Priority item is an item that is denoted in this code with a superscript P^P; and is an item that carries a weight of five points on the Food Service Inspection Report or Inspectional Guide and is considered a critical violation as referenced in ORS chapter 624.
24. **Priority foundation item** means a provision in the Oregon Food Sanitation Rules OAR 333-150, 333-157, 333-158, 333-160, whose application supports, facilitates or enables one or more priority items. Priority foundation item includes an item that requires the purposeful incorporation of specific actions, equipment or procedures by industry management to attain control of risk factors that contribute to foodborne illness or injury such as personnel training, infrastructure or necessary equipment, HACCP plans, documentation or record keeping, and labeling. Priority foundation item" is an item that is denoted in this code with a superscript Pf^{Pf}. Pf^{Pf} is an item that carries a weight of three points on the food service inspection report and is considered a critical violation as referenced in ORS chapter 624.
25. **"Public Spa Pool"** means a Public Swimming Pool or wading pool designed primarily to direct water or air-enriched water under pressure onto the bather's body with the intent of producing a relaxing or therapeutic effect.
26. **"Public Swimming Pool"** means an artificial structure, and its appurtenances, that contains water more than two feet deep, is expressly designated or used with the knowledge and consent of the owner or operator for swimming or recreational bathing,

and is for the use of any segment of the public. Public Swimming Pool includes, but is not limited to, swimming pools owned or operated by:

- (a) Travelers' Accommodations;
- (b) Recreation Parks;
- (c) Colleges;
- (d) Schools;
- (e) Organizational camps as defined in ORS 446.310;
- (f) Clubs;
- (g) Associations;
- (h) Business establishments for their patrons or employees;
- (i) Private persons and that are open to the public;
- (j) Recreation districts;
- (k) Municipalities;
- (l) Counties; or
- (m) State agencies.

27. **"Public Wading Pool"** means an artificial structure, and its appurtenances, that contains water less than two feet deep, is expressly designated or used with the knowledge and consent of the owner or operator for wading or recreational bathing, and is for the use of any segment of the public, whether limited to patrons of a companion Facility or not.
28. **"Recheck Inspection"** means an Inspection to determine whether specified corrections have been made or alternative procedures maintained for violations identified in previous Inspections. In food service establishments, a Recheck Inspection also means an Inspection to determine whether specific corrections have been maintained for priority and priority foundation violations creating a significantly increased risk for foodborne illness. Recheck Inspections may be conducted either on pre-announced dates or unannounced.
29. **"Recreation Park"** means any area designated by the person establishing, operating, managing or maintaining the same for picnicking, overnight camping or use of recreational vehicles by the general public or any segment of the public. Recreation Park includes but is not limited to areas open to use free of charge or through payment of a tax or fee or by virtue of rental, lease, license, membership, association or common ownership and further includes, but is not limited to, those areas divided into two or more lots, parcels, units or other interests for purposes of such use.
30. **"Restaurant"** includes any establishment where food or drink is prepared for consumption by the public or any establishment where the public obtains food or drink so prepared in form or quantity consumable then and there, whether or not it is consumed within the confines of the premises where prepared, and also includes establishments that prepare food or drink in consumable form for service outside the premises where prepared, but does not include railroad dining cars, bed and breakfast facilities or Temporary Restaurants as defined herein.

31. **"Risk Control Plan (RCP)"** is a mutually agreed upon written plan (between the Local Public Health Authority and the management of the food establishment) that describes a management system for control of foodborne disease risk factors. The plan delineates necessary records, responsible personnel, what needs to be controlled, and how it will be controlled.
32. **"Temporary Restaurant"**:
- "Intermittent temporary restaurant"** means an establishment:
- (a) That operates temporarily at a specific location in connection with multiple public gatherings, entertainment events, food product promotions or other events, at least two of which are arranged for by different oversight organizations; and
 - (b) Where food is prepared or served for consumption by the public.
- "Seasonal temporary restaurant"** means an establishment:
- (a) That operates at a specific location in connection with multiple public gatherings, entertainment events, food product promotions or other events that are arranged for by the same oversight organization; and
 - (b) Where food is prepared or served for consumption by the public.
- "Single-event temporary restaurant"** means an establishment:
- (a) That operates in connection with a single public gathering, entertainment event, food product promotion or other event; and
 - (b) Where food is prepared or served for consumption by the public.
27. **"Tourist Facility"** means any Travelers' Accommodation, hostel, Picnic Park, Recreation Park and Organizational Camp.
28. **"Travelers' Accommodation"** includes any establishment, which is not a hostel, having rooms, apartments or sleeping facilities rented or kept for rent on a daily or weekly basis to travelers or transients for a charge or fee paid or to be paid for rental or use of facilities.
29. **"Vending Machine"** means any self-service device offered for public use which, upon insertion of a coin, coins, currency or token, or by other means, dispenses unit servings of food or beverage, either in bulk or package, without the necessity of replenishing the device between each vending operation.
30. **"Warehouse"** means any place where food, utensils, single-service articles, cleaning or servicing supplies for Vending Machines, Mobile Units or commissaries are stored.

**OREGON HEALTH AUTHORITY
2015-2017 INTERGOVERNMENTAL AGREEMENT
FOR ENVIRONMENTAL HEALTH SERVICES**

EXHIBIT A

Part 2

Statement of Work

Each Party agrees that if a conflict arises between this Statement of Work and applicable Oregon Administrative Rules (OARs), the OARs will take precedence over this Statement of Work and the Parties shall amend this Contract to conform to the provision of those laws or regulations.

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

I. Staffing and Training.

1. LPHA shall:
 - a. Provide the staff, facilities, materials, and equipment necessary to perform the Environmental Health Services required by this Agreement.
 - b. Ensure that Inspections are conducted by Field Staff who are registered as required by ORS Chapter 700 et seq.
 - c. Require at least one Environmental Health Specialist engaged in the FIPP, Tourist Facility and Public Swimming Pool programs to attend annual OHA sponsored or approved training in all three program areas.
 - d. Within one year of hiring, send all Environmental Health Specialists to an orientation provided by OHA. This requirement does not apply to staff that have previously attended the training while employed in another jurisdiction.
 - e. Ensure that the annual work hours available for a dedicated full time equivalent (FTE) for Field Staff in the Environmental Health Services program is based on a 40 hour week, and totals at least 1640 hours per annum, of which no more than 25% of this total per annum amount of hours is allocated for office and administrative duties and consultation, and of which 75% is for field Inspection activities.
 - f. Observe the following standards, which are established to reflect the levels of effort and resources required to conduct the delegated activities and functions pursuant to the applicable sections of ORS 624, 448 and 446:
 - A. Utilize the staffing standards established in this subsection to determine LPHA budget for field Inspection activities.

- B. Limit Administrative Costs for the Environmental Health Services program to fifteen percent (15%) of Direct Costs for the Environmental Health Services program.
 - C. Staffing for the Environmental Health Services program shall not exceed a ratio of .35 FTE for clerical support staff and .25 FTE for supervisory staff relative to the FTE ratio established for LPHA Field Staff.
 - D. LPHA shall not claim expenditures for services and supplies for administering the Environmental Health Services program that exceed a ratio of .25 of personnel salary for direct program costs.
2. For the FIPP Program, the LPHA shall ensure that at least one Environmental Health Specialist is employed by LPHA, or providing FIPP services under sub-contract with LPHA, who has a current certification from OHA as a Food Service Standardization Officer.
 - a. If applicable, ensure that a new employee is certified as a food service standardization officer within 18 months of employment or within 18 months after becoming registered as an Environmental Health Specialist unless the LPHA elects to develop a plan for addressing this requirement and submits it to OHA for approval.
 3. For the Public Swimming Pool Program the LPHA shall ensure that:
 - a. Inspections are conducted by staff registered as required by ORS Chapter 700.
 - b. At least one Environmental Health Specialist on staff or through contract must successfully complete a National Swimming Pool Foundation (NSPF) Certified Pool Operator course or equivalent approved by OHA within 24 months of employment. OHA may waive this requirement upon request.
 4. Notwithstanding the time limits specified in paragraph I.2.a. the LPHA may elect to develop a training plan, subject to approval by OHA that allows for a longer time limit to comply with the certification requirement.
 5. Notwithstanding the administrative standards outlined in I.1.f, LPHA may determine staffing standards and actual costs of providing FIPP program services. In instances for which LPHA decides to determine its actual costs, LPHA must document and report to OHA actual time spent and expenses incurred. OHA, at its sole discretion, will conduct a Fiscal Audit of the costs of providing FIPP services claimed by LPHA.

II. Inspections.

1. FIPP Program.
 - a. LPHA shall conduct a minimum of one Complete Inspection once each six months of operation, or fraction thereof in instances in which the Facility receiving Inspection is a seasonal or other Facility that does not operate on a full-year basis, for each Licensed Establishment, with the exception of bed and breakfast facilities and Temporary Restaurants. LPHA shall evaluate at least 10% of the Vending Machines of each licensed Vending Machine operator during each Inspection
 - b. LPHA shall ensure that average standards, relative to the size of the Licensed Establishment or Facility under Inspection, for completing Inspection functions by Field Staff, including travel time, are established as follows:
 - A. 0-15 seats, one and one half hours.
 - B. 16-50 seats, one and three quarter hours.
 - C. 51-150 seats, two hours.
 - D. Over 150 seats, two and one half hours.
 - c. Single-event, Seasonal and Intermittent temporary restaurants must receive a minimum of one Inspection during operation for each license issued;
 - d. Benevolent Single-event temporary restaurants may receive an Inspection or a consultation in lieu of an Inspection, as determined by the Local Public Health Authority.
 - e. Bed and Breakfast Facilities must be inspected once per year;
 - f. LPHA may, subject to OHA approval, substitute an alternative Inspection procedure or intervention once per year in place of a Complete Inspection.
 - g. LPHA shall implement an increased Inspection schedule for Licensed Establishments or facilities in accordance with OAR 333-157-0027. LPHA may, conduct two of the quarterly Inspections based upon a menu review consultation, an announced Inspection, a Risk Control Plan or other method sanctioned by OHA.
 - h. LPHA shall conduct a Pre-Operational or construction Inspection following review of the operational plan of a particular Licensed Establishment or Facility, and shall conduct a pre-operational or

construction Inspection prior to the operation of a new, remodeled, converted, renovated or altered establishment or Facility. The pre-operational Inspection is in addition to the requirement for a Complete Inspection in section II.1.a. of this Agreement.

- i. LPHA shall conduct a Complete Inspection to assign a public notice of sanitation within forty-five (45) days after opening for a Restaurant or Bed and Breakfast Facility. This Inspection counts toward one of the Inspections required in section II.1.a of this Agreement Exhibit.
- j. LPHA shall conduct Recheck Inspections of Licensed Establishments and facilities to determine if timely corrective action has been taken on noted priority and priority foundation violations or public health hazards.
- k. LPHA shall, at a minimum, furnish each FIPP Specialist with the following equipment or materials to conduct Inspections:
 - A. Temperature measuring devices, flashlight, Inspection forms and/or computer Inspection equipment, identification and business cards, rules, and stickers;
 - B. Food Service - Sanitizing swabs, test strips for chlorine and quaternary ammonium;
 - C. Food and waterborne illness investigation materials, specified in guidelines provided by OHA, and a light meter.
- l. For purposes of establishing program budget and staffing, LPHA shall assume an average Recheck Inspection rate of forty percent of the total number of Inspections conducted by the LPHA. A priority and priority foundation recheck inspection shall require an average of 45 minutes, including travel time.

2. Public Swimming Pool Program.

- a. All licensed pools and spas must receive a minimum of one Complete Inspection for every six months of operation or fraction thereof.
- b. Inspectors shall document pH, free residual chlorine, total chlorine, total alkalinity, total hardness, cyanuric acid (if used), water clarity (recorded as acceptable or unacceptable), water temperature, pressure and/or vacuum gauge readings and flow rate as measured by flow meter.
- c. The LPHA shall provide inspectors with a state-approved pool test kit and a 25-foot tape measure or equivalent device with the ability to accurately measure distance and depth.

3. Tourist Facility Program.
 - a. LPHA shall conduct a minimum of one Complete Inspection once each six months of operation, or fraction thereof in instances in which the Facility receiving Inspection is a seasonal or other Facility that does not operate on a full-year basis, for each Recreation Park and Organizational Camp.
 - b. Travelers' Accommodations and Hostels must be inspected on a schedule in accordance with local public health priorities and with consideration of the following criteria:
 - A. Complaints received from a guest at a particular Facility;
 - B. A history of rule violations;
 - C. A request for Inspection or consultation from a licensee;
 - D. Reports of illness or accidents associated with the Facility;
 - E. Change of owner or operator;
 - F. The Facility's method of sewage disposal, source of water and availability of local fire protection services;
 - G. Length of time since the last Inspection of the Facility;
 - c. OHA recommends a minimum of one Inspection every two years for Travelers' Accommodations and hostels.
4. LPHA shall ensure that Inspection reports are filled out completely and include at least the following information:
 - a. Specific problem and correction statements for all violations including Oregon Administrative Rule references.
 - b. Time limits for making corrections to violations, unless the violation is in the food program.
 - c. For the FIPP program Inspections must be documented as specified in OAR 333-157-0000. In addition, the LPHA shall indicate on the Inspection report the means and manner by which a priority and priority foundation violation has been corrected during Complete and Recheck Inspections.

III. Food Handler Training. LPHA shall assure that a food handler training program for food handlers is available in accordance with ORS 624.570 using minimum criteria developed by OHA. The LPHA shall provide a food handler training program if one is otherwise not available in its county. A LPHA may deviate from the minimum criteria developed by OHA if such deviation is pre-approved by OHA. The LPHA shall document the training methods used for food handler training in a manner specified by OHA.

IV. Licensing and Fees

1. The LPHA shall establish a single license fee per establishment or Facility type. Fees may not be added based on local determination of unique features of an establishment or Facility.
2. Licensing categories must be based upon those specified in ORS 446.310, 448.035 and 624.490. The Local Public Health Authority may not create additional licensing categories.
3. LPHA may, with OHA approval, establish and implement the following:
 - a. A fee schedule for licensees that require more than two (2) Recheck Inspections per year.
 - b. A fee schedule for costs associated with plan review conducted under guidelines established by OHA.
 - c. A reinstatement fee for late license reinstatement of licensees.
 - d. A schedule for pro-rated licensing and Inspection fees for partial year operation of licensees as follows: From January 1 through September 30, a full license fee is required. From October 1 through December 31, half the annual fee must be assessed.
4. LPHA shall ensure that license applications and licenses are issued on forms provided or approved by OHA.
5. LPHA may elect to recover the cost of the extra Inspections by charging a fee of up to one-half of the annual licensing fee otherwise assessable to the Restaurant for each additional Inspection.
6. LPHA shall issue a license only after the LPHA has received the fee from the Facility and has determined that the Facility is in "substantial compliance" with the requirements set forth in the applicable statutes and rules.

7. LPHA shall document and report to OHA the actual time spent and expenses incurred on program services and may be subject to a Fiscal Audit, in instances in which the license fees assessed by the LPHA are more than 20 % above or below the fees established in ORS 624.490. If LPHA requests a Fiscal Audit be conducted by a private auditing agency, LPHA shall, subject to OHA approval of the conduct of the audit by a private auditing agency, pay the costs and shall provide a copy of the audit report to OHA.
8. All license fees collected by the LPHA pursuant to ORS 446.425, ORS 448.448.005 to 448.090 and 624.510 must be paid into the county treasury and placed in a special revenue fund or the general fund of the county treasury and placed to the credit of the LPHA. Such monies must be used only for program services pursuant to ORS 446, 448 and 624. The LPHA must assure on an annual basis that all fees collected are used solely for the purposes of administering the programs as described in this section.
9. All moneys received by OHA under ORS 624 shall be paid into the State Treasury, deposited in the General Fund to the credit of the Public Health Account and used exclusively by OHA for the purpose of carrying out the provisions of ORS 624.

V. Record Keeping and Reporting. LPHA shall establish, implement and monitor standards and practices for record keeping and periodic reporting to OHA on the provision of Environmental Public Health services. The LPHA shall:

1. In accordance with ORS 192.001 to 192.170, record, and maintain for at least three years, documentation of all administrative matters delegated under ORS 446.425, ORS 448.100 or 624.510 including a record of any hearings; the time, date, place and copies of the complaint; all intended actions and orders; and the final disposition of the hearing proceedings.
2. At a minimum, maintain records according to the State Archive Division rules for:
 - a. Inspection reports,
 - b. Complaints and their disposition,
 - c. Communicable disease or suspected food-borne illness investigations,
 - d. License applications and licenses issued,
 - e. Food service Inspection scores,
 - f. Changes in public notice placards,
 - g. Food handler training materials,
 - h. Plan review records,
 - i. License denials, revocations, suspensions or other temporary closures,
 - j. Failed to Comply notices posted or any other enforcement actions take,

and

- k. Public Swimming Pool accidents
3. Upon OHA request, provide to OHA program information such as:
 - a. Inspections conducted, and
 - b. Workload indicators and staffing patterns.
4. Respond to surveys conducted by OHA.
5. Submit program information and surveys to OHA in a form within the technical abilities of the LPHA.
6. Maintain and update the guidance documents issued by OHA as well as other information required by OHA.

VI. Technical Assistance and Consultation. The LPHA shall, upon request by a licensee or member of the public, provide technical information and consultation to the public and those Licensed Establishments and facilities currently holding permits and licenses.

VII. Minimum Standards, Program Review and Penalties. LPHA shall be subject to the minimum standards, program review, and penalty provisions set forth below.

1. The LPHA must request approval prior to implementing alternative Inspection or enforcement procedures. The LPHA must include expected performance measures and outcomes in the annual plan required to be submitted under ORS 431.385.
2. The LPHA is subject to a performance review of both office and field activities to determine compliance with these rules. OHA will conduct a review of each LPHA at least once every three years. OHA will submit the results of the review to the LPHA.
3. The LPHA shall cooperate with OHA in a triennial Fiscal Audit that will be conducted by OHA. LPHA may also be subject to additional Fiscal Audits if deemed necessary by OHA. If the LPHA requests a Fiscal Audit required in OAR 333-012-0070(3) be conducted by a private auditing agency, the LPHA shall pay the costs and a copy of audit report must be provided to OHA.
4. The LPHA shall, at least once each calendar year, cooperate with OHA in the completion and submission of an OHA survey that is designed to determine accomplishments of LPHA performance of Environmental Health Services and of anticipated needs for further refinements in the performance of these services. The information obtained by OHA from the survey is intended to assist OHA in providing assistance, guidance, training, consultation and support for Environmental Health Services as needed.

5. If a review reveals that LPHA is not complying with the provisions of this Agreement or applicable Environmental Health Services rules or regulations, OHA will inform LPHA of the action required to correct performance deficiencies, and of the time frame by which the corrective action must be completed. LPHA shall correct the deficiencies within the time frames required and report the corrections to OHA.
6. If OHA determines that the deficiencies result in a serious human health hazard, OHA shall require immediate compliance of LPHA. If OHA determines that the deficiencies do not result in a serious human health hazard, a longer period of time may be allowed for compliance, however, the maximum time allowed for compliance, after notice is issued by OHA, shall be as follows:
 - a. Up to 90 days to correct administrative deficiencies such as, but not limited to, accounting reports and records.
 - b. Up to 180 days to correct program deficiencies such as, but not limited to, inadequate frequency of inspections, scoring, staffing and lack of enforcement action.
 - c. Notwithstanding paragraph 6. a. and b. of this section, OHA, at its sole discretion, may allow a longer time frame for compliance if deemed necessary;
7. If OHA determines that the LPHA did not use the proper cost elements in determining the fee or that the amount of the fee is not justified, OHA may order the LPHA to adjust any fee, as soon as is possible, to a level supported by OHA's analysis of the fee.
8. In instances in which OHA notifies LPHA of an emergency health hazard, and LPHA is either unwilling or unable to administer or enforce delegated standards, OHA may, pursuant to ORS 431.170, immediately take responsibility of the functions and collect the monies necessary to protect public health. When the health hazard has been resolved or is no longer an emergency, OHA may return authority to the LPHA, and may initiate a review to determine if delegation is to be continued.
9. OHA may deny or revoke the delegation of a program in instances in which the LPHA:
 - a. Does not have sufficient qualified personnel to conduct the program.
 - b. Has failed to perform its delegated duties.
 - c. Has engaged in deceit or fraud in the conduct of the program or maintenance of its associated records.

10. OHA will impose suspension or rescission of a delegation in accordance with ORS Chapter 183 relating to contested cases.
11. OHA will immediately respond to a request by the LPHA for personnel or equipment during an emergency. If OHA is unable to assist as requested, OHA will immediately notify the LPHA and provide such assistance as is available to OHA.

VIII. Establishment of Enforcement Procedures.

1. In accordance with the requirements of ORS Chapter 183, LPHA shall comply with its own rules for conducting administrative hearings for permit and license denial for those applicants for permits and licenses that have been denied permits and licenses, and for the suspension or revocation of licenses for which LPHA suspends or revokes licenses.
2. Enforcement Procedures. LPHA shall utilize all administrative and legal means necessary to enforce ORS 446.310 to 446.349, 448.005 to 448.060, and 624.010 to 624.130, 624.310 to 624.430, and 624.490 to 624.550, and Oregon administrative rules developed there under and implement OHA policies relating to the Environmental Public Health Program. OHA will consider failure to adhere to statutes and rules governing environmental public health services as unacceptable surveillance and enforcement.

IX. Determination and Remittance of LPHA Consultation Services Remittance.

LPHA and OHA shall comply with ORS 446.321 and 446.322, 448.030 and 448.035, ORS 624.020, and OAR 333-012-0057 for collecting fees from licensees and the LPHA shall remit fees to OHA in accordance with this Agreement.

1. FIPP Remittance

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

- a. The FIPP remittance amount must be determined by:
 - i. Projecting license revenue for the biennium using state marker fees.
 - ii. Taking the biennial budget for the environmental public health

services programs and dividing it by the revenue projection to yield a percentage factor.

- iii. Taking each LPHA's revenue projection for environmental public health services, using state marker fees, is then multiplied by that factor to yield the remittance amount.
- b. Fifty percent (50%) of the biennial fee assessment is payable to the OHA each year unless otherwise negotiated with OHA.
- c. The annual amount remitted to OHA in the first year of the biennium may not be less than thirty-five percent (35%) of the biennial fee assessment.
- d. The LPHA must provide to OHA a quarterly remittance payment, in accordance with the time frames and procedures set forth in Exhibit A, Part 3, Section 2.
- e. Assessments may not be represented as a surcharge or added charge.

2. Public Pool Remittance

OHA shall consult with representatives of local health officials and industry in determining the amount to be remitted by each Local Public Health Authority that has accepted delegation for the Public Swimming, Spa and Wading Pool Program for the purposes of supporting the statewide consultation and program services costs:

- a. The consultation must occur no later than April of each odd numbered year in order to determine the amount required to be remitted to OHA in the following biennium;
- b. The consultation must consider program expenditures and current Public Swimming Pool, Public Spa Pool and Public Wading Pool Facility inventories while determining the amount of the remittance.

3. Tourist facility Remittance

The county, quarterly, shall remit 15 percent of an amount equal to the state licensing fee or 15 percent of the county license fee whichever is less, to OHA for consultation service and maintenance of the statewide program.

X. Epidemiology Investigation and Reporting.

LPHA shall investigate all suspected illnesses connected with facilities licensed under this Agreement. The reports of all investigations of confirmed illnesses must be submitted to OHA as required by OAR 333-018. LPHA shall also notify the Department of investigations expected to result in confirmed foodborne illness.

XI. Ordinances.

The LPHA may adopt ordinances on applicable matters provided they are not less stringent than the Oregon Administrative Rules adopted pursuant to ORS Chapters 183, 446, 448 and 624. Any ordinance proposed for adoption on matters applicable to food service operators more stringent than those set forth in ORS 624 and rules adopted thereunder must be approved by OHA and the cost of implementing any ordinance so adopted may not be charged to license fees adopted pursuant to ORS 624.510(2). Notwithstanding the provisions of the section, when an emergency exists and delay will result in an immediate danger to public health, Local Public Health Authorities may adopt ordinances without prior OHA approval. This section does not affect ordinances that are required to be adopted as specified in these rules.

XII. OHA Statement of Work

OHA shall perform the following additional functions under this Contract:

1. Provide periodic training to LPHA staff at no cost to the LPHA including at least one annual meeting and one regional meeting;
2. As needed, develop, support, and provide technical assistance for statewide computer licensing and inspection program and database;
3. Provide at no cost, electronic versions of educational materials such as food handlers booklets, training videos, hand washing signs, temperature control signs, and other educational materials;
4. Support the inspection programs by providing technical assistance and interpretation of this Contract, administrative rules and other laws enforced by LPHA under this Contract;
5. Provide FIPP standardization for at least one person in the county in the FIPP program;
6. Provide training on swimming pool and spa review;
7. Provide personnel to LPHA to perform inspection services in case of an emergency.
8. Provide training on tourist accommodation and organizational camp rules.

**OREGON HEALTH AUTHORITY
2015-2017 INTERGOVERNMENTAL AGREEMENT
FOR ENVIRONMENTAL HEALTH SERVICES**

EXHIBIT A

Part 3

Payment and Financial Reporting

1. **Compensation.** The maximum, not-to-exceed compensation payable to OHA under the requirements of this Agreement which includes any allowable expenses is **\$108,407.00**. OHA may not receive payment for Work performed before the date this Agreement becomes effective or after the termination or expiration of this Agreement. If the maximum compensation is increased by amendment of this Agreement, the amendment must be fully effective before LPHA performs Work subject to the amendment.

Interim remittances shall be made to OHA subject to ORS 293.462, and in accordance with terms and conditions set forth in Exhibit A, Part 2, IX of this Agreement.

- a. **Foodborne Illness Prevention Program** - Not later than thirty (30) days following the last day of a particular calendar quarter, LPHA shall remit **\$13,551.00** to OHA which is a portion of the fees collected by LPHA pursuant to the FIPP Work performed under this Agreement that is approximately twenty-five percent (25%) of the fees assessed for LPHA for a particular calendar year, or as negotiated and modified by amendment to this Agreement.
 - A. The remittance to OHA shall be accompanied by a written remittance summary report that shall describe all Work performed with particularity and by whom it was performed and shall itemize and explain each remittance category contained in the report.
 - B. Each remittance summary report also shall include the total amount remitted to date by LPHA prior to the current remittance LPHA shall send remittances to OHA's Agreement Administrator.
- b. **Public Pool and Spa Program** - Not later than thirty (30) days following the last day of a particular calendar quarter, LPHA shall remit to OHA **\$45.00** for each license issued by LPHA in that quarter under ORS 448.035, which is a portion of the fees collected by LPHA.
- c. **Tourist Facility Program** - Not later than thirty (30) days following the last day of a particular calendar quarter, for each license issued in that quarter, the Local Public Health Authority must remit 15% of the state licensing fee or 15% of the Local Public Health Authority license fee, whichever is less, to OHA for consultation services and maintenance of the statewide program for facilities licensed under ORS 446.425.

**OREGON HEALTH AUTHORITY
2015-2017 INTERGOVERNMENTAL AGREEMENT
FOR ENVIRONMENTAL HEALTH SERVICES**

**EXHIBIT A
Part 4**

State Food Pool and Lodging Section Oversight Activities

OHA shall perform the oversight activities, of this Agreement in accordance with the following tasks and activities:

1. Provide the centralized oversight and system development to enable LPHA to enforce laws and regulations that protect public health and assure consistency and uniformity in program application.
2. Evaluate effectiveness, accessibility and quality of environmental health services provided by LPHA.
3. Maintain industry and community relations.
4. Assure a competent environmental health workforce – according to the annual Program Plans of the Foodborne Illness Prevention Program and Public Pool and Lodging Program.
5. OHA shall conduct a review of LPHA at least once during the period of this Agreement. OHA shall submit the results of the review to the LPHA. OHA may, in its discretion, conduct the review in the field using an inspection protocol.
6. OHA shall conduct a triennial fiscal audit of the LPHA and OHA may conduct additional fiscal audits of the LPHA if deemed necessary.
7. OHA shall survey each LPHA at least annually to determine accomplishments and needs. The survey results shall guide OHA in providing assistance, guidance, training, consultation and support as needed.
8. When a LPHA has been notified of an emergency health hazard and is either unwilling or unable to administer or enforce environmental health services statutes or rules, as delegated, OHA may, pursuant to ORS 431.170, immediately take responsibility of the functions and collect the monies necessary to protect public health. When the health hazard has been resolved or is no longer an emergency, the Authority may return authority to the LPHA or may initiate a review to determine if delegation to LPHA is to be continued.

9. OHA shall immediately respond to a request by the LPHA for personnel or equipment during an emergency. If the Authority is unable to assist as requested, OHA shall immediately notify the LPHA and provide any possible assistance.

**OREGON HEALTH AUTHORITY
2015-2017 INTERGOVERNMENTAL AGREEMENT
FOR ENVIRONMENTAL HEALTH SERVICES**

EXHIBIT B

Standard Terms and Conditions

1. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between the parties that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within a circuit court for the State of Oregon of proper jurisdiction. THE PARTIES, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Except as provided in this section, neither party waives any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. The parties acknowledge that this is a binding and enforceable Agreement and, to the extent permitted by law, expressly waive any defense alleging that either party does not have the right to seek judicial enforcement of this Agreement.
2. **Compliance with Law.** Both parties shall comply with laws, regulations and executive orders to which they are subject and which are applicable to the Agreement or to the Work. Without limiting the generality of the foregoing, both parties expressly agree to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations; (b) all state laws requiring reporting of client abuse; (c) ORS 659A.400 to 659A.409, ORS 659A.145 and all regulations and administrative rules established pursuant to those laws in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the Work. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. All employers, including LPHA and OHA, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126.
3. **Independent Contractors.** The parties agree and acknowledge that their relationship is that of independent contracting parties and that LPHA is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.
4. **Representations and Warranties**
 - a. LPHA represents and warrants as follows:
 - (1) Organization and Authority. LPHA is a political subdivision of the State of Oregon duly organized and validly existing under the laws of the State of Oregon. LPHA 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 LPHA of this Agreement (a) have been duly authorized by all necessary action by LPHA 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 LPHA'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 LPHA is a party or by which LPHA 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 LPHA of this Agreement.
 - (3) Binding Obligation. This Agreement has been duly executed and delivered by LPHA and constitutes a legal, valid and binding obligation of LPHA, 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) LPHA has the skill and knowledge possessed by well-informed members of its industry, trade or profession and LPHA 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 LPHA's industry, trade or profession;
 - (5) LPHA shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the Work; and
- b. OHA represents and warrants as follows:
- (1) Organization and Authority. OHA has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder.
 - (2) Due Authorization. The making and performance by OHA of this Agreement (a) have been duly authorized by all necessary action by OHA and (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which OHA is a party or by which OHA may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by OHA of this Agreement, other than approval by the Department of Justice if required by law.
 - (3) Binding Obligation. This Agreement has been duly executed and delivered by OHA and constitutes a legal, valid and binding obligation of

OHA, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

- (4) OHA has the skill and knowledge possessed by well-informed members of its industry, trade or profession and OHA 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 OHA's industry, trade or profession.

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

5. Reserved

6. Reserved

7. Nothing in this Agreement shall require LPHA or OHA to act in violation of state or federal law or the Constitution of the State of Oregon.

8. Ownership of Intellectual Property.

- a. Except as otherwise expressly provided herein, or as otherwise required by state or federal law, OHA will not own the right, title and interest in any intellectual property created or delivered by LPHA or a subcontractor in connection with the Work. With respect to that portion of the intellectual property that the LPHA owns, LPHA grants to OHA a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to (1) use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the intellectual property, (2) authorize third parties to exercise the rights set forth in Section 8.a.(1) on OHA's behalf, and (3) sublicense to third parties the rights set forth in Section 8.a.(1).
- b. If state or federal law requires that OHA or LPHA grant to the United States a license to any intellectual property, or if state or federal law requires that OHA or the United States own the intellectual property, then LPHA shall execute such further documents and instruments as OHA may reasonably request in order to make any such grant or to assign ownership in the intellectual property to the United States or OHA. To the extent that OHA becomes the owner of any intellectual property created or delivered by LPHA in connection with the Work, OHA will grant a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to LPHA to use, copy, distribute, display, build upon and improve the intellectual property.
- c. LPHA shall include in its subcontracts terms and conditions necessary to require that subcontractors execute such further documents and instruments as OHA may reasonably request in order to make any grant of license or assignment of ownership that may be required by federal or state law.

9. LPHA Default.

LPHA shall be in default under this Agreement upon the occurrence of any of the following events:

- a. LPHA fails to perform, observe or discharge any of its covenants, agreements or obligations set forth herein;
- b. Any representation, warranty or statement made by LPHA herein or in any documents or reports relied upon by OHA to measure the delivery of Work, the expenditure of payments or the performance by LPHA is untrue in any material respect when made;
- c. LPHA (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 LPHA, in any court of competent jurisdiction, seeking (1) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of LPHA, (2) the appointment of a trustee, receiver, custodian, liquidator, or the like of LPHA or of all or any substantial part of its assets, or (3) similar relief in respect to LPHA 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 LPHA is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

10. OHA Default.

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

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

11. Termination.

- a. LPHA Termination. LPHA may terminate this Agreement:

- (1) For its convenience, upon at least 30 days advance written notice to OHA;
 - (2) Upon 45 days advance written notice to OHA, if LPHA does not obtain funding, appropriations and other expenditure authorizations from LPHA's governing body, federal, state or other sources sufficient to permit LPHA to satisfy its performance obligations under this Agreement, as determined by LPHA in the reasonable exercise of its administrative discretion;
 - (3) Upon 30 days advance written notice to OHA, if OHA is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as LPHA may specify in the notice; or
 - (4) Immediately upon written notice to OHA, if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that LPHA no longer has the authority to meet its obligations under this Agreement.
- b. OHA Termination. OHA may terminate this Agreement:
- (1) For its convenience, upon at least 30 days advance written notice to LPHA;
 - (2) Upon 45 days advance written notice to LPHA, if OHA does not obtain funding, appropriations and other expenditure authorizations from federal, state or other sources sufficient to meet the payment obligations of OHA under this Agreement, as determined by OHA in the reasonable exercise of its administrative discretion. Notwithstanding the preceding sentence, OHA may terminate this Agreement, immediately upon written notice to LPHA or at such other time as it may determine if action by the Oregon Legislative Assembly or Emergency Board reduces OHA's legislative authorization for expenditure of funds to such a degree that OHA will no longer have sufficient expenditure authority to meet its payment obligations under this Agreement, as determined by OHA in the reasonable exercise of its administrative discretion, and the effective date for such reduction in expenditure authorization is less than 45 days from the date the action is taken;
 - (3) Immediately upon written notice to LPHA if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that OHA no longer has the authority to meet its obligations under this Agreement or no longer has the authority to provide the financial assistance from the funding source it had planned to use;
 - (4) Upon 30 days advance written notice to LPHA, if LPHA is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as OHA may specify in the notice;
 - (5) Immediately upon written notice to LPHA, if any license or certificate

required by law or regulation to be held by LPHA or a subcontractor to perform the Work is for any reason denied, revoked, suspended, not renewed or changed in such a way that LPHA or a subcontractor no longer meets requirements to perform the Work. This termination right may only be exercised with respect to the particular part of the Work impacted by loss of necessary licensure or certification;

- (6) Immediately upon written notice to LPHA, if OHA determines that LPHA 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.

12. Effect of Termination

- a. Entire Agreement.
 - (1) Upon termination of this Agreement, LPHA shall have no further obligation to make remittance payments to OHA under this Agreement, except for the remittance of payments for fees collection prior to the termination of the agreement.
 - (2) Upon termination of this Agreement, neither party shall have an obligation to perform Work under this Agreement except as otherwise required by law.
- b. Obligations and Liabilities. Notwithstanding Section 12.a., any termination of this Agreement shall not prejudice any obligations or liabilities of either party accrued prior to such termination.

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

14. Insurance. LPHA shall require subcontractors to maintain insurance as set forth in Exhibit C, which is attached hereto.

15. Records Maintenance; Access. LPHA shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, LPHA shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of LPHA, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document LPHA's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of LPHA whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." LPHA acknowledges and agrees that OHA and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to all Records to perform examinations and audits and make excerpts and transcripts. LPHA 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. LPHA 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 LPHA or its subcontractor(s) to have access to or use of any OHA computer system or other OHA Information Asset for which OHA imposes security requirements, and OHA grants LPHA or its subcontractor(s) access to such OHA Information Assets or Network and Information Systems, LPHA shall comply and require all subcontractor(s) to which such access has been granted to comply with OAR 943-014-0000 through OAR 943-014-0320, as such rules may be revised from time to time. For purposes of this section, "Information Asset" and "Network and Information System" have the meaning set forth in OAR 943-014-0305, as such rule may be revised from time to time.

17. Force Majeure. Neither OHA nor LPHA shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, natural causes, or war, which is beyond the reasonable control of OHA or LPHA respectively. Each party shall, however, make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. OHA may terminate this Agreement upon written notice to the other party after reasonably determining that the delay or breach will likely prevent successful performance of this Agreement.

18. Assignment of Agreement, Successors in Interest.

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

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

20. Subcontracts. LPHA shall not enter into any subcontracts for any of the Work required by this Agreement without OHA's prior written consent. In addition to any other provisions OHA may require, LPHA shall include in any permitted subcontract under this Agreement provisions to require that OHA will receive the benefit of subcontractor performance as if the subcontractor were the LPHA with respect to Sections 1, 2, 3, 4, 8,

15, 16, 18, 21, and 23 of this Exhibit B. OHA's consent to any subcontract shall not relieve LPHA of any of its duties or obligations under this Agreement.

21. **No Third Party Beneficiaries.** OHA and LPHA are the only parties to this Agreement and are the only parties entitled to enforce its terms. The parties agree that LPHA's performance under this Agreement is solely for the benefit of OHA to assist and enable OHA to accomplish its statutory mission. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
22. **Amendment.** No amendment, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and when required the Department of Justice. Such amendment, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.
23. **Severability.** The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
24. **Survival.** Sections 1, 4, 6, 7, 8, 12, 13, 14, 15, 16, 19, 21, 22, 23, 24, 25, 26, 28, 29, 30 and 31 of this Exhibit B shall survive Agreement expiration or termination as well as those the provisions of this Agreement that by their context are meant to survive. Agreement expiration or termination shall not extinguish or prejudice either party's right to enforce this Agreement with respect to any default by the other party that has not been cured.
25. **Notice.** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid to LPHA or OHA at the address or number set forth below, or to such other addresses or numbers as either party may indicate pursuant to this section. Any communication or notice so addressed and mailed shall be effective five days after mailing. Any communication or notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the recipient, or on the next business day, if transmission was outside normal business hours of the recipient. To be effective against the other party, any notice transmitted by facsimile must be confirmed by telephone notice to the other party at number listed below. Any communication or notice given by personal delivery shall be effective when actually delivered to the addressee.

OHA: Office of Contracts and Procurement
 250 Winter Street NE
 Salem, OR 97301
 Telephone: (503) 945-5818
 Facsimile Number: (503) 378-4324

LPHA: Clackamas County acting by and through its Health and Human Services
Department
Sherry Whitehead
2051 Kaen Road, Suite 367
Oregon City, Oregon 97045
Telephone: (503) 742-5342
Facsimile Number: (503) 742-5352

26. **Headings.** The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret this Agreement.
27. **Counterparts.** This Agreement and any subsequent amendments may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement and any amendments so executed shall constitute an original.
28. **Waiver.** The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision. No waiver or consent shall be effective unless in writing and signed by the party against whom it is asserted.
29. **Construction.** Reserved
30. **Contribution.** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which the State is jointly liable with the LPHA (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 LPHA in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the LPHA 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 LPHA 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 LPHA is jointly liable with the State (or would be if joined in the Third Party Claim), the LPHA 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 LPHA 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 LPHA 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 LPHA'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.** LPHA 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 LPHA'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.

**OREGON HEALTH AUTHORITY
2015-2017 INTERGOVERNMENTAL AGREEMENT
FOR ENVIRONMENTAL HEALTH SERVICES**

**EXHIBIT C
Subcontractor Insurance Requirements**

LPHA 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 LPHA 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 OHA. LPHA shall not authorize contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, LPHA shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. LPHA 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 LPHA permit a contractor to work under a Subcontract when the LPHA is aware that the contractor is not in compliance with the insurance requirements. As used in this section, a "first tier" contractor is a contractor with whom LPHA directly enters into a contract. It does not include a subcontractor with whom the contractor enters into a contract.

TYPES AND AMOUNTS.

1. **WORKERS COMPENSATION.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employers Liability insurance with coverage limits of not less than \$1,000,000 must be included.
2. **PROFESSIONAL LIABILITY:** Covers any damages caused by an error, omission or negligent act related to the services to be provided under the Subcontract, with limits not less than the following, as determined by OHA, or such lesser amount as OHA approves in writing:

- Per occurrence for all claimants for claims arising out of a single accident or occurrence:

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

Professional liability insurance is required for entities that employ professionals and when professional liability insurance is available for the profession.

3. **COMMERCIAL GENERAL LIABILITY:** Covers bodily injury, death, and property damage in a form and with coverages that are satisfactory to OHA. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by OHA, or such lesser amount as OHA approves in writing:

Bodily Injury, Death and Property Damage:

- Per occurrence for all claimants for claims arising out of a single accident or occurrence:

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

4. **AUTOMOBILE LIABILITY INSURANCE:** Required for first tier contractors when the scope of work includes transportation. Covers all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for “Commercial General Liability” and “Automobile Liability”). Automobile Liability Insurance must be in not less than the following amounts as determined by OHA, or such lesser amount as OHA approves in writing:

Bodily Injury, Death and Property Damage:

- Per occurrence for all claimants for claims arising out of a single accident or occurrence:

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

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

**OREGON HEALTH AUTHORITY
2015-2017 INTERGOVERNMENTAL AGREEMENT
FOR ENVIRONMENTAL HEALTH SERVICES**

EXHIBIT D

Required Sub-Contractor Provisions

1. Subcontractor shall comply with all applicable provisions of that certain Agreement (the "Agreement") between the State of Oregon acting by and through its Oregon Health Authority ("OHA") and LPHA.
2. Subcontractor shall comply with all applicable federal, state and local laws, administrative rules, ordinances, and regulations.
3. Subcontractor shall make available to OHA or to any Client, any and all written materials in alternate formats in compliance with OHA's policies or administrative rules. For the purposes of the foregoing, "written materials" includes, without limitation, all work product and subcontracts related to this contract.
4. Unless Subcontractor is a State of Oregon governmental agency, Subcontractor agrees that it is an independent contractor and not an agent of the State of Oregon, OHA or LPHA.
5. Subcontractors(s) that are not units of local government as defined in ORS 190.003, shall 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 Subcontractor 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 Subcontractor from and against any and all Claims
6. First tier Subcontractors(s) that are not units of local government as defined in ORS 190.003 shall obtain, at Subcontractor's expense, and maintain in effect with respect to all occurrences taking place during the term of the contract, insurance requirements as specified in Exhibit C of the certain 2015-2017 Intergovernmental Agreement For Environmental Health Services between LPHA and the Oregon Health Authority dated as of July 1, 2015 which Exhibit is incorporated herein by this reference.