

February 11, 2016

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement with the State of Oregon,
Department of Consumer and Business Services, Oregon Insurance Division,
Senior Health Insurance Benefits Assistance (SHIBA)

Purpose/Outcomes	To provide grant funds for the Senior Medicare Patrol (SMP) program to provide outreach, education and individual counseling regarding Medicare/Medicaid fraud, waste, and abuse to people in our community.
Dollar Amount and Fiscal Impact	Three year grant for \$30,000
Funding Source	U.S. Administration for Community Living awarded a three year grant to State of Oregon, Department of Human Services, Aging and People with Disabilities, State Unit on Aging that awarded a grant to State of Oregon, Department of Consumer and Business Services, Oregon Insurance Division, Senior Health Insurance Benefits Assistance. No match requirements. No County General Funds are involved.
Safety Impact	None
Duration	June 1, 2015 through May 31, 2018
Previous Board Action	051012-A2, 101112-A1, 080411-A1
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. This funding aligns with H3S's strategic priority to increase self-sufficiency for our clients. 2. This funding aligns with the County's strategic priority to ensure safe, healthy and secure communities.
Contact Person	Brenda Durbin, Director – Social Services Division – (503) 655-8641
Contract No.	7529

BACKGROUND:

The Social Services Division (SSD) of the Health, Housing and Human Services Department requests approval of a Grant Agreement from the State of Oregon, Department of Consumer and Business Services, Senior Health Insurance Benefits Assistance (SHIBA) to help carry out the Senior Medicare Patrol (SMP) program. The SMP program is intended to support the activities of the SSD Volunteer Connection's SHIBA program.

SHIBA is designed to educate senior and other Medicare recipients of their rights, resources and needs relating to Medicare and other health insurance. These services are invaluable to our seniors and disabled citizens and provide a much needed resource for our most vulnerable populations.

The SMP grant funds help the Volunteer Connection SHIBA program improve and expand State efforts to provide Medicare/Medicaid beneficiaries education of healthcare fraud, errors and abuse. Outreach efforts focus on high populations in rural, Hispanic and tribal communities.

This Intergovernmental Agreement is effective June 1, 2015 through May 31, 2018. It is retroactive due to receipt from the State on December 23, 2015, subsequently reviewed by SSD and County Counsel. It was reviewed and approved by County Counsel on January 20, 2016.

The agreement is for \$30,000 for a three year period. There are no match requirements or County General Funds involved.

RECOMMENDATION:

Staff recommends approval of this Intergovernmental Agreement and authorizes Richard Swift, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,

Richard Swift, Director
Health, Housing & Human Services

INTERGOVERNMENTAL AGREEMENT

This Agreement is between the State of Oregon acting by and through its Department of Consumer and Business Services, Oregon Insurance Division, Senior Health Insurance Benefits Assistance (SHIBA) grant program (“Agency”) and Clackamas County acting by and through its Health, Housing & Human Services Department, Social Services Division (“Local Government”), each a “Party” and, together, the “Parties.”

SECTION 1: AUTHORITY

This Agreement is authorized by [ORS 190.110](#).

SECTION 2: PURPOSE

Oregon Department of Human Services (DHS), Aging and People with Disabilities, State Unit on Aging received a three-year Senior Medicare Patrol (SMP) grant (CFDA 93.048) from the U.S. Administration for Community Living (ACL). SHIBA received a three-year interagency agreement from DHS to help carry out the SMP grant project objectives. SHIBA is providing this sub-grant with the intention to improve and expand State efforts to provide Medicare/Medicaid beneficiaries education on healthcare fraud, errors and abuse. This federal grant from the ACL helps ensure states have a network of trained staff and volunteer counselors to accomplish this task. This Agreement is 100% funded with Federal funds.

Objectives

1. Local Government will increase beneficiary access to a volunteer counselor work force that is trained and fully able to provide a range of assistance tied to healthcare fraud.
2. Local Government will participate in SMP training, as required by the grant, to ensure SMP volunteer counselors are equipped to respond to healthcare fraud inquiries.
3. Local Government will provide personalized counseling to an increasing number and diversity of beneficiaries needing locally-based counseling services.
4. Local Government will conduct targeted community outreach to beneficiaries in public forums either under their sponsorship or with community-based partners or coalitions to increase healthcare fraud education and reporting.

SECTION 3: EFFECTIVE DATE AND DURATION

This Agreement is effective on June 1, 2015 and terminates on May 31, 2018, unless terminated earlier in accordance with Section 16.

SECTION 4: AUTHORIZED REPRESENTATIVES

4.1 AGENCY'S AUTHORIZED REPRESENTATIVE IS:

Lisa D. Emerson, SHIBA Program Coordinator
350 Winter ST NE, RM 330
Salem, OR 97301
(503) 947-7087 Office
(503) 947-7092 Fax
lisa.emerson@oregon.gov

4.2 LOCAL GOVERNMENT'S AUTHORIZED REPRESENTATIVE IS:

Lois Orner, Human Services Manager, Volunteer Connection
2051 Kaen Rd
PO Box 2950
Oregon City, OR 97045
(503) 655-8269 Office
(503) 503-655-8889 Fax
lomer@co.clackamas.or.us

4.3 A PARTY MAY DESIGNATE A NEW AUTHORIZED REPRESENTATIVE BY WRITTEN NOTICE TO THE OTHER PARTY.

SECTION 5: RESPONSIBILITIES OF EACH PARTY

5.1 LOCAL GOVERNMENT SHALL PERFORM THE WORK SET FORTH ON EXHIBIT A, ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE.

5.2 AGENCY SHALL PAY LOCAL GOVERNMENT AS DESCRIBED IN SECTION 6.

SECTION 6: COMPENSATION AND PAYMENT TERMS

Agency shall pay Local Government a fixed fee of **\$30,000** for completing all work and delivering all deliverables required of Local Government under this Agreement. Agency agrees to pay Local Government **\$5,000** on a semi annual basis beginning June 1, 2015 – May 31, 2018. Payment will be made after completion of all work and delivery of all deliverables to Agency's satisfaction and submission of satisfactory invoice.

SECTION 7: RECOVERY OF OVERPAYMENTS

If payments to Local Government under this Agreement, or any other agreement between Agency and Local Government, exceed the amount to which Local Government is entitled, Agency may, after notifying Local Government in writing, withhold from payments due Local Government under this Agreement, such amounts, over such periods of times, as are necessary to recover the amount of the overpayment.

SECTION 8: NONAPPROPRIATION

Agency's obligation to pay any amounts and otherwise perform its duties under this Agreement is conditioned upon Agency receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement. Nothing in this Agreement may be construed as permitting any violation of [Article XI, Section 7](#) of the Oregon Constitution or any law limiting the activities, liabilities or monetary obligations of Agency.

SECTION 9: REPRESENTATIONS AND WARRANTIES

Local Government represents and warrants to Agency that:

- 9.1 Local Government is a county duly organized and validly existing. Local Government has the power and authority to enter into and perform this Agreement;
- 9.2 The making and performance by Local Government of this Agreement (a) have been duly authorized by Local Government, (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 Local Government'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 Local Government is party or by which Local Government may be bound or affected. No authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Local Government of this Agreement, other than those that have already been obtained;
- 9.3 This Agreement has been duly executed and delivered by Local Government and constitutes a legal, valid and binding obligation of Local Government enforceable in accordance with its terms;
- 9.4 Local Government has the skill and knowledge possessed by well-informed members of the industry, trade or profession most closely involved in providing the services under this Agreement, and Local Government will apply that skill and knowledge with care and diligence to perform its obligations under this Agreement in a professional manner and in accordance with the highest standards prevalent in the related industry, trade or profession; and
- 9.5 Local Government shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform its obligations under this Agreement.

The representations and warranties set forth in this section are in addition to, and not in lieu of, any other representations or warranties provided by Local Government.

SECTION 10: INDEPENDENT CONTRACTORS

The Parties agree and acknowledge that their relationship is that of independent contracting parties and that Local Government is not an officer, employee, or agent of the State or Oregon as those terms are used in [ORS 30.265](#) or otherwise.

SECTION 11: OWNERSHIP OF WORK PRODUCT

11.1 As used in this Section and elsewhere in this Agreement, the following terms have the meanings set forth below:

11.1.1 “Local Government Intellectual Property” means any intellectual property owned by Local Government and developed independently from the work under this Agreement.

11.1.2 “Third Party Intellectual Property” means any intellectual property owned by parties other than Local Government or Agency.

11.1.3 “Work Product” means every invention, discovery, work of authorship, trade secret or other tangible or intangible item that Local Government is required to deliver to Agency under this Agreement and all intellectual property rights therein.

11.2 All Work Product created by Local Government under this Agreement, including derivative works and compilations, and whether or not such Work Product is considered a “work made for hire,” shall be the exclusive property of Agency. Agency and Local Government agree that all Work Product created by Local Government under this Agreement is “work made for hire” of which Agency is the author within the meaning of the United States Copyright Act. If for any reason the Work Product created by Local Government under this Agreement is not “work made for hire,” Local Government hereby irrevocably assigns to Agency any and all of its rights, title, and interest in all Work Product created by Local Government under this Agreement, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Agency’s reasonable request, Local Government shall execute such further documents and instruments necessary to fully vest such rights in Agency. Local Government forever waives any and all rights relating to Work Product created by Local Government under this Agreement, including without limitation, any and all rights arising under 17 U.S.C. §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

11.3 If Work Product is Local Government Intellectual Property, a derivative work based on Local Government Intellectual Property or a compilation that includes Local Government Intellectual Property, Local Government hereby grants to Agency an irrevocable, no-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Local Government Intellectual Property and the pre-existing elements of the Local Government Intellectual Property employed in the Work Product, and to authorize others to do the same on Agency’s behalf.

11.4 If Work Product is Third Party Intellectual Property, a derivative work based on Third Party Intellectual Property or a compilation that includes Third Party Intellectual Property, Local Government shall secure on Agency’s behalf and in the name of Agency an irrevocable, no-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property and the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, and to authorize others to do the same on Agency’s behalf.

- 11.5** If state or federal law requires that Agency or Local Government grant to the United States a license to any intellectual property in the Work Product, or if state or federal law requires that Agency or the United States own the intellectual property in the Work Product, then Local Government shall execute such further documents and instruments as Agency may reasonably request in order to make any such grant or to assign ownership in such intellectual property to the United States or Agency.

SECTION 12: 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, suite or proceeding (collectively "Claim") between Agency or any other agency or department of the State of Oregon, or both, and Local Government that arises from or relates to this Agreement 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 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, to or from any Claim or from the jurisdiction of any court. LOCAL GOVERNMENT, BY EXECUTING OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

SECTION 13: LOCAL GOVERNMENT DEFAULT

Local Government will be in default under this Agreement upon the occurrence of any of the following events:

- 13.1** Local Government fails to perform, observe or discharge any of its covenants, agreements or obligations under this Agreement;
- 13.2** Any representation, warranty or statement made by Local Government in this Agreement or in any documents or reports relied upon by Agency to measure the delivery of services, the expenditure of funds or the performance by Local Government is untrue in any material respect when made;
- 13.3** Local Government (a) 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, (b) admits in writing its inability, or is generally unable, to pay its debts as they become due, (c) makes a general assignment for the benefit of its creditors, (d) is adjudicated a bankrupt or insolvent, (e) commences a voluntary case under the Federal Bankruptcy code (as now or hereafter in effect), (f) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (g) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in any involuntary case under the Bankruptcy Code, or (h) takes any action for the purpose of effecting any of the foregoing; or
- 13.4** A proceeding or case is commenced, without the application or consent of Local Government, in any court of competent jurisdiction, seeking (a) the liquidation, dissolution winding-up, or the composition or readjustment of debts of Local Government, (b) the appointment of a trustee

receiver custodian liquidator or the like of Local Government or of all or any substantial part of its assets, or (c) similar relief in respect to Local Government 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, judgement, 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 Local Government is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

SECTION 14: AGENCY DEFAULT

Agency will be in default under this Agreement if Agency fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Agreement.

SECTION 15: REMEDIES

- 15.1** In the event Local Government is in default under Section 13, Agency 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: (a) termination of this Agreement under Section 16, (b) reducing or withholding payment for work or Work Product that Local Government has failed to deliver within any scheduled completion dates or has performed inadequately or defectively, (c) requiring Local Government to perform, at Local Government's expense, additional work necessary to satisfy its performance obligations or meet performance standards under this Agreement, (d) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, or (e) exercise of its right of recovery of overpayments under Section 7 of this Agreement or setoff, or both. These remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.
- 15.2** In the event Agency is in default under Section 14 and whether or not Local Government elects to exercise its right to terminate this Agreement under Section 16.3.3, or in the event Agency terminates this Agreement under Sections 16.2.1, 16.2.2, 16.2.3, or 16.2.5, Local Government's sole monetary remedy will be (a) for work compensable at a stated rate, a claim for unpaid invoices for work completed and accepted by Agency, for work completed and accepted by Agency within any limits set forth in this Agreement but not yet invoiced, for authorized expenses incurred, and for interest within the limits of [ORS 293.462](#), less any claims Agency has against Local Government, and (b) for deliverable-based work, a claim for the sum designated for completing the deliverable multiplied by the percentage of work completed on the deliverable and accepted by Agency, for authorized expenses incurred, and for interest within the limits of [ORS 293.462](#), less previous amounts paid for the deliverable and any claims that Agency has against Local Government. In no event will Agency be liable to Local Government for any expenses related to termination of this Agreement or for anticipated profits. If previous amounts paid to Local Government exceed the amount due to Local Government under this Section 15.2, Local Government shall promptly pay any excess to Agency.

SECTION 16: TERMINATION

16.1 This Agreement may be terminated at any time by mutual written consent of the Parties.

16.2 Agency may terminate this Agreement as follows:

16.2.1 Upon 30 days advance written notice to Local Government;

16.2.2 Immediately upon written notice to Local Government, if Agency fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in Agency's reasonable administrative discretion, to perform its obligations under this Agreement;

16.2.3 Immediately upon written notice to Local Government, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Agency's performance under this Agreement is prohibited or Agency is prohibited from paying for such performance from the planned funding source;

16.2.4 Immediately upon written notice to Local Government, if Local Government is in default under this Agreement and such default remains uncured 15 days after written notice thereof to Local Government; or

16.2.5 As otherwise expressly provided in this Agreement.

16.3 Local Government may terminate this Agreement as follows:

16.3.1 Immediately upon written notice to Agency, if Local Government fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in Local Government's reasonable administrative discretion, to perform its obligations under this Agreement;

16.3.2 Immediately upon written notice to Agency, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Local Government's performance under this Agreement is prohibited or Local Government is prohibited from paying for such performance from the planned source;

16.3.3 Immediately upon written notice to Agency, if Agency is in default under this Agreement and such default remains uncured 15 days after written notice thereof to Agency; or

16.3.4 As otherwise expressly provided in this Agreement

16.4 Upon receiving a notice of termination of this Agreement, Local Government will immediately cease all activities under this Agreement, unless Agency expressly directs otherwise in such notice. Upon termination, Local Government will deliver to Agency all documents, information, works-in-progress, Work Product and other property that are or would be deliverables under the Agreement. And upon Agency's reasonable request, Local Government will surrender all documents, research or objects or other tangible things needed to complete the work that was to have been performed by Local Government under this Agreement.

SECTION 17: AMENDMENTS

The terms of this Agreement may not be altered, modified, supplemented or otherwise amended, except by written agreement of the Parties.

SECTION 18: NOTICE

Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement must be given in writing by email, personal delivery, facsimile, or postage prepaid mail, to a Party's Authorized Representative at the physical address, fax number or email address set forth in this Agreement, or to such other addresses or numbers as a Party may indicate pursuant to this Section 18. Any notice so addressed and mailed becomes effective five days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system. Any notice given by facsimile becomes effective upon electronic confirmation of successful transmission to the designated fax number.

SECTION 19: SURVIVAL

All rights and obligations of the Parties under this Agreement shall cease upon termination of this Agreement, other than the rights and obligations arising under Sections 11, 12, 19, 22 and 29 hereof and those rights and obligations that by their express terms survive termination of this Agreement; provided, however, that termination of this Agreement will not prejudice any rights or obligations accrued to the Parties under this Agreement prior to termination.

SECTION 20: 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.

SECTION 21: COUNTERPARTS

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.

SECTION 22: LIMITATION OF LIABILITY AND INSURANCE

22.1 EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTION 29, NEITHER PARTY WILL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER THE LIABILITY CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE. NEITHER PARTY WILL BE LIABLE FOR ANY DAMAGES

OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS.

22.2 Local Government shall maintain insurance as set forth in Exhibit B, attached hereto and incorporated herein by this reference.

SECTION 23: RECORDS

Local Government shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Local Government shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of Local Government, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document Local Government's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of Local Government, whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." Local Government acknowledges and agrees that Agency and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. Local Government 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 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. Subject to foregoing minimum records retention requirement, Local Government shall maintain Records in accordance with the records retention schedules set forth in [OAR Chapter 166](#).

SECTION 24: COMPLIANCE WITH LAW

In connection with their activities under this Agreement, the Parties shall comply with all applicable federal, state and local law.

SECTION 25: NO THIRD PARTY BENEFICIARIES

Agency and Local Government are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this Agreement.

SECTION 26: FORCE MAJEURE

Neither Party is responsible for any failure to perform, or any delay in performance of any obligations under this Agreement caused by fire, civil unrest, labor unrest, natural causes, or war, which is beyond that Party's reasonable control. Each Party shall, however, make all reasonable efforts to remove or eliminate such cause of failure to perform or delay in performance and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. Agency may terminate this Agreement upon written notice to Local Government after

reasonably determining that the failure or delay will likely prevent successful performance of this Agreement.

SECTION 27: MERGER, WAIVER AND MODIFICATION

This Agreement and all exhibits and attachments, if any, constitute 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. No waiver or consent under this Agreement binds either Party unless in writing and signed by both Parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given. EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

SECTION 28: SUBCONTRACTS AND ASSIGNMENT

- 28.1** Local Government shall not, without Agency's prior written consent, enter into any subcontracts for any of the work required of Local Government under this Agreement. Agency's consent to any subcontract will not relieve Local Government of any of its duties or obligations under this Agreement.
- 28.2** Local Government may not assign or transfer its interest in this Agreement without the prior written consent of Agency and any attempt by Local Government to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. Agency's consent to Local Government's assignment or transfer of its interest in this Agreement will not relieve Local Government of any of its duties or obligations under this Agreement. The provisions of this Agreement will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.

SECTION 29: CONTRIBUTION

- 29.1** 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](#) (a "Third Party Claim") against a Party (the "Notified Party") with respect to which the other Party (the "Other Party") may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. Each 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 Section and a 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 contribution obligation under this Section 29 with respect to the Third Party Claim.
- 29.2** With respect to a Third Party Claim for which Agency is jointly liable with Local Government (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses

(including attorneys' fees), judgements, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Local Government in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of Local Government on the other hand in connection with the events that resulted in such expenses, judgements, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of Local Government 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, judgements, fines or settlement amounts. Agency'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.

29.3 With respect to a Third Party Claim for which Local Government is jointly liable with Agency (or would be if joined in the Third Party Claim), Local Government shall contribute to the amount of expenses (including attorneys' fees), judgements, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of Local Government on the one hand and of Agency on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Local Government on the one hand and of Agency 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, judgements, fines or settlement amounts. Local Government'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.

SECTION 30: TIME IS OF THE ESSENCE

Time is of the essence in Local Government's performance of its obligations under this Agreement.

SECTION 31: HEADINGS

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

SECTION 32: ADDITIONAL PROVISIONS

Local Government shall comply with the additional requirements set forth in Exhibit C, attached hereto and incorporated herein by this reference.

SECTION 33:

SECTION 34:

SECTION 35: AGREEMENT DOCUMENTS

This Agreement consists of the following documents, which are listed in descending order of precedence: this Agreement less all exhibits, attached Exhibit A - Statement of Work, Exhibit B - Insurance, and Exhibit C - Additional Requirements.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

STATE OF OREGON acting by and through its
Department of Consumer and Business Services

STATE OF OREGON, Clackamas County acting
by and through its Health, Housing & Human
Services Department

Reviewed By: _____
(Signature of Printed Name below)

By: _____
(Signature of Printed Name below)

TK Keen
Printed Name

Printed Name

Deputy Administrator
Title

Title

Date

Date

Authorized By: _____
Nancy A. Cody, Designated Procurement Officer

Date

Approved for Legal Sufficiency in accordance with [ORS 291.047](#)

NA

Assistant Attorney General