



Clackamas County Sheriff's Office

CRAIG ROBERTS, Sheriff

October 20, 2016

Board of County Commissioners
Clackamas County

Members of the Board:

Request by the Clackamas County Sheriff's Office to enter into an
Intergovernmental Agreement with
Oregon Department of Human Services for Funding to Conduct a Specialist Interview Training

Purpose/Outcome	Clackamas County Sheriff's Office, in partnership with other local agencies, will offer a comprehensive specialist interview course.
Dollar Amount and Fiscal Impact	The total billable amount under this agreement is \$33,000.00.
Funding Source	Children's Justice Act (CJA) Grant via the Oregon Department of Human Services.
Safety Impact	This training is developed to provide interviewers with a better understanding of offender behavior in order to design an interview strategy that will help identify victims. It provides a more accurate understanding of the risks posed by a particular offender.
Duration	Five days; totaling 40 hours of training.
Previous Board Action/Review	Approval of funds in FYs 2014-15 and 2015-16.
Contact Person	Julie Collinson, Conference Coordinator – Office (503) 557-5827
Contract No.	None

BACKGROUND:

Clackamas County Sheriff's Office, in partnership with the Oregon Department of Justice, United States Attorney's Office and Multnomah County, will provide a five-day, 40-hour specialist interview course that is designed to enhance the skills and knowledge base of professionals who interview child sex offenders in the course of law enforcement investigations, child protection evaluation and risk assessments and/or management of offenders. The course provides the skills needed to competently and thoroughly interview suspects, obtain admissions, and most importantly, identify and rescue previously unknown and unidentified victims of child sexual abuse and exploitation.

This agreement has been reviewed by County Counsel.

RECOMMENDATION:

Staff recommends the Board approve this agreement and authorizes Craig Roberts, Sheriff, or his designee, to sign on behalf of Clackamas County.

Respectfully submitted,


Matt Ellington,
Undersheriff

"Working Together to Make a Difference"



Grant Agreement Number 152014

**STATE OF OREGON
INTERGOVERNMENTAL GRANT AGREEMENT**

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

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

**Clackamas County Sheriff's Office
2223 Kaen Road
Oregon City, OR
Contact Name: Julie L. Collinson
Telephone: 503-896-9505
Facsimile: 503-794-8068
E-mail address: jcollinson@co.clackamas.or.us**

hereinafter referred to as "Recipient."

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

**Clackamas County Sheriff's Office
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Oregon City, OR
Contact Name: Julie L. Collinson
Telephone: 503-896-9505
Facsimile: 503-794-8068
E-mail address: jcollinson@co.clackamas.or.us**

1. Effective Date and Duration.

This Agreement shall become effective on the date this Agreement has been fully executed by every party and, when required, approved by Department of Justice or on **August 1, 2016**, whichever date is later. Unless extended or terminated earlier in accordance with its terms, this Agreement shall expire on **November 30, 2016**. Agreement termination or expiration shall not extinguish or prejudice DHS' right to enforce this Agreement with respect to any default by Recipient that has not been cured.

2. Agreement Documents.

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

- (1) Exhibit A, Part 1: Program Description
- (2) Exhibit A, Part 2: Payment and Financial Reporting
- (3) Exhibit A, Part 3: Special Terms and Conditions
- (4) Exhibit B: Standard Terms and Conditions
- (5) Exhibit C: Subcontractor Insurance Requirements
- (6) Exhibit D: Required Federal Terms and Conditions
- (7) Attachment 1: Budget

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

b. In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The documents comprising this Agreement shall be in the following descending order of precedence: this Agreement less all exhibits, Exhibits D, A, B, C, and Attachment 1.

3. Grant Disbursement Generally.

The maximum not-to-exceed amount payable to Recipient under this Agreement, which includes any allowable expenses, is **\$33,000.00**. DHS will not disburse grant to Recipient in excess of the not-to-exceed amount and will not disburse grant until this Agreement has been signed by all parties. DHS will disburse the grant to Recipient as described in Exhibit A.

4. Vendor or Sub-Recipient Determination.

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

Recipient is a sub-recipient; OR Recipient is a vendor.

Catalog of Federal Domestic Assistance (CFDA) #(s) of federal funds to be paid through this Agreement: 93.643.

5. Recipient Data and Certification.

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

Please print or type the following information

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

Street address: 2051 Kaen Road

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

Email address: N/A

Telephone: (503) 742-5444 Facsimile: (503) 742-5401

Federal Employer Identification Number: 93-6002286

Recipient Proof of Insurance:

Workers' Compensation Insurance Company: Self-Insured

Policy #: - Expiration Date: -

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

b. **Certification.** The Recipient acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any "claim" (as defined by ORS 180.750) that is made by (or caused by) the Recipient and that pertains to this Agreement or to the project for which the grant activities are being performed. The Recipient certifies that no claim described in the previous sentence is or will be a "false claim" (as defined by ORS 180.750) or an act prohibited by ORS 180.755. Recipient further acknowledges that in addition to the remedies under this Agreement, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the Recipient. Without limiting the generality of the foregoing, by signature on this Agreement, the Recipient hereby certifies that:

- (1) Under penalty of perjury the undersigned is authorized to act on behalf of Recipient and that Recipient is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620;

- (2) The information shown in this Section 5., Recipient Data and Certification, is Recipient's true, accurate and correct information;
 - (3) To the best of the undersigned's knowledge, Recipient has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts;
 - (4) Recipient and Recipient's employees and agents are not included on the list titled "Specially Designated Nationals" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at: <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>;
 - (5) Recipient is not listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal procurement or Non-procurement Programs" found at: <https://www.sam.gov/portal/public/SAM/>; and
 - (6) Recipient is not subject to backup withholding because:
 - (a) Recipient is exempt from backup withholding;
 - (b) Recipient has not been notified by the IRS that Recipient is subject to backup withholding as a result of a failure to report all interest or dividends; or
 - (c) The IRS has notified Recipient that Recipient is no longer subject to backup withholding.
- c. Recipient is required to provide its Federal Employer Identification Number (FEIN) to DHS. By Recipient's signature on this Agreement, Recipient hereby certifies that the FEIN provided to DHS is true and accurate. If this information changes, Recipient is also required to provide DHS with the new FEIN within 10 days.

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

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

Clackamas County Sheriff's Office

By:

		
Authorized Signature	Title	Date

State of Oregon acting by and through its Department of Human Services

By:

Authorized Signature	Title	Date
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Approved for Legal Sufficiency:

Exempt per OAR 137-045-0030(1)(a)	Date
Assistant Attorney General	

Office of Contracts and Procurement:

Contract Specialist	Date
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COUNTY COUNSEL DOCUMENT REVIEW
TRANSMITTAL FORM

DATE: 10/04/2016

TO: COUNTY COUNSEL
ATTORNEY: _____

FROM: Nancy Armano (name)

EXTENSION: 5012 DEPARTMENT/DIVISION: Sheriff, Admin

BILL TO Sheriff (216/1001) (Department/Division to be billed)

TYPE OF DOCUMENT: IGA with Oregon DHS

NAME OF DOCUMENT: 2016 Specialist Interviewer Course

REQUESTED RETURN DATE: 10/11/2016

APPROVED AS TO FORM:

County Counsel: 

Date: 10/6/16

Counsel Comments:

Intergovernmental Agreement
Oregon Department of Human Services
Signature Page (revised for required signatures)

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

Signatures:

State of Oregon:

(See attached)

By: Department of Human Services

Date

(See attached)

By: Office of Contracts and Procurement

Date

Clackamas County:

(See Attached)

Craig Roberts, Sheriff, Clackamas County Sheriff's Office

Date

John Ludlow, Chair, Clackamas County Board of Commissioners

Date

Approved as to form by:

(See attached)

Clackamas County Counsel

Date

EXHIBIT A

Part 1 Program Description

2016 Specialist Interviewer Course

1. Description of Need

Sex offenses against children are chronically under-reported and typically, the burden of disclosure is on the child victim. While we cannot identify every child who has been victimized, we can help identify victims once we have identified an offender. Working with an offender to disclose hands-on offenses starts at the time of arrest and continues through conviction, treatment, and supervision.

The Bourke and Hernandez (2009) study begins to show the number of victims who are currently going unnoticed. The study reviewed a sample of 155 offenders convicted of child pornography possession, receipt or distribution (but not manufacturing), who were participating in the U.S. Bureau of Prisons Sex Offender Treatment Program. Initially, 26% (40) of the sample admitted to hands-on offenses and disclosed a total of 75 victims. At the end of the study, 85% (131) of the sample admitted to hands-on offenses and disclosed 1,777 victims. That is an average of 13.56 victims per offender, the overwhelming majority of which were previously unreported. This study highlights the prevalence of hands-on sexual offenses among child pornography offenders, and rather dramatically demonstrates how many child sexual offenses go unreported, and how many victims are therefore never identified.

Law enforcement officers who work these types of cases will state there are many interrogation and interviewing technique courses available designed to help obtain a confession and becoming a skilled interrogator. This course offered by Dr. Sullivan has a different objective. It moves beyond confession and conviction and focuses on understanding offender behavior in order to design an interview strategy that will help identify victims and have a more accurate understanding of the risks posed by a particular offender. This course provides an excellent opportunity to equip investigators, probation officers, and prosecutors with the skills they need to competently and thoroughly interview suspects, obtain admissions, and most importantly, identify and rescue previously unknown and unidentified victims of child sexual abuse and exploitation thus limiting the trauma that children and families have been experiencing.

2. Project Objectives:

As outlined by Dr. Sullivan's course description, by the end of the course each participant will be able to:

- Understand the prevalence of child sexual abuse and the degree to which criminal records reflect a perpetrators pattern of sexual offending.
- Recognize the myths and facts about child sexual abuse.
- Understand the role which behavior analysis can play in facilitating a better understanding of offender behavior.

- Identify common characteristics of offending behavior.
- Plan for more effective offender interviews & meetings.
- Use behavioral analysis tools to create accurate risk assessments.
- Understand how offender motivations and justifications create a “spiral of abuse”.
- Better decide what the important questions to ask each offender are.
- Recognize grooming & manipulation more readily.
- Understand the key features and issues related to women who sexually offend.
- Distinguish the importance of identifying offenders who travel to facilitate the sexual exploitation of children.
- Identify the prevalence and key features of offenders who engage in group-based child sexual exploitation.
- Comprehend the risk factors related to sex offenders who view/download images of child sexual abuse.
- Use advanced techniques and practical skills to encourage engagement in the interview.
- Apply theoretical technique to plan effective interviews.
- Better analyze sexual offending against children.
- Profile a subject.
- Understand and apply the Sullivan behavior analysis tool (S-BAT).
- Utilize the Projected Personalities Matrix (PPM).
- Design a layered interview approach.

3. Performance Measures:

Outcomes will be measured using a survey at the completion of the course, as well as a follow-up survey after the participants have had an opportunity to utilize the tools learned through the course. The survey questions will focus on whether participants increased their skills, and whether they believe they have the ability to use, in their current positions, the tools and information they learned during the course. The CJA Task Force will review all submitted materials to evaluate whether this course is able to increase institutional knowledge and create substantial change in practice in Oregon in relation to the statewide child welfare system.

4. Deliverables: Recipient shall provide the following reports to Jennifer.wynhausen@state.or.us no later than the designated due dates:

Report	Due Date
Initial Report	December 15, 2016
Final Report	June 15, 2017

- a. The initial report shall include, but is not limited to the following elements:
 - (1) List and count of attendees, including description clearly identifying attendee profession and employment location.
 - (2) A detailed summary of post training survey results to include the following: questions utilized; how the information presented has increased the skills of attendees; how the information presented has increased the ability of the professional organization each survey participant represents in better serving the population.
 - (3) Raw data collected from the initial post training survey.
 - (4) List of scholarship recipients, by employment category, and the criteria used in decision making
 - (5) A thorough evaluation of how this training moves beyond providing information to create a statewide change in practice by increasing knowledge both on an individual and institutional level.
- b. Final report shall include, but is not limited to the following elements:
 - (1) A detailed summary of the six-month follow-up survey results to include the following: questions utilized; how the information presented has increased the skills of attendees; how the information presented has increased the ability of the professional organization each survey participant represents in better serving the population.
 - (2) Raw data collected from the six-month follow-up survey.
 - (3) A thorough evaluation of how this training moves beyond providing information to create a statewide change in practice by increasing knowledge both on an individual and institutional level.
- c. The Oregon CJA Task Force may request an in person presentation of material produced with these funds.
- d. Oregon CJA Task Force Coordinator and/or members may request the opportunity to attend a portion of the training to determine efficacy of material presented.

EXHIBIT A

Part 2 Payment and Financial Reporting

1. Payment Provisions:

Recipient shall invoice DHS/CJA for the full amount of the grant (maximum, not-to-exceed specified in Section 3. "Grant Disbursement Generally.") at any time after all parties have signed the Agreement and no later than October 1, 2016.

Recipient shall submit invoice to Jennifer.wynhausen@state.or.us. Invoice must include:

- a. The Grant Agreement number;
- b. The Recipient's name and address;
- c. The Agreement contact name, phone number and email address;
- d. Date of the invoice; and
- e. An itemized description of how Grant funds were used.

2. Budget: Attached 1, Budget, Attached under separate cover.

EXHIBIT A

Part 3

Special Terms and Conditions

Reserved

EXHIBIT B
Standard Terms and Conditions

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

institution or authorized payment agent capable of receiving and processing EFT using the Automated Clearing House (ACH) transfer method. The most current designation and EFT information will be used for all disbursements under this Agreement. Recipient must provide this designation and information on a form provided by DHS. In the event that EFT information changes or the Recipient elects to designate a different financial institution for the receipt of any payment made using EFT procedures, Recipient will provide the changed information or designation to DHS on a DHS-approved form.

5. Recovery of Overpayments.

Any funds disbursed to Recipient under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement "Misexpended Funds" or that remain unexpended on the earlier of termination or expiration of this Agreement must be returned to DHS. Recipient shall return all Misexpended Funds to DHS promptly after DHS' written demand and no later than 15 days after DHS' written demand. Recipient shall return all Unexpended Funds to DHS within 14 days after the earlier of termination or expiration of this Agreement. DHS, in its sole discretion, may recover Misexpended or Unexpended Funds by withholding from payments due to Recipient such amounts, over such periods of time, as are necessary to recover the amount of the overpayment. Prior to withholding, if Recipient objects to the withholding or the amount proposed to be withheld, Recipient shall notify DHS that it wishes to engage in dispute resolution in accordance with Section 13 of this Exhibit.

6. Reserved.

7. Contribution.

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

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

State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

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

This Section shall survive expiration or termination of this Agreement.

8. **Indemnification by Subcontractors.** Recipient shall take all reasonable steps to require its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Recipient's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims. This Section shall survive expiration or termination of this Agreement.
9. **Default; Remedies; Termination.**
 - a. Default by Recipient. Recipient shall be in default under this Agreement if:
 - (1) Recipient fails to perform, observe or discharge any of its covenants, agreements or obligations set forth herein;
 - (2) Any representation, warranty or statement made by Recipient herein or in any documents or reports relied upon by DHS to measure compliance with this Agreement, the expenditure of disbursements or the desired outcomes by Recipient is untrue in any material respect when made;
 - (3) Recipient (1) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (2) admits in writing its inability, or is generally unable, to pay its debts as they become due, (3) makes a general assignment for the benefit of its creditors, (4) is adjudicated a bankrupt or insolvent, (5) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (6) files a petition seeking to take advantage of any

other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (7) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (8) takes any action for the purpose of effecting any of the foregoing; or

- (4) A proceeding or case is commenced, without the application or consent of Recipient, in any court of competent jurisdiction, seeking (1) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Recipient, (2) the appointment of a trustee, receiver, custodian, liquidator, or the like of Recipient or of all or any substantial part of its assets, or (3) similar relief in respect to Recipient under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive days, or an order for relief against Recipient is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

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

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

These remedies are cumulative to the extent the remedies are not inconsistent, and DHS may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

If a court determines that Recipient was not in default under Section 9.a., then Recipient shall be entitled to the same remedies as if this Agreement was terminated pursuant to Section 9.e.(1).

c. Termination.

- (1) DHS' Right to Terminate at its Discretion. At its sole discretion, DHS may terminate this Agreement:
 - (a) For its convenience upon 30 days' prior written notice by DHS to Recipient;

- (b) Immediately upon written notice if DHS fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to continue supporting the program; or
 - (c) Immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that DHS' support of the program under this Agreement is prohibited or DHS is prohibited from paying for such support from the planned funding source.
 - (d) Immediately upon written notice to Recipient if there is a threat to the health, safety, or welfare of any person receiving funds or benefitting from services under this Agreement "DHS Client", including any Medicaid Eligible Individual, under its care.
- (2) DHS' Right to Terminate for Cause. In addition to any other rights and remedies DHS may have under this Agreement, DHS may terminate this Agreement immediately upon written notice to Recipient, or at such later date as DHS may establish in such notice if Recipient is in default under Section 9.a.
 - (3) Mutual Termination. The Agreement may be terminated immediately upon mutual written consent of the parties or at such other time as the parties may agree in the written consent.
 - (4) Return of Property. Upon termination of this Agreement for any reason whatsoever, Recipient shall immediately deliver to DHS all of DHS' property that is in the possession or under the control of Recipient at that time. This Section 9.c.(4) survives the expiration or termination of this Agreement.
 - (5) Effect of Termination. Upon receiving a notice of termination of this Agreement or upon issuing a notice of termination to DHS, Recipient shall immediately cease all activities under this Agreement unless, in a notice issued by DHS, DHS expressly directs otherwise.
- 10. Insurance.** All employers, including Recipient, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Recipient shall require subcontractors to maintain insurance as set forth in Exhibit C, which is attached hereto.
- 11. Records Maintenance, Access.** Recipient shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Recipient shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of Recipient, whether in paper, electronic or other form, that are pertinent to this Agreement, in such a manner as to clearly document Recipient's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of Recipient whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." Recipient acknowledges and agrees that DHS and the Secretary of State's

Office and the federal government and their duly authorized representatives shall have access to all Records to perform examinations and audits and make excerpts and transcripts. Recipient shall retain and keep accessible all Records for the longest of:

- a. Six years following final payment and termination of this Agreement;
- b. The period as may be required by applicable law, including the records retention schedules set forth in OAR Chapter 166; or
- c. Until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement.

12. Information Privacy/Security/Access. Not Applicable

13. Assignment of Agreement, Successors in Interest.

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

14. Resolution of Disputes. The parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation. This Section shall survive expiration or termination of this Agreement.

15. Subcontracts. Recipient shall not enter into any subcontracts for any part of the program supported by this Agreement without DHS' prior written consent. In addition to any other provisions DHS may require, Recipient shall include in any permitted subcontract under this Agreement provisions to ensure that DHS will receive the benefit of subcontractor activity(ies) as if the subcontractor were the Recipient with respect to Sections 1, 2, 3, 6, 7, 8, 10, 11, 12, 13, 15, 16, and 17 of this Exhibit B. DHS' consent to any subcontract shall not relieve Recipient of any of its duties or obligations under this Agreement.

16. No Third Party Beneficiaries. DHS and Recipient are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement. This Section shall survive expiration or termination of this Agreement.

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

18. **Notice.** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, e-mail, or mailing the same, postage prepaid to Recipient or DHS at the address or number set forth in this Agreement, or to such other addresses or numbers as either party may indicate pursuant to this Section. Any communication or notice so addressed and mailed by regular mail shall be deemed received and effective five days after the date of mailing. Any communication or notice delivered by e-mail shall be deemed received and effective five days after the date of e-mailing. Any communication or notice delivered by facsimile shall be deemed received and effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the Recipient, or on the next business day if transmission was outside normal business hours of the Recipient. Notwithstanding the foregoing, to be effective against the other party, any notice transmitted by facsimile must be confirmed by telephone notice to the other party. Any communication or notice given by personal delivery shall be deemed effective when actually delivered to the addressee.

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

This Section shall survive expiration or termination of this Agreement.

19. **Headings.** The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret this Agreement.
20. **Amendments; Waiver; Consent.** DHS may amend this Agreement to the extent provided herein, the solicitation document, if any from which this Agreement arose, and to the extent permitted by applicable statutes and administrative rules. No amendment, waiver, or other consent under this Agreement shall bind either party unless it is in writing and signed by both parties and when required, the Department of Justice. Such amendment, waiver, or consent shall be effective only in the specific instance and for the specific purpose given. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision. This Section shall survive the expiration or termination of this Agreement.
21. **Merger Clause.** This Agreement constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein, regarding this Agreement.
22. **Limitation of Liabilities.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT. NEITHER PARTY SHALL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT OR ANY PART HEREOF IN ACCORDANCE WITH ITS TERMS.

EXHIBIT C

Subcontractor Insurance Requirements

Not Applicable

EXHIBIT D
Required Federal Terms and Conditions

General Applicability and Compliance. Unless exempt under 45 Part 87 for Faith-Based Organizations (Federal Register, July 16, 2004, Volume 69, #136), or other federal provisions, Recipient shall comply and, as indicated, require all subcontractors to comply with the following federal requirements to the extent that they are applicable to this Agreement, to Recipient, or to the grant activities, or to any combination of the foregoing. For purposes of this Agreement, all references to federal and state laws are references to federal and state laws as they may be amended from time to time.

1. **Miscellaneous Federal Provisions.** Recipient shall comply and require all subcontractors to comply with all federal laws, regulations, and executive orders applicable to the Agreement or to the delivery of grant activities. Without limiting the generality of the foregoing, Recipient expressly agrees to comply and require all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Executive Order 11246, as amended, (e) the Health Insurance Portability and Accountability Act of 1996, as amended, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (j) all federal laws requiring reporting of DHS Client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. No federal funds may be used to provide grant activities in violation of 42 U.S.C. 14402.
2. **Equal Employment Opportunity.** If this Agreement, including amendments, is for more than \$10,000, then Recipient shall comply and require all subcontractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).
3. **Clean Air, Clean Water, EPA Regulations.** If this Agreement, including amendments, exceeds \$100,000 then Recipient shall comply and require all subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to DHS, United States Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. Recipient shall include and require all subcontractors to include in all

contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this Section.

4. **Energy Efficiency.** Recipient shall comply and require all subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42 U.S.C. 6201 et. seq. (Pub. L. 94-163).
5. **Truth in Lobbying.** By signing this Agreement, the Recipient certifies, to the best of the Recipient's knowledge and belief that:
 - a. No federal appropriated funds have been paid or will be paid, by or on behalf of Recipient, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
 - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Recipient shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
 - c. The Recipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.
 - d. This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
 - e. No part of any federal funds paid to Recipient under this Agreement shall be used other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the United States Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government itself.

- f. No part of any federal funds paid to Recipient under this Agreement shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the United States Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.
 - g. The prohibitions in subsections (e) and (f) of this Section shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.
 - h. No part of any federal funds paid to Recipient under this Agreement may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance of that federally sponsored clinical trials are being conducted to determine therapeutic advantage.
6. **Resource Conservation and Recovery.** Recipient shall comply and require all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 U.S.C. 6901 et. seq.). Section 6002 of that Act (codified at 42 U.S.C. 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.
7. **Audits.**
- a. Recipient shall comply, and require any subcontractor to comply, with applicable audit requirements and responsibilities set forth in this Agreement and applicable state or federal law.
 - b. If Recipient expends \$500,000 or more in Federal funds (from all sources) in its fiscal year beginning prior to December 26, 2014, Recipient shall have a single organization-wide audit conducted in accordance with the Single Audit Act. If Recipient expends \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014, Recipient shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR Subtitle B with guidance at 2 CFR Part 200. Copies of all audits must be submitted to DHS within 30 days of completion. If Recipient expends less than \$500,000 in Federal funds in a fiscal year beginning prior to December 26, 2014, or less than \$750,000 in a fiscal year beginning on or after that date, Recipient is

exempt from Federal audit requirements for that year. Records must be available as provided in Exhibit B, "Records Maintenance, Access".

8. **Debarment and Suspension.** Recipient shall not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and Suspension" (See 2 CFR Part 180). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Subcontractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.
9. **Drug-Free Workplace.** Recipient shall comply and require all subcontractors to comply with the following provisions to maintain a drug-free workplace: (i) Recipient certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in Recipient's workplace or while providing services to DHS Clients. Recipient's notice shall specify the actions that will be taken by Recipient against its employees for violation of such prohibitions; (ii) Establish a drug-free awareness program to inform its employees about: The dangers of drug abuse in the workplace, Recipient's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations; (iii) Provide each employee to be engaged in the performance of services under this Agreement a copy of the statement mentioned in paragraph (i) above; (iv) Notify each employee in the statement required by paragraph (i) above that, as a condition of employment to provide services under this Agreement, the employee will: abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; (v) Notify DHS within ten (10) days after receiving notice under subparagraph (iv) above from an employee or otherwise receiving actual notice of such conviction; (vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by 41 U.S.C. 8104; (vii) Make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs (i) through (vi) above; (viii) Require any subcontractor to comply with subparagraphs (i) through (vii) above; (ix) Neither Recipient, or any of Recipient's employees, officers, agents or subcontractors may provide any service required under this Agreement while under the influence of drugs. For purposes of this provision, "under the influence" means: observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the Recipient or Recipient's employee, officer, agent or subcontractor has used a controlled substance, prescription or non-prescription medication that impairs the Recipient or Recipient's employee, officer, agent or subcontractor's performance of essential job function or creates a direct threat to DHS Clients or others. Examples of abnormal behavior include, but are not limited to: hallucinations, paranoia or violent outbursts. Examples of impairments in physical or

mental performance include, but are not limited to: slurred speech, difficulty walking or performing job activities; and (x) Violation of any provision of this subsection may result in termination of this Agreement.

10. Pro-Children Act. Recipient shall comply and require all subcontractors to comply with the Pro-Children Act of 1994 (codified at 20 U.S.C. 6081 et. seq.).

11. Medicaid Services.

Recipient shall comply with all applicable federal and state laws and regulation pertaining to the provision of Medicaid Services under the Medicaid Act, Title XIX, 42 U.S.C. 1396 et. seq., including without limitation:

- a. Keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving Medicaid assistance and shall furnish such information to any state or federal agency responsible for administering the Medicaid program regarding any payments claimed by such person or institution for providing Medicaid Services as the state or federal agency may from time to time request. 42 U.S.C. 1396a (a)(27); 42 CFR Part 431.107(b)(1) & (2).
- b. Comply with all disclosure requirements of 42 CFR Part 1002.3(a) and 42 CFR Part 455 Subpart (B).
- c. Maintain written notices and procedures respecting advance directives in compliance with 42 U.S.C. 1396(a)(57) and (w), 42 CFR Part 431.107(b)(4), and 42 CFR Part 489 Subpart I.
- d. Certify when submitting any claim for the provision of Medicaid Services that the information submitted is true, accurate and complete. Recipient shall acknowledge Recipient's understanding that payment of the claim will be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.
- e. Entities receiving \$5 million or more annually (under this Agreement and any other Medicaid contract) for furnishing Medicaid health care items or services shall, as a condition of receiving such payments, adopt written fraud, waste and abuse policies and procedures and inform employees, contractors and agents about the policies and procedures in compliance with Section 6032 of the Deficit Reduction Act of 2005, 42 U.S.C. 1396a(a)(68).

12. Agency-based Voter Registration. If applicable, Recipient shall comply with the Agency-based Voter Registration sections of the National Voter Registration Act of 1993 that require voter registration opportunities be offered where an individual may apply for or receive an application for public assistance.

13. Disclosure.

- a. 42 CFR Part 455.104 requires the State Medicaid agency to obtain the following information from any provider of Medicaid or CHIP services, including fiscal agents of providers and managed care entities: (1) the name and address (including the primary business address, every business location and P.O. Box address) of any person (individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity; (2) in the case of an

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

- b. 42 CFR Part 455.434 requires as a condition of enrollment as a Medicaid or CHIP provider, to consent to criminal background checks, including fingerprinting when required to do so under state law, or by the category of the provider based on risk of fraud, waste and abuse under federal law.
- c. As such, a provider must disclose any person with a 5% or greater direct or indirect ownership interest in the provider whom has been convicted of a criminal offense related to that person's involvement with the Medicare, Medicaid, or Title XXI program in the last 10 years.
- d. Recipient shall make the disclosures required by this Section to DHS. DHS reserves the right to take such action required by law, or where DHS has discretion, it deems appropriate, based on the information received (or the failure to receive information) from the provider, fiscal agent or managed care entity.

14. Federal Intellectual Property Rights Notice.

The federal funding agency, as the awarding agency of the funds used, at least in part, for the activities performed under this Agreement, may have certain rights as set forth in the federal requirements pertinent to these funds. For purposes of this subsection, the terms "grant" and "award" refer to funding issued by the federal funding agency to the State of Oregon. The Recipient agrees that it has been provided the following notice:

- a. The federal funding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work, and to authorize others to do so, for Federal Government purposes with respect to:
 - (1) The copyright in any work developed under a grant, subgrant or contract under a grant or subgrant; and
 - (2) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

- b. The parties are subject to applicable federal regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."
- c. The parties are subject to applicable requirements and regulations of the federal funding agency regarding rights in data first produced under a grant, subgrant or contract under a grant or subgrant.

ATTACHMENT 1

Budget

Attached under separate cover