

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON**

RESOLUTION NO. 2019-095

Resolution to update the Co-Applicant Agreement with the Community Health Council.

The Multnomah County Board of Commissioners Finds:

- a. The Community Health Center (Federally Qualified Health Center) provides valuable and essential health services to all people in Multnomah County, regardless of income or insurance status;
- b. The Community Health Council (patient majority board) of the Community Health Center was first established in 1980 to serve as a co-applicant governing body for the Community Health Center; and
- c. The Community Health Center must comply with the Health Resources and Services Administration (HRSA) within the United Department of Health and Human Services (DHHS) pursuant to Section 330 of the Public Health Service Act to remain a Community Health Center

The Multnomah County Board of Commissioners Resolves:

1. To update the existing Co-Applicant Agreement between the Community Health Council and the Board of County Commissioners to reflect changes in Health Center leadership reporting structure and in physical building address changes, to continue meeting expectations and requirements pursuant to Section 330 of the Public Health Service Act.

ADOPTED this 7th day of November, 2019.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Deborah Kafoury

Deborah Kafoury, Chair

REVIEWED:
JENNY M. MADKOUR, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By *Robert E. Sinnott*
Robert E. Sinnott, Senior Assistant County Attorney

SUBMITTED BY: Adrienne Daniels, Deputy Director, Integrated Clinical Services

Co-Applicant Agreement for the Operation of the Community Health Center

This Co-Applicant Agreement for the Operation of the Community Health Center (the “Agreement”) is entered into by and between Multnomah County (the “County”) and the Multnomah County Community Health Council (the “Council”) (individually a “Party” and the “Parties”).

Recitals

WHEREAS, since 1977, the County has been awarded Federal grant support from the Health Resources and Services Administration (“HRSA”) within the United Department of Health and Human Services (“DHHS”), pursuant to Section 330 of the Public Health Service Act (“Section 330”), to operate a community health center project (hereinafter the “Community Health Center”);

WHEREAS, the Council was established in 1980, serves as the co-applicant governing body for the Community Health Center, and supports the Division of Integrated Clinical Services’ vision of *Integrated. Compassionate. Whole person health*;

WHEREAS, the Council meets the size, selection, and composition requirements, and exercises certain governance authorities proscribed by Section 330, the implementing regulations set forth at 42 C.F.R. Part 51c, and related HRSA policies, including but not limited to the Community Health Center Program Compliance Manual (the “Compliance Manual”);

WHEREAS, consistent with the County Division of Integrated Clinical Services, the mission of the Community Health Center is to provide services that improve the health and wellness for individuals, families, and communities; and

WHEREAS, the Parties wish to set forth in this Agreement their respective responsibilities with respect to governance and operation of the Community Health Center.

Agreement

NOW THEREFORE, the County and the Council agree as follows with respect to their responsibilities for the Community Health Center:

1. Health Council

1.1 Composition of the Governing Body.

The composition of the Council shall comply with the Council’s Bylaws, which shall be consistent with the requirements of Section 330, its implementing regulations, and applicable HRSA policies, including but not limited to the Compliance Manual.

1.2 Authorities and Responsibilities of the Council.

The Council shall hold monthly meetings where a quorum is present and shall exercise the authorities and responsibilities described in the Council's Bylaws and described below:

- 1.2.1 Adopting health care policies including the scope and availability of services to be provided by the Community Health Center, the mode of delivery of services, the location and hours of operation, quality-of care audit procedures, and the Community Health Center's quality plan;
- 1.2.2 Evaluating the Community Health Center's activities, including service utilization patterns, productivity, patient satisfaction, achievement in health center project objectives, and development of a process for hearing and resolving patient complaints;
- 1.2.3 In consultation with the Community Health Center management team, evaluating the performance of the Community Health Center based on quality assurance/quality improvement assessments and other information received from the Community Health Center management;
- 1.2.4 Approving the Community Health Center's annual operating and capital budgets, which outline the proposed uses of both Section 330 and non-Federal resources and revenue, consistent with Section 2.1.1;
- 1.2.5 Approving the Section 330 grant application and other grant applications and formal requests to federal, state, local and private agencies related to the Community Health Center's Scope of Project, including but not limited to Change in Scope requests submitted to HRSA;
- 1.2.6 Selecting, evaluating and dismissing the Executive Director of the Community Health Center, consistent with Section 1.3;
- 1.2.7 Monitoring the financial status of the Community Health Center, including reviewing the results of the annual audit and ensuring appropriate follow-up actions are taken, consistent with Section 2.2.7;
- 1.2.8 Adopting a policy for eligibility for services, including a sliding fee discount schedule, related eligibility and verification policies and procedures, and other policies and procedures related to the

Community Health Center's Sliding Fee Discount Program consistent with the requirements of Section 330, consistent with Section 2.1.4;

- 1.2.9 Assuring that the Community Health Center is operated in compliance with applicable federal, state and local laws and regulations, consistent with Section 3.1;
- 1.2.10 Approving any decisions to subaward or contract for a substantial portion of the Community Health Center's services; and
- 1.2.11 Exercising all other authorities and responsibilities, except those specified in Section 2.1 of this Agreement, which are required by Section 330, the implementing regulations, and HRSA policies, including but not limited to the Compliance Manual, to be vested in a Section 330-compliant governing board.

The Parties understand and agree that no other individual, entity, or committee shall reserve or have approval or veto power over the Council with regard to the above authorities.

1.3 Selection, Evaluation and Dismissal of the Executive Director.

- 1.3.1 Selection of an Executive Director. The County shall be responsible for recruiting candidates to fill any Community Health Center Executive Director vacancy. The Council may also propose candidates. The County shall consult with the Council on qualifications and the recruitment process for the Executive Director position. An equal number of representatives from both the County and the Council shall be included in the qualification, review, and interview process. The County shall present at least three (3) candidates to the Council for final selection. The Council shall have the authority to either select or reject the Executive Director candidate(s) presented by the Search Committee. In the event that the Council rejects the candidate(s) presented, the Search Committee will prepare additional candidate slates until the Council approves a candidate.
- 1.3.2 Evaluation of the Executive Director. The Council will work with the County's MCHD Human Resources department to conduct an annual review of the Executive Director's performance. The Chair of the Board of County Commissioners or, if so designated by such Chair, the County Chief Operations Officer ("COO") shall conduct an independent evaluation of the Executive Director's performance as Director of Integrated Clinical Services and shall submit such report to the County's human resources department.

1.3.3 Dismissal of the Executive Director. Subject to Section 1.4.2, the Council shall have the authority to dismiss the Executive Director from the role as Executive Director of the Community Health Center, if such termination is warranted based on performance or pursuant to federal, state, or County personnel rules. The Executive Director shall be dismissed upon the vote of a majority of the voting Council Directors.

1.3.4 Duties of the Executive Director. The Executive Director will be the chief executive of the Community Health Center and will serve as the Director of Integrated Clinical Services. The Executive Director shall have responsibility for the general care, day-to-day management, supervision, and direction of the Community Health Center's affairs in furtherance of established policies, procedures and programs. The Executive Director shall have the authority to approve the assignment of County personnel to the Community Health Center, to supervise such individuals, and to dismiss such personnel from their duties at the Community Health Center, in accordance with the personnel policies established by the County. The Executive Director or designee shall also have the authority to negotiate, execute and administer all contracts for goods and services as required for the operation of the Community Health Center subject to the rules and policies applicable to the County's procurement, purchasing and administration of contracts, and the budget approved for the Community Health Center. The Executive Director shall report to (i) the Council and (2) the Chair of the Board of County Commissioners or, if so designed by the Chair, the County Chief Operations Officer ("COO") or the Health Department Director.

1.4 Employer-Employee Relations.

1.4.1 Subject to Section 1.3 of this Agreement regarding the selection, approval, evaluation and dismissal of the Community Health Center's Executive Director, the County shall have sole authority over employment matters and personnel policies and procedures applicable to the Community Health Center staff, including selection and dismissal procedures, salary and benefit scales, employee grievance procedures and processes, equal employment opportunity practices, labor disputes and other human resources issues.

1.4.2 The Community Health Center's Executive Director shall, at all times, be an employee of the County. Removal of the Executive Director by the Council pursuant to Section 1.3.3 of this Agreement may not constitute a termination of employment by the County. As the Executive Director's employer, the County shall have authority to terminate the Executive Director's employment if such termination is warranted pursuant to federal, state, or local law or rule, or County personnel rules. If the

County seeks to terminate the Executive Director for a reason that is not warranted by federal, state, or local law or rule, or County personnel rules it may do so only with the Council's prior approval.

2. The County

2.1 Authorities and Responsibilities

The County, via the Board of County Commissioners, shall exercise certain responsibilities and authorities with respect to the Community Health Center. These authorities and responsibilities include:

- 2.1.1 Consistent with Section 1.2.4 of this Agreement, developing the Community Health Center's annual operating and capital budgets, which will be prepared under the direction of the Community Health Center's management team and incorporated into the overall County's Health Department budget. In the event that the County proposes revisions to the budget that impact the portion of the budget applicable to the Community Health Center, such revisions shall be presented to and approved by the Council prior to final approval and implementation by the County.
- 2.1.2 Subject to Section 1.3 regarding the Executive Director, establishing personnel policies and procedures applicable to any County employee assigned to the Community Health Center, which policies and procedures include, but are not limited to, selection and dismissal policies and procedures, salary and benefit scales, position descriptions and classifications, and employee grievance policies and procedures, all of which shall meet all Oregon and federal employment requirements including, but not limited to, equal employment opportunity, drug free workplace, and non-discrimination.
- 2.1.3 Adopting policy for financial management practices and accounting systems, including a system to assure accountability for Community Health Center resources and assets, selection of an independent auditor and provision of an annual audit, long-range financial planning, and establishing purchasing policies and procedures consistent with DHHS administrative requirements set forth in 45 C.F.R. Part 75.
- 2.1.4 Consistent with the provisions of 1.2.8, supporting the Council in its development of policies for billing and collections activities, including a policy regarding determinations of eligibility for services; a schedule

of charges; and a schedule of discounts off charges for services provided to uninsured and underinsured patients with annual incomes equal to or below 200% of the federal poverty level, a nominal fee policy for uninsured and underinsured patients with annual incomes less than or equal to 100% of the federal poverty level, related eligibility and verification policies and procedures, and other policies and procedures related to the Community Health Center's Sliding Fee Discount Program. The Council shall approve the policies for billing and collections activities as set forth in this Section.

2.2 Operational Responsibilities

The County shall fulfill the following obligations with respect to the Community Health Center:

- 2.2.1 Applying for and maintaining all licenses, permits, certifications, and approvals necessary and appropriate for the operation of the Community Health Center.
- 2.2.2 Receiving, managing and disbursing grant funds consistent with the budget approved in accordance with this Agreement. The County shall not be required to disburse funds for any expenditure not authorized by a budget approved in accordance with this Agreement. Consistent with Section 2.1.1, the County shall seek and obtain the Council's prior written approval before implementing any line item change in the portion of the Council's approved budget that is specific to the Community Health Center.
- 2.2.3 Maintaining the financial affairs of the Community Health Center, including capital and operating borrowing and controlling funds received for services provided by and all income otherwise generated by the Community Health Center, including fees, premiums, thirdparty reimbursements and other State and local operational funding (collectively, "Program Income"), as well as all Program Income greater than the amount budgeted to the Community Health Center ("Excess Program Income"). All Program Income and Excess Program Income shall be used as permitted under, and for such other purposes that are not specifically prohibited by, Section 330 and solely for uses that further the objectives of the Community Health Center's federally-approved program, consistent Section 330 and the policies and priorities applicable to the Community Health Center.

- 2.2.4 Supporting the Community Health Center through the County's Human Resources Department's recruitment and training resources and activities.
- 2.2.5 Developing management, reporting and internal control systems for the Community Health Center, in consultation with the Council, that are in accordance with sound financial management procedures, including:
 - 2.2.5.1 The provision for an audit of the Community Health Center on an annual basis, consistent with the requirements of 45 C.F.R. Part 75 and the then current compliance supplement applicable to the consolidated Health Center Program (or any subsequent regulations that may replace and supersede 45 C.F.R. Part 75 and the applicable compliance supplement), to determine, at a minimum, the fiscal integrity of financial transactions and reports;
 - 2.2.5.2 Implementing accounting procedures and controls in accordance with generally accepted accounting principles utilized in operating the Community Health Center, as well as the systems for the development, preparation, and safekeeping of records and books of account relating to the business and financial affairs of the Community Health Center;
 - 2.2.5.3 Maintaining the Community Health Center's business and financial records separate from records related to other County finances to ensure that revenues and expenditures of the Community Health Center may be properly allocated and accounted for, and that Community Health Center funds will be distinguished and accounted for separately from other funds of the County. All expenditures pertaining to the operation of the Community Health Center (including but not limited to, direct and indirect costs associated with staffing, operational systems, additional administrative support services, and overhead) shall be allocated as Community Health Center costs in accordance with the proportionate amount of time expended by the County's personnel in providing services to and on behalf of the Community Health Center or the proportionate amount of resources utilized by the Community Health Center; and

- 2.2.5.4 The preparation and submission of cost reports, supporting data, and other materials required in connection with reimbursement under Medicare, Medicaid, and other third party payment contracts and programs, in which the Community Health Center may from time to time participate.
- 2.2.6 Providing to patients of the Community Health Center access to the County's other programs, based on the County's established eligibility requirements for such programs.
- 2.2.7 Preparing regular financial statements of the Community Health Center's budgeted and actual revenues and expenses, and other financial status reports for the Council, and any other reports reasonably requested by the Council, to enable the Council to fulfill its responsibilities for the Community Health Center.
- 2.2.8 Submitting the required Section 330 grant-related information and reports to DHHS, including but not limited to the Uniform Data System ("UDS") data and the Federal Financial Report ("FFR").
- 2.2.9 Complying with the terms and conditions of the Section 330 grant.

3. Mutual Obligations

3.1 Compliance and Representatives.

The Parties shall have a mutual commitment and responsibility to work together to ensure that the Community Health Center provides care in compliance with all federal, state and local laws and regulations. The Executive Director shall ensure that both the County and Council communicate strategic priorities, maintain regular communication, and share information about the Community Health Center's operations.

The Council and County shall comply with County's code-of-conduct and harassment policies, including the health center project standards of conduct, which shall be drafted in a manner consistent with Chapter 13 of Compliance Manual. Consistent with 45 C.F.R. Part 75, the Parties further agree that no employee, officer, or agent of either Party may participate in the selection, award, or administration of a contract supported by the Section 330 grant award if he or she has a real or apparent conflict of interest.

3.2 Financial Responsibility and Expenses of the Parties.

Each Party agrees not to undertake expenditures in excess of overall available resources, to materially change or modify the adopted budget without their mutual agreement, or to

otherwise take actions inconsistent with the financial management protocols developed hereunder.

3.3 Record Keeping and Reporting.

3.3.1 Each Party shall maintain records, reports, supporting documents and all other relevant books, papers and other documents so as to enable the Parties to meet all grant-related reporting requirements. Records shall be maintained for a period of four (4) years, or a period otherwise required by law, from the date this Agreement expires or is terminated. If an audit, litigation, or other action involving the records is started before the end of the period, the Parties agree to maintain the records until the end of the period or until the audit, litigation, or other action is completed, whichever is later. The Parties shall make available to each other, DHHS and the Comptroller General of the United States, or any of their duly authorized representatives, upon appropriate notice, such financial systems, records, reports, books, documents, and papers as may be necessary for audit, examination, excerpt, transcription, and copy purposes, for as long as such systems, records, reports, books, documents, and papers are retained.

3.3.2 The Parties agree that the County shall be the custodian of all health records established and maintained relating to diagnosis and treatment of patients served through the Community Health Center.

3.4 Legal Services.

The County shall provide the services of the County's employed or contracted counsel, as requested by the Council, to offer legal consultation for the operation of the Community Health Center. If the Council wishes to retain independent legal counsel, the Council will follow County's policy to request such services.

3.5 Ownership of Property Acquired with Grant Funds.

The provisions of 45 C.F.R. §75.316, *et seq.* (and/or any subsequent regulations that replace and supersede 45 C.F.R. Part 75) apply to tangible property acquired under this Agreement. The Parties agree that the County shall be the title holder of all property purchased with Section 330 grant funds. The County shall further assure that all contracts executed by for the Community Health Center are consistent with procurement standards contained in 45 C.F.R. Part 75 (and/or any subsequent regulations that replace and supersede 45 C.F.R. Part 75).

4. Governing Law

4.1 Applicable Laws, Regulations and Policies.

This Agreement shall be governed and construed in accordance with, and both Parties shall comply with, applicable Federal and State laws, regulations, and policies, including but not limited to: Section 330 of the Public Health Service Act; implementing regulations at 42 C.F.R. Part 51c; the terms and conditions of Section 330 grants awarded to County; the legislative mandates issued by the Office of Federal Assistance Management (OFAM); HRSA policies and other guidance (including, but not limited to, Health Center Program Compliance Manual); the DHHS Grants Policy Statement in effect as of the date the Agreement is executed; and the DHHS Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards set forth in 45 C.F.R Part 75 (and/or any subsequent regulations that replace and supersede 45 C.F.R. Part 75).

4.2 Compliance with State and Local Law.

This Agreement is governed by the laws of the State of Oregon. Each Party covenants to comply with all applicable laws, ordinances and codes of the State of Oregon and local governments in the performance of the Agreement, including all licensing standards and applicable accreditation standards.

4.3 HRSA Communication.

County shall submit promptly to the Council HRSA communication, Notice of Grant Awards, directives and/or policies that are received from or issued by HRSA after execution of this Agreement and are pertinent to the Community Health Center.

5. Term

This Agreement shall remain in effect unless terminated at an earlier date in accordance with Section 6.

6. Termination

This Agreement shall terminate immediately upon the mutual approval of the Parties or upon the effective date of any termination in full of the County's Section 330 grant.

7. Dispute Resolution

The Parties will use their best efforts to carry out the terms of this Agreement in the spirit of cooperation. In the unlikely event of disagreement, the Parties shall first attempt to resolve any dispute arising under this Agreement by informal discussions. In the event the Parties are unable to resolve the dispute through informal negotiations within a reasonable period of time of the commencement of such discussions (not to exceed thirty days), the Parties shall attempt

formal mediation, if they mutually agree to do so. If the Parties are unable to resolve the dispute, either Party may pursue any remedy available at law.

8. Notices

All notices permitted or required by this Agreement shall be deemed given when in writing and delivered personally or deposited in the United States Mail, first class postage prepaid, Certified and Return Receipt Requested, addressed to the other Party at the address set forth below, or such other address as the Party may designate in writing:

For the County:

Multnomah County Chair
501 SE Hawthorne Blvd, 6th Floor
Portland, Oregon 97214

For the Council:

Community Health Council Chair
619 NW 6th Ave, 7th Floor
Portland, Oregon 97209

9. Non-Severability

The provisions of this Agreement are not severable. In the event that any one or more provisions of this Agreement are deemed null, void, illegal or unenforceable, or should any part of this Agreement, as determined by DHHS or any other governmental authority, cause the County and the Council (as co-applicants) not to comply with Section 330, the Parties agree to attempt to amend this Agreement as shall reasonably necessary to achieve compliance. In the event that the Parties reach such agreement, this Agreement shall be construed in all respects as if such invalid or unenforceable provisions have been omitted. In the event that no such amendments or agreements for amendments can reasonably be made, this Agreement shall immediately terminate.

10. Waiver

No provision of this Agreement shall be waived by any act, omission or knowledge of a Party or its agents or employees except by an instrument in writing expressly waiving such provision and signed by a duly authorized officer of the waiving Party.

11. Third-Party Beneficiaries

None of the provisions of this Agreement shall be for the benefit of or enforceable by any third party, including, without limitation, any creditor or patient. No third party shall obtain any right under any provision of this Agreement or shall by reason of any provisions make any claim relating to any debt, liability, obligation or otherwise against any Party to this Agreement.

12. Entire Agreement

This Agreement represents the complete understanding of the Parties with respect to the subject matter herein and as such, supersedes any other agreements or understandings between the Parties, whether oral or written, relating to such subject matter, including but not limited to the 2015 policy, ICS.01.42, *Multnomah County Public Center Governance Staff Guidelines Community Health Council Board & Board of County Commissioners Co-Applicant Relationship*. No such other agreements or understandings may be enforced by either Party nor may they be employed for interpretation purposes in any dispute involving this Agreement.

13. Amendments and Modifications

Any amendment or modification to this Agreement shall be in writing and signed by both Parties. Modification or amendment of any provision(s) of this Agreement shall not affect the remaining provisions and, except for the specific provision(s) of this Agreement which thereby may be modified or amended, this Agreement shall remain in full force and effect as originally executed.

Notwithstanding anything set forth herein, in the event of a change in law or regulation, or upon the issuance of an order from a lawful authority, including but not limited to a court of law or a regulatory agency, that is binding upon a Party and will affect the provisions of this Agreement, the Parties shall meet and confer to amend this Agreement as necessary to incorporate any such change in law, regulation, or order, if a Party determines, in good faith and upon advice of counsel, that such amendment is necessary for purposes of compliance with such change in law or regulation or order.

14. Incorporation of Recitals

The Recitals are incorporated into this Agreement by this reference.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

Multnomah County

Multnomah County Community
Health Council

By: _____

By: _____

Print: Deborah Kafoury

Print: Tara Marshall

Title: Multnomah County Chair

Title: CHC Board Chair

Date: _____

Date: _____