

**THE EARLY LEARNING DIVISION
2013-2015 COUNTY HEALTHY FAMILIES OREGON
MEDICAID ADMINISTRATIVE ACTIVITIES
INTERGOVERNMENTAL AGREEMENT**

"HEALTHY START AGREEMENT"

This Early Learning Division 2013-2015 County Healthy Families Oregon - Medicaid Administrative Activities Intergovernmental Agreement (this "Agreement") is entered into by and between the State of Oregon, (the "State") acting by and through its Early Learning Division ("AGENCY") and Multnomah County, a political subdivision of the State of Oregon ("COUNTY").

RECITALS

WHEREAS, under Title XIX of the Social Security Act (the "Act"), the federal government and states share the cost of funding the Medicaid program, which provides medical assistance to certain low-income individuals. Federal Financial Participation ("FFP") is the federal government's share for states' Medicaid program expenditures. The State is required to share in the cost of medical assistance expenditures, and the Act permits both state and local governments to participate in the financing of the non-Federal portion of medical assistance expenditures ("State Share"). States may claim FFP for providing administrative activities that are found to be necessary by the Secretary of the U.S. Department of Health and Human Services (DHHS), Centers for Medicare and Medicaid Services ("CMS") for proper and efficient administration of the Title XIX Medicaid Oregon State Plan (the "State Medicaid Plan").

WHEREAS, the State Medicaid program is administered by the Oregon Health Authority ("OHA"), pursuant to ORS 409.010(3). OHA has an interagency agreement with AGENCY that authorizes AGENCY to administer Medicaid administrative activities for purposes of the Healthy Families Oregon programs authorized under ORS 417.795 (formerly known as the Healthy Start Family Support Services Program). AGENCY desires to administer those Medicaid administrative services, in part, through its Agreement with the COUNTY.

WHEREAS, ORS 417.795, authorizes AGENCY to establish Healthy Families Oregon programs, as funding becomes available.

WHEREAS, COUNTY desires to receive funding from AGENCY to implement Health Families Oregon programs to improve the wellness of children and families located within COUNTY'S jurisdiction.

WHEREAS, consistent with the goals of the Healthy Families Oregon programs, AGENCY and COUNTY, intend to improve health services access and availability for children and families eligible for medical assistance under Medicaid who reside in the geographic areas served by the COUNTY. Under the Agreement, COUNTY, through contracts with local providers ("Providers"), who must be enrolled with the Oregon Health Authority, Department of Medical Assistance Program ("DMAP") to provide Medicaid services, will perform Title XIX administrative activities. COUNTY will utilize Providers to perform outreach, health care coordination, and other medical assistance related to administrative activities that support the administration of the State Medicaid Plan.

WHEREAS, 42 CFR 433.51 permits the use of public funds to be appropriated directly to the COUNTY to be considered as the State Share in obtaining FFP;

WHEREAS, AGENCY and COUNTY desire to enter into this Agreement to ensure optimal utilization of available federal funding for Healthy Oregon Families administrative activities in order to better serve the eligible Medicaid population of Oregon; and

WHEREAS, COUNTY acknowledges that, in accordance with 2013 Oregon legislation, the implementation of Health Families Oregon programs may change and that, accordingly, AGENCY may terminate this Agreement, as provided herein, to provide for continuing implementation of the Healthy Families Oregon programs, as contemplated by 2013 legislation.

NOW THEREFORE, in consideration of the mutual premises set forth above and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **AGREEMENT.** This Agreement is effective on July 1, 2013, or on the date it has been fully executed by every party and, when required, approved by the Oregon Department of Justice. Unless extended or terminated in accordance with its terms, this Agreement terminates on June 30, 2015.

Upon execution by each of the parties hereto and approval as required by applicable law, the Agreement shall become effective as of July 1, 2013.

2. **STATEMENT OF WORK.** COUNTY shall, through subcontracts with its Providers, provide Title XIX administrative activities as further described in Attachment A, section (A1) Medicaid/OHP Outreach Activities and Facilitating Medicaid/OHP Eligibility, section (B1) Referral, Coordination, Monitoring, and Training of Medicaid/OHP Covered Services (C1) Medicaid/OHP Transportation and Translation, (D1) Program Planning, Policy Development, and Interagency Coordination Related to Medicaid/OHP Services; which are incorporated herein by this reference (the "Work"). Medicaid does not pay for administrative expenditures related to, or in support of, services that are not included in the State Medicaid Plan, the Oregon Health Plan, or services which are not reimbursed under Medicaid those activities are further described in Attachment A, section (A2) Outreach and Application Assistance for Non Medicaid/OHP Programs, (B2) Case Planning, Monitoring, Coordination, Referral and Training of Non Medicaid/OHP Covered Services, (C2) Non Medicaid/OHP Transportation and Translation means, and (D2) Coordination Related to Non-Medicaid/OHP Services.

A. COUNTY RESPONSIBILITIES.

1. COUNTY represents that it is a local governmental entity authorized by local authority to enter into the Agreement.
2. COUNTY shall enter into written subcontracts that require its Providers to submit necessary information for developing a Medicaid claim for Medicaid allowable activities to AGENCY on a quarterly basis, including: a list of each individual identified as performing activities under this Agreement and the salary and other personnel

expenses for each identified individual; and the actual time study record of all activities.

3. COUNTY shall enter into written subcontracts that require its Providers to participate in time studies required under this Agreement and to utilize the specific activity codes ("Activity Codes") and time study methodology approved by AGENCY, OHA, and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services ("CMS") to document time spent on each administrative activity listed in Attachment A and to claim all allowable costs under this Agreement. COUNTY shall require its Providers to participate in the time study during the four days per quarter determined by AGENCY. The Activity Codes that COUNTY shall require its Providers to use are attached to the Agreement as Attachment A. AGENCY will provide to COUNTY the form of the time study Providers must utilize.
4. COUNTY shall enter into written subcontracts that require its Providers to participate, not less than annually, in State-offered Medicaid training on the implementation of the time study and Activity Codes to ensure its Providers make claims only for allowable Medicaid administrative activities.
5. COUNTY shall enter into written subcontracts that require of its Providers that all reimbursement claims for administrative activities are claimed in accordance with Title 2 CFR PART 225 (OMB Circular A-87). The administrative activities eligible for reimbursement must be directly related to the administration of the State Medicaid Plan.
6. COUNTY shall enter into written subcontracts that require its Providers to maintain, and make available to COUNTY and AGENCY upon request, the following information on:
 - a. Employees who perform services under this Agreement: the employee's name, title, job description, education level, salary, and other personnel expenses for each individual; and
 - b. Cost information: records to indicate the nature and extent of services provided, and other resources that have been applied to offset costs; and
 - c. Time study records
 - d. Any other information applicable to the Medicaid administrative services provided under this Agreement.
7. COUNTY shall enter into written subcontracts that require its Providers to provide all records that support the quarterly claim, upon request of AGENCY, OHA, the Oregon Department of Justice, the Oregon Secretary of State, or federal officials.
8. COUNTY'S written subcontracts with Providers shall comply with all requirements of 42 CFR 434.6 as applicable.

9. COUNTY shall enter into written subcontracts that require of its Providers that Medicaid eligible children and families receiving assistance administered under this Agreement be free to accept or reject Medicaid services and to receive such service from an enrolled Provider of their choice unless otherwise restricted to a provider of the Oregon Health Plan by OHA.
10. COUNTY must advise Provider that Provider may include in its claim to COUNTY the actual costs billed to Provider by COUNTY for the performance of Medicaid Administrative Activities provided by COUNTY to Provider in its submission to the COUNTY for the purpose of calculating the Provider's Medicaid Administrative Claim.
11. COUNTY shall comply with and require by contract that any Provider comply with all requirements set forth in this Agreement, including but not limited to Attachment B, "Additional Requirements", attached to and made a part of this Agreement by this reference.

B. AGENCY RESPONSIBILITIES.

1. OHA shall determine the dates during each quarter on which the time study shall be conducted, and AGENCY shall communicate those dates to the COUNTY and Providers conducting the time study.
2. Upon receipt of time study records from Providers, AGENCY will compile the time study results on a quarterly basis, calculate the administrative Medicaid claim, and submit the administrative Medicaid claim for payment to OHA.
3. AGENCY shall provide technical assistance in the identification of allowable Medicaid administrative activities under the Agreement.
4. AGENCY shall assist COUNTY and Providers in responding to any federal Medicaid compliance issues related to the Agreement.

3. CONSIDERATION

A. Summary of Medicaid Payment Methodology

Under Title XIX of the Act, the federal government and states share the cost of providing allowable Medicaid administrative activities. COUNTY will provide under this Agreement 50% of the total allowable costs attributable to Medicaid Administrative activities. AGENCY will pay COUNTY the total allowable costs of providing Medicaid administrative activities, in arrears, on a quarterly basis. COUNTY shall then reimburse AGENCY 50% of the total allowable costs of providing Medicaid administrative activities, which represents the State match portion of the Medicaid expenditures. The State match funds COUNTY transfers to AGENCY shall be public funds that are not federal funds, or shall be federal funds authorized by federal law to be used to match other federal funds. Oregon Health Authority will claim the Federal Financial Participation (FFP) amount from U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS).

In addition, COUNTY on a quarterly basis will pay to AGENCY an Intergovernmental charge of 1% (one percent) of the total allowable cost of providing Medicaid administrative activities under this Agreement.

Allowable administrative Medicaid costs are separate from any other direct Medicaid or other services that may be provided by COUNTY pursuant to separate Medicaid funding agreements or authorizations. Duplicate payments are not allowable when determining administrative costs under Medicaid. Payments for allowable activities must not duplicate payments that have been or should have been included and paid as part of a rate for services, part of a capitation rate, or through some other local, State or federal program. Medicaid administrative costs may not be claimed for activities that are integral parts or extensions of medical services. Furthermore, in no case shall COUNTY be reimbursed more than the actual cost of the activities claimed by COUNTY under this Agreement.

AGENCY'S payment obligation is conditioned on: (1) AGENCY receiving payment from OHA in an amount sufficient to pay COUNTY; (2) AGENCY receiving the necessary time study results from Providers to calculate the quarterly claim for Medicaid administrative activities; and (3) AGENCY reasonably determining to accept the quarterly claim for Medicaid administrative activities, in whole or in part. COUNTY'S obligation to perform under this Agreement is conditioned on: (1) AGENCY'S timely payment in arrears for past performance due under this Agreement, and (2) AGENCY receiving payment from OHA in an amount sufficient to pay COUNTY for the provision of prospective performance due under this Agreement.

- B.** Payment for all Work performed under this Agreement shall be subject to the provisions of ORS 293.462. The maximum, not to exceed amount for the total cost of providing Medicaid administrative activities under this Agreement is \$240,000. COUNTY shall reimburse AGENCY 50% of this amount for the State match portion.
- C.** AGENCY will not pay for any Work performed before the beginning date or after the expiration date of this Agreement including amendments thereto.
- D.** COUNTY shall submit claims for Medicaid allowable activities only. Medicaid does not pay for administrative expenditures related to, or in support of, services that are not included in the State Medicaid Plan, the Oregon Health Plan, or services which are not reimbursed under Medicaid. In addition, Medicaid does not pay for health care services that are rendered free of charge to the general population. Thus, any administrative activity which supports the referral, coordination, planning of screening or services that are provided free to the general population would not be considered as Medicaid administration.
- E.** Total Allowable Administrative Costs for which COUNTY may request reimbursement from AGENCY under this Agreement include the following costs.
 - 1.** AGENCY incurs administrative costs in its administration of the Agreement, including but not limited to processing the Provider time studies and calculating the allowable

Medicaid administrative claiming on behalf of COUNTY, and payment of an intergovernmental charge to OHA. AGENCY invoices COUNTY on a quarterly basis for the administrative expenses incurred from the above responsibilities under this Agreement, not to exceed actual costs.

2. COUNTY incurs indirect Medicaid costs in its administration of the Agreement, including payment of AGENCY administrative costs invoiced to COUNTY as described in paragraph 1 of this subsection and other actual Medicaid indirect costs associated with administering the tasks authorized under this Agreement with its Providers such as implementation of the time study requirements. COUNTY'S actual Medicaid indirect costs must be documented and justifiable. COUNTY will include in its claim for Total Allowable Administrative Costs to AGENCY the amount of the COUNTY'S actual Medicaid indirect costs.
 3. Consistent with Subsection II.A of this Agreement, COUNTY will obtain Provider time study information for the purpose of obtaining reimbursement for Provider Medicaid administrative claiming. COUNTY'S total Allowable Administrative Costs shall include the Provider Medicaid administrative claiming information.
 4. Total Allowable Administrative Costs that may be claimed by COUNTY under this Agreement are the amounts described in paragraphs 2 and 3 of this subsection.
- F. COUNTY shall invoice AGENCY quarterly, in arrears for the Total Allowable Administrative Costs identified in Subsection E of this section.
1. AGENCY will reimburse COUNTY in arrears on a quarterly basis for the total allowable costs of providing Medicaid administrative services accepted by AGENCY.
 2. COUNTY will reimburse AGENCY quarterly upon invoice from the State for the State match portion which is equal to 50% of the amount billed by COUNTY and accepted by AGENCY for the total allowable Medicaid administrative costs.
- G. COUNTY shall send itemized invoice to the following AGENCY supervising representative:
- Attn: Serena Harris**
Early Learning Division
Contracts and Procurement Office
775 Court Street NE
Salem, OR 97301
- H. COUNTY represents by its signature to this Agreement that for the purposes of 42 CFR 433.51, the funds it transfers to AGENCY pursuant to this Agreement are public funds that are not federal funds, or are federal funds authorized by federal law through a waiver in order for federal funds to be used as match other federal funds.

4. RECOVERY OF FUNDS

To the extent permitted by law, including without limitation, applicable constitutional, statutory

and regulatory provisions and controlling governmental determinations and orders, COUNTY shall be financially responsible for the final amount of any claim for Work provided under this Agreement that CMS, OHA, or AGENCY finds unallowable under the Medicaid program. In the event CMS, OHA, or AGENCY finds any costs claimed by COUNTY unallowable, AGENCY shall provide COUNTY written notice identifying the amount that must be refunded to CMS, OHA, or AGENCY. Within thirty (30) calendar days of AGENCY'S notice, COUNTY shall either (1) make payment to AGENCY for the full amount of the unallowable cost identified by AGENCY in its notice; or (2) notify AGENCY in writing that COUNTY wishes to repay the unallowable amount from future payments or other means. AGENCY may then offset the unallowable amount from future payments owed to COUNTY under this Agreement, or any payment to COUNTY from AGENCY under any other contract or agreement between COUNTY and AGENCY, present or future. Nothing in this section shall be construed as a waiver by either party of any process or remedy that might otherwise be available. The rights and remedies of AGENCY set forth in this section shall not be exclusive and are in addition to any other rights and remedies provided to AGENCY by law or under this Agreement.

If payment to COUNTY by AGENCY under this Agreement are made in error or are found to be excessive under the terms of this Agreement, AGENCY, after giving written notification to COUNTY, shall enter into nonbinding discussions with COUNTY within 15 days of the written notification. If, after discussions, the parties agree that payments were made in error or found to be excessive, AGENCY may withhold payments due COUNTY under this Agreement in such amounts, and over such periods of time, as are deemed necessary by the parties to recover the amount of the overpayment.

Nothing in this Agreement shall require COUNTY or AGENCY to act in violation of law, including without limitation, applicable constitutional, statutory and regulatory provisions and controlling governmental determinations and orders.

5. GENERAL PROVISIONS

A. Compliance with Law. COUNTY shall comply and shall require its Providers to comply, with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Work under this Agreement. Without limiting the generality of the foregoing, COUNTY expressly agrees to comply with: (i) Title VI of the Civil Right Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) the Health Insurance Portability and Accountability Act of 1996; (v) the Federal Funding Accountability and Transparency Act (FFATA) of 2006 (P.L.109-282), provisions of which include but may not be limited to a requirement for County and/or Providers to have a Data Universal Numbering System (DUNS) number and to maintain a current registration in the Central Contractor Registration (CCR) database; (vi) all regulations and administrative rules established pursuant to the foregoing laws; and (vii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. In the performance of Work under this Agreement, COUNTY shall use recyclable and recycled products to the maximum extent which is economically feasible. No federal funds may be used to provide Services in violation of 42 USC 14402.

B. Subcontracts. COUNTY shall enter into subcontracts for the purposes of performing

the Work under the Agreement. COUNTY shall not permit any person or entity to be a Provider unless the person or entity holds all licenses, certificates, authorizations and other approvals required by applicable law to deliver the Work. Subcontracts must be in writing and contain each of the provisions necessary to permit COUNTY to comply with its obligations under the Agreement with respect to the Work performed by the Provider, and any other provisions AGENCY deems to be reasonably appropriate. COUNTY shall maintain an originally executed copy of each subcontract at its office and shall furnish a copy of any subcontract to AGENCY upon written request.

6. Termination.

- A.** The Agreement may be terminated at any time by mutual written consent of both parties, or by either party upon thirty (30) days' notice, in writing, and delivered by certified mail or in person. COUNTY acknowledges that AGENCY may terminate this Agreement in accordance with this Section 6, if AGENCY determines that such termination is necessary or desirable to continue implementation of Healthy Families Oregon programs in accordance with Oregon law that becomes effective January 1, 2014.
- B.** In addition, either Party may terminate the Agreement, in whole or in part, immediately upon notice to the other, or if AGENCY terminates, at such later date as AGENCY may choose to establish in such notice, under any of the following conditions:
 - 1.** Federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the Work under the Agreement is prohibited or AGENCY is prevented from paying for such Work from the planned funding source;
- C.** AGENCY fails to receive funding, appropriations, limitations, or other expenditure authority at levels sufficient to pay for the Work; or
- D.** The other party, including its employees, agents or assigns, commits any material breach or default of any covenant, warranty, or obligation under this Agreement, fails to perform the Work under this Agreement within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger the other's performance under this Agreement in accordance with its terms, and fails to correct such breach, default, or failures within ten (10) calendar days after delivery of notice by the other Party, or if AGENCY terminates, such longer period as AGENCY may choose to specify in such notice.
- E.** Upon receiving a notice of termination from AGENCY, COUNTY shall immediately cease all activities under the Agreement, unless expressly directed otherwise by AGENCY in the notice of termination. Upon termination, COUNTY shall deliver to AGENCY all Agreement documents, information, works-in-progress and other property that are or would be deliverables had the Agreement been completed.
- F.** Termination of this Agreement pursuant to this Subsection G shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination. Specifically, but without limiting the generality of the preceding sentence, termination of this Agreement shall neither affect AGENCY'S right to recover funds from COUNTY

pursuant to Section IV nor COUNTY'S right to payment under Subsection 3.A for Work appropriately performed prior to termination.

- G.** In the event insufficient funds are appropriated for performance of the Work under this Agreement and the COUNTY has no other lawfully available funds to pay for such Work, then the COUNTY may terminate this Agreement at the end of its current fiscal year, with no further liability or penalty to AGENCY.

COUNTY must deliver written notice to AGENCY of termination pursuant to this paragraph 5 not later than (a) thirty (30) days from the determination by the COUNTY of the event of non-appropriation or (b) thirty (30) days from the end of the legislative session, whichever first occurs.

7. Confidentiality of Client Information

- A.** The Work provided under the Agreement does not include the use of, access to, exchange of or disclosure of personally identifiable health information. Therefore, the parties reasonably believe that the HIPAA Privacy Rules in 45 CFR Parts 160 and 164 do not apply. The Agreement does not require or provide for the use of "standard transactions" as that term is used in the HIPAA Transaction Rules, 45 CFR Part 162. If the Work is revised, or if the federal HIPAA requirements are changed or interpreted in a way that would require the Work to comply with any HIPAA requirement, the parties may amend the Agreement to address such change or interpretation.
- B.** The use or disclosure of information concerning the administration of the Medicaid program shall be limited to persons directly connected with the administration of this Agreement unless otherwise authorized or required by law. AGENCY and COUNTY shall apply confidentiality policies to all requests from outside sources.

- 8. Record Maintenance; Access.** COUNTY shall maintain all fiscal records relating to the Agreement in accordance with generally accepted accounting principles. In addition, COUNTY shall maintain any other records pertinent to the Agreement in such a manner as to clearly document COUNTY'S performance. COUNTY acknowledges and agrees that AGENCY, OHA, the Oregon Department of Justice, the Oregon Secretary of State's Office, and the federal government and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans, and writings of COUNTY that are pertinent to the Agreement to perform examinations and audits and to make excerpts and transcripts. COUNTY shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of seven (7) years, or such longer period as may be required by applicable law, following final payment and termination of the Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to the Agreement, whichever date is later. COUNTY shall require its Providers to comply with the requirements in this section.

- 9. Notice.** Except as otherwise expressly provided in the Agreement, any communications between the parties hereto or notices to be given hereunder shall be in writing by personal delivery, facsimile, or mailing the same, postage prepaid to COUNTY or AGENCY at the address or number set forth below, or to such other addresses or numbers as either party may indicate pursuant to this section. Any communication or notice so addressed and

mailed shall be effective on the fifth calendar day after the date of mailing. Any communication or notice delivered by facsimile will be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the recipient, or on the next business day, if transmission was outside normal business hours of the recipient. To be effective against AGENCY, any notice transmitted by facsimile must be confirmed by telephone notice to AGENCY'S Office of Contracts and Procurement at (503) 373-1283.

To be effective against COUNTY, any notice transmitted by facsimile must be confirmed by telephone notice to COUNTY'S Early Learning Division Office. Any communication or notice given by personal delivery shall be effective when actually delivered.

Notices to AGENCY: Early Learning Division
Contracts and Procurement Office
775 Court Street NE
Salem, OR 97301

Notices to COUNTY: Multnomah County CCFC
421 SW Oak Street, Suite 200
Portland, OR 97204

10. Severability. The parties agree that if any term or provision of the 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.

11. Counterparts. The Agreement 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 so executed shall constitute an original.

12. Governing Law; Venue; Consent to Jurisdiction. The 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 AGENCY (and/or any other agency of the State of Oregon) and COUNTY that arises from or relates to the Agreement shall be brought and conducted solely and exclusively within a circuit court in the State of Oregon of proper jurisdiction. 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, from any Claim or from the jurisdiction of any court. COUNTY, BY EXECUTION OF THE AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

13. Assignment of Contract, Successors in Interest.

A. COUNTY shall not assign or transfer its interest in the Agreement without prior written approval of AGENCY. Any such assignment or transfer, if approved, is subject to such

conditions and provisions as the AGENCY may deem necessary. No approval by the AGENCY of any assignment or transfer of interest shall be deemed to create any obligation of the AGENCY in addition to those set forth in the Agreement.

B. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns.

- 14. No Third Party Beneficiaries.** AGENCY and COUNTY are the only parties to the Agreement and are the only parties entitled to enforce its terms. The parties agree that COUNTY'S performance under this Agreement is solely for the benefit of AGENCY to assist and enable AGENCY to accomplish its statutory mission. Nothing in the 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 the Agreement.
- 15. Integration and Waiver.** The Agreement, including all of its Attachments, 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 the Agreement. The failure of either party to enforce any provision of the Agreement shall not constitute a waiver by that party of that or any other provision. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.
- 16. Amendment.** No waiver, consent, modification or change of terms of the Agreement shall bind either party unless in writing and signed by both parties and when required the Department of Administrative Services and Department of Justice. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. COUNTY, 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.
- 17. Headings.** The headings and captions to sections of the Agreement have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret the Agreement.
- 18. Construction.** This Agreement is the product of negotiations between representatives of AGENCY and representatives of COUNTY. The provisions of this Agreement are to be interpreted and their legal effects determined as a whole. An arbitrator or court interpreting this Agreement shall give a reasonable, lawful and effective meaning to the Agreement to the extent possible, consistent with the public interest.
- 19. Limitation of Liabilities.** EXCEPT FOR LIABILITY OF DAMAGES ARISING OUT OF OR RELATED TO SECTIONS VI AND V OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THE 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.

20. Force Majeure. Neither AGENCY nor COUNTY shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, natural causes and war which is beyond respectively, the AGENCY'S or COUNTY'S reasonable control. Each party shall, however, make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under the Agreement.

21. Time is of the Essence. The parties agree time is of the essence under this Agreement.

22. FEDERAL PROVISIONS

A. In addition to the requirements of Subsection V.A, COUNTY shall comply and, as indicated, require all Providers to comply with the following federal requirements. For purposes of the Agreement, all references to federal and state laws are references to federal and state laws as they may be amended from time to time.

A1. Equal Employment Opportunity. If the Agreement, including amendments, is for more than \$10,000, then COUNTY shall 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).

A2. Clean Air, Clean Water, EPA Regulations. If the Agreement, including amendments, exceeds \$100,000 then COUNTY shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), 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 (40 CFR Part 15), 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 AGENCY, the U.S. Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. COUNTY shall comply with, and include in its contracts with all Providers receiving more than \$100,000 in Federal Funds language requiring the Provider to comply with, the federal laws identified in this section.

A3. Energy Efficiency. COUNTY shall comply with applicable mandatory standards and conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

A4. Truth in Lobbying. COUNTY certifies, to the best of COUNTY'S knowledge and belief that:

- a.** No federal appropriated funds have been paid or will be paid, by or on behalf of COUNTY, 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, COUNTY shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- c. COUNTY 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.

This certification is a material representation of fact upon which reliance was placed when the Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into the Agreement imposed by section 1352, Title 31, U.S. Code. 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.

- A5. Resource Conservation and Recovery.** COUNTY shall comply and require all providers 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 USC 6901 et. seq.). Section 6002 of that Act (codified at 42 USC 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 Parts 247-253.
- A6. Audits.** COUNTY shall comply and, if applicable, require Providers to comply, with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations."
- A7. Debarment and Suspension.** COUNTY shall not permit any person or entity to be a Provider 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. 12,549 and No. 12,689, "Debarment and Suspension" (See 45 CFR part 76). 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. Providers 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.

A8. Medicaid Compliance. To the extent COUNTY provides any Work whose costs are paid in whole or in part by Medicaid, COUNTY shall comply with and require its Providers to comply with the federal and state Medicaid statutes and regulations applicable to the Work, including but not limited to:

- a. Keeping such records as may be necessary to disclose the extent of services furnished to clients and, upon request, furnish such records or other information to OHA, the Oregon Department of Justice and the Secretary of the U.S. Department of Health and Human Services;
- b. Complying with all applicable disclosure requirements set forth in 42 CFR 1002.3(a) and 42 CFR Part 455, Subpart B;
- c. Complying with any applicable advance directive requirements specified in 42 USC Section 1396(a)(57) and 42 CFR section 431.107(b)(4);
- d. Complying with the applicable certification requirements of 42 CFR sections 455.18 and 455.19, including that information submitted with any claim for the provision of Medicaid Services is true, accurate and complete; and
- e. Requiring that entities receiving \$5 million or more annually under this Agreement and any other Medicaid contract 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 USC §1396a(a)(68).

COUNTY shall include in all agreements with Providers receiving Medicaid language requiring the Provider to comply with the record keeping and reporting requirements set forth in this section and with the federal laws identified in this section.

A9. Americans with Disabilities Act. COUNTY shall comply with and require all Providers by contract to comply with Title II of the Americans with Disabilities Act of 1990 (codified at 42 USC 12131 et. seq.) in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the delivery of Work.

A10. Pro-Children Act. COUNTY shall comply with and require all Providers by contract to comply with the Pro-Children Act of 1995 (codified at 20 USC section 6081 et. seq.).

A11. HIPAA Compliance. COUNTY shall comply with and require all Providers to comply with Title II of the Americans with Disabilities Act of 1990 (codified at 42 USC 12131 et. seq.) in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the delivery of services.

Additional Certification: By execution of the Agreement, I, an authorized representative of COUNTY, certify that COUNTY has provided training and education to its employees and agents employed to comply with the required terms and conditions of this Agreement, and so require of

them that all data, claims, submissions or other submissions that provide a basis for claiming or receiving reimbursement under the Agreement will be true, accurate, and complete; that payment of claims to COUNTY will be from federal and State funds, and therefore, any falsification or concealment of a material fact by COUNTY when submitting claims or other submissions to obtain payments may be prosecuted under federal and State laws.

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

**OREGON DEPARTMENT OF EDUCATION
EARLY LEARNING DIVISION**

By: _____
Name: _____
Title: _____
Date: _____

DEPARTMENT OF JUSTICE

Approved for Legal Sufficiency (ORS 291.047)

THE CHAIR, BOARD OF COUNTY COMMISSIONER

By: _____
Name: _____
Title: _____
Date: _____

COUNTY COMMISSIONERS DELEGATE

By: _____
Name: _____
Title: _____
Date: _____

ATTACHMENT A

TIME STUDY ACTIVITY CODES

A1. Medicaid/OHP Outreach Activities and Facilitating Medicaid /OHP Eligibility

This code should be used when performing activities that inform eligible or potentially eligible individuals about Medicaid/OHP/Oregon Healthy Kids. This code should also be used when describing the range of services covered under Medicaid/OHP/Oregon Healthy Kids, how to access and obtain them, and the benefits of Medicaid/OHP preventative services. Use this code when assisting children and their families in applying for and becoming eligible for Medicaid/OHP. Activities for obtaining and sharing information for Medicaid/OHP outreach and facilitating Medicaid/OHP eligibility can be written or verbal and may occur during meetings, home visits, or over the phone. This includes related paperwork, clerical activities, and staff travel required to perform these activities. Please note it is not necessary that the child/family actually receive Medicaid/OHP in order for this code to be used.

Examples:

- Informing Medicaid eligible and potential Medicaid eligible children and families about the benefits and availability of services provided by Medicaid (including preventative treatment and screening) including services provided through Enter Periodic Screening Diagnosis and Treatment (EPSDT) program.
- Developing and/or compiling materials to inform individuals about the Medicaid program (including EPSDT) and how and where to obtain those benefits. Note: this activity should not be used when Medicaid-related materials are already available to the children and families served in your target population (such as through the Medicaid agency). As appropriate, obtain prior approval from Medicaid when creating/developing outreach materials.
- Distributing literature about the benefits, eligibility requirements, and availability of the Medicaid program, including EPSDT.
- Assisting the Medicaid agency to fulfill the outreach objectives of the Medicaid program by informing individuals, children and their families about health resources available through the Medicaid program.
- Providing information about Medicaid EPSDT screening (e.g., dental, vision) available that will help identify medical conditions that can be corrected or improved by services offered through the Medicaid program.
- Contacting pregnant and parenting women and teens about the availability of Medicaid-covered prenatal and well-baby care programs, immunizations, birth control options and services.
- Providing information regarding Medicaid managed care programs and health plans such as Oregon Healthy Kids to individuals and families, including how to access the system.

- Encouraging families to access medical/dental/mental health services provided by the Medicaid program.
- Verifying an individual's current Medicaid eligibility status for purposes of the Medicaid eligibility process. (This may be accomplished by performing an eligibility check on-line, by reviewing the medical card, or contacting a local DHS/OHA facility to verify status of eligibility.)
- Reminding or assisting families to reapply for OHP to keep it current.
- Explaining Medicaid eligibility rules and the Medicaid eligibility process to prospective applicants.
- Assisting individuals or families complete a Medicaid eligibility application
- Gathering information related to the application and eligibility determination process for an individual, including resource information and third party liability (TPL) information, as a prelude to submitting a formal Medicaid application.
- Providing necessary forms and/or packaging forms in preparation for Medicaid eligibility determination.
- Referring an individual or family to a local assistance office to make application for Medicaid benefits.
- Assisting an individual or family in collecting/gathering required information and documents for the Medicaid application.
- Identifying enrolled providers to provide Medicaid covered services, such as: immunizations, well child exams, dental services, mental health services.
- Participating as a Medicaid eligibility outreach outstation. NOTE: excludes determining eligibility.
- Preparing, presenting and disseminating child health related materials identifying Medicaid-covered services and how to access such services including preventative health care and substance abuse prevention programs, related staff travel and paperwork.
- Informing parents/families on how to appropriately access/use Medicaid-covered medical care/services.

A2. Outreach and Application Assistance for Non-Medicaid/OHP Programs:

Activities that assist the child/family in gaining access to non-Medicaid/OHP services and effectively utilizing social services and community wellness programs. (Included are housing, commodities, food banks, Women's Infant and Children Program ("WIC"), foster care, financial

assistance, exercise and weight loss programs, energy assistance, child care, after school programs, friendly visitor and vocational services.) Providers that are not enrolled with Medicaid or part of Medicaid Managed care network of providers and activities that assist the child/family in applying for these services, including form preparation, related staff travel, clerical, and paperwork.

Examples:

- Informing families about general health education programs or campaigns and how to access them, conducting, scheduling or promoting these programs.
- Scheduling and promoting activities which educate individuals about the benefits of healthy lifestyles, home safety and accident prevention.
- Non-Medicaid/OHP outreach directed toward encouraging persons to access social, educational, legal, or other services not covered by Medicaid/OHP.
- Explaining eligibility rules and the eligibility process to prospective applicants for NON-OHP programs, providing the necessary forms and packaging all forms in preparation for such NON-OHP services.
- Informing individuals and families about NON-OHP programs, such as Housing, food banks, Foster Care, Financial Assistance for needy families TANF, Food Stamps, Women's Infant and Children (WIC) program, Childcare, Legal Aid and other NON-OHP social or educational programs, and referring them to the appropriate agency to make application for such services.
- Providing outreach, developing and verifying initial and continuing eligibility for the Free and Reduced Lunch Program.

B1. Referral, Coordination, Monitoring, and Training of Medicaid/OHP Covered Services

Staff should use this code when making referrals for, coordinating, and/or monitoring the delivery of, (Medicaid-covered) services. This code may also be used when coordinating or participating in training events and seminars for outreach staff regarding the benefits of the Medicaid/OHP program, how to assist families to access Medicaid-covered services, and how to more effectively refer participants for services. Activities that are an integral part of or an extension of a direct medical service are not claimable as an administrative activity and must be reported as E. Note: Targeted case management is also not claimable as an administrative activity and must be reported as E. Claimable activities reported include related staff travel, clerical, and paperwork.

Note: If medically licensed staff provide these activities they are considered integral to Medical services they provide whether they are actively billing Medicaid for direct medical services or not must be reported under E for Direct Healthcare Services.

- Monitoring, coordination, and training of Medicaid/OHP services: for vulnerable children and families, including agency staffing to coordinate Medicaid/OHP services for child health and development, (Note: this does not include Individualized Family Services Goal Plan meetings), arranging for Medicaid-covered services, coordinating

child specific Medicaid-covered services in coordination with services identified (i.e. psychological counseling, health, substance abuse counseling and consultation), related staff travel and paperwork.

- **Referral and Coordination:** Gathering information in advance of a referral for a Medicaid-covered service utilizing questionnaires (i.e. New Baby Questionnaire or Family Update). Making referrals for and coordinating Medicaid covered screenings, examinations, assessments and evaluations for health, vision, dental, developmental, mental health, substance abuse, and other Medicaid-covered medical services. Contacts with parents regarding their child's Medicaid covered healthcare needs. Gathering background information and supportive data such as social history and medical history. Helping families meet goals related to Medicaid covered services and coordinating medical care with partnering agencies also serving the family such as Early Intervention and/or Community Health Nurses, and related staff travel and paperwork.
- **Immunization:** Scheduling immunizations, coordination of immunizations for children, related staff travel and paperwork.
- **Maternal Care Services:** Referring for Medicaid-covered prenatal, postpartum and newborn care, pre-pregnancy risk prevention, family planning and related staff travel and paperwork.
- **Developmental Delay:** Gathering information in advance of a referral for a Medicaid-covered service utilizing Ages and Stages Questionnaire (ASQ) and ASQ Social Emotional Questionnaire for early identification of age appropriate child development and/or delays to assure health and developmental problems are found, diagnosed and treated. Coordinating or referring for early Medicaid-covered medical consultation and evaluations, related staff travel and paperwork. Participating in or coordinating training which improves the delivery of Medicaid/OHP services, enhances early identification, intervention, screening and referral of children with special health needs.

B2. Case Planning, Monitoring, Coordination, Referral and Training of Non-Medicaid/OHP Covered Services

- Assessing and monitoring of the home learning environment using standardized forms, creating and disseminating information on positive and interactive learning environments, providing or arranging for reading material for the child, providing or arranging for age appropriate toys.
- Classroom instruction or presentations, preparation, related paperwork and travel, attendance at conferences, providing educational or career guidance or consultation. Includes related staff travel, clerical, and paperwork.
- Case management of social services and community wellness programs (including housing, commodities, food banks, WIC, foster care, financial assistance, exercise and weight loss programs, energy assistance, child care, after school programs, friendly visitor and vocational services) arranging transportation for these services.

Making referrals for and coordinating the delivery of these social services and community wellness programs. Arranging transportation for these services and coordinating or participating in training events and seminars for these services. Includes related staff travel, clerical, and paperwork.

- Making direct referrals to social services such as housing, energy assistance, educational and/or special education, childcare, education and Early Intervention, vocational and transportation to these services, etc., monitoring and follow-up. Includes related staff travel, clerical and paperwork.
- Participating in or coordinating training which improves the delivery of non-Medicaid/OHP services.

Examples:

- Helping families meet non Medicaid covered related goals
- General education and referrals about topics like nutrition, normal breastfeeding, exercise, wellness, attachment, infant development
- Sharing toys, making toys
- Literacy
- Parent child interactions

C1. Medicaid/OHP Transportation and Translation:

Assisting an individual to obtain transportation to services covered by OHP, arranging for or providing translation services to facilitate access to OHP services. This does not include the provision of the actual transportation services, but rather the administrative activities involved in arranging or scheduling transportation to a Medicaid covered service. Translation services must be provided by an employee whose role is performing translation functions to facilitate access to Medicaid-covered services. Include related paperwork, clerical activities or staff travel required to perform these activities.

Examples:

- Arranging for or providing translation services (oral and signing) that assist the individual to access and understand necessary care or treatment covered by Medicaid.
- Developing translation materials that assist individuals to access and understand necessary care or treatment covered by Medicaid.
- Scheduling or arranging transportation to Medicaid/OHP covered services
- Related staff travel and paperwork

C2. Non-Medicaid/OHP Transportation and Translation means:

Assisting an individual to obtain transportation to services not covered by Medicaid/OHP, or arranging for or providing translation services related to social, vocational, or educational programs. Include related paperwork, clerical activities or staff travel time required to perform these activities.

Special Note: Use this code when accompanying an individual to non-Medicaid/OHP services.

D1. Program Planning, Policy Development, and Interagency Coordination Related to Medicaid/OHP Services

Performing activities associated with the development of strategies to improve the coordination and delivery of medical/dental/mental health services, and when performing collaborative activities with other agencies and/or providers. Planning and developing procedures to track requests for services; the actual tracking of requests for Medicaid services would be coded under B1 Referral, Coordination and Monitoring of Medical Services. Working internally and with other agencies to improve services, expand health and medical services and their utilization to specific target populations, gathering information about their functions, to improve early identification of health and developmental problems, related staff travel, clerical, and paperwork.

Examples:

- Identifying gaps or duplication of medical/dental/mental services and developing strategies to improve the delivery and coordination of these services.
- Developing strategies to assess or increase the capacity of medical/dental/mental health programs.
- Monitoring medical/dental/mental health delivery systems.
- Developing procedures for tracking families' requests for assistance with medical/dental/mental services and providers, including Medicaid. (This does not include the actual tracking of requests for Medicaid services.)
- Evaluating the need for medical/dental/mental services in relation to specific populations or geographic areas.
- Analyzing Medicaid data related to a specific program, population, or geographic area.
- Working with other agencies and/or providers that provide medical/dental/mental services to improve the coordination and delivery of services, to expand access to specific populations of Medicaid eligibles, and to increase provider participation and improve provider relations.
- Working with other agencies and/or providers to improve collaboration around the early identification of medical/dental/mental problems.
- Developing strategies to assess or increase the cost effectiveness of medical/dental/mental health programs.
- Defining the relationship of each agency's Medicaid services to one another.
- Working with Medicaid resources, such as the Medicaid agency and Medicaid managed care plans, to make good faith efforts to locate and develop EPSDT health services referral relationships.
- Developing advisory or work groups of health professionals to provide consultation and advice regarding the delivery of health care services.
- Working with the Medicaid agency to identify, recruit and promote the enrollment of potential Medicaid providers.
- Developing medical referral sources such as directories of Medicaid providers and managed care plans who will provide services to targeted population groups, e.g., EPSDT children.

- Coordinating with interagency committees to identify, promote and develop EPSDT services
- System coordination, community meetings to improve services, expand access to OHP, improve system of care.
- Developing a family planning, education, counseling and service program compatible with community norms, locating or developing family planning information and materials and methods of distribution, developing a family planning service referral network
- Notifying medical providers of Healthy Start/Healthy Families Oregon services and coordination opportunities.
- Recruitment of enrolled providers to provide Medicaid covered services, such as: immunizations, well child exams, dental services, and mental health services.
- System coordination to improve delivery of immunizations.
- Related supervision, travel, case conferences, team meetings and paperwork.

D2. Coordination Related to Non-Medicaid/OHP Services

Working internally and with other agencies to improve social services, identify gaps in services, expand and improve capacity to engage in non-Medicaid/OHP activities, expand access and linkage to non-Medicaid/OHP services, their utilization by specific target populations; related staff travel, clerical, and paperwork.

E. Direct Health Care Services

Providing medical care, treatment, and/or counseling services to an individual. This code also includes administrative activities that are an integral part of or extension of a medical service (e.g., patient follow-up, patient assessment, patient counseling, patient education, parent consultations, billing activities). This code also includes all related paperwork, clerical activities, or staff travel required to perform these activities.

- Providing health/mental health services.
- Medical/health assessment and evaluation.
- Conducting medical/health assessments/evaluations and diagnostic testing and preparing related reports.
- Providing personal aide services.
- Providing speech, occupational, physical and other therapies.
- Administering first aid, or prescribed injection or medication.
- Providing direct clinical/treatment services.
- Performing developmental assessments.
- Providing counseling services to treat health, mental health, or substance abuse conditions.
- Developing a treatment plan (medical plan of care) for a student if provided as a medical service.
- Performing routine or mandated child health screens including but not limited to vision, hearing, dental, scoliosis, and EPSDT screens.
- Providing immunizations.

F. General Administration/Other Services

General administrative functions, such as payroll, maintaining inventories, developing budgets, executive direction, lunches, paid leave, educational or professional development conferences, staff meetings, and personnel issues.

Examples:

- Paid lunches, breaks, or other time not at work
- Paid time off (vacation, sick)
- Most trainings, conferences and meetings (not related to Medicaid covered services)
- Personnel issues
- Emails and phone messages, general office work, filing
- Establishing goals and objectives of health-related programs as part of an annual or multi-year plan.
- Reviewing agency procedures and rules.
- Attending or facilitating staff or board meetings.
- Performing administrative or clerical activities related to general building or agency functions or operations.
- Providing general supervision of staff, including assistants or volunteers, and evaluation of employee performance.

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ATTACHMENT B

ADDITIONAL REQUIREMENTS

AGENCY hereby grants COUNTY the authority to subcontract the Work required under this Agreement but COUNTY may not assign or transfer any of its interests in this Agreement without the prior written consent of the AGENCY. AGENCY'S consent to subcontracts shall not relieve COUNTY of any of its duties or obligations under this Agreement. In addition to any other provisions AGENCY may require, COUNTY shall include in any permitted subcontract under this Agreement a requirement that subcontractor be bound by the following provisions as if the subcontractor were COUNTY:

1. STATEMENT OF WORK

A. COUNTY RESPONSIBILITIES.

COUNTY SHALL:

- A1.** Utilize the specific activity codes ("Activity Codes") for time study ("Time Study"), as set forth in Attachment A, and approved by Oregon Health Authority (OHA) and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services ("CMS") to document all time spent on the Work and to claim all costs under this Agreement for allowable Medicaid administrative activities.
- A2.** Ensure training is available and provided to its employees and subcontractors on the implementation of the Time Study and Activity Codes to ensure COUNTY'S subcontractors make claims only for allowable Medicaid administrative activities.
- A3.** Ensure that all reimbursement claims for the Work are in accordance with 2 CFR PART 225 (OMB Circular A-87) and the State Medicaid Plan, both of which are incorporated herein by this reference. The Work for which COUNTY claims reimbursement must be directly related to the administration of the State Medicaid Plan for Federal Financial Participation (FFP) to be available.
- A4.** Maintain the following information on employees and subcontractors who perform Work under this Agreement: the employee's or subcontractors employee's name, title, job description, salary, and other personnel expenses for each individual; the percent of time each employee spends on the coded activities identified in the Time Study; costs attributable to each person's position providing Work; the salary of each person providing Work under subcontracts.
- A5.** Claim indirect costs in accordance with 2 CFR PART 225 (OMB Circular A-87).
- A6.** Monitor compliance with the requirements of this Agreement and maintain all records that support the quarterly payment claim for the Work performed, including but not limited to, position details, cost information, Time Study results, records to indicate that services were requested and the extent of services provided, other resources that have been

applied to offset costs, and any other information applicable to the Work provided under this Agreement.

A7. Upon request from AGENCY, OHA, the Oregon Department of Justice, the Secretary of State's Office, or the federal government, make available all records that support the quarterly payment claim for Work performed.

A8. Assure that Medicaid eligible children and families receiving assistance under this Agreement are free to accept or reject Medicaid services and/or to receive such services from an enrolled provider of their choice unless otherwise restricted to a provider of the Oregon Health Plan by OHA.

A9. Use the Medicaid-eligible percentage for the COUNTY in its cost calculations unless another statistically based calculation has been approved by AGENCY and OHA.

B. EARLY LEARNING DIVISION RESPONSIBILITIES.

ELD SHALL:

B1. Ensure its sub agreements for the purpose of carrying out the Work under this Agreement are in compliance with requirements described in Section H below.

B2. Utilize the specific Time Study Activity Codes as set forth in Attachment A Time Study Activity Codes.

B3. Ensure that all reimbursement claims for the costs related to provision of the Work are in accordance with Title 2 CFR Part 225 (OMB Circular A-87) and the State Medicaid Plan, which are incorporated herein by this reference.

B4. Claim indirect costs in accordance with Title 2 CFR Part 225 (OMB Circular A-87).

B5. Provide OHA with a signed copy of the subcontract boilerplate executed for the purpose of carrying out the Work under this Agreement.

B6. Monitor subcontracts to ensure that the Medicaid administrative activities and costs being claimed by subcontractors are allowable and related to the purpose of this Agreement.

B7. Monitor compliance with the requirements of this Agreement and maintain all records that support the quarterly payment claim for the Work performed including, but not limited to, position details, cost information, Time Study results, records to indicate that services were requested and the extent of services provided, other resources that have been applied to offset costs, and any other information applicable to the Work provided under this Agreement.

B8. Transfer the 50% state match portion of total amount claimed for each completed survey period for allowable Medicaid administrative claiming activities submitted to the OHA. Transfers must be made quarterly in arrears, to OHA.

2. CONSIDERATION.

COUNTY shall submit claims for Medicaid allowable activities only. Medicaid does not pay for administrative expenditures related to, or in support of, services that are not included in the State Medicaid Plan, OHP, or services which are not reimbursed under Medicaid. In addition, Medicaid does not pay for health care services that are rendered free of charge to the general population. Thus, any administrative activity which supports the referral, coordination, planning of screening or services that are provided free to the general population would not be considered as Medicaid administration.

3. GENERAL PROVISIONS

A. Amendment

The terms of this Agreement shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written agreement signed by the Parties. This Agreement shall not be amended after the expiration date. No amendment to this Agreement shall be effective until it has been signed by all Parties and all necessary governmental approvals have been obtained.

B. Compliance with Applicable Law

COUNTY shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Work under the Agreement. Without limiting the generality of the foregoing, COUNTY expressly agrees to comply with the following laws, regulations and executive orders, as they may be amended from time to time during the term of the Agreement, to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) The Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vi) The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (vii) The Family Educational Rights and Privacy Act, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. 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. AGENCY'S performance under this Agreement is conditioned upon COUNTY'S compliance with the provisions of ORS 279.312, 279.314, 279.316, and 279.320, which are incorporated by reference herein. In the performance of Work under this Agreement, COUNTY shall use recycled and recyclable products to the maximum extent which is economically feasible.

4. Compliance with Federal Law

A. Equal Employment Opportunity

If this Agreement, including amendments, is for more than \$10,000, then COUNTY shall 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).

B. Clean Air, Clean Water, EPA Regulations

If this Agreement, including amendments, exceeds \$100,000 then COUNTY shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), 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 (40 CFR Part 15), 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 AGENCY, OHA, the U.S. Department of Health and Human Services, and the appropriate Regional Office of the Environmental Protection Agency, COUNTY shall include and cause all subcontractors to include in all contracts with subcontractors receiving more than \$100,000 in Federal Funds, language requiring the subcontractor to comply with the federal laws identified in this section.

C. Energy Efficiency

COUNTY shall 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 (Pub. L. 94-163).

D. Truth in Lobbying

COUNTY certifies, to the best of the COUNTY'S knowledge and belief that:

- a. No federal appropriated funds have been paid or will be paid, by or on behalf of COUNTY, 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, COUNTY shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- c. COUNTY 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 subreipients and subcontractors shall certify and disclose accordingly.

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 section 1352, Title 31, U.S. Code. 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. Resource Conservation and Recovery

COUNTY shall comply and cause 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 USC 6901 et. seq.). Section 6002 of that Act (codified at 42 USC 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 Parts 247- 253.

F. Audits

COUNTY shall comply and, if applicable, cause a subcontractor to comply, with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations."

G. Debarment and Suspension

COUNTY 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. 12,549 and No. 12,689, "Debarment and Suspension". (See 45 CFR part 76). 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.

H. Medicaid Compliance

To the extent COUNTY provides any service whose costs are paid in whole or in part by Medicaid, COUNTY shall comply with and require its subcontractors to comply with the federal and state Medicaid statutes and regulations applicable to the service, including but not limited to:

- a.** Complying with all applicable disclosure requirements set forth in 42 CFR Part 455, Subpart B;

- b. Complying with any applicable advance directive requirements specified in 42 CFR section 431.107(b)(4);
- c. Complying with the certification requirements of 42 CFR sections 455.18 and 455.19; and.
- d. Requiring that entities receiving \$5 million or more annually under this Agreement and any other Medicaid contract 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 USC §1396a(a)(68).

COUNTY shall include and require all subcontractors to include in all contracts with subcontractors receiving Medicaid, language requiring the subcontractor to comply with the requirements set forth in this section and with the federal laws identified in this section.

I. Americans with Disabilities Act

COUNTY shall comply and require all subcontractors to comply with Title II of the Americans with Disabilities Act of 1990 (codified at 42 USC 12131 et. seq.) in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the delivery of services.

J. Pro-Children Act

COUNTY shall comply and require all subcontractors to comply with the Pro-Children Act of 1995 (codified at 20 USC section 6081 et. seq.).

5. No Third Party Beneficiaries

The parties to this agreement are the only parties entitled to enforce its terms. Nothing in the 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 unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

6. Confidentiality of Client Information

- A.** COUNTY shall treat all information as to personal facts and circumstances obtained by COUNTY on Medicaid eligible individuals as privileged communication, shall hold such information confidential, and shall not disclose such information without the written consent of the individual, his or her attorney, the responsible parent of a minor child, or the child's guardian, except as required by law. Nothing prohibits the disclosure of information in summaries, statistical information, or other form which does not identify particular individuals.

- B.** The use or disclosure of information concerning Medicaid eligible or potentially eligible individuals shall be limited to persons directly connected with the administration of this Agreement. Confidentiality policies shall be applied to all requests from outside sources. AGENCY, COUNTY, OHA and subcontractors will share information as necessary to effectively serve Medicaid eligible, or potentially eligible individuals.
- C. To the extent that any individually identifiable health information about students is used to perform the Work under this Agreement, the confidentiality of that information is governed by the Family Educational Rights and Privacy Act. Accordingly, such student information is not included within the requirements of the Privacy Rules, 45 CFR Part 164, adopted by the U.S. Department of Health and Human Services to implement the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). In addition, this Agreement does not require or provide for the use of "standard transactions" as that term is used in the HIPAA transaction rules, 45 CFR Part 162. If the Work is revised, or if the federal HIPAA requirements are changed, in a material way that would require compliance with HIPAA, the Parties may amend the Agreement to address such material changes.

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