



MARION COUNTY
REQUEST FOR APPLICATIONS (RFA)
COVID-19
CULTURALLY SPECIFIC COMMUNITY BASED ORGANIZATIONS (CBO)
C25102-HE778-20

Release Date: August 26, 2020

Applications Due Date: First Due Date September 9, 2020
(See Section 4. Schedule of Events)

Refer Questions to:
Richard Wirfs
rwirfs@co.marion.or.us

Submit Responses to:
Marion County Health and Human Services
Attn: Richard Wirfs
3180 Center St. – Suite 2100
Salem, OR 97301
rwirfs@co.marion.or.us

Electronic copies of this RFA and attachments, if any, can be obtained from the ORPIN website <http://orpin.oregon.gov/open.dll/welcome> and view Marion County Opportunity Number C25102-HE778-20.

RFA
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1. INTRODUCTION

Marion County Health and Human Services Department (County) is currently seeking culturally-specific Community Based Organizations (CBOs) in the county to ensure a culturally and linguistically appropriate response to the behavioral health needs of our community in response to the COVID-19 pandemic services. County is seeking applications from individuals, firms, teams or consultants, hereafter called “applicant(s),” with demonstrated experience in providing culturally responsive services and supports to individuals who speak one or more of the following languages: Spanish, Russian, Chuukese, and Marshallese, ASL and proposes to engage the successful Applicant for the following services:

In response to the COVID-19 pandemic, provide culturally responsive services and supports to individuals who speak one or more of the following languages: ASL, Spanish, Russian, Chuukese, and Marshallese.

Depending on services provided, County expects to award contracts between \$50,000.00 to \$200,000.00 for the following services.

- Training
- Develop and Support Promoters
- Community Cafes
- Telehealth Kiosks
- Destigmatization Campaign
- Town Halls or Listening Sessions

***** Contracts resulting from this Request for Application may be federally funded and as such all applicants who are awarded contracts will be required to meet federal provisions as stated in Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards (see Exhibit 1, COUNTY CONTRACT FOR SERVICES). *****

County reserves the right to enter into contracts with multiple vendors based on price and the ability to meet the County’s requirements & needs.

All firms submitting applications are referred to as applicants in this document; after negotiations, the awarded Applicant will be designated as Contractor.

2. BACKGROUND

As the Local Public Health Authority (LPHA), County will be contracting with culturally-specific Community Based Organizations (CBOs) within Marion County to ensure culturally and linguistically responsive community outreach and education strategies, contact tracing and monitoring, and social service and wraparound supports in response to the COVID-19 pandemic.

3. CONTRACT TERM

The Contracts are anticipated to start in September/October 2020. The Contract term shall be for 10 months. The parties may agree to extend the term of the Contract up to a maximum of 2 years.

4. SCHEDULE OF EVENTS

August 26, 2020 September 22, 2020 October 20, 2020	RFA issued
September 02, 2020	Questions concerning RFA and project emailed to rwirfs@co.marion.or.us no later than 5:00 p.m.
September 04, 2020	Answers to questions posted on ORPIN website
PHASE I – September 09, 2020 at 2:00 PM PST PHASE II - October 06, 2020 at 2:00 PM PST PHASE III – November 03, 2020 at 2:00 PM PST	Applications will be accepted on a revolving basis. Opportunity will be posted for a two week period and then closed for a two week period. This process will be repeated two additional times. Each two week closing period will allow time for processing of applications by County. In addition, if a CBO is unable to meet a closing deadline, they will have an opportunity to apply in the next Phase.
Ongoing	Notifications of selected applicants

The County reserves the right, at its sole discretion, to adjust this schedule as it deems necessary.

5. SCOPE OF WORK

Applicants responding to this RFA must be capable of performing the following tasks and services:

Training: Train individuals as trainers in Question, Persuade, Refer (QPR) and Mental Health First Aid and provide trainings to the community.

Develop and Support Promoters: Promote problem solve barriers to accessing mental health resources for children and young adults. They also conduct community outreach to the LatinX population in rural areas, sharing with people the services available to support them, with a focus on behavioral health.

Community Cafés: Set-up and support virtual and in-person venues to engage middle and high schoolers to talk about how they are navigating various facets of their COVID-19 life, from distance learning challenges and opportunities to topics of well-being to support mental and emotional health.

Telehealth Kiosks: Develop and support telehealth kiosks in a community location. Grant funding would include equipment and support. MCHHS staff would be available to provide technical support as needed.

De-stigmatization Campaign: Create and disseminate a campaign across multiple platforms and languages to support access to behavioral health services and supports.

Town Halls or Listening Sessions: Facilitate one or two town halls or listening sessions to assist MCHHS to determine the need and interest in establishing an Urgent Behavioral Health Clinic, or other behavioral health services in the City of Woodburn. Other means of eliciting feedback and ideas from the community may also be needed. Findings and recommendations for next steps need to be completed by September 30, 2020 at the latest.

In providing these services, applicant will be required to: Provide culturally responsive services and support to individuals who speak one or more of the following languages: ASL, Spanish, Russian, Chuukese, and Marshallese.

Reporting:

Final report for how the organization ensured a culturally and linguistically appropriate response to the behavioral health needs of our community in response to the COVID-19 pandemic services will be due at end of contracting period. Report to include types of materials, trainings, resources and processes utilized and community members affected. Additional requirements may be added to comply with state and federal laws and regulations.

6. PRE-APPLICATION CONFERENCE

There will be no pre-application conference for this RFA.

7. INSTRUCTIONS TO APPLICANTS

Proposers must submit one (1) original signed proposal, five (5) hard copies and one digital copy (CD or flash drive) of proposal. Proposals are due at the County **no later than the time and date set forth in the Section 4: Schedule of Events**. Envelopes or packages shall be clearly marked with the RFP number, "**C25102-HE778-20.**"

The proposal must include information responsive to items (a) through (h) set forth below. The proposal may not exceed a total of 25 single-sided, 8.5" x 11" numbered pages. Resumes must be included in an appendix to the proposal. Proposers must complete and submit **Attachment 1: Application, Attachment A – Offerors Representations and Certifications and Attachment B - Cost Proposal Form.**

Proposers must include the following as part of their proposal:

1. Does the mission of the organization promote health equity? Please provide one example of past experience delivering culturally responsive and linguistically appropriate services and supports to the community:
2. In what languages are the services and supports offered?
3. What services and supports is the organization prepared to contract with MCHHS to provide?
4. Will the organization need to hire additional staff to fulfill these activities? If yes, please describe (Please note: funds must be spent by December 31, 2020).

8. CONTRACT FORM

By submitting an application, applicant agrees to comply with the requirements of the RFA, including the terms and conditions of the **Sample Contract for Services (Exhibit 1)**. Applicant shall review the attached Contract for Services and note exceptions. Unless applicant notes exceptions in its application, the County intends to enter into a Contract for Services with the successful applicant substantially in the form set forth in Contract for Services (Exhibit 1). It may be possible to negotiate some provisions of the final Contract for Services; however, many provisions cannot be changed. Applicant is cautioned that the County believes modifications to the standard provisions constitute increased risk and increased cost to the County. Therefore, the County will consider the Scope of requested exceptions in the evaluation of applications.

Any application that is conditioned upon the County's acceptance of any other terms and conditions may be rejected. Any subsequent negotiated changes are subject to prior approval of the County's Legal Counsel.

In the event that the parties do not reach mutually agreeable terms, the County may terminate negotiations and commence negotiations with the next highest ranking applicant.

9. EVALUATION

a. *Minimum Responsiveness*. In order to be responsive, each application will be reviewed for minimum responsiveness. Failure to meet minimum responsiveness may result in rejection of the application. Each application must comply with **Section 7: Instructions to Applicants** and include the following to be considered minimally responsive:

- Items 1-4 in Section 7
- Completed and Signed Attachment A- Offeror Representations and Certifications
- Completed Attachment B - Cost Proposal Form

- b. *Evaluation Committee.* A County Evaluation Committee (CEC) will evaluate all responsive applications. The CEC will be composed of County staff and other parties that may have relevant expertise or experience. The CEC will score and recommend applications in accordance with the evaluation criteria set forth in this RFA. Evaluation of the applications shall be within the sole judgment and discretion of the CEC.
- c. *Categories.* The evaluation criteria and their respective weights are as follows:

CATEGORIES	MAXIMUM POINTS POSSIBLE
Responses to Items 1-4 in Section 7 of RFA	75
Budget/Expenditures (Attachment B)	25
Total Points Possible	100

- d. *Best Value.* The County will select the application(s) that presents the best value and is most advantageous to the County and the public. Accordingly, the County may not necessarily award the applicant with the lowest price application if doing so would not be in the overall best interest of the County. The County reserves the right to expand or reduce the proposed scope of work during the contract negotiations based on budget constraints and to award to a single or multiple applicants.

10. AWARD NOTICE AND ACCEPTANCE PERIOD

- a. After the evaluation of applications and final consideration of all available pertinent information, the County will either reject all applications or issue a written notice of intent to award the contract(s). The notice shall not create any rights, interests, or claims of entitlement in the apparent best evaluated applicant.
- b. The applicant should be prepared to enter into a contract with the County which shall be substantially the same as the Contract for Services in Exhibit 1 to this RFA. Notwithstanding, the County reserves the right to add terms and conditions, deemed to be in the best interest of the County, during final contract negotiations.
- c. If an applicant fails to promptly sign and return the contract drawn pursuant to this RFA and final contract negotiations, the County may cancel the award and award the contract to the next best evaluated applicant.

11. PROTEST AND APPEALS

An applicant may protest the award of a contract or the intent to award a contract, whichever comes first, if the conditions set forth in ORS 279B.410(1) are satisfied. The protest must be submitted in writing by mail, courier or hand delivery to the Contracts and Procurement Manager within seven (7) days after issuance of the notice of intent to award the contract.

Marion County Finance Department
Courthouse Square
Attn: Camber Schlag
555 Court St. Suite 4247
Salem, OR 97301

All letters of protest shall clearly identify the reasons and basis for the protest. The Contracts and Procurement Manager will issue a written disposition in a timely manner as set forth in ORS 279B.410(4), which shall include the reason for the action taken and the process for appealing the decision. An applicant must file a written protest with the County and exhaust all administrative remedies before seeking judicial review of the County's contract award decision.

12. TERMS AND CONDITIONS

- a. *The Marion County Public Contracting Rules, found at <http://www.co.marion.or.us/FIN/Pages/contracts.aspx>, govern this RFA.*
- b. *RFA Amendment, Cancellation and Right of Rejection.*
 - i. The County reserves the unilateral right to amend this RFA in writing at any time by posting the addendum on the ORPIN website. The County may extend the deadline for submission of applications by written addendum. Applicants are responsible to view the website periodically for any addendum to the RFA. Applicants shall respond to the final written RFA, its exhibits and attachments, and all addenda. The County also reserves the right, in its sole discretion, to reject any and all applications or to cancel or reissue the RFA.
 - ii. The County reserves the right, in its sole discretion, to waive minor informalities in applications provided such action is in the best interest of the County. Where the County waives minor informalities in applications, such waiver does not modify the RFA requirements or excuse the applicant from full compliance with the RFA. Notwithstanding any minor variance, the County may hold any application to strict compliance with the RFA.
- c. *Confidentiality.* The County will retain a master copy of each application to this RFA, which becomes public record after the notice of intent to award unless the application or specific parts of the application can be shown to be exempt by law under ORS Chapter 192. If a applicant believes that any portion of its application contains any information that is a trade secret under ORS 192.311-431 or otherwise is exempt from disclosure under the Oregon Public Records Law, that applicant shall complete and submit the Attachment 2: Trade Secret Form and a fully redacted version of its application.

Applicant is cautioned that cost information generally is not considered a trade secret under Oregon Public Records Law and identifying the application as confidential, in whole or in part, as exempt from disclosure is not acceptable. County advises each applicant to consult with its own legal counsel regarding disclosure issues. If applicant fails to identify the portions of the

application that applicant claims are exempt from disclosure, applicant has waived any future claim of non-disclosure of that information.

- d. *Applicant Responsible for Incurred Costs.* The County shall not be liable for any expenses incurred by applicant in both preparing and submitting its application or contract negotiation process, if any.

13. ATTACHMENTS AND EXHIBITS

Attachment A: Offeror Representations and Certifications

Attachment B: Cost Proposal

Exhibit 1: County Contract for Services

14. APPLICATION SUBMISSION CHECKLIST FOR APPLICANTS

- Items 1-4 in Section 7
- Completed and Signed Attachment A - Offeror Representations and Certifications
- Completed Attachment B - Cost Proposal

ATTACHMENT A
OFFEROR REPRESENTATIONS AND CERTIFICATIONS

FAILURE OF THE OFFEROR TO COMPLETE AND SIGN THIS FORM MAY RESULT IN REJECTION OF THE SUBMITTED OFFER

The undersigned, having full knowledge of the specifications for the goods or services specified herein, offers and agrees that this offer shall be irrevocable for at least 30 calendar days after the date offers are due or as stated in the solicitation, and if accepted, to furnish any and/or all goods or services as described herein at the prices offered and within the time specified.

OFFEROR NAME: _____

ADDRESS: _____

TELEPHONE NUMBER: _____ FAX NUMBER: _____ WEB SITE: _____

TAXPAYER ID NUMBER: _____ DATE/STATE OF INCORPORATION: _____

BUSINESS DESIGNATION: Corporation Sole Proprietor Partnership
 S Corporation Non-Profit Government
 Other _____

OPTIONAL CERTIFICATION/LICENSE NUMBER: _____

OPTIONAL DUNS NUMBER: _____ (For Federally Funded Contracts)

ASSURANCES - The Offeror attests that:

1. The person signing this offer has the authority to submit an offer and to represent Offeror in all phases of this procurement process;
2. The information provided herein is true and accurate;
3. The Proposer certifies that it does not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, handicap, financial ability, age or other non-job-related factors as per ORS 659 and USC 42 2000e.
"Resident bidder" means a bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid, has a business address in this state and has stated in the bid whether the bidder is a "resident bidder". ORS 279A.120 (1) (j)(b);
4. Any false statement may disqualify this offer from further consideration or because of contract termination; and
5. The Offeror will notify the department Contract Specialist within 30 days of any change in the information provided on this form.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS - The Offeror certifies to the best of its knowledge and belief that neither it nor any of its principals:

1. Are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from submitting bids or proposals by any federal, state or local entity, department or agency;
2. Have within a five-year period preceding the date of this certification been convicted of fraud or any other criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are presently indicted for or otherwise criminally charged with commission of any of the offenses enumerated in paragraph 2. of this certification;
4. Have, within a five-year period preceding the date of this certification had a judgment entered against contractor or its principals arising out of the performance of a public or private contract;
5. Have pending in any state or federal court any litigation in which there is a claim against contractor or any of its principals arising out of the performance of a public or private contract; and
6. Have within a five-year period preceding the date of this certification had one or more public contracts (federal, state, or local) terminated for any reason related to contract performance.

Where Offeror is unable to certify to any of the statements in this certification, Offeror shall attach an explanation to their offer. The inability to certify to all of the statements may not necessarily preclude Offeror from award of a contract under this procurement.

SIGNATURE OF AUTHORIZED PERSON

Signature _____ Date _____

Print Name & Title _____

Contact Person for this procurement: _____

Phone _____ Email _____

ATTACHMENT B:

Utilize the table below to list proposed expenditures requested for the funding period. Add columns as needed

Proposed Expenditure	Amount Requested	Justification
Staff Costs		
Materials		
Printing		
Mileage		
Other		
<u>Total</u>	0	

Exhibit 1: County Contract for Services

The Contract for Services (provided in the following pages) contains capitalized and bracketed items that shall be replaced with appropriate information in the final contract.

[County Contract for Services on Next Page]

**MARION COUNTY
CONTRACT FOR SERVICES
HE-XXXX-20**

This contract is between Marion County (a political subdivision of the State of Oregon) hereinafter called County, and _____, hereinafter called Contractor.

Contractor agrees to perform, and County agrees to pay for, the services and deliverables described in Exhibit A (the “Work”).

ORS 430.610(4) and 430.640(1) authorize Oregon Health Authority “OHA” to assist Oregon counties and groups of Oregon counties in the establishment and financing of community addictions and mental health programs operated or contracted for by one or more counties.

This contract between the County and the Contractor is subject to the availability of local, state, and federal funds, special conditions and required provisions of Intergovernmental Agreement (IGA) #159174 between the County and OHA which is incorporated herein by this reference.

Contractor shall comply with all federal, state and local laws, regulations, and ordinances applicable to this Contract or to Contractor’s obligations under this Contract, as those laws, regulations and ordinances may be adopted or amended from time to time.

The IGA is available for reference at the County’s website;
<http://www.co.marion.or.us/HLT/PH/Epid/Pages/cfac.aspx>

The Catalog of Federal Assistance (CFDA) number is 21.019.

The Contractor is designated as:
 Sub-recipient relationship
 Vendor relationship
 Not Applicable

1. TERM. This Contract is effective after signed by all parties and all required County approvals have been obtained. This Contract expires on **June 30, 2021**.

2. CONTRACT DOCUMENTS, ORDER OF PRECEDENCE. This Contract consists of the following documents, which are listed in descending order of precedence herein attached and incorporated: this Contract less all exhibits,

Exhibit A: Statement of Work

Exhibit B: Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts
Under Federal Awards

Exhibit G: Required Federal Terms and Conditions

Exhibit H: Required Provider Contract Provisions

Exhibit I: Provider Insurance Requirements

Addendum No.1: Health Insurance Portability and Accountability Act Business Associate Contract

Addendum No. 2: Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

3. CONSIDERATION. The sum of \$_____ is the maximum payment amount obligated by the county under this contract.

A. Payment of Contract. Contractor shall expend the funds paid under this Contract solely on the delivery of the services listed below and as described in Exhibit A (Statement of Work), subject to the limitations outlined in the OHA Agreement and Exhibit H (Required Provider Contract Provisions), in addition to any other restrictions or limitations imposed by this. County will not pay Contractor any amount in excess of the not-to-exceed compensation of this Contract for completing the Work, and will not pay for Work performed before the date this Contract becomes effective or after the termination of this Contract. If the maximum compensation is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

B. Interim payments to Contractor shall be made in accordance with the payment schedule and requirements in Exhibit A.

4. COMPLIANCE WITH STATUTES AND RULES.

A. County and the Contractor agree to comply with the provisions of this contract and all applicable federal, state, and local statutes and rules.

Unless otherwise specified, responsibility for all taxes, assessment, and any other charges imposed by law upon employers shall be the sole responsibility of the Contractor. Failure of the Contractor or the County to comply with the provisions of this contract and all applicable federal, state, and local statutes and rules shall be cause for termination of this contract as specified in sections concerning recovery of funds and termination.

County's performance under this Contract is conditioned upon Contractor's compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Contract), 279B.230 and 279B.235 (if applicable to this Contract), which are incorporated by reference herein.

B. Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this Section, "tax laws" includes all the provisions described in subsection 28. C. (i) through (iv) of this Contract.

i. Any violation of subsection B of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty, in subsection 28.3 of this Contract, that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle the County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or

all of the remedies available under this Contract, at law, or in equity, including but not limited to:

- a. Termination of this Contract, in whole or in part;
- b. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to State's setoff right, without penalty; and
- c. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. The County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing [replacement Services/replacement Goods/ a replacement contractor].

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

5. CIVIL RIGHTS, REHABILITATION ACT, AMERICANS WITH DISABILITIES ACT and TITLE VI OF THE CIVIL RIGHTS ACT. Contractor agrees to comply with the Civil Rights Act of 1964, and 1991, Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973, and Title VI as implemented by 45 CFR 80 and 84 which states in part, No qualified person shall on the basis of disability, race, color, or national origin be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which received or benefits from federal financial assistance.

6. TIME IS OF THE ESSENCE. Contractor agrees that time is of the essence in the performance of this Contract.

7. FORCE MAJEURE. Neither County nor Contractor shall be responsible for any failure to perform or for any delay in the performance of any obligation under this Contract caused by fire, riot, acts of God, terrorism, war, or any other cause which is beyond the breaching party's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate the cause of Contractor's delay or breach and shall, upon the cessation of the cause, continue performing under this Contract. County may terminate this Contract upon written notice to Contractor after reasonably determining that the delay or breach will likely prevent successful performance of this Contract.

8. FUNDING MODIFICATION.

A. County may reduce or terminate this contract when state or federal funds are reduced or eliminated by providing written notice to the respective parties.

B. In the event the Board of Commissioners of the County reduces, changes, eliminates, or otherwise modifies the funding for any of the services identified, the Contractor agrees to abide

by any such decision including termination of service.

9. RECOVERY OF FUNDS. Expenditures of the Contractor may be charged to this contract only if they (1) are in payment of services performed under this contract, (2) conform to applicable state and federal regulations and statutes, and (3) are in payment of an obligation incurred during the contract period.

Any County funds spent for purposes not authorized by this contract and payments by the County in excess of authorized expenditures shall be deducted from future payments or refunded to the County no later than thirty (30) days after notice of unauthorized expenditure or notice of excess payment.

Contractor shall be responsible to repay for prior contract period excess payments and unrecovered advanced payments provided by the County. Repayment of prior period obligations shall be made to the County in a manner agreed on.

10. ACCESS TO RECORDS.

A. Contractor shall permit authorized representatives of the County, State of Oregon, or the applicable audit agencies of the U.S. Government to review the records of the Contractor as they relate to the contract services in order to satisfy audit or program evaluation purposes deemed necessary by the County and permitted by law.

B. Contractor agrees to establish and maintain financial records, which indicate the number of hours of work provided, and other appropriate records pertinent to this contract shall be retained for a minimum of three (3) years after the end of the contract period. If there are unresolved audit questions at the end of the three-year period, the records must be maintained until the questions are resolved.

11. REPORTING REQUIREMENTS. Contractor shall provide County with periodic reports at the frequency and with the information prescribed by County. Further, at any time, County has the right to demand adequate assurances that the services provided by Contractor shall be in accordance with the Contract. Such assurances provided by the Contractor shall be supported by documentation in Contractor's possession from third parties.

12. CONFIDENTIALITY OF RECORDS.

A. Contractor shall not use, release or disclose any information concerning any employee, client, applicant or person doing business with the County for any purpose not directly connected with the administration of County's or the Contractor's responsibilities under this Contract except upon written consent of the County, and if applicable, the employee, client, applicant or person.

B. Contractor shall ensure that its agents, employees, officers and subcontractors with access to County and Contractor records understand and comply with this confidential provision.

C. If Contractor receives or transmits protected health information, Contractor shall enter into a Business Associate Agreement with County, which shall become part of this Contract, if attached hereto.

D. Client records shall be kept confidential in accordance with ORS 179.505, OAR 309-11-020, 45 CFR 205.50 and 42 CFR Part 2 as applicable.

13. INDEMNIFICATION AND INSURANCE.

A. Contractor shall defend, save, indemnify, and hold harmless the County, its officers, agents, and employees from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including attorney fees, resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under this Contract. Contractor shall have control of the defense and settlement of any claim that is subject to this section. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of either County or any department of County, nor purport to act as legal representative of either County or any of its departments, without first receiving from County Legal Counsel authority to act as legal counsel for the County, nor shall Contractor settle any claim on behalf of County without the approval of County Legal Counsel. County may, at its election and expense, assume its own defense and settlement.

B. County shall take all reasonable steps to cause its Contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents (“Indemnitee”) from and against any and claims, actions, liabilities, damages, losses, or expenses (including attorneys’ fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of County’s Contractor or any of the officers, agents, employees or subcontractors of the contractor (“Claims”). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.

C. Contractor shall obtain the insurance required under section 24 prior to performing under this Contract and shall maintain the required insurance throughout the duration of this Contract and all warranty periods.

D. County, pursuant to applicable provisions of ORS 30.260 to 30.300, maintains a self-insurance program that provides property damage and personal injury coverage.

14. EARLY TERMINATION. This Contract may be terminated as follows:

A. County and Contractor, by mutual written agreement, may terminate this Contract at any time.

B. County in its sole discretion may terminate this Contract for any reason on 30 days written notice to Contractor.

C. Either County or Contractor may terminate this Contract in the event of a breach of the Contract by the other. Prior to such termination the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within 15 days of the date of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.

D. Notwithstanding section 14C, County may terminate this Contract immediately by written notice to Contractor upon denial, suspension, revocation or non-renewal of any license, permit or certificate that Contractor must hold to provide services under this Contract.

15. PAYMENT ON EARLY TERMINATION. Upon termination pursuant to section 14, payment shall be made as follows:

A. If terminated under 14A or 14B for the convenience of the County, the County shall pay Contractor for Work performed prior to the termination date if such Work was performed in accordance with the Contract. County shall not be liable for direct, indirect or consequential damages. Termination shall not result in a waiver of any other claim County may have against Contractor.

B. If terminated under 14C by the Contractor due to a breach by the County, then the County shall pay the Contractor for Work performed prior to the termination date if such Work was performed in accordance with the Contract.

C. If terminated under 14C or 14D by the County due to a breach by the Contractor, then the County shall pay the Contractor for Work performed prior to the termination date provided such Work was performed in accordance with the Contract less any setoff to which the County is entitled.

16. INDEPENDENT CONTRACTOR.

A. The Contractor is a separate and independently established business, retains sole and absolute discretion over the manner and means of carrying out the Contractor's activities and responsibilities for the purpose of implementing the provisions of this contract, and maintains the appropriate license/certifications, if required under Oregon Law. This contract shall not be construed as creating an agency, partnership, joint venture, employment relationship or any other relationship between the parties other than that of independent parties. The Contractor is acting as an "independent contractor" and is not an employee of County, and accepts full responsibility for taxes or other obligations associated with payment for services under this contract. As an "independent contractor", Contractor will not receive any benefits normally accruing to County employees unless required by applicable law. Furthermore, Contractor is free to contract with other parties for the duration of the contract.

B. **SUBCONTRACTING/NONASSIGNMENT.** No portion of the Contract may be contracted or assigned to any other individual, firm or entity without the express and prior approval of the County.

17. GOVERNING LAW AND VENUE. This Contract shall be governed by the laws of the State of Oregon. Any action commenced in connection with this Contract shall be in the Circuit Court of Marion County. All rights and remedies of the County shall be cumulative and may be exercised successively or concurrently. The foregoing is without limitation to or waiver of any other rights or remedies of the County according to law.

18. OWNERSHIP AND USE OF DOCUMENTS. All documents, or other material submitted to the County by Contractor shall become the sole and exclusive property of the County. All material prepared by Contractor under this Contract may be subject to Oregon's Public Records Laws.

19. NO THIRD PARTY BENEFICIARIES.

A. County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms.

B. Nothing in this contract gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Contract and expressly described as intended beneficiaries of this Contract.

20. SUCCESSORS IN INTEREST. The provisions of this Contract shall be binding upon and inure to the benefit of the parties and their successors and approved assigns.

21. MERGER CLAUSE. This Contract and the attached exhibits constitute the entire agreement between the parties.

A. All understandings and agreements between the parties and representations by either party concerning this Contract are contained in this Contract.

B. No waiver, consent, modification or change in the terms of this Contract shall bind either party unless in writing signed by both parties.

C. Any written waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given.

22. WAIVER. The failure of any Party to enforce any provision of this Contract shall not constitute a waiver by that Party or any other provision. Waiver of any default under this Contract by any Party shall not be deemed to be a waiver of any subsequent default or a modification of the provisions of this Contract.

23. REMEDIES. In the event of breach of this Contract, the Parties shall have the following remedies:

A. If terminated under 14C by County due to a breach by the Contractor, the County may

complete the Work either itself, by agreement with another Contractor, or by a combination thereof. If the cost of completing the Work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then the Contractor shall pay to the County the amount of the reasonable excess.

B. In addition to the remedies in sections 14 and 15 for a breach by the Contractor, County also shall be entitled to any other equitable and legal remedies that are available.

C. If County breaches this Contract, Contractor's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Contractor is entitled.

24. INSURANCE.

A. REQUIRED INSURANCE. Contractor shall obtain at Contractor's expense the insurance specified in this section prior to performing under this Contract and shall maintain it in full force and at its own expense throughout the duration of this Contract and all warranty periods. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in Oregon and that are acceptable to County:

i. WORKERS COMPENSATION. All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements.

ii. PROFESSIONAL LIABILITY. Covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Contract. Contractor shall provide proof of insurance of not less than the following amounts as determined by the County:

Required by County Not required by County.

\$1,000,000 Per occurrence limit for any single claimant; and

\$2,000,000 Per occurrence limit for multiple claimants

Exclusion Approved by Risk Manager

iii. CYBER LIABILITY. Covering network security, breach of data, and coverage for regulatory fines and fees imposed against County due to failures in products and services provided under this Contract. Cyber Liability coverage must include errors, omissions, negligent acts, denial of service, media liability (including software copyright), dishonesty, fraudulent or criminal acts by a person or persons whether identified or not, intellectual property infringement, computer system attacks, unauthorized access and use of computer system, regulatory actions, and contractual liability.

Required by County Not required by County.

- \$2,000,000 Per occurrence limit for any single claimant; and
- \$5,000,000 Per occurrence limit for multiple claimants
- Exclusion Approved by Information Technology Director and Risk Manager

iv. COMMERCIAL GENERAL LIABILITY. Covering bodily injury, death and property damage in a form and with coverages that are satisfactory to the County. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence basis. Contractor shall provide proof of insurance of not less than the following amounts as determined by the County:

Required by County **Not required by County.**

Minimum Limits:

- \$1,000,000 Per occurrence limit for any single claimant; and
- \$2,000,000 Per occurrence limit for multiple claimants
- Exclusion Approved by Risk Manager
- \$500,000 Per occurrence limit for any single claimant
- \$1,000,000 Per occurrence limit for multiple claimant

v. AUTOMOBILE LIABILITY INSURANCE. Covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for “Commercial General Liability” and “Automobile Liability”). Contractor shall provide proof of insurance of not less than the following amounts as determined by the County:

Required by County **Not required by County.**

Minimum Limits:

- Oregon Financial Responsibility Law, ORS 806.060 (*\$25,000 property damage/\$50,000 bodily injury \$5,000 personal injury*).
- \$500,000 Per occurrence limit for any single claimant; and
- \$1,000,000 Per occurrence limit for multiple claimants
- Exclusion Approved by Risk Manager

B. ADDITIONAL INSURED. The Commercial General Liability insurance required under this Contract shall include Marion County, its officers, employees and agents as Additional Insureds but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

C. NOTICE OF CANCELLATION OR CHANGE. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without 30 days written notice from this Contractor or its insurer(s) to County. Any failure to comply

with the reporting provisions of this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract by County.

D. **CERTIFICATE(S) OF INSURANCE.** Contractor shall provide to County Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) must specify all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees). Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

25. NOTICE. Except as otherwise expressly provided in this contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing, to Contractor or County at the address or number set forth below or to such other addresses or numbers as either party may hereafter indicate in writing. Delivery may be by personal delivery, or mailing the same, postage prepaid.

A. Any communication or notice by personal delivery shall be deemed delivered when actually given to the designated person or representative.

B. Any communication or notice mailed shall be deemed delivered five (5) days after mailing. Any notice under this Contract shall be mailed by first class postage delivered to:

To Contractor:

To County:

Procurement & Contracts Manager
555 Court Street NE, Suite 5232
P.O. Box 14500
Salem, Oregon 97309
Fax No. 503-588-5237
and;
Marion County Health & Human Services
Attn: Rebecca Werner
3180 Center Street NE, Ste 2100
Salem, Oregon 97301
503-361-2795 Fax No. 503-364-6552
rwerner@co.marion.or.us

26. SURVIVAL. All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in sections 3, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26 and 27.

27. SEVERABILITY. If any term or provision of this Contract is declared illegal or in conflict with any law by a court of competent jurisdiction, the validity of the remaining terms and provisions that shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

28. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES. Contractor represents and warrants to the County that:

A. Contractor has the power and authority to enter into and perform this Contract.

B. This Contract, when executed and delivered, is a valid and binding obligation of Contractor, enforceable in accordance with its terms.

C. Contractor (to the best of Contractor's knowledge, after due inquiry), for a period of no fewer than six calendar years preceding effective date of this Contract, faithfully has complied with:

i. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;

ii. Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor;

iii. Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and

iv. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

D. Any Goods / Items delivered to/granted to the County under this Contract, and Contractor's Services rendered in the performance of Contractor's obligations under this Contract, shall be provided to the County free and clear of any and all restrictions on or conditions of use, transfer, modification, or assignment, and shall be free and clear of any and all liens, claims, mortgages, security interests, liabilities, charges, and encumbrances of any kind.

29. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA): The Business Associate Contract Provisions required by the Health Insurance Portability and Accountability Act, of 1996, (HIPAA), as amended, are attached as ADDENDUM #1 to this contract and are incorporated herein.

30. FALSE CLAIMS, FRAUD, WASTE AND ABUSE. Contractor shall cooperate with and participate in activities to implement and enforce the County's policies and procedures to prevent, detect and investigate false claims, fraud, waste and abuse relating to Oregon Health Plan, Medicare or Medicaid funds. Contractor shall cooperate with authorized State of Oregon entities and Centers for Medicare and Medicaid (CMS) in activities for the prevention, detection and investigation of false claims, fraud, waste and abuse. Contractor shall allow the inspection, evaluation or audit of books, records, documents, files, accounts, and facilities as required to investigate the incident of false claims, fraud, waste or abuse. Contractor is required to verify that their staff and Contractors are not excluded from providing services under this contract

**EXHIBIT A
STATEMENT OF WORK**

1. STATEMENT OF SERVICES. Contractor shall perform Services as described below.

A. GENERAL INFORMATION. *(Insert project background information, County objectives and any other general information that may be helpful to describe the context of this contractual relationship. This information may come from your solicitation document.)*

B. REQUIRED SERVICES, DELIVERABLES AND DELIVERY SCHEDULE. *(Describe the following:*

-Specific services to be performed,

Who is doing the work? (Key Persons? Did the contractor include position titles of job functions in their proposal?)

What are they doing?

What is the delivery schedule for the services? (Is there a timeline of events, milestones)

-Deliverables to be provided, (what are we getting from the contractor providing services?)

Are there Goods to be delivered?

What are the deliverables and goods, including documents and reports, if any, to be created and delivered as part of the services? (Do we need specific data or detailed outcome from the services?)

An individual reading the Contract must be able to easily answer the following questions:

a. Who is purchasing?

b. Who is selling?

c. What is being purchased?

d. How much is being purchased?

e. When will it be delivered?

Be specific, clear, concise and complete when describing the intended performance obligations of the parties).

C. SPECIAL REQUIREMENTS. *(Insert: special terms and conditions applicable to this Contract.)*

[OPTION:] Contractor shall be solely responsible for and shall have control over the means, methods, techniques, sequences and procedures of performing the work, subject to the plans and specifications under this Contract and shall be solely responsible for the errors and omissions of its employees, subcontractors and agents.

Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence and perform Services in a timely, professional and workmanlike manner in accordance with standards applicable to Contractor's industry, trade or profession.

OPTION FOR REQUIREMENT THAT CONTRACTOR PROVIDE KEY PERSONS:

i. KEY PERSONS. Contractor and County agree that each individual specified below is an individual whose special qualifications and involvement in Contractor's performance of Services form part of the basis of agreement between the parties for this Contract and is an individual through whom Contractor shall provide to County the expertise, experience, judgment, and personal attention required to perform Services ("Key Person"). Each of the following is a Key Person under this Contract:

[List name, title, identify the specific services each Key Person is required to perform under this Contract.]

Neither Contractor nor any Key Person of Contractor shall delegate performance of Services that any Key Person is required to perform under this Contract to others without first obtaining County's written consent. Further, Contractor shall not, without first obtaining County's prior written consent, re-assign or transfer any Key Person to other duties or positions so that the Key Person is no longer available to provide County with that Key Person's expertise, experience, judgment, and personal attention. If Contractor requests County to approve a re-assignment or transfer of a Key Person, County shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s) for the Key Person. Any individual County approves as a replacement for a Key Person is deemed a Key Person under this Contract.

Contractor shall be in compliance with Exhibit B: Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.

2. COMPENSATION. The total amount available for payment to Contractor under Exhibit A, section 2.A and for authorized reimbursement to Contractor under Exhibit A, section 2.C is \$_____. **[NOTE: THIS AMOUNT SHOULD EQUAL THE TOTAL AMOUNT PAYABLE UNDER EX. A, SECTION 2.A PLUS THE TOTAL AMOUNT AUTHORIZED FOR REIMBURSEMENT UNDER EX. A, SECTION 2.C AND THE AMOUNT IDENTIFIED UNDER 2. COMPENSATION.]**

A. METHOD OF PAYMENT FOR SERVICES. **[OPTION 1 – FIXED PRICE FOR EVERYTHING:** County shall pay Contractor \$_____ for completing all Services and delivering all Goods required under this Contract.]

[OPTION 2 – FIXED PRICE PER DELIVERABLE AND GOODS: County shall pay Contractor the amounts specified for each of the following deliverables and Goods that County has accepted: **(CLEARLY SPECIFY DELIVERABLE AND FIXED AMOUNT FOR THAT DELIVERABLE)]**

[OPTION 3 – HOURLY RATE UP TO MAXIMUM AMOUNT: County shall pay Contractor \$____ per hour up to but not in excess of \$_____ for completing all Services required under this Contract.]

[OPTION 4 –COMBINATION FIXED PRICE AND HOURLY RATE: County shall pay Contractor \$_____ for _____. County shall pay Contractor \$_____ per hour up to but not in excess of \$_____ for _____.]

B. BASIS OF PAYMENT FOR SERVICES. **OPTION 1 –** Full completion. County shall pay Contractor all amounts due under this Contract in one payment upon County’s approval of Contractor’s invoice to County but only after County has determined that Contractor has completed, and County has accepted, all Services; and Contractor has delivered and County has accepted all Goods required under this Contract.

OPTION 2 - Milestone progress payments for completed Services. County shall pay Contractor all amounts due for Services completed and accepted by County and for Goods delivered and accepted by County at the following milestones after County’s approval of Contractor’s invoice to County for those Services and Goods: **(list payment milestones)**

OPTION 3 - Monthly progress payments for completed Services. County shall pay Contractor monthly progress payments upon County’s approval of Contractor’s invoice submitted to County for completed Services and delivered Goods, but only after County has determined that Contractor has completed, and County has accepted the completed Services and County has accepted the delivered goods.

C. EXPENSE REIMBURSEMENT. **OPTION 1: No Expense Reimbursement -** County will not reimburse Contractor for any expenses under this Contract.

OPTION 2: County will reimburse Contractor for the following expenses incurred only when the expenses are essential to the discharge of, and within the course and scope of, Contractor’s obligations under this Contract.

Total for Reimbursable Expenses. The total amount available to reimburse Contractor for expenses authorized for reimbursement under this Exhibit A, section 2.C is \$_____.

D. GENERAL PAYMENT PROVISIONS. Notwithstanding any other payment provision of this contract, failure of the Contractor to submit required reports when due, or failure to perform or document the performance of contracted services, may result in withholding of payments under this contract. Such withholding of payment for cause shall begin thirty (30) days after written notice is given by the County to the Contractor, and shall continue until the Contractor submits required reports, performs required services or establishes, to the County’s satisfaction, that such failure arose out of causes beyond the control, and without the fault or negligence of the Contractor.

E. INVOICES. Contractor shall send all invoices to County’s Contract Administrator at the address specified below or to any other address as County may indicate in writing to Contractor.

Marion County
Attn: [insert Dept Name] Department, [NAME]

[Address 1]
Salem, OR 9730X

EXHIBIT B

APPENDIX II TO PART 200—CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the

employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See §200.322 Procurement of recovered materials.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014]

ADDENDUM NO. 1

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT BUSINESS ASSOCIATE CONTRACT PROVISIONS

INTRODUCTION

This Addendum to the contract between Marion County, a political subdivision of the State of Oregon, hereinafter called the County, and _____, hereinafter called Contractor is required by the Health Insurance Portability and Accountability Act of 1996, (HIPAA), as amended.

WHEREAS, County will make available or transfer to Contractor certain information in conjunction with goods or services that are being provided by Contractor to County, that is confidential and must be afforded special treatment and protection.

WHEREAS, Contractor will have access to or receive from County certain information that can be received, maintained, used or disclosed only in accordance with this Contract and the Department of Health and Human Services Security Rule and Privacy Rule, 45 Code of Federal Regulations (CFR) Parts 160, 162, and 164.

NOW THEREFORE, the parties agree as follows:

1. Definitions.
 - a. Business Associate shall mean _____.
 - b. BREACH means the acquisition, access, use or disclosure of protected health information (PHI) in a manner not permitted under subpart E of the HIPAA Privacy Regulations; 1 found at 45 CFR 164.402 (as amended by the Final HIPAA/HITECH Act Privacy, Security, Breach Notification, and Enforcement Rule, 78 *Federal Register* 5565), which compromises the security or privacy of the protected health information. In the event of any inconsistency between the definition of "Breach" in this Agreement and the definition in the Privacy Regulations, the definition in the Privacy Regulations will control.
 - c. Covered Entity shall mean MARION COUNTY.
 - d. HITECH Act shall mean the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act Public. Law No. 111-5.
 - e. INDIVIDUAL shall mean the person who is the subject of the information and has the same meaning as the term "individual" defined in 45 CFR 164.501 and includes a person who qualifies as a personal representative pursuant to 45 CFR 164.502 (g).

- f. PRIVACY RULE shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, Subparts A and E.
- g. PROTECTED HEALTH INFORMATION shall have the same meaning as the term in 45 CFR 164.501 (as amended by the Final HIPAA/HITECH Act Privacy, Security, Breach Notification, and Enforcement Rule, 78 *Federal Register* 5565), limited to information created or received by Business Associate from or on behalf of Covered Entity.
- h. REQUIRED BY LAW shall have the same meaning as the term in 45 CFR 164.103.
- i. SECRETARY shall mean the Secretary of the Federal Department of Health and Human Services (HHS) and any other HHS officer or employee with delegated authority.
- j. SECURITY RULE shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160, and 164, Subparts A and C.
- k. UNSECURED PROTECTED HEALTH INFORMATION shall mean Protected Health Information in any form, including electronic, paper or verbal, that is not rendered usable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary pursuant to the HITECH Act, as such guidance may be updated by the Secretary from time to time.

Terms used, but not otherwise defined, in this Agreement shall have the meaning given the terms in the Health Insurance Portability and Accountability Act (HIPAA) Regulations at 45 CFR 160-164.

2. Term.

The term of the HIPAA obligations under this addendum shall commence as of the effective date of this contract and shall expire when all of the information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or if it is infeasible to return or destroy protected health information, protections are extended to the information in accordance with the termination provisions in this contract.

3. Limits on Use and Disclosure.

Business Associate shall not use or disclose protected health information provided or made available by Covered Entity for any purpose other than as expressly permitted or required by this contract or as Required by Law.

4. Permitted Uses and Disclosures by Business Associate.

a. Statutory Duties.

(1) Business Associate acknowledges that it has a statutory duty under the HITECH Act to, among other duties:

(A) effective February 17, 2010, use and disclose Protected Health Information only in compliance with 45 C.F.R. § 164.504(e) (the provisions of which have been incorporated into this Agreement); and

(B) effective February 17, 2010, comply with 45 C.F.R. §§ 164.308 ("Security Standards: General Rules"), 164.310 ("Administrative Safeguards"), 164.312 ("Technical Safeguards"), and 164.316 ("Policies and Procedures and Documentation Requirements"). In complying with 45 C.F.R. § 164.312 ("Technical Safeguards"), Business Associate shall consider guidance issued by the Secretary pursuant to Section 13401(c) of the HITECH Act and, if a decision is made to not follow such guidance, document the rationale for that decision.

(2) Business Associate acknowledges that its failure to comply with these or any other statutory duties could result in civil and/or criminal penalties under 42 U.S.C. §§1320d-5 and 1320d-6.

(3) As of the effective date of Section 13405(d) of the HITECH Act, Business Associate may not receive direct or indirect remuneration in exchange for Protected Health Information unless permitted by the Act or regulations issued by the Secretary.

b. General Use and Disclosure Provision.

Except as otherwise limited in this contract, Business Associate may use or disclose protected health information to perform the functions, activities or services for, or on behalf of, Covered Entity as specified in the contract between the parties, provided that such use or disclosure would not violate the Security and Privacy Rules if done by the Covered Entity, or the minimum necessary policies of Covered Entity.

c. Permissible Requests by Covered Entity.

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Regulations if done by Covered Entity.

5. Additional Purposes for Uses and Disclosures by Business Associate.

- (a) Except as otherwise limited in this Contract, Business Associate may use protected health information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- (b) Except as otherwise limited in this Contract, Business Associate may disclose protected health information for the proper management and administration of the Business Associate, provided that:
 - (i) The disclosure is Required by Law;
 - (ii) Reasonable assurances are obtained from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, that the person will use appropriate safeguards to prevent use or disclosure of the information, and that the person immediately notifies Business Associate of any instances of which the confidentiality of the information has been breached per section 6.d of this Contract;
 - (iii) Except as otherwise limited in this Contract, Business Associate may use protected health information to provide data aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B).
 - (iv) Business Associate may use protected health information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1).
 - (v) As of the effective date of Section 13405(d) of the HITECH Act, Business Associate may not receive direct or indirect remuneration in exchange for Protected Health Information unless permitted by the Act or regulations issued by the Secretary.

6. Business Associate Obligations:

- a. Limits on Use and Further Disclosure Established by Contract and Law. Business Associate agrees that information provided or made available by Covered Entity shall not be further used or disclosed other than as permitted or required by the Contract or as Required by Law.
- b. Appropriate Safeguards. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the protected health information other than as provided for by this Contract.
- c. Mitigation of Harmful Effects. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of the

use or disclosure of protected health information by Business Associate in violation of the requirements of this Contract.

- d. **Reports of Breach.** Per the Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA) Public. Law 111-5, Business Associate agrees to report to Covered Entity as soon as possible any use or disclosure of the protected health information not provided for by this Contract of which it becomes aware. If a breach of unsecured protected health information occurs at or by a Business Associate, the Business Associate must notify the Covered Entity no later than 60 days from the discovery of the breach. To the extent possible, the Business Associate should provide the Covered Entity with the identification of each individual affected by the breach as well as any information required to be provided by the Covered Entity in its notification to affected individuals.
- e. **Subcontractors and Agents.** Business Associate agrees to ensure that any agent, including any subcontractor, to whom it provides protected health information received from, or created by Business Associate on behalf of Covered Entity agrees in writing to the same terms, conditions and restrictions on the use and disclosure of protected health information as contained in this Contract. Business Associate is required to have Business Associate Agreements with its subcontractors that use protected health information on their behalf. Business Associate is required to obtain satisfactory assurances from its subcontractors that the subcontractor will safeguard protected health information.
- f. **Right of Access to Information.** Business Associate agrees to provide access, at the request of Covered Entity, to protected health information in a Designated Record Set, either to the Covered Entity, or as directed by Covered Entity to an Individual. This right of access shall conform with and meet the requirements of 45 CFR 164.524, including substitution of the words "Covered Entity" with Business Associates where appropriate.
- g. **Amendment and Incorporation of Amendments.** Business Associate agrees to make and incorporate any amendments to protected health information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526.
- h. **Provide Accounting.** Business Associate agrees to make internal practices, books, and records, including policies and procedures and protected health information relating to the use and disclosure of protected health information received from, or created or received by Business Associate on behalf of, Covered Entity available to Covered Entity, the Secretary, or the Secretary's designee for the purposes of determining compliance with the Security and Privacy Rules.

- i. Documentation of Disclosures. Business Associate agrees to document disclosures of protected health information and information related to these disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of protected health information in accordance with 45 CFR 164.528.
- j. Access to Documentation of Disclosures. Business Associate agrees to provide Covered Entity information collected in accordance with Section 6(i) of this Contract, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of protected health information in accordance with 45 CFR 164.528.
- k. False Claims, Fraud, Waste and Abuse. Business Associate shall cooperate with and participate in activities to implement and enforce the Covered Entity's policies and procedures to prevent, detect and investigate false claims, fraud, waste and abuse relating to Oregon Health Plan, Medicare or Medicaid funds. Business Associate shall cooperate with authorized State of Oregon entities and Centers for Medicare and Medicaid (CMS) in activities for the prevention, detection and investigation of false claims, fraud, waste and abuse. Business Associate shall allow the inspection, evaluation or audit of books, records, documents, files, accounts, and facilities as required to investigate the incident of false claims, fraud, waste or abuse. Business Associate is required to verify that their staff and contractors are not excluded from providing services under this contract funded by Medicare and Medicaid before services are provided. Business Associate is required to check the following databases for excluded individuals and entities:

Excluded Parties List System (EPLS) www.sam.gov

7. Obligations of Covered Entity.

- a. Limitations in Notice of Privacy Practices. Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity, in accordance with 45 CFR 164.520, to the extent that the limitation may affect Business Associate's use or disclosure of protected health information.
- b. Changes in Use or Disclosure of Protected Health Information. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose protected health information, to the extent that the changes may affect Business Associate's use or disclosure of protected health information.
- c. Restrictions on Use or Disclosure of Protected Health Information. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of protected health information, that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that the restriction may affect Business Associate's use or disclosure of protected health information.

8. Permissible Requests by Covered Entity.

Covered Entity shall not request Business Associate to use or disclose protected health information in any manner that would not be permissible under the Security and Privacy Rules if done by Covered Entity, except if the Business Associate will use or disclose protected health information for, and the Contract includes provisions for, data aggregation or management and administrative activities of Business Associate.

9. Security Assurances, the Business Associate will.

- a. Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the County as required by the Health Insurance Portability and Accountability Act of 1996 and the requirements of Health Insurance Reform, the Security Standards (45CFR Parts 160, 162 & 164); and, effective February 17, 2010, to comply with the provisions of the Security Rule identified in this Agreement.
- b. Ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect it;
- c. Report to the County any material attempted or successful unauthorized access, use, disclosure, modification, or destruction of information, interference with system operations in an information system, or any security incident of which it becomes aware;
- d. Authorize termination of the contract by the County, if the County determines that the Business Associate has violated a material term of the contract.