

**POLK COUNTY BOARD OF COMMISSIONERS**

**DATE:** December 6, 2023  
**TIME:** 9:00 a.m.  
**PLACE:** Polk County Courthouse, Dallas, Oregon

**THE LOCATION OF THIS MEETING IS ADA ACCESSIBLE. PLEASE ADVISE THE BOARD OF COMMISSIONERS AT (503-623-8173), AT LEAST 24 HOURS IN ADVANCE, OF ANY SPECIAL ACCOMMODATIONS NEEDED TO ATTEND OR TO PARTICIPATE IN THE MEETING VIRTUALLY.**

**PAGE:** **AGENDA ITEMS**

1. CALL TO ORDER AND NOTE OF ATTENDANCE
2. ANNOUNCEMENTS
  - (a) Regular meetings of the Board of Commissioners are held on Tuesday and Wednesday each week. Each meeting is held in the Courthouse Conference Room, 850 Main Street, Dallas, Oregon. Each meeting begins at 9:00 a.m. and is conducted according to a prepared agenda that lists the principal subjects anticipated to be considered. Pursuant to ORS 192.640, the Board may consider and take action on subjects that are not listed on the agenda. The Board also holds a department staff meeting at 9:00am on every Monday in the Commissioners Conference Room at 850 Main Street, Dallas, Oregon.
3. COMMENTS (for items not on this agenda and limited to 3 minutes)
4. APPROVAL OF AGENDA
5. APPROVAL OF THE MINUTES FROM November 29, 2023
6. APPROVAL OF CONSENT CALENDAR

**CONSENT CALENDAR**

- (a) Polk County Contract No. 23-230, Oregon Health Authority  
(Rosana Warren, Behavioral Health)

**THE BOARD OF COMMISSIONERS WILL MEET IN EXECUTIVE SESSION  
PURSUANT TO ORS 192.660.**

**ADJOURNMENT**

**POLK COUNTY BOARD OF COMMISSIONERS**  
**MINUTES November 29, 2023**

**1. CALL TO ORDER & ATTENDANCE**

At 9:00 a.m., Commissioner Gordon declared the meeting of the Polk County Board of Commissioners to be in session. Commissioner Mordhorst and Commissioner Pope were present.

Staff present: Greg Hansen, Administrative Officer  
Morgan Smith, County Counsel  
Matt Hawkins, Administrative Services Director

**2. ANNOUNCEMENTS**

Regular meetings of the Board of Commissioners are held on Tuesday and Wednesday each week. Each meeting is held in the Courthouse Conference Room, 850 Main Street, Dallas, Oregon. Each meeting begins at 9:00 a.m. and is conducted according to a prepared agenda that lists the principle subjects anticipated to be considered. Pursuant to ORS 192.640, The Board may consider and take action on subjects that are not listed on the agenda. The Board also holds a department staff meeting at 9:00 a.m. on every Monday in the Commissioners Conference Room at 850 Main Street, Dallas, Oregon.

**3. COMMENTS**

None.

**4. APPROVAL OF AGENDA**

**MOTION: COMMISSIONER MORDHORST MOVED, COMMISSIONER POPE SECONDED, TO APPROVE THE AGENDA.**

**MOTION PASSED BY UNANIMOUS VOTE OF THE BOARD.**

**5. APPROVAL OF MINUTES OF BOARD MEETING OF November 22, 2023**

**MOTION: COMMISSIONER POPE MOVED, COMMISSIONER MORDHORST SECONDED, TO APPROVE THE MINUTES OF November 22, 2023.**

**MOTION PASSED BY UNANIMOUS VOTE OF THE BOARD.**

**6. APPROVAL OF CONSENT CALENDAR**

**MOTION: COMMISSIONER MORDHORST MOVED, COMMISSIONER POPE SECONDED, TO APPROVE THE CONSENT CALENDAR.**

**MOTION PASSED BY UNANIMOUS VOTE OF THE BOARD.**

**7. PUBLIC WORKS RECOGNITION**

The Board of Commissioners and staff would like to recognize the Public Works Department for their recent achievement in pavement ratings. Commissioner Gordon read aloud an email that was received from Joel Condor, Senior Project manager for Capital Asset & Pavement Services Inc. In the email, Mr. Condor stated that he has been rating pavements since 1989 and has never seen an entire road system in such a good condition as Polk County's. The Board and staff presented Todd Whitaker and the Public Works Department with a framed certificate and commended them on their great work.

## **8. PUBLIC HEARING – AMBULANCE SERVICE AREA (ASA) DISCUSSION**

Commissioner Gordon explained to everyone what the hearing would look like and gave a brief explanation of the process. Commissioner Gordon opened the public hearing at 9:05 am.

Greg Hansen, Administrative Officer, is recommending that the Board of Commissioners hold a public hearing to determine the geographical assignment of Ambulance Service Areas (ASA's) within Polk County and to hear the testimony from current and proposed ASA providers/general public to aid in the decision-making process. Mr. Hansen provided background information on the ASA assignments and this discussion. Commissioner Pope wanted to provide his input on their last meeting that this was moved to present to the Board of Commissioners at their last committee meeting. He explained that this was a very complex discussion and decision for the Board to make and he wanted to make sure that the public understood that.

Commissioner Gordon invited the City of Dallas to present. Brian Latta, Dallas City Manager & Dallas Fire Chief April Wallace, shared a power point presentation with the Board and staff. Their presentation went over the goals for the City of Dallas, the Dallas ambulance services that they currently provide, their staffing levels, the number of calls that were served in 2022 for EMS calls, and maps that show the current ASA boundaries and the calls that were billed for EMS calls. Next Mr. Latta went over their preferred option for the boundaries and explained why this was their preferred choice. He also went over the alternative option and explained why this was an alternative option. Mr. Latta provided a summary of his presentation, what their recommendation is and why they are making that recommendation.

Commissioner Gordon invited SW Polk to present. Fred Hertel SW Polk Fire Chief, Scott Magers SW Polk Operations Chief, passed around handouts to the Board and staff. Mr. Hertel explained what the maps were showing and provided some history on the service calls that they have been handling. Mr. Magers thanked the Board for their time today and stated that he understands that this is not an easy decision, but that this is 2023 and we should be using 2023 thinking, not going backwards. Mr. Magers stated that he understands the financial aspects but he cares about getting people the help they need as soon as possible. Mr. Magers handed out another map and explained that this was given to the City of Dallas yesterday. Mr. Hertel provided some examples of calls that they would cover and calls that the City of Dallas needs to handle. Commissioner Pope asked them how long has SW Polk been operating. Mr. Hertel answered his question. Commissioner Pope stated that he supports SW Polk and he supports the people who support them and support the current levy, but he also understands the financial challenges and if the current levy will provide enough finances to run successfully. Mr. Hertel stated that currently yes but, in the future, it may need to increase. Commissioner Pope asked questions about their operations and Mr. Hertel answered his question. Commissioner Pope asked about their ability to house EMS staff and Mr. Magers answered his question. Commissioner Mordhorst asked how many calls were from Falls City for the 500 Bridgeport calls and Mr. Hertel stated a very few.

Commissioner Gordon invited the City of Dallas back up to answer questions from the Board. Commissioner Pope asked how many years has the City of Dallas been providing services and Ms. Wallace stated it was 50+ years. Commissioner Pope asked about the possible impacts to their financial stability plan and Mr. Latta answered his question. Commissioner Pope asked if their EMS crew was dedicated or combination and Ms. Wallace stated that they are dedicated. Commissioner Pope asked if the Dallas City Council has weighed in on this and Mr. Latta answered his question.

At 10:07 am Commissioner Gordon opened up the public hearing to public comment.

Bob Young provided his comment in favor of what the City of Dallas is proposing as the preferred option.

Michael Schilling provided his comment in favor of what the City of Dallas is proposing as the preferred option

Allen Hershman provided his comment in favor of the preferred option for SW Polk.

Paul Telfer provided his comment in favor of the preferred option for SW Polk.

Cristopher Burton provided his public comment in favor of the preferred option for SW Polk.

At 10:22 am, Commissioner Gordon closed the public hearing and recommended that the record remain open for 2 weeks. The other two Commissioners agreed with keeping the record open for 2 more weeks.

The following items were approved by Motion under **5. APPROVAL OF CONSENT CALENDAR:**

- (a) Polk County Contract No. 23-228 (Amendment 3 to 23-109), Oregon Health Authority  
(Rosana Warren, Public Health)
- (b) Polk County Contract no. 23-229, Buy Board  
(Todd Whitaker, Public Works Director)

There no need for an executive session and Commissioner Pope adjourned the meeting at 10:22 a.m.

**POLK COUNTY BOARD OF COMMISSIONERS**

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Jeremy Gordon, Chair

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Craig Pope, Commissioner

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Lyle Mordhorst, Commissioner



# CONTRACT REVIEW SHEET

Staff Contact: Rosana Warren Phone Number (Ext): 3558  
Department: Health Services: Behavioral Health Consent Calendar Date: December 06, 2023  
Contractor Name: Oregon Health Authority  
Address: 500 Summer Street SE, E86  
City, State, Zip: Salem, OR 97301-1118  
Effective Dates - From: August 01, 2023 Through: April 01, 2024  
Contract Amount: \$0

## Background:

The Oregon Health Authority provided funding for the Community Stabilization and Recovery Center project with the goal to provide an array of crisis stabilization services, relieve bottlenecks in the continuum of care, and address health inequities and housing disparities, among others. This contract is an amendment to the initial award from the state IGA 177690 (No. 22-156).

## Discussion:

Amendment 1 updates the project scope to reallocate the original awarded funds to the completion of the CARES center project versus having two separate facilities as originally proposed. The CARES center will be expected to house the Community Stabilization and Recovery Center amongst other services.

## Fiscal Impact:

There is no change to the original funding amount of \$2,456,371.85.

## Recommendation:

It is recommended that Polk County sign amendment 1 to IGA 177690 with the Oregon Health Authority.

## Copies of signed contract should be sent to the following:

Name: Rosana Warren E-mail: hs.contracts@co.polk.or.us  
Name: \_\_\_\_\_ E-mail: \_\_\_\_\_  
Name: \_\_\_\_\_ E-mail: \_\_\_\_\_

**Grant Agreement Number 177690****AMENDMENT TO  
STATE OF OREGON  
INTERGOVERNMENTAL GRANT AGREEMENT**

You can get this document in other languages, large print, braille, or a format you prefer free of charge. Contact the Agreement Administrator at the contact information found on page one of the original Agreement, as amended. We accept all relay calls.

This is amendment number **01** to Grant Agreement Number **177690** between the State of Oregon, acting by and through its Oregon Health Authority, hereinafter referred to as “**OHA**,” and

**Polk County**  
**182 SW Academy Street, Suite 33**  
**Dallas, OR 97338**  
**Attention: Rosana Warren**  
**Telephone: 503-831-1726**  
**E-mail address: warren.rosana@co.polk.or.us**

hereinafter referred to as “**Recipient**.”

1. This amendment shall become effective on the last date all required signatures in Section 5., below have been obtained.
2. The Agreement is hereby amended as follows:
  - a. For services provided on and after the effective date of this amendment, **Exhibit A Part 3, “Special Terms and Conditions”** is hereby superseded and restated in its entirety, as set forth in **Exhibit A Part 3, “Special Terms and Conditions”**, attached hereto and incorporated herein by this reference.
  - b. For services provided on and after the effective date of this amendment, **Exhibit D, “Approved Budget”** is hereby superseded and restated in its entirety, as set forth in **Exhibit D, “Approved Budget”**, attached hereto and incorporated herein by this reference.
  - c. For services provided on and after the effective date of this amendment, **Attachment 1 “Declaration of Restricted Covenants”** is hereby added, as set forth in **Attachment 1, “Declaration of Restricted Covenants”**, attached hereto and incorporated herein by this reference.
3. Except as expressly amended above, all other terms and conditions of the original Agreement and any previous amendments are still in full force and effect.

**4. Certification.** Without limiting the generality of the foregoing, by signature on this Agreement, the undersigned hereby certifies under penalty of perjury that:

- a.** Recipient acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any “claim” (as defined by ORS 180.750) that is made by (or caused by) the Recipient and that pertains to this Agreement or to the project for which the grant activities are being performed. Recipient certifies that no claim described in the previous sentence is or will be a “false claim” (as defined by ORS 180.750) or an act prohibited by ORS 180.755. Recipient further acknowledges that in addition to the remedies under this Agreement, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the Recipient;
- b.** The information shown in Section 5.a. “Recipient Information” of the original Agreement, as amended is Recipient’s true, accurate and correct information;
- c.** To the best of the undersigned’s knowledge, Recipient has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts;
- d.** Recipient and Recipient’s employees and agents are not included on the list titled “Specially Designated Nationals” maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at: <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>;
- e.** Recipient is not listed on the non-procurement portion of the General Service Administration’s “List of Parties Excluded from Federal procurement or Non-procurement Programs” found at: <https://www.sam.gov/SAM>;
- f.** Recipient is not subject to backup withholding because:

  - (1) Recipient is exempt from backup withholding;
  - (2) Recipient has not been notified by the IRS that Recipient is subject to backup withholding as a result of a failure to report all interest or dividends; or
  - (3) The IRS has notified Recipient that Recipient is no longer subject to backup withholding; and

(2) Recipient’s Federal Employer Identification Number (FEIN) or Social Security Number (SSN) provided to OHA is true and accurate. If this information changes, Recipient is required to provide OHA with the new FEIN or SSN within 10 days.

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

**5. Signatures.**

**Polk County**

**By:**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**State of Oregon, acting by and through its Oregon Health Authority**

**By:**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Interim Director, OHA Health Systems Division**

**By:**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Approved for Legal Sufficiency:**

Via e-mail by Lisa Gramp, Assistant Attorney General on October 23, 2023; email in agreement file.



## EXHIBIT A

### Part 3

#### Special Terms and Conditions

**1. SUBCONTRACTORS.** Recipient shall not enter into any subcontracts for any part of the program supported by this Agreement without OHA's prior written consent. Recipient intends to subcontract with the subcontractors listed on Exhibit D (each, a "**Subcontractor**"). In addition to any other provisions OHA may require, Recipient shall include in any permitted subcontract with a Subcontractor under this Agreement provisions to ensure compliance with the grant requirements and that OHA will receive the benefit of subcontractor activity(ies) as if the subcontractor were the Recipient. Prior to disbursing any grant funds to a Subcontractor, Recipient shall execute a subcontract that includes and is consistent with the grant requirements set forth in this Agreement. OHA's consent to any subcontract shall not relieve Recipient of any of its duties or obligations under this Agreement.

**2. REAL PROPERTY PURCHASE, RENOVATION, OR IMPROVEMENT.** Before grant funds in the amount of \$100,000 and above, paid to Recipient under this Agreement, are to be used for purchase or renovation of real property by a Subcontractor, Recipient shall notify OHA and subsequently shall cause such Subcontractor to execute all documents reasonably necessary to secure the real property funded with this Agreement, as determined by the Social Determinants of Health team of OHA, including but not limited to, a Declaration of Restrictive Covenants substantially the form attached hereto as Attachment 1 (the "**Declaration**").

**EXHIBIT D**  
Approved Budget

**SUBCONTRACTOR REQUIREMENT:** The following Subcontractors are approved by OHA, subject to the requirements set forth in the Agreement.

**BEHAVIORAL HEALTH HOUSING INVESTMENT FUNDS**

**PROJECT/SERVICES**

The proposal for the entire Polk County allotment of the BH Investment funds, \$2,456,371.85 is as follows:

- Construct a new multi-purpose building called the CARES Center on county owned property, near the Polk County Health Services current clinic location in Dallas.
- The CARES Center will support a crisis stabilization center, respite services, a crisis/mobile crisis hub ACT, and Behavioral Health Resource Network (BHRN) which, if fully staffed, will be open 24/7/365. This contract is being amended due to unforeseen and increased costs on the building project and the reallocation of other expected funding which is required in order to include an operational second floor in the building. With the inability to build a second floor for staff occupation, there will be a lack of space to house a short-term transitional program on the first floor.
- AC & CO Architecture delivered new architectural drawings in mid-September and we will receive the finalized plans at the end of September or beginning of October. Plans are expected to be completed and sent out for bidding by January 2024 with the intention of breaking ground in March 2024. Total cost estimates can be provided within the progress report at that time. This amendment reflects an extension of completion estimate dates due to the requirements of building above a flood plan, corresponding tasks it entails, including moving the building back several feet from where it was originally going to be placed, as well as overall increased costs.

**PLANNING, COORDINATION, SITTING, PURCHASING BUILDING/LAND  
DESCRIPTION AND USE OF OTHER FUNDS**

The Behavioral Health Housing Funding amount of \$2,456,371.85 combined with BRHN funding in the amount of \$1,213,000, will be used to build a new multi-purpose facility, called the CARES Center. The CARES Center will provide community stabilization and recovery services, which once fully staffed, will be opened 24/7/365. Services included at the CARES Center will be a crisis stabilization center and include a short-term crisis respite for adults 18 and over. The CARES Center will include a voluntary three recliner short-term (23 hours of less) respite unit for adults experiencing acute mental health issues. This respite will provide a quiet, calm environment for individuals allowing them to stabilize and work with staff who will help them connect with the community resources and support they need.

This building will be sited on county owned property, near the Polk County Health Services current clinic location in Dallas. Originally, additional funds toward the project were allocated to be used to create a space for a short-term transitional program which provided stabilization and staff support onsite.

Unexpected costs incurred related to the site location within a floodplain, extra work was required to determine building boundaries, elevation concerns, issues related to the foundation, and other aspects related to new building construction. In addition to a rise in costs, a portion of funding allocated to this project was reallocated causing the inability to complete the second story of the building creating a significant reduction in size. For future planning, AC & CO Architecture suggested framing in a second floor, with the addition of an elevator and stair access points. Contingent on funding, if the second-floor construction and remodeling were able to be completed in the future, the county may consider, if determined feasible, adding a short-term respite and support services program, but are unable to at this time.

## **OPERATIONAL AND ADMINISTRATIVE COSTS TO MANAGE FACILITY DESCRIPTION AND USE OF OTHER FUNDS**

Crisis stabilization centers are effective at providing suicide prevention services, addressing behavioral health treatment, diverting individuals from entering higher levels of care and addressing the distress experienced by individuals in a behavioral health crisis. The CARES Center in Polk County will offer an alternative to emergency department visits, psychiatric hospitalizations, reduced use of Marion County Psychiatric Care Center, and provide law enforcement the ability to coordinate care and transport individuals in need of respite to a more centrally located facility in Polk County. The CARES center will increase the ability for services to be provided rapidly, in a more comfortable, trauma informed environment, closer to home by providing 23-hour crisis respite and observation while remaining in the community.

Staffing the CARES Center, including Crisis, BHRN and ACT programs, will include a multidisciplinary team capable of meeting the needs of community members of all ages who may be experiencing a crisis related to mental health or a co-occurring substance use disorder or are seeking vital services and referrals. Staff would include licensed and/or credentialed clinicians capable of assessing and planning for suicidal risk, and complete comprehensive violence risk assessments and planning, case managers with experience in working with the target population and peers with lived experiences in the areas of justice involvement, mental health and/or substance use disorders, crisis, and state hospital experiences. Staffing needs also include cross trained peer support specialists, peer wellness specialists and certified recovery mentors whose skills sets include assisting individuals in obtaining housing, ready to rent education for individuals needing those services, life skills, employment support and other types of peer support services. Costs will include support staff such as office specialists, administrative specialists, data/application specialists whose support will be needed to meet access, data collection and state reporting requirements.

The CARES Center will have unique administrative and operational costs related to the need for adequate staffing to support service provision 24/7/365 and to ensure the safety and security of staff and clients at all times. Filling and maintaining positions can be difficult and staff must be compensated at a higher level, the capacity for the management and availability of a variety of work shifts, and funding is necessary to ensure safety, licensing and other such requirements of the facilities.

In light of the requirement to provide all of the services listed above 24/7/365 the administrative and operational costs will include:

1. Salaries
2. Benefits
3. Wages to Support 24/7/365 programming

## **EXPECTED IMPACT**

This project will provide comprehensive and effective interventions and supports by adding another level of care to our community by providing crisis stabilization, low barrier access 24/7/365 to crisis and to other critical services such as those the BHRN and ACT programs provide to support stabilization of individuals in the community. Developing a continuum of care path in Polk County by creating the CARES Center stabilization and engagement process, integrating the ability to place and stabilize individuals in their community when needed, followed by a supported step-down process toward longer-term integration into more permanent resources/settings will impact our community in multiple ways including:

- Reducing emergency department use both in Dallas and at the Salem Hospital, in turn reducing inpatient psychiatric care. Rather than transporting Polk County individuals to Salem, time and resource usage are reduced by supporting individuals who can safely remain in the community.
- Minimizing criminal justice involvement by providing individuals with comprehensive crisis care supporting jail diversion, allowing law enforcement to bring individuals to the CARES Center for crisis intervention or other types of services critical to an individual in need and support the reduction of incarceration length of stays, and law enforcement and criminal justice involvement by allowing them to immediately connect with peer support, case managers and therapist.
- Provides ability to prevent or reduce decompensation by obtaining services and resources locally and with immediate access to individuals in need of such services.
- Provides low barrier access to services 24/7/365, including crisis respite, ongoing engagement with easy access to wrap-around and stabilization services to provide the individual with supports and services needed related to mental health, substance use disorder and assistance in obtaining long term transitional housing with a goal of independent living in permanent housing.
- Aids in community reintegration from jail, prison, the local hospital, state hospital, and other institutional settings.

## **COST ESTIMATE**

The focus of the BH Housing Investment is a new building named the CARES Center. The CARES Center will include the construction of a second story shell as the funding received does not allow for the completion of a second floor at this time. The CARE Center, will operate 24/7/365 if fully staffed, house crisis services, including voluntary respite recliner units, ACT program and the BHRN program. The Behavioral Health Resource Network grant funds are contributing to the construction costs of this building.

HB 5202 – BH Housing Funds - \$2,456,371

M110 – BHRN Funds - \$1,213,000

Additional Funds – if obtained will be allocated as needed.

Administrative and operational costs for comprehensive projects will be covered with other funding streams, CFAA funding and billable services. Due to unstable workforce costs and availability, as well as supply shortages and/or increased costs the cost estimate is unknown at this time, and will be difficult to determine as the expected construction completion date of this project is in March 2025. Plans and cost estimates should be available in the Spring of 2024.

### **OTHER FUNDING THAT CAN BE UTILIZED BY THESE PROJECTS INCLUDE**

In addition to funding from the Oregon Health Plan, funds from the following services elements will support operational and administrative components of the new facility and staff/operational needs.

#### **SERVICE ELEMENTS**

- MHS 25 - Crisis
- MHS 09 - Jail Diversion
- MHS 04 - Aid & Assist
- MHS 05 - ACT/FACT
- MHS 06 - CHOICE
- A&D 66 - SUD Services
- A&D 63 – Peer Support Services

**Total Grant Amount: \$2,456,371.85**

\*Recipient will provide an updated Budget for OHA approval with their quarterly Expenditure Reports required under this Grant Agreement.

**ATTACHMENT 1**

**After Recording Return to:**

**Oregon Health Authority  
Heath Systems Division  
500 Summer St NE, E86  
Salem, OR 97301**

SPACE ABOVE FOR

RECORDER'S USE

**FORM OF**

**STATE OF OREGON  
OREGON HEALTH AUTHORITY**

**DECLARATION OF RESTRICTIVE COVENANTS**

This Declaration of Restrictive Covenants (this “**Declaration**”) is made and entered into this [ ] day of [ ] 2023 (the “**Effective Date**”) by and between [ ], an Oregon [ ] (“**Declarant**”) and the State of Oregon (“**State**”), acting by and through the Oregon Health Authority and its Health System Division (“**OHA**”) pursuant to House Bill 5202, section 364. OHA and Declarant may be referred to herein jointly as the “**Parties**” or individually as a “**Party**”.

**RECITALS**

**A.** The Oregon State Legislature’s Joint Committee on Ways and Means stated in the Budget Report and Measure Summary for House Bill 5202 that the OHA was appropriated funds “for distribution to community mental health programs (CMHPs) and related administrative support in OHA. The goals of this funding are to provide an array of supported housing and residential treatment, relieve bottlenecks in the continuum of care, and address health inequities and housing access disparities, among others.”

**B.** OHA issued a Request for Applications (RFA) to the CMHPs for receiving this funding and Declarant applied for a grant award.

**C.** Declarant is a subrecipient of funds from \_\_\_\_\_ (the “**CMHP**”) pursuant to an agreement between the CMHP and Declarant dated \_\_\_\_\_ (the “**Subcontract**”).

**D.** The Subcontract requires Declarant to execute this Declaration and comply with certain terms of that certain Grant Agreement by and between the CMHP and OHA dated \_\_\_\_\_ 2022 (the “**CMHP Grant Agreement**”).

**E.** Pursuant to the Subcontract, Declarant was subawarded [ ] (\$[

\_\_\_\_\_)] (the “**SubGrant**”) for the purpose of increasing behavioral health housing by [acquiring, constructing or renovating \_\_\_\_\_] (collectively, the “**Improvements**”) situated on certain real property located in the city of [\_\_\_\_\_, \_\_\_\_\_] County (the “**County**”), State of Oregon, as more particularly described in Exhibit A attached hereto (the “**Property**”). The Property, together with the Improvements, is referred to herein as the “**Project**”.

**F.** The Parties desire that this Declaration be recorded in the relevant records of the County at Declarant’s cost and that certain terms herein constitute restrictive covenants and equitable servitudes running with the Property and governing, among other things, the maintenance, monitoring, and operation of the Project.

## **AGREEMENT**

NOW, THEREFORE, for good and sufficient consideration, including the terms, conditions, covenants, warranties, and undertakings set forth herein, the Parties agree as follows:

### **1. INCORPORATION.**

The foregoing recitals and exhibit(s) to this Declaration are incorporated into this Declaration by reference to the same extent and with the same force and effect as if fully set forth herein, provided, however, that the incorporated items do not modify the express provisions of this Declaration.

### **2. REPRESENTATIONS, WARRANTIES AND COVENANTS OF DECLARANT.**

Declarant represents, warrants and covenants that:

**2.1. Organization and Authority.** Declarant has all necessary right, power and authority under its organizational documents to (a) execute, deliver and record this Declaration, and (b) incur and perform its obligations under this Declaration.

**2.2. Use of SubGrant Funds.** Declarant has used or will use the SubGrant funds only for the Project costs as provided for in this Declaration and the Subcontract.

**2.3. Full Disclosure.** Declarant has disclosed in writing to OHA all facts that may materially adversely affect the Project, or the ability of Declarant to perform all obligations required by this Declaration. Declarant has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading, regarding the Grant, the Project and this Declaration. The information contained in this Declaration is true and accurate in all respects.

**2.4. Pending Litigation.** Declarant has disclosed in writing to OHA all proceedings, environmental or otherwise, pending (or to the knowledge of Declarant, threatened) against or affecting Declarant, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project or the ability of Declarant to perform all obligations required by this Declaration.

### **2.5. No Defaults.**

(a) No Defaults or Events of Default exist or occur upon authorization, execution or delivery of

this Declaration.

(b) Declarant has not violated and has not received notice of any claimed violation of, any agreement or instrument to which it is a party or by which the Project or its property may be bound, that would materially adversely affect the Project or the ability of Declarant to perform all obligations required by this Declaration.

**2.6. Compliance with Existing Agreements and Applicable Law.** The authorization and execution of, and the performance of all obligations required by, this Declaration will not: (i) cause a breach of a material agreement, indenture, mortgage, deed of trust, or other instrument, to which Declarant is a party or by which the Project or any of Declarant's property or assets may be bound; (ii) violate any provision of the applicable enabling statutes, code, charter, ordinances or other Oregon law pursuant to which Declarant was organized or established; or (iii) violate any laws, regulations, ordinances, resolutions, or court orders related to Declarant, the Project or Declarant's properties or operations.

**2.7. Governmental Consent.** Declarant has obtained or will obtain all permits and approvals, and has made or will make all notifications, declarations, filings or registrations, required for the making and performance of its obligations under this Declaration and undertaking and completion of the Project, including without limitation, all land use approvals and development permits required under local zoning or development ordinances, state law and federal law for the use of the land on which the Project will be located.

**2.8. Responsibility.** Declarant assumes full responsibility for timely and appropriate completion of the Project, for ownership of the Project, for its operation in accordance with this Declaration and the Subcontract and acknowledges that OHA has no direct or contractual responsibility for the Project, for ownership of the Project, or for its operation.

### **3. ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF DECLARANT.**

Declarant also represents, warrants, and covenants that:

**3.1. Fair Housing and Other Civil Rights Compliance.** Declarant shall comply with all applicable state and federal nondiscrimination laws, including but not limited to the Fair Housing Act and the Americans with Disabilities Act;

#### **3.2. Use Restrictions and Duration.**

(a) **Use Restrictions.** [description from Exhibit D of the Grant Agreement] (collectively, the "Use Restrictions").

(b) **Use Restriction Period.** For a period of twenty (20) years from December 31<sup>st</sup> of the year that the Project is completed or until **December 31, 2043**, whichever is later (the "Use Restriction Period"), Declarant is required to provide and comply with the requirements of the Use Restrictions.

**3.3. Habitability; Other Compliance.** Throughout the Use Restriction Period, Declarant will manage the Project in a safe, sanitary, and habitable condition satisfactory to OHA and in accordance with applicable zoning and code requirements.



**3.4. Financial Records.** Declarant shall keep accurate books and records regarding use of the SubGrant and maintain them according to generally accepted accounting principles applicable to Declarant in effect at the time.

**3.5. Inspections; Information.** Declarant shall permit the State and any party designated by the State: (i) to inspect the Project and (ii) to inspect and make copies of any accounts, books and records, including, without limitation, Declarant's records regarding receipts, disbursements, contracts, investments and any other related matters.

**3.6. Reports.**

(a) Declarant shall prepare and electronically submit written quarterly reports that satisfy OHA requirements of the continued use of the Project for the agreed purpose as defined in this Declaration.

(b) The quarterly reports are due to OHA no later than April 15 (January 1-March 31), July 15 (April 1- June 30), October 15 (July 1- September 30), and January 15 (October 1-December 31) each year.

(c) The quarterly reports shall provide data as OHA requests, including but not limited to bed/unit/client capacity with their utilization rates and data on clients served by the property/facility. OHA will provide the reporting form and instructions for completion and submission of this quarterly compliance report. Declarant may be required to provide capacity and utilization rates every 60 days or more frequently as requested by OHA.

(c) Declarant shall supply any other reports and information related to the Project as the State may reasonably require.

**3.7. Records Maintenance.** Declarant shall retain and keep accessible all books, documents, papers, and records that are directly related to this Declaration, the Project, or the SubGrant throughout the Use Restriction Period and for a minimum of six (6) years, or such longer period thereafter, as may be required by OHA.

**3.8. Corrective Action.** As a consequence of its monitoring, review of quarterly reports or otherwise, OHA may identify deficiencies in Declarant's compliance with this Declaration. OHA may require action by Declarant (satisfactory to OHA) to correct such deficiencies. Declarant must correct such deficiencies within thirty (30) days of notice by OHA of such deficiencies unless earlier correction is required by OHA to address material health or safety needs of Project users. The reasonableness of such corrective actions is subject to OHA in its sole discretion. Nothing in this Section 3.8 is intended or may be construed to impose any duty on OHA to identify deficiencies in Declarant's compliance with this Declaration or to require any action by Declarant to correct such deficiencies, and Declarant remains solely responsible for compliance with this Declaration.

**3.9. Insurance, Damage.** Declarant shall maintain insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by entities constructing, operating and maintaining similar properties/facilities.

#### **4. FURTHER ASSURANCES.**

**4.1. Further Acts.** Declarant, at any time upon request of OHA, will do, make, execute and deliver all such additional and further acts, instruments or papers as OHA may require in its sole discretion to protect OHA's rights under this Declaration.

**4.2. Reliance.** OHA may rely upon statements, certificates, and other records of Declarant and its agents and assigns, including as to accuracy, genuine nature, and proper execution of such statements, certificates, and other records.

#### **5. COVENANTS AND EQUITABLE SERVITUDES TO RUN WITH THE LAND.**

**5.1. Inducement.** Declarant represents, covenants and warrants that the issuance to it of the SubGrant described herein by OHA is an inducement to Declarant to complete the Project and to operate the Project in accordance with the Subcontract and this Declaration. In consideration of the issuance of the Grant, Declarant has entered into this Declaration and has agreed to restrict the operation of and uses to which the Project can be put on the terms and conditions set forth herein. Therefore, Declarant covenants, agrees and acknowledges that OHA has relied on this Declaration in determining to issue the Grant.

#### **5.2. Covenants; Equitable Servitudes.**

(a) OHA and Declarant hereby declare their express intent that throughout the Use Restriction Period the covenants, restrictions, charges and easements set forth herein, including the Use Restrictions, will be deemed covenants running with the Property and will create equitable servitudes running with the Property, and will pass to and be binding upon OHA's and Declarant's successors in title including any purchaser, grantee or lessee of any portion of the Project and any other person or entity having any right, title or interest therein and upon the respective heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee or lessee of any portion of the Project and any other person or entity having any right, title or interest therein.

(b) Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof or interest therein (*other than a residential rental agreement or residential lease for a Housing Unit*) will contain an express provision making such conveyance subject to the covenants, restrictions, charges and easements contained herein; provided, however, that any such contract, deed or other instrument will conclusively be held to have been executed, delivered and accepted subject to such covenants, regardless of whether or not such covenants are set forth or incorporated by reference in such contract, deed or other instrument.

(c) Any and all legal requirements for the provisions of this Declaration to constitute restrictive covenants running with the Property and applying to the Project as a whole, or to create equitable servitudes with respect to same in favor of OHA, are deemed satisfied in full.

(d) The consent of any recorded prior lien holder on the Project, including the Property, is not required in connection with recording this Declaration, or if required, such consent has been or will be obtained by Declarant.

### 5.3. Burden and Benefit.

(a) Declarant hereby declares its understanding and intent that the burdens of the covenants and equitable servitudes, including the Use Restrictions, set forth herein touch and concern the Property, and the Project as a whole, in that Declarant's legal interest in the Project is rendered less valuable thereby.

(b) Declarant hereby further declares its understanding and intent that the benefits of such covenants and equitable servitudes touch and concern the Property, and the Project as a whole, by enhancing and increasing the enjoyment and use of the Project by tenants, intended beneficiaries (in addition to OHA) of such covenants, reservations and restrictions, and by furthering the public purposes for which the SubGrant was issued.

**5.4. Right of Modification.** OHA may compromise, waive, amend or modify the terms of this Declaration including, but not limited to the restrictive covenants and equitable servitudes created hereby, with the written consent of Declarant or subsequent Project owners, as it so determines in OHA's sole discretion to be to the benefit of OHA, the Project, or OHA efforts to provide or maintain safe and sanitary conditions of the Project and affordability of the Housing Units in the State of Oregon. To be effective, any compromise, waiver, amendment or modification of this Declaration must be in writing, signed by an authorized OHA representative.

## 6. GENERAL PROVISIONS.

### 6.1. Compliance with Applicable Laws and Requirements.

(a) **Compliance.** Declarant shall comply with and shall ensure that the Project complies with all federal, state and local laws, rules regulations, codes, ordinances, and orders applicable to the Project from time to time.

(b) **Contracts; Subcontracts.** Declarant shall ensure that all contracts and subcontracts related to the Project or this Declaration comply with the terms and conditions hereof, including containing a provision to that effect therein.

(c) **Endurance of Obligations.** Declarant will remain fully obligated under the provisions of this Declaration notwithstanding its designation of any third-party or parties for the undertaking of all or any part of the Project with respect to which SubGrant funding is being provided.

### 6.2 Contribution.

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

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

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

This Section shall survive expiration or termination of this Agreement.

### **6.3. Indemnification by Subcontractors.**

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

**6.4. Time of the Essence.** Time is of the essence in the performance by Declarant of the terms of this Declaration.

**6.5. No Discrimination; Marketing.** Except as permitted by law, Declarant will not inappropriately discriminate in the provision of housing on the basis of race, creed, color, sex, national origin, religion, marital status, sexual orientation, family status, age, disability or the receipt of public assistance.

**6.6. Notice.** Except as otherwise expressly provided in this Declaration, any notices required or permitted to be given under this Declaration will be given in writing, by personal delivery, or mailing the

same, postage prepaid, to OHA or Declarant at the following addresses:

If to OHA:  
Social Determinants of Health  
OHA Health Systems Division  
500 NE Summer St. E-86  
Salem, OR 97301

If to Declarant:

or to such other address a party may indicate to the other pursuant to this Section. Any notice so addressed and mailed will be effective five (5) days after mailing. Any notice by personal delivery will be deemed to be given when actually delivered.

**6.7. No Third-Party Beneficiaries.** Unless and only to the degree expressly provided otherwise in this Declaration, OHA and Declarant are the only Parties to this Declaration and are the only Parties entitled to rely on and enforce the terms of this Declaration. Nothing in this Declaration gives, is intended to give, or will be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly indirectly or otherwise, to third persons unless such third persons are expressly identified in this Declaration and only to the degree they are expressly described as intended beneficiaries of particular terms of this Declaration and only with such remedies as expressly given herein with respect to such interests.

**6.8. Declarant Status.**

**(a) Independent Contractor.** Declarant shall perform all obligations under this Declaration and will timely satisfy its obligations hereunder as an independent contractor. Declarant is not an officer, employee or agent of the State, as those terms are used in ORS 30.265 or otherwise, with respect to performance under this Declaration.

**(b) Declarant Responsible for Insurance Coverage.** Declarant agrees that insurance coverage, whether purchased or by self-insurance, for Declarant's agents, employees, officers and/or subcontractors is the sole responsibility of Declarant.

**(c) Non-Federal Employment Certification.** Declarant certifies that it is not employed by or contracting with the Federal Government for performance covered by this Declaration.

**(d) Good Standing Certification.** Declarant certifies to the best of its knowledge and belief that neither Declarant nor any of its principals, officers, directors or employees:

**(i)** Is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any state or federal department or agency;

**(ii)** Has within a three (3) year period preceding this Declaration been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract related to a public transaction; violation of federal or state antitrust statutes; or

commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;

(iii) Is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in subsection (d)(ii) of this Section;

(iv) Has within a three (3) year period preceding this Declaration had one or more public transactions (federal, state or local) terminated for cause or default; and

(v) Is included on the list titled “**Specially Designated Nationals and Blocked Persons**” maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at:

<https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>

**6.9. Termination.** OHA may terminate this Declaration in whole or in part, without further liability and without impairment of its remedies, effective upon delivery of written notice to Declarant, under any of the following conditions:

(a) If funding from federal, state, or other sources is not obtained or is not continued at levels sufficient to allow for delivery of full SubGrant funding; or

(b) If federal or state laws, regulations, rules or other requirements are modified or interpreted in such a way that the intended use of SubGrant funding for the Project is no longer allowable or appropriate or the Project is no longer eligible for the SubGrant funding identified in this Declaration from the planned funding source(s); or

(c) If any authority required by law or regulation to be held by Declarant to complete the Project ends for any reason; or

(d) If Declarant is unable or fails to commence the Project within six (6) months from the date of this Declaration; or

(e) If Declarant breaches or fails to timely perform any of its obligations under this Declaration, or any other applicable agreement and such breach is not cured within the grace period, if any, provided for cure in the applicable document; or

(f) If OHA determines that any representation, warranty or covenant of Declarant, whether in whole or in part, is false, invalid, or in default; or

(g) If Declarant (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all or substantially all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) is adjudicated as bankrupt or insolvent, (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, winding-up, or composition or adjustment of debts, (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an

involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect), or (viii) takes any action for the purpose of effecting any of the foregoing.

(h) Termination of this Declaration does not terminate or otherwise impair or invalidate any remedy available to OHA or to Declarant hereunder, at law, or otherwise.

**6.10. Declarant Default.** Any of the following constitutes an “**Event of Default**” of Declarant:

(a) Any false or misleading representation is made by or on behalf of Declarant, in this Declaration or in any document provided by Declarant to OHA related to the SubGrant or the Project.

(b) Declarant fails to perform any obligation required under this Declaration and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Declarant by OHA, or such longer period as OHA may agree to in writing, if OHA determines in its sole discretion that Declarant has instituted and is diligently pursuing corrective action.

(c) Declarant: (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) is adjudicated a bankrupt or insolvent, (v) commences a voluntary case under the Federal Bankruptcy Code, (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (viii) takes any corporate action for the purpose of effecting any of the foregoing.

(d) A proceeding or case is commenced, without the application or consent of Declarant, in any court of competent jurisdiction, seeking: (i) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Declarant, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of Declarant or of all or any substantial part of its assets, or (iii) similar relief in respect to Declarant under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty (60) consecutive days, or an order for relief against Declarant is entered in an involuntary case under the Federal Bankruptcy Code.

**6.11. OHA Default.** OHA will be in default under this Declaration if it fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Declaration.

**6.12. Remedies.**

(a) **Repayment.** If this Declaration or any part hereof, terminates prior to the term of the Use Restriction Period, Declarant will, within thirty (30) days of written demand for repayment by OHA, repay the SubGrant to OHA multiplied by a fraction, the numerator of which is 20 minus the number of full years that have transpired between the year the Project is completed and the year of OHA’s demand and the denominator of which is 20.

**(b) Deficiencies.** OHA may, from time to time, identify and direct Declarant to correct deficiencies (including deficiencies by the Owner) in its compliance with this Declaration, which it shall correct as so directed.

**(c) Extension of Use Restriction Period.** OHA may by written notice extend the Use Restriction Period described in this Declaration for periods of time matching corresponding periods of time during which OHA determines the Declarant to be in material noncompliance with any of the terms of this Declaration.

**(d) Additional Remedies.** If the Declarant defaults in the performance or observance of any covenant, agreement or obligation set forth in this Declaration (including correction of deficiencies), and if such default remains uncured by the Declarant for a period of thirty (30) days or less (depending upon the requirements of the notice, lesser notice periods being reserved for matters that OHA determines in its sole discretion relate to material health or safety needs of Project occupants) after notice thereof shall have been given by OHA, or if such default runs for a period of thirty (30) days from the date the Declarant should, with due diligence, have discovered such default, then OHA may declare an Event of Default to have occurred hereunder provided, however, if a default is not reasonably capable of being cured within thirty (30) days or any lesser notice period provided by OHA, OHA may, in its sole discretion, extend the correction period for up to six (6) months, but only if OHA determines in its sole discretion there is good cause for granting the extension; and provided further, however, in the event of a foreclosure, deed in lieu of foreclosure, or similar event with respect to the Project or the Property, the correction period for the successor for an existing default shall be no less than thirty (30) days from the earlier of the date the successor obtains control or becomes the owner of the Project. To the extent that the default is not corrected within the above-described period including extensions, if any, granted by OHA, an Event of Default shall be deemed to occur and OHA may exercise its rights and remedies under this Section. Following the occurrence of an Event of Default hereunder OHA may, at its option, take any one or more of the following steps in addition to all other remedies provided in this Declaration, by law, or in equity:

**i.** By mandamus or other suit, action or proceeding at law or in equity, require Declarant specifically to perform its obligations under this Declaration or enjoin any acts or things that may be unlawful or in violation of the rights of OHA under this Declaration;

**ii.** Obtain the appointment of a receiver to operate the Project in compliance with this Declaration;

**iii.** Withhold from Declarant, suspend or terminate, or (upon thirty (30)-days written demand) require the repayment of all or part of any disbursed SubGrant funds or other funding assistance provided by OHA to Declarant with respect to the Project;

**iv.** Declare Declarant, its owners, principals, employees, and agents ineligible to receive further OHA funds or other OHA financial assistance, including with respect to other projects or requests for same, for such period as OHA determines in its sole discretion;

**v.** Offset amounts due from repayment of the SubGrant against other funding awarded or to be awarded to Declarant;



**vi.** Have access to, and inspect, examine and make copies of, all of the books and records of Declarant pertaining to the Project and to inspect the Project itself;

**vii.** Enter onto the Property and correct Events of Default with respect to the Project at Declarant's expense, which expense Declarant will repay to OHA within ten (10) days of any presentment of charges for same; and

**viii.** Take such other action under this Declaration, at law, in equity, or otherwise as may be available to OHA.

**(e) Survival of Remedies; Remedies Not Exclusive; Non-Waiver.** The rights and remedies of OHA provided for in this Declaration, which by their nature are intended to survive termination of this Declaration, will survive the termination of the Use Restriction Period and of this Declaration. Furthermore, such remedies will not be exclusive and are in addition to any other rights and remedies available at law, in equity or otherwise. No failure of or delay by OHA to enforce any provision of this Declaration will constitute a waiver by OHA of that or any other provision, nor will any single or partial exercise of any right, power or privilege under this Declaration preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.

**6.13. Severability.** If any term or provision of this Declaration 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 will not be affected, and the rights and obligations of the Parties will be construed and enforced as if this Declaration did not contain the particular term or provisions held to be invalid.

**6.14. Survival of Obligations.** The obligations of Declarant as set forth in this Declaration will survive the expiration or termination of the Subcontract.

**6.15. Attorney Fees.** Subject to Article XI, Section 7, of the Oregon Constitution, in the event a lawsuit or other proceeding is instituted regarding this Declaration, the prevailing party in any dispute arising under this Declaration will, to the extent permitted by law, be entitled to recover from the other(s) its reasonable attorney fees and all costs and disbursements incurred at trial, in mediation, and on appeal. Reasonable attorney fees will not exceed the rate charged to OHA by its attorneys. This provision does not apply to lawsuits or other proceedings instituted or maintained by or against tenants or other third-party beneficiaries hereunder, if any, for which lawsuits or other proceedings no award of attorney fees is permitted.

**6.16. Construction.** The Parties to this Declaration acknowledge that each party and its counsel have participated in the drafting and revision of this Declaration (or knowingly and voluntarily waived the party's right to do so). Accordingly, the Parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not apply in the interpretation of this Declaration or any amendment, modification, supplementation or restatement of the foregoing or of any exhibit to this Declaration.

**6.17. Captions.** The captions or headings in this Declaration are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Declaration.

**6.18. Execution and Counterparts.** This Declaration may be executed in several counterparts, each of which will be an original, all of which will constitute but one and the same instrument.

**6.19. Governing Law; Venue: Consent to Jurisdiction.** This Declaration will be governed by the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, “**Claim**”) related to this Declaration will be conducted exclusively within the Circuit Court of Marion County, Oregon (unless Oregon law requires that it be brought and conducted where the real property is located) or, if necessary, the United States District Court for the District of Oregon. In no event will this provision be construed as a waiver by OHA or the State of Oregon of any form of defense or immunity, whether it is 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. OHA and the State of Oregon expressly reserve all sovereignty rights. **DECLARANT, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**

**6.20. Merger Clause.** This Declaration constitutes the entire agreement between the Parties on the subject matter hereof. No modification or amendment of this Declaration will bind either Party unless in writing and signed by the Parties (and the necessary approvals obtained), and no waiver or consent will be effective unless signed by the party against whom such waiver or consent is asserted. Such waiver or consent, if given, will be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Declaration.

**6.21. No Limitations on Actions of OHA in Exercise of Its Governmental Powers.** Nothing in this Declaration is intended, nor will it be construed, to in any way limit the actions of OHA in the exercise of its governmental powers. It is the express intention of the Parties hereto that OHA will retain the full right and ability to exercise its governmental powers with respect to Declarant, the Project, this Declaration, and the transactions contemplated by this Declaration to the same extent as if it were not a party to this Declaration or the transactions contemplated hereby, and in no event will OHA have any liability in contract arising under this Declaration, or otherwise by virtue of any exercise of its governmental powers.

*(Signature Pages Follow)*

IN WITNESS WHEREOF, OHA and Declarant have caused this Declaration to be signed by their duly authorized officers on the Effective Date.

**OHA:** **STATE OF OREGON**, acting by and through its **OREGON HEALTH AUTHORITY**,

**By:** \_\_\_\_\_  
Michael J. Mitchell,  
Director of Business Operations

STATE OF OREGON            )  
  : ss  
County of Marion            )

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2023,  
by \_\_\_\_\_, for and on behalf of the State of Oregon, acting by and through its  
\_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_

**DECLARANT:**

**By:** \_\_\_\_\_

STATE OF OREGON            )  
  : ss  
County of [\_\_\_\_\_])

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2023,  
by \_\_\_\_\_, for and on behalf of \_\_\_\_\_ acting by and through its  
\_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_

**EXHIBIT A**  
**Legal Description**

[\_\_\_\_\_]

