

POLK COUNTY BOARD OF COMMISSIONERS

DATE: March 13, 2024
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.
 - (b) The Homeless Prevention Advisory Council (AKA P.A.T.H.S) will be meeting on March 13, 2024 from 12:00 pm to 2:00 pm located at 1407 Monmouth Independence Hwy, Monmouth OR 97361.
 - (c) The Grand Ronde Sanitary District Board is meeting on March 20, 2024 at 9:15 a.m. The meeting will take place in the Polk County Courthouse, 850 Main Street, Dallas, OR, 97338.
 - (d) The Polk County Board of Commissioners will be speaking at the State of the County meeting on Thursday, March 21, 2024 from 5:30PM to 6:30PM, located in the main conference room of the Polk County Courthouse at 850 Main St Dallas, Oregon 97338.
3. COMMENTS (for items not on this agenda and limited to 3 minutes)
4. APPROVAL OF AGENDA
5. APPROVAL OF THE MINUTES FROM March 6, 2024
6. APPROVAL OF CONSENT CALENDAR
7. PUBLIC HEARING – LEGISLATIVE AMENDMENT 23-03 – Michael Burns

CONSENT CALENDAR

- (a) Polk County Right of Way Dedication, Haga
(Todd Whitaker, Public Works Director)
- (b) Polk County Right of Way Dedication, Lauer
(Todd Whitaker, Public Works Director)
- (c) Polk County Right of Way Dedication, Mesdag
(Todd Whitaker, Public Works Director)
- (d) Polk County Contract No. 24-33 (Amendment 1 to 23-169), Dallas School District
(Jennifer Segovia, Family & Community Outreach)
- (e) Polk County Contract No. 24-35, Service Contract
(Rosana Warren, Behavioral Health)
- (f) Polk County Contract No. 24-37, 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 March 6, 2024

1. CALL TO ORDER & ATTENDANCE

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

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.

The Polk Extension Service District will be meeting at 9:30 am on March 6, 2024. The meeting will be in the main conference room located on the first floor of 850 Main St Dallas OR 97338.

The Homeless Prevention Advisory Council (AKA P.A.T.H.S) will be meeting on March 13, 2024 from 12:00 pm to 2:00 pm located at 1407 Monmouth Independence Hwy, Monmouth OR 97361.

The Polk County Board of Commissioners will be speaking at the State of the County meeting on Thursday, March 21, 2024 from 5:30PM to 6:30PM, located in the main conference room of the Polk County Courthouse at 850 Main St Dallas, Oregon 97338.

3. COMMENTS

None.

4. APPROVAL OF AGENDA

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

MOTION PASSED BY UNANIMOUS VOTE OF THE BOARD.

5. APPROVAL OF MINUTES OF BOARD MEETING OF February 28, 2024

MOTION: COMMISSIONER GORDON MOVED, COMMISSIONER MORDHORST SECONDED, TO APPROVE THE MINUTES OF February 28, 2024.

MOTION PASSED BY UNANIMOUS VOTE OF THE BOARD.

6. APPROVAL OF CONSENT CALENDAR

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

MOTION PASSED BY UNANIMOUS VOTE OF THE BOARD.

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

- (a) **Polk County Resolution No, 24-04, In the Matter of Correcting Resolution No. 24-02
(Greg Hansen, Administrative Officer)**
- (b) **Polk County Contract No. 24-31 (Amendment 2 to 20-205), Lease Agreement
(Dean Bender, Emergency Management Manager)**
- (c) **LPSCC Appointment Memorandum, Jessica Fitts
(Mark Garton, Polk County Sheriff)**

There no need for an executive session and Commissioner Pope adjourned the meeting at 9:02 a.m.

POLK COUNTY BOARD OF COMMISSIONERS

Craig Pope, Chair

Jeremy Gordon, Commissioner

Lyle Mordhorst, Commissioner



POLK COUNTY

POLK COUNTY COURTHOUSE * DALLAS, OREGON 97338
(503) 623-9237

COMMUNITY DEVELOPMENT

AUSTIN M'GUIGAN
Director

MEMORANDUM

TO: Polk County Board of Commissioners
FROM: Michael Burns, Associate Planner
DATE: March 5, 2024
SUBJECT: Legislative Amendment 23-03: Text Amendments to the Polk County Zoning Ordinance Chapters 136 and 177.

Public Hearing – March 13, 2024

ISSUE:

The Polk County Board of Commissioners will hold a public hearing concerning potential text amendments to Polk County Zoning Ordinance (PCZO) Chapters 136 and 177, which pertain to the Exclusive Farm Use (EFU) and Timber Conservation (TC) Zoning Districts. The proposed text amendments are intended to bring PCZO Chapters 136 and 177 into compliance with State law, and to consider adopting optional changes for uses in these zones.

RECOMMENDATION:

Staff recommends that the Board of Commissioners adopt the proposed text amendments to PCZO Chapters 136 and 177, as included in Attachments A and B.

STAFF REPORT:

I. BACKGROUND

Oregon Revised Statute (ORS) 197.646 states that when new land use statutes, statewide land use planning goals or rules implementing the statutes or the goals are enacted, counties must either adopt amendments to their local code to implement the changes to State law or apply those changes directly to land use applications. Currently, the Planning Division applies certain sections of ORS and Oregon Administrative Rules (OAR) directly to land use applications. Some changes in State law are not mandated to be adopted by the local government, but rather allow the local government the opportunity to be more restrictive than State law. The proposed legislative amendment is intended to provide conformity to PCZO Chapter 136 and 177 with land use regulations found in State law where required, and to consider optional changes to PCZO Chapter 136 and 177 where Polk County's local ordinance may currently be more restrictive than or differentiates from State law. It should be noted that many of the required text amendments to the PCZO found in Attachments A and B are not substantive changes but, rather are intended to provide parity with the language found in State law.

Typically, text amendments solely intended for conformance with provisions in State law would be processed through a ministerial action, however, staff has chosen to consolidate those changes that are required and those changes that are optional into one legislative amendment process in order to evaluate all amendments to PCZO Chapter 177 and 136 synchronously.

A public hearing was held before the Polk County Planning Commission on February 6, 2024, where Planning Staff made a recommendation to the Planning Commission regarding the proposed text amendments to PCZO Chapters 136 and 177. The Planning Commission concurred with staff on all proposed text amendments and recommended that the Board of Commissioners adopt staff's recommendations.

II. COMMENTS RECEIVED

No comments were received as of the writing of this staff report.

III. CRITERIA FOR LEGISLATIVE AMENDMENTS

A legislative amendment to the text of the PCZO may be approved provided that the request is based on substantive information and factual basis to support the change. In amending the PCZO, Polk County shall demonstrate compliance with PCZO 115.060. The applicable review and decision criteria are listed in bold, followed by staff's analysis and findings.

1. AMENDING THE TEXT OF THE POLK COUNTY ZONING ORDINANCE.

- (A) **[ORS 197.612(1)] An amendment to the text of the Polk County Zoning Ordinance solely for the purpose of conforming the ordinance to new requirements in a land use statute, statewide land use planning goal or rule of the Land Conservation and Development Commission implementing the statutes or goals may be made without holding a public hearing when:**
 - (1) **Polk County gives notice to the Oregon Department of Land Conservation and Development of the proposed change in the manner provided by ORS 197.610 and 197.615;**
 - (2) **The Oregon Department of Land Conservation and Development confirms in writing that the only effect of the proposed change is to conform the Polk County Zoning Ordinance to the new requirements; and**
 - (3) **The Planning Division provides notice of the proposed change to the Planning Commission.**
- (B) **An amendment to the text of the Polk County Zoning Ordinance under the provisions of subsection (A) of this section shall be considered a ministerial decision and not a land use action. Amendments under subsection (A) of this section need only be adopted on the Board of Commissioner's Consent agenda.**
- (C) **All amendments to the text of the Polk County Zoning Ordinance that are not included in subsection (A) of the section shall be processed under the procedures and criteria for a legislative comprehensive plan amendment described in Chapter 115.**

Staff Findings: The proposed text amendments are intended to bring PCZO Chapters 136 and 177 into conformance with State law where required, and to evaluate and consider adopting optional changes for uses which may be permitted in the EFU and TC Zoning Districts. While a portion of these text amendments are included under subsection (A) of this criteria, not all of the changes are for the purpose of conforming PCZO Chapter 136 and 177 to new requirements found in Oregon Revised Statutes, Statewide Planning Goals, or Oregon Administrative Rules, but rather to consider adopting optional changes. Therefore, staff has determined that the proposed text amendments shall be processed under the procedures and criteria for a legislative comprehensive plan amendment described in PCZO Chapter 115.

The Polk County Board of Commissioners initiated this legislative amendment process on September 19, 2023. Staff sent notice of the proposed text amendments to the Oregon Department of Land and Conservation Development (DLCD) on January 2, 2024. Staff sent notice of the Planning Commission Public Hearing to all interested parties on January 11, 2024, more than 20

days prior to the hearing. Notice of the Planning Commission public hearing was also published in the January 17, 2024 publication of the *Itemized Observer* newspaper and was posted on the Planning Division page of the Polk County website on January 17, 2024. Pursuant to PCZO 115.040, the Planning Commission conducted a public hearing on February 6, 2024 and made a recommendation to the Board of Commissioners to adopt staff's recommendation of the proposed amendments to PCZO Chapters 136 and 177.

Staff sent notice of the March 13, 2024 Board of Commissioners public hearing to all interested parties on February 20, 2024, more than 20 days prior to the hearing. Notice of the Board of Commissioners public hearing was also published in the February 21, 2024 publication of the *Itemized Observer* newspaper and was posted on the Planning Division page of the Polk County website on February 20, 2024. No comments have been received as of the writing of this report.

2. Compliance with Oregon Revised Statutes, and the statewide planning goals and related administrative rules. If an exception to one or more of the goals is necessary, Polk County shall adopt findings which address the exception criteria in Oregon Administrative Rules, Chapter 660, Division 4; [PCZO 115.060(A)]

(B) A local government shall amend its acknowledged comprehensive plan or acknowledged regional framework plan and land use regulations implementing either plan by a self-initiated post-acknowledgment process under ORS 197.610 to 197.625 to comply with a new requirement in land use statutes, statewide land use planning goals or rules implementing the statutes or the goals. [ORS 197.646(1)]

(C) When a local government does not adopt amendments to an acknowledged comprehensive plan, an acknowledged regional framework plan or land use regulations implementing either plan, as required by subsection (1) of this section, the new requirements apply directly to the local government's land use decisions. The failure to adopt amendments to an acknowledged comprehensive plan, an acknowledged regional framework plan or land use regulations implementing either plan required by subsection (1) of this section is a basis for initiation of enforcement action pursuant to ORS 197.319 to 197.335. [ORS 197.646(3)]

General Findings: ORS 197.646 states that when new land use statutes, statewide land use planning goals or rules implementing the statutes or the goals are enacted, counties must either adopt amendments to their local code to implement the changes to State law or apply those changes directly to land use applications. Currently, the Planning Division applies certain sections of ORS and OAR directly to land use applications. Some changes in State law are not mandated to be adopted by the local government but rather allow the local government the opportunity to be more restrictive than State law.

OAR Chapter 660 Division 33 pertains to agricultural lands and the administrative rules that govern land uses that are consistent with Oregon Statewide Planning Goal 3. OAR Chapter 660 Division 6 pertains to forest lands and the administrative rules that govern land uses that are consistent with Oregon Statewide Planning Goal 4. ORS 215 pertains to uses that may be allowed in the EFU and TC zones. This text amendment is intended to add the changes found in OAR Chapter 660 Division 33, OAR Chapter 660 Division 6, and ORS 215 to the PCZO where required by the State. Many of these changes are not substantive but are rather minor changes intended to make the language found in the PCZO verbatim to State law. In other cases, some of the changes would add additional provisions that have not been adopted by the County but have been applied directly to land use applications. Because these required changes are not substantive but rather are for the sake of conformance, staff will not detail these changes in the findings. The full text amendment with all changes can be found in Attachments A and B.

This report will be primarily concentrated on the evaluation of the changes found in OAR Chapter 660 Division 33, OAR Chapter 660 Division 6, and ORS 215 that are not required to be adopted by the County and allow local governments to be more restrictive than State law. Due to changes in State law, PCZO Chapter 136 and 177 are currently more restrictive, less restrictive, or differentiate

from State law in its regulation of some land uses that may be allowed in the EFU and TC zones. As part of this process, the Board of Commissioners could adopt the optional text amendments as proposed by Staff, adopt those text amendments with further restrictions, or choose to not adopt those text amendments. These changes will be referred to in this report as “optional changes,” and are discussed in further detail below along with staff’s recommendation for each change.

In other cases, there have been changes in State law to optional uses which have resulted in the PCZO being less restrictive in some sections. Although these uses are optional, the changes are required to be added to the PCZO in order to continue to be in compliance with State law. These changes will be referred to in this report as “mandatory changes,” and are discussed in further detail below.

Temporary Medical Hardship Dwellings: Optional Change

PCZO 177.035(B) currently permits “One manufactured dwelling or the temporary residential use of an existing building in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident,” subject to an administrative review. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle must be removed or demolished, or returned to an allowed nonresidential use. Temporary medical hardship dwellings are authorized by the State pursuant to ORS 215.755(2) and OAR 660-006-0025(4)(t). State law indicates that a converted building can be converted back to an approved nonresidential use, while a manufactured dwelling or RV must be removed or demolished.

The Planning Division currently authorizes manufactured dwellings that were used as a temporary medical hardship dwelling to be “removed” by converting them to an otherwise approved use. In some instances, the intended use could require the property owner to obtain a change of use building permit, including inspections from the Building Division. In other instances, the intended use could require a new planning authorization. Ultimately, if the intended use of the manufactured dwelling is otherwise permitted by the zone, staff finds that it is not necessary to physically remove the manufactured dwelling from the subject property, so long as all necessary permits are obtained to formally convert and/or re-authorize the structure for an approved use. This process is intended to limit the burdens placed on property owners while also meeting the requirements found in State law. For these reasons, staff recommends not adopting this text amendment as it is written in statute.

Procedure for Temporary Medical Hardship Dwellings: Mandatory Change

State law indicates that temporary medical hardship dwellings should be processed under a conditional use review, as this use is listed under OAR 660-006-0025(4). As discussed above, temporary medical hardship dwellings are currently processed through an administrative review process. Staff currently applies the general review standards listed under PCZO 177.050 to all conditional use applications. The purpose of this criteria is to ensure that the proposal would not force a significant change or significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. Staff already applies PCZO 177.050 to applications for temporary medical hardship dwellings; therefore, changing this process from administrative review to a conditional use review would not alter staff’s evaluation for a temporary medical hardship dwelling. This amendment would change this application from a Type A notification procedure to a Type B notification procedure, as specified in PCZO 111.240. This would require staff to send notice of a complete application to all neighboring property owners located within a 750 foot buffer surrounding the subject property prior to the issuance of the decision. Because this change would be required, staff began processing temporary medical hardship dwellings under a Type B procedure in 2023. Based on the information discussed above, staff finds that this text amendment is a mandatory change.

Temporary Medical Hardship Dwellings: Optional Change

In some instances, temporary medical hardship dwelling applications also require a significant resource management plan if the dwelling would be sited within the inventoried Deer and Elk Habitat Area, which is a Goal 5 protected resource.

Within the Deer and Elk Habitat area, “residential development” is considered a conflicting use. Pursuant to PCZO 182.040(A), when a permitted use in the underlying zone is listed as a conflicting use, the management plan review type is ministerial. However, pursuant to PCZO 182.040(B), when a conditional use is identified as a conditional use, a public hearing is required.

Since the mandatory change identified above includes changing temporary medical hardship dwellings to be a conditional use rather than an administrative review process, staff recommends that clarifying text be added to the temporary hardship dwelling criteria that specifies the requirements of Chapter 182 are applicable, but are not subject to the public hearing requirements listed in 182.040(B). When PCZO Chapter 182 was adopted, temporary hardship dwellings were not conditional uses. Therefore, staff finds that it was never Polk County’s intent to require a public hearing for temporary medical hardship dwellings that are within the Deer and Elk Habitat area. Staff recommends adopting the optional text amendment for temporary hardship dwellings included in Attachments A and B.

Replacement Dwelling: Part Mandatory Changes, Part Optional Changes

The Oregon Legislature recently amended ORS 215.291 through the passage of House Bill 2192 (2023), which pertains to replacement dwellings in resource zones. The proposed changes would include updating the replacement dwelling criteria for Polk County’s EFU and TC zones, while updates to the Farm/Forest zone would be completed through a future legislative amendment process that focuses on updates PCZO Chapter 138.

Staff has identified a discrepancy in ORS 215.291(2)(b)(C), which may require a future legislative correction. ORS 215.291(2)(b)(C) states:

(2) For replacement of a lawfully established dwelling under this section:

(b) The replacement dwelling:

(C) Must comply with the construction provisions of section R327 of the Oregon Residential Specialty Code, if:

- (i) The dwelling is in an area identified as extreme or high wildfire risk on the statewide map of wildfire risk described in ORS 477.490; or
- (ii) No statewide map of wildfire risk has been adopted.

These criteria reference a “statewide map of wildfire risk” described in ORS 477.490 and has additional development standards for properties located within the “high” and “extreme” risk categories. However, the map described in ORS 477.490 is called a “statewide wildfire hazard map” and does not include an “extreme” risk category, but rather only has three risk categories including “low”, “moderate”, and “high”. Staff reviewed a draft of this map and found that Polk County does not contain any “high” wildfire risk areas. For these reasons, staff recommends that the amended criteria found in ORS 215.291(2)(b)(C) not be adopted locally at this time. Instead, staff can apply this statute directly as a condition of development that would require the applicant to determine the applicability of these standards at the time of development.

Staff recommends that all other mandatory changes found in ORS 215.291 be adopted to provide consistency with State law. The replacement dwelling criteria currently found in PCZO Chapters 136 and 177 is both more restrictive and less restrictive than State law and the proposed changes would provide parity.

Home Occupations: Optional Change

PCZO 177.040(A) currently permits home occupations that are operated by a resident of the property in which the business is located, subject to review and approval of a conditional use permit. Home occupations are authorized by the State pursuant to ORS 215.448 and OAR 660-006-0025(4)(s). State law currently authorizes home occupations to be operated by a resident or an employee of a resident of the property on which the business is located.

Under the current criteria listed in PCZO 177.040(A), home occupations must be operated by a resident of the property in which the business is located, but may employ up to five (5) employees. This proposed amendment would authorize home occupations to be operated by an employee of the resident, although, it could not result in any additional employees and would not permit any uses or a size and scale that could not otherwise be permitted under the current criteria. Based on this information, staff finds that PCZO 177.040(A) could be interpreted as being more restrictive than State law. For these reasons, staff recommends adopting the proposed text amendment, as shown in Attachment B.

New Single Family Accessory Dwelling Unit to Support Family Forestry: Optional Change

Pursuant to ORS 215.757 and OAR 660-006-0027(9), counties may choose to allow a new single family accessory dwelling unit to support family forestry in the TC zone subject to a review and approval when the dwelling would be occupied by an owner or a relative of the owner to assist with the forestry operation on the property. The PCZO does not currently list this as a permitted use in the TC zone. Adopting this text amendment would authorize single family accessory dwelling units to support family forestry in the TC zone. To provide clear parameters regarding the manner in which this use may be authorized in the TC zone, staff recommends adopting this text amendment, as shown in Attachment B.

A land division to preserve open space or a park: Optional Change

Pursuant to ORS 215.783 and OAR 660-006-0026(2)(e), counties may choose to adopt standards to allow land divisions to preserve open space or a park in the TC zone. A land division under this criteria would require the purchaser of one of the resulting parcels to be a provider of public parks or open space, or a not-for-profit land conservation organization. Land divisions under this section would still be subject to the partition standards listed in Polk County Subdivision and Partition Ordinance (PCSO) Chapter 91. For these reasons, staff recommends adopting this text amendment, as shown in Attachment B.

Period of Validity for Residential Uses: Mandatory Change

Currently, the PCZO states that land use approvals for residential uses are valid for four (4) years. A single two (2) year extension to this period of validity may be approved upon submission of a written request for an extension prior to the expiration of the approval.

Pursuant to OAR 660-003-00140(5), a permit approved for residential development on agricultural or forest land outside of an urban growth boundary may receive an additional five (5) one-year extensions upon written requests prior to the expiration of the previous extension. Such extensions may only be approved when the applicable residential development statute has not been amended following the approval of the permit, except the amendments to ORS 215.750 by Oregon Laws 2019, chapter 433, section 1; and an applicable rule or land use regulation has not been amended following the issuance of the permit, unless allowed by the county, which may require that the applicant comply with the amended rule or land use regulation. The proposed text amendments would allow the County to grant applicants additional extensions for residential land use applications. For these reasons, staff recommends adopting this text amendment, as shown in Attachment B.

Land Division Requirements: Optional Change

Currently, land partitions in the TC zone must be exercised within two (2) years of the effective date pursuant to PCZO 177.060(F). Staff has not found any provisions in state law which require the period of validity for land partitions in the TC zone to be two (2) years. In this way, the PCZO is more restrictive than state law. Adopting the proposed text amendments would allow the County to give applicants more or less time to exercise approved land divisions. For these reasons, staff recommends adopting this text amendment, as shown in Attachment B.

General Findings: The recommended amendments to PCZO 136 and 177, which would comply with and implement the applicable amendments to State law, are included as Attachments A and B. Consequently, this update process would be consistent with ORS 197.646(1). An exception to the

Oregon Statewide Planning Goals is not required to approve any of these amendments. Staff concludes that the proposed text amendments to the PCZO would comply with this criterion.

(B) Conformance with the Comprehensive Plan (PCCP) goals, policies and intent, and any plan map amendment criteria in the plan; [PCZO 115.060(B)]

Findings: The Polk County Comprehensive Plan (PCCP) is implemented by the provisions in the PCZO and Polk County Subdivision and Partition Ordinance (PCSO). Section 7 of the PCCP, Implementation Techniques, states: “in theory, the zoning ordinance is a legislative expression of the Comprehensive Plan and must satisfy certain standards set out by statute.” The PCCP is implemented within the bounds provided by State law. The PCCP can set goals and policies, which through implementation by the PCZO or PCSO, are more restrictive than State law. However, the provisions of the PCZO or PCSO may not be less restrictive than State law. Where Polk County requirements and ORS conflict, the County is required to apply the more restrictive of the two standards.

As discussed above, ORS 197.646 requires that Polk County update its local code to implement changes to State law. Until such changes are made, the County must implement the new provisions of State law directly. Planning Staff is currently applying State law directly to applications for many of the proposed changes. In light of the changes to State law, Polk County has an opportunity to evaluate and consider adopting these changes to PCZO Chapter 136 and 117. As discussed, some of these changes are required and other changes are optional. Many of the changes are not substantive but are rather intended to provide parity between the local ordinance and the language found in State law.

The proposed text amendments would include changes to PCZO 177.030, which pertains to uses that are outright permitted in the TC zone. These changes are mandatory and would add the language from ORS Chapter 215 and OAR Chapter 660 Division 6 verbatim in order to provide parity with State law. The intent of this is to afford citizens the right to uses that have little or no impact on neighboring properties without requiring a land use application or license. By adopting the language found in State law verbatim, the County would be permitting all such uses that are outright permitted uses and authorized by ORS Chapter 215 and OAR Chapter 660, Division 6. The County does not have deference over any of these changes.

The proposed text amendments would also include changes to PCZO 136.040 and 177.035, which pertain to uses that are subject to administrative review land use application. Similar to PCZO 136.030, these changes are mandatory and are intended to provide parity with State law by adopting the language found in the applicable ORSs and OARs verbatim. Many of these changes have been applied by County staff directly to land use applications. Therefore, the intent of these changes is simply to add the language from State law to the local ordinance rather than applying the provisions directly from State law.

The proposed text amendments could include changes to PCZO 136.050 and 177.040, 177.060, and 177.070, which are uses that the county may be more restrictive in implementing. Changes to these sections that are more restrictive than State law are not mandatory; however, the County may not be less restrictive than State law. As discussed in the previous section, the Planning Commission has made a recommendation to the Board of Commissioners regarding the adoption of each of these changes to the PCZO as provided in Attachments A and B. The proposed amendments to the PCZO were designed to directly implement State law and adopt uses that are not currently permitted by the PCZO. The Board of Commissioners could choose to adopt more restrictive standards in such cases where the Planning Commission has recommended adoption.

Conformance with specific PCCP goals, policies and intent are discussed below.

- 1. Polk County will strive to permit those uses that have little or no impact on neighboring properties without requiring a land use determination or limited land use determination. [PCCP Section 2, Element A, Goal 1.3]**
- 2. Polk County will permit those farm and nonfarm uses in agricultural areas**

authorized by Oregon Revised Statutes Chapter 215 and Oregon Administrative Rules Chapter 660, Division 33. [PCCP Section 2, Element B, Agricultural Lands Policy 1.4]

- 3. Polk County will permit farm-related and non-farm residential use in agricultural areas consistent with Oregon Revised Statutes Chapter 215 and Oregon Administrative Rules Chapter 660, Division 33.** [PCCP Section 2, Element B, Agricultural Lands Policy 1.6]

Findings: As discussed, some of the proposed text amendments would directly implement ORS Chapter 215 and OAR Chapter 660, Division 33. These text amendments would be consistent with PCCP Section 2, Element B, Policy 1.4, which states that Polk County will permit those farm and nonfarm uses in agricultural areas authorized by ORS Chapter 215 and OAR 660-033. The proposed text amendments to PCZO Chapter 136 for hardship dwellings in the EFU zone would also be consistent with PCCP Section 2, Element B, Agricultural Lands Policy 1.6, which states that Polk County will permit farm-related and non-farm residential use in agricultural areas consistent with Oregon Revised Statutes Chapter 215 and Oregon Administrative Rules Chapter 660, Division 33. In addition, the required text amendments, specifically the outright permitted uses listed in PCZO 136.030, would be consistent with PCCP Section 2, Element A, Goal 1.3, which states Polk County will strive to permit those uses that have little or no impact on neighboring properties without requiring a land use determination or limited land use determination.

- 4. Polk County will discourage the development of nonfarm uses in agricultural areas.** [PCCP Section 2, Element B, Agricultural Lands Policy 1.5]

Findings: The proposed text amendments would include amendments to nonfarm uses. PCCP Section 2, Element B, Agricultural Lands Policy 1.5 is intended to discourage nonfarm uses in the EFU zone, although, it is acknowledged that some nonfarm uses are permitted subject to review and approval of an administrative or conditional use application. As mentioned, in such cases where additional nonfarm uses could be permitted or where there have been changes to State law pertaining to nonfarm uses, staff has designed the proposed amendments to the PCZO to directly implement State law. Because such nonfarm uses are subject to review and approval from the Planning Division, limitations and conditions can be imposed to limit the impacts of those nonfarm uses. For this reason, staff finds the proposed text amendments would be consistent with PCCP Section 2, Element B, Agricultural Lands Policy 1.5.

- 5. Polk County shall zone forest lands for uses allowed pursuant to Oregon Administrative Rules Chapter 660, Division 6. In addition to forest practices and operations and uses auxiliary to forest practices, as set forth in Oregon Revised Statute 527.722, Polk County shall allow in the forest environment the following general types of uses:**
 - a. Uses related to, and in support of, forest operations;**
 - b. Uses to conserve soil, water and air quality and to provide for fish and wildlife resources, agriculture and recreational opportunities appropriate for the forest lands;**
 - c. Locally dependent uses such as communication towers, mineral and aggregate resources use, etc.;**
 - d. Forest management dwellings as provided for in Oregon Administrative Rule 660-06-027; and e. Other dwellings under prescribed conditions.** [PCCP Section 2, Element C, Forest Lands Policy 1.4]
- 6. Polk County will permit new dwellings and structures on designated forest lands consistent with Oregon Revised Statutes Chapter 215 and Oregon Administrative Rules Chapter 660, Division 6.** [PCCP Section 2, Element C, Forest Lands Policy 1.5]

Findings: As previously discussed, the proposed text amendments would directly implement Chapter 215 and OAR Chapter 660, Division 06 for uses in the TC zone. These text amendments would be consistent with PCCP Section 2, Element C, Forest Lands Policies 1.4 and 1.5, which state that Polk County will permit those uses, including the new Single Family Accessory Dwelling Unit to Support Family Forestry Use, on forest lands authorized by ORS Chapter 215 and OAR 660-006.

7. **Polk County shall provide the opportunity to establish single-family dwellings on designated forest lands that comply with lot-of-record provisions established under state law consistent with Oregon Revised Statutes, Chapter 215, and Oregon Administrative Rules, Chapter 660, Division 6.** [PCCP Section 2, Element C, Forest Lands Policy 1.6]

Findings: The proposed text amendments would include amendments to lot-of-record dwelling criteria listed in PCZO 177.070(A) in order to provide conformity with ORS Chapter 215 and OAR Chapter 660, Division 06. These text amendments would be consistent with PCCP Section 2, Element C, Forest Lands Policy 1.6 which states that Polk County shall provide the opportunity to establish single-family dwellings on forest lands that comply with lot-of-record provisions found in ORS Chapter 215 and OAR Chapter 660, Division 06.

8. **Polk County will review all requests for the division of land in forest land areas and will permit only those which meet the following criteria:**
 - a. **For forest operations and practices, the minimum lot size will be at least 80 acres.**
 - b. **For non-forest parcels, the proposed division is consistent with Oregon Revised Statutes, Chapter 215, and Oregon Administrative Rules, Chapter 660, Division 6 and complies with all applicable requirements of the zoning and partitioning ordinances.** [PCCP Section 2, Element C, Forest Lands Policy 1.7]

Findings: Some of the proposed text amendments would directly implement ORS Chapter 215 and OAR Chapter 660, Division 06 by providing parity between the language in these chapters, and the PCZO. The proposed text amendments also include a new set of criteria under which an applicant could divide their land to preserve open space or a park in the TC zone pursuant to OAR 660-006-0026(2)(e). These text amendments would be consistent with PCCP Section 2, Element C, Forest Lands Policy 1.7, which states that Polk County will only permit land division requests in forest land when the minimum parcel size is at least 80 acres or the proposed division is consistent with ORS Chapter 215 and OAR Chapter 660, Division 06.

- (C) **That the proposed change is in the public interest and will be of general public benefit; and**

Findings: The purpose of this legislative amendment is to update the PCZO in order to reflect changes in State law or discrepancies found between State law and the PCZO. The proposed amendments would be in the public interest because they would provide continuity between the requirements of State law and the PCZO. Currently, the Planning Division must apply ORS 215, OAR Chapter 660 Division 6, and OAR Chapter 660 Division 33 directly to some types of land use applications. This situation makes it difficult for applicants and property owners to understand what provisions apply to their property. The proposed text amendments would resolve that issue. This continuity would benefit both applicants and other property owners seeking to understand their property rights.

This process also provides the opportunity for the Board of Commissioners to consider how to regulate specific optional uses where the county can be more restrictive than State law. For those optional changes discussed in this report, the Board of Commissioners could adopt the text amendments as proposed by Staff and recommended by the Planning Commission, apply those text amendments with further restrictions, or choose to not adopt the text amendments. In some cases,

there have been changes in State law to optional uses which have resulted in the PCZO being less restrictive in some sections. Although these uses are optional, the changes are required to be adopted in order to continue to be in compliance with State law. For such changes, the Board of Commissioners shall adopt those changes as required to no longer be less restrictive than State law, which would alleviate the need to apply State law directly to land use applications.

Staff believes that adopting the language from State law directly rather than being more restrictive than State law would be in the public interest and of general public benefit because it remove certain restrictions and would afford property owners certain property rights that are authorized by the State and which are not currently permitted in the TC zone. As discussed above, staff and the Planning Commission have also recommended that some optional changes should not be adopted. For those changes, staff believes that adoption would be unnecessary and it would be in the public interest and would be of general public benefit to not adopt those changes at this time. Staff's and the Planning Commission's recommendations on the specific optional changes are discussed in further detail above.

(D) Compliance with the provisions of any applicable intergovernmental agreement pertaining to urban growth boundaries and urbanizable land.

Findings: Polk County has adopted intergovernmental agreements (IGAs) with each of the cities that have urban growth boundaries (UGB) that extend outside of city limits and into Polk County's planning jurisdiction. These cities are Salem, Dallas, Monmouth, Independence, and Willamina. The Falls City UGB is entirely located within city limits; therefore, Polk County does not have an IGA regarding UGB land use management with Falls City.

The proposed text amendments to the PCZO would amend the standards for some uses that are outright permitted and some uses that are subject to review and approval of an administrative review or conditional use application in the EFU and TC zones. While most properties in the UGB are zoned Suburban Residential (SR), where these text amendments would not apply, some properties in UGBs are zoned EFU. None of the proposed text amendments would impact the existing terms of any IGA's with any cities. Polk County will continue to provide notice to cities when the county receives land use applications for property located within an adopted UGB.

Staff finds that the proposed text amendments would comply with this criterion.

IV. CONCLUSION

Based on the findings above, Staff concludes that the proposed amendments to the Polk County Zoning Ordinance would comply with all of the applicable review and decision criteria for a legislative amendment. As discussed, staff and the Planning Commission recommend that the Board of Commissioners adopt the following text amendments found in Attachments A and B:

- 1). All mandatory changes to PCZO 136.
 - Replacement Dwellings (136.040(I))
- 2). All mandatory changes to PCZO 177, including changes to:
 - Private Parks and Campgrounds (177.040(G))
 - Temporary Medical Hardship Dwellings (136.050(G))
 - Replacement Dwellings (177.035(B))
 - Period of Validity for Residential Uses (177.210)
- 3). All optional changes to PCZO 136 including changes to:
 - Replacement Dwellings (136.040(I))
 - Temporary Medical Hardship Dwellings (136.050(G))
- 4). All optional changes to PCZO 177 including changes to:

- Replacement Dwellings
- Temporary Medical Hardship Dwellings (177.040(Z))
- Home Occupations (177.040(A))
- Land Division Requirements (177.060(F))

5) All new uses and/or provisions that would be listed under PCZO 177, including:

- A land division to preserve open space or a park
- New Single Family Accessory Dwelling Unit to Support Family Forestry

BOARD OF COMMISSIONERS ACTION:

After opening the public hearing and receiving testimony, the Board of Commissioners options include the following:

- (1) Move to approve Legislative Amendment 23-03 as recommended by Staff and the Planning Commission, thereby amending chapter 136 and 177 of the PCZO by:
 - (a) Adopting the PCZO amendments presented in Attachments A and B of the Staff Report,
or
 - (b) As further amended by the Board of Commissioners (state revisions); or
- (2) Continue the public hearing; or
- (3) Other

ATTACHMENTS:

- A - Proposed Amendments to PCZO Chapter 136
- B - Proposed Amendments to PCZO Chapter 177

**Amendments to Polk County Zoning Ordinance Chapter 136;
Exclusive Farm Use (EFU) Zoning District**

Additions are double underlined

Deletions are in ~~strikethrough~~

136.040. USES SUBJECT TO ADMINISTRATIVE REVIEW. The following uses are permitted, subject to review and approval under the prescriptive standards specified herein and as may otherwise be indicated by federal, state and local regulations and permits:

- (I) Replacement Dwelling [OAR 660-033-0130(8) and temporary provisions relating to replacement dwellings are compiled as notes following ORS 215.291]. A lawfully established dwelling may be altered, restored or replaced under ORS 215.283(1)(p).
- (1) ~~The dwelling may be altered, restored or replaced if, when an application for a permit is submitted, the permitting authority:~~
- (a) ~~Finds to the satisfaction of the permitting authority that the dwelling to be altered, restored or replaced has, or formerly had:~~
- (i) ~~Intact exterior walls and roof structure;~~
- (ii) ~~Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;~~
- (iii) ~~Interior wiring for interior lights; and~~
- (iv) ~~A heating system; and~~
- (b) ~~If the dwelling was removed, destroyed or demolished:~~
- (i) ~~The dwelling's tax lot does not have a lien for delinquent ad valorem taxes; and~~
- (ii) ~~Any removal, destruction or demolition occurred on or after January 1, 1973;~~
- (c) ~~If the dwelling is currently in such a state of disrepair that the dwelling is unsafe for occupancy or constitutes an attractive nuisance, the dwelling's tax lot does not have a lien for delinquent ad valorem taxes;~~
~~or~~
- (d) ~~A dwelling not described in subparagraph (b) or (c) of this paragraph was assessed as a dwelling for purposes of ad valorem taxation:~~
- (i) ~~For the previous five property tax years; or~~
- (ii) ~~From the time when the dwelling was erected upon or affixed to the land and became subject to assessment as described in ORS 307.010.~~
- (2) ~~For replacement of a lawfully established dwelling under this section:~~
- (a) ~~The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use:~~
- (i) ~~Within one year after the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055; or~~
- (ii) ~~If the dwelling to be replaced is, in the discretion of the permitting authority, in such a state of disrepair that the structure is unsafe for occupancy or constitutes an attractive~~

nuisance, on or before a date set by the permitting authority that is not less than 90 days after the replacement permit is issued.

- (b) ~~The replacement dwelling:

 - (i) ~~May be sited on any part of the same lot or parcel.~~
 - (ii) ~~Must comply with applicable siting standards. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling.~~~~
- (c) ~~As a condition of approval, if the dwelling to be replaced is located on a portion of the lot or parcel that is not zoned for exclusive farm use, the applicant shall execute and cause to be recorded in the deed records of the county in which the property is located a deed restriction prohibiting the siting of another dwelling on that portion of the lot or parcel. The restriction imposed is irrevocable unless the county planning director, or the director's designee, places a statement of release in the deed records of the county to the effect that the provisions of this section and ORS 215.283 regarding replacement dwellings have changed to allow the lawful siting of another dwelling.~~
- (3) ~~Notwithstanding subsection (2)(b)(i) of this section, the replacement dwelling must be sited on the same lot or parcel:

 - (a) ~~Using all or part of the footprint of the replaced dwelling or near a road, ditch, river, property line, forest boundary or another natural boundary of the lot or parcel; and~~
 - (b) ~~If possible, for the purpose of minimizing the adverse impacts on resource use of land in the area, within a concentration or cluster of structures or within 500 yards of another structure.~~~~
- (4) ~~The County Planning Director, or the Director's designee, shall maintain a record of the lots and parcels that do not qualify for the siting of a new dwelling under subsection (2) of this section, including a copy of the deed restrictions filed under subsection (2)(c) of this section.~~
- (5) ~~If an applicant is granted a deferred replacement permit under this section:

 - (a) ~~The deferred replacement permit:

 - (i) ~~Does not expire but, notwithstanding subsection (2)(a)(i) of this section, the permit becomes void unless the dwelling to be replaced is removed or demolished within three months after the deferred replacement permit is issued; and~~
 - (ii) ~~May not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.~~~~
 - (b) ~~The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling.~~~~

Notes: ~~(1) A replacement dwelling permit that is issued under ORS 215.283(1)(p) is not subject to the time to act limits of ORS 215.417 [OAR 660-0033-0130(8)(e)(B)]~~

~~(2) These temporary provisions to ORS 215.291 sunset on January 2, 2024. [Amended by Ordinance 18-01 and 23-01]~~

- (1) A lawfully established dwelling may be altered, restored or replaced under ORS 215.283(1)(p) if the county determines that the dwelling to be altered, restored or replaced:
- (a) Has, or formerly had:
 - (i) Intact exterior walls and roof structure;
 - (ii) Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;
 - (iii) Interior wiring for interior lights; and
 - (iv) A heating system; and
 - (b) Unless the value of the dwelling was eliminated as a result of destruction or demolition, was assessed as a dwelling for purposes of ad valorem taxation since the later of:
 - (i) Five years before the date of the application; or
 - (ii) The date that the dwelling was erected upon or fixed to the land and became subject to property tax assessment; or
 - (c) If the value of the dwelling was eliminated as a result of destruction or demolition, was assessed as a dwelling for purposes of ad valorem taxation prior to the destruction or demolition and since the later of:
 - (i) Five years before the date of the destruction or demolition; or
 - (ii) The date that the dwelling was erected upon or fixed to the land and became subject to property tax assessment.
- (2) For replacement of a lawfully established dwelling under this section:
- (a) The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use within three months after the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055.
 - (b) The replacement dwelling:
 - (i) May be sited on any part of the same lot or parcel.
 - (ii) Must comply with applicable siting standards. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling.
 - (c) As a condition of approval, if the dwelling to be replaced is located on a portion of the lot or parcel that is not zoned for exclusive farm use, the applicant shall execute and cause to be recorded in the deed records of the county in which the property is located a deed restriction prohibiting the siting of another dwelling on that portion of the lot or parcel. The restriction imposed is irrevocable unless the county planning director, or the director's designee, places a statement of release in the deed records of the county to the effect that the provisions of this section and either ORS 215.213 or 215.283 regarding replacement dwellings have changed to allow the lawful siting of another dwelling.
- (3) The county planning director, or the director's designee, shall maintain a record of the lots and parcels that do not qualify for the siting of a new

- dwelling under subsection (2) of this section, including a copy of the deed restrictions filed under subsection (2)(c) of this section.
- (4) If an applicant is granted a deferred replacement permit under this section:
- (a) The deferred replacement permit:
- (i) Does not expire but the permit becomes void unless the dwelling to be replaced is removed or demolished within three months after the deferred replacement permit is issued; and
- (ii) May not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.
- (b) The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction.
- (5) An application under this section must be filed within three years following the date that the dwelling last possessed all the features listed under subsection (1)(a) of this section.
- (6) Construction of a replacement dwelling approved under this section must commence no later than four years after the approval of the application under this section becomes final.

136.050 CONDITIONAL USES [OAR 660-033-0130]. The following uses may be approved, subject to compliance with the procedures and criteria under Chapter 119, applicable state and federal regulations, and other specific criteria as may be indicated:

- (G) Temporary Medical Hardship Dwelling [OAR 660-033-0130(10)]. One manufactured dwelling, recreational vehicle, or the temporary residential use of an existing building in conjunction with an existing dwelling as a temporary use for the term of the hardship suffered by the existing resident or a relative of the resident, subject to compliance with Section 136.060, provided that: [Amended by Ordinance 23-03]
- (1) The hardship is certified by a licensed physician;
- (2) The manufactured home or existing building converted to residential use is connected to the existing sewage disposal system; except when the County Sanitarian finds the existing system to be inadequate and that it cannot be repaired or is not physically available to serve the additional dwelling; If the manufactured home will use a public sanitary system, such condition will not be required.
- (3) The applicant agrees to renew the permit every two years.
- (4) Within 3 months of the end of the hardship, the manufactured dwelling, recreational vehicle, or building converted to a temporary residential use, shall be removed, demolished, or converted to an approved nonresidential use.
- (5) As used in this section, "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons.
- (6) A temporary residence approved under this section is not eligible for replacement under Section 136.040(I).
- (7) If the temporary hardship dwelling is located within a big game habitat significant resource area, it shall be subject to the requirements listed in

Chapter 182, but shall not be subject to the public hearing requirements listed under Section 182.040(B).

**Amendments to Polk County Zoning Ordinance Chapter 177;
Timber Conservation (TC) Zoning District**

Additions are double underlined

Deletions are in ~~strikethrough~~

177.020. DEFINITIONS. For the purposes of this Chapter, the following definitions shall apply:

(~~IC~~) *Center of the Subject Tract.* As used in Section 177.070, “center of the subject tract” means the mathematical centroid of the tract. [~~Amended by Ordinance 23-01~~]

(~~D~~) *Commercial Tree Species* means trees recognized for commercial production under rules adopted by the State Board of Forestry pursuant to ORS 527.715.

(~~EE~~) *Cubic Foot Per Acre Per Year* means the average annual increase in cubic foot volume of wood fiber per acre for fully stocked stands at the culmination of mean annual increment as reported by the USDA Natural Resource Conservation Service (NRCS) soil survey. [~~Amended by Ordinance 11-03~~]

(~~DE~~) *Cubic Foot Per Tract Per Year* means the average annual increase in cubic foot volume of wood fiber per tract for fully stocked stands at the culmination of mean annual increment as reported by the USDA Natural Resource Conservation Service (NRCS) soil survey. [~~Amended by Ordinance 11-03~~]

(~~EG~~) *Date of Creation and Existence.* When a lot, parcel or tract is reconfigured pursuant to applicable law after November 4, 1993, the effect of which is to qualify a lot, parcel or tract for the siting of a dwelling, the date of the reconfiguration is the date of creation or existence. Reconfigured means any change in the boundary of the lot, parcel or tract.

(~~H~~) *Forest Lands* as defined in Goal 4 are those lands acknowledged as forest lands, or, in the case of a plan amendment, forest lands shall include:

(1) Lands that are suitable for commercial forest uses, including adjacent or nearby lands which are necessary to permit forest operations or practices; and

(2) Other forested lands that maintain soil, air, water and fish and wildlife resources.

(~~FI~~) *Forest Operation* means any commercial activity relating to the growing or harvesting of any forest tree species as defined in ORS 527.620(6).

(~~J~~) *Primary processing of forest products* means the initial treatments of logs or other forest plant or fungi materials to prepare them for shipment for further processing or to market, including, but not limited to, debarking, peeling, drying, cleaning, sorting, chipping, grinding, sawing, shaping, notching, biofuels conversion, or other similar methods of initial treatments.

(~~GK~~) *Relative* means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin. [~~ORS 215.283(1)(e)(A)~~]

(~~HL~~) *Tract* means one or more contiguous lots or parcels in the same ownership as provided in ORS 215.010(2).

177.030. USES PERMITTED BY RIGHT. No building, structure, or premise shall be used, arranged, or designed to be used, erected, structurally altered or enlarged, except for one or more of the following uses.

- (E) Uses and activities to conserve soil, air, and water quality and to provide for and manage wildlife and fisheries resources, including, but not limited to creation, restoration, and enhancement of wetlands, fisheries, and wildlife habitat.
- (F) ~~Additional local~~ Local distribution lines ~~within existing public rights-of-way~~ (e.g., electric, telephone, natural gas, etc.) and accessory equipment (e.g., electric distribution transformers, meter cabinets, terminal boxes, pedestals), ~~and which or equipment that~~ provide service hookups, including water service hookups.
- (G) Temporary portable facility for the primary processing of forest products. The facility shall be removed at the conclusion of the forest operation requiring its use.
- (H) Exploration for and production of geothermal, gas, oil, and other associated hydrocarbons, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the well head as defined in ORS Chapters 517 and 520.
- (L) Disposal site for solid waste that has been ordered established by the Environmental Quality Commission under ORS 459.049, together with the equipment, facilities or buildings necessary for its operation. Such site designation shall require owner consent.
- (M) Temporary forest labor camps, without any permanent structures, limited to the duration of the forest operation requiring the use.
- (O) Private ~~fee~~ and ~~fee~~ hunting or fishing operations without any accommodations.
- (Q) Destination resorts pursuant to ORS 197.435 to 197.465 ~~467~~ and upon compliance with Statewide Planning Goal 8.

177.035. USES SUBJECT TO ADMINISTRATIVE REVIEW. The following uses are permitted, subject to review and approval under the prescriptive standards specified herein, ~~the dwelling standards under 177.070; the general siting standards for dwellings and structures under Section 177.080, the fire siting standards for dwellings and structures under 177.090, and as may otherwise be indicated by federal, state and local permits or regulations.~~ [Amended by Ordinance 11-03 and 23-01]

- (A) Single-family dwelling, as authorized under Section 177.070 of this ordinance and such accessory buildings and uses as are normally associated with a single-family dwelling.
- ~~(B) One manufactured dwelling or the temporary residential use of an existing building in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. As used in this section, "hardship" means a medical hardship or hardships for the care of an aged or infirm person or persons. The application shall be subject to:

 - ~~(1) The general review standards in Sections 177.050(A), (B), (C) and (D);~~
 - ~~(2) The hardship is certified by a licensed physician;~~
 - ~~(3) The applicant agrees to renew the permit every two years.~~
 - ~~(4) Conditions being imposed that require:

 - ~~(a) The manufactured dwelling or existing building converted to residential use is connected to the existing sewage disposal system, unless the Community Development Department finds the existing system to be inadequate and that it cannot be repaired or is not physically available. If the manufactured home will use a public sanitary system, such condition will not be required. Establishment of a separate sewage disposal system does not vest a right to retain the temporary dwelling after the conclusion of the hardship.~~
 - ~~(b) Within 3 months of the end of the hardship, the manufactured dwelling or in the case of an existing building converted to a temporary residential use, shall be removed, demolished, or converted to an approved nonresidential use.~~~~~~

- ~~(e) A temporary residence approved under this section is not eligible for replacement under Section 177.035(C).~~
- ~~(C) Alteration, restoration, or replacement of a lawfully established dwelling which has:~~
- ~~(1) Intact exterior walls and roof structure;~~
 - ~~(2) Interior plumbing, including kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;~~
 - ~~(3) Interior wiring for interior lights;~~
 - ~~(4) A heating system; and~~
 - ~~(5) The dwelling to be replaced must be removed, demolished or converted to an approved non-residential use, within 3 months of the completion of the replacement dwelling.~~
- (B) A lawfully established dwelling may be altered, restored or replaced under ORS 215.291 and 215.755:
- (1) If the county determines that the dwelling to be altered, restored or replaced:
 - (a) Has, or formerly had:
 - (i) Intact exterior walls and roof structure;
 - (ii) Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;
 - (iii) Interior wiring for interior lights; and
 - (iv) A heating system; and
 - (b) Unless the value of the dwelling was eliminated as a result of destruction or demolition, was assessed as a dwelling for purposes of ad valorem taxation since the later of:
 - (i) Five years before the date of the application; or
 - (ii) The date that the dwelling was erected upon or fixed to the land and became subject to property tax assessment; or
 - (c) If the value of the dwelling was eliminated as a result of destruction or demolition, was assessed as a dwelling for purposes of ad valorem taxation prior to the destruction or demolition and since the later of:
 - (i) Five years before the date of the destruction or demolition; or
 - (ii) The date that the dwelling was erected upon or fixed to the land and became subject to property tax assessment.
 - (2) For replacement of a lawfully established dwelling under this section:
 - (a) The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use within three months after the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055.
 - (b) The replacement dwelling:
 - (i) May be sited on any part of the same lot or parcel.
 - (ii) Must comply with applicable siting standards. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling.
 - (c) As a condition of approval, if the dwelling to be replaced is located on a portion of the lot or parcel that is not zoned for exclusive farm use, the applicant shall execute and cause to be recorded in the deed records of the county in which the property is located a deed restriction prohibiting the siting of another dwelling on that portion of the lot or parcel. The restriction imposed is irrevocable unless the county planning director, or the director's designee, places a statement of release in the

deed records of the county to the effect that the provisions of this section and ORS 215.283 regarding replacement dwellings have changed to allow the lawful siting of another dwelling.

- (3) The county planning director, or the director's designee, shall maintain a record of the lots and parcels that do not qualify for the siting of a new dwelling under subsection (2) of this section, including a copy of the deed restrictions filed under subsection (2)(c) of this section.
- (4) If an applicant is granted a deferred replacement permit under this section:
- (a) The deferred replacement permit:
- (i) Does not expire but the permit becomes void unless the dwelling to be replaced is removed or demolished within three months after the deferred replacement permit is issued; and
- (ii) May not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.
- (b) The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction.
- (5) An application under this section must be filed within three years following the date that the dwelling last possessed all the features listed under subsection (1)(a) of this section.
- (6) Construction of a replacement dwelling approved under this section must commence no later than four years after the approval of the application under this section becomes final.
- (DC) A lawfully established dwelling that is destroyed by wildfire may be replaced within 60 months when:
- (1) The county finds, based on substantial evidence, that the dwelling to be replaced contained those items listed at subsection ~~(C)(1) through (5)(B)(1)(a)~~. For the purposes of this subsection, substantial evidence includes, but is not limited to, county assessor data.
- (2) The property owner of the record at the time of the wildfire may reside on the subject property in an existing building, tent, travel trailer, yurt, recreational vehicle, or similar accommodation unit replacement has been completed or the time for replacement has expired. [Amended by Ordinance 23-01]
- (ED) Wind energy systems utilizing a tower and meteorological towers outside of an adopted urban growth boundary that are not commercial power generating facilities that would utilize a tower(s) that requires lighting or that requires modification to the height or type of construction standards described in Section 112.135(C)(1), as provided in Sections 112.135 and 112.137. [Amended by Ordinance 09-06]

177.040. CONDITIONAL USES. The following conditional uses may be allowed subject to compliance with the procedures and criteria under Chapter 119, the general review standards under 177.050, the general siting standards for dwellings and structures under 177.080, the fire siting standards for dwellings and structures under 177.090, applicable state and federal regulations, and other specific criteria as may be indicated. [Amended by Ordinance 11-03]

- (A) Home occupations, subject to ~~the general review standards under Sections 177.050(A), (B), (C), and (D), and compliance with~~ the following standards and conditions from ORS 215.448:
- (1) ~~The home occupation~~ It shall be is operated by a resident or employee of a resident of the property on which the business is located;

- (2) ~~It shall employ on the site N~~no more than five full or part-time persons are employed by the business;
- (3) ~~It shall be operated The business is conducted~~substantially in:
- (a) ~~within €~~The dwelling; or
 - (b) ~~o~~Other buildings normally associated with the uses permitted in the zone in which the property is located; and
- (4) ~~The business will~~It shall not unreasonably interfere with other uses permitted in the zone in which the property is located, existing uses on nearby land or with other permitted uses. [Amended by Ordinance 13-05]
- (5) The governing body of the county or its designate may establish additional reasonable conditions of approval for the establishment of a home occupation under this section.
- (6) Nothing in this section authorizes the governing body or its designee to permit construction of any structure that would not otherwise be allowed in the zone in which the home occupation is to be established.
- (7) The existence of home occupations shall not be used as justification for a zone change.
- (B) Mining and processing of oil, gas, or other subsurface resources, as defined in ORS Chapter 520, and not otherwise permitted under 177.030(H) (e.g., compressors, separators and storage serving multiple wells), and mining and processing of aggregate and mineral resources as defined in ORS Chapter 517, ~~subject to compliance with Sections 177.050(A), (B), and (D).~~
- (C) Permanent facility for the primary processing of forest products, ~~subject to compliance with Sections 177.050(A), (B), and (D).~~
- (1) Located in a building or buildings that do not exceed 10,000 square feet in total floor area, or an outdoor area that does not exceed one acre excluding laydown and storage yards, or a proportionate combination of indoor and outdoor areas; and
 - (2) Adequately separated from surrounding properties to reasonably mitigate noise, odor and other impacts generated by the facility that adversely affect forest management and other existing uses, as determined by the governing body.
- (D) Permanent logging equipment repair and storage, ~~subject to compliance with Sections 177.050(A), (B), and (D).~~
- (E) Log scaling and weigh stations, ~~subject to compliance with Sections 177.050(A), (B), and (D).~~
- (F) Disposal site for solid waste approved by the governing body of a city or county or both and for which the Department of Environmental Quality has granted a permit under ORS 459.245, together with equipment, facilities or buildings necessary for its operation. Such site designation shall require owner consent, ~~subject to compliance with Sections 177.050(A), (B), and (D).~~
- (G) Private Parks and campgrounds, ~~subject to compliance with Sections 177.050(A), (B), (C) and (D).~~ Except on a lot or parcel contiguous to a lake or reservoir, private campgrounds shall not be allowed within three (3) miles of an urban growth boundary unless an exception to Statewide Planning Goal 4 is approved, pursuant to ORS 197.732 and OAR Chapter 660, Division 4. For the purpose of this title, a campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site that is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites. A camping site may be occupied by a tent, travel trailer, yurt, or recreational vehicle. Separate

sewer, water, or electric service hookups shall not be provided to individual campsites, except that electrical service may be provided to yurts allowed by this subsection. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Campgrounds authorized by this title shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive six (6) month period.)

Note: As used in this Section, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook up, or internal cooking appliance. (G) Private parks and campgrounds. A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes. Campgrounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations.

- (1) Vacation or recreational purposes. Except on a lot or parcel contiguous to a lake or reservoir, private campgrounds devoted to vacation or recreational purposes shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4. Campgrounds approved under this subsection must be found to be established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground and designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive six-month period.
 - (a) Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites except that electrical service may be provided to yurts allowed for by subsection (3).
 - (b) Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive six-month period.
- (2) Emergency purposes. Emergency campgrounds may be authorized when a wildfire identified in an Executive Order issued by the Governor in accordance with the Emergency Conflagration Act, ORS 476.510 through 476.610, has destroyed homes or caused residential evacuations, or both within the county or an adjacent county. Commercial activities shall be limited to mobile commissary services scaled to meet the needs of campground occupants. Campgrounds approved under this section must be removed or converted to an allowed use within 36 months from the date of the Governor's Executive Order. The county may grant two additional 12-month extensions upon demonstration by the applicant that the campground continues to be necessary to support the natural hazard event recovery efforts because permanent housing units replacing those lost to the natural hazard event are not available in sufficient quantities. A county must process applications filed pursuant to this section in the manner identified at ORS 215.416(11).
 - (a) Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer hook-ups shall not be provided to individual camp sites.
 - (b) Campgrounds shall be located outside of flood, geological, or wildfire hazard areas identified in adopted comprehensive plans and land use regulations to the extent possible.

- (c) A plan for removing or converting the temporary campground to an allowed use at the end of the time-frame specified in subsection (2) shall be included in the application materials and, upon meeting the county's satisfaction, be attached to the decision as a condition of approval. A county may require that a removal plan developed pursuant to this subparagraph include a specific financial agreement in the form of a performance bond, letter of credit or other assurance acceptable to the county that is furnished by the applicant in an amount necessary to ensure that there are adequate funds available for removal or conversion activities to be completed.
- (3) Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the Commission determines that the increase will comply with the standards described in ORS 215.296(1). As used in this rule, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.
- (4) For applications submitted under subsection (2), the county may find the criteria of PCZO 177.050 to be satisfied when:
- (a) The Governor has issued an Executive Order declaring an emergency for all or parts of Oregon pursuant to ORS 401.165, et seq.
- (b) The number of proposed campsites does not exceed 12; or
- (c) The number of proposed campsites does not exceed 36; and
- (d) Campsites and other campground facilities are located at least 660 feet from adjacent lands planned and zoned for resource use under Goals 3, 4, or both.
- (H) Public parks including only those uses specified under OAR 660-034-0035, or OAR 660-034-0040, whichever is applicable, ~~subject to compliance with Sections 177.050(A), (B), and (D).~~
- (I) Television, microwave and radio communication facilities and transmission towers, as provided in Section 112.135, ~~subject to compliance with Sections 177.050(A), (B), and (D).~~
- (J) Fire stations for rural fire protection, ~~subject to compliance with Sections 177.050(A), (B), and (D).~~
- (K) Commercial power generating facilities, ~~subject to compliance with Sections 177.050(A), (B), and (D).~~ An exception to the statewide Forest Lands Planning Goal is required where development of the power generating facility removes more than 10 acres from use as a commercial forest operation.
- (L) Aids to navigation and aviation, ~~subject to compliance with Sections 177.050(A), (B), and (D).~~
- (M) Water intake facilities, related treatment facilities, pumping stations, and distribution lines, ~~subject to compliance with Sections 177.050(A), (B), and (D).~~
- (N) Reservoirs and water impoundments, ~~subject to compliance with Sections 177.050(A), (B), (C), and (D).~~
- (O) Firearms training facility as provided in ORS 197.770(2), ~~subject to compliance with Sections 177.050(A), (B), and (D).~~
- (P) Cemeteries, ~~subject to compliance with Sections 177.050(A), (B), and (D).~~

- (Q) Private seasonal accommodations for fee hunting operations, subject to compliance with OAR 660-006-0029, OAR 660-006-0035 ~~Sections 177.050(A), (B), and (D)~~ and the following requirements:
- (1) Accommodations are limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code;
 - (2) Only minor incidental and accessory retail sales are permitted;
 - (3) Accommodations are occupied temporarily for the purpose of hunting during game bird and big game hunting seasons authorized by the Oregon Fish and Wildlife Commission; and
 - (4) Other conditions, as deemed appropriate.
- (R) New electric transmission lines with right of way widths of up to 100 feet as specified in ORS 722.210. New distribution lines (e.g., gas, oil, geothermal, telephone, fiber optic cable) with rights-of-way 50 feet or less in width. ~~New electric transmission or distribution lines authorized under this section are subject to compliance with Sections 177.050(A), (B), and (D).~~
- (S) Temporary asphalt and concrete batch plants as accessory uses to specific highway projects; ~~subject to compliance with Sections 177.050(A), (B), and (D).~~
- (T) Expansion of existing airports; ~~subject to compliance with Sections 177.050(A), (B), and (D).~~
- (U) The following transportation improvements may be established; ~~subject to compliance with Sections 177.050(A), (B), and (D):~~
- (1) Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.
 - (2) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.
 - (3) Improvement of public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.
 - (4) Accessory transportation improvements for an authorized land use to provide safe and efficient access to the use. Such accessory transportation improvements are subject to the same requirements applicable to the land use to which they are accessory;
 - (5) Channelization;
 - (6) Realignment of roads;
 - (7) Replacement of an intersection with an interchange;
 - (8) Continuous median turn lane;
 - (9) New access roads or collectors within a built or committed exception area, or in other areas consistent with OAR 660-012-0065(3)(g) (i.e., where the function of the road is to reduce local access to or local traffic on a state highway). These roads shall be limited to two travel lanes. Private access and intersections shall be limited to rural needs or provide adequate emergency access.
 - (10) Bikeways, footpaths, and recreation trails not otherwise allowed as a modification or part of an existing road;
 - (11) Park and ride lots;
 - (12) Railroad mainlines and branchlines;
 - (13) Pipelines;
 - (14) Navigation channels;

- (15) Replacement of docks and other facilities without significantly increasing the capacity of those facilities;
- (16) Expansions or alterations of public use airports that do not permit service to a larger class of airplanes; and
- (17) Transportation facilities, services and improvements other than those listed in this section that serve local travel needs. The travel capacity and performance standards~~level of service~~ of facilities and improvements serving local travel needs shall be limited to that necessary to support rural land uses identified in the acknowledged comprehensive plan or to provide adequate emergency access.
- (V) Private accommodations for fishing occupied on a temporary basis, subject to compliance with OAR 660-060-0029, OAR 660-006-0035 and Sections 177.050(A), (B), (C), and (D), ~~and~~ the following requirements:
- (1) Accommodations limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code;
 - (2) Only minor incidental and accessory retail sales are permitted;
 - (3) Accommodations occupied temporarily for the purpose of fishing during fishing seasons authorized by the Oregon Fish and Wildlife Commission;
 - (4) Accommodations must be located within 1/4 mile of fish bearing Class I waters; and
 - (5) A governing body may impose other appropriate conditions.
- (W) Forest management research and experimentation facilities as defined by ORS 526.215 or where accessory to forest operations, ~~subject to compliance with Sections 177.050(A), (B), and (D)~~.
- (X) Youth camp. A youth camp may be established pursuant to the standards and limitations in OAR 660-006-0031 and ORS 215.457. Changes to or expansions of youth camps established prior to June 14, 2000 shall be subject to the provisions of ORS 215.130. [Amended by Ordinances 01-10 and 11-03]
- (Y) Wind energy systems utilizing a tower and meteorological towers within an adopted urban growth boundary up to 100 feet in height that are not commercial power generating facilities, as provided in Sections 112.135 and 112.137. [Amended by Ordinance 09-06]
- (Z) Temporary Medical Hardship Dwelling [OAR 660-006-0025(4)(t)]. One manufactured dwelling, recreational vehicle, or the temporary residential use of an existing building in conjunction with an existing dwelling as a temporary use for the term of the hardship suffered by the existing resident or a relative of the resident, provided that:
- (1) The hardship is certified by a licensed physician;
 - (2) The manufactured home or existing building converted to residential use is connected to the existing sewage disposal system; except when the County Sanitarian finds the existing system to be inadequate and that it cannot be repaired or is not physically available to serve the additional dwelling; If the manufactured home will use a public sanitary system, such condition will not be required.
 - (3) The applicant agrees to renew the permit every two years.
 - (4) Within 3 months of the end of the hardship, the manufactured dwelling or recreational vehicle, or building converted to a temporary residential use, shall be removed, demolished, or converted to an approved nonresidential use. Department of Environmental Quality review and removal requirements also apply.
 - (5) As used in this section, "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons.

- (6) A temporary residence approved under this section is not eligible for replacement under Section 177.035(B).
- (7) If the temporary hardship dwelling is located within a big game habitat significant resource area, it shall be subject to the requirements listed in Chapter 182, but shall not be subject to the public hearing requirements listed under Section 182.040(B).

177.050. GENERAL REVIEW STANDARDS [OAR 660-006-0025(5) and (6)]. To ensure compatibility with farming and forest activities, the Planning Director or hearings body shall determine that the proposed use meets the following requirements:

- (A) The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands;
- (B) The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel;
- (C) For uses authorized in subsections 177.040(A), (G), (N), (V), and (Z), a written statement recorded with the deed or written contract with the county or its equivalent is obtained from the land owner which recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act and Rules ~~for uses authorized in Subsections 177.035(B) and 177.040(A), (G), (N), and (V).~~
- (D) All other requirements contained in the Comprehensive Plan or implementing ordinances, including but not limited to regulations which apply to flood hazard areas, development within the Willamette River Greenway, development in forested areas or development in significant resource areas, such as riparian or big game habitat.

177.060. LAND DIVISION REQUIREMENTS. In the TC Zoning District, the following standards shall apply:

- (A) The minimum lot or parcel size is 80 acres; or
- (B) Land divisions creating parcels less than 80 acres in size may only be approved for uses listed in ~~Sections 177.030(H), (L), and (Q) and 177.040 (B) through (P)~~ OAR 660-006-0025(3)(m) and (n) and 4(a) through (o), provided that those uses have been approved pursuant to Section 177.050 of this Ordinance. [OAR 660-006-0026(2)(a)] Such divisions shall create a parcel that is the minimum size necessary for the use. Required building setbacks for these parcels will be determined on a case-by-case basis through the conditional use process and may vary from those required under Section 177.140 and 112.430(C) based upon the specific use authorized by the land use decision. The landowner of a parcel created under this subsection shall provide evidence that a restrictive covenant has been recorded with the County Clerk's Office for the subject property. The restrictive covenant shall prohibit the landowner and the landowner's successor's in interest from further dividing the parcel. The restrictive covenant shall be irrevocable unless a statement of release is signed by the Polk County Planning Director indicating that the comprehensive plan designation is no longer applicable to the parcel and that the property is no longer subject to Oregon Statewide Planning Goal 4 (Forest Lands). The restrictive covenant shall also be irrevocable unless the land division is subsequently authorized by law or by change in Statewide Goal 4. The property owner shall also record a deed restriction in the office of the Polk County Clerk as required by Section 177.120.
- (C) A land division creating a parcel for an existing dwelling that has existed since before June 1, 1995, subject to the following requirements [OAR 660-006-0026(2)(b) and 215.780(2)(b)]:
- (1) The parcel created shall not be larger than five acres, except as necessary to recognize physical factors such as roads or streams, in which case the parcel shall not be larger than ten (10) acres; and
 - (2) ~~The dwelling existed prior to June 1, 1995;~~

- (3) ~~The remaining parcel, not containing the dwelling, consists of at least 80 acres, or when consolidated with another parcel consists of at least 80 acres;~~
- (4) ~~The remaining parcel that does not containing the dwelling, is not entitled to a dwelling unless subsequently authorized by law or goal and the parcel either:; and~~
- ~~(a) Meets the minimum land division standards of the zone; or~~
- ~~(b) Is consolidated with another parcel, and together the parcels meet the minimum land division standards of the zone.~~
- (5) ~~The landowner of a parcel created under this subsection shall provide evidence that a restrictive covenant has been recorded with the County Clerk's Office for the subject property. The restrictive covenant shall prohibit the landowner and the landowner's successor's in interest from further dividing the parcel. The restrictive covenant shall be irrevocable unless a statement of release is signed by the Polk County Planning Director indicating that the comprehensive plan designation is no longer applicable to the parcel and that the property is no longer subject to Oregon Statewide Planning Goal 4 (Forest Lands). The restrictive covenant shall also be irrevocable unless the land division is subsequently authorized by law or by change in Goal 4. The property owner shall also record a deed restriction in the office of the Polk County Clerk as required by Section 177.120.(3) An applicant for the creation of a parcel under this section shall provide evidence that a restriction on the remaining parcel, not containing the dwelling, has been recorded with the county clerk of the county where the property is located. The restriction shall allow no dwellings unless authorized by law or goal on land zoned for forest use except as permitted under section (2) of this rule.~~
- (4) A restriction imposed under this section shall be irrevocable unless a statement of release is signed by the county planning director of the county where the property is located indicating that the comprehensive plan or land use regulations applicable to the property have been changed in such a manner that the parcel is no longer subject to statewide planning goals pertaining to agricultural land or forest land.
- (D) *A land division of a lot or parcel that contains two or more dwellings subject to the following requirements [OAR 660-006-0026(2)(d) and ORS 215.780(2)(e)]:*
- (1) At least two dwellings lawfully existed on the lot or parcel prior to November 4, 1993;
 - (2) Each dwelling complies with the criteria for a replacement dwelling under Section 177.035(EB);
 - (3) Except for one lot or parcel, each lot or parcel created under this section is between two and five acres in size;
 - (4) At least one dwelling is located on each lot or parcel created under this section; and
 - (5) The landowner of a lot or parcel created under this paragraph provides evidence that a restriction prohibiting the landowner and the landowner's successors in interest from further dividing the lot or parcel has been recorded with the Polk County Clerk. A restriction imposed under this paragraph shall be irrevocable unless a statement of release is signed by the Planning Director indicating that the comprehensive plan or land use regulations applicable to the lot or parcel have been changed so that the lot or parcel is no longer subject to Oregon Statewide Planning Goal 4 (Forest Lands) unless the land division is subsequently authorized by law or by a change in statewide planning goal for land zoned for forest use. The restrictive covenant shall also be irrevocable unless the land division is subsequently authorized by law or by change in Goal 4. The property owner shall also record a deed restriction in the office of the Polk County Clerk as required by Section 177.120.
 - (6) A lot or parcel may not be divided under this section if an existing dwelling on the lot or parcel was approved under:

- (a) A statute, an administrative rule or a land use regulation as defined in ORS 197.015 that required removal of the dwelling or that prohibited subsequent division of the lot or parcel; or
 - (b) A farm use zone provision that allowed both farm and forest uses in a mixed farm and forest use zone under Goal 4 (Forest Lands). [Amended by Ordinance 11-03]
- (E) *A land division to facilitate a forest practice* as defined in ORS 527.620 that results in a parcel that does not meet the minimum area requirement of subsection 177.060(A). [OAR 660-006-0026(2)(c) and ORS 215.780(2)(d)]. The applicant shall provide evidence to demonstrate that there are unique property specific characteristics present in the proposed parcel that require an amount of land smaller than the minimum parcel size requirements of subsection 177.060(A) for the zone in order to conduct the forest practice. Parcels created pursuant to this subsection:
- (1) ~~Shall~~ Are not be eligible for siting a new dwelling;
 - (2) ~~Shall~~ May not serve as the justification for the siting of a future dwelling on other parcels;
 - (3) May not, as a result of the land division, be used to justify redesignation or rezoning of resource land; and
 - (4) ~~Shall~~ May not result in a parcel of less than 35 acres, unless the purpose of the land division is to ~~except:~~
 - (a) ~~Where the purpose of the land division is to~~ Facilitate an exchange of lands involving a governmental agency, or
 - (b) ~~Where the purpose of the land division is to~~ allow transactions in which at least one participant is a person with a cumulative ownership of at least 2,000 acres of forestland in Oregon; ~~and~~
 - (4) If associated with the creation of a parcel where a dwelling is involved, shall not result in a parcel less than the minimum parcel size of the zone. ~~(5)~~ The property owner shall also record a deed restriction in the office of the Polk County Clerk as required by Section 177.120.
 - (6) An applicant for the creation of a parcel under this section shall provide evidence that a restriction on the newly created parcel has been recorded with the county clerk of the county where the property is located. The restriction may not allow a dwelling unless authorized by law or goal on land zoned for forest use except as permitted under this section.
 - (7) A restriction imposed under this subsection is irrevocable unless a statement of release is signed by the county planning director of the county where the property is located indicating that the comprehensive plan or land use regulations applicable to the property have been changed in such a manner that the parcel is no longer subject to statewide planning goals pertaining to agricultural land or forestland.
- (F) ~~A partition plat shall be filed within two years from the effective date of preliminary approval for each parcel (Note: One year extensions may be requested prior to expiration of the approval):~~
- (GF) *Partition along an Urban Growth Boundary* [OAR 660-006-0026(8) and ORS 215.785(3)] A parcel that is located partially within the TC zone and partially within an urban growth boundary and is designated for urban uses, may be partitioned subject to the following criteria:
- (1) The partition occurs along the urban growth boundary; and
 - (2) If the parcel contains a dwelling, the parcel must be large enough to support continued residential use;
 - (3) If the parcel does not contain a dwelling, the parcel:

- (a) Is not eligible for a dwelling, except as authorized by ORS 195.120;
 - (b) May not be considered in approving or denying an application for siting any other dwelling; and
 - (c) May not be considered in approving or redesignation or rezoning of forestlands under the acknowledged comprehensive plan and land use regulations, except for a redesignation or rezoning to allow a public park, open space or other natural resource use.
- (4) The owner of the parcel not containing a dwelling shall record with the County Clerk an irrevocable deed restriction prohibiting the owner and all successors in interest from pursuing a cause of action or claim of relief alleging injury from farming or forest practices for which a claim or action is not allowed under ORS 30.936 or 30.937.

[Amended by Ordinance 19-01]

(G) A land division to preserve open space or a park [OAR 660-006-0026(2)(e) and ORS 215.783]. A land division may be authorized in a forest zone to create one new parcel if the proposed division of land is for the purpose of allowing a provider of public parks or open space, or a not-for-profit land conservation organization, to purchase one of the resulting parcels as provided in this section.

- (1) A parcel created by the land division that is not sold to a provider of public parks or open space or to a not-for-profit land conservation organization must comply with the following:
 - (a) If the parcel contains a dwelling or another use allowed under ORS chapter 215, the parcel must be large enough to support continued residential use or other allowed use of the parcel; or
 - (b) If the parcel does not contain a dwelling, the parcel is eligible for siting a dwelling as may be authorized under ORS 195.120 or as may be authorized under ORS 215.705 to 215.750, based on the size and configuration of the parcel.
- (2) Before approving a proposed division of land under this section, the governing body of a county or its designee shall require as a condition of approval that the provider of public parks or open space, or the not-for-profit land conservation organization, present for recording in the deed records for the county in which the parcel retained by the provider or organization is located an irrevocable deed restriction prohibiting the provider or organization and their successors in interest from:
 - (a) Establishing a dwelling on the parcel or developing the parcel for any use not authorized in a forest zone or mixed farm and forest zone except park or conservation uses; and
 - (b) Pursuing a cause of action or claim of relief alleging an injury from farming or forest practices for which a claim or action is not allowed under ORS 30.936 or 30.937.
- (3) If a proposed division of land under this section results in the disqualification of a parcel for a special assessment described in ORS 308A.718 or the withdrawal of a parcel from designation as riparian habitat under ORS 308A.365, the owner must pay additional taxes as provided under ORS 308A.371 or 308A.700 to 308A.733 before the county may approve the division.

177.070. STANDARDS FOR DWELLINGS. Dwellings are authorized in the Timber Conservation Zoning District, subject to the siting requirements under Section 177.080 and 177.090 of the Ordinance, and the following criteria: [Amended by Ordinance 23-01]

- (A) Small Tract, Lot-of-Record Dwelling [OAR 660-006-0027(1)(a), (f), and (g) and ORS 215.705]. A dwelling may be authorized on a lot-of-record. To qualify as a lot-of-record, the parcel must meet the following criteria:
- (1) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired and owned continuously by the present owner as defined in subsection (4) of this section;(a) -sSince prior to January 1, 1985; or
 - (b) The owner may also qualify if the property was inherited bBy devise or by intestate secession from a person that who acquired and had owned continuously the lot or lawfully created parcel since prior to January 1, 1985.
 - (2) ~~Based on soil types, the tract is not capable of annually producing 5,000 cu. ft. of commercial tree species, as recognized under rules adopted under ORS 527.715 for commercial production.~~
 - (23) The tracton which the dwelling will be sited does not include a dwelling is currently vacant;
 - (43) ~~If tThe lot or parcel on which the dwelling will be sited was part of a tract existing on November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract;~~
 - (4) As used in this subsection, "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, nephew, stepparent, stepchild, grandparent, or grandchild of the owner or a business entity owned by any one or a combination of these family members.
 - (5) The dwelling must be located:(a) On a tract that is composed of soils not capable of producing 5,000 cubic feet per year of commercial tree species and The tract is located within 1,500 feet of a public road, as defined by ORS 368.001, that provides or will provide access to the subject tract.(Note: The road shall be maintained and either paved or surfaced with rock. The road and shall not be (i) a U.S. Bureau of Land Management road.; or(ii) The road shall not be a U.S. Forest Service road unless the road is paved to a minimum width of 18 feet, there is at least one defined lane in each direction and a maintenance agreement exists between the U.S. Forest Service and landowners adjacent to the road, Polk County, or a state agency.);
 - (6) When the lot or parcel on which the dwelling will be sited lies within an area designated in an acknowledged comprehensive plan as habitat of big game, the siting of the dwelling shall be consistent with the limitations on density upon which the acknowledged comprehensive plan and land use regulations intended to protect the habitat are basedThe dwelling complies with limitations on density imposed by the Deer and Elk Winter Range; and
 - (7) ~~Where~~When the lot or parcel on whichthe dwelling is sited on a portionis part of a tract, the remaining portions of the tract shall be under common ownership are consolidated into a single lot or parcel when the dwelling is allowed unit of land.
 - (8) Authorization to establish a single-family dwelling under the provisions of this subsection may be transferred by a person who has qualified under this subsection to any other person after the effective date of the decision.
 - (9) If the lot or parcel is more than 10 acres, the property owner shall submit a stocking survey report to the Polk County Assessor and the Assessor will verify that the minimum stocking requirements adopted under ORS 527.610 to 527.770 have been met. Parcels 10 acres or less in size shall not be required to submit a stocking report prior to receiving a permit for the dwelling as authorized by this subsection.

~~Note: As used in this subsection, "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, nephew, stepparent, stepchild, grandparent, or grandchild of the owner or a business entity owned by any one or a combination of these family members.~~ (10) The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged comprehensive plan and land use regulations and other provisions of law.

- (B) Large Tract Forest Land Dwelling [OAR 660-006-0027(2) and ~~(78)~~and ORS 215.740]. A dwelling may be authorized on a tract that does not contain a dwelling and meets the following criteria:
- (1) The tract is at least 160 contiguous acres in size. A tract shall not be considered to consist of less than 160 acres because it is crossed by a public road or a waterway; or,
 - (2) The tract is ~~part of one ownership, at least 200 acres in size, that may be composed of separate vacant tracts of designated forest land in Polk County or its adjacent counties.~~ one ownership that are not contiguous but are in the same county or adjacent counties and zoned for forest use. A deed restriction shall be filed for all tracts that are used to meet the acreage requirements of this subsection, pursuant to the following provisions:
 - (a) The applicant shall provide evidence that the covenants, conditions and restrictions form adopted as "Exhibit "A" to OAR 660-006 has been recorded with the County Clerk of the county or counties where the property subject to the covenants, conditions and restrictions is located.
 - (b) The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the property subject to the covenants, conditions and restrictions is located.
 - (c) Enforcement of the covenants, conditions and restrictions may be undertaken by the Department of Land Conservation and Development or by the county or counties where the property subject to the covenants, conditions and restrictions is located.
 - (d) Failure to follow the requirements of this section shall not affect the validity of the transfer of property or the legal remedies available to the buyers of the property ~~which~~ that is subject to the covenants, conditions and restrictions required by this section.
 - (e) The Planning Director shall maintain a copy of the covenants, conditions and restrictions filed in the County deed records pursuant to this section and a map or other record depicting tracts which do not qualify for a siting of a dwelling under the covenants, conditions and restrictions filed in the county deed records pursuant to this section. The map or other record required by this section shall be readily available to the public in the Planning Division office.
- (C) Small Tract "Template" Dwelling [OAR 660-006-0027(3) and ORS 215.750]. A dwelling may be authorized on a ~~tract~~ lot or parcel that meets the following criteria:
- (1) The tract is less than 60 acres in size;
 - (2) The tract meets one of the following:
 - (a) ~~The tract~~ lot or parcel is predominately composed of soils that are capable of annually-producing more than 85 cu. ft. per acre per year of wood fiber if:
 - (i) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract (Note: If the tract abuts a road that existed ~~as of~~ on January 1, 1993, the measurement may be made by creating a 160-acre rectangle that is one mile long and one-

- quarter mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road to the maximum extent possible.); and
- (ii) At least three (3) dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels; or
- (b) ~~The tract~~ lot or parcel is predominately composed of soils that are capable of annually-producing 50 to 85 cu. ft. per acre per year of wood fiber if:
 - (i) All or part of at least seven (7) other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract (Note: If the tract abuts a road that existed as of January 1, 1993, the measurement may be made by creating a 160-acre rectangle that is one mile long and one-quarter mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road to the maximum extent possible.); and
 - (ii) At least three (3) dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels; or
 - (c) ~~The tract~~ lot or parcel is predominately composed of soils that are capable of annually-producing 0 to 49 cu. ft. per acre per year of wood fiber if:
 - (i) All or part of at least three (3) other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract (Note: If the tract abuts a road that existed as of January 1, 1993, the measurement may be made by creating a 160-acre rectangle that is one mile long and one-quarter mile wide centered on the center of the subject tract and that is the maximum extent possible, aligned with the road to the maximum extent possible.); and
 - (ii) At least three (3) dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.
- (3) ~~The tract contains no dwellings on other lots or parcels that make up the tract.~~ The tract on which the dwelling will be sited does not include a dwelling.
 - (4) ~~No dwellings are allowed on other lots or parcels that make up the tract is not subject to and deed restrictions established under OAR 660-006-0027(68) and Section 177.070(B)(2) of this Ordinance~~ for the other lots or parcels that make up the tract are met.
 - (5) The lot or parcel on which the dwelling will be sited was lawfully established.
 - (56) ~~Parcels 10 acres or less in size shall not be required to submit a stocking report prior to receiving a permit for the dwelling as authorized by this subsection.~~ If the lot or parcel is more than 10 acres, the property owner shall submit a stocking survey report to the Polk County Assessor and the Assessor will verify that the minimum stocking requirements adopted under ORS 527.610 to 527.770 have been met.
 - (67) ~~Lots or parcels within urban growth boundaries may not be used to satisfy the eligibility requirements under this section).~~
 - (78) ~~Any property line adjustment to the lot or parcel complied with the applicable property line adjustment provisions in ORS 92.192.~~
 - (9) ~~Any property line adjustment to the lot or parcel after January 1, 2019, did not have the effect of qualifying the lot or parcel for a dwelling under this section; and~~
 - (10) ~~If the lot or parcel on which the dwelling will be sited was part of a tract on January 1, 2019, no dwelling existed on the tract on that date, and no dwelling exists or has been approved on another lot or parcel that was part of the tract.~~

~~Note: Prior to November 1, 2023, a county may allow the establishment of a single-family dwelling on a lot or parcel that was part of a tract on January 1, 2021, if:~~

1. ~~No more than one other dwelling exists or has been approved on another lot or parcel that was part of the tract; and~~
2. ~~The lot or parcel qualifies, notwithstanding PCZO 177.070(C)(9) for a dwelling under PCZO 177.070(C). [Amended by Ordinance 23-01]~~

(11) It will comply with the requirements of an acknowledged comprehensive plan, acknowledged land use regulations, and other provisions of law.

(D) Large Tract "Template" Dwelling [OAR 660-006-0027(5) and ORS 215.750]. A dwelling may be authorized on a tract that meets the following criteria:

- (1) The tract is 60 acres or larger in size;
- (2) The tract meets one of the following:
 - (a) ~~The tract lot or parcel is predominately composed of soils that are capable of annually-producing more than 85 cu. ft. per acre per year of wood fiber if:~~
 - (i) ~~All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract. However, if the tract abuts a road or perennial stream, the measurement shall be made by creating a 160-acre rectangle that is one mile long and one-quarter mile wide centered on the center of the subject tract and aligned with the road or stream to the maximum extent possible. As used in this section, "center of the subject tract" means the mathematical centroid of the tract; and~~
 - (ii) ~~At least three (3) dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels; or~~
 - (b) ~~The tract lot or parcel is predominately composed of soils that are capable of annually-producing 50 to 85 cu. ft. per acre per year of wood fiber if:~~
 - (i) ~~All or part of at least seven (7) other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract. However, if the tract abuts a road or perennial stream, the measurement shall be made by creating a 160-acre rectangle that is one mile long and one-quarter mile wide centered on the center of the subject tract and aligned with the road or stream to the maximum extent possible; and~~
 - (ii) ~~At least three (3) dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels; or~~
 - (c) ~~The tract lot or parcel is predominately composed of soils that are capable of annually producing 0 to 49 cu. ft. per acre per year of wood fiber if:~~
 - (i) ~~All or part of at least three (3) other lots or parcels that existed on January 1, 1993, are within a 160 acre centered on the center of the subject tract. However, if the tract abuts a road or perennial stream, the measurement shall be made by creating a 160-acre rectangle that is one mile long and one-quarter mile wide centered on the center of the subject tract and aligned with the road or stream to the maximum extent possible; and~~
 - (ii) ~~At least three (3) dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels; and,~~
- (3) ~~If the tract is situated such that the road or stream crosses the tract, at least one (1) of the three (3) required dwellings shall be on the same side of the road or stream as the proposed dwelling, and within the 160-acre rectangle or within 1/4 mile from the edge of the tract where the dwelling will be located, but not outside the length of the rectangle. If the tract abuts a road or perennial stream, the measurement shall be made by creating a 160-acre rectangle that is one mile long and one-quarter mile wide centered on the center of the subject tract and that is to the maximum extent possible,~~

aligned with the road or stream. As used in this section, “center of the subtract tract” means the mathematical centroid of the tract. However, one of the three required dwellings must be on the same side of the road or stream as the tract, and:

- (a) Be located within a 160-acre rectangle that is one mile long one-quarter mile wide centered on the center of the subject tract and that is, to the maximum extent possible aligned with the road or stream; or
 - (b) Be within one-quarter mile from the edge of the subject tract but not outside the length of the 160-acre rectangle, and on the same side of the road or stream as the tract.
- (4) If a road crosses the tract on which the dwelling will be located, at least one of the three required dwellings shall be on the same side of the road as the proposed dwelling.
 - (4)5) The tract on which the dwelling will be sited does not include a dwelling. The tract contains no dwellings on other lots or parcels that make up the tract.
 - (5)6) No dwellings are allowed on other lots or parcels that make up the tract is not subject to and deed restrictions established under OAR 660-006-0027(68) and Section 177.070(B)(2) of this Ordinance for the other lots or parcels that make up the tract are met.
 - (7) The lot or parcel on which the dwelling will be sited was lawfully established.
 - (6)8) Lots or parcels within urban growth boundaries may not be used to satisfy the eligibility requirements under subsections 177.070(D) this section.
 - (9) Any property line adjustment to the lot or parcel complied with the applicable property line adjustment provisions in ORS 92.192.
 - (10) Any property line adjustment to the lot or parcel after January 1, 2019, did not have the effect of qualifying the lot or parcel for a dwelling under this section; and
 - (11) If the lot or parcel on which the dwelling will be sited was part of a tract on January 1, 2019, no dwelling existed on the tract on that date, and no dwelling exists or has been approved on another lot or parcel that was part of the tract.

Note: Prior to November 1, 2023, a county may allow the establishment of a single family dwelling on a lot or parcel that was part of a tract on January 1, 2021, if:

- 1. No more than one other dwelling exists or has been approved on another lot or parcel that was part of the tract; and
 - 2. The lot or parcel qualifies, notwithstanding PCZO 177.070(D)(9) for a dwelling under PCZO 177.070(D). [Amended by Ordinance 23-01]
- (12) It will comply with the requirements of an acknowledged comprehensive plan, acknowledged land use regulations, and other provisions of law.
 - (13) If the lot or parcel is more than 10 acres, the property owner shall submit a stocking survey report to the Polk County Assessor and the Assessor will verify that the minimum stocking requirements adopted under ORS 527.610 to 527.770 have been met.

(E) New Single Family Accessory Dwelling Unit to Support Family Forestry [OAR 660-006-0027(9) and ORS 215.757]. A new dwelling unit may be authorized on a lot or parcel that meets the following criteria:

- (1) The new single-family dwelling unit will be on a lot or parcel no smaller than the minimum size allowed under OAR 660-006-0026(1) and ORS 215.780;
- (2) The new single-family dwelling unit will be on a lot or parcel that contains exactly one existing single-family dwelling unit that was lawfully;

- (a) In existence before November 4, 1993; or
- (b) Approved under this rule, ORS 215.130(6), 215.705, 215.720, 215.740, 215.755 or OAR 660-006-0025(3)(o).
- (3) The shortest distance between any portion of the new single-family dwelling unit and any portion of the existing single-family dwelling unit is no greater than 200 feet;
- (4) The lot or parcel is within a rural fire protection district organized under ORS chapter 478;
- (5) The new single-family dwelling unit complies with the Oregon residential specialty code relating to wildfire hazard mitigation;
- (6) As a condition of approval of the new single-family dwelling unit, in addition to the requirements of OAR 660-006-0029(5)(e) and ORS 215.293, the property owner agrees to acknowledge and record in the deed records for the county in which the lot or parcel is located, one or more instruments containing irrevocable deed restrictions that:
 - (a) Prohibit the owner and the owner's successors from partitioning the property to separate the new single-family dwelling unit from the lot or parcel containing the existing single-family dwelling unit; and
 - (b) Require that the owner and the owner's successors manage the lot or parcel as a working forest under a written forest management plan, as defined in ORS 526.455 that is attached to the instrument.
- (7) The existing single-family dwelling is occupied by the owner or a relative;
- (8) The new single-family dwelling unit will be occupied by the owner or a relative;
- (9) The owner or a relative occupies the new single-family dwelling unit to allow the relative to assist in the harvesting, processing or replanting of forest products or in the management, operation, planning, acquisition, or supervision of forest lots or parcels of the owner; and
- (10) If a new single-family dwelling unit is constructed under this section, a county may not allow the new or existing dwelling unit to be used for vacation occupancy as defined in ORS 90.100.
- (11) As used in this section, "owner or a relative" means the owner of the lot or parcel, or a relative of the owner or the owner's spouse, including a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew, or first cousin of either.

177.120. NON-REMONSTRANCE DEED RESTRICTION. Pursuant to OAR 660-006-0026(6) and OAR 660-006-0029(45)(e), for any dwelling, residential facility, private park, reservoir or water impoundment, home occupation, or private fishing or hunting accommodations approved under sections 177.035, 177.040, and 177.070, and partitions approved under subsections 177.060(B)-(G), (C), (D) and (E), the landowner for the property shall be required to sign and record a deed restriction binding the landowner and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 to 30.937. [Amended by Ordinance 11-03]

177.210. PERIOD OF VALIDITY FOR RESIDENTIAL USES. [OAR 660-033-0140 and ORS 215.417] A land use application authorizing a dwelling pursuant to the provisions of Polk County Zoning Ordinance Sections 177.035(A), (B), and (C), and Section 177.070(A)-(D) shall be valid four (4) years from the effective date of the land use decision. The land use application authorizing such use to be established shall be void at the end of the validity period if development action is not initiated in that period. An extension request shall be submitted to the Planning Director on the form provided by the Planning Division. An extension shall be granted

~~upon submission of a written request for an extension prior to the expiration of the approval period. An extension of the validity period shall be approved for two additional years. Approval of an extension granted under this section is an administrative decision, is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision. A land use decision granted herein does not vest (guarantee) the right of the property owner to use the property as authorized in the land use decision in perpetuity. The property owner is responsible for completing required conditions and establishing and continuing the use in order to retain a vested right. The property owner is advised to consult with an attorney to determine the appropriate actions necessary to obtain and retain rights of use authorized by a land use decision.~~

- (A) If a permit is approved for a proposed residential development on forest land outside of an urban growth boundary, the permit shall be valid for four years.
- (B) An extension of a permit described in subsection (A) is valid for two years. A county may approve no more than five additional one-year extensions of a permit if:
- (1) The applicant makes a written request for the additional extension prior to the expiration of the extension;
 - (2) The applicable residential development statute has not been amended following the approval of the permit, except the amendments to ORS 215.750 by Oregon Laws 2019, chapter 433, section 1; and
 - (3) An applicable rule or land use regulation has not been amended following the issuance of the permit, unless allowed by the county, which may require that the applicant comply with the amended rule or land use regulation.
- (C) As used in this section, "residential development" only includes the dwellings provided for under ORS 215.705(1) to (3), 215.720, 215.740, 215.750 and 215.755 (1) and (3).

177.220. PERIOD OF VALIDITY FOR NON-RESIDENTIAL DISCRETIONARY USES.
[OAR 660-033-0140]

- (A) A discretionary decision, except for a land division, shall be valid for two (2) years from the effective date of the land use decision. An extension of the validity period shall extend the validity period for one (1) additional year, if:
- (1) The applicant makes a written request for an extension of the development approval validity period;
 - (2) The written request is submitted to the Polk County Planning Division, on the form provided by the Planning Division, prior to the expiration of the approval period;
 - (3) The applicant states the reasons that prevented the applicant from beginning or continuing development with the approval period;
 - (4) The applicant states the reasons that prevented the applicant from beginning or continuing development during the approval period for reasons for which the applicant was not responsible.
- (B) The Planning Director may authorize additional one-year extensions where the applicable criteria for the decision have not changed. Approval of an extension granted under this section is an administrative decision, is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision. [OAR 660-033-0140(1) through (4)]

After recording, return to:

Polk County Public Works
820 SW Ash Street
Dallas, OR 97338

Send tax statements to:

Finance Department, Polk County
850 Main Street
Dallas, OR 97338

Permanent Right Of Way Dedication & Temporary Construction Easement

Brad R. Haga and Lesli J. Darrow Haga, as tenants by the entirety, hereinafter called **Grantors**, 1046 N Gun Club Rd, Independence, OR 97351, convey, grant, and dedicate to **POLK COUNTY, an Oregon municipal corporation**, hereinafter called **Grantee**, a Permanent Right-of-Way Dedication, which runs with the land, for public road and right-of-way purposes in, upon, and across all that real property situated within said Polk County, State of Oregon, and more particularly described, and shown, as follows:

See Exhibit A and Exhibit B, Parcel 1, of the attached pages, titled: “**Permanent Right Of Way Dedication**”, together with a Temporary Construction Easement over, under, and across the full width and length of the premises more particularly described, and shown, as follows:

See Exhibit A and Exhibit B, Parcel 2, of the attached pages, titled: “**Temporary Construction Easement**”.

Grantor covenants that it is the owner of the above-described property free of all encumbrances except: *Exceptions 1 through 12, noted in the Preliminary Title Report dated December 13, 2022, and identified by Order No. 573470AM.*

and will warrant and defend the same against all persons who may lawfully claim the same, except as shown above.

The true and actual consideration for this transfer and temporary street construction easement is:

Twenty-two thousand five hundred and ⁰⁰/100 dollars (\$22,500.00).

"BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301, AND 195.305 TO 195.336, AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE NIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL TO DETERMINE AY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930, AD TO UNIQUE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS IF ANY UNDER ORS 195.300, 195.301, AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424 OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010."

The Temporary Construction Easement shall be effective upon execution by Grantee and shall remain in effect for a maximum of (2) TWO YEARS from the date executed by Grantee. The rights granted herein shall be exercised only for and during the time of the initial construction through completion of construction. This easement shall automatically terminate without the need for further action by either party upon the completion of construction.

To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, Grantee will indemnify and hold harmless Grantor, their heirs, and assigns from claims for injury to person or property that result from the negligence of Grantee, its agents, or employees in the construction, operation, or maintenance of the project. This instrument, and the covenants and agreements contained in this instrument, shall inure to the benefit of and be binding and obligatory upon the heirs, executors, administrators, successors, and assigns of the respective parties.

Grantee assumes no liability for any hazardous waste on or from this Property. Grantor, their successors and assigns, agree to defend, indemnify and hold harmless the Grantee, its officers, agents, and employees against any and all liabilities, damages, penalties, losses, claims, demands, actions, suits, and judgments (including attorney fees and costs), and any costs or expenses incurred resulting from the presence of hazardous waste onto or from the Property, including any and all costs associated with clean up or remediation that may be required. This provision shall not apply to a release of hazardous waste onto or from the Property caused by the officers, agents, or employees of Grantee. Any action taken pursuant to this provision shall not constitute an admission of liability or waiver of any defenses to liability. "Hazardous Waste" has the same meaning as provided in Oregon Revised Statutes 466.005, as may be amended.

Grantee, upon completion of the initial construction, shall restore all hardscapes (gravel, concrete, asphalt, curbing) located in the Temporary Construction Easement acquisition area (that are disturbed by the project activity) to an "as good or better" condition as they were prior to the work.

It is understood and agreed that delivery of this easement is hereby tendered and that the terms and obligations hereof shall not become binding upon Grantee unless and until accepted and approved hereon in writing for the Grantee, by its authorized agent.

IN WITNESS WHEREOF, the undersigned have executed the foregoing effective as of the date written below.

GRANTOR:

Brad R. Haga and Lesli J. Darrow Haga, as tenants by the entirety

By: *Brad R Haga*
Print Name: BRAD R HAGA

By: *Lesli J. Darrow-Haga*
Print Name: Lesli J. DARROW-HAGA

STATE OF OREGON)
 : ss
County of Polk)

On this 16 day of February 2024, before me personally appeared Brad R. Haga and Lesli J. Darrow Haga, to me known to be the individuals described in and who executed the foregoing instrument and acknowledged that they signed the same as their free and voluntary act, and in the capacity and for the uses and purposes therein mentioned.

GIVEN under my hand and official seal:



Tiel Grasse Fox
Notary Public for the State of Oregon
My commission expires: Feb. 13 2027

GRANTEE:

Dated this _____ of _____, 2024

ACCEPTED on behalf of the Public and Polk County, Oregon:

POLK COUNTY BOARD OF COMMISSIONERS

Jeremy Gordon, Chair

Lyle Mordhorst, Commissioner

Craig Pope, Commissioner

Approved as to Form:

Morgan Smith
County Counsel

POLK COUNTY SRTS GRANT IMPROVEMENT PROJECT
JANUARY 17, 2023
OWNER: BRAD R. HAGA & LESLI J. DARROW

POLK COUNTY PROJECT NO. 20-29
TAX LOT 8420 00901
FILE NO. 02

PAGE 1 OF 3

EXHIBIT "A"

A TRACT OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 8 SOUTH, RANGE 4 WEST OF THE WILLAMETTE MERIDIAN, CITY OF INDEPENDENCE, POLK COUNTY, OREGON, AND BEING A PORTION OF THAT PROPERTY CONVEYED TO BRAD R. HAGA & LESLI J. DARROW, PER DEED DOCUMENT NO. 2022-004765, POLK COUNTY DEED RECORDS, SAID TRACT LYING ALONG NORTH GUN CLUB ROAD AS SHOWN ON SURVEY NUMBER CS13568 AND PARTITION PLAT 2022-0016 POLK COUNTY RECORDS. SAID NORTH GUN CLUB ROAD CENTERLINE IS DESCRIBED AS FOLLOWS:

NORTH GUN CLUB ROAD AVENUE CENTERLINE

A ROADWAY COMMONLY KNOWN AS NORTH GUN CLUB ROAD, LOCATED IN THE SOUTHWEST AND NORTHWEST QUARTERS OF SECTION 20, TOWNSHIP 8 SOUTH, RANGE 4 WEST, WILLAMETTE MERIDIAN, CITY OF INDEPENDENCE, POLK COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND AND HELD 1-1/2 INCH ALUMINUM CAP AT THE CENTERLINE INTERSECTION WITH HOFFMAN ROAD, HAVING AN ENGINEERS STATION OF 10+00.00; THENCE SOUTH 00°04'33" WEST 816.83 FEET TO A 1-1/2 INCH ALUMINUM CAP MARKED "PROJECT DELIVERY GROUP" PER THE PLAT OF QUAIL CROSSING AT THE CENTERLINE INTERSECTION WITH NORTHGATE DRIVE; THENCE CONTINUING SOUTH 00°04'33" WEST 560.30 FEET TO THE CENTERLINE INTERSECTION WITH MARIGOLD DRIVE AND THE POINT OF TERMINUS OF THIS DESCRIPTION HAVING ENGINEERS STATION 23+77.13.

THE BASIS OF BEARING OF THE ABOVE DESCRIPTION IS OREGON NORTH, NAD 83 (2011) EPOCH 2010.00, INTERNATIONAL FEET UNITS, PER OPUS



RENEWS: 12/31/2024



4858 SW SCHOLLS FERRY RD. STE A
PORTLAND, OR. 97225
PH: (503) 345-0328 WWW.SFLANDS.COM

POLK COUNTY SRTS GRANT IMPROVEMENT PROJECT
JANUARY 17, 2023
OWNER: BRAD R. HAGA & LESLI J. DARROW

POLK COUNTY PROJECT NO. 20-29
TAX LOT 8420 00901
FILE NO. 02

PAGE 2 OF 3

SAID PORTION LYING EASTERLY OF THE FOLLOWING DESCRIBED LINE.

PARCEL – 1 (11 FOOT WIDE PERMANENT RIGHT OF WAY DEDICATION)

STATION TO STATION	WESTERLY OFFSET DISTANCE FROM CENTERLINE
14+90.00 TO 16+25.00	31.00 FEET

EXCEPTING THEREFROM THAT PORTION LYING WITHIN THE EXISTING RIGHT-OF-WAY OF NORTH GUN CLUB ROAD.

CONTAINS 1332 SQUARE FEET OR 0.031 ACRES MORE OR LESS.

PARCEL – 2 (VARIABLE WIDTH TEMPORARY CONSTRUCTION EASEMENT)

STATION TO STATION	WESTERLY OFFSET DISTANCE FROM CENTERLINE
14+90.00 TO 15+30.88	32.50 FEET
15+30.88 TO 15+64.99	36.00 FEET
15+64.99 TO 16+25.00	32.50 FEET

EXCEPTING THEREFROM THAT PORTION LYING WITHIN THE EXISTING RIGHT-OF-WAY OF NORTH GUN CLUB ROAD AND PARCEL 1 DESCRIBED ABOVE.

CONTAINS 301 SQUARE FEET OR 0.007 ACRES MORE OR LESS.

SEE THE ATTACHED EXHIBIT "B", FILE 02, ATTACHED AND MADE A PART HEREOF.

S&F Land Services

4858 SW SCHOLLS FERRY RD. STE A
PORTLAND, OR. 97225
PH: (503) 345-0328 WWW.SFLANDS.COM

EXHIBIT "B"
FILE 02

BASIS OF BEARINGS:
OREGON NORTH, NAD83/2011
EPOCH 2010.00 PER NGS OPUS

FOUND AND HELD
ALUMINUM CAP AT CL
OF ROADWAYS



1 INCH = 30 FEET

PARCEL 1 - PARTITION PLAT 2022-0016

STA: 14+90.00 32.50' (RT)

PARCEL 1
PERMANENT
RIGHT OF WAY

STA: 15+30.88 36.00' (RT)

FILE NO. 02
TAX MAP & LOT 8.4.20 00901
OWNER: BRAD R. HAGA & LESLI J. DARROW
DEED DOC.: 2022-004765
1046 N GUN CLUB RD
INDEPENDENCE, OR 97351

1.50'

5.00'

STA: 15+64.99 36.00' (RT)

PARCEL 2
TEMPORARY
CONSTRUCTION
EASEMENT

10+00 HOFFMAN ROAD

15+00

S00°04'33"W

N GUN CLUB RD

16+00

20'

QUAIL CROSSING
LOT 34

STA: 16+25.00 32.50' (RT)

31'

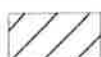
LEGEND:

PARCEL 1



AREA OF PERMANENT
RIGHT-OF-WAY DEDICATION
1332 SQUARE FEET

PARCEL 2



AREA OF TEMPORARY CONSTRUCTION EASEMENT
301 SQUARE FEET

PAGE 3 OF 3

SEE ATTACHED LEGAL DESCRIPTION "EXHIBIT A"

23982_FILE 02.dwg

S&F Land Services

4858 SW SCHOLLS FERRY RD. www.sflands.com
STE A, PORTLAND, OR 97225 info@sflands.com
(503) 345-0328

EXHIBIT "B"
TAX MAP 8.4.20
TAXLOT 00901

PROJECT NO. 20-29
SECTION 20 T.8S, R.4W, W.M.
CITY OF INDEPENDENCE
POLK COUNTY, OREGON

DATE	JOB NO.	FIELD	DRAWN	CHECKED
JAN. 17, 2023	20_01909	AM	ECW	JLM

After recording, return to:

Polk County Public Works
820 SW Ash Street
Dallas, OR 97338

Send tax statements to:

Finance Department, Polk County
850 Main Street
Dallas, OR 97338

Permanent Right Of Way Dedication & Temporary Construction Easement

Richard Lawrence Lauer and Marcy M. Lauer, Trustees of the Richard Lawrence Lauer and Marcy M. Lauer Revocable Trust dated June 16, 1998, hereinafter called **Grantors**, 880 N Gun Club Road, Independence, OR 97351, convey, grant, and dedicate to **POLK COUNTY, an Oregon municipal corporation**, hereinafter called **Grantee**, a Permanent Right-of-Way Dedication, which runs with the land, for public road and right-of-way purposes in, upon, and across all that real property situated within said Polk County, State of Oregon, and more particularly described, and shown, as follows:

See Exhibit A and Exhibit B of the attached pages, titled: **“Permanent Right Of Way Dedication”**,

together with a Temporary Construction Easement over, under, and across the full width and length of the premises more particularly described, and shown, as follows:

See Exhibit A and Exhibit B of the attached pages, titled: **“Temporary Construction Easement”**.

Grantor covenants that it is the owner of the above-described property free of all encumbrances except: Exceptions 1 – 10. of the Preliminary Title Report dated: December 13, 2022, and identified by Order No. 573473AM.

and will warrant and defend the same against all persons who may lawfully claim the same, except as shown above.

The true and actual consideration for this transfer and temporary street construction easement is:

Fifteen Thousand Nine Hundred Fifty and ⁰⁰/₁₀₀ Dollars (\$15,950.00).

"BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301, AND 195.305 TO 195.336, AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE NIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL TO DETERMINE AY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930, AD TO UNIQUE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS IF ANY UNDER ORS 195.300, 195.301, AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424 OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010."

The Temporary Construction Easement shall be effective upon execution by Grantee and shall remain in effect for a maximum of (2) TWO YEARS from the date executed by Grantee. The rights granted herein shall be exercised only for and during the time of the initial construction through completion of construction. This easement shall automatically terminate without the need for further action by either party upon the completion of construction.

To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, Grantee will indemnify and hold harmless Grantor, their heirs, and assigns from claims for injury to person or property that result from the negligence of Grantee, its agents, or employees in the construction, operation, or maintenance of the project. This instrument, and the covenants and agreements contained in this instrument, shall inure to the benefit of and be binding and obligatory upon the heirs, executors, administrators, successors, and assigns of the respective parties.

Grantee assumes no liability for any hazardous waste on or from this Property. Grantor, their successors and assigns, agree to defend, indemnify and hold harmless the Grantee, its officers, agents, and employees against any and all liabilities, damages, penalties, losses, claims, demands, actions, suits, and judgments (including attorney fees and costs), and any costs or expenses incurred resulting from the presence of hazardous waste onto or from the Property, including any and all costs associated with clean up or remediation that may be required. This provision shall not apply to a release of hazardous waste onto or from the Property caused by the officers, agents, or employees of Grantee. Any action taken pursuant to this provision shall not constitute an admission of liability or waiver of any defenses to liability. "Hazardous Waste" has the same meaning as provided in Oregon Revised Statutes 466.005, as may be amended.

Grantee, upon completion of the initial construction, shall restore all hardscapes (gravel, concrete, asphalt, curbing) located in the Temporary Construction Easement acquisition area (that are disturbed by the project activity) to an "as good or better" condition as they were prior to the work.

It is understood and agreed that delivery of this easement is hereby tendered and that the terms and obligations hereof shall not become binding upon Grantee unless and until accepted and approved hereon in writing for the Grantee, by its authorized agent.

IN WITNESS WHEREOF, the undersigned have executed the foregoing effective as of the date written below.

GRANTOR:

**Richard Lawrence Lauer and Marcy M. Lauer,
Trustees of the Richard Lawrence Lauer and
Marcy M. Lauer Revocable Trust dated June 16, 1998**

By: *Richard Lawrence Lauer*, Trustee

By: *Marcy M Lauer* Trustee

Print: *Richard Lawrence Lauer*

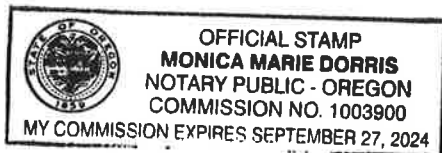
Print: *Marcy M. Lauer*

STATE OF OREGON)
County of *Polk*): ss

On this *6th* day of *January* 20*24*, before me personally appeared Richard Lawrence Lauer and Marcy M. Lauer, as Trustees of the Richard Lawrence Lauer and Marcy M. Lauer Revocable Trust, Dated June 16, 1998, to me known to be the individuals described in and who executed the foregoing instrument and acknowledged that they signed the same as their free and voluntary act, and in the capacity and for the uses and purposes therein mentioned.

GIVEN under my hand and official seal:

(SEAL)



[Signature]

Notary Public for the State of Oregon

My commission expires *9-27-2024*

GRANTEE:

Dated this _____ of _____, 20____.

ACCEPTED on behalf of the Public and Polk County, Oregon:

POLK COUNTY BOARD OF COMMISSIONERS

Jeremy Gordon, Chair

Lyle Mordhorst, Commissioner

Craig Pope, Commissioner

Approved as to Form:

Morgan Smith
County Counsel

POLK COUNTY SRTS GRANT IMPROVEMENT PROJECT
JANUARY 17, 2023
OWNER: RICHARD LAWRENCE LAUER & MACY M. LAUER,
TRUSTEES OF REVOCABLE TRUST

POLK COUNTY PROJECT NO. 20-29
TAX LOT 08420BD 03900

FILE NO. 01

PAGE 1 OF 3

EXHIBIT "A"

A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 8 SOUTH, RANGE 4 WEST OF THE WILLAMETTE MERIDIAN, CITY OF INDEPENDENCE, POLK COUNTY, OREGON, AND BEING A PORTION OF THAT PROPERTY CONVEYED TO THE RICHARD LAWRENCE LAUER & MACY M. LAUER, TRUSTEES OF REVOCABLE TRUST, PER DEED DOCUMENT NO. 2011-000422, POLK COUNTY DEED RECORDS, SAID TRACT LYING ALONG NORTH GUN CLUB ROAD AS SHOWN ON SURVEY NUMBER CS13568 AND PARTITION PLAT 2022-0016 POLK COUNTY RECORDS, SAID NORTH GUN CLUB ROAD CENTERLINE IS DESCRIBED IN THIS DESCRIPTION AS FOLLOWS:

NORTH GUN CLUB ROAD AVENUE CENTERLINE

A ROADWAY COMMONLY KNOWN AS NORTH GUN CLUB ROAD, LOCATED IN THE SOUTHWEST AND NORTHWEST QUARTERS OF SECTION 20, TOWNSHIP 8 SOUTH, RANGE 4 WEST, WILLAMETTE MERIDIAN, CITY OF INDEPENDENCE, POLK COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND AND HELD 1-1/2 INCH ALUMINUM CAP AT THE CENTERLINE INTERSECTION WITH HOFFMAN ROAD, HAVING AN ENGINEERS STATION OF 10+00.00; THENCE SOUTH 00°04'33" WEST 816.83 FEET TO A 1-1/2 INCH ALUMINUM CAP MARKED "PROJECT DELIVERY GROUP" PER THE PLAT OF QUAIL CROSSING AT THE CENTERLINE INTERSECTION WITH NORTHGATE DRIVE; THENCE CONTINUING SOUTH 00°04'33" WEST 560.30 FEET TO THE CENTERLINE INTERSECTION WITH MARIGOLD DRIVE AND THE POINT OF TERMINUS OF THIS DESCRIPTION HAVING ENGINEERS STATION 23+77.13.

THE BASIS OF BEARING OF THE ABOVE DESCRIPTION IS OREGON NORTH, NAD 83 (2011) EPOCH 2010.00, INTERNATIONAL FEET UNITS, PER OPUS



4858 SW SCHOLLS FERRY RD. STE A
PORTLAND, OR. 97225
PH: (503) 345-0328 WWW.SFLANDS.COM

POLK COUNTY SRTS GRANT IMPROVEMENT PROJECT
JANUARY 17, 2023
OWNER: RICHARD LAWRENCE LAUER & MACY M. LAUER,
TRUSTEES OF REVOCABLE TRUST

POLK COUNTY PROJECT NO. 20-29
TAX LOT 08420BD 03900

FILE NO. 01

PAGE 2 OF 3

SAID PORTION LYING EASTERLY OF THE FOLLOWING DESCRIBED LINE.

PARCEL – 1 (11 FOOT WIDE PERMANENT RIGHT OF WAY DEDICATION)

STATION TO STATION	WESTERLY OFFSET DISTANCE FROM CENTERLINE
20+50.00 TO 22+00.00	31.00 FEET

EXCEPTING THEREFROM THAT PORTION LYING WITHIN THE EXISTING RIGHT-OF-WAY OF NORTH GUN CLUB ROAD.

CONTAINS 1502 SQUARE FEET OR 0.034 ACRES MORE OR LESS.

PARCEL – 2 (VARIABLE WIDTH TEMPORARY CONSTRUCTION EASEMENT)

STATION TO STATION	WESTERLY OFFSET DISTANCE FROM CENTERLINE
20+50.00 TO 21+31.13	33.50 FEET
21+31.13 TO 21+50.18	36.00 FEET
21+50.18 TO 22+00.00	33.50 FEET

EXCEPTING THEREFROM THAT PORTION LYING WITHIN THE EXISTING RIGHT-OF-WAY OF NORTH GUN CLUB ROAD AND PARCEL 1 DESCRIBED ABOVE.

CONTAINS 389 SQUARE FEET OR 0.009 ACRES MORE OR LESS.

SEE THE ATTACHED EXHIBIT "B" FILE 01, ATTACHED AND MADE A PART HEREOF.



4858 SW SCHOLLS FERRY RD. STE A
PORTLAND, OR. 97225
PH: (503) 345-0328 WWW.SFLANDS.COM

**EXHIBIT "B"
FILE 01**

BASIS OF BEARINGS:
OREGON NORTH, NAD83/2011 EPOCH 2010.00
PER NGS OPUS

FOUND AND HELD ALUMINUM
CAP AT CL OF ROADWAYS

HOFFMAN ROAD
10+00

QUAIL CROSSING

LOT 1 STA: 20+50.00 33.50' (RT)

PARCEL 2
PP 1997-58

PARCEL 1
PERMANENT
RIGHT OF WAY

STA: 21+31.13 36.00' (RT)
FILE NO. 01

OWNER: RICHARD LAWRENCE LAUER & MACY M.
LAUER, TRUSTEES OF REVOCABLE TRUST
DEED: 2011-000422
TAX LOT: 08420BD 03900
880 N GUN CLUB RD
INDEPENDENCE, OR 97351

STA: 21+50.18 36.00' (RT)

PARCEL 2
TEMPORARY
CONSTRUCTION
EASEMENT

STA: 22+00.00 33.50' (RT)

PP 2015-009



31'

2.50'

5.00'

31'

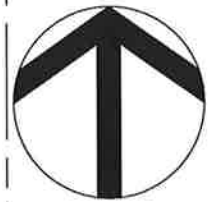
35'

21+00

22+00

S00°04'33"W

N GUN CLUB RD



1 INCH = 30 FEET

LEGEND:

PARCEL 1



AREA OF PERMANENT
RIGHT-OF-WAY DEDICATION
1502 SQUARE FEET

PARCEL 2



AREA OF TEMPORARY CONSTRUCTION EASEMENT
389 SQUARE FEET



4858 SW SCHOLLS FERRY RD.
STE A, PORTLAND, OR 97225
(503) 345-0328

www.sflands.com
info@sflands.com

EXHIBIT "B"

TAX MAP 8.4.20BD
TAXLOT 00900

PROJECT NO. 20-29
SECTION 20 T.8S, R.4W, W.M.
CITY OF INDEPENDENCE
POLK COUNTY, OREGON

DATE JAN. 17, 2023	JOB NO. 20_01909	FIELD AM	DRAWN ECW	CHECKED JLM
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ASSIGNMENT OF SALE PROCEEDS

File No.:	01
Grantor:	Richard Lawrence Lauer and Marcy M. Lauer, Trustees of the Richard Lawrence Lauer and Marcy M. Lauer Revocable Trust dated June 16, 1998
Section:	Gun Club Road and Hoffman Road
Highway:	N/A
County:	Polk
FAP No.:	N/A

The undersigned assign and transfer to:

Payee Name: **Marcy M. Lauer**
 Payee Address: **PO Box 183, Independence, OR 97351**

The net proceeds Fifteen Thousand Nine Hundred Fifty and 00/100 Dollars (\$15,950.00) due from Polk County, a municipal corporation of the State of Oregon (County), in connection with the sale of certain property to the County; provided, however, that this assignment shall be subject to claims which the County may have in the proceeds from said sale, or any prior assignments. If for any reason the sale of said property cannot be closed, then this assignment shall be null and void.



 Richard Lawrence Lauer, Trustee

2-7-2024
 Date



 Marcy M. Lauer, Trustee

2-7-2024
 Date

**MODIFICATION TO RICHARD LAWRENCE LAUER AND MARCY M.
LAUER REVOCABLE LIVING TRUST, ORIGINALLY DATED JUNE 16, 1998
WHICH WAS AMENDED AND RESTATED ON OCTOBER 5, 1999**

We, RICHARD LAWRENCE LAUER and MARCY M. LAUER, Trustors and Trustees of the RICHARD LAWRENCE LAUER AND MARCY M. LAUER REVOCABLE LIVING TRUST, do hereby modify and amend the amended and restated Trust Agreement dated October 5, 1999 as set forth herein.

We understand that the provisions of the amended and restated Trust dated October 5, 1999 do not conflict with the provisions of this amendment and shall remain in full force and effect.

1. **APPOINTMENT OF TRUSTEE AND SUCCESSOR TRUSTEE.** During the lifetimes of Richard Lawrence Lauer and Marcy M. Lauer, they shall serve as Co-Trustees. Upon the death or incapacity of one of them the other shall serve individually. Upon the death or incapacity of both of them, then Michael Lauer shall serve as first Successor Trustee. In the event that Michael Lauer can not serve then Kevin Sampson shall serve as alternate Successor Trustee. No bond shall be required of any Trustee or Successor Trustee. The Trustee shall have all authority under the provisions of the Oregon Uniform Trust Code as described in ORS Chapter 130, together with any similar applicable provisions under California Code as it may relate to any California assets.
2. **APPLICATION OF LAW.** Oregon Law shall apply under the provisions of Oregon Uniform Trust Code as described in ORS Chapter 130 as it relates to any assets controlled by the Trust within the State of Oregon. California Law shall apply to any assets held by the Trust as set forth and controlled within the State of California. In the event of any conflict of laws, the provisions of the Oregon Uniform Trust Code as described in ORS Chapter 130 will prevail.
3. **DIVISION OF TRUST AFTER DEATH OF DECEASED SETTLOR AS DESCRIBED IN ARTICLE 5.3 OF THE ORIGINAL TRUST AGREEMENT.** Under the provisions of Article 5.3 of our original Trust Agreement, the Trust is to be divided upon the death of the first settlor into a Survivor Share, Marital Deduction Share and the Non-Marital Share. At the time of execution of this amendment the status of the Federal Estate Tax System including applicable exemptions is uncertain. In addition, the State of Oregon currently has "decoupled" from the Federal System and the future of the Oregon State Tax System is also uncertain. At the time of execution of this amendment, the Trust and Non-Trust assets of the settlors are below the applicable Federal Estate exemption amounts and therefore it would be inefficient to divide Trust assets into the three shares as described above. Therefore, it is the intent of the settlors that in the event that at the time of the death of the first settlor, the total assets of the settlor's estate is less than the then applicable Federal Estate Tax exemption limit and/or any applicable State Estate Tax limit, whichever is lower, the Trust estate will not be divided into separate shares and will be administered under the provisions of the Survivor Share as described in the original Trust Agreement except as may be modified herein. If, however, the overall settlor's estate including Trust and Non-Trust assets is then over the then applicable Federal exemption limit and State Estate Tax

exemption limit then the Trust will be provided into separate shares as described in Article 5.3, Page 11 of the Trust Agreement dated October 5, 1999 and administered as described hereunder except for final distribution as described below.

4. ARTICLE 6.4. Upon the death of the surviving settlor, the Trustee shall hold, administer and distribute the assets of the Bypass Trust and/or the Survivor's Trust in the event that the Trust assets are not divided as described above as follows:

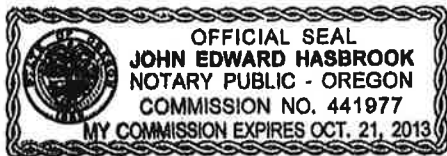
A. All Trust assets shall be equally divided between Michael Lauer and Kevin Sampson, share and share alike. No Trust assets shall be distributed to Robert Lauer under any circumstances. In the event that Michael Lauer should predecease the surviving settlor, his share shall be distributed to Tiffany Michelle Lauer in his stead. In the event that Kevin Sampson should predecease the surviving settlor, his share shall be distributed to Michael Lauer, or if Michael Lauer has also predeceased his share shall be distributed to Tiffany Michelle Lauer. In the event that Michael Lauer, Kevin Sampson and Tiffany Michelle Lauer have all predeceased the surviving settlor, then the Trust assets shall be distributed to the American Society for the Prevention of Cruelty to Animals (ASPCA), or their successor in interest.

DATED this 6 day of Jan, 2011.


RICHARD LAUER

STATE OF OREGON)
) ss.
County of Polk)

On the date last above, personally appeared the above named RICHARD LAUER, Settlor, Trustor and Trustee of the Richard Lawrence Lauer and Marcy M. Lauer Revocable Living Trust, and acknowledged the foregoing instrument to be his voluntary act and deed. Before me:



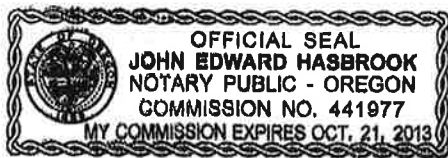

Notary Public for Oregon
My Commission Expires: 10/21/13

DATED this 6 day of JANUARY, 2011.

Marcy M. Lauer
MARCY M. LAUER

STATE OF OREGON)
) ss.
County of Polk)

On the date last above, personally appeared the above named MARCY M. LAUER, Settlor, Trustor and Trustee of the Richard Lawrence Lauer and Marcy M. Lauer Revocable Living Trust, and acknowledged the foregoing instrument to be her voluntary act and deed. Before me:



[Signature]
Notary Public for Oregon
My Commission Expires: 10/21/13

After recording, return to:

Polk County Public Works
820 SW Ash Street
Dallas, OR 97338

Send tax statements to:

Finance Department, Polk County
850 Main Street
Dallas, OR 97338

Permanent Right Of Way Dedication & Temporary Construction Easement

Thomas T. Mesdag, hereinafter called **Grantor**, conveys, grants, and dedicates to **Polk County**, a **municipal corporation of the State of Oregon**, hereinafter called **Grantee**, a Permanent Right-of-Way Dedication, which runs with the land, for public road and right-of-way purposes in, upon, and across all that real property situated within Polk County, Oregon, and more particularly described, and shown, as follows:

See Exhibit A and Exhibit B of the attached pages, titled: “**Permanent Right Of Way Dedication**”,

together with a Temporary Construction Easement over, under, and across the full width and length of the premises more particularly described, and shown, as follows:

See Exhibit A and Exhibit B of the attached pages, titled: “**Temporary Construction Easement**”.

Grantor covenants that they are the owner of the above-described property free of all encumbrances except: General and Special Exceptions #1-13, shown in the Preliminary Title Report dated: August 14, 2023, and identified by Order No. 573464AM, and will warrant and defend the same against all persons who may lawfully claim the same, except as shown above.

The true and actual consideration for this Dedication and Easement is: Twenty Two Thousand Five Hundred and 00/100 dollars (\$22,500.00).

"BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301, AND 195.305 TO 195.336, AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE NIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL TO DETERMINE AY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930, AD TO UNIQUE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS IF ANY UNDER ORS 195.300, 195.301, AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424 OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010."

The Temporary Construction Easement shall be effective upon execution by Grantee and shall remain in effect for a maximum of (2) TWO YEARS from the date executed by Grantee. The rights granted herein shall be exercised only for and during the time of the initial construction through completion of construction. This easement shall automatically terminate without the need for further action by either party upon the completion of construction.

To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, Grantee will indemnify and hold harmless Grantor, their heirs, and assigns from claims for injury to person or property that result from the negligence of Grantee, its agents, or employees in the construction, operation, or maintenance of the project. This instrument, and the covenants and agreements contained in this instrument, shall inure to the benefit of and be binding and obligatory upon the heirs, executors, administrators, successors, and assigns of the respective parties.

Grantee assumes no liability for any hazardous waste on or from this Property. Grantor, their successors and assigns, agree to defend, indemnify and hold harmless the Grantee, its officers, agents, and employees against any and all liabilities, damages, penalties, losses, claims, demands, actions, suits, and judgments (including attorney fees and costs), and any costs or expenses incurred resulting from the presence of hazardous waste onto or from the Property, including any and all costs associated with clean up or remediation that may be required. This provision shall not apply to a release of hazardous waste onto or from the Property caused by the officers, agents, or employees of Grantee. Any action taken pursuant to this provision shall not constitute an admission of liability or waiver of any defenses to liability. "Hazardous Waste" has the same meaning as provided in Oregon Revised Statutes 466.005, as may be amended.

Grantee, upon completion of the initial construction, shall restore all hardscapes (gravel, concrete, asphalt, curbing) located in the Temporary Construction Easement acquisition area (that are disturbed by the project activity) to an "as good or better" condition as they were prior to the work.

It is understood and agreed that delivery of this easement is hereby tendered and that the terms and obligations hereof shall not become binding upon Grantee unless and until accepted and approved hereon in writing for the Grantee, by its authorized agent.

IN WITNESS WHEREOF, the undersigned have executed the foregoing effective as of the date written below.

GRANTOR:

Thomas T. Mesdag

By: Thomas T. Mesdag

Print Name: THOMAS T MESTAG Date: 2-14-24

STATE OF OREGON)
County of Marion : ss)

On this 14th day of February 2024, before me personally appeared Thomas T. Mesdag, to me known to be the individual described in and who executed the foregoing instrument and acknowledged that he signed the same as his free and voluntary act, and in the capacity and for the uses and purposes therein mentioned.

GIVEN under my hand and official seal:



Tiel Grassle Fox
Notary Public for the State of Oregon
My commission expires Feb. 13, 2027

GRANTEE:

Dated this _____ of _____, 2024

ACCEPTED on behalf of the Public and Polk County, Oregon:

POLK COUNTY BOARD OF COMMISSIONERS

Jeremy Gordon, Chair

Lyle Mordhorst, Commissioner

Craig Pope, Commissioner

Approved as to Form:

Morgan Smith, County Counsel

POLK COUNTY SRTS GRANT IMPROVEMENT PROJECT
SEPTEMBER 28, 2023
OWNER: THOMAS T. MESDAG

POLK COUNTY PROJECT NO. 20-29
TAX LOT 8420 00900
FILE NO. 03

PAGE 1 OF 3

EXHIBIT "A"

A TRACT OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 8 SPOUTH, RANGE 4 WEST OF THE WILLAMETTE MERIDIAN, CITY OF INDEPENDENCE, POLK COUNTY, OREGON, AND BEING DESCRIBED AS ADJUSTED PROPERTY "A" (EXHIBIT "C") OF THAT PROPERTY OWNED BY THOMAS T. MESDAG IN PLA DEED DOCUMENT NO. 2023-001498, POLK COUNTY DEED RECORDS AND A PORTION OF PARCEL 1 OF PARTITION PLAT 2022-0016, SAID TRACT LYING ALONG NORTH GUN CLUB ROAD AS SHOWN ON SURVEY NUMBER CS13568 AND SAID PARTITION PLAT 2022-0016 POLK COUNTY RECORDS. SAID NORTH GUN CLUB ROAD CENTERLINE IS DESCRIBED AS FOLLOWS:

NORTH GUN CLUB ROAD AVENUE CENTERLINE

A ROADWAY COMMONLY KNOWN AS NORTH GUN CLUB ROAD, LOCATED IN THE SOUTHWEST AND NORTHWEST QUARTERS OF SECTION 20, TOWNSHIP 8 SOUTH, RANGE 4 WEST, WILLAMETTE MERIDIAN, CITY OF INDEPENDENCE, POLK COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND AND HELD 1-1/2 INCH ALUMINUM CAP AT THE CENTERLINE INTERSECTION WITH HOFFMAN ROAD, HAVING AN ENGINEERS STATION OF 10+00.00; THENCE SOUTH 00°04'33" WEST 816.83 FEET TO A 1-1/2 INCH ALUMINUM CAP MARKED "PROJECT DELIVERY GROUP" PER THE PLAT OF QUAIL CROSSING AT THE CENTERLINE INTERSECTION WITH NORTHGATE DRIVE; THENCE CONTINUING SOUTH 00°04'33" WEST 560.30 FEET TO THE CENTERLINE INTERSECTION WITH MARIGOLD DRIVE AND THE POINT OF TERMINUS OF THIS DESCRIPTION HAVING ENGINEERS STATION 23+77.13.

THE BASIS OF BEARING OF THE ABOVE DESCRIPTION IS OREGON NORTH, NAD 83 (2011) EPOCH 2010.00, INTERNATIONAL FEET UNITS, PER OPUS

REGISTERED
PROFESSIONAL
LAND SURVEYOR

DIGITALLY SIGNED

OREGON
JUNE 13, 2008
JERED MCGRATH
79419 PLS

RENEWS: 12/31/2022

S&F Land Services

4858 SW SCHOLLS FERRY RD. STE A
PORTLAND, OR. 97225
PH: (503) 345-0328 WWW.SFLANDS.COM

POLK COUNTY SRTS GRANT IMPROVEMENT PROJECT
SEPTEMBER 28, 2023
OWNER: THOMAS T. MESDAG

POLK COUNTY PROJECT NO. 20-29
TAX LOT 8420 00900
FILE NO. 03

PAGE 2 OF 3

SAID PORTION LYING EASTERLY OF THE FOLLOWING DESCRIBED LINE.

PARCEL – 1 (VARIABLE WIDTH PERMANENT RIGHT OF WAY DEDICATION)

STATION TO STATION	WESTERLY OFFSET DISTANCE FROM CENTERLINE
10+39.75 TO 10+49.65	40.94 FEET ALONG THE ARC OF A 10 FOOT RADIUS CURVE, 15.54 FEET THROUGH A CENTRAL ANGLE OF 89°02'54" WITH A CHORD OF SOUTH 45°03'03" EAST 14.02 FEET TO 31.00 FEET
10+49.65 TO 15+00.00	31.00 FEET

EXCEPTING THEREFROM THAT PORTION LYING WITHIN THE EXISTING RIGHT-OF-WAY OF NORTH GUN CLUB ROAD.

CONTAINS 5020 SQUARE FEET OR 0.115 ACRES MORE OR LESS.

PARCEL – 2 (VARIABLE WIDTH TEMPORARY CONSTRUCTION EASEMENT)

STATION TO STATION	WESTERLY OFFSET DISTANCE FROM CENTERLINE
10+38.00 TO 10+49.84	42.40 FEET IN A STRAIGHT LINE TO 32.50 FEET
10+49.84 TO 15+00.00	32.50 FEET

EXCEPTING THEREFROM THAT PORTION LYING WITHIN THE EXISTING RIGHT-OF-WAY OF NORTH GUN CLUB ROAD AND PARCEL 1 DESCRIBED ABOVE.

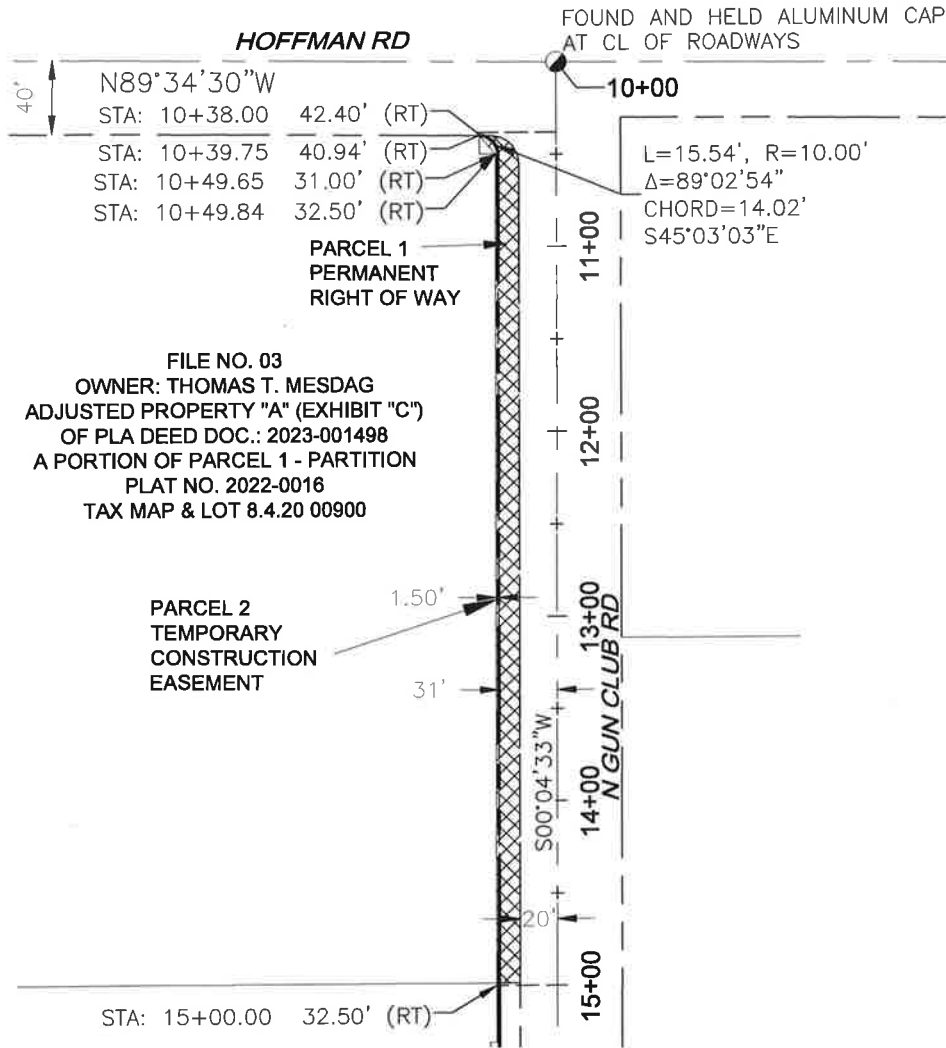
CONTAINS 709 SQUARE FEET OR 0.016 ACRES MORE OR LESS.

SEE THE ATTACHED EXHIBIT "B" FILE 01, ATTACHED AND MADE A PART HEREOF.

S&F Land Services

4858 SW SCHOLLS FERRY RD. STE A
PORTLAND, OR. 97225
PH: (503) 345-0328 WWW.SFLANDS.COM

**EXHIBIT "B"
FILE 03**



FILE NO. 03
OWNER: THOMAS T. MESDAG
ADJUSTED PROPERTY "A" (EXHIBIT "C")
OF PLA DEED DOC.: 2023-001498
A PORTION OF PARCEL 1 - PARTITION
PLAT NO. 2022-0016
TAX MAP & LOT 8.4.20 00900



1 INCH = 100 FEET

BASIS OF BEARINGS:
OREGON NORTH, NAD83/2011 EPOCH 2010.00
PER NGS OPUS

LEGEND:

PARCEL 1



AREA OF PERMANENT
RIGHT-OF-WAY DEDICATION
5020 SQUARE FEET

PARCEL 2



AREA OF TEMPORARY CONSTRUCTION EASEMENT
709 SQUARE FEET

S&F Land Services

4858 SW SCHOLLS FERRY RD.
STE A, PORTLAND, OR 97225
(503) 345-0328

www.sflands.com
info@sflands.com

EXHIBIT "B"

TAX MAP 8.4.20
TAXLOT 00900

PROJECT NO. 20-29
SECTION 20 T.8S, R.4W, W.M.
CITY OF INDEPENDENCE
POLK COUNTY, OREGON

DATE SEP. 28, 2023	JOB NO. 20_01909	FIELD AM	DRAWN ECW&TLB	CHECKED JLM
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Contract Review Sheet

Staff Contact: Dana Goodale Department: FCO

Title: SBMH Supervisor Consent Calendar Date: _____

Contractor Name: Dallas School District - amended

Address: 111 SW Ash St.

City, State, Zip: Dallas, OR 97338

Effective Dates - From: July 1, 2023 Thru: June 30, 2024

Contract Amount: \$443,787

Source Selection:

- Sole Source Personal Services
 Competitive Quotes Special/Exempt Procurement (explain below): _____
 Formal Bid _____
 Request for Proposals _____

Background/Discussion:

The purpose of this Contract is to provide School Based Mental Health services to students and families of Dallas School District through the ongoing employment of 6 FTE Mental Health Staff, 5 stationed full time in schools and 1 floating Resource Connector.

We amended the contract amount to reflect 3 Associate level staff for 12 months, 1 Therapist level staff for 12 months, 1 Therapist level staff for 4 months, and 1 Therapist level staff for 5 months.

Fiscal Impact:

Without this contract we would not be able to provide School Based Mental Health services to students and families of Dallas School District.

Recommendation:

Copies of signed contract should be sent to the following:

Name: Dana Goodale E-mail: goodale.dana@co.polk.or.us

Name: Jennifer Segovia E-mail: segovia.jennifer@co.polk.or.us

Name: _____ E-mail: _____

INTERGOVERNMENTAL AGREEMENT
POLK COUNTY AND DALLAS SCHOOL DISTRICT #2
FOR SCHOOL BASED MENTAL HEALTH SERVICES
AMENDMENT

THIS AGREEMENT is entered into and shall be effective on August 1, 2023, by and between Polk County ("Polk County") and Dallas School District #2 ("District").

RECITALS

WHEREAS, Polk County and District are units of local government, as that term is defined in ORS 190.003; and

WHEREAS, ORS 190,010 provides that units of local government may enter into written agreements for the performance of any or all functions and activities that a party to the agreement, its officers or agencies, have authority to perform;

WHEREAS, Polk County and District recognize a critical need to provide mental health support services for students to enrich the lives of school-age children of the County; and

WHEREAS, Polk County and District wish to enter into an agreement which provides for staff and families who will assist both District and Polk County in serving the school age children of Polk County; and

NOW, THEREFORE, in consideration of the promises and covenants herein contained, the parties enter into the following:

AGREEMENT

1. Purpose of and Effective Date of Contract.

- a. The purpose of this Contract is to provide School Based Mental Health services to students and families of Dallas School District through the ongoing employment of 6 FTE Mental Health Staff. 5 stationed full time in schools and 1 floating Resource Connector.
- a. This Contract becomes effective upon execution by both parties. The contract effective dates are July 1st, 2023, through June 30, 2024. Any renewals and/or changes to this agreement must be in writing, in the form of an amendment to this Contract and signed by both parties.

2. Duties and Responsibilities
See Appendix "A"

3. Polk County Supervision. Polk County is the employer of these employees and is responsible for supervisory oversight of these employees.,Polk County will handle all human resources functions including hours and benefits, grievances, employment disputes and all wages, hours and benefits. Polk County will also provide a designated supervisor for the School Based Mental Health Program who will provide supervision for employees, consultation and resource information to the district administration, Crisis Response Team (Flight Team) leadership, Level 2 Threat Assessment support, assistance in accessing services through Polk County Behavioral Health, and serve as a liaison for coordination of school based mental health services and Central School District.
4. Criminal Background Check. Polk County will ensure District a criminal background check is completed and passed by all employees and interns.
5. Workers' Compensation Insurance. Polk County and District agree that this employee shall be an employee of Polk County for purposes of workers' compensation insurance. Polk County agrees to administer all workers' compensation claims and to defend and hold harmless District for workers' compensation claims incurred while employee is injured at either employment site.
6. Health Care Benefits for Employees (ORS 279.31 5). Polk County shall offer health care benefits to all employees who are performing services previously performed by public employees if the conditions specified in ORS 653.767 require such payment. Benefits must equal or exceed those benefits specified in ORS 279.315 (3). This clause does not apply to contracts for temporary, non-ongoing or nonrecurring contracts.
7. Americans with Disabilities Act Compliance. Polk County will comply and does comply with all relevant provisions of the Americans with Disabilities Act, to the extent required by the Act.
8. Term of the Agreement. The parties agree that this agreement shall be in effect for one year. It is understood that this contract will be re-negotiated for renewal for the 2023-24 fiscal year. It is further agreed that any renewal will be for a period of not less than 12 months. Rates to be negotiated shall not be less than the current rate of salary for the County of School Based Mental Health Staff, as well as taxes and fringe benefits of the average cost by Polk County at the time of renewal. There will be an additional agreed upon rate for management and administration.
9. FERPA COMPLIANCE. District and Polk County agree that County employees providing school based health services for the District pursuant to this agreement shall be considered school officials for the purposes of the protections for student records mandated by the Family Education Rights and Privacy Act (20 USC 1231(g)) (collectively referred to as FERPA, which records are specifically

exempted from the Privacy regulations of the Health Insurance Portability and Accountability Act and the federal regulations implementing the Act (collectively referred to as HIPAA). The County will ensure that its employees maintain the confidentiality of student information under the Family Educational Rights and Privacy Act ("FERPA"). County staff that obtain or learn confidential information while providing services under this Agreement shall not disclose such information to third parties unless parent/guardian written consent has been obtained. FERPA prohibits the re-disclosure of confidential student information. Except in very specific circumstances, the County shall not disclose to any other party without prior consent of the parent/guardian any information or records regarding students or their families that the County may learn or obtain in the course and scope of its performance of this Contract. Any re-disclosure of confidential student information must be in compliance with the re-disclosure laws of FERPA. The County is not to re-disclose information without prior written notification to and written permission of the District.

10. Indemnification.

- a. Polk County and District are each independent governmental agencies. District agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless the County, its officers, directors and employees (collectively, County) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by District's performance of services under this Agreement and that of its employees or anyone for whom District is legally liable. The County agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless District, its officers, directors, employees and volunteers (collectively, District) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the County's acts in connection with this agreement and the acts of its officers, agents, employee, volunteers or anyone for whom the County is legally liable. Neither the County nor District shall be obligated to indemnify the other party in any manner whatsoever for the other party's negligence.
- b. Both Polk County and District shall obtain and at all times keep in effect comprehensive liability insurance and property damage insurance covering each respective party's own acts and omissions under this agreement. Such liability insurance, whatever the form, shall be in an amount not less than the limits of public body tort liability specified in ORS 30.270. Either party may satisfy this requirement by self-insurance.
- c. Polk County and District agree that District's liability insurance will be primary for any claims arising out of acts or omissions of the school staff.

11. Assignment. Neither party to this agreement may assign its interest in the

agreement without the express written consent of the other party.

12. Compliance with Laws. During the entire term of this agreement, the parties shall comply in every respect with all laws, rules and regulations of the State of Oregon as well as agency policies affecting their rights and responsibilities under the contract.
13. Waiver. No waiver of any portion of this agreement shall be deemed or shall constitute a waiver of any other portion thereof, nor shall any waiver constitute a continuing waiver.
14. Contract Disputes. The parties agree that any disagreement regarding the interpretation, meaning or affect or any provision of this agreement shall be settled by arbitration if so requested by either party in writing. The arbitration decision will be binding upon the parties. The cost of such arbitration shall be shared equally between the parties.
15. Termination or Suspension of Performance. This Intergovernmental Agreement may be terminated under the following conditions:
 - a. By mutual consent of both parties, or by either party on 30 days' notice, in writing and delivered by certified mail or in person;
 - b. Any such termination of this contract shall be without prejudice to any obligations or liabilities of either party already accrued prior to the notice of termination;
 - c. The parties agree to promptly settle all accounts existing from work performed under this contract upon termination.
16. Integration Clause. The foregoing represents the entire agreement between the parties and any prior understanding or representations of any kind preceding the date of this agreement shall not be binding upon the other party except to the extent incorporated in this agreement.
17. Modifications. No modification of this agreement shall be binding upon the parties unless reduced to writing.

POLK COUNTY

DALLAS SCHOOL DISTRICT #2

Date: _____

Date: 03/08/24

By: _____
Polk County Representative

By: Jamill Montague, Director of Fiscal Svcs
Dallas School District Representative

Appendix A

School District Services

Dallas School District agrees to:

1. Allow for Polk County staff to primarily focus on providing mental health services to students
 - a. Invite staff to school meetings as appropriate (i.e: MTSS/SIT/PBIS/IEP)
2. Provide mental health staff with appropriate confidential and consistent office space for individual and group work, and a reasonable level of office/clerical/technical support.
3. District agrees to participate in the identification and screening of students who may benefit from School Based Mental Health services and will provide referrals as needed. District will provide access to students and their pertinent records when identified.
4. District will have the opportunity to participate in the hiring process.
5. District will give Polk County input on the staff's job performance.
6. Reimburse Polk County in the amount of ~~\$531,231~~ \$443,787 for the 2023-24 academic year for mental health services and support as indicated.

To be paid in equal 1/12 allotments.

- a. Cost breakdown: Wages, insurance, and benefits ~~\$485,617~~ \$398,173; Mileage, training, administration and supplies \$45,614

Polk County Services

Polk County agrees to:

1. Provide the following FTE:
 - a. ~~3 Therapist level staff~~ 1 Therapist level staff for 12 months, 1 Therapist level staff for 4 months, 1 Therapist level staff for 5 months
 - Oakdale Heights Elementary
 - Lyle Elementary
 - Dallas High School
 - Morrison Campus
 - b. 3 Associate level staff
 - LaCreole Middle
 - Whitworth Elementary
 - Floating Resource Connector
2. Contract days for staff are to be from August 24, 2023- July 19, 2024 with the exception of one Associate level staff who will work 12 months and support summer school needs.
3. Provide clinical supervision to all team members on an ongoing and regular basis
4. Address corrective staffing issues as needed with the support of building administration
5. Provide mental health skills training to individuals, groups and families as needed and as assigned by school and county personnel, and upon

self-referral from clients and families within the district's assigned schools. Group skills training may include, but is not limited to, assistance in the development of skills in anger management, life/academic skills, healthy relationships, peer relationships, anti-bullying, and other identified topic areas.

6. Attend Service Integration Meetings and assist district in accessing county and community resources
7. Maintain appropriate records of services provided within a secure Electronic Health Record system.
8. Provide crisis intervention and screenings on an as-needed basis during normal working hours. Crisis intervention after hours will be routed through Polk County's assigned crisis intervention team. Staff will conduct crisis intervention through Crisis Response Team (formally known as Flight Team) leadership and support, Level I suicide screenings, Level I and Level 2 threat assessments, and through grief and loss support to students and families.
9. In addition to providing individual and group services as noted in 2c, staff will provide prevention and early intervention services to assigned schools through classroom presentations, school assemblies, and through special events when requested by school administration.

Special Conditions:

1. Polk County agrees to support employees to promote positive school environments and collegial relationships by:
 - a. Attending school staffing's as requested;
 - b. Attending and consulting at Student Services Team (SST) and Individualized Education Program (IEP) child meetings when appropriate
 - c. Participating in MTSS (Multi-Tiered Systems of Support) meetings, PBIS (Positive Behavior Intervention and Supports), and JEDI (Justice, Equity, Diversity and Inclusion) efforts as requested
 - d. Attending parent meetings as requested;
 - e. Seek meetings as needed with appropriate school personnel.
2. Polk County employees shall assist school personnel in dealing with students in crisis. Employees shall respond to requests by school staff to provide therapeutic crisis intervention, without the use of physical restraint measures. Employees may also participate in Level 1 and Level 2 Student Threat Assessments.
3. District understands that Polk County School Based Mental Health Staff have duties and expectations that necessitate time out of the school building; these duties and expectations will average approximately eight (8) hours per month, this is in addition to scheduled training(s) and personal/family emergencies or use of vacation/sick leave. Examples of duties include but are not limited to: clinical supervision, twice monthly School Based Mental Health staff meetings, assigned Service Integration Team, and occasional training

and staff development opportunities. Staff have accrued sick and vacation time that may also lead to additional time out of the building. In these instances, a substitute will not be provided by the county unless time missed exceeds ten working days. The county will work to place a substitute in the district if the absence exceeds 10 working days.

4. District understands that a designated "SBMH Lead" staff member may use up to 15% of their work time towards tasks unrelated to their typical school duties (consultation with other SBMH staff, attending Level 2 threat assessments, etc).



CONTRACT REVIEW SHEET

Staff Contact: Rosana Warren Phone Number (Ext): 3558

Department: Health Services: Behavioral Health Consent Calendar Date: March 13, 2024

Contractor Name: Jannell Werner

Address: 5936 SE 17th Loop

City, State, Zip: Portland, OR 97080

Effective Dates - From: February 01, 2024 Through: June 30, 2025

Contract Amount: Varies

Background:

Jannell Werner has agreed to provide Behavioral Health services to referred Polk County Behavioral Health individuals.

Discussion:

This contract is a new contract with Jannell Werner to provide prescriber services to Polk County individuals. Jannell Werner meets the criteria for a service provider and has been cleared to work with us through a criminal history records review.

Fiscal Impact:

The Behavioral Health Services budget has sufficient expenditure authority to accommodate this contract. The 2024-25 FY Behavioral Health budget was prepared in anticipation of this agreement.

Recommendation:

It is recommended that Polk County sign this agreement with Jannell Werner.

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: _____

CONTRACT & AGREEMENT SUMMARY

CONTRACT NUMBER:	
COUNTY/DEPARTMENT:	POLK COUNTY BEHAVIORAL HEALTH 182 SW ACADEMY STREET DALLAS, OR 97338 EIN: 93-6002310
CONTACT PERSON:	ROSANA WARREN
DATE ISSUED:	FEBRUARY 23, 2024
CONTRACTOR	JANNELL WERNER 5936 SE 17TH LOOP PORTLAND, OR 97080 SSN: ON FILE
CONTACT PERSON:	JANNELL WERNER
SERVICES PROVIDED:	To provide Licensed Psychiatric Nurse Practitioner services as outlined in Exhibit B.
EFFECTIVE DATES:	FROM MARCH 01, 2024 THROUGH JUNE 30, 2025
BUDGET LINE #:	99WERJAN
DOLLAR AMOUNT:	VARIES
TERMS:	Service Rates per Exhibit B
ADDITIONAL COMMENTS/INFORMATION:	

NOTIFY CONTRACTS TEAM IMMEDIATELY OF ANY CONTRACT TERMINATION

HS.CONTRACTS@co.polk.or.us

AGREEMENT

This Agreement is made and entered into by and between

**POLK COUNTY
BEHAVIORAL HEALTH
182 SW ACADEMY STREET
DALLAS, OR 97338
EIN: 93-6002310**

a political subdivision of the State of Oregon, hereinafter referred to as "County" and

**JANNELL WERNER
5936 SE 17TH LOOP
PORTLAND, OR 97080
SSN: ON FILE**

hereinafter referred to as "Contractor"; and,

WHEREAS, County is authorized to obtain, by contract, the services necessary to conduct its operation; and

WHEREAS, Contractor has available, or can obtain, the necessary licenses or certificates required for the performance of said services;

NOW, THEREFORE, IT IS HEREBY AGREED by and between the parties above-mentioned, for and in consideration of the mutual promises hereinafter stated as follows:

SECTION I: DECLARATION OF SERVICES RENDERED AS AN INDEPENDENT CONTRACTOR

- A. The County is desirous of securing the services of the Contractor to perform services more specifically outlined in Exhibit B: Statement of Work, based on Contractor's specialty and capacity, and Polk County's needs and capacity.
- B. The Contractor shall provide authorized services to Polk County referrals at Contractor's facilities, Polk County Buildings on space available basis, and/or consumer's school facility, work location, or home depending upon the needs of the individual. Depending on the nature of services provided, the location of services may be curtailed by Exhibit B: Statement of Work.
- C. Services shall be provided in accordance with the document entitled Exhibit B: Statement of Work, which is attached and by reference herein, made an integral part of this Agreement.

SECTION II: CONSIDERATION

- A. As consideration for the services provided by the Contractor during the period beginning March 1, 2024, and ending June 30, 2025, payment shall be retroactive for approved services provided to Polk County referrals on or after the period beginning date. Any renewals and/or changes to this agreement must be submitted in writing, in the form of an amendment to this Contract and signed by both Parties.
- B. Agreement is effective upon the signature of all parties. It is understood by both parties that no commitments have been or are made by either party beyond the termination of the Agreement.
- C. The County will pay to the Contractor, by check(s) or ACH direct payment upon receipt of an authorized billing document at the rates outlined in Exhibit B and as approved by Polk County. Billings shall be submitted to HS Fiscal either electronically to hs.fiscal@co.polk.or.us or by mail to Polk County Health Services Business Services Department, 182 SW Academy Street Suite 204, Dallas, Oregon 97338. The County shall endeavor remit payment within 2-3 weeks of receipt of appropriate billing, supporting documentation and signed invoice.
- D. It is agreed that Contractor shall accept payment from Polk County as full and total payment for services and that Contractor shall not bill any Polk County clients (or their insurance) served under this agreement for services delivered hereunder.
- E. Contractor is engaged hereby as an independent contractor, and the services to be rendered are those of an independent contractor, subject to ORS Chapter 656, and will be so deemed for purposes of the following:
 - i. Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Agreement.
 - ii. This Agreement is not intended to entitle Contractor to any benefits generally granted to County employees. Without limitation, but by way of illustration, the benefits which are not intended to be extended by this Agreement to the Contractor are vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, workers' compensation, unemployment compensation or retirement benefits .
 - iii. The Contractor is an independent contractor for purposes of the Oregon Workers' Compensation Law (ORS Chapter 656) and is solely liable for any Workers' Compensation coverage under this Agreement. If the Contractor has the assistance

of other persons in the performance of this Agreement, the Contractor shall qualify and remain qualified for the term of this Agreement as a direct responsibility employer under ORS 656.407 or as a contributing employer under ORS 656.411.

- F. Exhibit A – Business Associate Agreement attached hereto is by this reference incorporated herein and made an integral part of this agreement.

SECTION III: GENERAL PROVISIONS

- A. Extent of Agreement: This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.
- B. Captions: The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provision of this Agreement.
- C. Payment as Sole Monetary Obligation of the County: The Contractor is engaged as an independent contractor. Payment as provided herein shall be the sole monetary obligation of the County. Unless otherwise specified, the responsibility for payment of all operating costs, Federal, State, County or city taxes/assessments and any other charges imposed by law upon employers shall be the sole responsibility of the Contractor.
- D. Licensing and Program Standards: The Contractor agrees to comply with all applicable State, County, and municipal standards for licensing, and any other standards or criteria described in this Agreement and its attachments.
- E. Contractor-client Relationship: The Contractor will establish a system through which a client and/or the client's parents or guardian may represent grievances about the operation of the Contractor's service program. At the time arrangements are made for the Contractor's service, the Contractor will advise the child and parents or guardian of the provision. The Contractor shall notify the County of all unresolved grievances.
- F. Safeguarding of Client Information:
 - i. The use or disclosure by any party of any information concerning a recipient of services purchased under this Agreement, for any purpose not directly connected with the administration of the County's or the Contractor's responsibilities with respect to such purchased services, is prohibited, except on written consent of the County, or if the County is not the recipient, on written consent of the recipient or attorney, or otherwise compliant with Contractor's obligations under Exhibit A.

- ii. For the purposes of safeguarding protected client information, Contractor agrees to abide by all County rules and regulations regarding Communication technology as documented in the County's Communications Technology Policy. Contractors providing services from a County facility will be provided appropriate County equipment to perform its duties under this agreement. To the extent that Contractor elects to use their own technology (computer, cellular phone, etc...) Contractor warrants that such equipment shall be compliant with County rules and regulations, and its obligations under Exhibit A.
- G. Civil Rights Act of 1964 and Rehabilitation Act of 1973: The Contractor agrees to comply with the requirements of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973, and their implementing Federal regulations, including Executive Order 11246 as amended.
- H. Fiscal Responsibility, Records, Controls, Reports, and Monitoring Procedures:
- i. The Contractor agrees to establish and exercise such controls as are necessary to assure full compliance with Federal regulations and the County's guidelines on allowable use of funds paid by the County under this Agreement.
 - ii. The Contractor agrees to maintain fiscal records consistent with generally accepted accounting practices and controls, which will properly reflect all direct and indirect costs and funds expended in the performance of this Agreement. The Contractor shall make these records available at reasonable times upon request to State and Federal personnel, and other persons authorized by the County.
 - iii. The Contractor agrees to collect financial statistics on a regular basis and to make financial reports at times in the form prescribed by the County.
- I. Program Records, Controls, Reports, and Monitoring Procedures: The Contractor agrees to maintain program records including statistical records, and to provide program records to the County at times and in the form prescribed by the County. The Contractor agrees to establish and exercise such controls as are necessary to assure full compliance with the program and facilities review (including meetings with consumers, reviews of service records, review of policy and procedures, review of staffing ratios and job descriptions, and meetings with any staff directly or indirectly involved in the provision of services) may be conducted at any reasonable time by State and Federal personnel and other persons authorized by the County.
- J. Retention of Records: The Contractor agrees to retain all books, records, and other documents relevant to this Agreement for three (3) years after final payment is made

under the Agreement or all pending matters are closed, whichever is later. If litigation or other action involving the Agreement is started before the end of the three (3) year period, the records shall be retained until all issues arising out of the action are resolved or until the end of the three (3) year period, whichever is later.

K. Insurance:

- i. Contractor agrees that it is an independent contractor and not an agent of the County. The Contractor and the County shall not be responsible for any legal liability, loss, malpractice, damages, costs and expenses arising in favor of any person on account of personal injuries, death or property loss or damage occurring, growing out of, incident to or resulting directly or indirectly from the acts or omissions of the other party under this Agreement.
- ii. Contractor shall obtain, and at all times keep in effect, comprehensive liability insurance and property damage insurance covering activities, operations, and omissions of the Contractor, all subcontractors, and all named additional insureds. Contractor may satisfy this requirement for general liability insurance in any manner allowed by ORS 30.282. Such liability insurance, whatever the form, shall be in an amount not less than one million dollars (\$1,000,000) with provision for increased coverage as such limits are increased by legislative action. In the event of unilateral cancellation or restriction by the insurance company of the Contractor's insurance policy referred to in this paragraph, the Contractor shall immediately notify the County verbally and in writing.
- iii. As evidence of the insurance coverage required by this Agreement, and prior to the execution of this Agreement, the Contractor shall furnish a Certificate of Insurance to Polk County, to Polk County Health Services, 182 SW Academy Street, Suite 204, Dallas, Oregon 97338. The Certificate form, to be completed by the Contractor's insurer, naming Polk County as additional insured, will be maintained in the County's file of this Agreement.
- iv. There shall not be any cancellation, material changes or failure to renew such insurance policy (policies) without thirty (30) days' prior notice to the County.

- L. Subcontracting: Unless subcontracting is authorized elsewhere in the Agreement, the Contractor shall not enter into any subcontracts for any of the work contemplated under this Agreement without obtaining prior written approval from the County, which approval shall be attached to the original Agreement. Approval by the County of a subcontract shall not result in any obligations of the County in addition to the agreed rates of payment and total consideration. Any subcontracts which the County may

authorize shall contain all requirements of this Agreement, and the Contractor shall be responsible for the performance of the subcontractor. Contractor may subcontract medical investigator's duties so long as the subcontractor possesses medical qualifications equivalent to those of the Contractor.

- M. Re-negotiation or Modification: Any alterations, variations, modifications to or waivers of provisions of this Agreement shall be valid only when they have been reduced to writing, duly signed, and approved by the Contractor and the County and attached to the original of this Agreement.
- N. Excuses for Nonperformance: Neither party to this Agreement shall be held responsible for delay or failure in performance of the activities required herein when such delay or failure is due to causes beyond the control and without the fault or negligence of the party. Such causes may include, but are not restricted to, fire, flood, epidemic, strikes, acts of God or the public enemy, unusually severe weather, legal acts of public authorities, or delays or defaults caused by public carriers, which cannot reasonably be forecast or provided against. Either party may terminate the Agreement after reasonably determining that such delay or failure will prevent continued performance of the Agreement, and after giving written notice to the other party of the cause, its effect on Agreement performance and effective date of termination. If the Agreement is so terminated, the obligation of the County shall be limited to payment for services provided in accordance with the Agreement prior to the date of termination.
- O. Remedies: If the Contractor fails to provide the services or perform any of the other requirements under the Contract, and such failure is not excused under the paragraph titled "Excuses for Nonperformance", the County, after giving the Contractor written notice of such failure, may withhold part or all of the Contractor's payment for the services until such failure is corrected. If the Contractor does not correct such failure within a reasonable time allowed by the County, the County may terminate the Agreement in accordance with the clause titled "Termination." However, this paragraph, and any actions taken or not taken under it, shall not affect the County's rights under the "Termination" clause.
- P. Termination: This Agreement may be terminated by mutual consent of both parties or unilaterally by both parties at any time upon thirty (30) days' notice to the other party in writing and delivered personally or by Certified Mail. The County may also unilaterally terminate this Agreement effective upon delivery of written notice to the Contractor, or at such later date as may be established by the County, under any of the following conditions:

- i. If funds, specifically authorized by Legislative acts, do not become available in amounts sufficient to allow for purchase of the stated quantity of services. When possible and when agreed upon by the parties, the Agreement may be modified in accordance with the paragraph entitled "Re-negotiation or Modification" to accommodate a reduction in funds.
- ii. If Federal or State laws, regulations or guidelines are modified or changed in such a way that the services are no longer allowable or appropriate for purchase under this Agreement or no longer qualify for the funding proposed for payments authorized by this Agreement.
- iii. If any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Agreement is for any reason denied, revoked, not renewed, or changed in such a way that the Contractor no longer meets requirements for such license or certificate.
- iv. Termination under this clause shall be without prejudice to any obligations or liabilities of either party already reasonably incurred prior to such termination, except that the Contractor shall be solely responsible for its obligations or liabilities after the termination date, which obligations or liabilities result from the Contractor's failure to provide for termination of, or exercises the right to terminate, its commitments. No right of action or damages shall accrue to the benefit of the Contractor if the Agreement is terminated under this clause.
- v. The County, by written notice of default (including breach of contract) to the Contractor, may terminate this Agreement:
 - a. If the Contractor fails to provide the services called for by this Agreement within the time specified herein or any extension thereof granted by the County; or
 - b. If the Contractor fails to perform any of the other requirements of this Agreement; or
 - c. If the Contractor so fails to perform the work required in the Agreement that performance of this Agreement in accordance with its terms is endangered, and after receipt of written notice from the County specifying such failure, the Contractor fails to correct such failure within ten (10) days or such longer period as the County may authorize.
- vi. If the Agreement is terminated under this clause, the County's obligations shall be limited to payment for services provided in accordance with the Agreement prior to

the date of termination, less any damages suffered by the County. The rights and remedies of the County in this clause related to defaults (including breach of contract) by the Contractor shall not be exclusive and are in addition to any other rights and remedies provided to the County by law or under this Agreement.

- Q. Hold Harmless: Except for claims arising in whole from the negligence of County, its employees or its agents, Contractor agrees to indemnify and hold County harmless from and against all actions, suits, claims and demands arising out of Contractor's performance under this Contract and agrees to defend County in such actions, suits, claims and demands.
- R. Waiver of Default: Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of the Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such in writing, signed by an authorized representative of the County, and attached to the original Agreement in accordance with the paragraph entitled "Re-negotiation or Modification".
- S. Severability: The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
- T. Fees Prohibited: The Contractor will not impose or demand any fees from any person or agency for services provided and paid for under this Agreement, unless the fees have been approved in advance by the County in writing.
- U. Non-Discrimination: The Contractor acknowledges that they are an equal opportunity employer and no person shall be denied services or discriminated against on the basis of race, color, religion, sex, sexual orientation, national origin, marital status or age, and there shall be no discrimination in the selection, compensation or the employment practices with respect to personnel coming under the auspices of the Contractor.
- V. Assignment of Agreement: The Contractor shall not assign or transfer its interest in this Agreement without prior written approval of the County, which shall be attached to the original Agreement. Any such assignment, if approved, is subject to such conditions and provisions, as the County may deem necessary. No approval by the County of any assignment or transfer of interest shall be deemed to create any obligation of the county in addition to the agreed rates of payment and total Agreement consideration.

- W. Funds Authorized and Available: The County certifies that at the time of signing this Agreement, sufficient funds are authorized and available, or are anticipated to be available, for expenditure to finance costs of this Agreement within the County's current appropriation or limitation.
- X. Recovery of Overpayments: If billings under this Agreement, or under any Agreement between the Contractor and the County, result in payments to the Contractor for which the Contractor is not entitled under the terms of such Agreement, the County, after giving written notification to the Contractor, may withhold from payments due to the Contractor under this Agreement such amounts, over such periods of time, as are necessary to recover the amount of the overpayment.
- Y. Criminal History Records Checks: Contractor agrees to authorize a review of state and federal records by Polk County as a qualified entity, to determine the nature of any criminal activity the Contractor may have been involved in accordance with OAR 943-007-001 for purposes described in OAR 407-007-0400. No work will be assigned to Contractor until a Criminal History Check is completed and verified by the qualified entity. Contractor shall notify Polk County within five days of being arrested, charged, or convicted of any crime.

SECTION IV: CLAUSES REQUIRED BY OREGON LAW FOR PERSONAL SERVICES CONTRACTS

- A. Payment of Subcontractors, Industrial Accident Fund Contributions, Liens and Withholding Taxes:
 - 1. Contractor shall make payment promptly, as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided for in this contract.
 - 2. Contractor shall pay all contributions or amounts due the Industrial Accident Fund from such contractor or subcontractor incurred in the performance of the contract.
 - 3. Contractor shall not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, Municipal Corporation or subdivisions thereof, on account of any labor or material furnished.
 - 4. Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- B. Payment of Claims by County: If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public contract as such claim becomes due, the

proper officer or officers representing Polk County may pay such claim to the person furnishing the labor or services and charge the amount of payment against funds due or to become due the Contractor by reason of this contract. Payment of a claim in this manner shall not relieve the contractor or contractor's surety from obligation with respect to any unpaid claims.

- C. Hours of Labor: All laborers providing contract services shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 USC section 201 to 209 from receiving overtime.
- D. Payment for Medical Care: Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees for such Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying such service.
- E. Providing Workers' Compensation Insurance: All employers working under this contract are subject employers who will comply with ORS 656.017.
- F. Health Care Benefits for Employees: The Contractor shall provide health care benefits to all employees who are performing services previously performed by public employees if the conditions specified in ORS 653.767 require such payment. Benefits must equal or exceed those benefits specified in ORS 279.315(3). This clause does not apply to contracts for temporary, non-ongoing or nonrecurring contracts.
- G. Americans with Disabilities Act Compliance: Contractor agrees that Contractor will comply and does comply with all relevant provisions of the Americans with Disabilities Act, to the extent required by the Act.

EXHIBIT A:
BUSINESS ASSOCIATE AGREEMENT
Between
POLK COUNTY and JANNELL WERNER

1. DEFINITIONS:

Except as otherwise defined in this *Business Associate Agreement* (BA Agreement), any and all italicized terms herein shall have the same definition as those in the HIPAA Privacy Rule.¹ Henceforth, Polk County, a political subdivision of the State of Oregon, shall be referred as "COUNTY" and Jannell Werner shall be referred to as "CONTRACTOR".

2. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR:

- A. CONTRACTOR agrees to not use or disclose *Protected Health Information* other than as permitted or required by this BA Agreement or as permitted or required by law.
- B. CONTRACTOR agrees to use appropriate safeguards to prevent use or disclosure of Protected Health Information other than as provided for by this BA Agreement.
- C. CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR of a use or disclosure of Protected Health Information by CONTRACTOR in violation of the requirements of this BA Agreement.
- D. CONTRACTOR agrees to report to the COUNTY any use or disclosure of the Protected Health Information not provided for by this BA Agreement of which it becomes aware.
- E. CONTRACTOR agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by, CONTRACTOR on behalf of the COUNTY agrees to the same restrictions and conditions that apply through this BA Agreement to CONTRACTOR with respect to such information.
- F. In the event that it is found to be applicable, CONTRACTOR agrees to provide access, at the request of the COUNTY, and in the time and manner necessary for reasonable compliance, to Protected Health Information in a *Designated Record Set* to the COUNTY

¹ The use and disclosure of protected health information in performance of Business Associate functions is governed by the Standards for Privacy of Individually Identifiable Health Information (45 CFR Parts 160 and 164), referred to as the Privacy Rule, which were issued by the United States Department of Health and Human Services pursuant to Public Law 104-191, the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The use and disclosure of protected health information is also governed by laws of the State of Oregon and by other federal laws.

or, as directed by the COUNTY, to an *Individual* in order to meet the requirements under 45 CFR § 164.524.

- G. In the event that it is found to be applicable, CONTRACTOR agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the COUNTY directs or agrees to pursuant to 45 CFR § 164.526 at the request of CONTRACTOR, or an Individual, and in the time and manner necessary for reasonable compliance.
 - H. CONTRACTOR 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 CONTRACTOR on behalf of the COUNTY available to the COUNTY or to the *Secretary of the Department of Health and Human Services*, in a time and manner agreed between the COUNTY and CONTRACTOR or designated by the Secretary, for purposes of the Secretary determining the COUNTY'S compliance with the Privacy Rule.
 - I. CONTRACTOR agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for the COUNTY 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. CONTRACTOR agrees to provide to the COUNTY or an Individual, in the time and manner necessary for reasonable compliance, information collected in accordance with section 2.A of this BA Agreement, to permit the COUNTY to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.
3. PERMITTED USES AND DISCLOSURES BY CONTRACTOR: Except as otherwise limited in this BA Agreement, CONTRACTOR may use or disclose Protected Health Information to perform certain health plan functions for or on behalf of the COUNTY as specified in the Polk County Agreement and in this BA Agreement provided that such use or disclosure would not violate the Privacy Rule if done by the COUNTY or the minimum necessary policies and procedures of the COUNTY.
4. OBLIGATIONS OF THE COUNTY:
- A. The COUNTY shall notify CONTRACTOR of any limitation(s) in the *Notice of Privacy Practices* of the COUNTY in accordance with 45 CFR § 164.520, to the extent that

such limitation may affect CONTRACTOR'S use or disclosure of Protected Health Information.

- B. The COUNTY shall notify CONTRACTOR of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect CONTRACTOR'S use or disclosure of Protected Health Information.
 - C. The COUNTY shall notify CONTRACTOR of any restriction to the use or disclosure of Protected Health Information that the COUNTY has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect CONTRACTOR'S use or disclosure of Protected Health Information.
5. PERMISSIBLE REQUESTS BY THE COUNTY: The COUNTY shall not request CONTRACTOR to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by the COUNTY except if such use or disclosure is permitted under the Agreement between the COUNTY and CONTRACTOR.
6. TERM AND TERMINATION:
- A. Term. This BA Agreement shall be effective as of March 01, 2024, and shall terminate when all of the Protected Health Information provided by the COUNTY to CONTRACTOR, or created or received by CONTRACTOR on behalf of the COUNTY, is destroyed or returned to the COUNTY, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.
 - B. Termination for Cause. Upon the COUNTY'S knowledge of a material breach by CONTRACTOR, the COUNTY shall either:
 - i. Provide an opportunity for CONTRACTOR to cure the breach without the intervention of the COUNTY within the timeline specified in Section III (P) of the Polk County Agreement; or
 - ii. Provide an opportunity for CONTRACTOR to terminate this BA Agreement and the Polk County Agreement within the timeline specified in Section III of the Polk County Agreement. At the direction of its Board of Directors, the COUNTY may terminate this BA Agreement and the Polk County Agreement as permitted in Section III of the Polk County Agreement if CONTRACTOR has not cured the

breach upon conclusion of the technical assistance and corrective action described in paragraph (i.) of this section; or

- iii. If neither termination nor cure is feasible, the COUNTY shall report the violation to the Secretary.

C. Effect of Termination.

- i. Except as provided in paragraph (ii.) of this section, upon termination of this BA Agreement, for any reason, CONTRACTOR shall return or destroy all Protected Health Information received from the COUNTY, or created or received by CONTRACTOR on behalf of the COUNTY. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of CONTRACTOR. CONTRACTOR shall retain no copies of the Protected Health Information.
- ii. In the event that CONTRACTOR determines that returning or destroying the Protected Health Information is infeasible, CONTRACTOR shall provide to the COUNTY written notification of the conditions that make return or destruction infeasible. Upon written acknowledgement by the COUNTY that the return or destruction of Protected Health Information is infeasible, CONTRACTOR shall extend the protections of this BA Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as CONTRACTOR maintains such Protected Health Information.

7. MISCELLANEOUS:

- A. Regulatory References. References in this BA Agreement to the Privacy Rule or any section of the Privacy Rule means the Privacy Rule or section as in effect or as amended.
- B. Amendment. The COUNTY and CONTRACTOR agree to take such action as is necessary to amend this BA Agreement from time to time as is necessary for the COUNTY to comply with the requirement of the Privacy Rule and HIPAA.
- C. Survival. The respective rights and obligations of CONTRACTOR under Section 6.C of this BA Agreement shall survive the termination of this BA Agreement.
- D. Interpretation. Any ambiguity in this BA Agreement shall be resolved to permit the COUNTY to comply with the Privacy Rule. In the event of any inconsistency between

the provisions of this BA Agreement and the mandatory provisions of the Privacy Rule, the Privacy Rule shall control. Where laws in the State of Oregon or other federal law is more stringent than the Privacy Rule, the more stringent Oregon or federal law shall control.

8. SECURITY RULE BUSINESS ASSOCIATE AGREEMENT LANGUAGE:

- A. Background Requirement: The COUNTY, in accordance with § 164.306 and § 164.308 (b), may permit the CONTRACTOR to create, receive, maintain, or transmit Electronic Protected Health Information on the COUNTY'S behalf only if the COUNTY obtains satisfactory assurances, in accordance with § 164.314(a) that the CONTRACTOR will appropriately safeguard the information. The COUNTY must document the satisfactory assurances through a written contract or other arrangement with the CONTRACTOR.
- B. Part I. Security Assurances: The CONTRACTOR will Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the 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);
- i. Ensure that any agent, including a SUBCONTRACTOR, to whom it provides such information, agrees to implement reasonable and appropriate safeguards to protect it.
 - ii. Report to the COUNTY any security incident of which it becomes aware.
 - iii. Authorize termination of the contract by the COUNTY, if the COUNTY determines that the business associate has violated a material term of the contract.
- C. Part II. Other arrangements: When the COUNTY and the CONTRACTOR are both governmental entities, the COUNTY is in compliance with the requirements if:
- i. It enters into a memorandum of understanding with the CONTRACTOR that contains terms that accomplish the objectives of Part I.; or
 - ii. Other law (including regulations adopted by the COUNTY or the CONTRACTOR) contains requirements applicable to the CONTRACTOR that accomplish the objectives of Part I.

- D. If the CONTRACTOR is required by law to perform a function or activity on behalf of the COUNTY or to provide a service described in the definition of CONTRACTOR as specified in § 160.103 of the regulation to the COUNTY, the COUNTY may permit the CONTRACTOR to create, receive, maintain, or transmit Electronic Protected Health Information on its behalf to the extent necessary to comply with the legal mandate without meeting the requirements of Part I., although the COUNTY will attempt in good faith to obtain satisfactory assurances as required by Part I. (A), and will document the attempt and the reasons that these assurances cannot be obtained, if not obtained.

**EXHIBIT B:
STATEMENT OF WORK**

POLK COUNTY, a political subdivision of the State of Oregon and, JANNELL WERNER, hereinafter called "Contractor," hereby agree to the following:

1. STATEMENT OF SERVICES

- A. Contractor agrees to work within scope, training and experience as a Licensed Psychiatric Nurse Practitioner, to provide services, support and training that meets the needs of both Contractor and County as evidenced by the Service Authorization and Activity form.
- B. Contractor shall perform all services deemed necessary in their professional opinion based upon their training, education and expertise as evidenced in the application materials and other professional endorsements, notwithstanding any limitations set forth in this agreement.
- C. Contractor shall only use methods or techniques in which the Contractor has documented training, education and expertise. Contractor will ensure services provided are within rules and guidelines of Oregon Health Authority, Health Services Division: Behavioral Health Services, Chapter 309-019 and the Oregon State Board of Nursing.

2. GENERAL INFORMATION

- A. Contractors must provide primary source verification of credentials. No work will be assigned to Contractors who render direct service to clients or patients until credentials have been validated for Medicaid claims.
- B. Annual requirements mandate that the Contractor will submit a conflict of Interest Statement. Contractor queries of the OIG and EPLS List of Excluded Individuals/Entities database will also be performed annually. Bases for exclusion include convictions for program-related fraud and patient abuse, licensing board actions and default on Health Education Assistance Loans. It is the expectation that the Contractor will maintain credentialing required to perform job duties in good standing. It is the responsibility of the Contractor to report any circumstances that would jeopardize this standing or lead to exclusionary status. Failure to do so may lead to contract termination.
- C. Contractor agrees to report cases of suspected Medicaid, Medicare fraud, waste, or abuse to the PCBH Compliance Officer at 503-623-9289. If there is reason to believe that PCBH cannot respond appropriately to a suspected case of fraud, waste, or abuse,

or if the case involves PCBH, then Contractor agrees to make a report to Ethicspoint at 888-265-4068.

- D. County may conduct performance reviews annually to assess Contractor's performance as it relates to the services required under this contract.
- E. Absences:
 - i. Contractor shall notify the County at least five (5) business days in advance for all anticipated extended absences (i.e. vacations, professional meetings, etc.).
 - ii. Contractor shall notify the County of unplanned absences (ie: illness or other unforeseen events) at least one hour prior to expected work time.
- F. Contractor agrees to provide 10 business day notice of changes to their clinic schedule availability.
- G. All client records are considered the property of the County and shall not be retained by the Contractor. Contractor shall have all service notes and documentation completed within three business days of service encounter. Contractor shall maintain client/patient records and documentation within CMS guidelines.
- H. Contractor may elect to use the electronic health record system supported by the County. Contractor shall provide County with a Certificate of Electronic Health Record Technology (CEHRT) when Contractor elects to use a system that is not supported by the County or Oregon Health Authority.
- I. Documents that are required for billing shall be submitted no later than three days after the close of business on the last weekday of each month. Documentation found to be out of compliance with County and/or State guidelines shall be corrected within ten (10) business days.
- J. Billable service notes shall meet documentation standards in accordance with OAR 309-019-0135 through 309-019-0145.
- K. Contractor is required to receive two hours of clinical supervision quarterly, which shall include at least one hour of individual face-to-face contact either in person or via two-way audio visual conferencing from a qualified clinical supervisor. Contractor will be required to provide documentation of supervision received, if obtained by a Clinical Supervisor Outside of County. Failure to do so may lead to contract termination.

3. AUTHORIZED SERVICES

- A. County will only pay for service and activities that have been pre authorized and agreed upon in writing by both parties on a Service and Activity Authorization Form.
- B. County will authorize services based on Level of Care as outlined in the Individual Service Plan. All services submitted for payment must be supported by the Individual Service Plan and verified by the County to be compliant with applicable regulations.

4. RATES AND METHOD OF PAY

- A. County shall reimburse the Contractor at the rate of \$135.00 per hour for remote Clinic Service Hour availability, as outlined in the Service Activity Authorization form with Clinic Service Hours paid to the nearest quarter hour upon receipt of an invoice.
- B. County will have no legal obligation to pay for any unauthorized services, including unauthorized expenditures.



CONTRACT REVIEW SHEET

Staff Contact: Rosana Warren Phone Number (Ext): 3558
Department: Health Services: Behavioral Health Consent Calendar Date: March 13, 2024
Contractor Name: Oregon Health Authority
Address: 500 Summer Street NE
City, State, Zip: Salem, OR 97301
Effective Dates - From: January 01, 2024 Through: June 30, 2025
Contract Amount: \$265,826.00

Background:

The County receives funds from the Oregon Health Authority (OHA) to provide Choice Model Services to residents of Polk County by way of a grant. IGA 026114 is the initial award from the state and may be modified from time-to-time throughout the fiscal year to reflect changes to funds and/or programs that are made as part of the grant.

Discussion:

This agreement provides funding for Choice Model Services for the next 18 months, which provides oversight and care coordination for adult individuals with SPMI and helps offset service costs associated with that population.

Fiscal Impact:

The total for this agreement is \$265,826.00, which is a slight increase in the amount of \$14,000, but has a neutral financial impact as the 2024-25 Behavioral Health budget was prepared in anticipation of this funding and there has been an increase in population served.

Recommendation:

It is recommended that Polk County sign agreement 026114 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: _____



Agreement Number 44300-00026114

**STATE OF OREGON
INTERGOVERNMENTAL AGREEMENT**

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

This Agreement is between the State of Oregon, acting by and through its Oregon Health Authority, hereinafter referred to as "OHA," and

**Polk County
182 SW Academy Street, Suite 33
Dallas, OR 97338
Attention: Noelle Carrol
Telephone: 503-831-1726
E-mail address: carroll.noelle@co.polk.or.us**

hereinafter referred to as "County."

Work to be performed under this Agreement relates principally to OHA's

**Health Systems
BH Intensive Services, Housing and Social Determinants of Health
500 Summer Street NE
Salem, Oregon 97301
Agreement Administrator: Michael Oyster or delegate
Telephone: 503-410-2303
E-mail address: michael.w.oyster@dhsaha.state.or.us**

1. Effective Date and Duration.

This Agreement shall become effective on the date this Agreement has been fully executed by every party and, when required, approved by Department of Justice or on **January 1, 2024**, whichever date is later. Unless extended or terminated earlier in accordance with its terms, this Agreement shall expire on **June 30, 2025**. Agreement termination or expiration shall not extinguish or prejudice either party’s right to enforce this Agreement with respect to any default by the other party that has not been cured.

2. Agreement Documents.

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

- (1) Exhibit A, Part 1: Statement of Work
- (2) Exhibit A, Part 2: Payment and Financial Reporting
- (3) Exhibit A, Part 3: Special Provisions
- (4) Exhibit B: Standard Terms and Conditions
- (5) Exhibit C: Insurance Requirements
- (6) Exhibit D: *(RESERVED)*
- (7) Exhibit E: Financial Pages

This Agreement constitutes the entire agreement between the parties on the subject matter in it; there are no understandings, agreements, or representations, oral or written, regarding this Agreement that are not specified herein.

b. In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: this Agreement without Exhibits, Exhibits B, A, C and E

c. For purposes of this Agreement, “Work” means specific work to be performed or services to be delivered by County as set forth in Exhibit A.

3. Consideration.

a. The maximum not-to-exceed amount payable to County under this Agreement, which includes any allowable expenses, is set forth in “**Exhibit E, Financial Pages**” OHA will not pay County any amount in excess of the not-to-exceed amount for completing the Work, and will not pay for Work until this Agreement has been signed by all parties.

b. OHA will pay only for completed Work under this Agreement, and may make interim payments as provided for in Exhibit A.

4. Contractor or Subrecipient Determination.

In accordance with the State Controller’s Oregon Accounting Manual, policy 30.40.00.104, OHA’s determination is that:

- County is a subrecipient County is a contractor Not applicable

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

5. County Data and Certification.

a. County Information. This information is requested pursuant to ORS 305.385.

PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION:

County Name (exactly as filed with the IRS): Polk County

Street address: 182 SW Academy Street

City, state, zip code: Dallas, OR 97338

Email address: hs.contracts@co.polk.or.us

Telephone: 503-623-9289 Fax: 503-831-1726

Proof of Insurance: County shall provide the following information upon submission of the signed Agreement, all insurance listed herein and required by Exhibit C, must be in effect prior to Agreement execution.

Workers' Compensation Insurance Company: Craven-Woods Insurance

Policy #: 23LPLKC Expiration Date: 07/01/2024

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

- (1) The County is in compliance with all insurance requirements of this Agreement and notwithstanding any provision to the contrary, County shall deliver to the OHA Agreement Administrator (see page 1 of this Agreement) the required Certificate(s) of Insurance within 30 days of execution of this Agreement. By certifying compliance with all insurance as required by this Agreement, County acknowledges it may be found in breach of the Agreement for failure to obtain required insurance. County may also be in breach of the Agreement for failure to provide Certificate(s) of Insurance as required and to maintain required coverage for the duration of the Agreement;
- (2) The information shown in this Section 5a. "County Information", is County's true, accurate and correct information;
- (3) To the best of the undersigned's knowledge, County has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts;
- (4) County and County's employees and agents are not included on the list titled "Specially Designated Nationals" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at: <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>;

- (5) County is not listed on the non-procurement portion of the General Service Administration’s “List of Parties Excluded from Federal procurement or Non-procurement Programs” found at: <https://www.sam.gov/portal/public/SAM/>;
- (6) County is not subject to backup withholding because:

 - (a) County is exempt from backup withholding;
 - (b) County has not been notified by the IRS that County is subject to backup withholding as a result of a failure to report all interest or dividends; or
 - (c) The IRS has notified County that County is no longer subject to backup withholding; and
- (7) County Federal Employer Identification Number (FEIN) provided to OHA is true and accurate. If this information changes, County is required to provide OHA with the new FEIN within 10 days.

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

COUNTY: YOU WILL NOT BE PAID FOR WORK PERFORMED PRIOR TO NECESSARY STATE APPROVALS

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

Polk County

By:

Authorized Signature

Printed Name

Title

Date

State of Oregon, acting by and through its Oregon Health Authority pursuant to ORS 190

By:

Authorized Signature

Printed Name

Title

Date

Approved by: Director, OHA Health Systems Division

By:

Authorized Signature

Printed Name

Title

Date

Approved for Legal Sufficiency:

Via email by Jeff Wahl, Assistant Attorney General on December 27, 2023; email in agreement file.

EXHIBIT A

Part 1 Statement of Work

1. **Purpose:** County shall provide oversight and care coordination of Individuals whose county of responsibility falls within Polk County, or who are members and Individuals assigned to County by OHA to ensure access to services consistent with the clinical needs of the Individual and the purpose of the Choice Model Services. County of responsibility is defined as the county in which an Individual most recently maintained a postal address, or if residence is otherwise indeterminate, the county where the Individual was placed on an involuntary hold. Incarceration or placement in the state hospital or a licensed 24-hour facility is not to be used to make this determination. OHA requires that the County meets the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services.

2. **Services to be provided by County shall include:** Where referenced in this Contract, “Contract Settlement” means OHA’s reconciliation of amounts OHA actually disbursed to County against amounts that OHA is obligated to pay to County for services provided under this Contract. Contract Settlement can occur following the end of a biennial period, upon termination or expiration of this Contract. County shall provide the following:
 - a. Service Name: **CHOICE MODEL SERVICES**
 Service ID Code: **MHS 06**
 - (1) **Service Description**
 - (a) **For purposes of this Agreement the following definitions apply:**
 - i. **Acute Care Psychiatric Facility or Acute Care Psychiatric Hospital** means a hospital that provides 24 hour-a-day psychiatric, multi-disciplinary, inpatient or residential stabilization, care and treatment, for adults ages 18 years of age or older with serious psychiatric disabilities.
 - ii. **Assertive Community Treatment (ACT)** means an evidence-based practice designed to provide comprehensive treatment and support services to Individuals with SPMI. ACT is intended to serve Individuals who have serious functional impairments and who have not responded to traditional psychiatric outpatient treatment. ACT services are provided by a single multi-disciplinary team, which typically includes a psychiatrist, a nurse, a therapist, supported employment, and a peer, and are designed to meet the individual needs of each Individual and to help keep the Individual in the community and out of a structured service setting, such as residential or hospital care. ACT is characterized by:

- A. Low client to staff ratios;
 - B. Providing services in the community rather than in the office;
 - C. Shared caseloads among team members;
 - D. 24-hour staff availability;
 - E. Direct provision of all services by the team (rather than referring Individuals to other agencies); and
 - F. Time-unlimited services.
- iii. **Behavioral Health Treatment** means treatment for mental illness, substance use disorders, or problem gambling.
- iv. **County of Responsibility (COR)** means the county in which an Individual most recently maintained a postal address, or if residence is otherwise indeterminate, the county where the Individual was last present before being transported to an acute psychiatric hospital such as where the Individual was placed on a police officer custody, director's custody or transport custody. Incarceration or placement on an involuntary hold, at OSH or a licensed 24-hour facility, is not to be used to make this determination. OHA will determine COR if there is a disagreement between counties.
- v. **Discharge Plan** means a written document prepared by the County beginning at admission and updated through the Discharge Planning process which identifies housing, treatment, and other services needed to support the continuity of care necessary to maintain the Individual's stability in the community. This report shall combine information from the Individual, OSH, community providers, recovery plan, and other resources.
- vi. **Discharge Planning** means a process that begins upon admission to OSH or licensed residential setting and is based on the presumption that, with sufficient supports and services, all Individuals can live in an integrated community setting. Discharge planning is developed and implemented through a person-centered planning process in which the Individual has a primary role in creating, and is based on principles of self-determination.
- vii. **Exceptional Needs Care Coordination (ENCC)** means a process-oriented activity to facilitate ongoing communication and collaboration with the Individual to arrange Services appropriate to their needs, preferences and choices. These functions include, but are not limited to:
- A. Facilitating communication between the Individual, family, natural supports and community resources, involved providers and agencies;

- B.** Organizing, facilitating and participating in interdisciplinary team (IDT) meetings when the Individual is in the community in collaboration with CCO Care Coordinators;
 - C.** Emphasizing discharge planning in IDTs at OSH by collaborating with IDT members, providing recommendations in collaboration with CCO Care Coordinators towards discharge preparation and sharing revisions of the Discharge Plan;
 - D.** Providing for continuity of care by creating linkages to and managing transitions between levels of care and transitions for adults with SPMI; and
 - E.** In collaboration with CCO Care Coordinators, facilitating all referrals from OSH with the goal of providing oversight and care coordination for Adults with SPMI.
- viii.** **Face-to-Face** means a personal interaction where both words can be heard and facial expressions can be seen in person or through telehealth services where there is a live streaming audio and video.
- ix.** **Home and Community-Based Services (HCBS)** means the 1915 (i) state Medicaid plan amendment that allows for the use of Medicaid funding for home-based habilitation, behavioral habilitation, and psychosocial rehabilitation services for qualified Medicaid recipients who have been diagnosed with a mental illness.
- x.** **Home CCO** means enrollment in a Coordinated Care Organization (CCO) in a given service area, based upon an Individual's most recent permanent residency, determined at the time of original Oregon Health Plan eligibility determination or most current point of CCO enrollment prior to hospitalization per enrollment requirements in OAR 410-141-3500 through OAR 410-141-3870 and OAR 410-141-3815.
- xi.** **Individual** or **Client** means, with respect to a particular Service, any person who is enrolled in that Service, in whole or in part, with payments provided under this Agreement.
- xii.** **In-Reach Services** means services delivered by community-based service providers to an Individual while at the Oregon State Hospital (OSH) or Acute Care Psychiatric Hospital to:
 - A.** Maintain the Individual's connection to ongoing services and supports;
 - B.** Assist with stabilization and discharge planning; and
- xiii.** Collaborate with CCO Care Coordination to provide transition support for Individuals determined Ready to Transition from the OSH or determined appropriate for diversion from OSH while in an Acute Care Psychiatric Hospital.

- xiv. Integrated Setting** means a setting that enables Individuals with disabilities to interact with non-disabled persons to the fullest extent possible. Integrated settings are those that provide Individuals with disabilities opportunities to live, work, and receive services in the greater community, like Individuals without disabilities. Integrated settings are:

 - A.** Located in mainstream society;
 - B.** Offer access to community activities and opportunities at times, frequencies, and with persons of an Individual's choosing;
 - C.** Afford Individuals choice in their daily life activities; and,
 - D.** Provide Individuals with disabilities the opportunity to interact with non-disabled persons to the fullest extent possible.
- xv. Long-Term Psychiatric Care (LTPC)** means inpatient psychiatric services delivered in an Oregon State-operated Hospital after:

 - A.** Usual and customary care has been provided in an acute inpatient hospital psychiatric care setting;
 - B.** The Individual continues to be unsuccessful in an alternative setting; and
 - C.** The Individual continues to need psychiatric hospitalization services.
- xvi. Oregon State Hospital (OSH)** means any campus of the Oregon State Hospital system.
- xvii. Peer Delivered Services** means community-based services and supports provided by peers, and peer support specialists, to Individuals or family members with similar lived experience. These services are intended to support Individuals and families, to engage Individuals in ongoing treatment, and to live successfully in the community.
- xviii. Ready To Transition (RTT)** means that, consistent with the scope of the order of commitment, the Interdisciplinary Team (IDT) has determined that a State hospital level of care is no longer required as described in OAR 309-091-0035.
- xix. Recovery** means a process of change through which Individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential.
- xx. Recovery Plan** means a written document created by the Individual and facilitated by a peer support specialist, or an alternative as determined by the Individual, to help identify the Individual's strengths (e.g. knowledge gained from dealing with adversity, personal or professional roles, talents, personal traits)

that can act as resources to the Individual and the Individual's recovery planning team in pursuing personal and treatment goals.

xxi. Serious and Persistent Mental Illness (SPMI) means the current Diagnostic and Statistical Manual, Fifth Edition (DSM-V) of the American Psychiatric Association diagnostic criteria, incorporated by reference herein, for at least one of the following conditions, as a primary diagnosis for an adult 18 years of age or older:

- A. Schizophrenia and other psychotic disorders;
- B. Major depressive disorder;
- C. Bipolar disorder;
- D. Anxiety disorders limited to OCD (Obsessive Compulsive Disorder) and PTSD (Post Traumatic Stress Disorder);
- E. Schizotypal personality disorder; or
- F. Borderline personality disorder.

xxii. Supported Housing means permanent housing with tenancy rights and support services that enables Individuals to attain and maintain integrated affordable housing. Support services offered to Individuals living in supported housing are flexible and are available as needed and desired, but are not mandated as a condition of obtaining tenancy. Individuals have a private and secure place to make their home, just like other members of the community, with the same rights and responsibilities. Supported Housing enables Individuals with disabilities to interact with individuals without disabilities to the fullest extent possible. Supported Housing is scattered site housing. To be considered Supported Housing, for buildings with two or three units, no more than one unit may be used to provide Supported Housing for Individuals with SPMI who are referred by OHA or its contractors, and for buildings or complexes with four or more units, no more than 25% of the units in a building or complex may be used to provide Supported Housing for Individuals with SPMI who are referred by OHA or its contractors. Supported Housing has no more than two Individuals in a given apartment or house, with a private bedroom for each Individual. If two people are living together in an apartment or house, the Individuals must be able to select their own roommates. Supported Housing does not include housing where providers can reject Individuals for placement due to medical needs or substance abuse history.

xxiii. Voluntary by Guardian means that an Individual's legal guardian has signed consent for admission to an acute psychiatric facility, Oregon State Hospital, or licensed residential facility.

(b) Individuals Served

- i. County shall offer oversight and care coordination for Adults with

SPMI, as follows:

- A. Facilitate access to quality, individualized community-based services and supports so that Individuals with SPMI are served in the most integrated setting possible; and
 - B. Facilitate effective utilization of services and facility-based care in the community.
 - C. Identify anticipated capacity needs across the system and communicate with Coordinated Care Organizations (CCO), Community Mental Health Programs (CMHP), and Oregon Health Authority (OHA).
- ii. The County's service area shall align primarily with the Home CCO and when no CCO is identified or the Home CCO has multiple MHS 06 Services contractors, then the service area will align with the COR as follows:
- A. Home CCO is the designated service area for Individuals who are:
 - I. CCO enrolled members;
 - II. CCO members at the time of referral to Oregon State Hospital (OSH); or
 - B. COR is the designated service area for Individuals who are:
 - I. Fee-For-Service Medicaid Eligible;
 - II. Uninsured, underinsured, not eligible for Medicaid, or have exhausted Medicaid services, including those who meet the criteria for the Citizen Alien Waived Medical Program;
 - C. Undocumented;
 - D. Privately insured;
 - E. Funded through Veterans Administration; or
 - F. Other as approved by OHA.
- iii. **Service Population**
- A. Individuals who meet the following criteria, shall be offered Services through MHS 06 Services:
 - I. Have been civilly committed and admitted to OSH under ORS Chapter 426;
 - II. Have been civilly committed under ORS Chapter 426 and are referred to or at risk of being referred to OSH;
 - III. Admitted to OSH under guardian authorization; secured or non-secure licensed residential facility as defined in

ORS 443.400 including licensed programs designated specifically for young adults in transition;

- IV. Are residing in a licensed adult foster home, as defined in ORS 443.705, due to SPMI; or
- V. As directed by OHA.

B. Individuals who, due to SPMI, meet the following criteria shall also be offered Services per County's policies and procedures in Choice Model Services:

- I. Are placed on outpatient commitment pursuant to ORS 426.127;
- II. Are placed in assisted outpatient treatment pursuant to ORS 426.133;
- III. Have transitioned from civil commitment pursuant to ORS 426.060 within the past 12 months;
- IV. Have been found to lack fitness to proceed pursuant to ORS 161.370;
- V. Will end jurisdiction within the next six months or ended jurisdiction under the Psychiatric Security Review Board (PSRB) within the past 12 months;
- VI. Have been determined service eligible through the Department of Human Services (DHS), either through Aging & People with Disabilities (APD) or Intellectual/Developmental Disabilities (I/DD) Divisions to support the Behavioral Health Treatment service needs of Individuals determined service eligible for APD or I/DD; or
- VII. Are at risk of meeting the above criteria without supports offered through Choice Model Services.

(c) Services

County shall provide:

- i. Exceptional Needs Care Coordination as appropriate to the needs, preferences, and choices of each Individual.
- ii. Coordination of behavioral Health Treatment services and supports not funded through other sources including, but not limited to:
 - A. Medicaid;
 - B. Medicare;
 - C. County Financial Assistance Agreements; or
 - D. CCO Contracts.

- iii. Activities to remove barriers and facilitate access to integrated services and supports, which are not funded through other sources. Especially when Individuals are being discharged from OSH and when establishing residence in Supported Housing. These activities may include, but are not limited to:
 - A. Room and board payments;
 - B. Rental assistance, security deposits, and application fees;
 - C. Utility payments and deposits;
 - D. Prescription or over-the-counter medications and medical supplies not covered by Medicaid or other sources;
 - E. Transportation;
 - F. Activities to facilitate the securing of guardianship services, including but not limited to:
 - I. Paying the costs of:
 - (A) Court hearings to determine the necessity, continuation, or termination of a guardianship.
 - (B) Guardianship services to make decisions related to overseeing the care and supervision of an Individual.
 - II. If guardianship is expected to continue beyond a transitional period of time (6 months or less), then other payment options should be sought in order to maintain guardianship services.
 - G. Activities to facilitate the securing of representative payee services; or
 - H. Peer Delivered Services.
- iv. Support CCO Care Coordination efforts to gather documents such as the Community Questionnaire, develop a preliminary discharge plan from OSH and sign for final authorization for the Long-Term Psychiatric Care referral.
- v. Other services and supports necessary to facilitate provision of services in the most integrated setting and the prevention of admission to higher levels of care.

(2) Performance Requirements

- (a) County shall provide the following services:
 - i. Exceptional Needs Care Coordination for Individuals served in Choice Model Services to facilitate access to services in the most integrated setting appropriate to the Individual's needs and strengths, including:

- A.** Care coordination and Discharge Planning for Individuals receiving services in licensed residential programs, even when placed outside the County’s service area.
 - B.** Facilitate access to community-based rehabilitative mental health treatment services that are recovery-oriented, culturally responsive, and geographically accessible.
 - C.** Facilitate access to Peer Delivered Services.
 - D.** Serve as the Single Point Of Contact (SPOC) (OAR 309-019-0225) for all referrals from OSH to Assertive Community Treatment as described in OAR 309-019-0225 (25) Definition of SPOC in ACT Admission Process 309-019-0248.
 - E.** Collaborate with CCO Care Coordination concerning Acute Care Psychiatric Hospitals to divert Individuals approved for LTPC from admission to OSH and toward community-based services and supports, when indicated to be appropriate.
 - F.** Collaborate with the DSH, APD and I/DD Divisions to support the Behavioral Health Treatment service needs of Individuals determined service eligible for APD or I/DD.
 - G.** Coordinate the transition from forensic services for Individuals ending jurisdiction under the PSRB within six months and who will be served in Choice Model Services.
 - H.** Coordinate the transition from forensic services for Individuals found to lack fitness to proceed pursuant to ORS 161.370 and who will be enrolled in Choice Model Services; and
 - I.** Serve as a resource for community partners and service agencies in locating local community-based Behavioral Health Treatment services and supports.
- ii.** In collaboration with CCO Care Coordinators, facilitate transition for Individuals with SPMI out of hospital settings and into the most integrated community settings by completing the following:
- A.** Hold a Face-to-Face meeting with each Individual within the County’s service area being referred to OSH from Acute Care Psychiatric Hospitals prior to being referred but no later than 72 hours from the date of approval for LTPC to identify services and supports necessary for community-based stabilization and facilitate access to those services and supports in order to divert Individuals from admission to OSH whenever possible.
 - B.** Hold a Face-to-Face meeting with each Individual within the County’s service area who is civilly committed, and to the extent practical for Voluntary by Guardian, admitted to OSH within seven calendar days of admission.

- C. Participate in OSH IDT meetings for each Individual within the County's service area to update the Discharge Plan and to coordinate appropriate community-based services and supports.
- D. Arrange, advocate, and coordinate appropriate In-Reach Services from CCOs and community providers who are delegated or identified as having responsibility for providing mental health services upon discharge.
- E. Facilitate development of an initial Discharge Plan within 10 calendar days of admission to OSH and update the plan as appropriate after each IDT or discharge planning meeting with the Individual.
- F. Coordinate and facilitate access to community-based resources of those civilly committed at OSH to support discharge from OSH within 72 hours of being determined RTT whenever possible for Individuals with SPMI who have been civilly committed, ensuring that:
 - I. No less than 90% of Individuals shall be discharged within 20 calendar days of being determined RTT.
 - II. If not discharged within the above timeframe then each Individual shall be discharged no later than 60 calendar days from the date placed on RTT.
- G. Collaborate with OSH to verify that entitlement enrollments (e.g. Medicaid, Medicare, SSI/SSDI) are in place and anticipated to be active upon discharge.
- H. For Individuals not receiving Choice Model Services directly, collaborate and serve as a resource to support Discharge Planning for Individuals:
 - I. Determined services eligible for APD or I/DD;
 - II. Under the jurisdiction of ORS 161.370 to determine fitness to proceed; or
 - III. Under the jurisdiction of the PSRB.

(3) **Reporting Requirements**

None

(4) **Special Reporting Requirements**

- (a) County shall prepare and electronically submit, to hsd.contracts@odhsoha.oregon.gov, the following written reports using forms and procedures as prescribed on OHA's website, located at <http://www.oregon.gov/OHA/HSD/AMH/Pages/Reporting-Requirements.aspx>.

- i. Maintain for reference but not submit policies and procedures for enrollment in Choice Model Services.
 - ii. Monthly Choice Model Client Status Reports shall be submitted no later than 45 calendar days following the end of each subject month during the term of the Agreement for review and approval.
 - iii. Any other reports as mutually agreed upon between OHA and the County.
- (b) Upon OHA’s identification of any deficiencies in the County’s performance under this Agreement, including failure to submit reports as required, failure to expend available funding, or failure to meet performance requirements, County shall prepare and submit to OHA within 30 calendar days a Corrective Action Plan (CAP) to be reviewed and approved by OHA. The CAP must include, but is not limited to, the following information:
- i. Reason or reasons for the CAP based on OHA’s concerns and the County’s review.
 - ii. The date the CAP will become effective with timelines for implementation.
 - iii. Planned action already taken to correct the deficiencies as well as proposed resolutions to address remaining deficits identified with oversight and monitoring by OHA; and
 - iv. Proposed remedies, short of termination, should County not come into compliance within the timeframe set forth in the CAP.

(5) Payment Calculation, Disbursement, and Confirmation of Performance and Reporting Requirements Procedures

OHA provides payments for MHS 06 Services in two different ways, through Part A and Part C payments. The payment type is identified in Exhibit E, “Financial Pages,” on MHS 06 lines in which column “Part ABC,” contains an “A” for Part A or “C” for Part C payments. OHA will make payments for MHS 06 Services claims submitted through either Part A or Part C payments, for non-Medicaid-eligible Services. Provider is not entitled to payment for Part A or Part C payments (or both) in combination with Medicaid payments for the same Service, during the same time period or date of Service for the same Individual. County and Service Providers shall maintain compliance with OAR 410-172-0600 to 410-172-0860, OAR 943-120-0310, and OAR 943-120-0320.

- (a) Payments made to County or Service Provider are subject to the following:
- i. OHA shall not authorize in aggregate, under this “Payment Calculation, Disbursement, and Confirmation of Performance and Reporting Requirements Procedures” section, payments requested for MHS 06 Services in excess of the contractual Not-to-Exceed amount. Total aggregate funding means the total of all funding authorized in Exhibit E, “Financial Pages” before reducing payments to account for

client resources received by the County or Service Provider from an Individual, or from another on behalf of the Individual, in support of Individual's care and Services provided. The monthly rate will be prorated for any month in which the Individual does not receive Services for a portion of the month. Funding will be reduced (offset) by the amount of funding received by the Service Provider from the Individual, the Individual's health insurance provider, another person's health insurance provider under which Individual is also covered, or any other Third-Party Resource (TPR) in support of Individual's care and Services provided:

- ii. County understands and agrees that funding under Part A or Part C may be reduced by Agreement amendment to the extent County's billings under MMIS for Part B payments exceed the allocated total aggregated budget as set for in Exhibit E, "Financial Pages," and
 - iii. OHA is not obligated to provide payment for any MHS 06 Services that are not properly reported in accordance with the "Reporting Requirements" and "Special Reporting Requirements" sections above or as required in an applicable Specialized Service Requirement by the date 60 calendar days after the earlier of expiration or termination of this Agreement, termination of OHA's obligation to provide funding for MHS 06 Services, or termination of County's obligation to include the Program Area in which MHS 06 Services fall within its Services.
- (b) The Part A payments will be calculated, disbursed, and confirmed as follows:
- i. Calculation of Payments: OHA will provide payments for MHS 06 Services provided under a particular line of Exhibit E, "Financial Pages," containing and "A" in column "Part ABC," from payments identified in that line in an amount equal to the rate set forth in that line of the Financial Pages during the period specified in that line. The total of OHA payments for all MHS 06 Services delivered under a particular line of Exhibit E, "Financial Pages," containing and "A" in column "Part ABC," shall not exceed the total payments for MHS 06 Services as specified in that line of the Financial Pages and are subject to the limitations described herein.
 - ii. Disbursement of Payments: Unless a different disbursement method is specified in that line of the Exhibit E, "Financial Pages," OHA will disburse the Part A payments for MHS 06 Services provided under a particular line of the Financial Pages containing and "A" in column "Part ABC" to County in substantially equal monthly payments during the period specified in that line of the Financial Pages, subject to the following:

- A. OHA may, upon written request of County, adjust monthly payments;
 - B. Upon amendment to the Financial Pages, OHA shall adjust monthly payments as necessary, to reflect changes in the payments shown for MHS 06 Services provided under that line of the Financial Pages;
 - C. OHA may, after 30 calendar days (unless parties agree otherwise) written notice to County, reduce the monthly payments based on under-used payments identified through MOTS and other reports in accordance with the “Reporting Requirements” and “Special Reporting Requirements” sections above or applicable special conditions.
 - D. OHA is not obligated to provide payments for any MHS 06 Services that are not properly reported in accordance with the “Reporting Requirements” and “Special Reporting Requirements” sections above or as required in an applicable Specialized Service Requirement by the date 60 calendar days after the earlier of expiration or termination of this Agreement; termination of OHA’s obligation to provide payments for MHS 06 Services; or termination of County’s obligation to include the Program Area in which MHS 06 Services fall in its Services; and
 - E. OHA will reduce the payments made for MHS 06 Services delivered under a particular line of Exhibit E, “Financial Pages,” containing an “A” in column “Part ABC,” by the amount received by a Provider of MHS 06 Services, as payment for the cost of the Services delivered to an Individual from the Individual, the Individual’s health insurance provider, another person’s health insurance provider under which Individual is also covered, or any other Third Party Resource (TPR) in support of Individual’s care and Services provided. County is obligated to report to OHA, by email at hsd.contracts@odhsoha.oregon.gov, any TPR payments no later than 30 calendar days following receipt of payment by County or Service Provider.
- (c) The Part C payments will be calculated and disbursed as follows:
- i. Calculation of Performance Payment: County will qualify for a performance payment at the end of the calendar year if it was operational, as defined by serving Individuals for a minimum of 180 calendar days per fiscal year and who:
 - A. Submit the Monthly Choice Model Client Status Report no later than 45 calendar days following the end of each subject month during the term of the contract and address any

deficiencies identified by the Agreement Administrator.

- ii.** Disbursement of Performance Payment: The performance payment is based on achievement of the performance criteria in accordance with the “Performance Requirements” section above. Upon OHA’s determination that Agreement or met the performance criteria, Agreement or may prepare and electronically submit a written invoice, to hsd.contracts@odhsoha.oregon.gov, for a performance payment, not to exceed the amount specified in that particular line of Exhibit E, “Financial Pages.”
- (d)** Confirmation of Performance and Reporting Requirements: County shall be required to demonstrate through the data properly reported in accordance with the and “Special Reporting Requirements” sections above, how funds awarded for MHS 06 Services were utilized consistent with the terms and limitations herein to meet the performance requirements of this Service Description, and that Agreement or shall be subject to the monitoring and review of performance requirements and quality measures by the OHA Agreement Administrator for the Program under which this MHS 06 Service Description falls.

EXHIBIT A

Part 2

Payment and Financial Reporting

1. Payment Provisions.

OHA agrees to pay the County for accomplishing the Work required by this Contract as described in Exhibit A, Part 1, "Statement of Work" and Exhibit E, "Financial Pages".

2. Travel and Other Expenses.

OHA will not reimburse County for any travel or additional expenses under this Contract.

EXHIBIT A

Part 3 Special Provisions

1. Confidentiality of Information.

a. Client Information:

- (1) All information as to personal facts and circumstances obtained by the Contractor on the client (“Client Information”) shall be treated as privileged communications, shall be held confidential, and shall not be divulged without the written consent of the client, his or her guardian, or the responsible parent when the client is a minor child, or except as required by other terms of this Contract. Nothing prohibits the disclosure of information in summaries, statistical, or other forms which does not identify particular individuals.
- (2) The use or disclosure of Client Information shall be limited to persons directly connected with the administration of this Contract. Confidentiality policies shall be applied to all requests from outside sources.
- (3) If Contractor, or any of its officers, directors, employees, agents, or subcontractors receives or has access to confidential Social Security Administration (SSA), or Federal Tax Information (FTI) records in the performance of Work under this Contract, Contractor shall comply, and ensure that all of Contractor’s officers, directors, employees, agents and subcontractors comply, with the following provisions:
 - (a) With respect to SSA records:
 - i. Provide a current list of employees and employees of any agent or subcontractor with access to SSA records;
 - ii. Adhere to the same security requirements as employees of OHA;
 - iii. Abide by all relevant Federal laws, restrictions on access, use, disclosure, and the security requirements contained within OHA’s agreement with SSA;
 - iv. Provide its employees and agents the same security awareness training as OHA’s employees; and
 - v. Include the provisions of this Section 1.a.(3)(a) in any subcontract.
 - (b) With respect to Federal Tax Information (FTI), as defined in IRS Publication 1075:
 - i. Contractor and its officers, directors and employees with access to, or who use FTI provided by OHA must meet the background check requirements defined in IRS Publication 1075;

- ii. Any FTI made available to Contractor shall be used only for the purpose of carrying out the provisions of this Contract. Contractor shall treat all information contained in FTI as confidential and that information shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Inspection by or disclosure to anyone other than an officer or employee of the Contractor is prohibited;
 - iii. Contractor shall account for all FTI upon receipt and shall properly store all FTI before, during, and after processing. In addition, all FTI related output and products will be given the same level of protection as required for the source material;
 - iv. No work involving FTI furnished under this Contract will be subcontracted without prior written approval of the IRS;
 - v. Maintain a list of employees who are authorized access to FTI. Such list will be provided to OHA and, upon request, to the IRS reviewing office; and
 - vi. Include the provisions of this Section 1.a.(3)(b) in any subcontract.
- (c) Failure to abide by any of the requirements in this subsection could result in criminal or civil penalties and result in termination of this Contract.
- (d) Contractor may be subject to periodic and ongoing security reviews to ensure compliance with the requirements of Section 1.a.(3).
- (4) Except as prohibited by Section 1.a.(3) above, OHA, Contractor and any subcontractor will share information as necessary to effectively serve OHA clients.

b. Non-Client Information:

- (1) Each Party acknowledges that it and any of its officers, directors, employees and agents may, in the course of performing its responsibilities under the Contract, be exposed to or acquire information that is confidential to the other Party. To the extent permitted by law, any and all information of any form provided to a Party or its officers, directors, employees and agents in the performance of the Contract that reasonably could at the time of its disclosure be understood to be confidential shall be deemed to be confidential information of the originating Party (“Confidential Non-Client Information”).
- (2) Confidential Non-Client Information shall be deemed not to include information that:
 - (a) Is or becomes (other than by disclosure by the Party acquiring such information) publicly known or is contained in a publicly available document except to the extent applicable law still restricts disclosure;

- (b) Is furnished by the originating Party to others without restrictions similar to those imposed on the receiving Party under the Contract;
 - (c) Is rightfully in the receiving Party's possession without the obligation of nondisclosure prior to the time of its disclosure by the originating Party under the Contract;
 - (d) Is obtained from a source other than the originating Party without the obligation of confidentiality;
 - (e) Is disclosed with the written consent of the originating Party; or
 - (f) Is independently developed by the receiving Party's officers, directors, employees and agents who can be shown to have had no access to the Confidential Non-Client Information.
- (3) Nondisclosure. The receiving Party shall hold all Confidential Non-Client Information in strict confidence, using at least the same degree of care that it uses in maintaining the confidentiality of its own confidential information; and shall not sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Non-Client Information to third parties; shall not use Confidential Non-Client Information for any purposes whatsoever other than as contemplated by this Contract or reasonably related thereto; and shall advise any of its officers, directors, employees and agents that receive or have access to the Confidential Non-Client Information of their obligations to keep Confidential Non-Client Information confidential. These confidentiality obligations do not restrict disclosure of information otherwise qualifying as Confidential Non-Client Information if the receiving Party can show that either of the following conditions exists: (i) the information was disclosed in response to a subpoena or court order duly issued in a judicial or legislative process, in which case the receiving Party shall notify the originating Party of the subpoena five days prior to the disclosure, unless such notice could not reasonably be given; or (ii) the disclosure was required to respond to a request for the information made under the Oregon Public Records Law, ORS 192.311 to 192.478. The receiving Party shall notify the originating Party of a public records request five days prior to the disclosure.
- c.** Upon request and pursuant to the instructions of OHA, Contractor shall return or destroy all copies of Confidential Information, and Contractor shall certify in writing the return or destruction of all Confidential Information.
- d.** "Client" means any individual, family or provider:
- (1) For whom OHA must provide Services and incidental or specialized Goods, in any combination thereof ("Services and Incidental Supplies"), according to state, federal law, rule, and policy. Those Services and Incidental Supplies include but are not limited to treatment, care, protection, and support without regard to the proximity of the services being provided;
 - (2) Who in fact receives and utilizes services provided by OHA primarily for that individual's or family's benefit;

- (3) Who is under the custody, care, or both of OHA; or
- (4) Who provides direct care or Services and is a proxy or representative of the non-provider Client.

2. Amendments.

- a. Subject to Section 2.c. below, OHA reserves the right to amend or extend the Contract under the following general circumstances:
 - (1) OHA may extend the Contract for additional periods of time up to a total Contract period of 5 years, and for additional money associated with the extended period(s) of time. The determination for any extension for time may be based on OHA's satisfaction with performance of the work or services provided by the Contractor under this Contract.
 - (2) OHA may periodically amend any payment rates throughout the life of the Contract proportionate to increases in Portland Metropolitan Consumer Price Index; and to provide Cost Of Living Adjustments (COLA) if OHA so chooses. Any negotiation of increases in rates to implement a COLA will be as directed by the Oregon State Legislature. In addition, OHA may periodically amend any payment rates throughout the life of the Contract to meet current market conditions.
- b. OHA further reserves the right to amend the Statement of for the following:
 - (1) Programmatic changes, additions or modifications deemed necessary to accurately reflect the original scope of work that may not have been expressed in the original Contract or previous amendments to the Contract;
 - (2) Implement additional phases of the Work; or
 - (3) As necessitated by changes in Code of Federal Regulations, Oregon Revised Statutes, or Oregon Administrative Rules, which, in part or in combination, govern the provision of services provided under this Contract.
- c. Upon identification, by any party to this Contract, of any circumstance which may require an amendment to this Contract, the parties may enter into negotiations regarding the proposed modifications. Any resulting amendment must be in writing and be signed by all parties to the Contract before the modified or additional provisions are binding on either party. All amendments must comply with Exhibit B, "Standard Terms and Conditions", Section 24. "Amendments; Waiver; Consent." of this Contract.

3. Contractor Requirements to Report Abuse of Certain Classes of Persons.

- a. Contractor shall comply with, and cause its employees, agents and subcontractors to comply with, the applicable laws for mandatory reporting of abuse including but not limited to abuse of the following classes of persons in Oregon:
 - (1) Children (ORS 419B.005 through 419B.045);
 - (2) Elderly Persons (ORS 124.055 through 124.065);

- (3) Residents of Long Term Care Facilities (ORS 441.630 through 441.645);
 - (4) Adults with Mental Illness or Developmental Disabilities (ORS 430.735 through 430.743).
- b.** In addition to the requirements of Section 3.a. above, if law enforcement is notified regarding a report of child abuse, Contractor shall also notify the local Child Protective Services Office of the Department of Human Services within 24 hours. If law enforcement is notified regarding a report of abuse of elderly, long term care facility residents, adults with mental illness or developmental disabilities, the Contractor shall also notify the local Aging and People with Disabilities Office of the Department of Human Services within 24 hours.
- c.** If known, the abuse report should contain the following:
 - (1) The name and address of the abused person and any people responsible for that person's care;
 - (2) The abused person's age;
 - (3) The nature and the extent of the abuse, including any evidence of previous abuse;
 - (4) The explanation given for the abuse;
 - (5) The date of the incident; and
 - (6) Any other information that might be helpful in establishing the cause of the abuse and the identity of the abuser.
- 4. Equal Access to Services.** Contractor shall provide equal access to covered services for both males and females under 18 years of age, including access to appropriate facilities, services and treatment, to achieve the policy in ORS 417.270.
- 5. Media Disclosure.** The Contractor will not provide information to the media regarding a recipient of services purchased under this Contract without first consulting the OHA office that referred the child or family. The Contractor will make immediate contact with the OHA office when media contact occurs. The OHA office will assist the Contractor with an appropriate follow-up response for the media.
- 6. Nondiscrimination.**
 - a.** The Contractor must provide services to OHA clients without regard to race, religion, national origin, sex, age, marital status, sexual orientation or disability (as defined under the Americans with Disabilities Act). Contracted services must reasonably accommodate the cultural, language, and other special needs of clients.

EXHIBIT B

Standard Terms and Conditions

- 1. Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between the parties that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within a circuit court for the State of Oregon of proper jurisdiction. THE PARTIES, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Except as provided in this section, neither party waives any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. The parties acknowledge that this is a binding and enforceable agreement and, to the extent permitted by law, expressly waive any defense alleging that either party does not have the right to seek judicial enforcement of this Agreement.
- 2. Compliance with Law.** Both parties shall comply with laws, regulations and executive orders to which they are subject and which are applicable to the Agreement or to the Work. Without limiting the generality of the foregoing, both parties expressly agree to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations; (b) all state laws requiring reporting of client abuse; (c) ORS 659A.400 to 659A.409, ORS 659A.145 and all regulations and administrative rules established pursuant to those laws in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the Work. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. All employers, including County and OHA, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Nothing in this Agreement shall require County or OHA to act in violation of state or federal law or the Constitution of the State of Oregon.
- 3. Independent Contractors.** The parties agree and acknowledge that their relationship is that of independent contracting parties and that County is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.
- 4. Representations and Warranties.**

 - a. County represents and warrants as follows:**

 - (1) **Organization and Authority.** County is a political subdivision of the State of Oregon duly organized and validly existing under the laws of the State of Oregon. County has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder.
 - (2) **Due Authorization.** The making and performance by County of this Agreement (a) have been duly authorized by all necessary action by County and (b) do not and will not violate any provision of any applicable law, rule, regulation, or

order of any court, regulatory commission, board, or other administrative agency or any provision of County's charter or other organizational document and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which County is a party or by which County may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by County of this Agreement.

- (3) **Binding Obligation.** This Agreement has been duly executed and delivered by County and constitutes a legal, valid and binding obligation of County, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- (4) County has the skill and knowledge possessed by well-informed members of its industry, trade or profession and County will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in County's industry, trade or profession;
- (5) County shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the Work; and
- (6) County prepared its proposal related to this Agreement, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.

b. OHA represents and warrants as follows:

- (1) **Organization and Authority.** OHA has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder.
- (2) **Due Authorization.** The making and performance by OHA of this Agreement (a) have been duly authorized by all necessary action by OHA and (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which OHA is a party or by which OHA may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by OHA of this Agreement, other than approval by the Department of Justice if required by law.
- (3) **Binding Obligation.** This Agreement has been duly executed and delivered by OHA and constitutes a legal, valid and binding obligation of OHA, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

c. Warranties Cumulative. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

5. Funds Available and Authorized Clause.

- a.** The State of Oregon's payment obligations under this Agreement are conditioned upon OHA receiving funding, appropriations, limitations, allotment, or other expenditure authority sufficient to allow OHA, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Agreement. County is not entitled to receive payment under this Agreement from any part of Oregon state government other than OHA. Nothing in this Agreement is to be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. OHA represents that as of the date it executes this Agreement, it has sufficient appropriations and limitation for the current biennium to make payments under this Agreement.
- b.** **Payment Method.** Payments under this Agreement will be made by Electronic Funds Transfer (EFT) and shall be processed in accordance with the provisions of OAR 407-120-0100 through 407-120-0380 or OAR 410-120-1260 through OAR 410-120-1460, as applicable, and any other Oregon Administrative Rules that are program-specific to the billings and payments. Upon request, County shall provide its taxpayer identification number (TIN) and other necessary banking information to receive EFT payment. County shall maintain at its own expense a single financial institution or authorized payment agent capable of receiving and processing EFT using the Automated Clearing House (ACH) transfer method. The most current designation and EFT information will be used for all payments under this Agreement. County shall provide this designation and information on a form provided by OHA. In the event that EFT information changes or the County elects to designate a different financial institution for the receipt of any payment made using EFT procedures, the County shall provide the changed information or designation to OHA on a OHA-approved form. OHA is not required to make any payment under this Agreement until receipt of the correct EFT designation and payment information from the County.

- 6. Recovery of Overpayments.** If billings under this Agreement, or under any other Agreement between County and OHA, result in payments to County to which County is not entitled, OHA, after giving to County written notification and an opportunity to object, may withhold from payments due to County such amounts, over such periods of time, as are necessary to recover the amount of the overpayment. Prior to withholding, if County objects to the withholding or the amount proposed to be withheld, County shall notify OHA that it wishes to engage in dispute resolution in accordance with Section 19 of this Agreement.

7. Reserved.

8. Ownership of Intellectual Property.

- a. Definitions.** As used in this Section 8 and elsewhere in this Agreement, the following terms have the meanings set forth below:
- (1) "County Intellectual Property" means any intellectual property owned by County and developed independently from the Work.
 - (2) "Third Party Intellectual Property" means any intellectual property owned by parties other than OHA or County.

- b. Except as otherwise expressly provided herein, or as otherwise required by state or federal law, OHA will not own the right, title and interest in any intellectual property created or delivered by County or a subcontractor in connection with the Work. With respect to that portion of the intellectual property that the County owns, County grants to OHA a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to (1) use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the intellectual property, (2) authorize third parties to exercise the rights set forth in Section 8.b.(1) on OHA's behalf, and (3) sublicense to third parties the rights set forth in Section 8.b.(1).
 - c. If state or federal law requires that OHA or County grant to the United States a license to any intellectual property, or if state or federal law requires that OHA or the United States own the intellectual property, then County shall execute such further documents and instruments as OHA may reasonably request in order to make any such grant or to assign ownership in the intellectual property to the United States or OHA. To the extent that OHA becomes the owner of any intellectual property created or delivered by County in connection with the Work, OHA will grant a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to County to use, copy, distribute, display, build upon and improve the intellectual property.
 - d. County shall include in its subcontracts terms and conditions necessary to require that subcontractors execute such further documents and instruments as OHA may reasonably request in order to make any grant of license or assignment of ownership that may be required by federal or state law.
9. **County Default.** County shall be in default under this Agreement upon the occurrence of any of the following events:
- a. County fails to perform, observe or discharge any of its covenants, agreements or obligations set forth herein;
 - b. Any representation, warranty or statement made by County herein or in any documents or reports relied upon by OHA to measure the delivery of Work, the expenditure of payments or the performance by County is untrue in any material respect when made;
 - c. County (1) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (2) admits in writing its inability, or is generally unable, to pay its debts as they become due, (3) makes a general assignment for the benefit of its creditors, (4) is adjudicated a bankrupt or insolvent, (5) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (6) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (7) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (8) takes any action for the purpose of effecting any of the foregoing; or

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

10. OHA Default. OHA shall be in default under this Agreement upon the occurrence of any of the following events:

- a. OHA fails to perform, observe or discharge any of its covenants, agreements, or obligations set forth herein; or
- b. Any representation, warranty or statement made by OHA herein or in any documents or reports relied upon by County to measure performance by OHA is untrue in any material respect when made.

11. Termination.

a. County Termination. County may terminate this Agreement:

- (1) For its convenience, upon at least 30 days advance written notice to OHA;
- (2) Upon 45 days advance written notice to OHA, if County does not obtain funding, appropriations and other expenditure authorizations from County's governing body, federal, state or other sources sufficient to permit County to satisfy its performance obligations under this Agreement, as determined by County in the reasonable exercise of its administrative discretion;
- (3) Upon 30 days advance written notice to OHA, if OHA is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as County may specify in the notice; or
- (4) Immediately upon written notice to OHA, if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that County no longer has the authority to meet its obligations under this Agreement.

b. OHA Termination. OHA may terminate this Agreement:

- (1) For its convenience, upon at least 30 days advance written notice to County;
- (2) Upon 45 days advance written notice to County, if OHA does not obtain funding, appropriations and other expenditure authorizations from federal, state or other sources sufficient to meet the payment obligations of OHA under this Agreement, as determined by OHA in the reasonable exercise of its administrative discretion. Notwithstanding the preceding sentence, OHA may

terminate this Agreement, immediately upon written notice to County or at such other time as it may determine if action by the Oregon Legislative Assembly or Emergency Board reduces OHA's legislative authorization for expenditure of funds to such a degree that OHA will no longer have sufficient expenditure authority to meet its payment obligations under this Agreement, as determined by OHA in the reasonable exercise of its administrative discretion, and the effective date for such reduction in expenditure authorization is less than 45 days from the date the action is taken;

- (3) Immediately upon written notice to County if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that OHA no longer has the authority to meet its obligations under this Agreement or no longer has the authority to provide payment from the funding source it had planned to use;
- (4) Upon 30 days advance written notice to County, if County is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as OHA may specify in the notice;
- (5) Immediately upon written notice to County, if any license or certificate required by law or regulation to be held by County or a subcontractor to perform the Work is for any reason denied, revoked, suspended, not renewed or changed in such a way that County or a subcontractor no longer meets requirements to perform the Work. This termination right may only be exercised with respect to the particular part of the Work impacted by loss of necessary licensure or certification; or
- (6) Immediately upon written notice to County, if OHA determines that County or any of its subcontractors have endangered or are endangering the health or safety of a client or others in performing work covered by this Agreement.

c. **Mutual Termination.** The Agreement may be terminated immediately upon mutual written consent of the parties or at such time as the parties may agree in the written consent.

12. **Effect of Termination.**

a. **Entire Agreement.**

- (1) Upon termination of this Agreement, OHA shall have no further obligation to pay County under this Agreement.
- (2) Upon termination of this Agreement, County shall have no further obligation to perform Work under this Agreement.

b. **Obligations and Liabilities.** Notwithstanding Section 12.a., any termination of this Agreement shall not prejudice any obligations or liabilities of either party accrued prior to such termination.

13. **Limitation of Liabilities.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT. NEITHER PARTY SHALL BE LIABLE FOR ANY

DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT OR ANY PART HEREOF IN ACCORDANCE WITH ITS TERMS.

14. **Insurance.** County shall require subcontractors to maintain insurance as set forth in Exhibit C, which is attached hereto.
15. **Records Maintenance; Access.** County shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, County shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of County, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document County's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of County whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." County acknowledges and agrees that OHA and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to all Records to perform examinations and audits and make excerpts and transcripts. County shall retain and keep accessible all Records for a minimum of six years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. County shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.
16. **Information Privacy/Security/Access.** If the Work performed under this Agreement requires County or its subcontractor(s) to have access to or use of any OHA computer system or other OHA Information Asset for which OHA imposes security requirements, and OHA grants County or its subcontractor(s) access to such OHA Information Assets or Network and Information Systems, County shall comply and require all subcontractor(s) to which such access has been granted to comply with OAR 943-014-0300 through OAR 943-014-0320, as such rules may be revised from time to time. For purposes of this section, "Information Asset" and "Network and Information System" have the meaning set forth in OAR 943-014-0305, as such rule may be revised from time to time.
17. **Force Majeure.** Neither OHA nor County shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, natural causes, or war which is beyond the reasonable control of OHA or County, respectively. Each party shall, however, make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. OHA may terminate this Agreement upon written notice to the other party after reasonably determining that the delay or breach will likely prevent successful performance of this Agreement.
18. **Assignment of Agreement, Successors in Interest.**
 - a. County shall not assign or transfer its interest in this Agreement without prior written approval of OHA. Any such assignment or transfer, if approved, is subject to such conditions and provisions as OHA may deem necessary. No approval by OHA of any assignment or transfer of interest shall be deemed to create any obligation of OHA in addition to those set forth in the Agreement.

- b. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns.
19. **Alternative Dispute Resolution.** The parties should attempt in good faith to resolve any dispute arising out of this agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
20. **Subcontracts.** County shall not enter into any subcontracts for any of the Work required by this Agreement without OHA's prior written consent. In addition to any other provisions OHA may require, County shall include in any permitted subcontract under this Agreement provisions to require that OHA will receive the benefit of subcontractor performance as if the subcontractor were the County with respect to Sections 1, 2, 3, 4, 8, 15, 16, 18, 21, and 23 of this Exhibit B. OHA's consent to any subcontract shall not relieve County of any of its duties or obligations under this Agreement.
21. **No Third Party Beneficiaries.** OHA and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. The parties agree that County's performance under this Agreement is solely for the benefit of OHA to assist and enable OHA to accomplish its statutory mission. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
22. **Amendments.** No amendment, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and, when required, the Department of Justice. Such amendment, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given.
23. **Severability.** The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
24. **Survival.** Sections 1, 4, 5, 6, 8, 12, 13, 14, 15, 16, 19, 21, 22, 23, 24, 25, 26, 28, 29, 30 and 31 of this Exhibit B shall survive Agreement expiration or termination as well as those the provisions of this Agreement that by their context are meant to survive. Agreement expiration or termination shall not extinguish or prejudice either party's right to enforce this Agreement with respect to any default by the other party that has not been cured.
25. **Notice.** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid to County or OHA at the address or number set forth in this Agreement, or to such other addresses or numbers as either party may indicate pursuant to this section. Any communication or notice so addressed and mailed by regular mail shall be deemed received and effective five days after the date of mailing. Any communication or notice delivered by facsimile shall be deemed received and

effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the recipient, or on the next business day if transmission was outside normal business hours of the recipient. Notwithstanding the foregoing, to be effective against the other party, any notice transmitted by facsimile must be confirmed by telephone notice to the other party. Any communication or notice given by personal delivery shall be deemed effective when actually delivered to the addressee.

OHA: Office of Contracts & Procurement
635 Capitol Street NE, Suite 350
Salem, OR 97301
Telephone: 503-945-5818
Facsimile: 503-378-4324

26. **Headings.** The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret this Agreement.
27. **Waiver.** The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision. No waiver or consent shall be effective unless in writing and signed by the party against whom it is asserted.
28. **Reserved.**
29. **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 party (the "Notified Party") with respect to which the other party ("Other Party") may have 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 County (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 County in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the County 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 County 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 County is jointly liable with the State (or would be if joined in the Third Party Claim), the County 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 County 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 County 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 County'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.

- 30. Indemnification by Subcontractors.** 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 ("Indemnatee") 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 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 Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by the contractor from and against any and all Claims.
- 31. Stop-Work Order.** OHA may, at any time, by written notice to the County, require the County to stop all, or any part of the work required by this Agreement for a period of up to 90 days after the date of the notice, or for any further period to which the parties may agree through a duly executed amendment. Upon receipt of the notice, County shall immediately comply with the Stop-Work Order terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the stop work order notice. Within a period of 90 days after issuance of the written notice, or within any extension of that period to which the parties have agreed, OHA shall either:
- a. Cancel or modify the stop work order by a supplementary written notice; or
 - b. Terminate the work as permitted by either the Default or the Convenience provisions of Section 11. Termination.

If the Stop Work Order is canceled, OHA may, after receiving and evaluating a request by the County, make an adjustment in the time required to complete this Agreement and the Agreement price by a duly executed amendment.

EXHIBIT C

Subcontractor Insurance Requirements

Local Government shall require its first tier contractor(s) (Contractor) that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before the contractors perform under contracts between Local Government and the contractors (the "Subcontracts"), and ii) maintain the insurance in full force throughout the duration of the Subcontracts. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to OHA. Local Government shall not authorize contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, Local Government shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Local Government shall incorporate appropriate provisions in the Subcontracts permitting it to enforce contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Subcontracts as permitted by the Subcontracts, or pursuing legal action to enforce the insurance requirements. In no event shall Local Government permit a contractor to work under a Subcontract when the Local Government is aware that the contractor is not in compliance with the insurance requirements. As used in this section, a "first tier" contractor is a contractor with which the county directly enters into a contract. It does not include a subcontractor with which the contractor enters into a contract.

TYPES AND AMOUNTS

WORKERS' COMPENSATION & EMPLOYERS' LIABILITY

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. If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If contractor is an employer subject to any other state's workers' compensation law, Contractor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

COMMERCIAL GENERAL LIABILITY:

Required **Not required**

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the OHA. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this contract, and have no limitation of coverage to designated premises, project, or operation. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.

AUTOMOBILE LIABILITY INSURANCE:

Required **Not required**

Automobile Liability Insurance covering Contractor’s business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$1,000,000 for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Use of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

PROFESSIONAL LIABILITY:

Required **Not required**

Professional Liability insurance covering any damages caused by an error, omission or any negligent acts related to the services to be provided under the Subcontract by the Contractor and Contractor’s subcontractors, agents, officers or employees in an amount not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000. If coverage is on a claims made basis, then either an extended reporting period of not less than 24 months shall be included in the Professional Liability insurance coverage, or the Contractor shall provide Tail Coverage as stated below.

EXCESS/UMBRELLA INSURANCE:

A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.

ADDITIONAL COVERAGE REQUIREMENTS:

Contractor’s insurance shall be primary and non-contributory with any other insurance. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

ADDITIONAL INSURED:

The Commercial General Liability insurance and Automobile liability insurance required under the Subcontract must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with

respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor's activities to be performed under this Subcontract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of Contractor's ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 04 13 or equivalent.

TAIL COVERAGE:

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, Contractor shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Subcontract, for a minimum of 24 months following the later of (i) Contractor's completion and Local Government's acceptance of all Services required under this Subcontract, or, (ii) The expiration of all warranty periods provided under this Subcontract.

CERTIFICATE(S) AND PROOF OF INSURANCE:

Local Government shall obtain from the Contractor a Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance OHA has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Contract.

NOTICE OF CHANGE OR CANCELLATION:

The Contractor or its insurer must provide at least 30 days' written notice to Local Government before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

INSURANCE REQUIREMENT REVIEW:

Contractor agrees to periodic review of insurance requirements by OHA under this agreement and to provide updated requirements as mutually agreed upon by Contractor and Local Government.

STATE ACCEPTANCE:

All insurance providers are subject to OHA acceptance. If requested by OHA, Contractor shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to OHA's representatives responsible for verification of the insurance coverages required under this Exhibit C.

EXHIBIT D

Federal Terms and Conditions

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

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

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

or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.

- g. The prohibitions in subsections (e) and (f) of this section shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.
- h. No part of any federal funds paid to Contractor under this Contract may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under Section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance of that federally sponsored clinical trials are being conducted to determine therapeutic advantage.

6. **Resource Conservation and Recovery.** Contractor shall comply and require all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 U.S.C. 6901 et. seq.). Section 6002 of that Act (codified at 42 U.S.C. 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.

7. **Audits.**

- a. Contractor shall comply, and require all subcontractors to comply, with applicable audit requirements and responsibilities set forth in this Contract and applicable state or federal law.
- b. If Contractor expends \$750,000 or more in federal funds (from all sources) in a fiscal year, Contractor shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR Subtitle B with guidance at 2 CFR Part 200. Copies of all audits must be submitted to OHA within 30 days of completion. If Contractor expends less than \$750,000 in a fiscal year, Contractor is exempt from Federal audit requirements for that year. Records must be available as provided in Exhibit B, "Records Maintenance, Access".

8. **Debarment and Suspension.** Contractor shall not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and Suspension". (See 2 CFR Part 180.) This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Subcontractors with awards

that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

9. **Pro-Children Act.** Contractor shall comply and require all subcontractors to comply with the Pro-Children Act of 1994 (codified at 20 U.S.C. Section 6081 et. seq.).
10. **Medicaid Services.** Contractor shall comply with all applicable federal and state laws and regulation pertaining to the provision of Medicaid Services under the Medicaid Act, Title XIX, 42 U.S.C. Section 1396 et. seq., including without limitation:
 - a. Keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving Medicaid assistance and shall furnish such information to any state or federal agency responsible for administering the Medicaid program regarding any payments claimed by such person or institution for providing Medicaid Services as the state or federal agency may from time to time request. 42 U.S.C. Section 1396a (a)(27); 42 CFR Part 431.107(b)(1) & (2).
 - b. Comply with all disclosure requirements of 42 CFR Part 1002.3(a) and 42 CFR Part 455 Subpart (B).
 - c. Maintain written notices and procedures respecting advance directives in compliance with 42 U.S.C. Section 1396(a)(57) and (w), 42 CFR Part 431.107(b)(4), and 42 CFR Part 489 subpart I.
 - d. Certify when submitting any claim for the provision of Medicaid Services that the information submitted is true, accurate and complete. Contractor shall acknowledge Contractor's understanding that payment of the claim will be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.
 - e. Entities receiving \$5 million or more annually (under this Contract and any other Medicaid contract) for furnishing Medicaid health care items or services shall, as a condition of receiving such payments, adopt written fraud, waste and abuse policies and procedures and inform employees, contractors and agents about the policies and procedures in compliance with Section 6032 of the Deficit Reduction Act of 2005, 42 U.S.C. § 1396a(a)(68).
11. **Agency-based Voter Registration.** If applicable, Contractor shall comply with the Agency-based Voter Registration sections of the National Voter Registration Act of 1993 that require voter registration opportunities be offered where an individual may apply for or receive an application for public assistance.
12. **Disclosure.**
 - a. 42 CFR Part 455.104 requires the State Medicaid agency to obtain the following information from any provider of Medicaid or CHIP services, including fiscal agents of providers and managed care entities: (1) the name and address (including the primary business address, every business location and P.O. Box address) of any person (individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity; (2) in the case of an individual, the date of birth and Social Security Number, or, in the case of a corporation, the tax identification number of the entity, with an ownership interest in the provider, fiscal

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

- b. 42 CFR Part 455.434 requires as a condition of enrollment as a Medicaid or CHIP provider, to consent to criminal background checks, including fingerprinting when required to do so under state law, or by the category of the provider based on risk of fraud, waste and abuse under federal law.
- c. As such, a provider must disclose any person with a 5% or greater direct or indirect ownership interest in the provider whom has been convicted of a criminal offense related to that person's involvement with the Medicare, Medicaid, or title XXI program in the last 10 years.
- d. Contractor shall make the disclosures required by this Section 13. to OHA. OHA reserves the right to take such action required by law, or where OHA has discretion, it deems appropriate, based on the information received (or the failure to receive information) from the provider, fiscal agent or managed care entity.

13. Federal Intellectual Property Rights Notice. The federal funding agency, as the awarding agency of the funds used, at least in part, for the Work under this Contract, may have certain rights as set forth in the federal requirements pertinent to these funds. For purposes of this subsection, the terms “grant” and “award” refer to funding issued by the federal funding agency to the State of Oregon. The Contractor agrees that it has been provided the following notice:

- a. The federal funding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the Work, and to authorize others to do so, for Federal Government purposes with respect to:
 - (1) The copyright in any Work developed under a grant, subgrant or contract under a grant or subgrant; and
 - (2) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.
- b. The parties are subject to applicable federal regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR Part 401, “Rights to Inventions Made by Nonprofit

Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.”

- c. The parties are subject to applicable requirements and regulations of the federal funding agency regarding rights in data first produced under a grant, subgrant or contract under a grant or subgrant.

14. Super Circular Requirements. 2 CFR Part 200, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, including but not limited to the following:

- a. **Property Standards.** 2 CFR 200.313, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, which generally describes the required maintenance, documentation, and allowed disposition of equipment purchased with federal funds.
- b. **Procurement Standards.** When procuring goods or services (including professional consulting services), applicable state procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C or 2 CFR §§ 200.318 through 200.326, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, as applicable.
- c. **Contract Provisions.** The contract provisions listed in 2 CFR Part 200, Appendix II, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, that are hereby incorporated into this Exhibit, are, to the extent applicable, obligations of Contractor, and Contractor shall also include these contract provisions in its contracts with non-Federal entities.

15. Federal Whistleblower Protection. Contractor shall comply, and ensure the compliance by subcontractors or subgrantees, with 41 U.S.C. 4712, Enhancement of contractor protection from reprisal for disclosure of certain information.

16. Information Required by 2 CFR Subtitle B with guidance at 2 CFR Part 200. All required data elements in accordance with 45 CFR 75.352 are available at:
<http://www.oregon.gov/oha/amh/Pages/federal-reporting.aspx>.