

POLK COUNTY BOARD OF COMMISSIONERS

DATE: May 22, 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 Grand Ronde Sanitary District Board is meeting on May 29, 2024 at 9:15 a.m. The meeting will take place in the Polk County Courthouse, 850 Main Street, Dallas, OR, 97338.
- 3. COMMENTS (for items not on this agenda and limited to 3 minutes)**
- 4. APPROVAL OF AGENDA**
- 5. APPROVAL OF THE MINUTES FROM May 15, 2024**
- 6. APPROVAL OF CONSENT CALENDAR**
- 7. FIRST READING OF POLK COUNTY ORDINANCE NO. 24-04 – Morgan Smith**

CONSENT CALENDAR

- a)** Polk County Contract No. 24-70, Oregon Health Authority
(Rosana Warren, Behavioral Health)
- b)** Polk County Contract No. 24-71, Oregon Health Authority
(Rosana Warren, Behavioral Health)
- c)** Polk County Ordinance No. 24-03, In the matter of Plan Amendment 23-01 & Zone Change 23-01
(Sidney Mulder, Community Development Planning Manager)
- d)** Polk County Contract No. 24-72, Service Contract
(Rosana Warren, Behavioral Health)
- e)** Polk County Contract No. 24-73, Service Contract
(Aaron Felton, Polk County District Attorney)
- f)** Polk County Contract. No. 24-74, Service Contract
(Rosana Warren, Behavioral Health)
- g)** Polk County Contract No. 24-75, Service Contract
(Rosana Warren, Behavioral Health)
- h)** Polk County Order No. 24-06, West Valley Housing Authority Appointment
(Nicole Pineda, Executive Assistant to BOC)
- i)** Polk County Contract No. 24-76 (Amendment 1 to 23-201), Department of Corrections
(Jodi Merritt, Community Corrections Director)

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

ADJOURNMENT

POLK COUNTY PUBLIC MEETINGS AND PUBLIC HEARINGS
GUIDELINE FOR CITIZENS

REGULAR MEETING AGENDA

Regular meetings of the Polk County Board of Commissioners convene at 9 a.m. each Wednesday morning. Any person wishing to bring a matter before the Board at one of these meetings may do so by mailing or delivering written notice, concisely describing the nature of the item, to the Board of Commissioners, Polk County Courthouse, Dallas, Oregon 97338, by noon on the preceding Thursday. Unless otherwise announced, meetings are held in the Main Conference Room of the Courthouse.

APPEARANCE OF INTERESTED CITIZENS

The Board sets aside a time at each regular meeting for comment by the public on subjects not appearing on the Agenda. Individuals may come forward and make any statement they wish, but not to exceed three (3) minutes in length, except as is required to give concise answers to questions from Board members. If the subject will require a lengthier presentation, or merits inclusion as an item on the Agenda of a future meeting, the Board shall schedule it accordingly.

PUBLIC HEARING FORMAT
Land Use

1. Chairman opens hearing.
 - a. Reading of hearing request or appeal statement.
 - b. Call for abstentions (ex parte contact or conflict of interest).
2. County staff presents background, summary and its recommendation (20-minute limit).
3. Applicant (Appellant) presents his/her case (15-minute limit).
4. Public testimony. Note that all testimony and evidence must be directed toward the applicable factual and legal criteria as identified in the record and/or during this hearing. Do not repeat previous testimony. Simply note for the record that you are in agreement with that earlier testimony. Your time to present testimony is limited. FAILURE TO RAISE AN ISSUE IN THIS HEARING, IN PERSON OR BY LETTER, OR FAILURE TO PROVIDE ADEQUATE SPECIFICITY TO AFFORD THE BOARD AN OPPORTUNITY TO RESPOND TO THE ISSUE MAY PRECLUDE LATER APPEAL TO LUBA ON THAT ISSUE.
 - a. Individuals in favor of the application or appeal.
 - b. Individuals against the application or appeal. At the discretion of the Chairman, an attorney, consultant, or other designated representative of two or more individuals may be allowed the combined time for each represented individual who does not speak, not to exceed 20 minutes. The Chairman may require proof of designation.
5. Rebuttal by Applicant (Appellant) (10-minute limit).
6. Questions from Board (discussion limited to individuals questioned by the Board).
 - a. Staff.
 - b. Applicant (Appellant).
 - c. Individuals testifying.
7. Chairman closes hearing and announces closing of Record.
8. Chairman announces date for deliberation and decision.
9. The Board's decision is deemed the final decision of Polk County. It may be appealed to LUBA within 21 days of its issuance in written form. The address and phone number of LUBA may be obtained from the Polk County Community Development Department and will also appear on the Notice of Decision which will be mailed to all persons who testify, submit comments, or print their name and address on the hearing attendance sheet at the back of the hearing room.

POLK COUNTY BOARD OF COMMISSIONERS
MINUTES May 15, 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 and Commissioner Gordon were present.

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

2. ANNOUNCEMENTS

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

The Polk County Budget Committee will meet on May 15, 2024 at 9:30 a.m. That meeting will take place in the Polk County Courthouse, 850 Main Street, Dallas, OR, 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 May 8, 2024

MOTION: COMMISSIONER GORDON MOVED, COMMISSIONER MORDHORST SECONDED, TO APPROVE THE MINUTES OF May 8, 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.

7. TRANSFER STATION FRANCHISE APPLICATION

Morgan Smith, County Counsel stated that the county has received an application for a franchise agreement for a transfer station. Mr. Smith provided a brief synopsis of the application stating who it was from, the proposed location and some key details. Mr. Smith the purpose of this agenda item was to inform the Board of the application but no decisions are being made today as this application was just received yesterday. Mr. Smith is also recommending that the county update their ordinances in how they would regulate a transfer station as there is very little language in the current ordinances.

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

- a) Polk County Contract No. 24-68, Oregon Health Authority
(Rosana Warren, Behavioral Health)
- b) Polk County Contract No. 24-69, Oregon Health Authority
(Rosana Warren, Behavioral Health)

There no need for an executive session and Commissioner Pope adjourned the meeting at 9:09 a.m.

POLK COUNTY BOARD OF COMMISSIONERS

Craig Pope, Chair

Jeremy Gordon, Commissioner

Lyle Mordhorst, Commissioner

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4 **BEFORE THE BOARD OF COMMISSIONERS**
5 **FOR THE COUNTY OF POLK, STATE OF OREGON**
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9 In the Matter of Enacting)
10 Amendments to Chapter 70 of the Polk)
11 County Code of Ordinances)
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15 **ORDINANCE NO. 24-04**
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17 THE POLK COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:
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19 Sec. 1. Enactment. Polk County Code of Ordinances is amended by the enactment of
20 amendments to Chapter 70. Specifically, §§ 70.0714 and 70.0801 of the Polk
21 County Code of Ordinances as it currently reads is hereby replaced with new
22 provisions, which reads in full as follows:
23

24 - See Attached Exhibit A
25

26 Sec. 2. Severability. Should any section or portion of this ordinance be held unlawful or
27 unenforceable by any court of competent jurisdiction, such decision shall apply
28 only to the specific section or portion thereof, directly specified in the decision.
29 All other sections or portions of this ordinance shall remain in full force and
30 effect.
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32 Sec. 3. Emergency. This ordinance being immediately necessary to protect public safety
33 and property, and emergency is declared and this ordinance is effective
34 immediately upon passage.
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1 Dated this XX of XX, 2024 at Dallas, Oregon.

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4 **POLK COUNTY BOARD OF COMMISSIONERS**

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7 _____
8 Craig Pope, Chair

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12 Lyle Mordhorst, Commissioner

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16 Jeremy Gordon, Commissioner

17 Approved as to form

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19 _____
20 Morgan Smith
21 County Counsel

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26 First Reading: _____

27 Second Reading _____

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29 Recording Secretary: _____

70.0714 FRANCHISE OR PERMIT FEES.

The Administrator shall collect, in the manner and at the time provided in this section, from the holder of:

(1) Any collection franchise, an annual fee of 3 percent of the gross receipts from providing service to the franchised service area.

(2) Any disposal ~~or transfer~~ franchise shall pay an amount equal to not less than 8 percent nor more than 15 percent of the gross income from the disposal service provided by the franchisee. Amount to be established by resolution of the Board.

(3) Any transfer franchise shall pay for first (1st) year of operations, an amount equal to one dollar (\$ 1.00) per ton on all ORS chapter 459 Solid Waste and materials and one (1) percent of the gross receipts on all ORS chapter 459 Solid Waste. For each subsequent year thereafter, up to year five, the amount any transfer franchise shall pay shall increase by one (1) percent each year and one dollar (\$1.00 per ton each, to a maximum percent of five (5) percent and five dollars (\$ 5.00) per ton thereafter.

~~(43)~~ The collection ~~and disposal, and transfer~~ franchise fee shall be computed and be payable to Polk County quarterly within thirty (30) days from the end of the calendar quarter. The fee shall be accompanied by a sworn statement of such cash gross receipts.

~~(54)~~ Within 105 days after the end of each franchisee's fiscal year, collection and disposal franchise holders shall file with the Administrator a sworn and verified financial report for the previous year and shall pay any and all additional fees which have not previously been paid upon monthly gross income.

~~(65)~~ The Administrator will provide forms to the franchise holders for filing the financial report. The content and form shall be established by order or resolution of the Board.

~~(76)~~ Every collection and disposal franchise holder shall maintain books and records disclosing the gross income receipts for the collection service area or disposal site, which books and records shall be opened at reasonable times and places for audit by the authorized personnel of Polk County.

~~(87)~~ Any applicant for an exemption pursuant to Section 70.402 (2), a processing fee of \$150, and an annual permit fee of \$30, each year thereafter.

~~(98)~~ Any applicant for a supplemental rate adjustment pursuant to Section 70.0801 (2) (B), a processing fee of \$150.

~~(109)~~ Any recycling depot exemption granted under Section 70.0402 (5), an annual fee of \$30.

~~(110)~~ Any transfer of franchise granted pursuant to Section 70.0716, a processing fee of

\$150.

(124) A late payment penalty of 1.5 percent per month but not less than \$100 shall be assessed for failure to submit the quarterly payment and the annual financial report within the time frame prescribed by paragraphs (3) and (4) of this section.

70.0801 DETERMINATION OF RATES.

(1) The existing approved rate schedule, as of the effective date of this Ordinance, shall be deemed to be in effect.

(2) For Collection and Disposal Franchise Holders, the ~~The~~ maximum rates in effect at the time this Ordinance takes effect and thereafter, shall be subject to review and change only one time in a calendar year beginning January 1 and ending December 31 the same year. However:

- (a) Upon application, the Administrator may, in writing, grant an interim or emergency rate for new, special, or different service. The Administrator shall submit a report of the decision to the Board for review. The effective date of the service and rate shall not precede Board review. The Administrator shall set the duration of said rate or continue it until the next overall rate adjustment.
- (b) In addition to an annual rate adjustment, a supplemental rate adjustment may be requested when the cost of service is increased by governmental regulations and compliance therewith; or when there is substantial increase in a single expense that was not anticipated at the time of the last rate adjustment; or when the total cost of service exceeds projected costs by 5 percent or more.

(3) Applicants for an annual rate adjustment to a collection and disposal franchisee's rate schedule adjustment must submit the request on approved forms 90 days prior to the effective date of the proposed rate change.

(4) No franchise holder shall charge a rate greater than that established by the Board. All collection rates within any classification shall be applied uniformly. Any franchised collector who wishes to charge a preferential collection rate, including a reduced rate for charitable non-profit or benevolent organizations, shall give written notice to the Administrator 10 days prior to the implementation of a preferential collection rate. The preferential rate shall be deemed approved unless the Administrator, in writing, disapproves the preferential rate prior to implementation. If the Administrator disapproves the preferential rate, the franchise collector may appeal the decision to the Board of Commissioners within 10 days after the denial. The appeal must be filed with the Board of Commissioners with a duplicate being forwarded to the Administrator. The appeal shall state wherein the Administrator failed to conform to the provisions of this Ordinance and why the preferential collection rate should be granted. The Board shall review the action of the Administrator and may refer the matter back to the Administrator for further consideration and investigation if it is deemed advisable. The Board may similarly, after considering the appeal, affirm the action of the Administrator and deny the appeal. If the Board is of the opinion that additional facts warrant further action, the Board may set the matter for a public hearing and shall give notice of the time and place of such hearing to the franchised collector, the Administrator and Polk County Legal Counsel, as well as having notice of the public hearing published in a newspaper of public record located in the area in which the collector is franchised. After the hearing, the Board may reverse or affirm or may impose such conditions as the facts warrant, and its decision or

determination shall be final. Any hearing may be continued from time to time.

(5) Upon recommendation by the Administrator, the Board may:

- (a) Approve and establish rates filed by applicants ~~for franchises~~ if it finds that such rates are not demonstratively unreasonable and are not substantially higher than those charged generally in the County under similar service requirements and for the same or similar quality of service, or it may establish a different rate schedule.
- (b) Establish uniform rates throughout the County or establish rates that are uniform within zones based upon the length of haul to disposal sites, concentration of customers, and other factors which may, in the opinion of the Board, justify establishment of rate differentials.
- (c) Establish rates for disposal sites that are uniform throughout the County or different rates for each site or class of sites.
- (d) Increase or decrease rates based on the cost of doing business.
- (e) Establish an interim rate until the Board makes a final determination on the rate for that type of service.

(6) In determining rates, the Administrator and the Board shall make a finding that the rates of a collection or disposal franchisee will be just, fair, reasonable, and sufficient to provide proper service to the public. The Administrator and the Board may consider rates charged by other persons performing the same or similar service in the same or other areas. The Administrator and the Board shall give due consideration to:

- (a) The investment in facilities and equipment.
- (b) The services of management.
- (c) Local wage scales.
- (d) The concentration of customers in the area served.
- (e) Methods of storage, collection, transportation and disposal, salvage, recycling, or reuse.
- (f) A reasonable return to the collection and disposal franchisee.
- (g) The length of haul to disposal facilities.
- (h) The cost of disposal.
- (i) The use of transfer stations or transfer systems and the added costs.

- (j) The cost of alternate methods of disposal.
- (k) The future service demands of the service area or disposal site which must be anticipated in equipment, facilities, personnel, or land.
- (l) Extra charges for special pickups or pickups on days where service is not normally provided on a collection route.
- (m) Extra charges where the type or character of waste or solid waste, including but not limited to wastes with peculiarly offensive odors, requires special handling or service.
- (n) Extra charges for providing janitorial services on the premises where service is provided.
- (o) In addition, with respect to disposal sites, the type of site, whether the site is open to the public, and hours, type of waste disposed of, and method of disposal.
- (p) Cost of compliance with laws, ordinances or regulations and rules of public agencies or bodies having jurisdiction.
- (q) Other factors that may, in the opinion of the Administrator and the Board, necessarily affect the rates to be charged.

(7) The Board may require an investigation by the Administrator of any proposed collection or disposal franchisee's rates. For the purpose of making this investigation, the Administrator is authorized to hold public hearings and to take and receive testimony. Upon completion of such an investigation, the Administrator shall report the results of any public hearing, make findings, and submit a recommendation to the Board.

(8) The Administrator shall provide a Collection and Disposal Rate Application that shall incorporate the considerations set forth in this Ordinance for providing an adequate review of any rate application. The form and content of the application shall be established by order or resolution of the Board.

(9) Polk County reserves the right, at any time during the period of a collection and disposal franchise/permit, to examine the rate structure of a collection and disposal franchisee or permittee and to modify rate charges that, in the discretion of the Board, are reasonably required.

(10) Rates for a transfer franchisee shall be determined based on the following:

a. Prior to providing service and every fourth year thereafter (the "fourth-year review"), the transfer franchisee will prepare a cost-of-service analysis and any other requirements within the applicable franchise agreement to establish new rates.

i. Criteria for review shall be the same as PCCO 70.0801(6) as applicable to a

transfer station.

ii. Prior to implementation of any new rates, the Board of Commissioner's qualified designee. County may set the matter for a public hearing before the County's hearings officer and shall give notice of the time and place of such hearing to the franchised collector, the Administrator and Polk County Legal Counsel, as well as having notice of the public hearing published in a newspaper of public record located in the area. After the hearing, the Board may reverse or affirm or may impose such conditions as the facts warrant, and its decision or determination shall be final. Any hearing may be continued from time to time.

b. During every year that is not a fourth-year review, the Board of Commissioner's qualified designee and the Franchisee may agree to adjust the rate schedule once a year.

i. The Adjusted Rate shall be based on:

1. The existing rate;
2. The Franchisee's prior year's certified financial statements;
3. Any CPI Increase; and
4. All costs of disposal, transportation, regulatory modifications, and/or
5. Any other criteria outlined in the applicable franchise agreement.

c. At any time, the Board of Commissioner's qualified designee or the Franchisee may initiate a review of the current rate schedule as permitted in the applicable franchise agreement.;



CONTRACT REVIEW SHEET

Staff Contact: Rosana Warren Phone Number (Ext): 2550
Department: Health Services: Public Health Consent Calendar Date: May 15, 2024
Contractor Name: Oregon Health Authority
Address: 635 Capitol Street NE, Room 350
City, State, Zip: Salem, OR 97301
Effective Dates - From: March 01, 2024 Through: June 30, 2024
Contract Amount: \$438.00

Background:

The County receives funds from the Oregon Health Authority to provide Public Health Services to residents of the County by way of a grant. This contract is the seventh amendment to the initial award from the State. The grant award 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 Amendment 7 provides one-time funding for training travel reimbursement under PE 01 Communicable Disease in the amount of \$438.00. No other changes noted.

Fiscal Impact:

The total for this amendment is \$438 for FY24, which will have a net zero impact.

Recommendation:

It is recommended that Polk County sign Amendment 7 to IGA 180027 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: _____

OHA - 2023-2025 INTERGOVERNMENTAL AGREEMENT - FOR THE FINANCING OF PUBLIC HEALTH SERVICES**Agreement #180027**

**AMENDMENT TO OREGON HEALTH AUTHORITY
2023-2025 INTERGOVERNMENTAL AGREEMENT FOR THE
FINANCING OF PUBLIC HEALTH SERVICES**

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 Seventh Amendment to Oregon Health Authority 2023-2025 Intergovernmental Agreement for the Financing of Public Health Services, effective July 1, 2023, (as amended the “Agreement”), is between the State of Oregon acting by and through its Oregon Health Authority (“OHA”) and Polk County, (“LPHA”), the entity designated, pursuant to ORS 431.003, as the Local Public Health Authority for Polk County. OHA and LPHA are each a “Party” and together the “Parties” to the Agreement.

RECITALS

WHEREAS, OHA and LPHA wish to modify the Fiscal Year 2024 (FY24) Financial Assistance Award set forth in Exhibit C of the Agreement.

WHEREAS, OHA and LPHA wish to modify the Exhibit J information required by 2 CFR Subtitle B with guidance at 2 CFR Part 200;

NOW, THEREFORE, in consideration of the premises, covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. This Amendment is effective on March 1, 2024, regardless of the date this amendment has been fully executed with signatures by every Party and when required, approved by the Department of Justice. However, payments may not be disbursed until the Amendment is fully executed.
2. The Agreement is hereby amended as follows:
 - a. Exhibit C, Section 1 of the Agreement, entitled “Financial Assistance Award” for FY24 is hereby superseded and replaced in its entirety by Attachment A, entitled “Financial Assistance Award (FY24)”, attached hereto and incorporated herein by this reference. Attachment A must be read in conjunction with Section 3 of Exhibit C.
 - b. Exhibit J of the Agreement entitled “Information required by 2 CFR Subtitle B with guidance at 2 CFR Part 200” is amended to add to the federal award information datasheet as set forth in Attachment B, attached hereto and incorporated herein by this reference.
3. LPHA represents and warrants to OHA that the representations and warranties of LPHA set forth in Section 4 of Exhibit F of the Agreement are true and correct on the date hereof with the same effect as if made on the date hereof.
4. Capitalized words and phrases used but not defined herein shall have the meanings ascribed thereto in the Agreement.
5. Except as amended hereby, all terms and conditions of the Agreement remain in full force and effect.

6. This Amendment may be executed in any number of 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 this Amendment so executed shall constitute an original.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the dates set forth below their respective signatures.

7. **Signatures.**

STATE OF OREGON, ACTING BY AND THROUGH ITS OREGON HEALTH AUTHORITY

Approved by: _____

Name: /for/ Nadia A. Davidson

Title: Director of Finance

Date: _____

POLK COUNTY LOCAL PUBLIC HEALTH AUTHORITY

Approved by: _____

Printed Name: _____

Title: _____

Date: _____

DEPARTMENT OF JUSTICE – APPROVED FOR LEGAL SUFFICIENCY

Agreement form group-approved by Steven Marlowe, Senior Assistant Attorney General, Tax and Finance Section, General Counsel Division, Oregon Department of Justice by email on August 11, 2023, copy of email approval in Agreement file.

REVIEWED BY OHA PUBLIC HEALTH ADMINISTRATION

Reviewed by: _____

Name: Rolonda Widenmeyer (or designee)

Title: Program Support Manager

Date: _____

Attachment A
Financial Assistance Award (FY24)

| State of Oregon Oregon Health Authority Public Health Division | | |
|---|---|---------------------------------|
| 1) Grantee Name: Polk County Street: 182 SW Academy, Suite 302 City: Dallas State: OR Zip: 97338-1900 | 2) Issue Date Friday, March 1, 2024 | This Action Amendment |
| | | FY 2024 |
| | 3) Award Period From July 1, 2023 through June 30, 2024 | |

| 4) OHA Public Health Funds Approved | | | | |
|-------------------------------------|--|------------------------|---------------------|-----------------------|
| Number | Program | Previous Award Balance | Increase / Decrease | Current Award Balance |
| PE01-01 | State Support for Public Health | \$111,703.00 | \$0.00 | \$111,703.00 |
| PE01-10 | OIP - CARES | \$137,731.57 | \$438.00 | \$138,169.57 |
| PE01-12 | ACDP Infection Prevention Training | \$1,517.82 | \$0.00 | \$1,517.82 |
| PE10-02 | Sexually Transmitted Disease (STD) | \$190,384.60 | \$0.00 | \$190,384.60 |
| PE12-01 | Public Health Emergency Preparedness and Response (PHEP) | \$93,277.69 | \$0.00 | \$93,277.69 |
| PE13 | Tobacco Prevention and Education Program (TPEP) | \$175,528.95 | \$0.00 | \$175,528.95 |
| PE40-01 | WIC NSA: July - September | \$55,416.00 | \$0.00 | \$55,416.00 |
| PE40-02 | WIC NSA: October - June | \$166,250.00 | \$0.00 | \$166,250.00 |
| PE40-05 | Farmer's Market | \$2,000.00 | \$0.00 | \$2,000.00 |
| PE42-03 | MCAH Perinatal General Funds & Title XIX | \$3,251.00 | \$0.00 | \$3,251.00 |
| PE42-04 | MCAH Babies First! General Funds | \$10,394.00 | \$0.00 | \$10,394.00 |
| PE42-06 | MCAH General Funds & Title XIX | \$6,100.00 | \$0.00 | \$6,100.00 |
| PE42-11 | MCAH Title V | \$34,599.00 | \$0.00 | \$34,599.00 |
| PE42-12 | MCAH Oregon Mothers Care Title V | \$2,960.00 | \$0.00 | \$2,960.00 |
| PE42-13 | Family Connects Oregon | \$67,305.00 | \$0.00 | \$67,305.00 |

| | | | | |
|---------|--|----------------|----------|----------------|
| PE43-01 | Public Health Practice (PHP) - Immunization Services | \$25,625.00 | \$0.00 | \$25,625.00 |
| PE43-05 | OIP Bridge COVID | \$23,383.00 | \$0.00 | \$23,383.00 |
| PE44-01 | SBHC Base | \$60,000.00 | \$0.00 | \$60,000.00 |
| PE44-02 | SBHC - Mental Health Expansion | \$77,000.00 | \$0.00 | \$77,000.00 |
| PE46-05 | RH Community Participation & Assurance of Access | \$24,234.80 | \$0.00 | \$24,234.80 |
| PE50 | Safe Drinking Water (SDW) Program (Vendors) | \$12,678.00 | \$0.00 | \$12,678.00 |
| PE51-01 | LPHA Leadership, Governance and Program Implementation | \$515,304.00 | \$0.00 | \$515,304.00 |
| PE51-03 | ARPA WF Funding | \$17,461.00 | \$0.00 | \$17,461.00 |
| PE51-05 | CDC PH Infrastructure Funding | \$72,359.08 | \$0.00 | \$72,359.08 |
| | | \$1,886,463.51 | \$438.00 | \$1,886,901.51 |

| | |
|-----------------------|--|
| 5) Foot Notes: | |
| PE01-10 | 2/2024: Any unspent funds will be rolled over into SFY25. |
| PE10-02 | 7/15/2023: Full FY24 award funds may be used in FY24 during the period of 7/1/23-12/31/2023 due to DIS WF federal grant funding being cut by CDC on 12/31/23. |
| PE10-02 | 8/2023: Prior Footnote dated 7/15/2023 Null and Void. Full FY24 award funds may now be used in FY24 during the period of 7/1/23-01/31/2024 due to new guidance from the CDC. |
| PE10-02 | 02/2024: Budget period extended through 06/30/2024. There will be no additional DIS workforce money available beyond SFY24. |
| PE40-01 | 7/2023: Unspent SFY2024 Q1 award will be rescinded by the state, cannot be carried over to SFY2024 Q2-4 period. |
| PE40-02 | 7/2023: Q2-4 Unspent grant award will be rescinded by the state at end of SFY2024 |
| PE42-11 | 7/2023: Indirect charges cap at 10%. |
| PE42-12 | 7/2023: Indirect Charges cap at 10%. |
| PE43-01 | 7/2023: Awarded funds can be spent on allowable costs for the period of 7/1/2023 - 9/30/23. Any unspent funds will be de-obligated. |
| PE43-01 | 9/2023: Prior Footnote dated 7/2023 Null and Void. |
| PE43-05 | 12/2023: Funds are available 7/1/23-12/31/24. Unspent SFY24 funds will be carried over to the first six months of SFY25. |

| | |
|---------|---|
| PE43-05 | 2/2024: Prior Footnote dated 12/2023 Null and Void. Any unspent funds will be rolled over into SFY25. |
| PE51-01 | 7/2023: Bridge funding for 7/1/23-9/30/23. |
| PE51-01 | 8/2023: Prior Footnote dated 7/2023 Null and Void |
| PE51-03 | 9/2023: Federal funds expire 6/30/24 and will be ineligible for carryover into SFY25. |
| PE51-03 | 3/2023: Prior footnote null and void. Federal funds are available through 6/30/25. Unspent funds in SFY24 will be carried over to the next fiscal year. |

6) Comments:

| | |
|---------|---|
| PE01-01 | 8/2023: Prior Comment dated 7/2023 Null and Void 7/2023: SFY24 funding available 7/1/23-9/30/23 only. |
| PE01-10 | 3/2024: Awarding Vaccine Finance Summit travel funds of \$438 to be paid as lump sum upon receipt of invoice. 10/2023: rollover unspent SFY23 funds of \$137,731.57 |
| PE10-02 | 11/2023: Rollover of additional unspent SFY23 funds of \$11,000 10/2023: rollover unspent SFY23 funds of \$28,130.60 |
| PE12-01 | 8/2023: \$350 award for In-Person PHEPR/OHA Meeting and Listening Session Travel Award 8/2023: Prior Comment dated 7/2023 Null and Void 7/2023: SFY24 Award funding for first 3 months only |
| PE13 | 10/2023: rollover unspent SFY23 funds of \$166,886.10 9/2023: All Prior Comments Null and Void 7/15/23: SFY24 Award adding funding for 10/1/23-6/30/24 |
| PE40-01 | 7/2023: SFY2024 Q1 WIC NSA grant award. \$11,083 must spent on Nutrition Ed; \$1,659 on BF Promotion. Underspend Q1 award cannot be carried over to Q2-4 period. |
| PE40-02 | 7/2023: SFY2024 Q2-4 grant award. \$33,250 must be spent on Nutrition Ed, \$4,977 on BF Promotion. |
| PE40-05 | 10/2023: Prior Comment dated 7/2023 Null and Void. 7/2023: SFY2024 WIC Farmers Market Mini grant award. Final Q2 Rev & Exp Report is required for final accounting. Underspent funds will be rescinded by the state in February 2024 |
| PE42-13 | 11/2023: SFY24 Nurse workforce development funds of \$10,000 and HDHP funds of \$7,305 |
| PE51-05 | 7/2023: SFY24 Award Available 7/1/23-6/30/24. Funding total is split over 60 months for the period of 12/1/22-11/30/27. |

7) Capital outlay Requested in this action:

Prior approval is required for Capital Outlay. Capital Outlay is defined as an expenditure for equipment with a purchase price in excess of \$5,000 and a life expectancy greater than one year.

| Program | Item Description | Cost | PROG APPROV | |
|---------|------------------|------|-------------|--|
| | | | | |
| | | | | |

Attachment B**Information required by CFR Subtitle B with guidance at 2 CFR Part 200**

| PE01-10 OIP - CARES | | |
|--------------------------------------|---|---|
| Federal Award Identification Number: | NH23IP922626 | NH23IP922626 |
| Federal Award Date: | 08/05/21 | 03/31/21 |
| Budget Performance Period: | 7/1/2023-6/30/2024 | 7/1/2023-6/30/2024 |
| Awarding Agency: | CDC | CDC |
| CFDA Number: | 93.268 | 93.268 |
| CFDA Name: | Immunization Cooperative Agreements | Immunization Cooperative Agreements |
| Total Federal Award: | 38,110,851 | 38,627,576 |
| Project Description: | CDC-RFA-IP19-1901 Immunization and Vaccines for Children | CDC-RFA-IP19-1901 Immunization and Vaccines for Children |
| Awarding Official: | Divya Cassity | Divya Cassity |
| Indirect Cost Rate: | 17.64 | 17.64 |
| Research and Development (T/F): | FALSE | FALSE |
| HIPPA: | No | No |
| PCA: | 53120 | 53856 |
| Index: | 50404 | 50404 |

| Agency | UEI | Amount | Amount | Grand Total: |
|--------|--------------|----------|--------------|--------------|
| Polk | MSNMZ3DRBRN5 | \$438.00 | \$137,731.57 | \$138,169.57 |



CONTRACT REVIEW SHEET

Staff Contact: Rosana Warren Phone Number (Ext): 2428
Department: Health Services: Public Health Consent Calendar Date: May 22, 2024
Contractor Name: Oregon Health Authority - Public Health
Address: 800 NE Oregon Street, Suite 825
City, State, Zip: Portland, OR 97232
Effective Dates - From: July 01, 2024 Through: June 30, 2029
Contract Amount: \$Varies

Background:

Polk County participates in the federal Medicaid Administrative Claims (MAC) program to help offset costs associated with assisting individuals with Medicaid obtain different social services. IGA 182954 is the renewal agreement to contract No.19-50.

Discussion:

This Agreement is to continue Polk's participation in the MAC program and has no significant changes to language or expectations.

Fiscal Impact:

The total not to exceed amount for this agreement is \$2,600,000 over the next five years. However, we typically bill for \$240,000 per year and reimburse the State \$120,000 per year for net revenue of \$120,000/year. The PH budget was prepared in anticipation of this agreement.

Recommendation:

It is recommended that Polk County sign IGA 182954 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 182954

**STATE OF OREGON
INTERGOVERNMENTAL AGREEMENT**

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

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
Dallas, Oregon 97338
Attention: Marcos Prado
Telephone: (503) 623-8175
Facsimile: (503) 831-3499
Email address: hs.contracts@co.polk.or.us

hereinafter referred to as “County.”

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

Public Health Division
Maternal and Child Health, Center for Prevention and Health Promotion
800 NE Oregon Street, Suite 825
Portland, OR 97232
Agreement Administrator: David V. Anderson, or delegate
Telephone: (971) 276-0412
Email: david.v.anderson@state.or.us

1. **Effective Date and Duration.** This Agreement shall become effective on the later of: (I) the last date all required signatures in Section 6., below have been obtained, or (II) **July 1, 2024** provided it is (i) signed by all parties on or before such date, and (ii) when required, approved in writing by the Oregon Department of Justice on or before such date, and (iii) when required, approved in writing by the Oregon Department of Administrative Services. Unless extended or terminated earlier in accordance with its terms, this Agreement shall expire on **June 30, 2029**. Agreement termination shall not extinguish or prejudice OHA's right to enforce this Agreement with respect to any default by County 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: Subcontractor Insurance Requirements
 - (6) Exhibit D: Federal Terms and ConditionsThis 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 D, B, A, and C.
3. **Consideration.**
 - a. The maximum not-to-exceed amount payable to County under this Agreement, which includes any allowable expenses, is **\$2,600,000.00**. 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. 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.
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: 93.778

5. County Information 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: 850 Main 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 must be in effect prior to Agreement execution.

Workers' Compensation Insurance Company: CIS

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

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

- (1) County acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any "claim" (as defined by ORS 180.750) that is made by (or caused by) County and that pertains to this Agreement or to the project for which the Agreement work is being performed. County certifies that no claim described in the previous sentence is or will be a "false claim" (as defined by ORS 180.750) or an act prohibited by ORS 180.755. County further acknowledges that in addition to the remedies under this Agreement, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against County;
- (2) The information shown in Section 5.a. "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/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's Federal Employer Identification Number (FEIN) provided to OHA is true and accurate. If this information changes, County shall 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

By:

Authorized Signature

Printed Name

Title

Date

Approved for Legal Sufficiency:

Via e-mail by Jeffrey J. Wahl, Assistant Attorney General

April 9, 2024

Oregon Department of Justice

Date

EXHIBIT A

Part 1 Statement of Work

1. Public Health MAC Time Study Activity Codes

- A1. Outreach and Application Assistance for the Medicaid Program:** means interviews, group meetings, phone contacts or home visits that inform Medicaid eligible and potentially Medicaid eligible individuals and their families about the benefits and availability of services provided by the Medicaid program. Additionally informing individuals and their families on how to access, use and maintain participation in all health care resources (i.e. Medicaid, Early Periodic Screening and Diagnostic Testing, etc), creating and/or disseminating materials to inform children and families about Medicaid and assisting them to make application for Medicaid eligibility (i.e. collecting information for the Medicaid application, helping to complete necessary forms for the Medicaid application, and updating of forms as necessary if a child or family's circumstances change), related staff travel and paperwork.
- A2. Outreach and Application Assistance for Non-Medicaid Programs:** means activities that assist the patient/client in gaining access to non-Medicaid services, effectively utilizing social services and community wellness programs. (Included are housing, commodities, food banks, Women's Infant and Children Program ("WIC"), foster care, financial assistance, exercise and weight loss programs, energy assistance, childcare, after school programs, friendly visitor and vocational services). Activities that assist the client in applying for these services, including form preparation, related staff travel and paperwork.
- B1. Referral, Coordination, Monitoring, and Training of Medicaid Services:** means making referrals for and coordinating the delivery of diagnostic and preventive service and treatment for health, vision, dental, developmental, mental health, substance abuse and other Medicaid services. Includes staffing to coordinate Medicaid case plan services (participation in multidisciplinary team meetings, conferencing on health, developmental issues, consultations), gathering background information and supportive information, such as medical histories, writing case plans, or summaries and preparing and/or presenting materials for case review, arranging for health services and coordinating services (i.e. psychological counseling, health, substance abuse counseling and consultation, inpatient services), related staff travel and paperwork.
- B2. Referral, Coordination, Monitoring, and Training of Non-Medicaid Services:** means making referrals for and coordinating the delivery of social services and community wellness programs (including housing,

commodities, food banks, WIC, foster care, financial assistance, exercise and weight loss programs, energy assistance, childcare, after school programs, friendly visitor and vocational services) arranging transportation for these services and related staff travel and paperwork.

- C1. Medicaid/OHP transportation and translation** means assisting an individual to obtain transportation to services covered by OHP, arranging for or providing translation services to facilitate access to OHP services. Include related paperwork, clerical activities or staff travel required to perform these activities.
- C2. Non-Medicaid/OHP transportation and translation:** means assisting an individual to obtain transportation to services not covered by Medicaid/OHP, or arranging for or providing translation services related to social, vocational, or educational programs. Include related paperwork, clerical activities or staff travel time required to perform these activities.
- D1. System Coordination Related to Medicaid Services:** means working internally and with other agencies to improve Medicaid health services, identify gaps in services, expand health and medical services; and improve capacity to engage in medical assistance services and to expand access and linkage to medical and health services and their utilization by medical assistance target populations, gathering information about the target population to improve early identification of health and developmental problems; related staff travel and paperwork.
- D2. System Coordination Related to Non-Medicaid Services:** means working internally and with other agencies to improve social services, identify gaps in services, expand and improve capacity to engage in non-Medicaid activities, expand access and linkage to non-Medicaid services, their utilization by target populations; related staff travel and paperwork.
- E. Direct Health Care Services:** means providing direct health care services to a patient, such as well baby checkups, immunizations, disease management, counseling, and including medical case management or other activities that are an integral part or extension of a patient's visit. Included is all related paperwork, clerical activities, staff time, or travel required performing these services
- F. Other Work Activities:** means all other paid work activities that do not fall under one of the above categories. Time off for vacation, sick leave, family leave, holidays, jury duty, paid lunchtime, comp time, and any other time away from work if the time is paid. Such activities may include payroll, maintaining inventories, developing budgets, general supervision, etc. All related paperwork, clerical activities, or staff travel would also be included.

2. Statement of Work

Background

Under Title XIX of the Social Security Act (“the Act”), the federal government and states share the cost of funding the Medicaid program, which provides medical assistance to certain low-income individuals. Federal Financial Participation (“FFP”) is the federal government’s share for states’ Medicaid program expenditures. States may claim FFP for providing administrative activities that are found to be necessary by the Secretary of the U.S. Department of Health and Human Service for proper and efficient administration of the state Medicaid plan. The process applicable to claiming administrative costs is referred to herein as Medicaid Administrative Claiming or MAC.

OHA and County intend to improve health services access and availability for children and families eligible for medical assistance under Medicaid and who reside in the geographic area(s) served by the County. Under the Agreement, County will perform Title XIX administrative activities, and OHA will reimburse County for the cost of performing these administrative activities. County will provide, through its own staff and through subcontracts, outreach, health care coordination, and other medical assistance related administrative activities that support OHA’s administration of the Title XIX Medicaid Oregon State Plan (the “State Medicaid Plan.”).

Statement of Work

County shall directly and through subcontracts approved by OHA provide to Medicaid-eligible clients allowable Title XIX administrative activities as follows: (a) Outreach and Application Assistance for the Medicaid Program; (b) Referral, Coordination, Monitoring, and Training of Medicaid Services; (c) Medicaid/Oregon Health Plan (“OHP”) transportation and translation; and (d) System Coordination Related to Medicaid Services, (collectively, the “Work”), which are further defined in Exhibit A Part 1, attached and hereby incorporated by reference as part of this Agreement.

a. County Responsibilities. The County shall perform the following:

- (1)** No later than one working day prior to the first day of an upcoming quarter, send to the Multnomah Education Service District (“MESD”) a list of those eligible county employees and/or subcontractor employees designated to complete and submit required time study surveys during the subject quarter, hereinafter referred to as the “cost pool”. Eligible employees are those whose training / retraining in MAC is current, as defined by OHA and certified according to OHA requirements.
- (2)** Utilize the specific Time Study Activity Codes as set forth in Exhibit A, Part 1 (“Activity Codes”), approved by OHA and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid (“CMS”) to document all time spent by cost pool on all activities listed in Exhibit A and to claim all costs under this Agreement for allowable Medicaid administrative activities. Specifically, County shall use the Activity Codes to document all time spent on all activities listed in

Exhibit A (“Documented Time”) throughout four (4) specifically identified days per claiming quarter (“Survey Days”). OHA shall randomly select the Survey Days and notify County in advance of the Survey Days selected.

- (3)** Adhere to OHA protocols and policies pertaining to adequate and proper completion of time study surveys, as stated in the Medicaid Administrative Claiming Public Health Manual, Version 5.0, and provided to the County by OHA.
- (4)** Facilitate training to its employees and subcontractors on the implementation of the Time Study and Activity Codes to ensure County’s employees and subcontractors make claims only for allowable Medicaid administrative activities, availing training tools and training sessions as provided by OHA.
- (5)** Submit all MAC information to the Multnomah Education Service District (“MESD”) for MESD’s preparation of claiming information documents and subsequent MAC claims to OHA. In accordance with its agreement with OHA, MESD will post on secure Internet site quarterly claiming information for County’s review and approval. Steps in the approval process shall be as follows:

 - (a)** Within one week of posting by MESD of a County’s claim, OHA shall send an electronic invoice to a designated contact at County. Invoice shall bill County for State match portion of Medicaid funds, more specifically described in Exhibit A, Part 3. County shall have one week from the date it receives the invoice to review and notify the OHA Contract Administrator in writing of its disapproval—if any—of the document. At the time County disapproves a quarterly claiming information document, County must provide corrected information to OHA Contract Administrator. County shall send such notices to OHA Agreement Administrator at the address indicated on the face page of this Agreement.
 - (b)** If the County’s total Documented Time throughout a quarter’s Survey Days is equal to or greater than fifty percent (50%) of the total time County spends on all activities throughout the Survey Days, whether Documented Time or otherwise (“Total Time”), County shall provide OHA with an acceptable explanation for the percentage of Documented Time to Total Time.

If the explanation is acceptable to OHA and remains the same over time even through County’s total Documented Time throughout the Survey Days continues to be equal to or greater than fifty percent (50%) of the total time County spends on all activities throughout the Survey Days, then upon approval by

OHA, County shall maintain supporting documentation and will not be required to provide an explanation to OHA unless circumstances supporting the explanation change significantly. In that case County shall submit acceptable documentation prior to payment. OHA reserves the right to request at any time documentation concerning County's Documented Time and an explanation for that documentation.

Notwithstanding that actual percentage of Documented Time throughout the Survey Days, County shall document explanation of Documented Time for any individual that is equal to or exceeds fifty percent (50%) of that individual's Total Time throughout any Survey Day.

- (c) County shall signify its approval of the claim by signing and dating the invoice and sending it with enclosed payment of the 50% match (as explained in Exhibit A, Part 3, paragraph 5 of this Agreement) to the address given on the invoice.
- (6) Be responsible for creating its own claiming information documents in order to document the bases for MAC claims submitted to OHA, in the event that the Agreement between OHA and MESD expires or terminates prior to the expiration or termination of this Agreement.
- (7) Provide OHA with its actual and current cost pool data, and Medicaid eligible percentage for the claimed quarter, within 30 days after the end of each quarterly claiming period, in the form of a quarterly report submitted in required pro forma. Cost pool data includes: the name, title, job description, salary, benefits, and other personnel expenses for each individual employee who met eligibility requirements for participation in the claimed quarter's cost pool.
- (8) Ensure that all MAC claims for the Work are in accordance with requirements applicable to MAC claims in 2 CFR Part 200 *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* as stated in the "Standard Grant/Cooperative Agreement Terms and Conditions" of the Centers for Medicare & Medicaid Services, and the State Medicaid Plan, which are incorporated herein by this reference. The Work for which County claims reimbursement must be directly related to the administration of the State Medicaid Plan for FFP to be available.
- (9) Obtain OHA's prior written approval of any subcontracts proposed by County for the purpose of carrying out the Work under this Agreement, by:
 - (a) Providing OHA with a draft copy of each subcontract; and
 - (b) Upon obtaining OHA verbal approval of each subcontract, submitting to OHA a copy of the signed subcontract.

- (10) Monitor subcontracts to ensure that the Medicaid administrative activities and costs being tracked and billed to County by subcontractors are allowable and related to the purpose of this Agreement.
- (11) Monitor compliance with the requirements of this Agreement and maintain such records that support the quarterly claiming information documents and MAC claims for the Work performed, including but not limited to: position data, and salary and benefit information pertaining to relevant cost pool members, to include clear identification of federal portions of salary and benefits and the process by which those federal funds are removed from cost pool information prior to the information's submittal to MESD. As specified by OHA, other information applicable to the Work provided under this Agreement may be required in order for OHA to approve a claim.
- (12) Upon request from OHA, the Oregon Department of Justice, Medicaid Fraud Unit, the Secretary of State's Office, or the federal government, make available all records that support the quarterly MAC claims to OHA for Work performed.
- (13) Assure that Medicaid eligible children and families receiving assistance under this Agreement are free to accept or reject Medicaid services and are free to receive such services from an enrolled provider of their choice unless otherwise restricted to a provider of the Oregon Health Plan by OHA.
- (14) Pay OHA for the State match portion of Medicaid funds for MAC claims submitted to OHA, and the OHA intergovernmental charge, as more specifically described in Exhibit A, Part 3.
- (15) Use the OHA-provided Medicaid-eligible percentage for County in its cost calculations unless another statistically based calculation has been approved by OHA.

b. OHA responsibilities. OHA will:

- (1) In accordance with Section 2.a.(3) of this Exhibit, upon receipt of a signed invoice and payment from County of its 50 percent match in accordance with its approval of the claiming information produced by MESD, submit the resulting MAC claim to the federal government for payment.
- (2) Within 30 days of receipt of the County's match, pay the County's claim for the quarter.
- (3) When requested by County, provide technical assistance and training to County, its employees, all County subcontractors and County subcontractors' employees on the use of MESD's web-based Time

Study tool and Activity Codes, and all other processes and claiming information documents necessary for County's MAC claims.

- (4)** Assist County in the review of and provide comments on the subcontracts between County and its subcontractors to carry out Work under this Agreement. OHA's review of subcontracts is not made for the purpose of providing legal advice to County. OHA will provide written approval of any subcontracts proposed by the County.
- (5)** Provide assistance to County in the identification of Medicaid administrative activities eligible for reimbursement under this Agreement and reimburse County as described in Exhibit A, Part 3.
- (6)** Provide County—through access to Medicaid Administrative Claiming Public Health Manual Version 5.0, and materials available on the MAC Support page of the Multnomah Education Services District website—with clear and up-to-date guidance on rules, protocols, and procedures required for accurate and timely execution of its MAC program in support of its claims.
- (7)** Assist County in responding to any federal Medicaid compliance issues.

EXHIBIT A

Part 2

Payment and Financial Reporting

1. Summary of Medicaid Payment Methodology

County shall send all invoices to OHA Receipting Unit at the address specified on invoice, or to any other address as OHA may indicate in writing to County. County's claims to OHA for overdue payments on invoices are subject to ORS 293.462.

Under Title XIX of the Act, the federal government and states share the cost of providing allowable Medicaid administrative activities. The State share for Medicaid administrative activities County will provide under this Agreement is 50% (fifty percent) of the total allowable costs attributable to Medicaid administrative activities. County shall pay to OHA, through an Intergovernmental Transfer (IGT) that is in accordance with Section 1903(w)(7)(G) of the Act, 50% (fifty percent) of the total allowable costs of providing Medicaid administrative activities, which represents the State match portion of the Medicaid expenditures.

The State match funds County transfers to OHA shall be public funds that are not federal funds, or shall be federal funds authorized by federal law to be used to match other federal funds. OHA shall then pay County the total allowable costs of providing Medicaid administrative activities in arrears on a quarterly basis. OHA shall claim the FFP amount from CMS.

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

- 2.** Payment for all Work performed under this Agreement shall be subject to the provisions of ORS 293.462. The maximum, not to exceed amount payable to County for providing Medicaid administrative activities under this Agreement is specified in Section 3 of this Agreement. OHA will only pay for Work performed and documented in accordance with Exhibit A, Part 2, Section 2.a., of this Agreement, and otherwise permitted by Medicaid.
- 3.** County shall reimburse OHA 50% (fifty percent) of the amounts paid to County under this Agreement for the State match portion, as specified in Paragraph 5 below.
- 4.** For purposes of this Agreement, all MAC claims submitted to OHA are deemed to be submitted by County. County shall submit MAC claims for Medicaid allowable administrative activities only. Medicaid does not pay for administrative expenditures

related to, or in support of, services that are not included in the State Medicaid Plan, the Oregon Health Plan, or services which are not reimbursed under Medicaid.

5. County shall submit to MESD quarterly, in arrears, all cost pool data, utilizing the MESD web-based time study tool, for the Medicaid administrative costs claimed under this Agreement. County shall review the amount of Medicaid administrative costs as calculated by the MESD web-based time study tool, and shall approve these costs as the County's claim, when the County agrees that the calculation is correct. The costs shall be calculated by the MESD tool, according to the federal formula, which is found in the Medicaid Administrative Claiming Public Health Manual, Version 5.0, and provided to the County by OHA.
 - a. County shall pay by IGT to OHA quarterly upon invoice from OHA for:
 - (1) The State match portion which is equal to 50% (fifty percent) of the amount claimed by County and accepted by OHA for the total allowable Medicaid administrative costs; and
 - (2) An OHA quarterly intergovernmental charge of \$65.00 per cost pool member, this charge to be assessed for all quarters.
 - b. OHA will reimburse County in arrears on a quarterly basis for the total allowable costs of providing Medicaid administrative activities.
6. County certifies by its signature to this Agreement that for the purposes of 42 CFR § 433.51, the funds it transfers to OHA pursuant to this Agreement are public funds that are not federal funds, or are federal funds authorized by federal law to be used to match other federal funds. County further certifies by its signature to this Agreement that these funds will not be committed or earmarked for non-Medicaid activities, nor will be contractually obligated for provision of health care services to the indigent or for any other non-Medicaid activity.
7. County shall be financially responsible for the final amount of any claim for services provided under this Agreement that CMS or OHA finds unallowable under the Medicaid program. In the event CMS or OHA finds any costs claimed by County unallowable, OHA shall provide County written notice identifying the amount that must be refunded to CMS or OHA. Within thirty (30) calendar days of OHA's notice, County shall either (1) Make a payment to OHA for the full amount of the unallowable cost identified by OHA in its notice; or (2) Notify OHA in writing that County wishes to repay the unallowable amount from future payments or other means. OHA may then offset the unallowable amount from future payments owed to County under this Agreement, or any payment to County from OHA under any other contract or agreement between County and OHA, present or future. Nothing in this section shall be construed as a waiver by either party of any process or remedy that might otherwise be available. The rights and remedies of OHA set forth in this section shall not be exclusive and are in addition to any other rights and remedies provided to OHA by law or under this Agreement.
8. OHA will not reimburse County for any additional expenses under this Agreement.

EXHIBIT A

Part 3 Special Provisions

1. Confidentiality of Client Information.

- a.** All information as to personal facts and circumstances obtained by County on the client shall be treated as privileged communications, shall be held confidential, and shall not be divulged without the written consent of the client, the client's guardian, or the responsible parent when the client is a minor child, or except as required by other terms of this Agreement. Nothing prohibits the disclosure of information in summaries, statistical, or other form, which does not identify particular individuals.
- b.** The use or disclosure of information concerning clients shall be limited to persons directly connected with the administration of this Agreement. Confidentiality policies shall be applied to all requests from outside sources.
- c.** OHA, County and any subcontractor will share information as necessary to effectively serve OHA clients.

2. Amendments.

- a.** OHA reserves the right to amend or extend the Agreement under the following general circumstances:
 - (1) OHA may extend the Agreement for additional periods of time up to a total Agreement 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 County under this Agreement.
 - (2) OHA may periodically amend any payment rates throughout the life of the Agreement 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.
- b.** OHA further reserves the right to amend the Statement of Work 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 Agreement or previous amendments to the Agreement;
 - (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 Agreement.

- c. Upon identification, by any party to this Agreement, of any circumstance which may require an amendment to this Agreement, 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 Agreement before the modified or additional provisions are binding on either party. All amendments must comply with Exhibit B, Section 22., “Amendments” of this Agreement.

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

- a. County shall comply with, and cause all employees to comply with, the applicable laws for mandatory reporting of abuse for certain classes of persons in Oregon, including:
 - (1) Children (ORS 419B.005 through 419B.045);
 - (2) Elderly Persons (ORS 124.055 through 124.065);
 - (3) Adults with Mental Illness or Developmental Disabilities (ORS 430.735 through 430.743);
- b. County shall immediately make reports of suspected abuse of persons who are members of the classes established in Section 3.a. above to Oregon’s Statewide Abuse Reporting Hotline: 1-855-503-SAFE (7233) or local law enforcement, as a requirement of this Agreement. The County does not need to know abuse occurred, just suspect abuse, to be required to report.
- c. In addition to the requirements of Sections 3.a. and 3.b. above, if law enforcement is notified regarding a report of child abuse, neglect, or threat of harm, County shall also notify the local Child Protective Services Office of the Oregon 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, County shall also notify the local Aging and People with Disabilities Office of the Oregon Department of Human Services within 24 hours.
- d. If known, the abuse report must 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. Background Checks. Reserved.

5. **Equal Access to Services.** County 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.
6. **Media Disclosure.** County will not provide information to the media regarding a recipient of services purchased under this Agreement without first consulting the OHA office that referred the child or family. County will make immediate contact with the OHA office when media contact occurs. The OHA office will assist County with an appropriate follow-up response for the media.
7. **Nondiscrimination.** County 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 Oregon 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). 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 an 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 18 of this Agreement.

7. Ownership of Intellectual Property.

- a. Definitions.** As used in this Section 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 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 7.b.(1) on OHA’s behalf, and (3) sublicense to third parties the rights set forth in Section 7.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.

8. 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).
9. **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.
10. **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.
- 11. **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 11.a., any termination of this Agreement shall not prejudice any obligations or liabilities of either party accrued prior to such termination.
- 12. **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.
- 13. **Insurance.** County shall require subcontractors to maintain insurance as set forth in Exhibit C, which is attached hereto.
- 14. **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.
- 15. **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.

16. **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.
17. **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.
18. **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.
19. **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 County with respect to Sections 1, 2, 3, 4, 7, 15, 16, 18, 19, 20, and 22 of this Exhibit B. OHA’s consent to any subcontract shall not relieve County of any of its duties or obligations under this Agreement.
20. **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.
21. **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, approved by the Oregon Department of Justice. Such amendment, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given.

22. **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.
23. **Survival.** Sections 1, 4, 5, 6, 7, 10, 12, 13, 14, 15, 18, 20, 21, 22, 23, 24, 25, 26, 27 and 28 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.
24. **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 forgoing, 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
500 Summer Street NE, E-03
Salem, OR 97301
Telephone: 503-945-5818

25. **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.
26. **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.
27. **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 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 County in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of 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 County is jointly liable with the State (or would be if joined in the Third Party Claim), 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 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 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. 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.

28. **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.
29. **Stop-Work Order.** OHA may, at any time, by written notice to 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 10. Termination.

If the Stop Work Order is canceled, OHA may, after receiving and evaluating a request by 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 the insurance specified under TYPES AND AMOUNTS and meet the requirements under ADDITIONAL INSURED, CONTINUOUS CLAIMS MADE COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before the Contractor(s) 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 authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Agency.

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, 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 Local Government directly enters into a contract. It does not include a subcontractor with which the Contractor enters into a contract.

If Contractor maintains broader coverage and/or higher limits than the minimums shown in this insurance requirement exhibit, Agency requires and shall be entitled to the broader coverage and/or higher limits maintained by Contractor.

INSURANCE TYPES AND AMOUNTS

WORKERS' COMPENSATION AND 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.

As applicable, Contractor shall obtain coverage to discharge all responsibilities and liabilities that arise out of or relate to the Jones Act with limits of no less than \$5,000,000 and/or the Longshoremen's and Harbor Workers' Compensation Act.

COMMERCIAL GENERAL LIABILITY:

Contractor shall provide Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State of Oregon. This insurance must 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 must be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence and not less than \$2,000,000 annual aggregate limit.

EXCESS/UMBRELLA INSURANCE:

A combination of primary and Excess/Umbrella insurance may be used to meet the required limits of insurance. When used, all of the primary and Excess or Umbrella policies must provide all of the insurance coverages required herein, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Excess or Umbrella policies must be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying insurance. No insurance policies maintained by the Additional Insureds, whether primary or Excess, and which also apply to a loss covered hereunder, are to be called upon to contribute to a loss until the Contractor's primary and Excess liability policies are exhausted.

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.

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 (SIR), and self-insurance, if any.

ADDITIONAL INSURED:

All liability insurance, except for Workers' Compensation, Professional Liability, Directors and Officers Liability and Network Security and Privacy Liability (if applicable), 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 services to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.

Regarding Additional Insured status under the General Liability policy, the State of Oregon requires Additional Insured status with respect to liability arising out of ongoing operations and completed operations. The Additional Insured Endorsement with respect to liability arising out of Contractor's ongoing operations must be on or at least as broad as ISO Form CG 20 10 and the Additional Insured

endorsement with respect to completed operations must be on or at least as broad as ISO form CG 20 37.

WAIVER OF SUBROGATION:

Contractor shall waive rights of subrogation which Contractor or any insurer of Contractor may acquire against the Agency or State of Oregon by virtue of the payment of any loss. Contractor must obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Agency or State of Oregon has received a waiver of subrogation endorsement from the Contractor or the Contractor's insurer(s).

CONTINUOUS CLAIMS MADE COVERAGE:

If any of the required liability insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, then Contractor shall maintain Continuous Claims Made coverage, provided the effective date of the Continuous Claims Made coverage is on or before the effective date of the Contract, for a minimum of 24 months following the later of:

- (i) Contractor's completion and Agency/Local Government's acceptance of all Services required under the Contract, or
- (ii) Agency or Contractor's termination of this Contract, or
- (iii) The expiration of all warranty periods provided under this Contract.

CERTIFICATE(S) AND PROOF OF INSURANCE:

Local Government shall obtain from the Contractor a Certificate(s) of Insurance for all required insurance before Contractor delivers any goods and performs any Services required under this Contract. The Certificate(s) must list the State of Oregon, its officers, employees, and agents as a certificate holder and as an endorsed Additional Insured. The Certificate(s) of Insurance must also include all required endorsements or copies of the applicable policy language effecting coverage required by this Contract. 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, Agency/Local Government 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 Agency/Local Government under this agreement and to provide updated requirements as mutually agreed upon by Contractor and Agency/Local Government.

STATE ACCEPTANCE:

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

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, County shall comply and, as indicated, require all subcontractors to comply with the following federal requirements to the extent that they are applicable to this Agreement, to County, or to the Work, or to any combination of the foregoing. For purposes of this Agreement, 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.** County shall comply and require all subcontractors to comply with all federal laws, regulations, and executive orders applicable to the Agreement or to the delivery of Work. Without limiting the generality of the foregoing, County 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 Agreement: (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 Agreement 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 Agreement, including amendments, is for more than \$10,000, then County 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 Oregon Department of Labor regulations (41 CFR Part 60).
- 3. Clean Air, Clean Water, EPA Regulations.** If this Agreement, including amendments, exceeds \$100,000 then County 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. County 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.** County 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 Agreement, County certifies, to the best of the County's knowledge and belief that:
 - a. No federal appropriated funds have been paid or will be paid, by or on behalf of County, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
 - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, County shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
 - c. County shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.
 - d. This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31 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 County under this Agreement 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.

- Page 34 of 37
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- Updated: 5/10/2023

Non-procurement 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.** County 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.** County 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. County shall acknowledge County’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 Agreement 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. Section 1396a(a)(68).
11. **Agency-based Voter Registration.** If applicable, County 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. **Disclosures.**
 - 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.** County shall furnish to the State Medicaid agency or to the Health and Human Services (HHS) Secretary, within 35 days of the date of the request, full and complete information about the ownership of any subcontractor with whom County has had business transactions totaling more than \$25,000 during the previous 12 month period ending on the date of the request, and any significant business transactions between County, and any wholly owned supplier or between County and any subcontractor, during the five year period ending on the date of the request. See, 42 CFR 455.105.
- c.** 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.
- d.** As such, County must disclose any person with a 5% or greater direct or indirect ownership interest in County 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.
- e.** County shall make the disclosures required by this Section 12. to OHA. OHA reserves the right to take such action required by law, or where OHA has discretion, as 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 Agreement, 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. County 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 County, and County shall also include these contract provisions in its contracts with non-Federal entities.

15. Federal Whistleblower Protection. County 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.



POLK COUNTY

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

COMMUNITY DEVELOPMENT

AUSTIN M^CGUIGAN
Director

MEMORANDUM

TO: Board of Commissioners
FROM: Sidney Mulder, Planning Manager
DATE: May 14, 2024
SUBJECT: Plan Amendment (PA) 23-01 and Zone Change (ZC) 23-01;

May 22, 2024 Consent Agenda

ISSUE:

Should Polk County adopt the documents that would implement Comprehensive Plan Amendment PA 23-01 and Zone Change ZC 23-01?

RECOMMENDATION:

Staff recommends that the Board of Commissioners adopt Ordinance Number 24-03, including the Exhibits, thereby changing the Comprehensive Plan Map designation from Agriculture to Farm Forest and changing the Zoning Map designation from Exclusive Farm Use (EFU) to Farm Forest Overlay (FFO) for an approximately 22.1-acre parcel.

BACKGROUND:

The subject property is identified on the Assessor's Map as T7S, R3W, Section 7, Tax Lot 1601 and is located in unincorporated West Salem near Brush College Road and Gibson Road.

The Polk County Hearings Officer held a duly noticed public hearing on February 20, 2024, where an opportunity was provided for members of the public to submit oral and written testimony. On March 17, 2024, the Polk County Hearings Officer issued a recommendation of approval. On May 1, 2024, the Board of Commissioners held a duly noticed public hearing, where an opportunity was provided for members of the public to submit oral and written testimony. The Board of Commissioners passed a motion to approve PA 23-01 and ZC 23-01.

Polk County Zoning Ordinance Section 111.090(A) lists the effective date of the Official Zoning Map. Zone Change ZC 23-01 would change the Official Zoning Map, and staff has included within Ordinance Number 24-03 a text amendment to change the effective date of the Official Zoning Map in PCZO 111.090(A) to May 22, 2024.

Upon adoption, Ordinance Number 24-03 would become effective 21 days after the mailing of the decision.

DISCUSSION / ALTERNATIVES:

1. Adopt Ordinance Number 24-03 including the Hearings Officer's findings included as Exhibit A and an amendment to Polk County Zoning Ordinance (PCZO) 111.090(A) included as Exhibit B; or
2. Direct staff to amend and return to the Board for adoption; or
3. Other.

FISCAL IMPACTS:

No fiscal impacts to the County have been identified.

ATTACHMENTS:

Ordinance Number 24-03 with Exhibits

Exhibit A: Hearings Officer's Findings with Attachments

Exhibit B: Text Amendments to PCZO Chapter 111

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8 **BEFORE THE BOARD OF COMMISSIONERS**
9 **FOR THE COUNTY OF POLK, STATE OF OREGON**

10
11 In the matter of Plan Amendment 23-01 and)
12 Zone Change 23-01: A Comprehensive Plan Map)
13 amendment and a Zoning Map amendment)
14 for an approximately 22.1 acre parcel identified as)
15 T7S, R3W, Section 7, Tax Lot 1601 and located)
16 in unincorporated West Salem near Brush College)
17 Road and Gibson Road.)
18
19
20

21 **ORDINANCE NO. 24-03**

22
23 **WHEREAS**, on May 26, 2023, applications Plan Amendment (PA) 23-01 and Zone
24 Change (ZC) 23-01 were submitted by the applicant; and
25

26 **WHEREAS**, on February 13, 2024, Planning Staff provided the Polk County Hearings
27 Officer with their Staff Report and issued a recommendation of approval for PA 23-01 and ZC
28 23-01; and
29

30 **WHEREAS**, on February 20, 2024, the Polk County Hearings Officer conducted a duly
31 noticed public hearing and received public testimony for Planning Files PA 23-01 and ZC 23-01;
32 and
33

34 **WHEREAS**, on March 17, 2024, the Polk County Hearings Officer considered all of the
35 testimony and evidence in the record and issued a recommendation of approval for PA 23-01 and
36 ZC 23-01 to the Board of Commissioners; and
37

38 **WHEREAS**, on May 1, 2024, the Board of Commissioners conducted a duly noticed
39 public hearing and received public testimony for Planning Files PA 23-01 and ZC 23-01; and
40

41 **WHEREAS**, the Board reviewed and considered all of the testimony and evidence that
42 were submitted into the record after the Hearings Officer's recommendation was issued and
43 passed a motion to approve Planning Files PA 23-01 and ZC 23-01; now therefore,
44

45 **THE POLK COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:**

46
47 Sec. 1. That Polk County adopts the Hearings Officer's findings for Plan
48 Amendment PA 23-01 and Zone Change ZC 23-01, as included in Exhibit A.
49

50 Sec. 2. That Polk County amends the Polk County Comprehensive Plan Map for
51 the approximately 22.1 acre parcel located north of 3010 Brush College Road NW, Salem,
52 Oregon and identified on the Assessment Map as T7S, R3W, Section 7, Tax Lot 1601. The
53 Comprehensive Plan Map shall be amended from Agriculture to Farm Forest. The total area to be
54 amended is approximately 22.1 acres, as shown on Attachment B of Exhibit A.

1 Sec. 3 That Polk County amends the Polk County Zoning Map for the
2 approximately 22.1 acre parcel located north of 3010 Brush College Road NW, Salem, Oregon
3 and identified on the Assessment Map as T7S, R3W, Section 7, Tax Lot 1601. The Zoning Map
4 shall be amended from Exclusive Farm Use (EFU) to Farm Forest Overlay (FFO). The total area
5 to be amended is approximately 22.1 acres, as shown on Attachment C of Exhibit A.

6
7 Sec. 4. Polk County amends the Polk County Zoning Ordinance (PCZO) text so
8 that the effective date of the Official Zoning Map listed under PCZO 111.090(A) is changed to
9 May 22, 2024, as shown on Exhibit B.

10
11 Sec. 5 That Polk County determines that an emergency related to the economic
12 welfare of the citizens of Polk County is declared and this ordinance is effective immediately
13 upon passage.

14
15 Dated this 22nd day of May 2024 at Dallas, Oregon.

16
17
18 **POLK COUNTY BOARD OF**
19 **COMMISSIONERS**

20
21
22
23
24 _____
25 Craig Pope, Chair

26
27
28 _____
29 Jeremy Gordon, Commissioner

30
31
32 _____
33 Lyle Mordhorst, Commissioner

34
35
36
37 Approved as to Form:

38
39
40 _____
41 Morgan Smith
42 County Counsel

43
44 First Reading: _____
45 Second Reading: _____
46 Recording Secretary: _____
47

**BEFORE THE PLANNING DIVISION
FOR POLK COUNTY, OREGON**

In the Matter of:

DAVID KNIELING TRUST

File No: PA 23-01 & ZC 23-01

**HEARINGS OFFICER'S
DECISION**

I. SUMMARY OF PROCEEDINGS

A. BACKGROUND

This matter arose on the application of the David Knieling Trust ("Applicant") requesting a Comprehensive Plan amendment and a Zoning Map amendment for a property approximately 22.1 acres in size. The subject property is currently designated Agriculture on the Comprehensive Plan Map and Exclusive Farm Use (EFU) on the Zoning Map. The Applicant is proposing to change the Comprehensive Plan designation of the subject property to Farm Forest and the zoning to Farm Forest Overlay (FFO). The FFO zone is a mixed-use zone and permits the same uses as the Farm Forest (FF) Zone found in Polk County Zoning Ordinance (PCZO) Chapter 138.

1. PROCEDURAL HISTORY

The applications were submitted on May 26, 2023. On June 22, 2023, Polk County Community Development Staff ("County Staff") placed the applications on hold and sent the Applicant a letter requesting additional information. The Applicant provided the requested information on September 25, 2023, and subsequently requested for the applications to be accepted as complete and for County Staff to schedule these applications for a public hearing before the Polk County Hearings Officer.

2. COMPREHENSIVE PLAN AND ZONING DESIGNATIONS:

| Location | Comprehensive Plan Designation | Zoning Designation |
|------------------|---------------------------------------|------------------------------------|
| Subject Property | Agriculture | Exclusive Farm Use |
| Property North | Agriculture | Exclusive Farm Use |
| Property South | Agriculture | Exclusive Farm Use |
| Property East | Urban Reserve/ City of Salem | Suburban Residential/City of Salem |
| Property West | Agriculture | Exclusive Farm Use |

3. PARCEL SIZE: Approximately 22.1 acres

4. PROPERTY DESCRIPTION:

The subject property is located one property north of 3010 Brush College Road NW, Salem (Tax Assessment Map T7S, R3W, Section 7, Tax Lot 1601), and is approximately 22.1 acres in size. According to the 2023 Polk County Assessor's Report, the subject property contains one (1) agriculture structure.

The subject property was lawfully created pursuant to Polk County Subdivision and Partition Ordinance (PCSO) 91.950(1)(a), as evidenced by the special warranty deed recorded in Polk County Deed Volume 166, Page 484, dated November 1957. The subject property is currently described in the bargain and sale deed recorded in Polk County Clerk Document 2005-021394, dated December 16, 2005.

According to the National Wetlands Inventory (NWI) Map, Salem West Quadrangle, there are inventoried freshwater forested and shrub wetlands located on the subject property that are associated with Brush College Creek. According to the Polk County Significant Resource Area (SRA) map, Brush College Creek is an inventoried significant fish bearing stream. The Applicant is not proposing any development as part of these applications, nevertheless, this report serves as notice to the property owners of the presence of fish habitat and significant wetland areas on the subject property, and the possible need for State or Federal permits. Prior to any development activity within a significant resource riparian area on the subject property, the property owner shall coordinate a management plan with the Oregon Department of State Lands (DSL) and the Oregon Department of Fish and Wildlife (ODFW) if the activity is identified in PCZO Section 182.070(A) and (C) as a conflicting use. If a management plan is required, the property owner shall submit the management plan coordinated with DSL, ODFW, and any other appropriate State and Federal agencies to the Polk County Planning Division prior to issuance of permits for the development activity pursuant to PCZO 182.040 and 182.050. Structural development shall be prohibited within the riparian and significant wetland setback area. Within the setback area, all trees and at least 50 percent of the understory shall be retained, excluding the exceptions authorized pursuant to PCZO Section 182.050(B)(1)(a-e). The riparian setback area shall be measured from the bank top perpendicular to the stream and shall average three times the stream width and shall be a minimum of 25 feet but not more than 100 feet. Prior to any future development activities within the wetland area, the property owner shall obtain necessary State and Federal permits. Such permits may include but are not limited to, a Removal/Fill Permit from DSL.

Based on a review of the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) panel numbers 41053C0277F and 41053C0276F, dated December 18, 2006, the subject property is not located within the Special Flood Hazard Area (SFHA). Based on a review of the Polk County SRA Map, the subject property does not contain any other inventoried significant resources. There are no identified historic sites, or Willamette River Greenway areas on the subject property.

Table 2: Soil characteristics of the subject property as identified in the Natural Resources Conservation Service (NRCS) Soil Survey of Polk County, Oregon utilizing the Polk County Geographic Information System (GIS)¹

| Soil Type | Soil Name | Soil Class | High Value | Forest Productivity | Acres |
|-----------|--|------------|------------|---------------------|-------|
| 77C | Woodburn Silt Loam, 3 to 12 percent slopes | IIE | Yes | Unknown | 5.1 |
| 48A | McAlpin Silty Clay Loam, 0 to 3 percent slopes | IIW | Yes | Unknown | 4.7 |
| 52C | Nekia Silty Clay Loam, 2 to 12 percent slopes | IIE | Yes | 157 | 3.0 |
| 52D | Nekia Silty Clay Loam, 2 to 12 perfect slopes | IIIE | Yes | 157 | 4.7 |

¹ Disclaimer: Information is based on NRCS soil information & Polk County Tax Assessment data. This information is provided for land use planning purposes only. Polk County is not responsible for map errors, omissions, misuse, or misinterpretation. The data in Table 2 does not account for approximately 2.3 acres of land on the subject property.

| | | | | | |
|-----|---|-----|-----|---------------|------------|
| 52F | Nekia Silty Clay Loam, 30 to 50 percent slopes | VIE | No | 157 | 2.1 |
| 36C | Jory Silty Clay Loam, 2 to 12 percent slopes | IIE | Yes | 172 | 2.6 |
| | | | | TOTAL: | 22.1 acres |

Based on Polk County's soil report depicted in Table 2 above, at least 90.1% of the subject property contains soils that are considered high value (Class I-IV). At least 56.1% of the subject property contains soils that are considered productive forestry soils. Those soils are capable of annually producing approximately 157 cubic feet of wood fiber per acre.

5. SERVICES:

Access: The subject property has frontage along and direct access to Brush College Road, a Major Collector as identified in the Polk County Transportation Systems Plan, Figure 3.

Services: The subject property is served by a private well. It does not appear that the subject property contains an on-site sewage disposal system (septic system).

School: Salem SD #32J

Fire: Spring Valley RFPD

Police: Polk County Sheriff

B. COMMENTS RECEIVED

Prior to the public hearing no comments were received.

II. PUBLIC HEARING

Notice of the February 20, 2024 public hearing before the Polk County Hearings Officer was provided as required by PCZO 111.340-111.370. The Department of Land Conservation and Development (DLCD) was sent notice of the applications on January 16, 2024. Notice was mailed to property owners located within 750 feet of the outside perimeter of the subject property on January 31, 2024. Notice was printed in the local Itemizer-Observer Newspaper on January 31, 2024. Notice was posted on the subject property on or prior to January 31, 2024.

A duly advertised public hearing was held on February 20, 2024, at the Polk County Courthouse. The Hearings Officer called the meeting to order at the appointed hour. There were no objections as to the notice, jurisdiction, or conflict of interest. County Staff recited the applicable review and decision criteria and recommended approval. The Applicant's attorney, Margaret Gander-Vo spoke in favor the application and the staff report recommending approval. No one spoke against the application. There was no request to keep the record open, or for a continuance. The Hearings Officer thereupon declared the record closed and adjourned the hearing.

III. REVIEW & DECISION CRITERIA

The review and decision criteria for a Polk County Comprehensive Plan (PCCP) Map amendment and a Zoning Map amendment are provided under Polk County Zoning Ordinance (PCZO) Sections 115.050 and 111.275. Under those criteria, the Hearings Officer conducts a public hearing pursuant to PCZO 111.190 and 115.030 and makes a recommendation to the Polk County Board of Commissioners. The Board of Commissioners conducts a public hearing pursuant to PCZO 111.200 and 115.030 and makes a final local decision.

1. Findings for Comprehensive Plan Map Amendment; File PA 23-01:

Amendments to the Comprehensive Plan Map must meet one or more of the following criteria: [PCZO 115.050(A)]

- A. The Comprehensive Plan designation is erroneous and the proposed amendment would correct the error, or [PCZO 115.050(A)(1)]**
- B. The Comprehensive Plan Designation is no longer appropriate due to changing conditions in the surrounding area; and [PCZO 115.050(A)(2)]**

The Applicant is proposing a Comprehensive Plan Amendment to change the PCCP designation from Agriculture to Farm Forest. The Applicant asserts that the criteria listed in PCZO 115.050(A)(1) and 115.050(A)(2) are both relevant to this request. This criterion is intended to evaluate whether the original PCCP designation that Polk County assigned to the subject property was erroneous and should be corrected to a more appropriate designation, or whether the changing conditions to the surrounding area constitute the need for a change to a more appropriate PCCP designation.

In evaluating whether the original Agriculture PCCP designation was erroneous, the Hearings Officer must first evaluate the purpose and intent of the designation and how it relates to the historic management and conditions of the subject property. Then, the Hearings Officer must determine whether the Farm Forest PCCP designation would be the appropriate designation to correct this error.

According to Section 4 of the Polk County Comprehensive Plan, the areas designated Agriculture *"occur mainly in the eastern and central sections of the County. These areas are characterized by large ownerships and few non-farm uses. Topography in these areas is usually gentle, including bottom lands, central valley plains and the low foothills of the Coastal Range."* The Plan further states that *"the areas designated for agriculture have a predominance of agricultural soils (SCS capability class I-IV)."* The intended purpose of the Agriculture Plan designation is to *"to preserve agricultural areas and separate them from conflicting non-farm uses. Toward that end, the County will discourage the division of parcels and the development of non-farm uses in a farm area (Only those non-farm uses considered essential for agriculture will be permitted)."*²

Alternatively, the Farm Forest Plan designation applies to lands *"which, for the most part, are situated between the relatively flat agricultural areas and the foothills of the coast range."* The intended purpose of the Farm Forest Plan designation is to *"provide an opportunity for the continuance of large and small scale commercial farm and forestry operations."* The Plan further states that *"these lands are generally hilly, heavily vegetative, and have scattered residential development."*³

The Applicant states that Polk County's original designation of Agriculture was erroneous because the subject property has historically been predominately in forest use, there are substantial topographical characteristics that limit the subject property's ability to be managed predominately for farm use, and there has historically been scattered rural residential development in the area. The Applicant states that currently, approximately 12 acres are being managed for forest use, which was regenerated with new seedlings in 2005 and which is professionally thinned periodically. The Applicant also submitted into the record historical aerial photographs of the Subject Property that indicate these 12 acres have been consistently managed for this use, at least as far back as 1955. The Applicant has stated the remaining acreage is dedicated to access roads and wetlands, leaving approximately seven acres available for agricultural use. The Applicant provided a 1994 aerial photograph of the subject property that depicts a similar ratio of forest use to pastureland compared to what is observed on the property today, which could be described as an approximate 1:1 ratio. As depicted in Table 2 of this report, at least 56.1% of the subject property contains soils that are considered productive forestry soils capable of annually producing

² Comprehensive Plan, pp. 55

³ Comprehensive Plan, pp. 59-60

approximately 157 cubic feet of wood fiber per acre, and at least 90.1% of the soils on the property are considered to be high-value farmland soils. However, there isn't forest productivity data for approximately 9.8 acres of the subject property; therefore, these percentages could be higher.

According to the 2023 Assessor's report, the subject property currently receives a farm tax deferral. According to the Applicant, the topographical characteristics of the subject property, such as steep slopes, existing hardwood, small parcel size and the presence of wetlands, limits the area that could be effectively managed for agricultural use to approximately 7.0 acres, whereas approximately 12.0 acres of the subject property are forested and have extensive slopes. The remaining acreage is dedicated to access roads and contains wetland areas. The Applicant states that the 7.0 acres of pastureland is used to isolate up to 10 cattle at a time from a larger operation of approximately 100 cattle that is predominately managed on other properties in the vicinity. The 12.0 acres of forest land is managed for timber production and wetland enhancement and preservation. Based on the information provided by the Applicant, the Hearings Officer finds that there is evidence in the record to support the Applicant's conclusion that the subject property has historically been predominately in forest use.

The Applicant asserts that the Agriculture PCCP designation does not account for the limitations discussed above, and thus, is erroneous. Consequently, the Applicant contends that the Farm Forest PCCP designation would be more appropriate as it would better reflect the predominant forest use and the mixed farm and forest characteristics of the subject property. As discussed in more detail later in this decision, the Applicant provided an impacts analysis that characterizes the agricultural enterprise of the surrounding area. This analysis describes the area as containing significant patterns of rural residential development and small-scale farm and forest operations that more closely match the type of land use patterns that would be observed under the Farm Forest PCCP designation.

Although high-value soils are a component of what constitutes agricultural lands, the Hearings Officer concurs with the Applicant that the Agriculture PCCP designation does not entirely reflect how the subject property has historically been managed, nor does it take into account the topographical features that may limit the ability for the subject property's high-value farmland soils to be effectively utilized for commercial farm use. The Agriculture PCCP designation is implemented in the PCZO through the Exclusive Farm Use (EFU) zone. While the EFU zone permits the propagation or harvesting of forest products and accessory buildings and structures related to the use and management of forest lands, the Agriculture designation does not reflect the predominance of forest use on the subject property or the physical limitations on the ability to manage the subject property for commercial farm use. Staff concurs with the applicant that the original Agriculture PCCP designation was erroneous to the extent that it does not best reflect the size, topography, and historical management of the subject property and does not account for the existing patterns of rural residential development in the surrounding area. For these reasons, the Hearings Officer finds that the historic and existing conditions constitute the need to change the PCCP designation.

The Applicant indicates that the criteria listed PCZO 115.050(A)(1) and 115.050(A)(2) are both relevant to this request; although, the criterion listed in Section 115.050(A) does not require compliance with both of these standards. As discussed above, the Hearings Officer finds the Applicant has provided substantial evidence to demonstrate compliance with PCZO 115.050(A)(1); nevertheless, the Applicant has asserted that this application also complies with PCZO 115.050(A)(2).

The Applicant states that the Agriculture PCCP designation is no longer appropriate due to the changing conditions in the surrounding area. Specifically, the Applicant asserts that the increase in residential development and resulting traffic have made it more difficult for the Subject Property to be highly productive for agricultural use alone and that the Farm/Forest designation better reflects the actual use and productivity of the Subject Property and the surrounding area. The Applicant provided aerial photographs from 1994 and 2022 that depicts an increase in residential

development to the surrounding area. Specifically, the establishment of a new subdivision in the incorporated city limits of Salem, located to the east of the subject property and Brush College Road. County Staff reviewed Tax Assessor's records and Polk County Community Development records and found that in addition to the fact that the subject property is in close proximity to a subdivision located within the City of Salem to the east, each of the surrounding adjacent properties also contains at least one (1) single-family dwelling. Based on this review, County Staff concurs with the Applicant that there has been a change in conditions to the surrounding area caused by an increase in residential development, which more closely aligns with the Farm Forest PCCP designation. As result, the Agriculture PCCP designation is no longer the most appropriate designation.

It is the Applicant's belief that a Farm Forest PCCP designation would be the most appropriate designation for the subject property. OAR 660-006-0057 is applicable to this request, which states:

Any rezoning or plan map amendment of lands from an acknowledged zone or plan designation to an agriculture/forest zone requires demonstration that each area being rezoned or replanned contains such a mixture of agriculture and forest that neither Goal 3 nor Goal 4 can be applied alone.

It is the specific intent of the Farm/Forest PCCP designation *"to ensure that land-use actions are consistent with definitions of agricultural and forest lands contained within the Polk County Comprehensive Plan."* Goal 2 of the Forest Lands PCCP designation is intended *"to conserve and protect watersheds, fish and wildlife habitats, riparian areas and other such uses associated with forest lands."* The Applicant asserts that the shift in the urban-rural interface of the surrounding area has resulted in habitat loss and topsoil destabilization that directly impacts the wetlands and riparian areas associated with Brush College Creek; therefore, the management and conservation of forest lands in this area must be prioritized in order to offset the impact caused by the shift in the surrounding area. The Applicant states that the forest lands on and around the subject property help filter run off from adjacent residential uses before it enters the wetlands and ground water in the area, preserving natural resources in the vicinity in a manner that is consistent with the policies of the Farm/Forest designation, but which is not addressed or emphasized within the County's Agricultural designation.

Based on the information provided by the Applicant, there is substantial evidence in the record to support the conclusion that neither Goal 3 nor Goal 4 can be applied alone to the subject property and that the mixed Farm/Forest designation would be the most appropriate PCCP designation to correct the erroneous designation and changing conditions to the surrounding area. The Hearings Officer finds that the Applicant's property and land management goals would be consistent with this proposed designation.

Based on the evidence in the record, the Hearings Officer finds the Comprehensive Plan Designation is erroneous and the proposed amendment would correct the error; as well as the Comprehensive Plan Designation is no longer appropriate due to changing conditions in the surrounding areas. Therefore, the Hearings Officer finds the application complies with these criteria.

- C. The purpose of the Comprehensive Plan will be carried out through approval of the proposed Plan Amendment based on the following: [PCZO 115.050(A)(3)]**
 - 1. Evidence that the proposal conforms to the intent of relevant goals and policies in the Comprehensive Plan and the purpose and intent of the proposed land use designation. [PCZO 115.050(A)(3)(a)]**
 - a. Polk County will endeavor to conserve for agriculture those areas which exhibit a predominance of agricultural soils, and an absence of nonfarm use interference and conflicts. [PCCP Section 2, Agricultural Lands Policy 1.1]**

- b. **Polk County will place lands designated as agriculture on the Comprehensive Plan Map consistent with Oregon Revised Statutes Chapter 215 and Oregon Administrative Rules Chapter 660, Division 33 in an exclusive farm use zoning district. [PCCP Section 2, Agricultural Lands Policy 1.2]**
- c. **Polk County will apply standards to high-value farmland areas consistent with Oregon Revised Statutes Chapter 215 and Oregon Administrative Rules Chapter 660, Division 33. [PCCP Section 2, Agricultural Lands Policy 1.3]**
- d. **Polk County will provide for the protection of productive forest lands. Designated forest lands will be areas defined as one of the following:**
 - i. **Predominately Forest Site Class I, II and III, for Douglas Fir as classified by the U.S. Soil Conservation Service;**
 - ii. **Suitable for commercial forest use;**
 - iii. **In predominately commercial forest use and predominately owned by public agencies and private timber companies;**
 - iv. **Cohesive forest areas with large parcels;**
 - v. **Necessary for watershed protection;**
 - vi. **Potential reforestation areas; and**
 - vii. **Wildlife and fishery habitat areas, potential and existing recreation areas or those having scenic significance. [PCCP Section 2, Forest Lands Policy 1.1]**
- e. **Polk County shall designate forest lands on the Comprehensive Plan Map consistent with Goal 4 and Oregon Administrative Rules Chapter 660, Division 6. [PCCP Section 2, Forest Lands Policy 1.2]**
- f. **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:**
 - i. **Uses related to, and in support of, forest operations;**
 - ii. **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;**
 - iii. **Locally dependent uses such as communication towers, mineral and aggregate resources use, etc.;**
 - iv. **Forest management dwellings as provided for in Oregon Administrative Rule 660-06-027; and**
 - v. **Other dwellings under prescribed conditions. [PCCP Section 2, Forest Lands Policy 1.4]**
- g. **Polk County will encourage the conservation and protection of watersheds and fish and wildlife habitats on forest lands in Polk County in accordance with the Oregon Forest Practices Act. [PCCP Section 2, Forest Lands Policy 1.8]**

- h. It is the intent of the Farm/Forest designation to provide an opportunity for the continuance and the creation of large and small scale commercial farm and forestry operations. It is also intended that the addition and location of new structures and improvements will not pose limitations upon the existing farm and forest practices in the area or surrounding area and that additional density will not adversely affect the agricultural or forestry operations of the area through the increased use of roads, demands for ground water during the growing season, or demands for increased levels of public facilities and services.

It is the specific intent of the Farm/Forest Plan designation to ensure that land use actions are consistent with definitions of agricultural and forest lands contained within the Polk County Comprehensive Plan. The Farm/Forest Plan designation will be implemented through the use of the Farm/Forest (F/F) Zone which includes areas designated as Farm/Forest Overlay on the zoning map. [PCCP Section 4].

The Applicant is requesting the Farm Forest designation, which is an “agricultural/forest” designation as referenced in OAR 660-006-0015(2). As described by the Applicant, the proposed Farm Forest Plan designation and corresponding FFO zoning would better reflect the topography and predominant forest use of the subject property and assist in the creation and continuance of large and small scale commercial forest operations. The proposed FFO zone, which implements the Farm Forest Comprehensive Plan land designation, has an 80-acre minimum parcel size. That is the same as the current EFU zone. Consequently, the proposed change would not increase the potential parcel density of the subject property. The subject property is currently designated Agriculture on the Comprehensive Plan map. As a result, the subject property has already been determined to comply with the PCCP Agriculture Lands’ goals and policies.

In order to determine whether the subject property could comply with the Goals and Policies of the Farm Forest PCCP designation, the Hearings Officer must evaluate whether the subject property can be identified as forest lands. OAR 660-006-0005(7) defines “Forest Lands” as follows:

(7) “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:

- (a) Lands that are suitable for commercial forest uses, including adjacent or nearby lands which are necessary to permit forest operations or practices; and
- (b) Other forested lands that maintain soil, air, water and fish and wildlife resources.

Based on the NRCS soil data for the subject property listed in Table 2 of this report, at least 90.1% of the subject property contains soils that are considered high value (Class I-IV) and at least 56.1% of the subject property contains soils that are considered productive forestry soils. Those soils are capable of annually producing approximately 157 cubic feet of wood fiber per acre. The Applicant states that approximately 12.0 acres of the subject property are forested, with a portion of the forested area functioning as a natural watershed for Brush College Creek that helps to maintain the fish and wildlife resources that rely on the creek. As demonstrated above, the Applicant has submitted evidence that the subject property has historically been utilized for timber production. The Hearings Officer finds that the soil characteristics and the current and historic management practices of the subject property are consistent with the definition of “forest lands” in OAR 660-006-0005(7) and Goal 4. The Applicant has provided substantial evidence demonstrating that the subject property is considered forest land.

Based on the evidence in the record, the Hearings Officer finds that the Farm Forest Plan designation is appropriate. The Farm Forest Plan designation, which would be implemented by the FFO zone, would allow the subject property to be used for an array of both commercial forestry and agricultural purposes.

As stated in Section 4 of the PCCP, it is the intent of the Farm Forest designation to provide an opportunity for the continuance and the creation of large and small scale commercial farm and forestry operations. It is also intended that new permitted structures not pose limitations upon the existing farm and forest practices in the surrounding area and that additional density will not adversely affect the agricultural or forestry operations of the area through the increased use of roads, demands for ground water during the growing season, or demands for increased levels of public facilities and services.

OAR 660-006-0015(2) is applicable to this request, which states:

When lands satisfy the definition requirements of both agricultural land and forest land, an exception is not required to show why one resource designation is chosen over another. The plan need only document the factors that were used to select an agricultural, forest, agricultural/forest, or other appropriate designation.

Based on the findings above, the Hearings Officer concludes that applying the proposed Farm Forest Comprehensive Plan designation to the subject property would be consistent with the goals and policies of the PCCP. This analysis assumes that the FFO zone would implement the Farm Forest designation. The Applicant has concurrently applied for a zone change on the subject property from EFU to FFO in application ZC 23-01. These applications shall be dependent on the approval of one another.

Based on the evidence in the record, the Hearings Officer finds this application complies with this criterion.

D. Compliance with Oregon Revised Statutes, statewide planning goals and related administrative rules which applies to the particular property(s) or situations. If an exception to one or more of the goals is necessary, the exception criteria in Oregon Administrative Rules, Chapter 660, Division 4 shall apply; and [PCZO 115.050(A)(3)(b)]

The Applicant is proposing a Comprehensive Plan Map amendment and Zoning Map amendment with the primary intention of having a PCCP designation that better reflects the historical topography and management of the subject property. The Applicant indicates that they would possibly pursue a small tract forest "template" dwelling on the subject property in the future if these applications were approved. Although farm and nonfarm dwellings can be authorized in the EFU zone, subject to review and approval of a land use application, PCZO Chapter 136 does not list forest template dwellings as a criteria that can be utilized to authorize a dwelling in the EFU zone. Findings pertaining to each of the Oregon Statewide Planning Goals are listed below.

Goal 1 - Citizen Involvement

Polk County has an established land use system which sets forth a procedure for amendments to the Polk County Comprehensive Plan and the Polk County Zoning Ordinances. This application requires two (2) public hearings and is subject to the notice requirements listed in PCZO Chapter 111. Citizen involvement is advanced by providing appropriate notice and an opportunity to comment on this application. Notice for comments and of any and all public hearings will be mailed appropriately and timely by County Staff pursuant to the requirements listed in PCZO 111.340-111.370. The comprehensive plan amendment process includes opportunities for participation from the public. The Hearings Officer concurs with the Applicant and finds that the application would be in compliance with Goal 1.

Goal 2 - Land Use Planning

The Applicant states that Polk County has an established land use planning process and policy framework through the adoption of the Polk County Comprehensive Plan and the associated Polk County Zoning Ordinance which includes a process for reviewing and approving applications of this nature. The Hearings Officer concurs with the Applicant and finds that the application would be in compliance with Goal 2.

Goal 3 -Agricultural Lands

The purpose of Statewide Planning Goal 3 (herein "Goal 3") is to preserve and maintain agricultural lands. Agricultural lands should be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space.

While both Farm/Forest (F/F) and Exclusive Farm Use (EFU) have been acknowledged as consistent with Goal 3, the decision to change the existing plan and zoning designations must comply with the Statewide Planning Goals. OAR 660-006-0057 is also applicable to this request, and states the following:

Any rezoning or plan map amendment of lands from an acknowledged zone or plan designation to an agriculture/forest zone requires a demonstration that each area being rezoned or replanned contains such a mixture of agriculture and forest uses that neither Goal 3 nor 4 can be applied alone.

As described by the Applicant, the subject property has historically been predominately managed for forest use. In addition, the property owner manages portions of the pastureland on the subject property for the segregation of cattle associated with a small-scale cattle operation that is primarily managed on another property in the vicinity. The Applicant states that due to the limited pastureland, extensive slopes, and the presence of Brush College Creek and associated wetlands, the property owner is unable to manage the cattle operation entirely on the subject property and predominately manages the subject property for timber production.

Because the proposed PCCP designation is a mixed agriculture/forestry designation that implements both Goals 3 and 4, there would be additional uses that could be permitted on the subject property that would not otherwise be allowed under the current Agriculture designation. As depicted in Table 2 of this report, the subject property is classified as high-value farmland. Although many of these new uses are not allowed on high-value farmland in the EFU zone, PCZO Chapter 138 does not specifically restrict land uses based on soil types, other than dwellings, so some conditional uses permitted in the FFO zone would not be allowed on high value farm land in the EFU zone. However, the local ordinance is precluded by State law when it can be interpreted as being less restrictive than State law. Because the Applicant is requesting a Comprehensive Plan amendment to a mixed agriculture/forest designation, both Agriculture and Forest Goal policies must be applied to all land uses other than dwellings, as evidenced by OAR 660-006-0050(1) and (2), which state:

- (1) Governing bodies may establish agriculture/forest zones in accordance with both Goals 3 and 4, and OAR Chapter 660, divisions 6 and 33.
- (2) Uses authorized in Exclusive Farm Use zones in ORS Chapter 215, and in OAR 660-006-0025 and 660-006-0027, subject to the requirements of the applicable section, may be allowed in any agricultural/forest zone. The county shall apply either OAR Chapter 660, division 6 or 33 standards for siting a dwelling in an agriculture/forest zone based on the predominate use of the tract on January 1, 1993.

The application of this administrative rule by Marion County was evaluated by the Oregon Land Use Board of Appeals (LUBA) in its ruling of *Silver Creek Solar, LLC vs. Marion County* (LUBA Case No. 2023-045). In this case, LUBA found that "if a use is authorized in ORS Chapter 215 and in OAR 660-006-0025, requirements of both sections may apply under OAR 660-006-0050(2) because both sections are applicable to the use." Based on this opinion, it is understood that if a use other than a dwelling is not allowed on high-value farmland in the EFU zone, the county must

also apply the high-value farmland restriction to that same use in the FFO zone. Although PCZO Chapter 138 does not explicitly make this clear, the opinion from LUBA in the above referenced case states that the Goal 3 standards pertaining to high-value soils restrictions must apply to uses in the FFO zone.

The Applicant provided a chart comparing those uses in the EFU (on high-value farmland) and FFO zones that are permitted outright or subject to review and approval of a land use application. Many of the additional uses identified by the Applicant that would be allowed on the subject property under the Farm/Forest designation are primarily conditional uses that are limited to lands not classified as high-value farmland, thus, would not be permitted on the subject property as a result of the proposed Comprehensive Plan and Zoning Map amendment. Consequently, most of the additional permitted uses would be related to forestry management, such as log scaling and weigh stations, forest management research and experimentation facilities, and temporary portable facilities for the primary processing of forest products.

Further to this point, the Applicant states that Polk County's mixed farm/forest PCCP designation and FFO zone have been acknowledged by DLCD as consistent with the Statewide Planning Goals 3 and 4. Therefore, permitted and conditional uses in the FFO zone are per se compliant with Goal 3 and Goal 4, provided they meet the applicable approval criteria. The Hearings Officer concurs with the Applicant on the basis of this contention, and because any uses allowed on the subject property, other than dwellings, would still be subject to Goal 3 regulations listed in ORS Chapter 215 and OAR Chapter 660 Division 33, the proposed Comprehensive Plan designation would be in compliance with Goal 3.

While the majority of the property would continue be managed for timber production and the small-scale cattle operation, the Applicant indicates that the property owner would likely pursue a "Small Tract Template Dwelling" application, which is a criteria that could be utilized to apply for a dwelling in the FFO zone, but not in the EFU zone. Farm dwellings are permitted uses under the Agriculture PCCP designation. In order to establish a primary farm operator dwelling, the primary farm operator would need to demonstrate compliance with the criteria listed in PCZO 136.040(A), which in part is based on a gross income standard from the sale of farm products. However, nonfarm dwellings in the EFU zone require extensive analysis to determine compliance with Statewide Planning Goal 3.

As referenced above, OAR 660-006-0050(2) indicates that the county shall apply either OAR Chapter 660, Division 6 or 33 standards for the siting of a dwelling in an agriculture/forest zone based on the predominate use of the tract on January 1, 1993. As discussed in this report, the Applicant has asserted that the subject tract is predominately in forest use. When proposing to change a Zoning/ Comprehensive Plan designation that could result in the ability to utilize a different set of criteria for a nonfarm dwelling, such as a future forest template dwelling, an applicant would need to show consistency with Goal 3; otherwise an exception to Goal 3 would be required. LUBA made this determination in *DLCD vs. Polk County* (LUBA Case 91-044). In that case, LUBA found that a proposal to change the zone from EFU to FF must address Goal 3 because the zone change could result in additional parcelization and residential development that would not otherwise be permitted in the EFU zone. Although the EFU zone and FFO zone have the same minimum parcel size, which would not result in additional parcelization, additional types of non-farm dwelling applications could potentially be pursued in the FFO zone that would not otherwise be permitted in the EFU zone. Therefore, demonstrating compliance with Goal 3 is required, including findings to demonstrate that a future non-farm dwelling would not impact the existing agricultural enterprise of the area.

The land division standards for the EFU zone and FFO zone are listed under PCZO 136.070 and 138.130, respectively. The Applicant's narrative indicates that based on the current conditions of the subject property, any applicable land division that could be permitted under PCZO 138.130 could also be permitted under PCZO 136.070, except for those land divisions authorized by PCZO 138.130(H) and (J).

PCZO 138.130(H) is intended to allow for the division of mixed agriculture/forest lands for nonfarm uses, except dwellings, pursuant to OAR 660-006-0055(2)(a), for uses set out under OAR 660-006-0025(3)(m) through (o) and (4)(a) through (o), provided that such uses have been approved by the Planning Director. The division of agricultural land for nonfarm uses is also authorized by State law, pursuant to OAR 660-033-0100(6), for uses set out under ORS 215.213(1)(c) or (2) and ORS 215.283(1)(c) or (2), provided that these uses have been approved. These uses set out in State law for agricultural lands and mixed agricultural/forest lands refer to the same land uses for the creation of substandard sized parcels; therefore, the Hearings Officer finds that the land division standards listed under PCZO 138.130(H) could not lead to any additional parcelization that would not otherwise be allowed on lands designated for Agriculture in the PCCP. Further, the Applicant states that establishing a use that would allow for the division of the subject property under this criteria would be unlikely due to the significant amount of residential development, roads, and utilities in the vicinity of the vicinity.

PCZO 138.130(J) is intended to allow for the division of mixed agriculture/forest lands to facilitate a forest practice, as defined in ORS 527.620. The Applicant's narrative pertaining to PCZO 138.130(J) states:

“When the partitions that would also be permitted under PCZO 136.070, which allows for partitions in the EFU, from this list the following divisions would be permitted PCZO 138.130(H) or (J), however, PCZO 138.130(J) requires a minimum lot size of 35 acres, which is larger than the Subject Property.”

County Staff understood the Applicant to be asserting that a land division permitted under PCZO 138.130(J) limits the resultant parcel to 35 acres; however, this claim isn't entirely accurate. These land division regulations derive from OAR 660-006-0055(2)(c), which states:

To allow a division of forestland to facilitate a forest practice as defined in ORS 527.620 that results in a parcel that does not meet the minimum area requirements of section (1). Parcels created pursuant to this subsection:

- (A) Are not eligible for siting of a new dwelling;*
- (B) May not serve as the justification for the siting of a future dwelling on other lots or parcels;*
- (C) May not, as a result of the land division, be used to justify redesignation or rezoning of resource land; and*
- (D) May not result in a parcel of less than 35 acres, unless the purpose of the land division is to:*
 - (i) Facilitate an exchange of lands involving a governmental agency; or*
 - (ii) Allow transactions in which at least one participant is a person with a cumulative ownership of at least 2,000 acres of forestland.*

As listed under subsection (D) of this rule, land divisions permitted under PCZO 138.130(J) may result in the creation of a parcel less than 35 acres under specific circumstances. Therefore, additional parcelization could hypothetically occur on the subject property under the proposed designation, if the division was for public benefit or if the property was part of a much larger forestland tract. As discussed above, in *DLCD vs. Polk County* (LUBA Case 91-044), LUBA determined that a change from EFU to FF must demonstrate compliance with Goal 3 if additional parcelization could be allowed as a result of the change. This case was evaluated through the lens of whether the additional parcelization could lead to additional residential development and impede the existing agricultural enterprise in the area. LUBA found it was vital for the county to make findings explaining “whether the minimum lot size standard that will be imposed under the

F/F zone is sufficient to comply with the requirement of Goal 3 that the minimum lots size “be appropriate for the continuation of the existing commercial agricultural enterprise of the area.””

As discussed above, the standards listed under OAR 660-006-0055(2)(c) are intended to allow for the creation of parcels to facilitate a forest practice. As discussed in this decision, the Applicant submitted a impacts analysis that indicates in addition to the existing agricultural enterprise, small and large-scale forestry operations are a common land practice within the study area. In addition, there are many forest-management related uses that are permitted in the EFU zone, such as the propagation or harvesting of a forest product or accessory buildings or structures related to the use and management of forest lands. Based on LUBA’s opinion, the nature of the land division standards listed under OAR 660-006-0055(2)(c), and the Applicant’s narrative, the Hearings Officer finds that there is substantial evidence in the record to demonstrate that any additional land divisions that could be permitted as a result of the proposed Comprehensive Plan Amendment would be appropriate for the continuation of the existing commercial agricultural enterprise of the area, thus, in compliance with Goal 3.

In *Dobson v. Polk County* (LUBA Case No. 91-148 and 149) LUBA determined that in order to sufficiently demonstrate that a Comprehensive Plan Amendment from Agriculture to Farm Forest and Zoning Map Amendment from EFU to FF would be in compliance with Goal 3, the applicant must explain the “nature of the agricultural enterprises in the affected area in such a manner as to enable an analysis of whether a Comprehensive Plan Amendment from Agriculture to Farm Forest would allow the continuation of the identified existing agricultural enterprises.” To address how the proposed Farm Forest PCCP designation would be in compliance with Goal 3, here the Applicant prepared an impacts analysis that was selected to include the most accurate sampling of farm practices in the surrounding area and evaluate the addition of one (1) nonfarm dwelling on the subject property. The Applicant indicates that if a forest template dwelling were to be pursued on the subject property under the FFO zone, it would likely be established on the southeastern portion of the property due to the location of the existing access on the subject property, its proximity to existing utilities and development in the surrounding area, and the fact that it would be buffered from surrounding resource-zoned properties by Brush College Creek and forested areas. The Applicant relies on the tentative location of the potential forest template dwelling for portions of the impacts analysis, however, the Hearings Officer acknowledges that nothing in this application would ensure that a future dwelling would be limited to the location identified by the applicant. Nevertheless, the location identified by the Applicant appears to be a rational location for a dwelling based on the factors identified by the applicant.

The impacts analysis provided by the Applicant indicates that the resource lands in the surrounding area are located to the north and west of the subject property, with the incorporated city limits of Salem to the east and south, along with properties that are designated in the PCCP as Rural Lands (Acreage Residential- Five Acre (AR-5) Zone) and Urban Reserve (Suburban Residential (SR) Zone). Within the 2,000 acre study area, the impacts analysis identified 98 resource-zoned (EFU and FF) tax lots. Of these 98 tax lots, 63 are identified as Agricultural lands within the EFU zone and 35 are identified as Farm Forest lands within the FF zone. For each tax lot, the Applicant provided a brief description of how the property is predominately managed. Based on the impacts analysis, the most common practices on Agricultural lands in the study area are vineyards, orchards, pasture land, and row crops. The most common practices on Farm/Forest lands in the study area are timber management, pasture land, and row crops. The Applicant states that many of the farm and forest practices on lands in the study area are homogeneous in nature and that the land management on the properties adjacent to the subject property are representative of the enterprise of the surrounding area. For this reason, the Applicant asserts that the impacts to the surrounding area can be generalized by evaluating the potential impact of the adjacent properties, and justifies this stance by citing LUBA’s opinions in *Hood River Valley PRO v. Hood River County*, 67 Or LUBA 314 (2013) and *Sisters Forest Planning Committee v. Deschutes County*, 48 Or LUBA 78, 84 (2004).

In the application and additional written information submitted in favor of the application, the Applicant cited several LUBA cases related to the application of ORS 215.296(1)(a) and (b), which pertain to the standards for conditional use permits that evaluate whether the proposed use would force a significant change in accepted farm or forest practices on surrounding lands devoted for farm or forest use; or significantly increase the cost of accepted farm or forest practices on surrounding lands devoted for farm use. ORS 215.296(1) is only applicable to uses that are allowed under ORS 215.213(2) or (11) or ORS 215.283(2) or (4), which are uses that Polk County identifies as conditional uses in PCZO Chapter 136 and 138. A forest template dwelling is not a conditional use because it is a use that is allowed under OAR 660-006-0027(3) and ORS 215.750(2); therefore, ORS 215.296(1) is not applicable to the analysis of a forest template dwelling. While the cases referenced by the Applicant may not be entirely relevant, the Hearings Officer concurs with the Applicant to the extent that potential impacts to adjacent lands can be indicative of impacts to the general study area due to the fact that many of the uses are homogeneous in nature.

In addressing the potential impacts of one (1) nonfarm dwelling to the existing adjacent properties, the Applicant asserts that the impacts would be minimal, as the farm enterprises in the vicinity are insulated from the subject property by natural buffers such as creeks, rolling hills, steep ridges, and forested areas. The Applicant states that if a nonfarm dwelling were established on the subject property, it would likely be established in the southeastern portion of the property due to the location of the existing access on the subject property, its proximity to existing utilities and development in the surrounding area, and the fact that it would be buffered from surrounding resource-zoned properties by Brush College Creek and forested areas. The Applicant states this location would be the most viable due to inhibiting topographical characteristics that prevent most of the property from being developed on.

The Applicant's impacts analysis indicates that the majority of the properties in the study area can be characterized predominately as rural residential with several small-scale, owner-operated farm operations. The two (2) adjacent tax lots to the north are managed predominately for timber, with small portions of pastureland. The property to the south is managed predominately for pastureland and contains a forested area on the western portion. The adjacent property directly to the west is an approximately 124.0 acre tract that contains approximately 80.0 acres dedicated to a nursery and orchard that grows fruit, nuts, and flowering trees. The Applicant identified the larger scale agricultural operations located within the study area, which include Ditchen Land Company (approximately 951.3 acres predominately managed for pastureland), Byers Farm Holdings (approximately 156.9 acres predominately managed for pastureland and timber), Roserock, LLC (approximately 140 acres of vineyards), and Shudel Enterprises (approximately 198.3 acres predominately managed for a Christmas Tree operation). The Applicant also identified the smaller scale commercial farming operations in the study area such as Whitman Nursery, Northridge Vineyard, and X Novo Vineyard.

With the incorporated city limits of Salem, UGB, and AR-5 exception lands to the east and south of the subject property, the commercial farm operations identified by the Applicant are all located to the north and the west. In addition, the future dwelling would be accessed from Brush College Road to the east, which is a road that serves many properties that are zoned SR, AR-5, or within the incorporated city limits of Salem, whereas all of the commercial farm operations identified in the study are accessed using different roads further to the west and north of the subject property. This suggests that any additional traffic generated from a future dwelling would have limited impacts on the commercial farm operations in the study area. The impacts analysis further indicates that the addition of one (1) forest template dwelling could enhance the timber and farm uses on the subject property, which comprise a portion of the main agricultural enterprise of the study area, by allowing the primary operator of these farm and forest practices to live on-site.

The impacts analysis cites the existing level of residential development in the surrounding area and the manner in which residential development has historically co-existed with the surrounding farm and forest operations as evidence that any potential impacts of one (1) dwelling would be minimal because the farm operators in the area have historically had to account for these mixed

rural-residential patterns, including urban levels of traffic and utilities. For these reasons, the applicant states that an addition of one (1) nonfarm dwelling would not negatively impact the agricultural enterprise of the surrounding area and would largely conform to the character of the area.

In determining whether the addition of one (1) nonfarm dwelling on the subject property would be consistent with Goal 3, County Staff and the Hearings Officer must consider the existing and historical residential development patterns of the surrounding area. Of the 98 tax lots in the study area, the study identified 52 tax lots that contain at least one (1) dwelling. Of those 52 tax lots, 41 contained at least one (1) dwelling in 1993, whereas 11 of the tax lots have had dwellings established sometime after 1993. This does not account for replacement dwellings established after 1993; therefore, there could have been additional tax lots developed with dwellings prior to 1993. Many of the properties identified in the impacts analysis are substandard sized tax lots for the EFU and FF zones. Specifically, 55 of the 63 tax lots located within the EFU zone are below the minimum parcel size of 80.0 acres and 33 of the 35 tax lots located within the FF zone are below the minimum parcel size of 40.0 acres. County Staff acknowledges that tax lots are not entirely indicative of the legal parcel sizes and configurations and that some of these tax lots may be a part of larger tracts. Specifically, there are a total 13 tax lots that compose a total of four (4) different EFU tracts over 80.0 acres in size, and a total of four (4) tax lots that compose one (1) FF tract over 40.0 acres in size. When these larger tracts are taken into account, there are 71 tax lots in the study area that are substandard sized properties for their respective zones.

County Staff reviewed Polk County Assessor's records, Polk County Community Development records, and Polk County GIS, and confirmed that the Applicant has appeared to accurately characterize the surrounding land uses and property ownership within the 2,000 acre study area. Based on the impacts analysis provided, County staff concurs and the Hearings Officer agrees with the Applicant that the study area can be characterized as a transitional area that has been largely committed to mixed rural-residential uses despite the underlying PCCP designation and zoning of the area.

The purpose of this analysis is to determine whether a Comprehensive Plan change from Agriculture to Farm Forest would be in compliance with Goal 3, which is determined by evaluating whether the requested Amendment would allow for the continuation of the identified existing agricultural enterprises of the surrounding area. Based on the impacts analysis provided by the Applicant, it is evident that the surrounding area contains a mixture of large and small scale farm and timber operations mixed with significant patterns of rural residential development that can be historically described as an urban to rural transitional area. Based on the subject property's proximity to the City of Salem and the natural buffers that isolate the subject property from the identified commercial farm operations, together with the existing and historical patterns of rural residential development and utilities in the surrounding area that the agriculture enterprise is already oriented to account for, the Hearings Officer finds that there is substantial evidence in the record to support the conclusion that the addition of one (1) potential future nonfarm dwelling on the subject property would not materially alter the overall land use pattern of the surrounding area and would allow for the continuation of the identified agricultural enterprises of the area.

For the reasons described above, the Hearings Officer finds that the proposed Comprehensive Plan Amendment to change the PCCP designation from Agriculture to Farm Forest would be in compliance with Goal 3.

Goal 4 - Forest Lands

The purpose of Statewide Planning Goal 4 is to conserve forest lands for forest uses. As discussed in this report, the Applicant has asserted that at least 50% of the Subject Property has consistently been managed for forest use. The Applicant also states that those areas not managed for forest are suitable for agricultural purposes, which is a permitted use in the FFO zone. The Farm Forest Plan designation, which would be implemented by the FFO zone, would allow the subject property to

be used for an array of both commercial forestry and agricultural purposes. The FFO zone has been acknowledged by DLCD to be consistent with both Goals 3 and 4.

The Hearings Officer finds that the application would be in compliance with Goal 4.

Goal 5 - Natural Resources, Scenic and Historic Areas, and Open Spaces

According to the National Wetlands Inventory (NWI) Map, Salem West Quadrangle, there are inventoried freshwater forested and shrub wetlands located on the subject property that are associated with Brush College Creek. According to the Polk County SRA map, Brush College Creek is an inventoried significant fish bearing stream, which is a Goal 5 resource. The Applicant is not proposing any development as part of these applications, nevertheless, this report serves as notice to the property owners of the presence of fish habitat and significant wetland areas on the subject property, and the possible need for State or Federal permits. Prior to any development activity within a significant resource riparian area on the subject property, the property owner shall coordinate a management plan with the Oregon Department of State Lands (DSL) and the Oregon Department of Fish and Wildlife (ODFW) if the activity is identified in PCZO Section 182.070(A) and (C) as a conflicting use. If a management plan is required, the property owner shall submit the management plan coordinated with DSL, ODFW, and any other appropriate State and Federal agencies to the Polk County Planning Division prior to issuance of permits for the development activity pursuant to PCZO 182.040 and 182.050. Structural development shall be prohibited within the riparian and significant wetland setback area. Within the setback area, all trees and at least 50 percent of the understory shall be retained, excluding the exceptions authorized pursuant to PCZO Section 182.050(B)(1)(a-e). The riparian setback area shall be measured from the bank top perpendicular to the stream and shall average three times the stream width and shall be a minimum of 25 feet but not more than 100 feet.

While there are wetlands on the subject property, a shift from one resource designation to another is not anticipated to impact wetlands or riparian corridors. Moreover, timber lands have been acknowledged as an important component in the filtration of water and in the prevention of erosion, helping protect the natural resources on the Subject Property. There are no scenic or historic areas or open spaces on the Subject Property.

The Hearings Officer finds that the application would be in compliance with Goal 5.

Goal 6 - Air, Water, and Land Resources Quality

The Applicant states that this request would not present any greater impact with regards to air, water, and land resource quality of the state than any discharges that result from customary farm uses. The Applicant further asserts that this application will not result in development on the subject property and any subsequent development would be subject to review and approval of a land use application, including a review of any proposed impact on air, water, or land quality. The Applicant concludes that no issue regarding air, water, and land resource quality is presented by the application, it is consistent with Goal 6.

The Hearings Officer finds that the application would be in compliance with Goal 6.

Goal 7 - Areas Subject to Natural Hazards

Based on a review of tools accessed through Polk County GIS, County Staff determined that the subject property is not located within an inventoried natural hazard area.

The Hearings Officer finds that the application would be in compliance with Goal 7.

Goal 8 - Recreational Needs

The subject property is not within an identified or inventoried recreational area. There are no parks or other recreational designations involved with the subject property.

The Hearings Officer finds that the application would be in compliance with Goal 8.

Goal 9 - Economic Development

The Applicant states that this application proposes a shift to a land use designation that better fits the existing economic use of the Subject Property. The Applicant asserts that shifting to a Farm Forest designation will allow for the highest and best economic use of the Subject Property.

The Hearings Officer concurs with the application and finds that the application would be in compliance with Goal 9.

Goal 10 - Housing

The Applicant states that the Comprehensive Plan Amendment would only affect parcels located outside of adjacent city limits and urban growth boundaries. The subject property is therefore not subject to Goal 10.

The Hearings Officer finds that the application would be in compliance with Goal 10.

Goal 11 - Public Facilities and Services

The Application does not affect the need for public facilities and services in the vicinity.

The Hearings Officer finds that the application would be in compliance with Goal 11.

Goal 12 - Transportation

The Applicant asserts that the Comprehensive Plan Amendment would not significantly impact any existing or planned transportation facilities as the management on the subject Property would remain the same and there is no proposed development on the subject property at this time. Uses permitted in the FFO zone such as a farm stand, winery, or commercial activity in conjunction with farm use could attract traffic associated with the retail sales of farm products and processed farm products, such as wine. However, these uses could be established under the current EFU zone of the subject property. The Hearings Officer does not believe that a change from EFU to FFO would result in a significant change to the amount of traffic that would be attracted to the subject property. As a result, the Hearings Officer does not believe that the proposed change would create a significant impact on traffic use on Brush College Road, and would not result in a significant impact on area transportation facilities as that term is used in OAR 660-012-0060.

The Hearings Officer finds that the application would be in compliance with Goal 12.

Goal 13 - Energy Conservation

The Amendment would not significantly affect the use of energy resources on the Subject Property.

The Hearings Officer finds that the application would be in compliance with Goal 13.

Goal 14 - Urbanization

The application proposes a change from one natural resource designation to another. The Applicant asserts that the use on the Subject Property will continue to be a resource use and would not affect urban or urbanizable land.

The Hearings Officer concurs and finds that the application would be in compliance with Goal 14.

Goal 15 - 19 Willamette River Greenway, Estuarine Resources, Coastal Shore Lands, Beaches and Dunes, and Ocean Resources.

Goals 15-19 are not applicable because the Subject Property is not within the Willamette River Greenway nor an ocean or coastal related resource.

For the reasons described above, the Hearings Officer finds that the Applicant has provided substantial evidence to demonstrate that the proposed Comprehensive Plan Amendment would be in compliance with all relevant Oregon Revised Statutes, Oregon Administrative Rules, and Statewide Planning Goals. The Applicant has addressed all applicable Oregon Statewide Planning Goals. No goal exception is necessary in order to approve these applications.

Based on the evidence in the record, the Hearings Officer finds the application complies with the above criterion.

E. Compliance with the provisions of any applicable intergovernmental agreement pertaining to urban growth boundaries and urbanizable land. [PCZO 115.050(A)(3)(c)]

The subject property is not located within an urban growth boundary or within an incorporated city. As a result, no intergovernmental agreements are applicable to this application.

The Hearings Officer finds this criterion is not applicable to the proposed amendment.

2. Findings for Zone Change, File ZC 23-01:

- A. A zone change is a reclassification of any area on the Official Zoning Map from one zoning designation to another, after the proposed change has been reviewed and a recommendation made by the Hearings Officer or the Planning Commission. Such change shall be an ordinance enacted by the Board of Commissioners after proceedings have been accomplished in accordance with the provisions of this chapter. Annexation of territory to a city shall result in automatic amendment of the Official Zoning Map as of the effective date of annexation. When the Official Zoning Map is amended by ordinance or annexation to a city, the Planning Director shall cause the changes to be made to the Official Zoning Map. [PCZO 111.110]**

The authorization for a zone change is provided under PCZO 111.275. A zone change is subject to recommendation by the Hearings Officer after holding a public hearing pursuant to PCZO 111.190 and 115.030 and decision by the Polk County Board of Commissioners after holding a public hearing pursuant to PCZO 111.200 and 115.030. County Staff reviews the proposed zone change, and prepares a report and recommendation for the Hearings Officer. The Hearings Officer makes a recommendation to the Polk County Board of Commissioners for a final local decision. This application has been processed in accordance with these procedural requirements of the PCZO.

- B. Pursuant to Section 111.160, a zone change may be approved, provided that the request satisfies all applicable requirements of this ordinance, and provided that with written findings, the applicant(s) clearly demonstrate compliance with the following criteria:**

- 1. The proposed zone is appropriate for the comprehensive plan land use designation on the property and is consistent with the purpose and policies for the applicable comprehensive plan land use classification; [PCZO 111.275(A)]**

- a. It is the intent of the Farm/Forest designation to provide an opportunity for the continuance and the creation of large and small scale commercial farm and forestry operations. It is also intended that the addition and location of new structures and improvements will not pose limitations upon the existing farm and forest practices in the area or surrounding area and that additional density will not adversely affect the agricultural or forestry operations of the area through the increased use of roads, demands for ground water during the growing season, or demands for increased levels of public facilities and services.**

It is the specific intent of the Farm/Forest Plan designation to ensure that land use actions are consistent with definitions of agricultural and forest lands contained within the Polk County Comprehensive Plan. The Farm/Forest Plan designation will be implemented through the use of the

Farm/Forest (F/F) Zone which includes areas designated as Farm/Forest Overlay on the zoning map. [PCCP Section 4]

The Applicant is requesting as part of this Application a change in the Subject Property's Comprehensive Plan Designation from "Agriculture" to "Farm/Forest." As described in Section 4 of the PCCP, the Farm Forest Plan designation is implemented by both the FF and FFO zones. The purpose of the FFO zone is to provide *"for the full ranges of agricultural and forest uses while providing for the maximum property tax benefits that are available."*⁴ The single difference between the FF and FFO zones is that the FF zone has a 40 acre minimum parcel size and the FFO zone has an 80 acre minimum parcel size. The subject parcel is currently zoned EFU, which has an 80 acre minimum parcel size; therefore, zoning the subject property FFO would not allow for additional parcel density beyond what is currently permitted. However, the subject property could be divided by utilizing the land division standards listed in PCZO 138.130(H) or (J). As discussed under subsection (I)(D) of this report, the Hearings Officer finds that any additional land divisions that could be permitted as a result of the proposed Comprehensive Plan amendment and zone change would be appropriate for the continuation of forestry operations and/or the commercial agricultural enterprise of the area, thus, in compliance with Goal 3.

The uses in the FFO zone have already been determined to be consistent with the Farm Forest Plan designation. The materials provided by the Applicant demonstrate the management of the subject property, timber management and a small-scale cattle operation, are suited to be managed consistently with the purpose and policies of the Farm/Forest Plan designation.

Therefore, the Hearings Officer concludes that the application complies with this criterion.

C. The proposal conforms with the purpose statement of the proposed zone; [PCZO 111.275(B)]

- a. The Farm/Forest (F/F) Zone is designed to provide for the full range of agricultural and forest uses for such lands, while providing for the maximum property tax benefits available (e.g. farm use assessment, timber tax treatment, open space deferral, wildlife habitat, etc.) and conformity with the Farm/Forest objectives and policies of the Polk County Comprehensive Plan.**

Upon periodic revision of the Polk County Comprehensive Plan, the lands within the F/F designation shall be reviewed by the County Commissioners as to their continued appropriateness in such a designation or, alternatively rezoning to a more appropriate category.

As with other natural resource zones, there are isolated lands within the F/F Zone which have no actual or potential use for agricultural or forest purposes. In those cases, other non-natural resource uses may be permitted only as provided in this Chapter and in the Polk County Comprehensive Plan. Such uses must not be adverse to accepted agricultural or forest practices. Further, consistent with the diverse character of this zone and recognizing that the actual and potential land use conditions vary from intensive to extensive cultivation and use, the Board of County Commissioners has adopted this zone to deal with myriad potential uses, while recognizing the primary orientation of this zone towards farm and forest uses. [PCZO 138.010]

The Applicant has proposed a zone change from EFU to FFO. The FFO zone is contained in chapter 138 of the Polk County Zoning Ordinance. The stated purpose of the Farm Forest Zone is to *"provide for the full range of agricultural and forest uses for such land, while providing for the maximum property tax benefits available (e.g. farm use assessment, timber tax treatment, open*

⁴ PCZO 138.010.

space deferral etc.) and with the Farm/Forest objectives and policies of the Comprehensive Plan.”⁵ Thus, the proposed FFO zone allows “farm use” and “use and management of forest lands” as outright permitted uses.

The subject property is currently managed for timber production and the cattle-ranching associated with a small-scale cattle operation managed on another property in the vicinity. Although the underlying zone of the property is EFU and the subject property currently receives a farm tax assessment, the Applicant has asserted that the subject property has historically been in forest use, and that there are topographic conditions that limit the property’s ability to be managed entirely for farm use. The Applicant is proposing to continue the current management practices on the subject property, but states that the current EFU zone and Agriculture PCCP designation are not entirely reflective of the topographical characteristics and management of the subject property, whereas, the FFO zone and Farm Forest PCCP designation more closely reflect these characteristics and practices. The Farm Forest Zone was adopted by Polk County to accommodate property owners who want to manage their land in both farm and forest types of uses. Based on the current and historical management and topography of the subject property, the Hearings Officer finds that the proposed zone change would conform to the purpose and intent of the FFO zone.

Future development of the subject property would be restricted to the uses permitted in the FFO zone. The Applicant indicates that they would likely to pursue a forest template dwelling on the subject property in the future upon approval of these applications. As discussed in this report, the PCZO Chapter 136 allows for some types of farm and nonfarm dwellings to be established in the EFU zone. However, the criteria for a Forest template dwelling cannot be utilized to establish a nonfarm dwelling in the EFU zone, but it could be utilized in the proposed FFO zone, subject to review and approval of a land use application.

The Applicant has proposed future uses on the property that are either outright permitted in the FFO zone, or could be permitted through an administrative review process. If the Applicant seeks to establish a forest template dwelling in the future, the applicant would need to submit an application and address all applicable criteria listed for a small tract “template” dwelling.

The Hearings Officer concludes that the Applicant’s proposal is consistent with the purpose and intent of the FFO zone.

D. The uses allowed in the proposed designation will not significantly adversely affect allowed uses on adjacent lands; [PCZO 111.275(C)]

The Applicant is proposing a Zoning Map Amendment to change the zoning of the subject property from EFU to FFO. The subject property is approximately 22.1 acres in size. As depicted in Table 2 of this report, the subject property is classified as high-value farmland. Based on a review of the Polk County Zoning Map, the properties contiguous to the subject property are zoned EFU, SR, or within the City of Salem. The surrounding area also includes properties zoned AR-5 and FF. The subject property is currently managed for a forest operation and cattle-ranch. The Applicant indicates that they intend to continue these management practices.

The FFO zone is intended to provide for the full range of agricultural and forest uses for such land, while providing for the maximum property tax benefits available (e.g. farm use assessment, timber tax treatment, open space deferral etc.). The FFO zone is also intended to facilitate the Farm/Forest objectives and policies of the Comprehensive Plan. Thus, with limited exceptions, the FFO zone permits those uses that are allowed in both the TC and EFU zones. It is commonly accepted that properties that have the same permitted uses are generally compatible with one another; therefore, those uses permitted in the FFO that are also permitted in the EFU zone would generally be compatible with one another.

⁵ PCZO 138.010.

The EFU zone permits some uses that are intended to support forestry activities, such as the propagation or harvesting of forest products and accessory buildings and structures related to the use and management of forest lands. However, there are other uses that would be allowed under the FFO zone that are not permitted in the EFU zone, some of which are related to forestry activities and others that are not related to resource management.

The Applicant provided a chart comparing those uses in the EFU (on high-value farmland) and FFO zones that are permitted outright or subject to review and approval of a land use permit. Those uses that would be permitted outright in the FFO zone include firearms training facilities that existed prior to 1992, caretaker residence for parks and hatcheries, and private fee hunting operations without any accommodations. Those uses subject to a conditional use permit and related to forest management include log scaling and weigh stations, forest management research and experimentation facilities, and temporary portable facilities for the primary processing of forest products.

PCZO Chapter 138 does not specifically restrict land uses based on soil types, other than dwelling, so some conditional uses permitted in the FFO zone would not be allowed on high value farm land in the EFU zone. However, the local ordinance is precluded by State law when it can be interpreted as being less restrictive than State law. Because the Applicant is requesting a Comprehensive Plan amendment to a mixed agriculture/forest designation, both Agriculture and Forest Goal policies must be applied to all land uses other than dwellings, as required by OAR 660-006-0050(1) and (2), which state:

- (1) Governing bodies may establish agriculture/forest zones in accordance with both Goals 3 and 4, and OAR Chapter 660, divisions 6 and 33.
- (2) Uses authorized in Exclusive Farm Use zones in ORS Chapter 215, and in OAR 660-006-0025 and 660-006-0027, subject to the requirements of the applicable section, may be allowed in any agricultural/forest zone. The county shall apply either OAR Chapter 660, division 6 or 33 standards for siting a dwelling in an agriculture/forest zone based on the predominate use of the tract on January 1, 1993.

The application of this administrative rule by Marion County was evaluated by the Oregon Land Use Board of Appeals (LUBA) in its opinion in *Silver Creek Solar, LLC vs. Marion County* (LUBA Case No. 2023-045). LUBA found that “if a use is authorized in ORS Chapter 215 and in OAR 660-006-0025, requirements of both sections may apply under OAR 660-006-0050(2) because both sections are applicable to the use.” Based on this opinion, it is understood that if a use other than a dwelling is not allowed on high-value farmland in the EFU zone, the county must also apply the high-value farmland restriction to that same use in the FFO zone. Although PCZO Chapter 138 does not explicitly make this clear, the opinion from LUBA in the above referenced case states that the Goal 3 standards pertaining to high-value soils restrictions also apply to uses in mixed Farm/Forest zones.

The Applicant has not indicated that they would establish any of those uses. Those conditional uses that are allowed on high-value farmland would require an application with the County, and the Applicant would need to demonstrate how their specific proposal would comply with all conditional use standards, including a demonstration that “[t]he use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands” [PCZO 138.100(A)]. That analysis and opportunity for public involvement through the conditional use permitting process would ensure that conditional uses would not significantly adversely affect allowed uses on adjacent lands.

As discussed, the 2,000 acre study area provided by the Applicant identifies 35 tax lots that are zoned FF. The FF zoned properties in the study area are adjacent to properties that are zoned AR-5, SR, and EFU, and the City of Salem, similar to that of the subject property. This suggests that if the subject property were to be rezoned to FFO, it would remain within the character of, and in harmony with, the surrounding area. The study area provides substantial evidence that there are

already a significant number of properties designated for FF that have not adversely affected any allowable uses on properties zoned AR-5, SR, EFU, FF, or within the City of Salem.

In consideration of the above factors, the Hearings Officer finds that the application complies with this criterion.

E. Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property; [PCZO 111.275(D)]

The Applicant is proposing to change the zoning of the subject property from EFU to FFO. With limited exceptions, the FFO zone permits the uses allowed in both the EFU and TC zones. The FFO zone allows limited residential development, and commercial development is largely restrained to activities in conjunction with farm and forest use on the subject property.

The Applicant states that they are likely to pursue a forest template dwelling on the subject property if this application is approved. Similar to a host of other permitted uses in the TC, EFU, and FFO zones, a dwelling requires road access, electricity, water, and the disposal of wastewater. The Applicant would be responsible for obtaining all necessary permits from the Polk County Environmental Health and Building Divisions and the Polk County Public Works Department. The subject property is not located within a public water utility district. Based on the information provided, it appears the subject property contains an existing well. Nevertheless, permits may also be needed from the Oregon Department of Water Resources if the Applicant plans to drill a well or collect and use surface water. These permits may place limitations on water intensive uses that are out of scale with the land and water resources available on the subject property. As discussed, the subject property is in an area that is adjacent to the City of Salem, and is located within the area served by Spring Valley Rural Fire Protection District and Salem School District #32J.

The subject property has frontage along and direct access to Brush College Road, a Major Collector as identified in the Polk County Transportation Systems Plan, Figure 3. If the proposed Comprehensive Plan amendment and Zoning Map amendment are approved, the Applicant would be able to establish the uses permitted in the FFO zone, assuming all applicable development standards could be met. Uses permitted in the FFO zone such as a farm stand, winery, or commercial activity in conjunction with farm use could attract traffic associated with the retail sales of farm products and processed farm products, such as wine. However, these uses could be established under the current EFU zone of the subject property. As such, the Hearings Officer does not believe that a change from EFU to FFO would result in a significant change to the amount of traffic that would be attracted to the subject property. Therefore, the Hearings Officer does not believe that the proposed change would create a significant traffic impact on Brush College Road, and would not result in a significant impact on area transportation facilities as that term is used in OAR 660-012-0060.

Based on the evidence in the record, there are adequate public facilities, services, and transportation networks in place to support the proposed zone change. Approval of this proposed zone change and Comprehensive Plan amendment would not authorize the Applicant to establish a use that would exceed transportation, water and/or sewage disposal services until such services are planned or available. There have been no identified effects on local schools as a result of the proposed change.

Thus, the Hearings Officer finds the application complies with this criterion.

F. The proposed change is appropriate taking into consideration the following:

- a. Surrounding land uses,**
- b. The density and pattern of development in the area,**
- c. Any changes which may have occurred in the vicinity to support the proposed amendment. [PCZO 111.275(E)(1-3)]**

As discussed above, the Applicant provided an impacts analysis that describes the prominent land practices and agricultural enterprise of the area surrounding the subject property. County Staff reviewed Polk County Assessor's records, Polk County Community Development records, and Polk County GIS, and confirmed that the Applicant has appeared to accurately characterize the surrounding land uses and property ownership within the 2,000 acre study area.

The impacts analysis provided by the Applicant identifies 98 resource-zoned tax lots; 63 of which are within the EFU zone and 35 of which are within the FF zone. Based on the impact analysis, the most common practices on Agricultural lands in the study area are vineyards, pasture land, orchards, and row crops. The most common practices on Farm/Forest lands in the study area are timber management, pasture land, and row crops. The impacts analysis identified 52 tax lots that contain at least one (1) dwelling. In addition, many of the properties identified in the study area are substandard sized tax lots for the EFU and FF zones. Specifically, 55 of the 63 tax lots located within the EFU zone are below the minimum parcel size of 80.0 acres and 33 of the 35 tax lots located within the FF zone are below the minimum parcel size of 40.0 acres. County Staff acknowledges that tax lots are not entirely indicative of the legal parcel sizes and configurations and that some of these tax lots are part of larger tracts. Specifically, there are a total 13 tax lots that compose a total of four (4) different EFU tracts over 80.0 acres in size, and a total of four (4) tax lots that compose one (1) FF tract over 40.0 acres in size. When these larger tracts are taken into account, there are 71 tax lots in the study area that are substandard sized properties for their respective zones.

The Applicant's impacts analysis indicates that the majority of the properties in the study area can be characterized predominately as rural residential with several small-scale, owner-operated farm and forest operations. The impacts analysis identified the larger scale agricultural operations located within the study area, which include Ditchen Land Company (approximately 951.3 acres predominately managed for pastureland), Byers Farm Holdings (approximately 156.9 acres predominately managed for pastureland and timber), Roserock, LLC (approximately 140 acres of vineyards), and Shudel Enterprises (approximately 198.3 acres predominately managed for a Christmas Tree operation). The impacts analysis also identified the smaller scale commercial farming operations in the study area such as Whitman Nursery, Meyer Nursery & Orchards (approximately 80 acres dedicated to growing fruit, nut, shade, and flowering trees), Northridge Vineyard, and X Novo Vineyard.

Based on the Applicant's impacts analysis that evaluates the addition of one (1) potential future nonfarm dwelling (template dwelling) to the subject property, it is evident that the surrounding area contains a mixture of large and small-scale farm and timber operations mixed with significant patterns of rural residential development that can be historically described as an urban to rural transitional area. County Staff and the Hearings Officer concur with the Applicant's findings that the proposed Zoning Map Amendment would be consistent with the development pattern that is commonly observed in areas where there is an evident transition from urban to rural uses. Due to the similar nature of the uses permitted in the FFO zone and the EFU zone, the proposed FFO zoning would be generally compatible with surrounding land uses. The FFO zone has an 80 acre minimum parcel size, which is the same as the EFU zone. The proposed zoning would not change the current potential parcel density of the area. Based on the information provided by the Applicant, the Hearings Officer finds that the proposed zone change of the subject property to FFO would be appropriate because it would remain in harmony with the character and patterns of the surrounding area and its land uses.

Thus, the Hearings Officer finds the application complies with this criterion.

G. The proposal complies with any applicable intergovernmental agreement pertaining to urban growth boundaries and urbanizable land; and [PCZO 111.275(F)]

The subject property is not located within an Urban Growth Boundary. There are no intergovernmental agreements that apply to this property. This criterion does not apply.

H. The proposal complies with Oregon Revised Statutes, all applicable statewide planning goals and associated administrative rules. If an exception to one or more of the goals is necessary, the exception criteria in Oregon Administrative Rules, Chapter 660, Division 4 shall apply. [PCZO 111.275(G)]

The Applicant is proposing a Zoning Map Amendment with the primary intention of having a zoning and plan designation that better reflect the topography and historical management of the subject property.

The proposal would change the zone from EFU which implements Goal 3, to FFO, which implements both Goals 3 and 4. The subject property is currently zoned EFU, which has an 80 acre minimum parcel size, and the Applicant is proposing the FFO zone which also has an 80 acre minimum parcel size. Consequently, the Applicant's proposal could not result in any additional land divisions or parcelization of the subject property, therefore, would not require an exception to Goals 3, 4 or 14 on that basis.

Because the proposed FFO zone is a mixed agriculture/forestry zone that implements both Goals 3 and 4, there would be additional uses that could be permitted on the subject property that would not otherwise be allowed under the current EFU zone designation. As discussed above in Subsection (1)(D), Polk County's mixed FFO zone has been acknowledged by DLCD to be in compliance with all of the Statewide Planning Goals, and in addition found that because any uses allowed on the subject property, other than dwellings, would still be subject to Goal 3 policies found in ORS Chapter 215 and OAR Chapter 660 Division 33, the proposed Comprehensive Plan designation would be in compliance with Goal 3.

While the majority of the property would continue be managed for the forest operation and the small-scale cattle operation, the Applicant indicates that the property owner may want to establish a "Small Tract Template Dwelling" on the subject property, which is permitted under the FFO zone. OAR 660-006-0050(2) indicates that the county shall apply either OAR Chapter 660, Division 6 or 33 standards for siting of a dwelling in an agriculture/forest zone based on the predominate use of the tract on January 1, 1993. As discussed in this report, the Applicant has asserted that the subject tract is predominately in forest use. When proposing to change a Zoning/ Comprehensive Plan designation that could result in additional parcelization or the ability to utilize a different set of criteria for a nonfarm dwelling, such as a future forest template dwelling, an Applicant would need to show consistency with Goal 3; otherwise an exception to Goal 3 would be required. Although the EFU zone and FFO zone have the same minimum parcel size, which would not result in additional parcelization, additional types of non-farm dwellings could potentially be pursued in the FFO zone that would not otherwise be permitted in the EFU zone. Therefore, demonstrating compliance with Goal 3 is required, including findings to demonstrate that a potential future non-farm dwelling (template dwelling) would not impact the existing agricultural enterprise of the area.

As discussed above in subsection (1)(D) of this report, the Applicant prepared a 2,000 acre impacts analysis that was selected to include the most accurate sampling of farm practices in the surrounding area and evaluate the addition of one (1) nonfarm dwelling on the subject property. As discussed in this decision, the impacts analysis provided by the Applicant demonstrates that the surrounding area contains a mixture of large and small scale farm and timber operations mixed with significant patterns of rural residential development that can be historically described as an urban to rural transitional area. Based on the subject property's proximity to the City of Salem and the natural buffers that isolate the subject property from the identified commercial farm operations, together with the existing and historical patterns of rural residential development and utilities in the surrounding area that the agriculture enterprise is already oriented to account for, the Hearings Officer finds that there is substantial evidence in the record to support the conclusion that the addition of one (1) nonfarm dwelling on the subject property would not materially alter the overall land use pattern of the surrounding area and would allow for the continuation of the identified agricultural enterprises of the area. Therefore, the Hearings Officer finds that the proposed Zone

Change to change the PCCP designation from Agriculture to Farm Forest, which would allow the property owner to utilize Goal 4 policies instead of Goal 3 policies to pursue a nonfarm dwelling on the subject tract, would be in compliance with Goal 3.

For the reasons described above and in subsection (1)(D) of this report, the Hearings Officer finds that the Applicant has provided substantial evidence to demonstrate that the proposed Zone Change would be in compliance with all relevant Oregon Revised Statutes, Oregon Administrative Rules, and Statewide Planning Goals. The Applicant has addressed all applicable Oregon Statewide Planning Goals. No goal exception is necessary in order to approve these applications.

Thus, the Hearings Officer finds the application complies with this criterion.

- I. The road function, classification, capacity and existing and projected traffic volumes have been considered. To allow comprehensive plan map and zone map amendments that may generate trips up to the planned capacity of the transportation system, Polk County will consider road function, classification, road capacity and existing and projected traffic volumes, as criteria for comprehensive plan map and zone map amendments. [PCZO 111.275(H)]**

The subject property is accessed from Brush College Road, which is under Polk County's jurisdiction and is managed by the Polk County Public Works Department. According to the Polk County Transportation Systems Plan (TSP), Figure 3, Brush College Road is identified as a Major Collector. As discussed, the Applicant indicates that they would likely pursue a forest template dwelling on the subject property if the proposed zone change is approved. Single-family dwellings are permitted uses in both the EFU and FFO zones, subject to review and approval of either an administrative review or conditional use permit. In addition, uses permitted in the FFO zone such as a farm stand, winery, or commercial activity in conjunction with farm use could attract traffic associated with the retail sales of farm products and processed farm products, such as wine. However, these uses could also be established under the current EFU zone of the subject property. The Hearings Officer does not believe that a change from EFU to FFO would result in a significant change to the amount of traffic that would be attracted to the subject property. As a result, the Hearings Officer does not believe that the proposed change would create a significant impact on traffic use on Brush College Road, and would not result in a significant impact on area transportation facilities as that term is used in OAR 660-012-0060.

The FFO zone permits additional nonfarm and non-forest uses that are not permitted in the EFU zone. Under the circumstances that the property owner were pursue one of these nonfarm uses, a conditional use review would be required, where staff would evaluate the size and scale of the proposed use to ensure it would be in harmony with the purpose and intent of the zone. For the reasons listed above, staff finds that the Comprehensive Plan and Zoning Map amendments would not result in any more traffic that what is currently permitted in the EFU zone and would be consistent with the current road classification and traffic volume of the area.

Thus, the Hearings Officer finds the application complies with this criterion.

IV. CONCLUSION & RECOMMENDATIONS

Based on the evidence submitted into the record, and the findings presented above, the Hearings Officer recommends that the Board of Commissioners **APPROVE** applications PA 23-01 and ZC 23-01. These applications shall be dependent on the approval of one another. Future development on the subject property would be subject to the use and development standards listed in the PCZO. These include the standards for the Farm Forest Overlay zone listed in PCZO Chapter 138.

V. ATTACHMENTS

Attachment A: Map of the subject property

Attachment B: Current Comprehensive Plan map

Attachment C: Current zoning map
Attachment D: 2022 aerial photograph

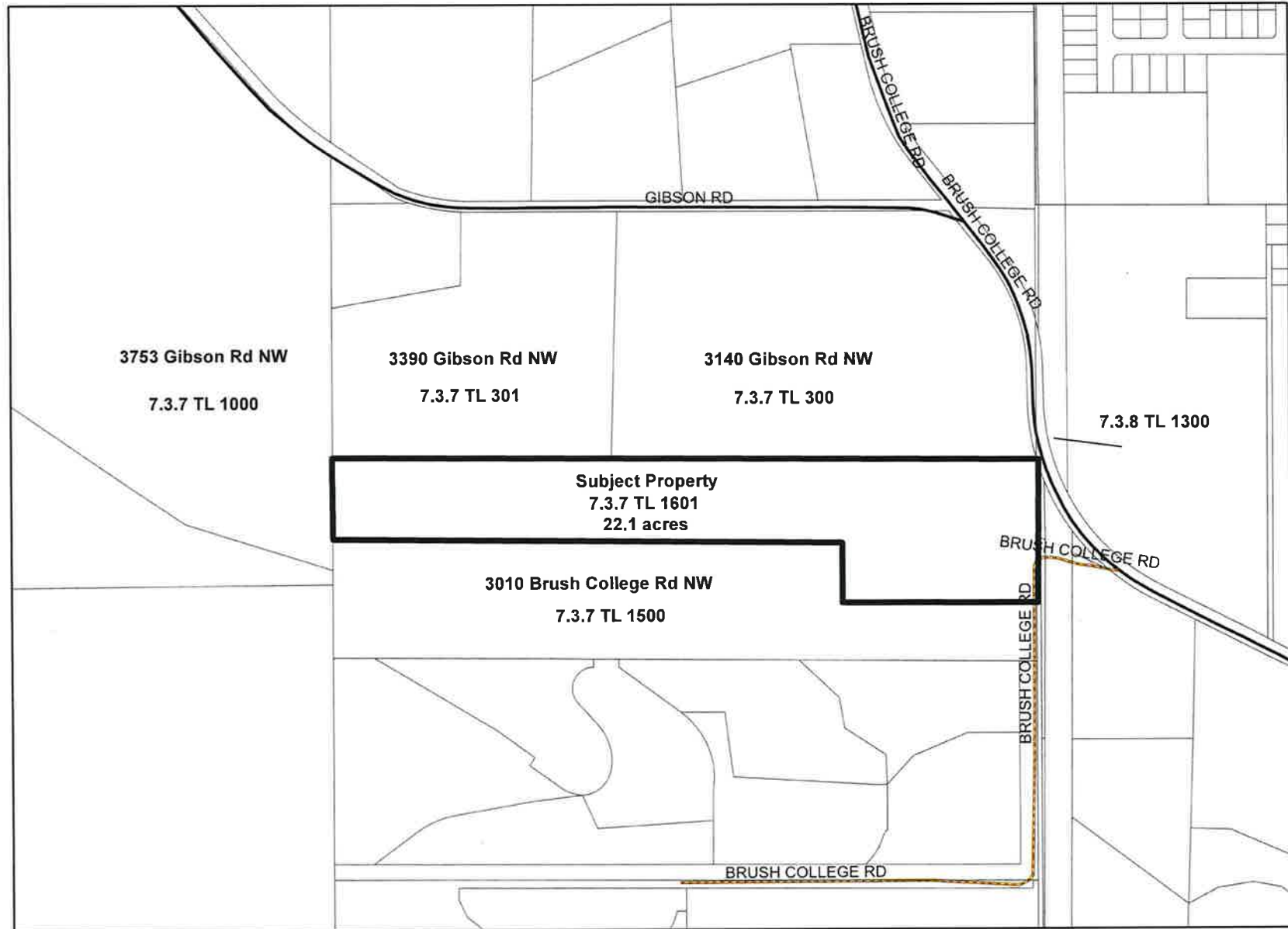
Dallas, Oregon, March 17th, 2024.

Leslie Howell

Leslie Howell
Polk County Hearings Officer

STAFF MAP FOR PA 23-01 & ZC 23-01

ATTACHMENT A

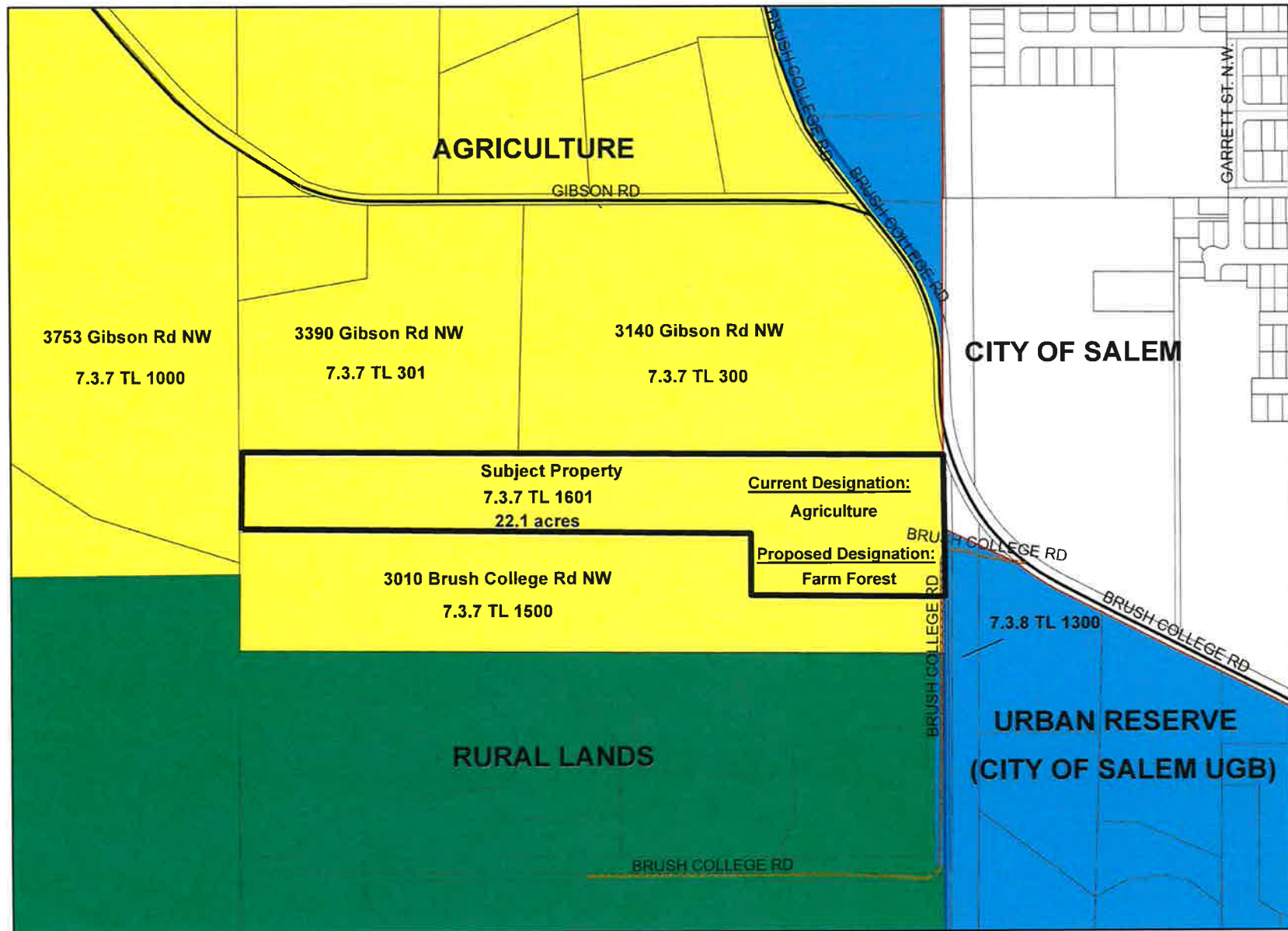


Date: 1/24/2024

This map was produced from the Polk County geographic databases to support its governmental activities. This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. The county is not responsible for any map errors, possible misuse, or misinterpretation. To report a map error, please call (503)623-0713.

COMPREHENSIVE PLAN MAP OF SUBJECT PROPERTY (PA 23-01)

ATTACHMENT B

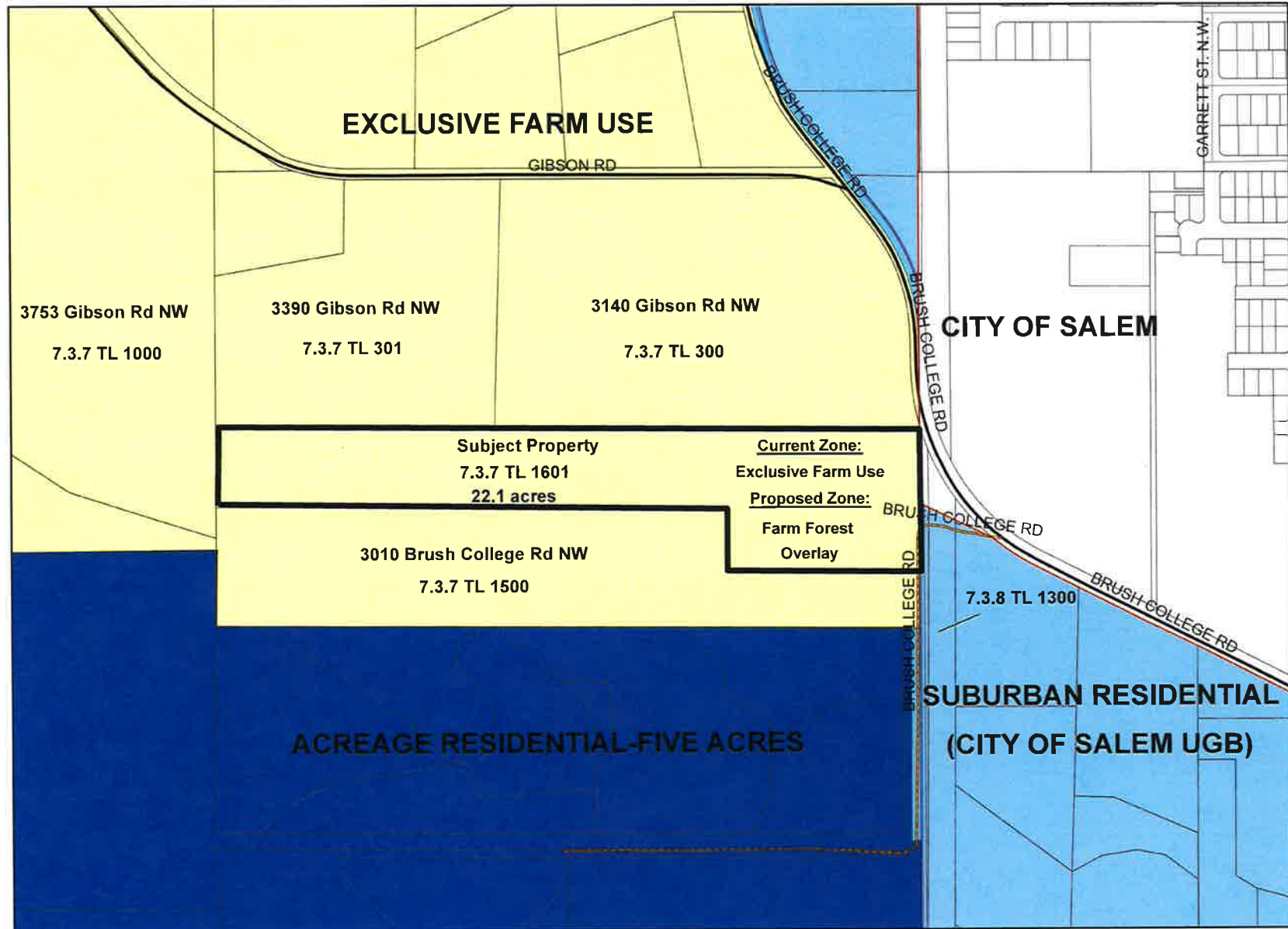


Date: 2/13/2024

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ZONING MAP OF SUBJECT PROPERTY (ZC 23-01)

ATTACHMENT C



Date: 2/13/2024

This map was produced from the Polk County geographic databases to support its governmental activities. This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. The county is not responsible for any map errors, possible misuse, or misinterpretation. To report a map error, please call (503)623-0713.

2022 AERIAL PHOTOGRAPH OF SUBJECT PROPERTY (PA 23-01 & ZC 23-01) ATTACHMENT D



Date: 2/13/2024

This map was produced from the Polk County geographic databases to support its governmental activities. This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. The county is not responsible for any map errors, possible misuse, or misinterpretation. To report a map error, please call (503)623-0713.

Amendment to Polk County Zoning Ordinance Chapter 111. Proposed text additions are double underlined. Proposed deletions are ~~strikethrough~~.

111.090. OFFICIAL ZONING MAP.

- (A) The Official Zoning Map adopted with an effective date of ~~June 27, 2018~~ May 22, 2024, exists as an electronic map layer within the Polk County geographic information system (GIS) at a scale of 1:24,000. The Official Zoning Map shall be maintained by the Planning Director. [~~Amended by Ordinances 11-02, 11-04, 12-06, and 13-03, 18-03, and 24-03~~]



CONTRACT REVIEW SHEET

Staff Contact: Rosana Warren Phone Number (Ext): 2550
Department: Health Services: Behavioral Health Consent Calendar Date: May 22, 2024
Contractor Name: Whitney Sherer
Address: 6705 Redstone Street SE
City, State, Zip: Turner, OR 97392
Effective Dates - From: July 01, 2024 Through: June 30, 2025
Contract Amount: Varies

Background:

Whitney Sherer has agreed to provide Behavioral Health services to referred Polk County Behavioral Health individuals.

Discussion:

This contract is a continuation of services Whitney Sherer has been providing Polk County individuals in the past fiscal years. Whitney Sherer 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 fiscal year 2024-2025 Mental Health Outpatient budget was prepared in anticipation of this agreement.

Recommendation:

It is recommended that Polk County sign this agreement with Whitney Sherer.

Copies of signed contract should be sent to the following:

| | |
|----------------------------|---|
| Name: <u>Rosana Warren</u> | E-mail: <u>hs.contracts@co.polk.or.us</u> |
| Name: <u></u> | E-mail: <u></u> |
| Name: <u></u> | E-mail: <u></u> |

CONTRACT & AGREEMENT SUMMARY

| | |
|---|--|
| CONTRACT NUMBER: | |
| COUNTY/DEPARTMENT: | POLK COUNTY BEHAVIORAL HEALTH 182 SW ACADEMY STREET DALLAS, OR 97338 ID#: 93-6002310 |
| CONTACT PERSON: | ROSANA WARREN |
| DATE ISSUED: | 05/08/24 |
| CONTRACTOR | WHITNEY SHERER 6705 REDSTONE STREET SE TURNER, OR 97392 SSN/ID#: ON FILE |
| CONTACT PERSON: | WHITNEY SHERER |
| SERVICES PROVIDED: | To provide Behavioral Health Clinical services as outlined in Exhibit B. |
| EFFECTIVE DATES: | FROM JULY 01, 2024 THROUGH JUNE 30, 2025 |
| BUDGET LINE #: | 240-8540-540-M20 |
| DOLLAR AMOUNT: | VARIES |
| TERMS: | Service Rates per Exhibit B |
| ADDITIONAL COMMENTS/INFORMATION: | |

NOTIFY CONTRACTS TEAM IMMEDIATELY OF ANY CONTRACT TERMINATIONHS.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
ID#: 93-6002310**

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

**WHITNEY SHERER
6705 REDSTONE STREET SE
TURNER, OR 97392
SSN/ID#: 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 July 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) per occurrence and three million dollars (\$3,000,000) in the aggregate. 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:
- i. 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.
 - ii. Contractor shall pay all contributions or amounts due the Industrial Accident Fund from such contractor or subcontractor incurred in the performance of the contract.
 - iii. 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.
 - iv. 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

SIGNATURE PAGE

BY SIGNATURE BELOW, both parties agree to and accept all terms and conditions of this Agreement between County and Contractor along with the following:

- Exhibit A: Business Associate Agreement
- Exhibit B: Statement of Work

CONTRACTOR



Signature



Date

COUNTY

Chair
Board of Commissioners

Date

APPROVED AS TO FORM

Morgan Smith
County Counsel

Date

EXHIBIT A:
BUSINESS ASSOCIATE AGREEMENT
Between
POLK COUNTY and WHITNEY SHERER

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 to as "COUNTY" and Whitney Sherer, 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.

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.

- 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 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 July 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, WHITNEY SHERER, 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 Professional Counselor, 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.

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 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 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 County to be compliant with applicable regulations.

4. RATES AND METHOD OF PAY

- A. County shall reimburse the Contractor at the rate of \$115.00 per hour for services as outlined in the Service Activity Authorization form with services paid on a per occurrence basis 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.

MEMORANDUM

TO: Polk County Board of Commissioners

FROM: Aaron Felton, District Attorney



DATE: May 16, 2024

SUBJECT: Contract Agreement with Dr. Steven Fletcher to be the Polk County Medical Examiner.

RECOMMENDATION: Approve and sign the contract agreement with Dr. Fletcher to be the Polk County Medical Examiner.

ISSUE: Current Medical Examiner Dr. Steven Fletcher's contract will expire June 30, 2024.

BACKGROUND: We have four Medicolegal Death Investigators who perform the bulk of the tasks performed by the Medical Examiner. They are the ones responding in person when required and are releasing bodies on behalf of the medical examiner from the scene. The Medicolegal Death Investigators do not have the legal authority to sign death certificates and therefore it is necessary to contract with a licensed physician. This contract runs from July 1, 2024 through June 30, 2025.

DISCUSSION/ALTERNATIVES:

- A. Approve attached contract.
- B. Do not approve attached contract.

SUMMARY:

N/A

FISCAL IMPACT:

The Medical Examiner receives \$350.00 per month to perform the duties outlined in this contract.

AGREEMENT

This Agreement made and entered into by and between POLK COUNTY, a political subdivision of the State of Oregon, hereinafter referred to as "County" and Steven Fletcher, M. D., hereinafter referred to as "Contractor."

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

WHEREAS, Contractor has available, or can cause to be provided, the facilities and staff 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 – SERVICES

- A. Effective Date. This Agreement is effective July 1, 2024 and shall terminate on June 30, 2025. It is understood by both parties that no commitments have been or are made by either party beyond the termination of the Agreement.
- B. The County is desirous of securing the services for the Contractor to provide Medical Examiner services to Polk County.
- C. The Contractor is located at 2636 Westminster Way, Albany, OR 97321; telephone – (541)619-2574; however, most services provided herein shall be provided by telephone, written contact with deputy medical examiners or within Polk County.
- D. Services shall be provided in accordance with the document entitled Exhibit I and, which is attached and is made a part of this Agreement.

SECTION II – CONSIDERATION

- A. As consideration for the services provided by the Contractor during the period beginning July 1, 2024, and ending June 30, 2025, the County will pay the Contractor, by check(s), at the rate of \$350.00 per month.
- B. Payment for services provided during any period of less than one (1) month shall be prorated on a daily basis.
- C. It is agreed that any payment or reimbursement received by the Contractor from persons served under this Contract shall be promptly submitted by the Contractor to the County.
- D. Contractor is engaged hereby as an independent Contractor, and will be so deemed for purposes of the following:
 - 1. Contractor will be solely responsible for the payment of any Federal or State taxes required as a result of this Agreement.
 - 2. 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 Contract to the Contractor are vacation, holiday and sick leave, other

insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the Contractor is presently a member of the Public Employees Retirement System.)

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

E. The General Provisions and Appendix "A" attached hereto and by this reference incorporated herein.

SECTION III - BILLINGS

Billings shall be submitted monthly to the District Attorney, 850 Main Street, Dallas OR 97338.

Approved by Polk County Board of Commissioners at their regular meeting on _____, 2024.

CONTRACTOR



DR. STEVEN FLETCHER

5-1-24

DATED

POLK COUNTY BOARD OF COMMISSIONERS

CHAIRMAN

DATED

Approved as to form:

MORGAN SMITH
County Counsel

GENERAL PROVISIONS

GENERAL PROVISIONS

1. Extent of Agreement

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral, or other wise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

2. 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.

3. Payment as Sole Monetary Obligation of the County

The Contractor is engaged as an independence contractor. Payment as provided herein shall be the sole monetary obligation of the County. Unless, otherwise specified, the responsibility for payment of all operating cost, Federal, State, County or city taxes/assessments and any other charges imposed by law upon employers shall be the sole responsibility of the Contractor.

4. 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.

5. Safeguarding of Client Information

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.

6. 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.

7. 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 this 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.

8. Insurance

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, damages, costs and expenses arising in favor of any person on account of personal injuries, death or property loss of damage occurring, growing out of, incident to or resulting directly or indirectly from the acts or omissions of the other party under this Agreement.

Both the County and the Contractor 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. Contractor may satisfy these requirements in any manner allowed by ORS 30.282. 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. 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 or in writing.

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, Risk Manager, 850 Main Street, Dallas, Oregon 97338. The Certificate form, to be completed by the Contractor's insurer, will be maintained in the County's file of this Agreement.

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.

9. 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. Prior written approval shall be required for the purchase by the Contractor of articles, supplies and services which are incidental but necessary for the performance of the work required under this Agreement (e.g., facilities maintenance.)

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.

10. Renegotiation of 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.

11. 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.

12. 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 title "Termination." However, this paragraph, and any actions taken or not taken under it, shall not affect the County's rights under the "Termination" clause.

13. Termination

- A. This Agreement may be terminated by mutual consent of both parties or unilaterally by either party at any time upon thirty 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:

- 1) 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.
- 2) 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. 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 terminated under this clause.

B. The County, by written notice of default (including breach of contract) to the Contractor, may terminate this Agreement:

- 1) 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
- 2) If the Contractor fails to perform any of the other requirements of this Agreement; or
- 3) 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.

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.

14. 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 "Renegotiation or Modification."

15. 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.

16. 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, creed, national origin or duration of residence, 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.

17. 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.

18. Funds Authorized and Available

The County certifies that at the time of signing of 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.

EXHIBIT I

POLK COUNTY MEDICAL EXAMINER

Contractor shall serve as Polk County Medical Examiner for Polk County, Oregon, and shall provide the following services:

1. Provide telephonic advice to deputy medical examiners, attend death scenes or conduct death investigations at the medical examiner's option and certify the cause of death.
2. Perform any other services that are required by the State Medical Examiner and by the Oregon Revised Statutes.



CONTRACT REVIEW SHEET

Staff Contact: Rosana Warren Phone Number (Ext): 2550
Department: Health Services: Behavioral Health Consent Calendar Date: May 22, 2024
Contractor Name: Kinsey Miller dba Elder Care of Oregon
Address: PO Box 5565
City, State, Zip: Salem, OR 97304
Effective Dates - From: July 01, 2024 Through: June 30, 2025
Contract Amount: Varies

Background:

Kinsey Miller, doing business as Elder Care of Oregon, has agreed to provide Behavioral Health services to referred Polk County Behavioral Health individuals.

Discussion:

This contract is a continuation of services Kinsey Miller has been providing Polk County individuals in the past fiscal years. Kinsey Miller 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 fiscal year 2024-2025 Behavioral Health budget was prepared in anticipation of this agreement.

Recommendation:

It is recommended that Polk County sign this agreement with Kinsey Miller dba Elder Care of Oregon.

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 ID#: 93-6002310 |
| CONTACT PERSON: | ROSANA WARREN |
| DATE ISSUED: | 05/16/24 |
| CONTRACTOR | KINSEY MILLER, dba ELDER CARE OF OREGON PO BOX 5565 SALEM, OR 97304 SSN/ID#: ON FILE |
| CONTACT PERSON: | KINSEY MILLER |
| SERVICES PROVIDED: | To provide Behavioral Health Clinical services as outlined in Exhibit B. |
| EFFECTIVE DATES: | FROM JULY 01, 2024 THROUGH JUNE 30, 2025 |
| BUDGET LINE #: | 240-8540-540-M20/M31 |
| 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
ID#: 93-6002310**

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

**KINSEY MILLER, dba ELDER CARE OF OREGON
PO BOX 5565
SALEM, OR 97304
SSN/ID#: 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 July 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) per occurrence and three million dollars (\$3,000,000) in the aggregate. 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:
- i. 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.
 - ii. Contractor shall pay all contributions or amounts due the Industrial Accident Fund from such contractor or subcontractor incurred in the performance of the contract.
 - iii. 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.
 - iv. 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.


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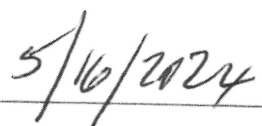
SIGNATURE PAGE

BY SIGNATURE BELOW, both parties agree to and accept all terms and conditions of this Agreement between County and Contractor along with the following:

- Exhibit A: Business Associate Agreement
- Exhibit B: Statement of Work

CONTRACTOR


Signature


Date

COUNTY

Chair
Board of Commissioners

Date

APPROVED AS TO FORM

Morgan Smith
County Counsel

Date

EXHIBIT A:
BUSINESS ASSOCIATE AGREEMENT
Between

POLK COUNTY and KINSEY MILLER, dba ELDER CARE OF OREGON

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 to as "COUNTY" and KINSEY MILLER, dba ELDER CARE OF OREGON, 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.

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.

- 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 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 July 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, KINSEY MILLER, dba ELDER CARE OF OREGON, 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 Professional Counselor, 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 will provide Behavioral Health Clinical services. 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.

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 days 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 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 County to be compliant with applicable regulations.

4. RATES AND METHOD OF PAY

- A. County shall reimburse the Contractor at the rate of \$120.00 per hour for services as outlined in the Service Activity Authorization form with services paid on a per occurrence basis to the nearest quarter hour upon receipt of an invoice.
- B. County shall reimburse the Contractor at the rate of \$600.00 per Pre-Admission Screening and Resident Review (PASRR) upon receipt of an invoice.
- C. 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): 2550
Department: Health Services: Behavioral Health Consent Calendar Date: May 22, 2024
Contractor Name: Andrew Stover Psyd, Inc.
Address: PO Box 1001
City, State, Zip: Seaside, OR 97138
Effective Dates - From: July 01, 2024 Through: June 30, 2025
Contract Amount: Varies

Background:

Andrew Stover Psyd, Inc. has agreed to provide Behavioral Health Clinical to Polk County Health Services.

Discussion:

This contract is a continuation of services Dr. Andrew Stover has been providing Polk County individuals in the past fiscal year. Andrew Stover, Psyd. 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 fiscal year 2023-2024 Behavioral Health budget was prepared in anticipation of this agreement.

Recommendation:

It is recommended that Polk County sign this agreement with Andrew Stover Psyd, Inc.

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 ID#: 93-6002310 |
| CONTACT PERSON: | ROSANA WARREN |
| DATE ISSUED: | 05/08/24 |
| CONTRACTOR | ANDREW R. STOVER PSYD, INC. PO BOX 1001 SALEM, OR 97308 SSN/ID#: ON FILE |
| CONTACT PERSON: | DR. ANDREW STOVER |
| SERVICES PROVIDED: | To provide forensic evaluator consultation during RAD, aka the Aid and Assist Docket meeting. |
| EFFECTIVE DATES: | FROM JULY 01, 2024 THROUGH JUNE 30, 2025 |
| BUDGET LINE #: | 240-8540-540-M88 |
| DOLLAR AMOUNT: | \$38,100.00 max |
| TERMS: | Service Rates per Exhibit C. |
| ADDITIONAL COMMENTS/INFORMATION: | |

NOTIFY CONTRACTS TEAM IMMEDIATELY OF ANY CONTRACT TERMINATIONHS.CONTRACTS@co.polk.or.us

PERSONAL SERVICES CONTRACT

This Agreement is made and entered into by and between Polk County, a political subdivision of the State of Oregon, and Andrew R. Stover, Psy.D. Inc., hereafter referred to as "Contractor."

Polk County is authorized to obtain, by contract, services necessary to conduct its operations. Contractor has available, or can cause to be provided, the facilities, skills and/or staff required for the performance of these services.

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

1. Contract Term. This Agreement, beginning July 01, 2024 and ending June 30, 2025, 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. Payment for services approved prior to the effective date shall be retroactive.
2. Contractor's services. Contractor shall perform the necessary services to conduct the program(s) more fully described in Exhibit B, attached hereto and by this reference incorporated into this Agreement. Services shall be performed in accordance with a schedule approved by Polk County.
3. Assignment. Neither party shall assign, sublet or transfer any interest in or duty under this agreement without the written consent of the other, and no assignment shall be of any force or effect whatsoever unless and until the other party has so consented.
4. Laws and regulations. Polk County and Contractor agree to comply with the ordinances and regulations of Polk County; applicable provisions in any contract between Polk County and the State of Oregon relating to the services to be provided under this Agreement by the Contractor; and all provisions of Federal and State law, rules and regulations relating to Contractor's performance of services under this Agreement. Contractor further expressly agrees to comply, as applicable, with the statutory language contained in Exhibit A, attached hereto and incorporated by reference into this Agreement. In the case of an act or duty of Polk County, imposed upon Polk County by the State of Oregon, which, by the nature of this Agreement, Polk County determines to be within the scope of this Agreement and is to be performed by Contractor, Contractor shall perform such act or duty on behalf of Polk County.
5. Conflict of Interest. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree

with the performance of its services. Contractor further covenants that in the performance of this contract no person having any such interest shall be employed.

6. Monitoring. Contractor agrees that time slips and billings that pertain to services under this Agreement shall be open for inspection by Polk County's agents at any reasonable time during business hours.
7. Payments/Consideration. Polk County shall pay Contractor pursuant to the terms and conditions stated in the attached Exhibit C, attached hereto and incorporated by reference into this Agreement.
8. Withholding payments; liquidated damages. Notwithstanding any other payment provision of this Agreement, if contractor fails to submit required reports when due, or fails to perform or document the performance of contracted services, Polk County may immediately withhold payments under this Agreement until such requirements are fulfilled by Contractor.
9. Termination. All or part of this Agreement may be terminated by mutual consent of both parties, or by either party at any time for convenience after 30 days notice in writing. Polk County may terminate all or part of this Agreement for any one or more of the reasons specified below:
 - a. After 10 days notice, if funding to Polk County from Federal, State or other sources is not obtained or is not continued at levels sufficient to allow for purchase of the indicated quantity of services. Polk County will give more notice whenever possible.
 - b. After 30 days notice, if Federal or State regulations are changed in such a way that services no longer are allowable under this Agreement.
 - c. Immediately, on notice of denial, revocation or non-renewal of any letter of approval, license or certificate required by law, rule or regulation to be held by Contractor to provide a service under this Agreement.
 - d. Immediately, if Contractor fails to provide services, or fails to meet any performance standard as specified by Polk County in this Agreement (or subsequent modifications of this Agreement) within the time therein specified, or any extensions thereof.
 - e. Immediately, if Polk County has evidence that Contractor has endangered or is endangering the health and safety of clients, residents, staff or the public.

- f. Immediately, upon failure of Contractor to comply with the provisions of this Agreement and all applicable Federal, State and local laws, rules and regulations.
- g. Termination, or the withholding of payments or reduction of obligation under Section 6.0, shall be without prejudice to any other obligation or liability of either party accrued prior thereto.

10. Independent contractor. Contractor is engaged as an Independent Contractor.

- a. Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Agreement.
- b. This Agreement is not intended to entitle Contractor to any benefits generally granted to Polk County employees. By way of illustration, but without limitation, 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.
- c. Contractor is an Independent Contractor for purposes of the Workers' Compensation Law (ORS Chapter 656) and is solely liable for any Workers' Compensation coverage under this Agreement. If Contractor has the assistance of other persons in the performance of this Agreement, Contractor shall qualify and remain qualified for the term of this Agreement as an insured employer under ORS 656.407. If Contractor performs this Agreement without the assistance of any other person, Contractor shall execute a Joint Declaration with Polk County's Workers' Compensation carrier absolving Polk County of any and all liability as provided in ORS 656.029.

11. Delegation and reports. Contractor shall not delegate the responsibility for providing services under this Agreement to any other individual or agency, and shall provide Polk County with periodic reports at the frequency and with the information required by Polk County.

12. Constraints. This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, Oregon Constitution, and is contingent upon funds being available and appropriated therefor. Any provisions in this Agreement which would conflict with law are deemed inoperative to that extent. The statutory provisions set out in Exhibit A of this Agreement, as applicable, constitute a part of this Agreement.

It is understood by both parties that no commitments have been or are made by either party beyond the end of this Agreement.

13. Hold harmless. County has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor warrants that all of its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state, and local laws, it being understood that acceptance of Contractor's work by County shall not operate as a waiver or release. Contractor is responsible for injury to persons or property caused directly or indirectly by reason of activities by Contractor, its subcontractor or the employees of either, in the performance of this Agreement. Contractor further agrees to indemnify, save harmless and defend Polk County, its officers, agents and employees from and against all claims, suits, actions, damages, costs, attorneys fees, losses and expenses in any manner resulting from, arising out of, or connected with any such damage and/or injury that may be asserted by any person or entity in connection with the performance of work described in this contract, except liability arising out of the sole negligence of the County and its employees. Such indemnification shall also cover claims brought against Polk County under state or federal workers compensation laws. If any aspect of this indemnity provision shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this provision.
14. Settlement of disputes. Differences between a Contractor and Polk County, or between contractors, will be resolved when possible at appropriate management levels. Polk County has ultimate responsibility and authority for resolution of disagreements among subcontract agencies.
15. Non-discrimination. Contractor agrees that no person, on grounds of race, color, creed, national origin, sex, marital status or age, will suffer discrimination in the performance of this Agreement when employed by Contractor.
16. Attorney fees. If an action, suit or proceeding, including appeal therefrom, is brought for failure to observe any terms of this Agreement, each party is responsible for its own attorney's fees, expenses, costs and disbursements for the action, suit, proceeding or appeal.
17. Disputes. All disputes, and all claims for alleged breach of contract shall, within ten days of the commencement of dispute, be presented in writing to Polk County for decision; but in the meanwhile, Contractor shall proceed with the work as directed.


18. Captions. The headings or captions in this Agreement are solely for convenience of the reader, and do not have legal effect.
19. Choice of Law. This Agreement shall be governed by the laws of the State of Oregon.
20. Venue. Venue relating to this Agreement shall be in the district or circuit courts of the State of Oregon for Polk County, located in Dallas, Oregon.
21. Severability. If any provision of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

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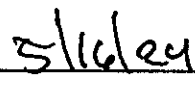
SIGNATURE PAGE

This Agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in. There are no understanding, agreements, or representations, oral or written, not specified herein regarding this Agreement. Contractor, by his signature below hereby acknowledges that he has read this Agreement, understands it and agrees to be bound by its terms and conditions.

CONTRACTOR



Signature



Date

COUNTY

Chair
Board of Commissioners

Date

APPROVED AS TO FORM

Morgan Smith
County Counsel

Date

EXHIBIT A
CLAUSES REQUIRED BY OREGON LAW FOR PERSONAL SERVICE CONTRACTS

1. Payment of Subcontractors, Industrial Accident Fund Contributions, Liens and Withholding Taxes

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.

Contractor shall pay all contributions or amounts due the Industrial Accident Fund from such contractor or subcontractor incurred in the performance of the contract.

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.

Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

2. 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 the 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 the contractor's surety from obligation with respect to any unpaid claims.

3. 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.

4. Payment for Medical Care

Contractor shall promptly, as due, make payment to any person, copartnership, 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 for such service.

5. Providing Workers' Compensation Insurance

All employers working under this contract are subject employers who will comply with ORS 656.017.

6. 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 B
STATEMENT OF SERVICES

1. STATEMENT OF SERVICES. Contractor shall perform Services as described below.
 - A. GENERAL INFORMATION. The last several years Polk County Health and Human Services (HHS) has worked in partnership with the Oregon State Hospital, the District Attorney's Office, and the Sheriff's Office to provide community based services for clients who are in the Criminal Justice system and going through the Aid and Assist process. With this in mind the collaboration has worked to engage in community services and to reduce the length of incarceration for persons in the aid and assist evaluation process. This has led to the creation of a Rapid Docket to monitor, hold accountable, and improve the court processes for aid and assist; including the evaluation process. Contractor has agreed to provide up to 3 slots per week to provide rapid access to evaluations.

- B. REQUIRED SERVICES, DELIVERABLES AND DELIVERY SCHEDULE.

Contractor shall perform the following tasks;

1. Referrals and Requests

Contractor shall meet weekly with the Aid and Assist Docket team to review identified cases for the week; persons to receive evaluations that week and those shall be identified and agreed upon by the team. All Release of Information (ROI) and other orders for access to information to perform evaluations shall be agreed upon in writing at the weekly meetings. Contractor shall then have two weeks to perform the evaluation and present its findings.

- C. SPECIAL REQUIREMENTS. Contractor shall be solely responsible for and shall have control over the means, methods, techniques, sequences and procedures of performing the work, subject to the plans and specifications under this Contract and shall be solely responsible for the errors and omissions of its employees, subcontractors and agents. Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence and perform Services in a timely, professional and workmanlike manner in accordance with standards applicable to Contractor's industry, trade or profession.

EXHIBIT C
RATES

1. Payment of Contractor. Subject to availability of funds, County shall pay Contractor after receipt of a billing statement for rendering the services listed in this Agreement as set forth in Exhibit B at a rate of \$425.00 per RAD Consultation Meeting (inclusive of mileage). Monthly invoices shall not exceed \$3,175 per month. Contractor shall also receive \$350.00 for each “individual no show” for up to 3 slots per month. Contractor shall provide email notification of each no show. Such emails shall be directed to Kerry Hammerschmith at hammerschmith.kerry@co.polk.or.us
2. Notwithstanding any other payment provision of this contract, failure of the Contractor to submit required reports when due, or failure to perform or document the performance of contracted services, may result in withholding of payments under this contract. Such withholding of payment for cause shall begin thirty (30) days after written notice is given by the County to the Contractor, and shall continue until the Contractor submits required reports, performs required services or establishes, to the County’s satisfaction, that such failure arose out of causes beyond the control, and without the fault or negligence of the Contractor.
3. Contractor shall send all invoices to County’s at the address or email address specified below:

Polk County Behavioral Health
Attn: Business Services
182 SW Academy St.
Dallas, OR 97338
Email: hs.fiscal@co.polk.or.us



POLK COUNTY

POLK COUNTY COURTHOUSE ★ DALLAS, OREGON 97338-3177
(503) 623-8173 ★ FAX (503) 623-0896

BOARD OF COMMISSIONERS

Commissioners

CRAIG A. POPE

JEREMY GORDON

LYLER MORDHORST

GREGORY P. HANSEN

Administrative Officer

MEMORANDUM

TO: Board of Commissioners

FROM: Nicole Pineda, Executive Assistant

DATE: May 20, 2024

SUBJECT: Appointment's to the West Valley Housing Authority Board

RECOMMENDATION:

Adopt Order 24-05 in the matter of appointing Jodi Russell to the West Valley Housing Authority Board, term to expire May, 2028.

ISSUE:

Should the above-named applicant be appointed to the West Valley Housing Authority Board?

BACKGROUND:

Jodi Russell applied for the WVHA in January 2024 and has attended several meetings. Ms. Russell supplied the Board with a cover letter, application, and recommendation of appointment from the WVHA Chair.

ALTERNATIVES:

1. Adopt Order 24-05, appointing Jodi Russell to the West Valley Housing Authority Board of Commissioners.
2. Don't adopt Order 24-05, appointing Jodi Russell to the West Valley Housing Authority Board of Commissioners and advertise for others who might be interested in serving.

FISCAL IMPACT:

No direct fiscal impact.

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6 **BEFORE THE BOARD OF COMMISSIONERS FOR**
7 **POLK COUNTY, OREGON**
8

9 In the Matter of Appointing)
10 Commissioners for the)
11 Housing Authority and)
12 Urban Renewal Agency of)
13 Polk County)

14
15 **ORDER NO. 24-05**
16

17 WHEREAS, the Polk County Board of Commissioners, pursuant to ORS 456.095 have
18 the authority to appoint a Board of Commissioners to oversee the operations of the Housing
19 Authority; and
20

21 WHEREAS, the Bylaws which govern operation of the Housing Authority and Urban
22 Renewal Agency of Polk County, allow for appointment of Commissioners to four (4) year terms;
23 and
24

25 WHEREAS, the Polk County Commissioners have sought out qualified individuals to
26 serve on the Board of Commissioners for the Housing Authority and Urban Renewal Agency of
27 Polk County;
28
29

30 **NOW THEREFORE, THE POLK COUNTY BOARD OF COMMISSIONERS ORDER AS FOLLOWS:**
31

- 32 1. Jodi Russell is appointed to Position #1. Term of appointment is through May 2028
33

34 Dated this 22nd day of May, 2024 at Dallas, Oregon.
35

36 BOARD OF COMMISSIONERS
37
38

39 _____
40 Craig Pope, Chair
41
42

43 _____
44 Lyle Mordhorst, Commissioner
45

46 Approved as to Form
47
48

49 _____
50 Jeremy Gordon, Commissioner

51 _____
52 Morgan Smith, County Counsel

**INTERGOVERNMENTAL AGREEMENT #6545
BETWEEN THE STATE OF OREGON AND POLK COUNTY
AMENDMENT #1**

This amendment #1 ("Amendment") to Intergovernmental #6545 ("Agreement"), is entered into by and between the State of Oregon, acting by and through its Department of Corrections, hereinafter referred to as "Department" and Polk County, hereafter called "County".

1. The Agreement is hereby amended as follows. (Unless otherwise noted, new language is indicated by being in **bold and underlined** and deleted language is indicated by [brackets]):
 - 1.1 Exhibit A, Budget Summary is hereby deleted in its entirety and replaced with the attached.
2. Except as expressly amended above, all other terms and conditions of the original contract are still in full force and effect. Contractor certifies that the representations, warranties and certifications contained in the original Contract are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.
3. Certification: By signature on this Amendment for Contractor, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Contractor and that Contractor is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 (Amusement Device Taxes), 403.200 to 403.250 (Tax For Emergency Communications), 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 321 (Timber and Forest Land Taxation) and 323 (Cigarettes And Tobacco Products) and the elderly rental assistance program under ORS 310.630 to 310.706 and any local taxes administered by the Department of Revenue under ORS 305.620.

STATE OF OREGON
DEPT. OF CORRECTIONS

POLK COUNTY
BOARD OF COMMISSIONERS

Eric McDowell, Contracts Officer

Chair

Date

Date

Approved for Legal Sufficiency
Oregon Attorney General's Office:

/s/ Sam Zeigler by email dated 5/8/2024
Assistant Attorney General

IGA #6545 Polk County

Contracts esm 050824