

MASTER GRANT AGREEMENT 2013-2014

EXHIBIT B

STANDARD TERMS AND CONDITIONS

1. Notice of Allocation; Work Plan Approval.

There is no guarantee of funding under this Agreement. Grant funding for applicable Grant Program Work Plans will be allocated to Subgrantee by OHCS through a Notice(s) of Allocation (“NOA”) issued in accordance with federal awards and pursuant to the terms of this Agreement.

Funding for applicable Work related to specific Work Plans is contingent, without limitation, upon Subgrantee’s submission to OHCS of corresponding Work Plans satisfactory to OHCS and upon OHCS’ review and approval, at its sole discretion, of such Work Plans. Approvals by OHCS of Work Plans will be provided to Subgrantee in the form of one or more NOA to Subgrantee. Subgrantee shall be subject to, and comply with, all NOA terms regarding related approved Work Plans.

Grant funds may derive from federal, state, and private sources, are subject to the terms under which they are received and shall be provided by OHCS only for reimbursement of allowable costs incurred by Subgrantee within the terms and conditions of this Agreement, specific program requirements (including OHCS directives), and applicable law.

2. Funding Appropriation.

Funds specified in the Consideration section of this Agreement or otherwise may include funds which have not yet been appropriated, but which OHCS anticipates receiving for use in funding this Agreement and is not a guarantee that Subgrantee will receive all of such funds. Any and all disbursements of funds hereunder are contingent upon them being lawfully and fully appropriated, allocated, and available to OHCS. Subgrantee’s obligation to perform the Work related to a particular NOA is conditioned upon OHCS receiving corresponding Grant funds or other funds available for reimbursement of such Work expenditures.

3. Notices of Allocation (NOA).

OHCS will issue one or more NOA, as appropriate, in form satisfactory to OHCS, detailing the amount of funds available to Subgrantee under this Agreement. OHCS may, at its option, modify any approved NOA to reflect changes pursuant to Section 7, to correct errors in an NOA, to adjust Grant funds awarded under this Agreement in response to the receipt by Subgrantee of other funds or to reflect the exercise of remedies or other discretionary acts by OHCS under this Agreement or otherwise. The modification or termination of an NOA by OHCS does not terminate OHCS remedies with respect to Subgrantee’s performance or non-performance of obligations that were due under this Agreement with respect to Work related to said NOA. At the option of OHCS, OHCS may issue any NOA to Subgrantee (or any modification or termination thereof) by email, fax, or first class mail at the address or number listed in sections 5 and 6 of the Agreement.

The Grant funds specified in an applicable NOA may be used to pay costs incurred during the specific expenditure periods and in the specific expenditure categories noted in the NOA provided, however, that all performance by the Subgrantee for which Grant fund reimbursement will be sought under this Agreement must be in compliance with this Agreement, including any amendments hereof.

4. Acceptance of Notices of Allocation (NOA).

Any NOA issued by OHCS under this Agreement is immediately binding upon the Subgrantee as to the amount of Grant funds available to Subgrantee under this Agreement with respect to related Work Plans. Subgrantee shall be obligated to perform Work obligations related to the NOA and corresponding Work Plans immediately upon its acceptance of same consistent with this Agreement. An accepted NOA shall be deemed to be incorporated into and constitute a part of this Agreement.

Unless earlier accepted by the Subgrantee in writing, the Subgrantee accepts an NOA as issued, and agrees to be bound by same (including modifications thereto), upon undertaking any performance of related Work.

5. Rollover Funds From a Prior Grant Agreement.

Subject to state and federal restrictions, Subgrantee may request in writing that grant authority allocated but not expended under a prior Master Grant Agreement, be allocated under this Agreement as an award of “rollover” Grant funds.

Subject to state and federal restrictions, OHCS may, at its sole and absolute discretion, approve any award of rollover grant funds from a prior Grant Agreement. Any rollover Grant funds shall be subject to all terms and conditions of this Agreement - and shall be subject to such terms and conditions of the prior Grant Agreement as OHCS may specify in its rollover approval.

Any request for an award of rollover Grant funds by Subgrantee must be made in form and content satisfactory to OHCS.

6. Requests for Funds.

Subgrantee shall request funds in such form and manner as is satisfactory to or required by OHCS. Further, in accordance with U.S. Department of Treasury Regulations, 31 CFR Part 205, implementing the Cash Management Improvement Act, Subgrantee shall limit any request for funds to the minimum amount needed to accomplish its described purposes and to time the request in accordance with the actual, immediate requirements in carrying out grant programs to be funded through the request for funds.

7. Remedies Related to Requests for Funds.

a. Withholding of Funds from Request.

OHCS may withhold any and all requested funds from Subgrantee under this Agreement if OHCS, in its sole discretion, determines that Subgrantee has failed to timely satisfy any material obligation arising under this Agreement or otherwise. Subgrantee obligations include, but are not limited to providing complete, accurate and timely reports satisfactory to OHCS about its performance under this Agreement as well as timely satisfying all Agreement obligations, including federal requirements relating to any awarded grant funds. OHCS also may withhold any and all requested funds from Subgrantee if OHCS, in its sole discretion, determines that the rate of requests for funds in any expenditure category is substantially different from approved budget submissions.

b. Redistribution or Retention of Funds.

Due to non-timely use.

If grant funds are not obligated for reimbursement by Subgrantee in a timely manner as determined by OHCS at its sole discretion, OHCS may at its sole discretion, reduce Subgrantee funding and redistribute such funds to other Subgrantees or retain such funds for other OHCS use. OHCS may implement adjustments pursuant to this subsection by modifying the applicable NOA. This remedy is in addition to any other remedies available to OHCS under this Agreement or otherwise.

2) Due to “substantial difference” in expenditure category from Approved Budget Submissions.

If the rate of request for any expenditure category is substantially different than in approved budget submissions as determined by OHCS at its sole discretion, OHCS may, at its sole discretion, reduce and redistribute or retain any and all funds otherwise available to Subgrantee under this Agreement. OHCS may implement adjustments pursuant to this subsection by modifying the applicable NOA. This remedy is in addition to any other remedies available to OHCS under this Agreement or otherwise.

c. Repayment of Excess Disbursed Funds.

1) Due to Modified NOA.

If Grant funds previously disbursed by OHCS to Subgrantee exceed a relevant modified NOA amount and remain unexpended by Subgrantee, Subgrantee shall not expend any such excess Grant funds. Subgrantee, instead, shall return any remaining unexpended Grant funds in excess of the modified NOA to OHCS within 60 calendar days of the modified NOA unless another use of such funds is authorized in writing by OHCS. This remedy is in addition to any other remedies available to OHCS under this Agreement or otherwise.

2) Due to Overpayment.

If OHCS makes an overpayment of Grant funds to Subgrantee in response to one or more funds requests, whether or not the underlying request(s) were inaccurate, Subgrantee shall repay such overpayment within 60 calendar days of its discovery by Subgrantee or upon notice by OHCS, unless OHCS in writing designates an earlier time for repayment or authorizes another use by Subgrantee of such overpayment. This remedy is in addition to any other remedies available to OHCS under this Agreement or otherwise.

8. Termination.

- a. OHCS may immediately terminate this Agreement in whole or in part upon written notice to the Subgrantee for cause related to any material misrepresentation, malfeasance, gross negligence, abandonment of performance or loss of authority to perform any of its obligations hereunder by Subgrantee, whether directly by Subgrantee or through one or more of its subrecipients, agents, subcontractors, successors or assigns, as determined by OHCS in its sole discretion.
- b. OHCS may, upon 30 days written notice, terminate this Agreement in whole or in part for cause including, but not limited to events described above in subsection 8.a. Cause may include any event, including an event of default, as determined by OHCS in its sole discretion that renders inappropriate the continuation of this Agreement or any part hereof. An event of default constitutes an act or omission by Subgrantee, its subrecipients, agents, representatives, contractors, or assigns by which Subgrantee, as determined by OHCS at its sole discretion, fails to timely perform one or more material obligations, or otherwise breaches a duty, owed to OHCS under this Agreement. Such events and events of default may include, but are not limited to an occurrence of any of the following:
 - 1) Subgrantee fails to fulfill timely any of its obligations under this Agreement;
 - 2) Subgrantee fails to comply timely with directives received from OHCS or from an agency that is the original source of the grant funds;
 - 3) Funds provided under this Agreement are used improperly or illegally by Subgrantee or any of its subrecipients;
 - 4) Funding for any or all grant programs relevant to this Agreement are denied, suspended, reduced or eliminated;
 - 5) Federal or state laws, regulations or guidelines are modified or interpreted in such a way that OHCS is prohibited from paying for or lacks authority to pay for any Work performance under this Agreement or to pay for any such performance from the planned funding source(s);
 - 6) Funding, appropriations, limitations or expenditure authorization to expend funds is denied, suspended, reduced or eliminated;
 - 7) Any certification, license or certificate required by law to be held by Subgrantee or others to provide the services required by this Agreement is for any reason denied, revoked, suspended, limited or not renewed;

- 8) Subgrantee (a) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or its property, (b) admits in writing its inability, or is generally unable, to pay its debts as they become due, (c) makes a general assignment for the benefit of its creditors, (d) commences a voluntary case under the federal Bankruptcy Code (as now or hereafter in effect), (e) is adjudicated as bankrupt or insolvent, or (f) fails to controvert in a timely or appropriate manner, or agrees in writing to, an involuntary petition for bankruptcy;
 - 9) Subgrantee is suspended, debarred, proposed for debarment, declared ineligible or voluntarily excluded from participating in agreements or contracts with any federal department or agency.
- c. Subgrantee may, upon 30 days written notice, terminate this Agreement in whole or in part, if:
- 1) OHCS unreasonably fails to provide timely funding hereunder and does not correct such failure within the 30-day notice period; or.
 - 2) OHCS provides one or more material directives which are contrary to federal or state laws, rules, regulations, guidelines, or original funding source requirements and does not correct such directives within the 30-day notice period.
- d. Either party may terminate this Agreement in whole or in part immediately upon written notice to the other party if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a competent court (in a final determination) in such a way that one or both parties no longer has the authority to meet its obligations under this Agreement.
- e. Upon issuance of any notice to terminate this Agreement and prior to the effective date of the termination, OHCS may, in its sole and absolute discretion, require that Subgrantee obtain prior OHCS approval from it for any additional expenditures that would obligate OHCS to reimburse it from Agreement grant funds or otherwise.
- f. Notwithstanding the above, or any termination thereunder, neither Subgrantee nor OHCS shall be relieved of its liability to the other party for damages sustained by virtue of its breach of this Agreement. OHCS may withhold any reimbursement to Subgrantee in the amount of compensation for damages due OHCS from Subgrantee (as estimated by OHCS in its sole discretion) until such time as the exact amount of damages has been agreed upon or otherwise finally determined.
- g. In the event of termination of this Agreement by either party, all unexpended money, property, finished or unfinished documents, data, financial reports, audit reports, program reports, studies and reports purchased or prepared by Subgrantee under this Agreement shall be delivered to OHCS within sixty (60) days of the date of termination or upon such date as requested by OHCS.
- h. Termination of this Agreement shall not impair or invalidate any remedy available to OHCS or to Subgrantee hereunder, at law, or otherwise.

9. Compliance.

Both parties shall, and Subgrantee shall require and cause (including by contract) all subrecipients, contractors, agents and assigns to comply with this Agreement, including applicable federal, state, and local laws, rules, regulations, and guidelines as well as OHCS directives with respect to any of its obligations related to grant programs funded under this Agreement or for which requests for funding are made, whether or not any such requirement described herein or listed within the respective Work Plan, particularly the Federal Funding Accountability and Transparency Act (FFATA) of 2006 (P.L. 109-282), provisions of which include but may not be limited to a requirement for Subgrantees and subrecipients to have a Data Universal Numbering System (DUNS) number and to maintain a current registration in the Central Contractor Registration (CCR) database. Both parties shall, and Subgrantee shall require and cause its subrecipients to, comply with such requirements whether or not such requirements exist at the time this Agreement is executed, or arise subsequent to the execution of this Agreement. Performance by both parties of their respective obligations hereunder must be made efficiently, effectively and within applicable program timelines.

Subgrantee shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement. Without limiting the generality of the foregoing, Subgrantee expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. Subgrantee shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper (as defined in ORS 279A.010(gg)), recycled PETE products (as defined in ORS 279A.010(hh)), and other recycled products (as "recycled product" is defined in ORS 279A.010(ii)).

10. Governing Law; Venue; 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") involving OHCS that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon or, if necessary, the United States District Court for the District of Oregon. 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.

11. Confidentiality.

Subgrantee shall, and shall require and cause its subrecipients to protect the confidentiality of all information concerning applicants for and recipients of services funded by this Agreement. It shall not release or disclose any such information except as necessary for the administration of the program(s), as authorized in writing by the applicant or recipient or as required by law. All records and files shall be appropriately secured to prevent access by unauthorized persons.

Subgrantee shall, and shall require and cause its subrecipients to ensure that all its officers, employees and agents are aware of and comply with this confidentiality requirement.

12. Monitoring Required.

a. OHCS Authorized to Monitor Each Subgrantee.

OHCS may monitor the activities of each Subgrantee and its subrecipients as it deems necessary or appropriate, among other things, to ensure Subgrantee and its subrecipients comply with the terms of this Agreement and that grant fund awards are used properly for authorized purposes hereunder OHCS also may ensure that performance goals are achieved as specified in this Agreement, including without limitation in the Scope of Work, related Program Elements, Work Plans and Budgets referenced in Exhibit A. Monitoring activities may include any action deemed necessary or appropriate by OHCS including, but not limited to the following: (1) the review (including copying) from time to time of any and all Subgrantee and subrecipient(s) files, records and other information of every type arising from or related to performance under this Agreement; (2) arranging for, performing, and evaluating general and limited scope audits; (3) conducting or arranging for on-site and field visits and inspections; (4) review of Subgrantee fiscal and program reports prior approval documentation; and (5) evaluating, training,

providing technical assistance and enforcing compliance of Subgrantee, subrecipient(s), and their officers, employees, agents, contractors and other staff. OHCS may utilize third parties in its monitoring and enforcement activities, including monitoring by peer agencies. OHCS monitoring and enforcement activities may be conducted in person, by telephone and by other means deemed appropriate by OHCS and may be effected through contractors, agents or other authorized representatives. Subgrantee consents to such monitoring and enforcement by OHCS and agrees to cooperate fully with same, including requiring by agreement and causing that its subrecipients so cooperate.

OHCS reserves the right, at its sole and absolute discretion, to request assistance in monitoring from outside parties including, but not limited to the Oregon Secretary of State, the Attorney General, the federal government, and law enforcement agencies.

b. Subgrantee Shall Fully Cooperate.

Subgrantee shall fully and timely cooperate with OHCS in the performance of any and all monitoring and enforcement activities. Failure by Subgrantee or any of its subrecipients to comply with this requirement is sufficient cause for OHCS to require special conditions and may be deemed by OHCS as a failure by the Subgrantee to perform its obligations under this Agreement.

c. Subgrantee Shall Monitor Its Subrecipients.

Subgrantee shall perform onsite visits to monitor the activities of its subrecipients as specified by applicable grant program requirements or otherwise directed by OHCS, but in no case less than at least once during the term of this Agreement, and not later than the third quarter of the term of this Agreement (unless otherwise approved in writing by OHCS) to ensure that grant funds are used for authorized purposes in compliance with this Agreement, including but not limited to specific program requirements, and that performance goals are achieved as specified in the Scope of Work.

13. Monitoring.

- a. OHCS generally will advise the Subgrantee as to its observations and findings generated by any on-site visit; usually through an exit interview. Within 60 days after an on-site inspection, OHCS will endeavor to provide Subgrantee with a written report as to its findings from that inspection. OHCS may advise the Subgrantee of any corrective action that it deems appropriate based upon its monitoring activities or otherwise. Subgrantee shall timely satisfy such corrective actions required by OHCS.
- b. OHCS may review (including copying) from time to time any and all Subgrantee and subrecipient(s) files, records, and other information of every type arising from or related to performance under this Agreement. Within 60 days after a review, OHCS will endeavor to communicate in writing to the Subgrantee. OHCS may advise the Subgrantee of any corrective action that it deems appropriate based upon its monitoring activities or otherwise. Subgrantee shall timely satisfy such corrective actions as reasonably required by OHCS.

14. Monitoring: Major Findings Resolution.

OHCS may track and follow up with Subgrantee regarding the correction by Subgrantee of findings made or other corrective actions required in OHCS' monitoring of Subgrantee's performance under this Agreement. The tracking record developed by OHCS may include, without limitation: findings, corrective actions, deliverables, due dates, responsible parties, actions taken, and final resolution. Subgrantees shall resolve findings and other required corrective actions within the timeframes reasonably given by OHCS by written report or otherwise.

15. Remedies.

- a. If OHCS determines, in its sole discretion, that Subgrantee has failed to comply timely with any material obligation under this Agreement, including but not limited to any OHCS directive or term of a corrective

action plan, OHCS may exercise any remedy available to it under this Agreement, applicable law, or otherwise. Such remedies may include, but are not limited to: (a) terminating any part or all of this Agreement; (b) modifying any NOA under this Agreement; (c) withholding and/or reducing grant funds; (d) disallowing costs; (e) suspending and/or recouping payments; (f) appointing a receiver for the receipt and administration of grant funds under this Agreement; (g) requiring corrective action as it may determine to be appropriate; (h) bringing suit or action in an appropriate forum for the enforcement of this Agreement and any remedy, as well as the recovery of damages, including by temporary restraining order, injunction, specific performance or otherwise; (i) debarring or otherwise limiting Subgrantee's eligibility for other funding from OHCS; (j) instituting criminal action for misstatements or fraud; and (k) requesting investigation, audit and/or sanction by other governmental bodies.

- b. The rights and remedies of OHCS provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided under this Agreement, by law, or otherwise. This Section also does not limit Subgrantee's remedies provided under this Agreement, by law, or otherwise.
- c. No failure of or delay by OHCS to enforce any provision of this Agreement shall constitute a waiver by OHCS of that or any other provision, nor shall any single or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.
- d. Remedies provided under this Agreement or otherwise shall survive termination of this Agreement.

16. Return of Unexpended Funds at Program Final Expenditure Period End.

All unexpended cash or income from such funds remaining at the end of any program final period for any program(s) covered by this Agreement must be returned by Subgrantee to OHCS within the time allowed for using Grant funds requested under a Grant Program consistent with U.S. Department of Treasury regulations or other controlling law. Where not otherwise specified or restricted, Grant funds must be returned by Subgrantee to OHCS within Sixty (60) days following the expiration of the Grant Programs' expenditure period or the termination of this Agreement, whichever occurs first.

17. Expenditures Properly Supported.

Expenditures and requests for grant funds shall be supported by Subgrantee with properly executed payroll and time records, invoices, contracts, vouchers, orders, canceled checks and/or any other accounting documents pertaining in whole or in part to the Agreement (or in the case of subrecipients, under their respective contracts with Subgrantee) in accordance with generally accepted accounting principles and applicable state and federal requirements, including as specified herein. OHCS may require such other information as it deems necessary or appropriate in its sole discretion.

18. Unallowable Costs and Lobbying Activities.

Subgrantee shall review and comply with the allowable costs and other provisions applicable to expenditures under the particular grant programs covered by this Agreement. Subgrantee shall, among other obligations, comply with the provisions prohibiting the expenditure of funds for lobbying and related activities, whether in 2 CFR, Part 225 – Cost Principles for State, Local, and Indian Tribal Governments, 2 CFR, Part 230 – Cost Principles for Non-profit Organizations, or otherwise. If Subgrantee makes expenditures or incurs costs for purposes or an amount inconsistent with the allowable costs or any other provisions governing expenditures in an Agreement grant program, OHCS may exercise any and all remedies under this Agreement, at law or otherwise that it deems, in its sole discretion, to be necessary or appropriate.

19. Disallowance of Costs.

OHCS neither is responsible for nor shall it pay for any costs disallowed (a Disallowance of Costs) either upon request for reimbursement or as a result of any audit, review, or site visit or other disallowance action by OHCS except for costs incurred by Subgrantee solely due to the negligence of OHCS, its employees, officers or agents. If a cost is disallowed by OHCS after reimbursement has occurred, Subgrantee shall repay all disallowed costs to OHCS upon written notice within

the time frame specified by OHCS, which in no event shall exceed thirty (30) days.

If Subgrantee is a county, such disallowed costs may be recovered by OHCS only through repayment, withholding or by other means authorized by this Agreement or otherwise allowable at law not inconsistent with the Oregon Constitution, and particularly Article XI, Section 10. If Subgrantee is other than a county, OHCS may recover such disallowed costs through repayment, withholding, offset or other means permitted under this Agreement, by law or otherwise.

Subgrantee shall cooperate and shall cause its subrecipients to cooperate with OHCS and all appropriate investigative agencies and shall assist in recovering invalid payments.

20. Records Maintenance.

Subgrantee shall, and shall require and cause its subrecipients to, prepare and maintain such records as necessary for performance of and compliance with the terms of this Agreement.

The Subgrantee and its subrecipients shall retain all records pertinent to expenditures incurred under this Agreement and otherwise in a manner consistent with the requirements of state and federal law, including but not limited to those requirements listed in OHCS' Record Retention Schedule, as may be modified from time to time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other action that involves any of the records cited, then such records must be retained until final completion of such matters.

21. Records Access.

OHCS, the Oregon Secretary of State's Office, the federal government and the duly authorized representatives of such entities shall have free access to and the right to copy all or any part of the books, documents, papers, audits and records of Subgrantee and its subrecipients which are related to this Agreement as they deem appropriate, including without limitation, for the purpose of making audit, examination, excerpts, and transcripts. These records are the property of OHCS who may take possession of them at any time after three (3) business days' notice to Subgrantee or subrecipient, as the case may be. Subgrantee or subrecipient may retain copies of all records taken by OHCS under this Section.

In its agreements with subrecipients, Subgrantee shall require and cause its subrecipients to comply with the requirements of this Section and to grant right of access to and ownership by OHCS of the subrecipient's books and records related to this Agreement.

22. Audits.

Subgrantee shall, and shall require and cause its subrecipients to, submit to OHCS satisfactory financial and compliance audits for the periods covered by the grants in accordance with the provisions of OMB Circular No. A-133 "Audits of States, Local Governments, and Non-Profit Organizations."

OHCS may withhold any or all requested funds from Subgrantee if Subgrantee violates this provision and OHCS may deem such failure as a material default and exercise any available remedy under this Agreement, including without limitation, termination of this Agreement.

23. Fixed Assets.

Subgrantee shall, and shall cause its subrecipients to, maintain policies and procedures for property management that comply with all requirements of the applicable Code of Federal Regulations, OMB Circulars, and specific requirements of the source of funds. The following practices are in addition to those otherwise required:

a. High Risk Items.

Fixed assets with a high risk of loss include all computer equipment, electronic equipment, photography equipment, hand tools and any other items Subgrantee may identify as at risk. Fixed assets that are deemed to have a high risk of loss must be labeled, recorded on an inventory tracking system, and inventoried at least once a year.

b. Automobiles.

All automobiles, regardless of value, purchased in whole or in part with funds provided under this Agreement shall be the property of Subgrantee; provided however that OHCS is hereby granted a security interest in all such automobiles and the proceeds thereof and shall be noted as the security interest holder on the certificates of title. The original certificates of title to all such automobiles shall be delivered to and remain on file at OHCS. In its agreements with its subrecipients, Subgrantee shall prohibit its subrecipients from using funds provided thereunder to purchase any automobiles.

c. Insurance.

Subgrantee shall, at a minimum, provide the insurance coverage required by Oregon Revised Statute for automobiles and or equipment requiring registration through Oregon Department of Transportation, Department of Motor Vehicles that has been acquired in whole or in part with funds provided under this Agreement owned by Subgrantee with OHCS named as a security interest in all such automobiles and or equipment, and a copy of the insurance certificates to all such automobiles and or equipment shall be delivered to and remain on file at OHCS. In its agreements with its subrecipients, Subgrantee shall require and cause its subrecipients to comply with the requirements of this Section.

d. Loaned Equipment / Property Disposition.

All fixed assets owned by OHCS and loaned to Subgrantee under a standard agreement will remain the property of OHCS, regardless of their value. The disposition of all loaned equipment shall be readily available.

e. Disposal Requiring Prior Approval.

When Subgrantee wishes to dispose of a fixed asset in which OHCS has a security or insurance interest or when Subgrantee or a subrecipient wishes to dispose of a fixed asset having an original cost of more than \$5,000, Subgrantee shall submit a letter requesting OHCS' consent to do so addressed to the Financial Operations Manager with a copy to the appropriate Program Coordinator. If OHCS consents, OHCS Program Coordinator will provide instructions regarding the method of disposition. OHCS reserves the right to refuse to consent to such disposal and the right to object to the timing of such disposition. Such disposition, if permitted, shall be done in a manner consistent with the property management standards for equipment of the agency from which the original funding was received. In the case of mixed funding sources, the most restrictive standards shall apply.

24. Insurance and Workers Compensation.

Grantee will provide all necessary General Liability and Automotive insurance required by Oregon Law to perform services under this Grant Agreement, and provide proof of coverage upon request of Agency.

Grantee and all employers providing work, labor, or materials under this Agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all of their subject workers. Out-of-state employers must provide Oregon worker's compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year or who otherwise constitute "subject workers" under Oregon law.

25. Dual Payment.

Subgrantee shall not be compensated for work performed under this Agreement from any other department of the State of Oregon, nor from any other source, including the federal government, unless such funds are used solely to increase the total services provided under this Agreement. Any additional funds received through or for activities arising under this Agreement shall immediately be reported to OHCS.

26. Third Party Beneficiaries.

OHCS and Subgrantee are the only parties to this Agreement and are the only parties entitled to enforce its terms. 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 unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

27. Notices.

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, email, facsimile, or mailing the same, postage prepaid, or other written instrument, to Subgrantee or OHCS at the address or number set forth in this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section; provided however that any notice of termination hereunder shall be given by certified or registered mail, return receipt requested. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile or email shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against OHCS, such facsimile transmission must be confirmed by telephone notice to OHCS' primary contact. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

28. Subgrantee Status.

- a. Subgrantee shall perform all work under this Agreement as an independent contractor. Subgrantee is not an officer, employee or agent of OHCS or the State, as those entities are respectively defined in ORS chapter 456 and in ORS 30.265, with respect to work performed under this Agreement.
- b. Subgrantee agrees that insurance coverage, whether purchased or by self-insurance, for Subgrantee's agents, employees, officers and/or subcontractors is the sole responsibility of Subgrantee.
- c. Subgrantee certifies that it is not employed by or contracting with the federal government for the work covered by this Agreement.
- d. Subgrantee certifies to the best of its knowledge and belief that neither the Subgrantee nor any of its principals, officers, directors or employees:
 - 1) Is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency;
 - 2) Has within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State or local) transaction or contract related to a public transaction; violation of federal or State antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
 - 3) Is presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in subsection d.(2) above; and
 - 4) Has within a three-year period preceding this Agreement had one or more public transactions (federal, State or local) terminated for cause or default.

29. OPUS System.

The OPUS system is a web-based application developed by OHCS. OPUS runs on an Oracle application server and database maintained by OHCS and accessed by OHCS and its subgrantees through the Internet (the "Site").

Subgrantee and its subrecipients shall enter all appropriate and/or necessary data into OPUS or other OHCS approved system at the time of client intake for all Federal, State, and private grant programs awarded by OHCS through this Agreement. OHCS will enter allocations to Subgrantee on a program by program expenditure category basis unless it determines otherwise. Exceptions are only allowed with prior written approval by OHCS.

a. OPUS Use.

As a condition of use of the Site, User (Subgrantee and its subrecipients) agrees to all OHCS terms and conditions, contained in this Agreement, placed as notices on the Site, or as otherwise directed by OHCS. User agrees to not use the Site for any unlawful purpose. OHCS reserves the right, at its discretion, to update or revise the OPUS terms of use. Use of the Site constitutes acceptance of the OPUS terms and conditions.

Use of the OPUS system for additional reported “local” program data is at the entity’s own risk. OHCS shall not modify or otherwise create any screen, report or tool in the OPUS system primarily or solely to meet needs related to this local data.

b. OPUS Data Rights.

Subgrantee hereby grants and shall require and cause any subrecipient to grant OHCS the right to reproduce, use, display, adapt, modify, distribute, and promote the content in any form and disclose, as allowed by law, any or all of the information or data furnished to or received by OHCS directly or indirectly resulting from this Agreement. Subgrantee also shall use and shall require and cause its subrecipients to use OPUS Client Release forms and Privacy Policy forms (samples provided by OHCS) in connection with obtaining and transmitting client data.

c. OPUS Disclaimer of Warranties.

Subgrantee understands and agrees, and shall require its subrecipients to agree, that all materials, information, software, products and services included in or available through the OPUS Site (the “content”) are provided “as is” and “as available” for use. The content is provided without warranties of any kind, either express or implied, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, or non-infringement. OHCS does not warrant that the content is accurate, reliable or correct; that this Site will be available at any particular time or location; that any defects or errors will be corrected; or that the content is free of viruses or other harmful components. Use of the OPUS Site is solely at the User’s risk. User hereby accepts the risk of its use of the Site, and of the use of the Site by its subrecipients, and expressly waives any claims and causes of action against the State and OHCS.

d. OPUS Limitation of Liability.

The Subgrantee agrees that under no circumstances shall OHCS be liable for any direct, indirect, punitive, incidental, special, or consequential damages that result from the use of, or inability to use the OPUS Site. This limitation applies whether the alleged liability is based on contract, tort, negligence, strict liability or any other basis, even if OHCS has been informed of the possibility of such damage.

e. OPUS Indemnification.

Subject to applicable law, Subgrantee agrees, and shall require its subrecipients to agree, to defend, indemnify (consistent with ORS Chapter 180), and hold harmless OHCS and its employees, contractors, officers and directors from all liabilities, claims, and expenses, including attorney fees that arise from use or misuse of this site. OHCS reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by Subgrantee, in which event Subgrantee will cooperate with OHCS in asserting any available defenses.

30. Attorney Fees.

In the event a lawsuit of any kind is instituted on behalf of OHCS or the Subgrantee with respect to this Agreement, or any right or claim related thereto, including but not limited to the collection of any payment due under this Agreement or to obtain performance of any kind under this Agreement, the prevailing party is, to the extent permitted by law, entitled to its reasonable attorney fees incurred before and during trial, on appeal, in arbitration, in bankruptcy, and in such other forum or proceeding appropriate thereto, together with such additional sums as the court or hearings officer may adjudge for reasonable costs and disbursements incurred therein. Reasonable fees shall not exceed the rate charged to OHCS by

its attorneys.

31. 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 provisions of this Agreement.

32. Severability.

If any term or provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof.

33. Execution and Counterparts.

This Agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

34. Grant Funds.

Grant funds are used in conjunction with this Agreement. Subgrantee assumes sole liability for breach of the conditions of the grant (including all terms and conditions of this Agreement) by Subgrantee or by any of its subrecipients, agents or assigns and shall, upon breach of grant conditions that require the State to return funds to the grantor, whether such breach is by Subgrantee or by any of its subrecipients, agents or assigns, hold harmless and indemnify the State for an amount equal to the grant funds received under this Agreement together with any additional damages resulting to OHCS; or if there are legal limitations on the indemnification ability of the Subgrantee, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount of grant funds received under this Agreement.

35. Indemnity.

Subject to applicable law, Subgrantee shall, and shall require by contract that its subrecipients shall, defend, save, hold harmless, and indemnify (consistent with ORS Chapter 180) the State of Oregon and OHCS and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Subgrantee or its officers, employees, subrecipients, subcontractors, or agents under this Agreement.

36. Merger Clause.

This Agreement, attached exhibits and resulting NOA constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, other modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary OHCS approvals have been obtained. Such waiver, consent, modification or change if made shall be effective only in the specific instance and for the specific purpose given.

37. Waiver.

The failure of either party to enforce any provision of this Agreement shall not constitute a waiver of that or of any other provision of this Agreement.

38. Time of the Essence.

Time is of the essence in the performance of any and all obligations under this Agreement.

39. No Limitations on Actions in Exercise of Governmental Powers.

Nothing in this Agreement is intended, nor shall it be construed, to in any way limit the actions of OHCS in the exercise of its governmental powers. It is the express intention of the parties hereto that OHCS shall retain the full right and ability to exercise its governmental powers with respect to the Subgrantee, the grant funds, and the transactions contemplated by this Agreement to the same extent as if it were not a party to this Agreement, and in no event shall OHCS have any liability in contract arising under this Agreement by virtue of any exercise of its governmental powers.

40. No Assignment by Subgrantee.

Subgrantee shall not assign its rights or obligations under this Agreement without the express written consent of OHCS. OHCS may assign its rights and obligations under this Agreement, including to a successor entity.

41. Amendments.

The Agency reserves the right to amend the Agreement and its Work Plans to, among other revisions: extend its term; modify, delete, or add any services, or any combination of the foregoing. The parties may not waive, supplement or amended the terms of the Agreement, in any manner whatsoever, except by written amendment signed by all parties and for which all necessary State of Oregon approvals have been obtained.

Changes to the Work Plan by the Subgrantee or by one or more of its subrecipients shall require the prior written approval of OHCS. Requests for and justification of any change must be submitted in writing to OHCS and be approved in writing by OHCS prior to commencement of the requested change. OHCS may supplement or modify the Work Plan as previously provided in this Agreement.

All federal terms and conditions included in this agreement at time of Original Agreement execution may be amended from time to time by the Federal Grantor or Regulator of Funds. These amendments to federal terms and conditions included in original agreement will be sent to Subgrantee and will become part of the original agreement without a formal amendment process. New Federal Terms and Conditions not included in the Original Agreement will follow the formal amendment process.

42. Oregon False Claims Act

- a. Grantee acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any action or conduct by Grantee pertaining to this Agreement that constitutes a “claim” (as defined by ORS 180.750(1)). By its execution of this Agreement, Grantee certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or causes to be made that pertains to this Agreement. In addition to other liabilities that may be applicable, Grantee further acknowledges that if it makes, or causes to be made, a false claim or performs a prohibited act under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against Grantee.
- b. Without limiting the generality of the foregoing, Grantee represents and warrants that:
 - 1) Grantee’s representations, certifications, and other undertakings in this Agreement are not False Claims Act Violations; and
 - 2) None of Grantee’s performance under this Agreement, including but not limited to any invoices, reports, or other deliverables in connection with its performance of this Agreement, will constitute False Claims Act Violations.
- c. For purposes of this Section 2.F., a “False Claims Act Violation” means a false claim as defined by ORS 180.750(2) or anything prohibited by ORS 180.755.
- d. Grantee shall immediately report in writing, to Agency, any credible evidence that a principal, employee, agent, subcontractor, subgrantee, or other person has made a false claim or committed a prohibited act under the Oregon False Claims Act, or has committed a criminal or civil violation of laws pertaining to fraud, bribery, gratuity, conflict of interest, or similar misconduct in connection with this Agreement or any moneys paid under

this Agreement.

- e. Grantee understands and agrees that any remedy that may be available under the Oregon False Claims Act shall be in addition to any other remedy available to the State of Oregon or Agency under any other provision of law, or this Agreement.

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