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AGENDA COVER MEMO

AGENDA DATE: October 26, 2005

TO: Board of County Commissioners

DEPARTMENT: Children and Families

PRESENTED BY: Alicia A. Hays, Director

AGENDA TITLE: IN THE MATTER OF DELEGATING AUTHORITY TO THE COUNTY ADMINISTRATIVE OFFICER TO EXECUTE THE OREGON COMMISSION ON CHILDREN AND FAMILIES HEALTHY START – MEDICAID ADMINISTRATIVE ACTIVITIES 2005-2007 COUNTY INTERGOVERNMENTAL AGREEMENT NOT TO EXCEED \$200,000

I. MOTION

TO DELEGATE AUTHORITY TO THE COUNTY ADMINISTRATIVE OFFICER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT IN SUBSTANTIAL CONFORMITY WITH THE OREGON COMMISSION ON CHILDREN AND FAMILIES HEALTHY START – MEDICAID ADMINISTRATIVE ACTIVITIES 2005-2007 COUNTY INTERGOVERNMENTAL AGREEMENT NOT TO EXCEED \$200,000.

II. ISSUE/PROBLEM

The Oregon Legislature has directed that Medicaid reimbursement be included as a component of the Healthy Start formula grant to each county. Attachment B must be executed by the county and returned to the Oregon Commission on Children and Families for the Lane County Healthy Start Program to participate in Medicaid reimbursement.

III. DISCUSSION

A. Background

The Oregon Commission on Children and Families (OCCF) administers Title XIX reimbursement claims for Oregon Healthy Start. At the beginning of a biennium, OCCF projects the level of Medicaid reimbursement for each county's Healthy Start. For the 2005-2007 biennium, the OCF projection for Lane County Healthy Start Medicaid reimbursement is not to exceed \$200,000. The Medicaid projection is discussed in the attached memo dated September 22, 2005

(Attachment A) and the Intergovernmental Agreement (Attachment B). This projection is done at the beginning of the biennium so that Healthy Start State General Fund allocations can be reduced by the 50% match required, 1% administrative fee to the Department of Human Services, and OCCF actual administrative costs.

B. Alternatives/Options

1. Adopt the order and delegate authority to the County Administrative Officer to execute an intergovernmental agreement in substantial conformity with the attached agreement.
2. Reject the order and provide direction to the Lane County Commission on Children and Families (LCCCF) for revisions and resubmission of the order.
3. Reject the order and the state funds.

C. Recommendation

Option 1 – Adopt the order and delegate authority to the County Administrative Officer to execute an intergovernmental agreement in substantial conformity with the attached agreement .

IV. IMPLEMENTATION/TIMING

Following Board approval, the County Administrative Officer will sign an intergovernmental agreement in substantial conformity with the attached agreement and an executed copy will be returned to OCCF.

V. ATTACHMENTS

- A. September 22, 2005 OCCF Memo.
- B. Intergovernmental Agreement.

THE BOARD OF COUNTY COMMISSIONERS, LANE COUNTY, OREGON

RESOLUTION) IN THE MATTER OF DELEGATING AUTHORITY
AND ORDER) TO THE COUNTY ADMINISTRATIVE OFFICER
) **TO EXECUTE THE OREGON COMMISSION ON**
) **CHILDREN AND FAMILIES HEALTHY START –**
) **MEDICAID ADMINISTRATIVE ACTIVITIES**
) **2005-2007 COUNTY INTERGOVERNMENTAL**
) **AGREEMENT NOT TO EXCEED \$200,000**

WHEREAS, the Oregon Legislature has directed local Healthy Start Programs to claim eligible reimbursement and has included projected reimbursement in total funding allocation for local programs, and

NOW, THEREFORE, IT IS HEREBY ORDERED that the Board of County Commissioners delegate authority to the County Administrative Officer to execute an intergovernmental agreement in substantial conformity with the Oregon Commission on Children and Families Healthy Start – Medicaid Administrative Activities 2005-2007 County Intergovernmental Agreement.

APPROVED this ____ day of October, 2005.

Anna Morrison, Chair
BOARD OF COUNTY COMMISSIONERS

APPROVED AS TO FORM

Date 10/18/05 Lane County

Zaid Law

OFFICE OF LEGAL COUNSEL



MEMO

DATE: September 22, 2005

TO: Local Commission Directors

FROM: Marsha Clark
Business Services Manager

SUBJECT: 2005-07 Medicaid Administrative Claiming IGA

The 2005-07 Healthy Start Medicaid Administrative Claiming Intergovernmental Agreement is enclosed for our review and signature.

OCCF's Assistant Attorney General and the Office of Medical Assistance Programs (OMAP) assisted OCCF in developing this document. Many changes to the agreement were made. This IGA attempts to clarify requirements of the Administrative Claiming program and the roles of the state, counties, providers and OMAP in the Administrative Claiming process.

The limitation amount in Section III B. was determined by reviewing your program's billing history in 2003-05 and estimating that billings will be approximately the same. In keeping with the two phase approach to Healthy Start general fund distribution, that estimate was divided in half to arrive at the limitation stated in the enclosed agreement for the fiscal year 2005-06. As we near the end of this first fiscal year, if it is apparent that your county's Healthy Start program may exceed this limitation, please contact the OCCF Business Services Office. Requests for increased limitation will be reviewed on a case-by-case basis to ensure that we do not exceed our statewide Medicaid limitation.

Clarifying language has been included in the entire agreement and you should carefully review the entire document. Some of the more notable changes to the IGA are:

- 1) Section III E. describes claiming for Allowable Administrative Costs. The 1% administrative charge described in subparagraphs 1 and 2 reflects a surcharge that was implemented by OMAP in January 2005. The 1% charge must be passed from the Agency to the County and then to the Provider in order to claim it as a reimbursable cost. OCCF will provide more information on the process for claiming this 1% and other administrative costs in October.

- 2) Section III D and E. also provide the ability for Agency and County administrative costs incurred in the administration of the Medicaid program.
- 3) Attachment A describes the current approved Activity Codes for Medicaid Administrative Claiming.
- 4) Attachment B sets forth Additional Requirements that County must include in subcontracts with program Providers. These provisions are taken directly from the intergovernmental agreement between OCCF and DHS OMAP and are required by that agreement to be included in any subcontracts with Counties and/or program Providers.
- 5) Please complete the blank County and Provider information in Section B, G.2.-3. (page 24 and 25 of 25) of the agreement. This will provide OCCF with contact information for both the County and the Provider.

After reviewing the agreement, if you have any questions please do not hesitate to contact me at 503-373-1570 extension 244 or by email at Marsha.Clark@state.or.us or through First Class.

After the appropriate signatures have been obtained, please return the agreement to my attention.

Thank you.

From the desk of...

**Marsha Clark, Business and Financial Services
Manager**
Oregon Commission on Children & Families
530 Center Street NE, Suite 405
Salem, OR 97301-3754

Phone: 503-373-1570 ext. 244
FAX: 503-378-8395

Email: Marsha.Clark@state.or.us

AGREEMENT #LANE0507

**OREGON COMMISSION ON CHILDREN AND FAMILIES
HEALTHY START - MEDICAID ADMINISTRATIVE ACTIVITIES
2005-2007 COUNTY INTERGOVERNMENTAL AGREEMENT**

This Oregon Commission on Children and Families 2005-2007 **COUNTY** Intergovernmental Agreement (the "Agreement") is between the State of Oregon (the "State") acting by and through its State Commission on Children and Families ("**AGENCY**") and **Lane County**, a political subdivision of the State of Oregon, acting by and through its Local Commission on Children and Families ("**COUNTY**").

RECITALS

WHEREAS, 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. The State is required to share in the cost of medical assistance expenditures, and the Act permits both state and local governments to participate in the financing of the non-Federal portion of medical assistance expenditures ("State Share"). 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 Services, Centers for Medicare and Medicaid Services ("CMS") for proper and efficient administration of the Title XIX Medicaid Oregon State Plan (the "State Medicaid Plan").

WHEREAS, the State Medicaid program is administered by the Department of Human Services ("DHS"). Pursuant to ORS 409.010(3), 417.735(7), and 417.735(13), DHS has an interagency agreement with **AGENCY** that authorizes **AGENCY** to administer Medicaid administrative activities for purposes of the Healthy Start Family Support Services Program authorized under ORS 417.795. **AGENCY** administers those Medicaid administrative services through its Agreement with the **COUNTY**.

WHEREAS, ORS 417.760 et seq. establish **COUNTY** as a governmental agency authorized to perform governmental functions and exercise governmental powers. The Healthy Start Program authorized in ORS 417.795, authorizes **COUNTY** to establish Healthy Start Family Support Services programs through contracts, as funding becomes available.

WHEREAS, consistent with the goals of the Healthy Start Program, **AGENCY** 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 areas served by the **COUNTY** pursuant to ORS 417.760 et seq. Under the Agreement, **COUNTY**, through subcontracts with local providers ("Providers"), who must be enrolled with DHS to provide Medicaid services, will perform Title XIX administrative activities. **COUNTY** will utilize its Providers to provide outreach, health care coordination, and other medical assistance related administrative activities that support the administration of the State Medicaid Plan.

WHEREAS, 42 CFR 433.51 permits the use of State funds allocated to the **COUNTY** to be considered as the State Share in obtaining FFP; and

WHEREAS, AGENCY and COUNTY desire to enter into this contractual relationship to ensure optimal utilization of available federal funding for Healthy Start administrative activities in order to better serve the eligible Medicaid population of Oregon;

NOW THEREFORE, in consideration of the mutual premises set forth above and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

I. EFFECTIVE DATE AND DURATION. Upon execution by each of the parties hereto and approval as required by applicable law, the Agreement is effective as of July 1, 2005. Unless terminated earlier in accordance with its terms, the Agreement terminates on June 30, 2007.

II. STATEMENT OF WORK. COUNTY shall, through subcontracts with its Providers, provide Title XIX administrative activities, including but not limited to Outreach Activities to Inform Families about Health Services and Benefits; Case Planning, Monitoring, Coordination, Referral and Training of Medicaid/OHP Covered Services; Medicaid/OHP transportation and translation; and System Coordination Related to Medicaid/OHP Services each as further defined in the attached Attachment A, which is incorporated herein by this reference (the "Work").

A. COUNTY Responsibilities.

1. COUNTY represents that it is a local governmental entity established pursuant to ORS 417.760 et seq., and that it is authorized by local authority to enter into the Agreement.
2. COUNTY shall enter into written subcontracts with Providers that include the provisions in the attached Attachment B, "Additional Requirements," which is incorporated herein by this reference.
3. COUNTY shall ensure that Medicaid eligible children and families receiving assistance under this Agreement are free to accept or reject Medicaid services and to receive such service from an enrolled provider of their choice unless otherwise restricted to a provider of the Oregon Health Plan by DHS.
4. COUNTY shall comply with, and cause any subcontractor to comply with, all requirements set forth in Attachment B.
5. COUNTY shall submit to AGENCY quarterly by a date designated by AGENCY through the Medicaid Online Tracking System ("MOTTS") COUNTY's indirect costs incurred in its administration of the Agreement as set forth in Section III.E.2. The submission constitutes COUNTY's quarterly payment claim for Total Administrative Costs as set forth in Section III.E.2.

B. AGENCY Responsibilities.

1. DHS shall determine the dates during each quarter on which the time study shall be conducted, and **AGENCY** shall communicate those dates to the **COUNTY** and Providers conducting the time study.
2. Upon submission by all counties of the information required by Section II.A.3 and submission by all Providers of the information required by Section I.A.1 of Attachment B, **AGENCY** will compile the quarterly time study results, calculate the total allowable Medicaid administrative activities claim, and submit the total allowable Medicaid administrative activities claim to DHS for payment.
3. **AGENCY** shall provide technical assistance to **COUNTY** in the identification of allowable Medicaid administrative activities under the Agreement.
4. **AGENCY** shall assist **COUNTY** and Providers in responding to any federal Medicaid compliance issues related to the Agreement.

III. CONSIDERATION

A. Summary of Medicaid Payment Methodology

Under Title XIX of the Act, the federal government and states share the cost of providing allowable Medicaid administrative activities. **COUNTY** will provide under this Agreement 50% of the total allowable costs attributable to Medicaid administrative activities. **AGENCY** will pay **COUNTY** the total allowable costs of providing Medicaid administrative activities in arrears on a quarterly basis. **COUNTY** shall then reimburse **AGENCY** 50% 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 **AGENCY** 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. DHS will claim FFP amount from CMS.

In addition, **COUNTY** on a quarterly basis will pay to **AGENCY** an intergovernmental charge of 1% (one percent) of the total allowable Medicaid administrative activities claim.

Allowable costs for Medicaid administrative activities 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.

AGENCY's payment obligation is conditioned on: (1) AGENCY receiving payment from DHS in an amount sufficient to pay COUNTY; and (2) AGENCY receiving the necessary time study results from Providers to calculate the quarterly claim for Medicaid administrative activities.

- B.** Payment for all Work performed under this Agreement shall be subject to the provisions of ORS 293.462. The maximum, not to exceed amount for the total cost of providing allowable Medicaid administrative activities under this Agreement is \$200,000. COUNTY shall reimburse AGENCY 50% of this amount for the State match portion.
- C.** AGENCY will not pay for any Work performed before the beginning date or after the expiration date of this Agreement including amendments thereto.
- D.** COUNTY shall submit claims for allowable Medicaid 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. In addition, Medicaid does not pay for health care services that are rendered free of charge to the general population. Thus, any administrative activity which supports the referral, coordination, planning of screening or services that are provided free to the general population would not be considered as Medicaid administration.
- E.** Total Allowable Administrative Costs for which COUNTY may request reimbursement from AGENCY under this Agreement include the following costs.

 - 1. AGENCY incurs administrative costs in its administration of the Agreement, including but not limited to processing the Provider time studies, calculating the allowable Medicaid administrative activities claim on behalf of COUNTY, and payment of a 1% (one percent) intergovernmental charge to DHS. AGENCY invoices COUNTY on a quarterly basis for the administrative expenses incurred from the above responsibilities under the Agreement, not to exceed actual costs.
 - 2. COUNTY incurs indirect Medicaid costs in its administration of the Agreement, including payment of the 1% (one percent) intergovernmental charge required by Section III.A, AGENCY administrative costs invoiced to COUNTY as described in section (1)

of this Section, and other actual indirect Medicaid costs associated with administering the tasks authorized under this Agreement with its Providers such as implementation of the time study requirements. COUNTY'S actual Medicaid indirect costs must be documented and justifiable. COUNTY will include in its claim for Total Allowable Administrative Costs to AGENCY the amount of the COUNTY'S actual indirect Medicaid costs.

3. Consistent with Section II.A., COUNTY will obtain Provider time study information for the purpose of obtaining reimbursement for the Provider allowable Medicaid administrative activities claim. COUNTY'S Total Allowable Administrative Costs shall include the Provider allowable Medicaid administrative activities claim information.

F. COUNTY shall invoice AGENCY quarterly, in arrears for the Total Allowable Administrative Costs identified in Section III.E.

1. AGENCY will reimburse COUNTY in arrears on a quarterly basis for the Total Allowable Administrative Costs of providing Medicaid administrative activities accepted by AGENCY.
2. COUNTY shall reimburse AGENCY quarterly upon invoice from the AGENCY for the State match portion which is equal to 50% of the amount billed by COUNTY and accepted by AGENCY for the Total Allowable Administrative Costs.

G. COUNTY shall send itemized invoice to the following AGENCY supervising representative:

Marsha Clark, Business Services Manager
State Commission on Children and Families
Contracts and Procurement Office
530 Center Street NE, #405
Salem, OR 97301-3754

H. COUNTY certifies by its signature to this Agreement that for the purposes of 42 CFR 433.51, the funds it transfers to AGENCY 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.

IV. RECOVERY OF FUNDS

COUNTY shall be financially responsible for the final amount of any claim for Work provided under the Agreement that CMS, DHS, or AGENCY finds unallowable under

the Medicaid program. In the event CMS, DHS, or AGENCY finds any costs claimed by COUNTY unallowable, AGENCY shall provide COUNTY written notice identifying the amount that must be refunded to CMS, DHS, or AGENCY. Within thirty (30) calendar days of AGENCY's notice, COUNTY shall either (1) Make a payment to AGENCY for the full amount of the unallowable cost identified by AGENCY in its notice; or (2) Notify AGENCY in writing that COUNTY wishes to repay the unallowable amount from future payments or other means. AGENCY may then offset the unallowable amount from future payments owed to COUNTY under the Agreement, or any payment to COUNTY from AGENCY under any other contract or agreement between COUNTY and AGENCY, 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 AGENCY set forth in this Section shall not be exclusive and are in addition to any other rights and remedies provided to AGENCY by law or under this Agreement.

V. GENERAL PROVISIONS

A. Compliance with Law. COUNTY shall comply and shall require its Providers to comply, with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Work under the Agreement. Without limiting the generality of the foregoing, COUNTY expressly agrees to comply with: (i) Title VI of the Civil Right Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) the Health Insurance Portability and Accountability Act of 1996; (v) all regulations and administrative rules established pursuant to the foregoing laws; and (vi) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. No federal funds may be used to provide Services in violation of 42 USC 14402.

B. Subcontracts. COUNTY shall enter into subcontracts for the purposes of performing the Work under the Agreement. COUNTY shall not permit any person or entity to be a Provider unless the person or entity holds all licenses, certificates, authorizations and other approvals required by applicable law to deliver the Work. Subcontracts must be in writing and contain each of the provisions necessary to permit COUNTY to comply with its obligations under the Agreement with respect to the Work performed by the Provider, and any other provisions AGENCY deems to be reasonably appropriate. COUNTY shall maintain an originally executed copy of each subcontract at its office and shall furnish a copy of any subcontract to AGENCY upon request.

C. Termination

1. The Agreement may be terminated at any time by mutual written consent of both parties, or by either party upon thirty (30) days notice, in writing, and delivered by certified mail or in person.

2. In addition, AGENCY may terminate the Agreement, in whole or in part, immediately upon notice to COUNTY, or at such later date as AGENCY may establish in such notice, under any of the following conditions:

a. Federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the Work under the Agreement is prohibited or

AGENCY is prevented from paying for such Work from the planned funding source;

b. **AGENCY** fails to receive funding, appropriations, limitations, or other expenditure authority at levels sufficient to pay for the Work;

c. **COUNTY** commits any material breach or default of any covenant, warranty, or obligation under the Agreement, fails to perform the Work under the Agreement within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger **COUNTY**'s performance under the Agreement in accordance with its terms, and fails to correct such breach, default, or failures within ten (10) calendar days after delivery of **AGENCY**'s notice or such longer period as **AGENCY** may specify in such notice.

3. **COUNTY's Tender Upon Termination:** Upon receiving a notice of termination, **COUNTY** shall immediately cease all activities under the Agreement, unless expressly directed otherwise by **AGENCY** in the notice of termination. Upon termination, **COUNTY** shall deliver to **AGENCY** all Agreement documents, information, works-in-progress and other property that are or would be deliverables had the Agreement been completed.

4. Termination of this Agreement pursuant to this Section V.C shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination. Specifically, but without limiting the generality of the preceding sentence, termination of this Agreement shall not affect **AGENCY**'s right to recover funds from **COUNTY** pursuant to Section IV.

D. Confidentiality of Client Information

1. The Work provided under the Agreement does not include the use of, access to, exchange of or disclosure of personally identifiable health information. Therefore, the parties reasonably believe that the HIPAA Privacy Rules in 45 CFR Parts 160 and 164 do not apply. The Agreement does not require or provide for the use of "standard transactions" as that term is used in the HIPAA Transaction Rules, 45 CFR Part 162. If the Work is revised, or if the federal HIPAA requirements are changed or interpreted in a way that would require the Work to comply with any HIPAA requirement, the parties may amend the Agreement to address such change or interpretation.

2. The use or disclosure of information concerning the administration of the Medicaid program shall be limited to persons directly connected with the administration of the Agreement. **AGENCY** and **COUNTY** shall apply confidentiality policies to all requests from outside sources.

E. Record Maintenance; Access. **COUNTY** shall maintain all fiscal records relating to the Agreement in accordance with generally accepted accounting principles. In addition, **COUNTY** shall maintain any other records pertinent to the Agreement in such a manner as to clearly document **COUNTY**'s performance. **COUNTY** acknowledges and agrees that **AGENCY**, DHS, the Oregon Department of Justice Medicaid Fraud Unit, Oregon Secretary of State's Office, and the federal government and

their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans, and writings of COUNTY that are pertinent to the Agreement to perform examinations and audits and to make excerpts and transcripts. COUNTY shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of seven (7) years, or such longer period as may be required by applicable law, following final payment and termination of the Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to the Agreement, whichever date is later. COUNTY shall cause its Providers to comply with the requirements in this Section.

F. Notice. Except as otherwise expressly provided in the 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 AGENCY at the address or number set forth below, or to such other addresses or numbers as either party may indicate pursuant to this section. Any communication or notice so addressed and mailed shall be effective on the fifth calendar day after the date of mailing. Any communication or notice delivered by facsimile shall be 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. To be effective against AGENCY, any notice transmitted by facsimile must be confirmed by telephone notice to AGENCY's Office of Contracts and Procurement at (503) 373-1283. To be effective against COUNTY, any notice transmitted by facsimile must be confirmed by telephone notice to COUNTY's Local Commission on Children and Families Office. Any communication or notice given by personal delivery shall be effective when actually delivered.

Notices to AGENCY: State Commission on Children and Families
Contracts and Procurement Office
530 Center Street NE, #405
Salem, OR 97301-3754

Notices to COUNTY: Lane County Commission on Children and Families
125 E Eighth Avenue
Eugene, OR 97401

G. Severability. The parties agree that if any term or provision of the 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.

H. Counterparts. The Agreement 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 so executed shall constitute an original.

I. Governing Law, Consent to Jurisdiction. The 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 AGENCY (and/or any other agency of the State of Oregon) and

COUNTY that arises from or relates to the Agreement shall be brought and conducted solely and exclusively within a circuit court in the State of Oregon of proper jurisdiction. In no event shall this section be construed as a waiver by the State of Oregon of 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. **COUNTY, BY EXECUTION OF THE AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**

J. Assignment of Contract, Successors in Interest.

1. **COUNTY** shall not assign or transfer its interest in the Agreement without prior written approval of **AGENCY**. Any such assignment or transfer, if approved, is subject to such conditions and provisions as the **AGENCY** may deem necessary. No approval by the **AGENCY** of any assignment or transfer of interest shall be deemed to create any obligation of the **AGENCY** in addition to those set forth in the Agreement.

2. The provisions of the Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns.

K. No Third Party Beneficiaries. **AGENCY** and **COUNTY** are the only parties to the Agreement and are the only parties entitled to enforce its terms. The parties agree that **COUNTY**'s performance under the Agreement is solely for the benefit of **AGENCY** to assist and enable **AGENCY** to accomplish its statutory mission. Nothing in the 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 the Agreement.

L. Integration and Waiver. The Agreement, including all of its Attachments, constitutes 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 the Agreement. The failure of either party to enforce any provision of the Agreement shall not constitute a waiver by that party of that or any other provision. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

M. Amendment. No waiver, consent, modification or change of terms of the Agreement shall bind either party unless in writing and signed by both parties and when required the Department of Administrative Services and Department of Justice. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. **COUNTY**, by signature of its authorized representative, hereby acknowledges that it has read the Agreement, understands it, and agrees to be bound by its terms and conditions.

N. Headings. The headings and captions to sections of the Agreement have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret the Agreement.

O. Construction. The parties agree and acknowledge that the rule of construction that ambiguities in a written agreement are to be construed against the party preparing or drafting the agreement shall not be applicable to the interpretation of the Agreement.

P. Limitation of Liabilities. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THE AGREEMENT. NEITHER PARTY SHALL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THE AGREEMENT OR ANY PART HEREOF IN ACCORDANCE WITH ITS TERMS.

Q. Force Majeure. Neither AGENCY nor COUNTY shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, natural causes and war which is beyond respectively, the AGENCY's or COUNTY's reasonable control. 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 the Agreement.

VI. FEDERAL PROVISIONS

A. In addition to the requirements of Section V(A), COUNTY shall comply and, as indicated, cause all Providers to comply with the following federal requirements. For purposes of the 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. Equal Employment Opportunity. If the Agreement, including amendments, is for more than \$10,000, then COUNTY shall comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

2. Clean Air, Clean Water, EPA Regulations. If the Agreement, including amendments, exceeds \$100,000 then COUNTY shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), 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 (40 CFR Part 15), 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 AGENCY, the U.S. Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. COUNTY shall include and cause all Providers to include in all contracts with Providers receiving more than \$1000,000 in Federal Funds, language requiring the Provider to comply with the federal laws identified in this section.

3. Energy Efficiency. COUNTY shall 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 (Pub. L. 94-163).

4. Truth in Lobbying. COUNTY certifies, to the best of 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.

This certification is a material representation of fact upon which reliance was placed when the Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into the Agreement imposed by section 1352, Title 31, 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.

5. Resource Conservation and Recovery. COUNTY shall comply and cause all Providers to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 USC 6901 et. seq.). Section 6002 of that Act (codified at 42 USC 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection AGENCY. Current guidelines are set forth in 40 CFR Parts 247-253.

6. Audits. COUNTY shall comply and, if applicable, cause Providers to comply, with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations."

7. Debarment and Suspension. COUNTY shall not permit any person or entity to be a Provider if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Executive Orders No. 12,549 and No. 12,689, "Debarment and Suspension" (See 45 CFR part 76). 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. Providers 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.

8. Medicaid Compliance. To the extent COUNTY provides any Work whose costs are paid in whole or in part by Medicaid, COUNTY shall comply with and cause its Providers to comply with the federal and state Medicaid statutes and regulations applicable to the Work, including but not limited to:

- a. Keeping such records as may be necessary to disclose the extent of services furnished to clients and, upon request, furnish such records or other information to DHS, the Medicaid Fraud Unit of the Oregon Department of Justice and the Secretary of the U.S. Department of Health and Human Services;
- b. Complying with all applicable disclosure requirements set forth in 42 CFR Part 455, Subpart B;
- c. Complying with any applicable advance directive requirements specified in 42 CFR section 431.107(b)(4); and
- d. Complying with the certification requirements of 42 CFR sections 455.18 and 455.19.

COUNTY shall include and cause all Providers to include in all contracts with Providers receiving Medicaid, language requiring the Provider to comply with the record keeping and reporting requirements set forth in this section and with the federal laws identified in this section.

9. Americans with Disabilities Act. COUNTY shall comply and cause all Providers to comply with Title II of the Americans with Disabilities Act of 1990 (codified at 42 USC 12131 et. seq.) 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 delivery of Work.

10. Pro-Children Act. COUNTY shall comply and cause all Providers to comply with the Pro-Children Act of 1995 (codified at 20 USC section 6081 et. seq.).

Additional Certification: By execution of the Agreement, I, an authorized representative of COUNTY, certify that all data, claims, submissions or other submissions that provide a basis for claiming or receiving reimbursement under the Agreement will be true, accurate, and complete; that payment of claims to COUNTY will be from federal and State funds, and therefore, any

falsification or concealment of a material fact by COUNTY when submitting claims or other submissions to obtain payments may be prosecuted under federal and State laws.

IN WITNESS WHEREOF, the parties hereto have caused the Agreement to be duly executed as of the dates set forth below their respective signatures.

State of Oregon

acting by and through its Commission
on Children and Families

By: _____

Name: _____

Title: _____

Date: _____

Lane County

acting by and through its Local Commission
on Children and Families

By: _____

Name: _____

Title: _____

Date: _____

**OREGON COMMISSION ON CHILDREN AND FAMILIES
2005-2007 COUNTY INTERGOVERNMENTAL AGREEMENT
ATTACHMENT A**

ACTIVITY CODES

A1. Outreach Activities to Inform Families about Health Services and Benefits

Meetings, home visits or phone contacts to obtain information about a family's access to health care, and to inform families about state programs to pay for medical care (i.e. Medicaid, EPSDT, etc.), creating or dissemination of materials to inform children and families about Medicaid and health benefits available, assisting a child and family in determining and establishing Medicaid eligibility (i.e. collecting information for the Medicaid application, helping complete necessary forms for the Medicaid application, helping complete necessary forms for the Medicaid application, updating any forms when a child's circumstances change), related staff travel, clerical, and paperwork.

A2. Outreach and Application Assistance for Non-Medicaid/OHP Programs:

Activities that assist the child/family in gaining access to non-Medicaid/OHP services and 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, child care, after school programs, friendly visitor and vocational services). Activities that assist the child/family in applying for these services, including form preparation, related staff travel, clerical, and paperwork.

B1. Case Planning, Monitoring, Coordination, Referral and Training of Medicaid/OHP Covered Services

Case planning and referral includes the following types of activities; included in all of them are related staff travel, clerical, and paperwork:

- **Case Planning:** Planning, coordination and monitoring case plans for vulnerable children and families, including any agency staffing to coordinate and plan services (Individual Family Support Plan, -IFSP-, multidisciplinary team meetings, conferencing on health, developmental, Public Health Department consultations), arranging for services, writing case plans or summaries, preparing material for case reviews, coordinating child specific services (i.e. psychological counseling, health, substance abuse counseling and consultation), arranging transportation, related travel and paperwork.

- **Referral and Coordination:** Making referrals for and coordinating the delivery of screenings, examinations, assessments and evaluations for health, vision, dental, developmental, mental health, substance abuse, and other medical or nutritional services, contact to parents regarding health needs of child, related travel and paperwork, gathering background information and supportive data such as social history and medical history, from standardized forms, notifying primary medical providers of target population services, developmental screenings and related service information, arranging transportation.
- **Immunization:** Notifying parents of immunization requirements, scheduling immunizations, coordination of immunizations for children and recruitment of providers to do immunizations, assessing and tracking immunization status, arranging transportation, related travel and paperwork.
- **Maternal Care Services:** Arranging for prenatal, postpartum and newborn care, pre-pregnancy risk prevention, coordinating health education for new mothers regarding; 1) infant health and development, 2) accident and disease prevention and home safety. Arranging transportation, related travel and paperwork.
- **Family Planning:** Developing a family planning, education, counseling and service program compatible with community norms, locating or developing family planning information and materials and methods of distribution, developing a family planning service referral network, related travel and paperwork.
- **Developmental Delay:** Early identification of age appropriate child development and / or delays to assure health and developmental problems are found, diagnosed and treated; assuring early medical consultation and evaluation; preparing and disseminating child health related materials to parents and others; assisting families to use the appropriate medical care and understand age appropriate child development; promote and advocate for appropriate planning for the health / medical needs of children; related travel and paperwork.
- **Other Wellness Activities:** Disseminating preventative health care information and materials, programs and presentations on preventative health care related topics such as substance abuse prevention programs (this does not include teaching or facilitating health classes at educational institutions), related travel and paperwork.

- Participating in or coordinating training which improves the delivery of Medicaid/OHP services, enhances early identification, intervention, screening and referral of children with special health needs.

B2. Case Planning, Monitoring, Coordination, Referral and Training of Non-Medicaid/OHP Covered Services

- Assessing and monitoring of the home learning environment using standardized forms, creating and disseminating information on positive and interactive learning environments, providing or arranging for reading material for the child, providing or arranging for age appropriate toys.
- Classroom instruction or presentations, preparation, related paperwork and travel, attendance at conferences, providing educational or career guidance or consultation. Includes related staff travel, clerical, and paperwork.
- Case management of social services and community wellness programs (including housing, commodities, food banks, WIC, foster care, financial assistance, exercise and weight loss programs, energy assistance, child care, after school programs, friendly visitor and vocational services) arranging transportation for these services. Making referrals for and coordinating the delivery of these social services and community wellness programs. Arranging transportation for these services and coordinating or participating in training events and seminars for these services. Includes related staff travel, clerical, and paperwork.
- Making direct referrals to social services such as housing, energy assistance, educational and/or special education, childcare, education and Early Intervention, vocational and transportation to these services, etc., monitoring and follow-up. Includes related staff travel, clerical and paperwork.
- Participating in or coordinating training which improves the delivery of non-Medicaid/OHP services.

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~~ related to social, vocational, or educational programs. Include related paperwork, clerical activities or staff travel time required to perform these activities.

Special Note: Use this code when accompanying an individual to non-Medicaid/OHP services.

D1. System Coordination Related to Medicaid/OHP Services

Working internally and with other agencies to improve services, expand health and medical services and their utilization to specific target populations, gathering information about their functions, to improve early identification of health and developmental problems, related staff travel, clerical, and paperwork.

D2. Coordination Related to Non-Medicaid/OHP Services

Working internally and with other agencies to improve social services, identify gaps in services, expand and improve capacity to engage in non-Medicaid/OHP activities, expand access and linkage to non-Medicaid/OHP services, their utilization by specific target populations; related staff travel, clerical, and paperwork.

E. Direct Health Care Services

Providing direct care, service or treatment to a child in order to correct a condition, (i.e. primary health care, speech, OT, PT, counseling, or providing screenings such as vision or hearing). Includes related staff travel, clerical, and paperwork.

F. Other Services

All other paid job related activities that do not fall under one of the above categories, lunches, paid leaves, conferences, staff meetings, and personnel issues.

**OREGON COMMISSION ON CHILDREN AND FAMILIES
2005-2007 COUNTY INTERGOVERNMENTAL AGREEMENT**

ATTACHMENT B

ADDITIONAL REQUIREMENTS

AGENCY hereby grants **COUNTY** the authority to subcontract the Work required under this agreement to Providers but **COUNTY** may not assign or transfer any of its interests in this Agreement without the prior written consent of the **AGENCY**. **AGENCY**'s consent to subcontracts shall not relieve **COUNTY** of any of its duties or obligations under this Agreement. The subcontracts shall comply with all requirements of 42 CFR 434.6 as applicable. In addition to any other provisions **AGENCY** may require, **COUNTY** shall include in any permitted subcontract with a Provider under this Agreement a requirement that the Provider be bound by the following:

I. STATEMENT OF WORK

A. PROVIDER Responsibilities. PROVIDER shall:

1. Utilize the specific activity codes ("Activity Codes") as set forth in Attachment A, and approved by Department of Human Services (**DHS**) and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services ("**CMS**") to document all time spent, and to claim all costs, under this agreement for allowable Medicaid administrative activities. Participate in a time study ("Time Study") during the four days per quarter determined by **AGENCY** using a form provided by **AGENCY** to **COUNTY**. Submit the Time Study results through **AGENCY**'s Medicaid Online Time Tracking System ("**MOTTS**"), and include in the submission a list of all individuals identified as performing activities under this agreement during the quarter and the salary and other personnel expenses for each identified individual. **PROVIDER** may include in the submission the actual costs billed to Provider by **COUNTY** for **COUNTY**'s administration of the related agreement between **COUNTY** and **AGENCY**. The submission constitutes **PROVIDER**'s quarterly payment claim for work performed under this agreement.
2. Participate, not less than annually, in State-offered Medicaid training on the implementation of the time study and Activity Codes. Ensure training is available and provided to its employees on the implementation of the Time Study and Activity Codes to ensure **PROVIDER** makes claims only for allowable Medicaid administrative activities.
3. Ensure that all reimbursement claims for the work are in accordance with OMB Circular A-87 and the State Medicaid Plan, which are incorporated herein by this reference. The work for which **PROVIDER** claims reimbursement must be directly related to the administration of the State Medicaid Plan for Federal Financial Participation (FFP) to be available.
4. Maintain the following information on employees who perform work under this agreement: the employee's name, title, job description, education level, salary,

and other personnel expenses for each individual; the percent of time each employee spends on the coded activities, and costs attributable to each person's position providing work.

5. Monitor compliance with the requirements of this agreement and maintain all records that support the quarterly payment claim for the work performed, including but not limited to, position details, cost information, Time Study results, records to indicate that services were requested and the extent of services provided, other resources that have been applied to offset costs, and any other information applicable to the work provided under this agreement.
6. Upon request from COUNTY, AGENCY, DHS, 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 payment claim for work performed.
7. Ensure that Medicaid eligible children and families receiving assistance under this agreement are free to accept or reject Medicaid services and/or to receive such services from an enrolled provider of their choice unless otherwise restricted to a provider of the Oregon Health Plan by DHS.

II. CONSIDERATION

- A. **PROVIDER** shall submit claims for allowable Medicaid 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, OHP, or services which are not reimbursed under Medicaid. In addition, Medicaid does not pay for health care services that are rendered free of charge to the general population. Thus, any administrative activity which supports the referral, coordination, planning of screening or services that are provided free to the general population would not be considered as Medicaid administration.

III. GENERAL PROVISIONS

A. Amendment

The terms of this agreement shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written agreement signed by the Parties. This agreement shall not be amended after the expiration date. No amendment to this agreement shall be effective until it has been signed by all parties and all necessary governmental approvals have been obtained.

B. Compliance with Applicable Law

PROVIDER shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the work under the agreement. Without limiting the generality of the foregoing, **PROVIDER** expressly agrees to comply with the following laws, regulations and executive orders, as they may be amended from time to time during the term of the agreement, 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 Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vi) The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (vii) The Family Educational Rights and Privacy Act, 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. **PROVIDER'S** performance under this agreement is conditioned upon **PROVIDER'S** compliance with the obligations of contractors under ORS 279B.220, 279B.230 and 279B.235, which are incorporated by reference herein.. In the performance of work under this agreement, **PROVIDER** shall use recycled and recyclable products to the maximum extent which is economically feasible.

C. Compliance with Federal Law

1. Equal Employment Opportunity

If this agreement, including amendments, is for more than \$10,000, then **PROVIDER** shall comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

2. Clean Air, Clean Water, EPA Regulations

If this agreement, including amendments, exceeds \$100,000 then **PROVIDER** shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), 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 (40 CFR Part 15), 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 **COUNTY AGENCY**, DHS, the U.S. Department of Health and Human Services, and the appropriate Regional Office of the Environmental Protection Agency. **PROVIDER** shall include and cause all subcontractors to include in all contracts with subcontractors receiving more than \$100,000 in Federal Funds, language requiring the subcontractor to comply with the federal laws identified in this section.

3. Energy Efficiency

PROVIDER shall 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 (Pub. L. 94-163).

4. Truth in Lobbying

PROVIDER certifies, to the best of the **PROVIDER'S** knowledge and belief that:

- a. No federal appropriated funds have been paid or will be paid, by or on behalf of **PROVIDER**, 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, **PROVIDER** shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- c. **PROVIDER** 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.

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, 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.

5. Resource Conservation and Recovery

PROVIDER shall comply and cause all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 USC 6901 et. seq.). Section 6002 of that Act (codified at 42 USC 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental

Protection Agency. Current guidelines are set forth in 40 CFR Parts 247-253.

6. Audits

PROVIDER shall comply and, if applicable, cause a subcontractor to comply, with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations."

7. Debarment and Suspension

PROVIDER shall not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Executive Orders No. 12,549 and No. 12,689, "Debarment and Suspension". (See 45 CFR part 76). 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.

8. Medicaid Compliance

To the extent **PROVIDER** provides any service whose costs are paid in whole or in part by Medicaid, **PROVIDER** shall comply with and cause its subcontractors to comply with the federal and state Medicaid statutes and regulations applicable to the service, including but not limited to:

- a. Complying with all applicable disclosure requirements set forth in 42 CFR Part 455, Subpart B;
- b. Complying with any applicable advance directive requirements specified in 42 CFR section 431.107(b)(4); and
- c. Complying with the certification requirements of 42 CFR sections 455.18 and 455.19.

PROVIDER shall include and cause all subcontractors to include in all contracts with subcontractors receiving Medicaid, language requiring the subcontractor to comply with the requirements set forth in this section and with the federal laws identified in this section.

9. Americans with Disabilities Act

PROVIDER shall comply and cause all subcontractors to comply with Title II of the Americans with Disabilities Act of 1990 (codified at 42 USC 12131 et. seq.) 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 delivery of services.

10. Pro-Children Act

PROVIDER shall comply and cause all subcontractors to comply with the Pro-Children Act of 1995 (codified at 20 USC section 6081 et. seq.).

D. No Third Party Beneficiaries

COUNTY and **PROVIDER** are the only parties to this agreement and are the only parties entitled to enforce its terms. Nothing in the 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.

E. Confidentiality of Client Information

1. **PROVIDER** shall treat all information as to personal facts and circumstances obtained by **PROVIDER** on Medicaid eligible individuals as privileged communication, shall hold such information confidential, and shall not disclose such information without the written consent of the individual, his or her attorney, the responsible parent of a minor child, or the child's guardian, except as required by law. Nothing prohibits the disclosure of information in summaries, statistical information, or other form which does not identify particular individuals.
2. The use or disclosure of information concerning Medicaid eligible or potentially eligible individuals shall be limited to persons directly connected with the administration of this agreement. Confidentiality policies shall be applied to all requests from outside sources. **AGENCY, COUNTY, DHS** and **PROVIDER** will share information as necessary to effectively serve Medicaid eligible, or potentially eligible individuals.
3. To the extent that any individually identifiable health information about students is used to perform the work under this agreement, the confidentiality of that information is governed by the Family Educational Rights and Privacy Act. Accordingly, such student information is not included within the requirements of the Privacy Rules, 45 CFR Part 164, adopted by the U.S. Department of Health and Human Services to implement the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). In addition, this agreement does not require or provide for the use of "standard transactions" as that term is used in the HIPAA transaction rules, 45 CFR Part 162. If the work is revised, or if the federal HIPAA requirements are changed, in a material way that would require compliance with HIPAA, the parties may amend the agreement to address such material changes.

F. Access to Records

PROVIDER shall maintain all fiscal records relating to this agreement in accordance with generally accepted accounting principles. In addition, **PROVIDER** shall maintain any other records pertinent to this agreement in such a manner as to clearly document **PROVIDER'S** performance. **PROVIDER** acknowledges and agrees that **COUNTY, AGENCY, DHS, the Oregon Department of Justice, Medicaid Fraud Unit, the Oregon Secretary of State's Office and the federal government and their duly authorized representatives** shall have access to such fiscal records and other books, documents, papers, plans, and writings of **PROVIDER** that are pertinent to this agreement to perform examinations and audits and to make excerpts and transcripts. **PROVIDER** shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of seven (7) 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.

G. Written Notice

Except as otherwise expressly provided in this agreement, any notice to be given shall be in writing by personal delivery, facsimile, e-mail or mailing the same postage prepaid to **AGENCY, COUNTY or PROVIDER** at the address or numbers set forth below or to such other addresses or numbers as each entity may indicate.

- 1. AGENCY:** Marsha Clark, Business Services Manager
Oregon Commission on Children and Families
530 Center Street, Suite 405
Salem, OR 97301
Phone: 503-373-1283
Fax: 503-378-8395
e-mail: marsha.clark@state.or.us

This **AGENCY** employee is assigned to monitor agreement compliance and act as **AGENCY's** Agreement Administrator on matters concerning this agreement.

2. COUNTY:

(Name and Title)

(County/Agency)

(Address)

(City/State/Zip)
Phone: _____
Fax: _____
e-mail: _____

3. **PROVIDER:**

Phone: _____
Fax: _____
e-mail: _____

(Name and Title)

(Provider)

(Address)

(City/State/Zip)

Any notice delivered by fax shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against **COUNTY** or **AGENCY**, such fax transmission must be confirmed by telephone notice to the **COUNTY** or **AGENCY** person(s) identified in Section 1 above. Any notice given by e-mail shall be deemed to be given upon actual receipt by the addressee.

Any notice given in writing by personal delivery or mailing the same, postage prepaid, shall be deemed given five (5) days after mailing to **COUNTY** or **AGENCY** at the address or numbers set forth above. Any communication or notice by personal delivery shall be deemed given when actually receive by the intended party.