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Agreement #«KT»

**«AMDT__TEXT» AMENDMENT TO DEPARTMENT OF HUMAN SERVICES
2008-2009 INTERGOVERNMENTAL AGREEMENT FOR THE
FINANCING OF PUBLIC HEALTH SERVICES**

This «Amdt__Text» Amendment to Department of Human Services 2008-2009 Intergovernmental Agreement for the Financing of Public Health Services, effective July 1, 2006 (as amended the “Agreement”), is between the State of Oregon acting by and through its Department of Human Services (“Department”) and «Awardee_Name», acting by and through its «Office_Name» (“LPHA”), the entity designated, pursuant to ORS 431.375(2), as the Local Public Health Authority for «Awardee_Name».

RECITALS

WHEREAS, the Department and LPHA wish to incorporate terms and conditions relating to “Enforcement of the Oregon Clean Air Act” into this Agreement.

WHEREAS, the Department and LPHA wish to modify certain terms and conditions located in Exhibit E of this Agreement.

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

AGREEMENT

1. Exhibit D entitled “Special Terms and Conditions” of the Agreement is hereby superseded and replaced in its entirety by Attachment 1 to this Amendment and incorporated herein by this reference.
2. Exhibit E entitled “General Terms and Conditions” of the Agreement is hereby superseded and replaced in its entirety by Attachment 2 to this Amendment and incorporated herein by this reference.
3. LPHA represents and warrants to Department that the representations and warranties of LPHA set forth in Section 2 of Exhibit E of the Agreement are true and correct on the date hereof with the same effect as if made on the date hereof.
4. Capitalized words and phrases used but not defined herein shall have the meanings ascribed thereto in the Agreement.

5. Except as amended hereby, all terms and conditions of the Agreement remain in full force and effect.
6. This Amendment may be executed in any number of counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Amendment so executed shall constitute an original.
7. This Amendment becomes effective on the date of the last signature below.

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

APPROVED:

STATE OF OREGON ACTING BY AND THROUGH ITS DEPARTMENT OF HUMAN SERVICES (DEPARTMENT)

By: _____
 Name: William J. Coulombe
 Title: Deputy Public Health Director
 Date: _____

«AWARDEE_NAME» ACTING BY AND THROUGH ITS «OFFICE_NAME» (LPHA)

By: _____
 Name: _____
 Title: _____
 Date: _____

DEPARTMENT OF JUSTICE – APPROVED FOR LEGAL SUFFICIENCY

Reviewed and approved for legal sufficiency by D. Kevin Carlson, Senior Assistant Attorney General, on November 6, 2008. Approval document on file at DHS, OC&P

DEPARTMENT OF HUMAN SERVICES, OFFICE OF CONTRACTS & PROCUREMENT - REVIEWED

By: _____
 Name: Phillip G. McCoy, OPBC
 Title: Contract Specialist
 Date: _____

Attachment 1

DEPARTMENT OF HUMAN SERVICES 2008-2009 INTERGOVERNMENTAL AGREEMENT FOR THE FINANCING OF PUBLIC HEALTH SERVICES

EXHIBIT D

SPECIAL TERMS AND CONDITIONS

Enforcement of Oregon Indoor Clean Air Act. This section is for the purpose of providing for the enforcement of laws by LPHA relating to smoking and enforcement of the Oregon Indoor Clean Air Act (for the purposes of this Section, the term “LPHA” will also refer to local government entities e.g. certain Oregon counties that agree to engage in this activity.)

1. **Authority.** Pursuant to ORS 190.110, LPHA may agree to perform certain duties and responsibilities related to enforcement of the Oregon Indoor Clean Air Act, ORS 433.835 through 433.875 and ORS 433.990(D) (hereafter “Act”) as set forth below.
2. **LPHA Responsibilities.** LPHA shall assume the following enforcement functions:
 - a. Maintain records of all complaints received using the complaint tracking system provided by Department’s Tobacco Prevention and Education Program (TPEP).
 - b. Comply with the requirements set forth in OAR 333-015-0070 to 333-015-0085 using Department enforcement procedures.
 - c. Respond to and investigate all complaints received concerning noncompliance with the Act or rules adopted under the Act.
 - d. Work with noncompliant sites to participate in the development of a remediation plan for each site found to be out of compliance after an inspection by the LPHA.
 - e. Conduct a second inspection of all previously inspected sites to determine if remediation has been completed within the deadline specified in the remediation plan.
 - f. Notify TPEP within five business days of a site’s failure to complete remediation, or a site’s refusal to allow an inspection or refusal to participate in development of a remediation plan. See Section 3.c. “Department Responsibilities.”
 - g. For each non-compliant site, within five business days of the second inspection, send the following to TPEP: intake form, copy of initial response letter, remediation form, and all other documentation pertaining to the case.
 - h. LPHA shall assume the costs of the enforcement activities described in this section. In accordance with an approved Community-based work plan as prescribed in OAR 333.010.0330(3)(b), LPHA may use Ballot Measure 44 funds for these enforcement activities.

- i. If a local government has local laws or ordinances that prohibit smoking in any areas listed in ORS 433.845, the local government is responsible to enforce those laws or ordinances using local enforcement procedures. In this event, all costs of enforcement will be the responsibility of the local government. Ballot Measure 44 funds may apply; see Section 2.h. above.

3. Department Responsibilities. Department shall:

- a. Provide an electronic records maintenance system to be used in enforcement, including forms used for intake tracking, complaints, and site visit/remediation plan, and templates to be used for letters to workplaces and/or public places.
- b. Provide technical assistance to LPHA.
- c. Upon notification of a failed remediation plan, a site's refusal to allow a site visit, or a site's refusal to develop a remediation plan, review the documentation submitted by the LPHA and issue citations to non-compliant sites as appropriate.
- d. If requested by a site, conduct contested case hearings in accordance with the Administrative Procedures Act, ORS 183.411 to 183.470.
- e. Issue final orders for all such case hearings.
- f. Pursue, within the guidelines provided in the Act and OAR 333.015.0070 – 333.015-0085, cases of repeat offenders to assure compliance with the Act.

Attachment 2

DEPARTMENT OF HUMAN SERVICES 2008-2009 INTERGOVERNMENTAL AGREEMENT FOR THE FINANCING OF PUBLIC HEALTH SERVICES

EXHIBIT E

GENERAL TERMS AND CONDITIONS

1. Disbursement and Recovery of Financial Assistance.

- a. Disbursement Generally.** Subject to the conditions precedent set forth below and except as otherwise specified in an applicable footnote in the Financial Assistance Award, Department shall disburse the financial assistance awarded for a particular Program Element, as described in the Financial Assistance Award, to LPHA in substantially equal monthly allotments during the period specified in the Financial Assistance Award for that Program Element, subject to the following:
- i.** At the request of LPHA, Department may adjust monthly disbursements of financial assistance to meet LPHA program needs.
 - ii.** Department may reduce monthly disbursements of financial assistance as a result of, and consistent with, LPHA's underexpenditure of prior disbursements.
 - iii.** After providing LPHA 30 days advance notice, Department may withhold monthly disbursements of financial assistance if any of LPHA's reports required to be submitted to Department under Section 8 of this Exhibit E or otherwise are not submitted in a timely manner or are incomplete or inaccurate subject to Exhibit C, Sections 2, 3, or 4. Department may withhold the disbursements under this subsection until the reports have been submitted or corrected to Department's satisfaction.

Department may disburse to LPHA financial assistance for a Program Element in advance of LPHA's expenditure of funds on delivery of the services within that Program Element, subject to Department recovery at Agreement Settlement of any excess disbursement. The mere disbursement of financial assistance to LPHA in accordance with the disbursement procedures described above does not vest in LPHA any right to retain those funds. Disbursements are considered an advance of funds to LPHA which LPHA may retain only to the extent the funds are expended in accordance with the terms and conditions of this Agreement.

- b. Conditions Precedent to Disbursement.** Department's obligation to disburse financial assistance to LPHA under this Agreement is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:

- i. No LPHA default as described in Section 12 of this Exhibit has occurred.
 - ii. LPHA's representations and warranties set forth in Section 2 of this Exhibit are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
- c. Recovery of Financial Assistance.**
- i. **Notice of Underexpenditure or Misexpenditure.** If Department believes there has been an Underexpenditure (as defined in Exhibit A) of moneys disbursed under this Agreement, Department shall provide LPHA with written notice thereof and Department and LPHA shall engage in the process described below in Section 1.c.ii. If Department believes there has been a Misexpenditure (as defined in Exhibit A) of moneys disbursed to LPHA under this Agreement, Department shall provide LPHA with written notice thereof and Department and LPHA shall engage in the process described below in Section 1.c.iii.
 - ii. **Recovery of Underexpenditure.**
 - (A) **LPHA's Response.** LPHA shall have 90 calendar days from the effective date of the notice of Underexpenditure to pay the Department in full or notify the Department that it wishes to engage in the appeals process set forth in Section 1.c.ii.(B) below. If LPHA fails to respond within that 90-day time period, LPHA shall promptly pay the noticed Underexpenditure.
 - (B) **Appeals Process.** If LPHA notifies Department that it wishes to engage in an appeal process, LPHA and the Department shall engage in non-binding discussions to give the LPHA an opportunity to present reasons why it believes that there is no Underexpenditure, or that the amount of the Underexpenditure is different than the amount identified by the Department, and to give the Department the opportunity to reconsider its notice. LPHA and Department may negotiate an appropriate apportionment of responsibility for the repayment of an Underexpenditure. At LPHA's request, Department will meet and negotiate with LPHA in good faith concerning appropriate apportionment of responsibility for repayment of an Underexpenditure. In determining an appropriate apportionment of responsibility, LPHA and Department may consider any relevant factors. An example of a relevant factor is the extent to which either party contributed to an interpretation of a statute, regulation or rule prior to the expenditure that was officially reinterpreted after the expenditure. If the Department and LPHA reach agreement on the amount owed to Department, LPHA shall promptly repay that amount to Department by issuing payment to Department or by directing Department to withhold future payments pursuant to Section 1.c.ii.(C) below. If Department and LPHA continue to disagree about whether or not there has been an Underexpenditure or as to the amount owed, the parties may agree to consider further appropriate dispute resolution processes, including, subject to Oregon Department of Justice and LPHA counsel approval, arbitration.

- (C) **Recovery From Future Payments.** To the extent that the Department is entitled to recover an Underexpenditure pursuant to Section 1.c.ii.(B), Department may recover the Underexpenditure by offsetting the amount thereof against future amounts owed to LPHA by Department, including, but not limited to, any amount owed to LPHA by Department under any other contract or agreement between LPHA and Department, past, present or future. Department shall provide LPHA written notice of its intent to recover the amounts of the Underexpenditure from amounts owed LPHA by Department as set forth in this Section 1.c.ii.(C), and shall identify the amounts owed by Department which the Department intends to offset (including the contracts or agreements, if any, under which the amounts owed arose). LPHA shall then have 14 calendar days from the date of Department's notice in which to request the deduction be made from other amounts owed to LPHA by Department and identified by LPHA. Department shall comply with LPHA's request for alternate offset, unless the LPHA's proposed alternative offset would cause the Department to violate federal or state statutes, administrative rules or other applicable authority, or would result in a delay in recovery that exceeds three months. In the event that Department and LPHA are unable to agree on which specific amounts, owed to County by Department, the Department may offset in order to recover the amount of the Underexpenditure, the Department may select the particular contracts or agreements between Department and LPHA and amounts from which it will recover the amount of the Underexpenditure, within the following limitations: Department shall first look to amounts owed to LPHA (but unpaid) under this Agreement. If that amount is insufficient, then Department may look to any other amounts currently owing or owed in the future to LPHA by Department. In no case, without the prior consent of LPHA, shall the Department deduct from any one payment due LPHA under the contract or agreement from which Department is offsetting funds an amount in excess of twenty-five percent (25%) of that payment. The Department may look to as many future payments as necessary in order to fully recover the amount of the Underexpenditure.

iii. Recovery of Misexpenditure.

- (A) **LPHA's Response.** From the effective date of the notice of Misexpenditure, LPHA shall have the lesser of (i) 60 calendar days, or (ii) if a Misexpenditure relates to a federal government request for reimbursement, 30 calendar days fewer than the number of days (if any) the Department has to appeal a final written decision from the federal government, to:
- (i.) Make a payment to the Department in the full amount of the noticed Misexpenditure identified by the Department;
 - (ii.) Notify the Department that LPHA wishes to repay the amount of the noticed Misexpenditure from future payments pursuant to Section 1.c.iii.(C) below; or
 - (iii.) Notify the Department that it wishes to engage in the applicable appeal process set forth in Section 1.c.iii.(B) below.

If LPHA fails to respond within the time required by this Section 1.c.iii.(A), Department may recover the amount of the noticed Misexpenditure from future payments as set forth in Section 1.c.iii.(C) below.

(B) Appeal Process. If LPHA notifies Department that it wishes to engage in an appeal process with respect to a noticed Misexpenditure, the parties shall comply with the following procedures, as applicable:

(i.) Appeal from Department-Identified Misexpenditure. If the Department's notice of Misexpenditure is based on a Misexpenditure solely of the type described in Section 13(b) or (c) of Exhibit A, LPHA and the Department shall engage in the process described in this Section 1.c.iii.(B)(i.) to resolve a dispute regarding the noticed Misexpenditure. First, LPHA and Department shall engage in non-binding discussions to give LPHA an opportunity to present reasons why it believes that there is, in fact, no Misexpenditure or that the amount of the Misexpenditure is different than the amount identified by the Department, and to give the Department the opportunity to reconsider its notice. LPHA and Department may negotiate an appropriate apportionment of responsibility for the repayment of a Misexpenditure. At LPHA request, Department will meet and negotiate with LPHA in good faith concerning appropriate apportionment of responsibility for repayment of a Misexpenditure. In determining an appropriate apportionment of responsibility, LPHA and Department may consider any relevant factors. An example of a relevant factor is the extent to which either party contributed to an interpretation of a statute, regulation or rule prior to the expenditure that was officially reinterpreted after the expenditure. If the Department and LPHA reach agreement on the amount owed to the Department, LPHA shall promptly repay that amount to Department by issuing payment to Department or by directing Department to withhold future payments pursuant to Section 1.c.iii.(C) below. If Department and LPHA continue to disagree as to whether or not there has been a Misexpenditure or as to the amount owed, the parties may agree to consider further appropriate dispute resolution processes including, subject to Oregon Department of Justice and LPHA counsel approval, arbitration.

(ii.) Appeal from Federal-Identified Misexpenditure.

(a) If the Department's notice of Misexpenditure is of the type described in Section 13(a) of Exhibit A and the relevant federal agency provides a process either by statute or administrative rule to appeal the determination of improper use of federal funds, federal notice of disallowance, or other federal identification of improper use of federal funds and if the disallowance is not based on a federal or state court judgment founded in allegations of Medicaid fraud or abuse, then LPHA may, prior to 30 days prior to the applicable federal appeals deadline, request that Department appeal the determination of improper use, federal notice of disallowance or other federal identification of improper use of funds in accordance with the process established or adopted by the federal agency. If LPHA so requests that Department appeal the

determination of improper use of federal funds, federal notice of disallowance, or other federal identification of improper use of federal funds, the amount in controversy shall, at the option of LPHA, be retained by the LPHA or returned to the Department pending the final federal decision resulting from the initial appeal. If the LPHA does request, prior to the deadline set forth above, that the Department enter an appeal, the Department shall appeal the determination of improper use of federal funds, federal notice of disallowance or other federal identification of improper use of federal funds in accordance with the established process and shall pursue the appeal until a decision is issued by the Departmental Grant Appeals Board of the Department of Health and Human Services (the "Grant Appeals Board") pursuant to the process for appeal set forth in 45 C.F.R. Subtitle A, Part 16, or an equivalent decision is issued under the appeal process established or adopted by the federal agency. LPHA and Department shall cooperate with each other in pursuing the appeal. If the Grant Appeals Board or its equivalent denies the appeal then either LPHA, Department, or both may, in their discretion, pursue further appeals. Regardless of any further appeals, within 90 days of the date the federal decision resulting from the initial appeal is final, LPHA shall repay to Department the amount of the noticed Misexpenditure (reduced, if at all, as a result of the appeal) by issuing payment to Department or by directing Department to withhold future payments pursuant to Section 1.c.iii.(C) below. To the extent that LPHA retained any of the amount in controversy while the appeal was pending, the LPHA shall pay to Department the interest, if any, charged by the federal government on such amount.

- (b) If the relevant federal agency does not provide a process either by statute or administrative rule to appeal the determination of improper use of federal funds, the federal notice of disallowance or other federal identification of improper use of federal funds or LPHA does not request that Department pursue an appeal prior to 30 days prior to the applicable federal appeals deadline, and if Department does not appeal, then within 90 days of the date the federal determination of improper use of federal funds, the federal notice of disallowance or other federal identification of improper use of funds is final LPHA shall repay to Department the amount of the noticed Misexpenditure by issuing a payment to Department or by directing Department to withhold future payments pursuant to Section 1.c.iii.(C) below.
- (c) If LPHA does not request that Department pursue an appeal of the determination of improper use of federal funds, the federal notice of disallowance or other federal identification of improper use of federal funds, prior to 30 days prior to the applicable federal appeals deadline but Department nevertheless appeals, LPHA shall repay to Department the amount of the noticed Misexpenditure (reduced, if at all, as a result of the appeal) within 90 days of the date the federal decision resulting from the appeal is final, by issuing payment to Department or by

directing Department to withhold future payments pursuant to Section 1.c.iii.(C) below.

- (d) Notwithstanding Section 1.c.iii.(A)(i.) through (iii.), if the Misexpenditure was expressly authorized by a Department rule or a Department writing that applied when the expenditure was made, but was prohibited by federal statutes or regulations that applied when the expenditure was made, LPHA will not be responsible for repaying the amount of the misexpenditure to Department, provided that:
- (1) Where post-expenditure official reinterpretation of federal statutes or regulations results in a Misexpenditure, LPHA and Department will meet and negotiate in good faith an appropriate apportionment of responsibility between them for repayment of the Misexpenditure.
 - (2) For purposes of this Section 1.c.iii.(B)(ii.)(d), a Department writing must interpret this Agreement or a Department rule and be signed by the Director of the Department or by one of the following DHS officers concerning services in the category where the officers are listed:

Mental Health or Addiction Services:

- Assistant Director, Administrator of the Office of Mental Health and Addiction Services
- Deputy Administrator of the Office of Mental Health and Addiction Services

Senior Services or Developmental Disability Services:

- Assistant Director for Seniors and People with Disabilities
- Deputy Assistant Director for Seniors and People with Disabilities
- Office Administrators for the Assistant or Deputy Assistant Director for Seniors and People with Disabilities.

Public Health Services:

- Public Health Director
- Deputy Public Health Director
- Office Administrators for the Director or Deputy Director

Department shall designate alternate officers in the event the offices designated in the previous sentence are abolished. Upon LPHA request, Department shall notify LPHA of the names of individual officers with the above titles. Department shall send Department writings described in this paragraph to LPHA by mail and email, and to CMHP directors by email.

- (3) The writing must be in response to a request from LPHA for expenditure authorization, or a statement intended to provide official guidance to LPHA or counties generally for making expenditures under this Agreement. The writing must not be contrary to this Agreement or contrary to law or other applicable authority that is clearly established at the time of the writing.
- (4) If the Department writing is in response to a request from LPHA for expenditure authorization, the request must be in writing and signed by the director of an LPHA department with authority to make such a request or by the LPHA Counsel. It must identify the supporting data, provisions of this Agreement and provisions of applicable law relevant to determining if the expenditure should be authorized.
- (5) A Department writing expires on the date stated in the writing, or if no expiration date is stated, six years from the date of the writing. An expired Department writing continues to apply to LPHA expenditures that were made in compliance with the writing and during the term of the writing.
- (6) The Department may revoke or revise a Department writing at any time if it determines in its sole discretion that the writing allowed expenditure in violation of this Agreement or law or any other applicable authority.
- (7) The Department rule does not authorize an expenditure that this Agreement prohibits.

(C) **Recovery From Future Payments.** To the extent that Department is entitled to recover a Misexpenditure pursuant to Section 1.c.iii.(B)(i.) or (ii.), Department may recover the Misexpenditure by offsetting the amount thereof against future amounts owed to LPHA by Department, including but not limited to, any amount owed to LPHA by Department under this Agreement or any amount owed to LPHA by Department under any other contract or agreement between LPHA and Department, past, present or future. Department shall provide LPHA written notice of its intent to recover the amount of the Misexpenditure from amounts owed LPHA by Department as set forth in this Section 1.c.iii.(C) and shall identify the amounts owed by Department that the Department intends to offset (including the contracts or agreements, if any, under which the amounts owed arose). LPHA shall then have 14 calendar days from the date of Department's notice in which to request the deduction be made from other amounts owed to LPHA by Department and identified by LPHA. Department shall comply with LPHA's request for alternate offset, unless the LPHA's proposed alternative offset would cause the Department to violate federal or state statutes, administrative rules or other applicable authority. In the event that Department and LPHA are unable to agree on which specific amounts are owed to LPHA by Department, that Department may offset in order to recover the amount of the Misexpenditure, then the Department may select the particular amounts from which it will recover the amount of the Misexpenditure, within the following limitations: Department shall first look to amounts owed to

LPHA (but unpaid) under this Agreement. If that amount is insufficient, then Department may look to any other amounts currently owing or owed in the future to LPHA by Department. In no case, without the prior consent of LPHA, shall the Department deduct from any one payment due LPHA under the contract or agreement from which Department is offsetting funds an amount in excess of twenty-five percent (25%) of that payment. The Department may look to as many future payments as necessary in order to fully recover the amount of the Misexpenditure.

iv. Additional Provisions related to parties rights/obligations with respect to Underexpenditures and Misexpenditures.

- (A) LPHA shall cooperate with Department in the Agreement Settlement process.
- (B) Department's right to recover Underexpenditures and Misexpenditures from LPHA under this Agreement is not subject to or conditioned on LPHA's recovery of any money from any other entity.
- (C) If the exercise of the Department's right to offset under this provision requires the LPHA to complete a re-budgeting process, nothing in this provision shall be construed to prevent the LPHA from fully complying with its budgeting procedures and obligations, or from implementing decisions resulting from those procedures and obligations.
- (D) Nothing in this provision shall be construed as a requirement or agreement by the LPHA or the Department to negotiate and execute any future contract with the other.
- (E) Nothing in this Section 1.c. shall be construed as a waiver by either party of any process or remedy that might otherwise be available.

2. Representations and Warranties.

a. LPHA represents and warrants as follows:

- i. Organization and Authority.** LPHA is a political subdivision of the State of Oregon duly organized and validly existing under the laws of the State of Oregon. LPHA has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder.
- ii. Due Authorization.** The making and performance by LPHA of this Agreement (1) have been duly authorized by all necessary action by LPHA and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of LPHA's charter or other organizational document and (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which LPHA is a party or by which LPHA may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification

to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by LPHA of this Agreement.

iii. **Binding Obligation.** This Agreement has been duly executed and delivered by LPHA and constitutes a legal, valid and binding obligation of LPHA, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

iv. **Services.** To the extent services are performed by LPHA, the delivery of each Program Element service will comply with the terms and conditions of this Agreement and meet the standards for such Program Element service as set forth herein, including but not limited to, any terms, conditions, standards and requirements set forth in the Financial Assistance Award and applicable Program Element Description.

b. **DHS** represents and warrants as follows:

i. **Organization and Authority.** DHS has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder.

ii. **Due Authorization.** The making and performance by DHS of this Agreement (1) have been duly authorized by all necessary action by DHS and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency and (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which DHS is a party or by which DHS may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by DHS of this Agreement, other than approval by the Department of Justice if required by law.

iii. **Binding Obligation.** This Agreement has been duly executed and delivered by DHS and constitutes a legal, valid and binding obligation of DHS, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

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

3. **Use of Financial Assistance.** LPHA may use the financial assistance disbursed to LPHA under this Agreement solely to cover actual Allowable Costs reasonably and necessarily incurred to implement Program Elements during the term of this Agreement. LPHA may not expend financial assistance provided to LPHA under this Agreement for a particular Program Element (as reflected in the Financial Assistance Award) on the implementation of any other Program Element.

4. **Provider Contracts.** Except when the Program Element Description expressly requires a Program Element service or a portion thereof to be delivered by LPHA directly, LPHA may use the financial assistance provided under this Agreement for a particular Program Element service to purchase that service, or portion thereof, from a third person or entity (a "Provider")

through a contract (a “Provider Contract”). Subject to Section 5. of this Exhibit E, LPHA may permit a Provider to purchase the service, or a portion thereof, from another person or entity under a subcontract and such subcontractors shall also be considered Providers for purposes of this Agreement and the subcontracts shall be considered Provider Contracts for purposes of this Agreement. LPHA 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 Program Element service. The Provider Contract must be in writing and contain each of the provisions set forth in Exhibit H, in substantially the form set forth therein, in addition to any other provisions that must be included to comply with applicable law, that must be included in a Provider Contract under the terms of this Agreement or that are necessary to implement Program Element service delivery in accordance with the applicable Program Element Descriptions and the other terms and conditions of this Agreement. LPHA shall maintain an originally executed copy of each Provider Contract at its office and shall furnish a copy of any Provider Contract to Department upon request.

5. Provider Monitoring. LPHA shall monitor each Provider’s delivery of Program Element services and promptly report to Department when LPHA identifies a major deficiency in a Provider’s delivery of a Program Element service or in a Provider’s compliance with the Provider Contract between the Provider and LPHA. LPHA shall promptly take all necessary action to remedy any identified deficiency. LPHA shall also monitor the fiscal performance of each Provider and shall take all lawful management and legal action necessary to pursue this responsibility. In the event of a major deficiency in a Provider’s delivery of a Program Element service or in a Provider’s compliance with the Provider Contract between the Provider and LPHA, nothing in this Agreement shall limit or qualify any right or authority Department has under state or federal law to take action directly against the Provider.

6. Records Maintenance, Access, and Confidentiality.

a. Access to Records and Facilities. The Department, the Secretary of State’s Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers and records of LPHA that are directly related to this Agreement, the financial assistance provided hereunder, or any Program Element service for the purpose of making audits, examinations, excerpts, copies and transcriptions. In addition, LPHA shall permit authorized representatives of Department to perform site reviews of all Program Element services delivered by LPHA.

b. Retention of Records. LPHA shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the financial assistance provided hereunder or any Program Element service, for a minimum of three years, or such longer period as may be required by other provisions of this Agreement or applicable law, following the termination of this Agreement. If there are unresolved audit or Agreement Settlement questions at the end of the applicable retention period, LPHA shall retain the records until the questions are resolved.

c. Expenditure Records. LPHA shall establish such fiscal control and fund accounting procedures as are necessary to ensure proper expenditure of and accounting for the financial assistance disbursed to LPHA by Department under this Agreement. In particular, but without limiting the generality of the foregoing, LPHA shall (a.) establish separate accounts for each Program Element for which LPHA receives financial assistance from Department

under this Agreement and (b.) document expenditures of financial assistance provided hereunder for employee compensation in accordance with Office of Management and Budget (OMB) Circular A-87 and, when required by Department, utilize time/activity studies in accounting for expenditures of financial assistance provided hereunder for employee compensation. LPHA shall maintain accurate property records of non-expendable property, acquired with Federal Funds, in accordance with OMB Circular A-122.

- d. **Safeguarding of LPHA Client Information.** LPHA shall maintain the confidentiality of LPHA Client records as required by applicable state and federal law. Without limiting the generality of the preceding sentence, LPHA shall comply with the following confidentiality laws, as applicable: ORS 433.045, 433.075, 433.008, 433.017, 433.092, 433.096, 433.098 and 42 CFR part 2. LPHA shall create and maintain written policies and procedures related to the disclosure of LPHA Client information, and shall make such policies and procedures available to the Department for review and inspection as reasonably requested by Department.

7. Alternative Formats of Written Materials. In connection with the delivery of Program Element services, LPHA shall:

- a. Make available to a Client, without charge to the Client, upon the Client's or the Department's request, any and all written materials in alternate, if appropriate, formats as required by Department's administrative rules or by Department's written policies made available to LPHA.
- b. Make available to a Client, without charge to the Client, upon the Client's or Department's request, any and all written materials in the prevalent non-English languages in LPHA's service area.
- c. Make available to a Client, without charge to the Client, upon the Client's or Department's request, oral interpretation services in all non-English languages in LPHA's service area.
- d. Make available to a Client with hearing impairment, without charge to the Client, upon the Client's or Department's request, sign language interpretation services and telephone communications access services.

For purposes of the foregoing, "written materials" includes, without limitation, all written materials created or delivered in connection with the Program Element services and all Provider Contracts related to this Agreement.

8. Reporting Requirements. For each calendar quarter or portion thereof, during the term of this Agreement, in which LPHA expends and receives financial assistance awarded to LPHA by Department under this Agreement, LPHA shall prepare and deliver to Department, no later than the 25 days following the end of the first, second and third quarters (or end of 3, 6, and 9 month periods) and 50 days following the end of the 4th quarter (or 12 month period) the following reports:

- a. A separate expenditure report for each Program in which LPHA expenditures and receipts of financial assistance occurred during the quarter as funded by indication on the original or formally amended Financial Assistance Award located in the same titled section of Exhibit C of the Agreement. Each report, (other than reports for PE 11 “STARS” and PE 41 “Family Planning”) must be substantially in the form set forth in Exhibit C titled “Oregon Department of Human Services, Public Health Division Expenditure and Revenue Report For All Programs Except STARS and Family Planning.”
- b. Expenditure reports for PE 11 and PE 41, must be substantially in the form set forth in Exhibit C titled "Oregon Department of Human Services Public Health Division Expenditure and Revenue Report For STARS Program Only" and "Oregon Department of Human Services Public Health Division Expenditure and Revenue Report For Family Planning Only", if LPHA expended financial assistance disbursed hereunder for PE 11 and PE 41 during the quarter.

All reports must be completed in accordance with the associated instructions and must provide complete, specific and accurate information on LPHA’s use of the financial assistance disbursed to LPHA hereunder. In addition, LPHA shall comply with all other reporting requirements set forth in this Agreement, including but not limited to, all reporting requirements set forth in applicable Program Element descriptions. If LPHA fails to comply with these reporting requirements, Department may withhold future disbursements of all financial assistance under this Agreement, as further described in Section 1. of this Exhibit E.

9. **Operation of Public Health Program.** LPHA shall operate or contract for the operation of a public health program during the term of this Agreement. If LPHA uses financial assistance provided under this Agreement for a particular Program Element, LPHA shall include that Program Element in its public health program from the date it begins using the funds provided under this Agreement for that Program Element until the earlier of (a) termination of this Agreement, (b) termination by Department of Department’s obligation to provide financial assistance for that Program Element, in accordance with Section 14 of this Exhibit E or (c) termination by LPHA, in accordance with Section 14 of this Exhibit E, of LPHA’s obligation to include that Program Element in its public health program.
10. **Technical Assistance.** During the term of this Agreement, Department shall provide technical assistance to LPHA in the delivery of Program Element services to the extent resources are available to Department for this purpose.
11. **Payment of Certain Expenses.** If Department requests that an employee of LPHA, or a Provider or a citizen providing services or residing within LPHA’s service area, attend Department training or a Department conference or business meeting and LPHA has obligated itself to reimburse the individual for travel expenses incurred by the individual in attending the training or conference, Department may pay those travel expenses on behalf of LPHA but only at the rates and in accordance with the reimbursement procedures set forth in the Oregon Accounting Manual as of the date the expense was incurred and only to the extent that Department determines funds are available for such reimbursement.

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

- a. LPHA fails to perform, observe or discharge any of its covenants, agreements or obligations set forth herein.
- b. Any representation, warranty or statement made by LPHA herein or in any documents or reports made by LPHA in connection herewith that are reasonably relied upon by Department to measure the delivery of Program Element services, the expenditure of financial assistance or the performance by LPHA is untrue in any material respect when made;
- c. LPHA (a) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (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) is adjudicated as bankrupt or insolvent, (e) commences a voluntary case under the federal Bankruptcy Code (as now or hereafter in effect), (f) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (g) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (h) takes any action for the purpose of effecting any of the foregoing; or
- d. A proceeding or case is commenced, without the application or consent of LPHA, in any court of competent jurisdiction, seeking (a) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of LPHA, (b) the appointment of a trustee, receiver, custodian, liquidator, or the like of LPHA or of all or any substantial part of its assets, or (c) similar relief in respect to LPHA under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive days, or an order for relief against LPHA is entered in an involuntary case under the federal Bankruptcy Code (as now or hereafter in effect).

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

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

14. Termination.

- a. **LPHA Termination.** LPHA may terminate this Agreement in its entirety or may terminate its obligation to include one or more particular Program Elements in its public health program:
 - i. For its convenience, upon at least three calendar months advance written notice to Department, with the termination effective as of the first day of the month following the notice period;
 - ii. Upon 45 days advance written notice to Department, if LPHA does not obtain funding, appropriations and other expenditure authorizations from LPHA's governing body, federal, state or other sources sufficient to permit LPHA to satisfy its performance obligations under this Agreement, as determined by LPHA in the reasonable exercise of its administrative discretion;
 - iii. Upon 30 days advance written notice to Department, if Department is in default under the Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as LPHA may specify in the notice; or
 - iv. Immediately upon written notice to Department, if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that LPHA no longer has the authority to meet its obligations under this Agreement.
- b. **Department Termination.** Department may terminate this Agreement in its entirety or may terminate its obligation to provide financial assistance under this Agreement for one or more particular Program Elements described in the Financial Assistance Award:
 - i. For its convenience, upon at least three calendar months advance written notice to LPHA, with the termination effective as of the first day of the month following the notice period;
 - ii. Upon 45 days advance written notice to LPHA, if Department does not obtain funding, appropriations and other expenditure authorizations from federal, state or other sources sufficient to meet the payment obligations of Department under this Agreement, as determined by Department in the reasonable exercise of its administrative discretion. Notwithstanding the preceding sentence, the Department may terminate this Agreement in its entirety or may terminate its obligation to provide financial assistance under this Agreement for one or more particular Program Elements, immediately upon written notice to LPHA or at such other time as it may determine if action by the Oregon Legislative Assembly or Emergency Board reduces the Department's legislative authorization for expenditure of funds to such a degree that Department will no longer have sufficient expenditure authority to meet its payment obligations under this Agreement, as determined by Department in the reasonable exercise of its administrative discretion, and the effective date for such reduction in expenditure authorization is less than 45 days from the date the action is taken;

- iii. Immediately upon written notice to LPHA if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that the Department no longer has the authority to meet its obligations under this Agreement or no longer has the authority to provide the financial assistance from the funding source it had planned to use;
- iv. Upon 30 days advance written notice to LPHA, if LPHA is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as Department may specify in the notice;
- v. Immediately upon written notice to LPHA, if any license or certificate required by law or regulation to be held by LPHA or a Provider to deliver a Program Element service described in the Financial Assistance Award is for any reason denied, revoked, suspended, not renewed or changed in such a way that LPHA or a Provider no longer meets requirements to deliver the service. This termination right may only be exercised with respect to the particular Program Element impacted by the loss of necessary licensure or certification; or
- vi. Immediately upon written notice to LPHA, if Department determines that LPHA or any of its Providers have endangered or are endangering the health or safety of an LPHA Client or others.

15. Effect of Termination

- a. Upon termination of this Agreement in its entirety, Department shall have no further obligation to pay or disburse financial assistance to LPHA under this Agreement, whether or not Department has paid or disbursed to LPHA all financial assistance described in the Financial Assistance Award, except (a) with respect to funds described in the Financial Assistance Award, to the extent Department's disbursement of financial assistance for a particular Program Element service, the financial assistance for which is calculated on a rate per unit of service or service capacity basis, is less than the applicable rate multiplied by the number of applicable units of the Program Element service or Program Element service capacity of that type performed or made available from the effective date of this Agreement through the termination date, and (b) with respect to funds described in the Financial Assistance Award, to the extent Department's disbursement of financial assistance for a particular Program Element service, the financial assistance for which is calculated on a cost reimbursement basis, is less than the cumulative actual Allowable Costs reasonably and necessarily incurred with respect to delivery of that Program Element service, from the effective date of this Agreement through the termination date.
- b. Upon termination of LPHA's obligation to perform under a particular Program Element service, Department shall have (a) no further obligation to pay or disburse financial assistance to LPHA under this Agreement for administration of that Program Element service whether or not Department has paid or disbursed to LPHA all financial assistance described in the Financial Assistance Award for administration of that Program Element and (b) no further obligation to pay or disburse any financial assistance to LPHA under this Agreement for such Program Element service, whether or not Department has paid or disbursed to LPHA all financial assistance described in the Financial Assistance Award for

such Program Element service except (i.) with respect to funds described in the Financial Assistance Award, to the extent Department's disbursement of financial assistance for the particular Program Element service, the financial assistance for which is calculated on a rate per unit of service or service capacity basis, is less than the applicable rate multiplied by the number of applicable units of the Program Element service or Program Element service capacity of that type performed or made available during the period from the effective date of this Agreement through the termination date, and (ii.) with respect to funds described in the Financial Assistance Award, to the extent Department's disbursement of financial assistance for a particular Program Element service, the financial assistance for which is calculated on a cost reimbursement basis, is less than the cumulative actual Allowable Costs reasonably and necessarily incurred by LPHA with respect to delivery of that Program Element service during the period from the effective date of this Agreement through the termination date.

- c. Upon termination of Department's obligation to provide financial assistance under this Agreement for a particular Program Element service, LPHS shall have no further obligation under this Agreement to provide that Program Element service.
- d. **Disbursement Limitations.** Notwithstanding subsections 15.a. and b. above, under no circumstances will Department be obligated to provide financial assistance to LPHA for a particular Program Element service in excess of the amount awarded under this Agreement for that Program Element service as set forth in the Financial Assistance Award.
- e. **Survival.** Exercise of a termination right set forth in Section 14 of this Exhibit E or termination of this Agreement in accordance with its terms, shall not affect LPHA's right to receive financial assistance to which it is entitled hereunder as described in subsections 15.a. and b. above or the right of the Department or LPHA to invoke the dispute resolution processes under Sections 17 and 18 below. Notwithstanding subsections a. and b. above, exercise of the termination rights in Section 14 of this Exhibit E or termination of this Agreement in accordance with its terms, shall not affect LPHA's obligations under this Agreement or Department's right to enforce this Agreement against LPHA in accordance with its terms, with respect to financial assistance actually disbursed by Department under this Agreement, or with respect to Program Element services actually delivered. Specifically, but without limiting the generality of the preceding sentence, exercise of a termination right set forth in Section 14 of this Exhibit E or termination of this Agreement in accordance with its terms shall not affect LPHA's representations and warranties; reporting obligations; record-keeping and access obligations; confidentiality obligations; obligation to comply with applicable federal requirements; the restrictions and limitations on LPHA's expenditure of financial assistance actually disbursed by Department hereunder, LPHA's obligation to cooperate with Department in the Agreement Settlement process; or Department's right to recover from LPHA; in accordance with the terms of this Agreement; any financial assistance disbursed by Department under this Agreement that is identified as an Underexpenditure or Misexpenditure. If a termination right set forth in Section 14 of this Exhibit E is exercised, both parties shall make reasonable good faith efforts to minimize unnecessary disruption or other problems associated with the termination.

- 16. Effect of Amendments Reducing Financial Assistance.** If LPHA and Department amend this Agreement to reduce the amount of financial assistance awarded for a particular Program Element, LPHA is not required by this Agreement to utilize other LPHA funds to replace the funds no longer received under this Agreement as a result of the amendment, and LPHA may, from and after the date of the amendment, reduce the quantity of that Program Element service included in its public health program commensurate with the amount of the reduction in financial assistance awarded for that Program Element. Nothing in the preceding sentence shall affect LPHA's obligations under this Agreement with respect to financial assistance actually disbursed by Department under this Agreement or with respect to Program Element services actually delivered.
- 17. Resolution of Disputes over Additional Financial Assistance Owed LPHA After Termination.** If, after termination of this Agreement, LPHA believes that Department disbursements of financial assistance under this Agreement for a particular Program Element are less than the amount of financial assistance that Department is obligated to provide to LPHA under this Agreement for that Program Element, as determined in accordance with the applicable financial assistance calculation methodology, LPHA shall provide Department with written notice thereof. Department shall have 90 calendar days from the effective date of LPHA's notice to pay LPHA in full or notify LPHA that it wishes to engage in a dispute resolution process. If Department notifies LPHA that it wishes to engage in a dispute resolution process, LPHA and Department's Assistant Administrator shall engage in non-binding discussion to give Department an opportunity to present reasons why it believes that it does not owe LPHA any additional financial assistance or that the amount owed is different than the amount identified by LPHA in its notices, and to give LPHA the opportunity to reconsider its notice. If Department and LPHA reach agreement on the additional amount owed to LPHA, Department shall promptly pay that amount to LPHA. If Department and LPHA continue to disagree as to the amount owed, the parties may agree to consider further appropriate dispute resolution processes, including, subject to Oregon Department of Justice and LPHA counsel approval, binding arbitration. Nothing in this Section shall preclude the LPHA from raising underpayment concerns at any time prior to termination of this Agreement under Section 18 below.
- 18. Resolution of Disputes, Generally.** In addition to other processes to resolve disputes provided in this Exhibit, either party may notify the other party that it wishes to engage in a dispute resolution process. Upon such notification, the parties shall engage in non-binding discussion to resolve the dispute. If the parties do not reach agreement as a result of non-binding discussion, the parties may agree to consider further appropriate dispute resolution processes, including, subject to Oregon Department of Justice and LPHA counsel approval, binding arbitration. The rights and remedies set forth in this Agreement are not intended to be exhaustive and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies at law or in equity.
- 19. Violation of Law.** Nothing in this Agreement shall require LPHA or Department to act in violation of state or federal constitutions, statutes, regulations or rules.