



PUBLIC HEALTH DIVISION
Center for Health Protection, Drinking Water Services

Tina Kotek, Governor

Oregon
Health
Authority

800 NE Oregon Street, Suite #640
Portland, OR 97232-2162
(971) 673-0405
(971) 673-0694 – FAX
<http://healthoregon.org/dwp>

July 22, 2024

Legal Notice

Legal notice of public review and comment period concerning the proposed 2023 Intended Use Plan (IUP) attached below for Oregon's new Bipartisan Infrastructure Law (BIL) Lead Service Line Replacement (LSLR) program. The BIL LSLR increases funding to Oregon's existing Drinking Water State Revolving Fund (DWSRF) program with focus on inventory collection, planning, and the replacement of known lead service lines and connectors.

One of Oregon Health Authority (OHA) Drinking Water Services (DWS) responsibilities as a state agency managing the DWSRF program as set forth under Section 1452 (40 CFR 35.555 (b)) of the amended 1996 Safe Drinking Water Act (SDWA) is to provide the public the opportunity to comment on the proposed IUP as part of the grant application process to the U.S. Environmental Protection Agency (EPA). This IUP explains how OHA-DWS prioritizes funding to eligible community and non-profit non-community public water systems and the funding of Set-Aside activities. It also is a key aspect of how we will procure the funding resources that the EPA has appropriated Oregon during Federal fiscal year 2023.

The public comment period for the IUP will be from Friday, July 26 through Monday, August 26, 2024. If you would like to make a comment, please email your comments to DWS.SRF@odhsoha.oregon.gov by no later than 5pm on Monday, August 26th to be considered. If you have questions, you may also email or call me at (503) 956-8287.

Thank you.

Adam DeSemple

PROGRAM COORDINATOR, DWSRF/BIL
Oregon Health Authority
Center for Health Protection
Drinking Water Services
800 N.E. Oregon St., STE 640
Portland, OR. 97232-2162
adam.desemple@oha.oregon.gov
<http://healthoregon.org/srf>
<http://oregon.gov/bil>



PUBLIC HEALTH DIVISION
Center for Health Protection, Drinking Water Services

Tina Kotek, Governor

Oregon
Health
Authority

800 NE Oregon Street, Suite #640
Portland, OR 97232-2162
(971) 673-0405
(971) 673-0694 – FAX
<http://healthoregon.org/dwp>

June 12, 2024

Ms. Lacey Davidson
Grants Specialist, EPA Region 10
United States Environmental Protection Agency
1200 Sixth Avenue, Suite 900, OMP-145
Seattle, WA 98101

Reference: Application, FFY-2023 Oregon's Drinking Water State Revolving Fund (FON: EPA-CEP-01) – BIL Lead Service Line Replacement

Dear Ms. Davidson:

Please find in the Grants.gov application package the Oregon Health Authority's (OHA) complete Drinking Water State Revolving Fund – BIL Lead Service Line Replacement capitalization grant application and Intended Use Plan (IUP) for *partial* FFY-2023 appropriations in the amount of \$1,142,900. This application package also includes OHA's Set-Aside work plans, the budget narrative (i.e., SF-424A), as well as the current indirect cost rate agreement and other required documents.

Our plans and strategy for implementing our programmatic goals while addressing the federal requirements will be copiously detailed and incorporated throughout the IUP and its attachments in the grant application package.

If you have any questions or comments, please contact Adam DeSemples, Program Coordinator, at 503-956-8287 or via e-mail at adam.desemples@oha.oregon.gov.

Sincerely,

André Ourso, MPH, JD
Administrator, Center for Health Protection
Public Health Division
Oregon Health Authority

Nadia Davidson
Director of Finance
Public Health Division
Oregon Health Authority

Enclosures: Application, FFY-2023 Drinking Water State Revolving Fund (FON: EPA-CEP-01)

cc: Richard Green
Catie Jones
Samina Panwhar
Tony Fields
Adam DeSemples
Debra Lambeth
Mai Quach
Travis Labrum
Jon Unger
Nicole Bailey
Kristen Larson

State of Oregon

Drinking Water State Revolving Fund (DWSRF)

Bipartisan Infrastructure Law

(BIL) – Lead Service Line

Replacement Program

Intended Use Plan

2023 - *final*

July 2024

Oregon Health Authority
Public Health Division
Center for Health Protection
Drinking Water Services
800 NE Oregon Street, STE 640
Portland, OR. 97232



Cover Photo Credit/Design:

Lead Service Lines (LSL) images created by EPA presenters from its 2019 quarterly LSL identification and replacement webinar series slides

**2023 Drinking Water State Revolving Fund – [BIL-Lead Service Line Replacement Program](#)
Capitalization Grant Application and Intended Use Plan
State of Oregon**

TABLE OF CONTENTS

EXECUTIVE SUMMARY (overview)

Introduction & Purpose	1
Summary	1
• Table 1: Summary of FFY2023 Allotments	2
Interagency Implementation	2
I. Need for the Program	3
A. Table 2: Comprehensive 2023 BIL-Lead Service Line Replacement PPL Overview	3
B. Drinking Water Infrastructure Needs Survey Results	3
C. Cumulative Grant Awards	4
D. Targeted Capacity Development for Priority Non-Compliers	4
II. Table 3: Oregon’s 2023 DWSRF – BIL-LSLR (Partial) Grant	5
A. BIL-LSLR Allocation Table Overview	5
B. Proportionality Ratio for Expending the Funds	6
C. Cost Allocation Plan	6
III. Bipartisan Infrastructure Law (BIL)	6
A. BIL Overview	6
B. Summary of Oregon’s BIL Appropriations (2022-2026)	7
• Table 4: Oregon’s BIL Appropriations	7
C. Subsidy / Forgivable Loan Requirements for BIL	7
• Table 5: Summary of Subsidy Requirements	8
D. The 3 BIL Funding Opportunities for DWSRF Programs	8
1. Lead Service Line Replacement	8
2. General Supplemental	9
3. Emerging Contaminants	9
IV. The Set-Aside Activities	10
A. Establishing Set-Aside Activities and Setting Funding Levels	10
B. Description of Oregon Health Authority’s Set-Aside Activities	11
1. Administrative Expense	11
2. Small Systems Technical Assistance	12
3. State Program Management	12
4. Local Assistance & Other State Programs	12
V. Current & Future Years of the Program	13
• Short-Term Goals	13
• Long-Term Goals	14

• Financing Considerations	14
➤ Loan Principal Forgiveness	14
➤ Loan Terms	14
➤ Interest Rates	15
• Letter of Interest (LOI) Process	15
• Federal Funding Accountability and Transparency Act (FFATA)	15
➤ Table 6: FFATA Projects Summary	16
• Davis Bacon (DB) Wage Rate Compliance, American Iron & Steel Requirements, and Build America, Buy America Act (BABA)	16
• Program Guidelines & Applicant’s Handbook	17
• Operating Agreement (OA)	18
VI. Sources & Uses / State Match	18
A. Sources and Uses Table	18
B. Sources & Uses Table Detailed: SFY2023 & SFY2024 Projections	19
C. State Matching Funds	20
VII. Disadvantaged Community Program	20
VIII. Asset Management	21
IX. Fund Linkage Between DWSRF and CWSRF	21
X. Drinking Water State Revolving Fund Projects	22
A. Project Eligibility, Rating & Ranking Process	22
B. Project Selection Criteria – Rating and Ranking, By-Pass	22
XI. Public Review & Comments	23
• Process	23

APPENDICES

A. REQUIRED DOCUMENTS

- Attorney General Certification
- 2023 BIL-Lead Service Line Replacement PPL
- BIL-Lead Service Line Replacement Rating Form & Guidance
- FFATA Set-Aside Reporting Spreadsheet

B. SUPPORTING DOCUMENTS

- 2023 Grant Allotment Use Summary – BIL-Lead Service Line Replacement
- Cost Allocation & Other Payroll Expense Letters (3)

C. TIMELY & EXPEDITIOUS USE OF FUNDS

- Sources & Uses Table

D. SET-ASIDE WORK PLANS

- Administrative Expense
- Small System Technical Assistance
- State Program Management
- Local Assistance:
 - Water System Capacity Development

E. PUBLIC NOTICES

- Intended Use Plan (IUP) Public Notice Letter
- Project Priority List Public Notice Letter

F. AGREEMENTS

- Interagency Agreement (with Business Oregon)
- Operating Agreement (with EPA)
- 3 Vendor Contracts – Lead Service Line Inventory Collection Assistance
 - i. HBH Consulting Engineers, Inc.
 - ii. Oregon Association of Water Utilities, Inc. (OAWU)
 - iii. 120 Water Audit, Inc.

COMMON ACRONYMS

• ACS	-	AMERICAN COMMUNITY SURVEY
• AIS	-	AMERICAN IRON & STEEL
• AWWA	-	AMERICAN WATER WORKS ASSOCIATION
• AWIA	-	AMERICA'S WATER INFRASTRUCTURE ACT
• BABA	-	BUILD AMERICA, BUY AMERICA ACT
• BIL	-	BIPARTISAN INFRASTRUCTURE LAW
• BMP	-	BEST MANAGEMENT PRACTICES
• CA	-	COST ALLOCATION & CAPACITY ASSESSMENT
• CFR	-	CODE OF FEDERAL REGULATIONS
• CHP	-	CENTER FOR HEALTH PROTECTION
• CR	-	CONTINUING RESOLUTION
• CWSRF	-	CLEAN WATER STATE REVOLVING FUND
• DB	-	DAVIS BACON
• DBE	-	DISADVANTAGED BUSINESS ENTERPRISE
• DEQ	-	DEPARTMENT OF ENVIRONMENTAL QUALITY
• DWAC	-	DRINKING WATER ADVISORY COMMITTEE
• DWS	-	DRINKING WATER SERVICES
• DWSP	-	DRINKING WATER SOURCE PROTECTION
• DWSRF	-	DRINKING WATER STATE REVOLVING FUND
• EDU	-	EQUIVALENT DWELLING UNIT
• EPA	-	ENVIRONMENTAL PROTECTION AGENCY
• ER	-	ENVIRONMENTAL REVIEW
• ERP	-	ENFORCEMENT RESPONSE POLICY
• ETT	-	ENFORCEMENT TARGETING TOOL
• FFATA	-	FEDERAL FUNDING ACCOUNTABILITY & TRANSPARENCY ACT
• FFY	-	FEDERAL FISCAL YEAR
• FSRS	-	FFATA SUBAWARD REPORTING SYSTEM
• FTE	-	FULL TIME EQUIVALENT
• GIS	-	GEOGRAPHICAL INFORMATION SYSTEMS
• GPR	-	GREEN PROJECT RESERVE
• IAA	-	INTER-AGENCY AGREEMENT
• IFA	-	INFRASTRUCTURE FINANCE AUTHORITY
• IGA	-	INTERGOVERNMENTAL AGREEMENT
• IUP	-	INTENDED USE PLAN
• LOI	-	LETTER OF INTEREST
• MCL	-	MAXIMUM CONTAMINANT LEVEL
• MHI	-	MEDIAN HOUSEHOLD INCOME
• NIMS	-	NATIONAL INFORMATION MANAGEMENT SYSTEM
• OA	-	OPERATING AGREEMENT
• OAR	-	OREGON ADMINISTRATIVE RULE
• OFS	-	OFFICE OF FINANCIAL SERVICES
• OHA	-	OREGON HEALTH AUTHORITY
• OMB	-	OFFICE OF MANAGEMENT & BUDGET
• ORS	-	OREGON REVISED STATUTE
• PBR	-	PROJECT & BENEFITS REPORTING
• PER	-	PROGRAM EVALUATION REPORT
• PPL	-	PROJECT PRIORITY LIST
• PPP	-	PUBLIC PRIVATE PARTNERSHIPS
• RCAC	-	RURAL COMMUNITY ASSISTANCE CORPORATION
• RLDWA	-	REDUCTION OF LEAD IN DRINKING WATER ACT
• SDWA	-	SAFE DRINKING WATER ACT
• SDWRLF	-	SAFE DRINKING WATER REVOLVING LOAN FUND
• SFY	-	STATE FISCAL YEAR
• SIPP	-	SUSTAINABLE INFRASTRUCTURE PLANNING PROJECTS
• SOS	-	SECRETARY OF STATE
• SPM	-	STATE PROGRAM MANAGEMENT
• ULO	-	UNLIQUIDATED OBLIGATION
• WIFIA	-	WATER INFRASTRUCTURE FINANCE & INNOVATION ACT
• WIIN	-	WATER INFRASTRUCTURE IMPROVEMENT FOR THE NATION ACT

Oregon's 2023 DWSRF – BIL-Lead Service Line Replacement, Intended Use Plan

Introduction & Purpose

On August 6, 1996, the Safe Drinking Water Act (SDWA) Amendments of 1996 ([P.L. 104-182](#)) were signed into law. Section 1452 of this act authorized the Administrator of the U.S. Environmental Protection Agency (EPA) to establish a Drinking Water State Revolving Fund (DWSRF) program to assist public water systems with affordable financing for infrastructure needs to achieve or maintain compliance with the SDWA requirements and to protect public health.

Congress appropriates funding for the DWSRF. EPA allocates the appropriated funds to each state based upon the results of the most recent Drinking Water Infrastructure Needs Survey and Assessment. EPA awards capitalization grants to each state to contribute to the capital of their DWSRF program. The state provides the required match. As a part of each capitalization grant application process to the EPA, Section 1452(b) of the SDWA, requires states to submit an Intended Use Plan (IUP) identifying the use of funds in that state's DWSRF program and how those uses support the goal of protecting public health.

❖ **Awarded DWSRF Capitalization Grants Cover:**

1. **Safe Drinking Water Revolving Loan Fund (SDWRLF)**: Assists eligible public water systems achieve, maintain, or regain compliance and protect public health by funding drinking water infrastructure or resiliency improvement projects such as treatment, distribution, storage, or a new source. Oregon's DWSRF capitalizes the SDWRLF (i.e., Loan Fund) per [Oregon Administrative Rule \(OAR\) 123-049](#) and is managed by the Oregon Business Development Department, DBA Business Oregon through its Infrastructure Finance Authority (IFA).

On November 15, 2021, the Bipartisan Infrastructure Law (BIL) was signed into law, generating significant additional investment in the DWSRF program through the General Supplemental (GS) funding and targeted programs for Emerging Contaminants (EC) and Lead Service Line Replacement (LSLR).

2. **Program Set-Asides**: State DWSRF programs include four unique Set-Asides that allow states the option of providing a portion of its capitalization grant towards those activities. Activities such as covering the costs to administer the DWSRF program, regulatory work (by counties) to ensure compliance with SDWA, technical assistance, and capacity development are a few of the primary focuses these Set-Asides support. Partner costs to Oregon's Department of Environmental Quality (DEQ) are also covered by Set-Asides for its assistance with source water protection efforts throughout the state. See Section IV below or **Appendix D** for more details about these four Set-Aside activities.

Summary

The State of Oregon, Drinking Water Services (DWS) is an Oregon Health Authority (OHA) program located within the Center for Health Protection (CHP) and is the primacy agency in managing Oregon's DWSRF program.

Detailed in EPA’s memorandum dated April 3, 2023, states are allocated the federal fiscal year (FFY) 2023 traditional “Base” DWSRF and [Bipartisan Infrastructure Law \(BIL\)](#) capitalization grant amounts totaling \$79,243,000. These funds are targeted for use for State Fiscal Years 2024 through 2025 (July 1, 2023 – June 30, 2025). Table 1 shows the breakdown of FFY 2023 allotments for Oregon.

Table 1: Summary of FFY 2023 Allotments

	“Base” DWSRF	BIL – General Supplemental	BIL – Emerging Contaminants	BIL – Lead Service Line Replacement	Total FFY Allotment
Oregon	\$7,428,000	\$31,672,000	\$11,493,000	\$28,650,000	\$79,243,000

Implementation across all programs will be in coordination with our partners at Business Oregon by continuing to offer low interest loans from the Loan Fund to eligible drinking water systems while continuing to support the four separate program Set-Aside activities to meet federal drinking water program mandates.

This IUP will focus on the high-level intended uses of the new BIL Lead Service Line Replacement (BIL-LSLR) grants through the [Infrastructure Investment and Jobs Act \(H.R. 3684\)](#) (i.e., BIL, Drinking Water Sec. 50101-50115). OHA and its state agency partner (i.e., Business Oregon) are pursuing a partial FFY2023 BIL-LSLR grant out of the full allocation of \$28,650,000. Through funded projects and Set-Asides, these funds will be utilized to further identify and replace lead service lines and connectors throughout Oregon.

Lead service lines have been banned in Oregon since 1985. Therefore, service line inventories are critically important in determining how much BIL-LSLR funding is needed for mitigation efforts in Oregon.

BIL-LSLR grant funding appropriations to Oregon’s DWSRF program are projected to run from FFY2022-2026. For more BIL details, see Section III in this IUP or visit [Oregon.gov/bil](https://oregon.gov/bil).

This IUP and its appendices, including its Project Priority Lists (PPL), incorporates BIL-LSLR grant funding details and federal mandates as part of Oregon’s DWSRF program to expand more funding options to eligible drinking water systems throughout the state.

Finally, many of the details throughout this IUP demonstrate Oregon’s continued efforts to programmatically improve processes and policies while protecting public drinking water supplies statewide.

Interagency Implementation

Oregon’s DWSRF program is carried out through direct involvement activities and with the utilization of partnership agreements. The primacy agency is OHA via its DWS which provides direct services with a complement of experienced regulatory technical staff.

OHA inter-agency agreement (IAA) with Business Oregon is maintained and updated on a biennial basis. Business Oregon is the state’s economic development agency. Visit **Appendix F** to see the

IAA.

Since OHA is the lead agency, it is responsible for establishing program and project priorities (via project ratings and rankings), oversight of program operation, technical assistance, capacity development, and the annual capitalization grant application and reporting processes. Business Oregon operates, manages, and administers the Safe Drinking Water Revolving Loan Fund (SDWRLF) for drinking water infrastructure projects, including the BIL-GS, BIL-EC, and BIL-LSLR programs, Drinking Water Source Protection (DWSP) loans and grants, and the Sustainable Infrastructure Planning Projects (SIPP) program funds (100% forgivable loans). While managing the Loan Fund, Business Oregon ensures compliance and reporting with subsidy (forgivable loan) requirements as outlined in annual grant agreements. Business Oregon staff also works with communities to provide loan servicing functions that result from the Loan Fund, as well as project management services to ensure project completion and adherence to federal standards. DEQ with OHA complete source water assessments and implement the local DWSP programs.

I. Need for the Program

This IUP and its supporting documents clearly demonstrate Oregon’s robust drinking water infrastructure need and further explains how the funds are intended to be used.

A. Table 2: Comprehensive 2023 BIL-Lead Service Line Replacement Project Priority List Overview

Project Priority List Description	No. of Letters of Interest	Funding Request Total
Lead Service Line Inventories, planning, design & forecasted construction related activities	5	\$788,601

- All projects submitted on a Letter of Interest (LOI) are reviewed for eligibility. Eligible projects are then rated and placed in a prioritized list to create a PPL.
- All 5 of the potential projects submitted are to be for inventory collection, planning, and/or engineering activities.
- Of these 5 potential projects submitted, 3 also include activities related to forecasted lead service line construction activities.
- All 5 (100%) of the projects are for small water systems serving fewer than 10,000 people.
- Four (4) of the 5 eligible projects (80%) are for disadvantaged communities (DAC).
- See **Appendix A** for details on the combined PPL and Public Notices. Also, see [OHA’s Project Priority List Webpage](#) for project details.

B. Drinking Water Infrastructure Needs Survey Results

EPA’s 7th Drinking Water Infrastructure Needs Survey and Assessment (DWINSA) assesses the nation’s public water systems’ infrastructure needs over the next 20 years and is used to allocate set percentages of the Drinking Water State Revolving Fund (DWSRF) grants, including Bipartisan Infrastructure Law funding, to states.

The 2019-20 nationwide Drinking Water Infrastructure Needs Survey, sponsored by the EPA with assistance from OHA and its water suppliers, was completed in 2022. The 2019-20 surveyed results indicated that Oregon’s drinking water infrastructure needs are more than \$10 billion over the next twenty years, a 160 percent increase from the 2015 Needs Survey results. Nearly half (i.e., \$5.14 billion) of needs in Oregon are for medium-sized water systems serving between 3,001 and 100,000 people according to the survey.

Previous allocation results conducted from the 2011 Needs Survey awarded Oregon with 1.42 percent and 2015 results equaled 1.32 percent of the total annual EPA DWSRF appropriations. The 2019-20 Needs Survey results supersede the 2011 and 2015 outcomes and now allocate 1.50 percent of the annual national appropriation to Oregon for “Base” DWSRF, BIL-General Supplemental, and BIL-Emerging Contaminants. BIL-LSLR annual allocations were reduced to 1.00 percent as the needs in Oregon are expected to be less than other parts of the country.

The nationwide 2023 BIL-LSLR DWSRF Allotment is approximately \$2.86 billion. Oregon’s 1.00 percent allocation of that total is \$28,650,000. However, the focus of this IUP will explain why Oregon is applying for a partial grant (i.e., \$1,142,900) versus the entire 2023 BIL-LSLR allotment.

C. Cumulative Grant Awards

The first grants from the DWSRF were distributed to states, tribes, and territories from the 1997 appropriation and totaled \$1.275 billion. From FFY1997 through March 31, 2024, cumulative federal grants (including American Recovery and Reinvestment Act, [ARRA] and BIL) for the DWSRF program to states total approximately \$32.94 billion. Oregon’s total federal grant allocations received through March 31, 2024 (including ARRA and BIL) is over \$384 million.

D. Targeted Capacity Development for Priority Non-Compliers

In addition to these substantial infrastructure needs, many small water systems in Oregon lack the technical, managerial, and financial capacities to provide safe drinking water to their respective users.

A system score is a violation point-based value that provides OHA a comprehensive approach for assessing a water system's level of regulatory compliance. A single value is calculated for each water system based on compliance with all rules, instead of using the rule based SNC (significant non-compliance) status which was based on failure to comply with individual drinking water rules.

OHA’s DWS targets systems with the highest scores (called Priority Non-Compliers (PNC)) for capacity development assistance and to ensure that these systems are given the fullest possible consideration for available DWSRF infrastructure financing. EPA utilizes an Enforcement Response Policy to ensure that no community or non-profit non-community systems from the System Scores list with a score of 11 or higher receive DWSRF funding unless the funding directly supports the water system in achieving or regaining compliance.

Please see OHA’s [Capacity Development Webpage](#) for resources on Technical Managerial and Financial Capacity and the Annual State Capacity Development Program Implementation Reports.

For Oregon’s PNC list, see here, <https://yourwater.oregon.gov/sscore.php>.

II. **Table 3: Oregon’s 2023 DWSRF – BIL-LSLR (Partial) Grant**

The 2023 program is budgeted as described in the table below:

(For more details, visit the Grant Allotment Use Summary in the **Appendix B** portion of the IUP)

2023 BIL-Lead Service Line Replacement	EPA Site Project Code	Federal Funds	Percent of Allotment	State Match Funds*
Project Funds for Water Systems	DA	\$ 788,601	69.00%	\$ -
Set-Aside Activities:				
1.) Administrative Expense	DD	\$ 45,716	4.00%	\$ -
2.) Small System Tech. Assist.	DE	\$ 22,858	2.00%	\$ -
3.) State Program Management	DF	\$ 114,290	10.00%	\$ -
4.) Local Assistance (LA)				
<i>LA - Capacity Development</i>	DGC	\$ 171,435	15.00%	\$ -
Total		\$ 1,142,900	100.00%	\$ -

* State Match is not required for BIL-LSLR grants.

A. **BIL-LSLR Allocation Table Overview (See Section IV or Appendix D for details on Set-Asides)**

- Project Funds for Water Systems: 69% of the BIL-LSLR Allocation is dedicated to funding project contracts. Eligible project activities must be related to inventory activities and to address or mitigate confirmed lead service line concerns.
 - Subsidy: BIL requires 49% of the total grant be provided as principal forgiveness (subsidy) and all the principal forgiveness must be for disadvantaged communities.
- Administrative Expense: 4% of the BIL-LSLR allocation to contribute to the costs associated to the 3 vendor contracts who are assisting small systems with their lead service line inventory collections.
- Small System Technical Assistance: 2% of the BIL-LSLR allocation to contribute to the costs associated to the 3 vendor contracts who are assisting small systems with their lead service line inventory collections.
- State Program Management: 10% of the funds will support regulatory work related to the State’s efforts around BIL-LSLR program development, implementation, and project review, rating, and ranking.
- Local Assistance (LA): The Local Assistance Capacity Development program will utilize its 2023 BIL-LSLR grant funding to cover costs related to the 3 vendor contracts assisting small systems with their lead service line inventory

collections. Implementation of Protection and Drinking Water Source Protection programs are not applicable to BIL-LSLR funding efforts.

- EPA Site Project Code: A simplified internal coding for tracking grant fund balances as required by EPA.
- State Match: BIL-LSLR funding does not require state match.

B. Proportionality Ratio for Expending the Funds

BIL-LSLR grant requirements do not include state matching funds, therefore, the figures for 2023 above do not have to adhere to the Cash Draw Rule (per 40 CFR part 35.3560) or proportionality ratio requirements.

C. Cost Allocation Plan

Additionally, this grant year, OHA will continue to impose its cost allocation plan. Cost allocation acts like indirect costs, as allowed under OMB 2 Code of Federal Regulations (CFR) Part 225 (formerly OMB Circular A-87). The cost allocation rate will affect some direct costs (e.g., Set-Aside activities), but not the Loan Fund, nor the DWSP loans or grants in the Local Assistance Set-Aside. Our current cost allocation rate is 16.96 percent and is expected to be applied to \$303,006 of Set-Asides, resulting in a cost of approximately \$51,293.

OHA continues to undergo an in-depth cost rate review for future state fiscal years as explained in our recent cost allocation letter dated, June 30, 2021.

III. Bipartisan Infrastructure Law (BIL)

A. BIL Overview

On November 15, 2021, the Infrastructure Investment and Jobs Act (H.R. 3684) commonly referred to as the [Bipartisan Infrastructure Law \(BIL\)](#) was signed into law. BIL is a federally funded infrastructure package covering multiple critical infrastructure sectors throughout the U.S., including drinking water. The law provides the EPA with grant funds that can be appropriated to states for investments in drinking water infrastructure over five federal fiscal years (2022 – 2026). States have until the end of the second federal fiscal year after appropriations announced to apply for and receive funding. For example, the 2023 BIL grant appropriations were announced in the spring of 2023, but states have until September 30th, 2024, to receive their awards.

BIL funding will be available to water systems through the state’s existing Drinking Water State Revolving Fund (DWSRF), implemented jointly by Business Oregon and OHA Drinking Water Services. BIL authorizes increases to Oregon’s existing “Base” [DWSRF](#) program and includes appropriations that supplement DWSRF funding for infrastructure improvements, funding for identifying and replacing lead service lines and gooseneck connectors, and funding to address emerging contaminants (e.g., PFAS or other unregulated contaminants).

It is anticipated that Oregon’s DWSRF program will evolve over the life of BIL funding to accommodate current and future needs and to better meet federal requirements,

program goals, and the needs of Oregonians and their communities as the BIL funding has intended.

B. Summary of Oregon’s BIL Appropriations (2022-2026)

With the release of the 2019-20 Drinking Water Needs Survey (DWNS) results, Oregon will receive 1.50 percent of the annual national allotment, starting with 2023. See Tables 4 and 5 below for current and anticipated appropriations and subsidy totals. For this IUP, the state has authority to apply for the 2023 BIL-LSLR allocation of \$28.65 million, which is 1.00 percent of the annual national BIL-LSLR appropriation. However, as noted previously, Oregon’s DWSRF program will be applying for a partial BIL-LSLR grant for 2023.

The 2024 allocations were announced by EPA in the Spring of 2024, and Oregon’s DWSRF program anticipates applying for and posting additional IUP’s in the fall or winter of 2024.

Table 4: Oregon's BIL Appropriations

Oregon's Three BIL Appropriations (2022 - 2026)							
Fiscal Year	General Supplemental	Needs Survey Rate (%)	Lead Service Line Replacement	Needs Survey Rate (%)	Emerging Contaminants	Needs Survey Rate (%)	
2022	\$ 23,673,000	1.32%	\$ 37,300,000	1.32%	\$ 9,940,000	1.32%	
2023	\$ 31,672,000	1.50%	\$ 28,650,000	1.00%	\$ 11,493,000	1.50%	
2024	\$ 34,575,000	1.50%	\$ 28,650,000	1.00%	\$ 11,493,000	1.50%	
2025	Forecast	\$ 34,575,000	1.50%	\$ 28,650,000	1.00%	\$ 11,493,000	1.50%
2026		\$ 34,575,000	1.50%	\$ 28,650,000	1.00%	\$ 11,493,000	1.50%
Total	\$ 159,070,000		\$ 151,900,000		\$ 55,912,000		

C. Subsidy / Forgivable Loan Requirements for BIL

A key priority of BIL is to ensure that disadvantaged communities benefit equitably, therefore, federal funding requirements stipulate that a significant portion of funds be provided in the form of loan forgiveness or subsidy.

Sixty-nine (69) percent (\$788,601) of the partial BIL-LSLR funding (\$1,142,900) will be targeted for project funding. Exactly 49% (approximately \$560,021) of the total grant must be provided as principal forgiveness to disadvantaged communities. OHA is utilizing 31% of the grant for program Set-Aside activities.

Four (4) of the 5 eligible projects (80%) are for disadvantaged communities, and thus the state expects no issues with meeting the 49% subsidy requirement.

The LSLR program shall not cap subsidy to each water system but must adhere to the 49%

subsidy requirement in BIL. Subsidy is anticipated to be distributed proportionally to each DAC system based on funds requested. This approach ensures that if for any reason the DWSRF program ultimately does not need or use all project funding the subsidy requirement is still met and the DWSRF program does not exceed or fall short of the 49% subsidy requirement. At this stage, water systems have submitted LOIs with estimated budgets and potential available subsidy has been calculated proportionally based on those figures. Please see Table 6 with the FFATA Projects Summary for these subsidy figures.

As projects develop and move to final application and contracting, water systems may find alternate funding sources, choose to not move forward with a loan, or modify their request for other reasons such as completing lead service line inventories on their own by utilizing available TA resources. For this reason, subsidy is allocated proportionally to the systems funded with BIL-LSLR for Oregon to meet the 49% subsidy requirement.

Each state’s DWSRF program is required to establish a definition of disadvantaged community based on the service area of a public water system that meets affordability criteria established by the state. Oregon’s current DWSRF’s community affordability criteria define Disadvantaged Community as “a public water system with a service area that has a Median Household Income (MHI) less than the state MHI.” Please see section VII for more information on disadvantaged definitions.

Table 5: Summary of Subsidy Requirements

Oregon's BIL Subsidy Requirements (2022 - 2026)				
Fiscal Year		General Supplemental (49% of Appropriation)	Lead Service Line Replacement (49% of Appropriation)	Emerging Contaminants (100% of Appropriation)
2022		\$ 11,599,770	\$ 18,277,000	\$ 9,940,000
2023		\$ 15,519,280	\$ 14,038,500	\$ 11,493,000
2024		\$ 16,941,750	\$ 14,038,500	\$ 11,493,000
2025	Forecast	\$ 16,941,750	\$ 14,038,500	\$ 11,493,000
2026		\$ 16,941,750	\$ 14,038,500	\$ 11,493,000
Total		\$ 77,944,300	\$ 74,431,000	\$ 55,912,000

D. The 3 BIL Funding Opportunities for DWSRF Programs:

- 1. Lead Service Line Replacement (LSLR):** BIL-LSLR funding targets projects or activities that otherwise would be eligible under the “Base” DWSRF funding program.

According to [EPA's March 8, 2022, BIL Implementation Memo](#), to be eligible for BIL-LSLR funding, the project or activity must be a LSLR or associated activity

directly connected to the identification, planning, design, and replacement of lead service lines. Additionally, any identified LSLR project must also replace the entire lead service line and not just a portion – unless a portion has already been replaced.

Projects funded through the Loan Fund or activities funded through the Set-Asides are best if reviewed and approved by EPA Region 10 prior to grant application submittal. OHA and Business Oregon intend to inform and work with our EPA Region 10 partners to ensure we are meeting all federal requirements for BIL-LSLR funding.

Oregon has had restrictions on use of lead in plumbing since 1985. Based on existing information, there are no known lead service lines under the jurisdiction of public water systems throughout Oregon. However, less is known about the private side of service lines – particularly for older homes that might not have had their service line replaced since the 1980's.

This IUP illustrates Oregon's plans to apply for a portion (i.e., \$1,142,900) of EPA's FFY2023 BIL-LSLR allotment of \$28,650,000.

Visit **Appendix A** for project and funding details on the 2023 BIL-LSLR PPL.

- 2. General Supplemental:** BIL-General Supplemental funding represents a continuation of Oregon's "Base" DWSRF program – which provides low-interest loans to eligible public water systems for planning, design, and construction of infrastructure improvements per Section 1452 of SDWA. Additional forgivable loan is also made available to disadvantaged communities through the BIL as mandated by federal requirements.

With Oregon's DWSRF program having already applied for its FFY 2023 BIL-General Supplemental allotment of \$31,672,000 in December 2023, its next BIL-General Supplemental grant application for FFY2024 funding will occur in fall 2024.

- 3. Emerging Contaminants (EC):** BIL Emerging Contaminant funding targets projects or activities that otherwise would be eligible under the "Base" DWSRF funding program. To be eligible for BIL Emerging Contaminant funding, the primary purpose must be to address and/or mitigate people's exposure to EC in drinking water with priorities on perfluoroalkyl and polyfluoroalkyl substances (PFAS).

According to the EPA, ECs are a chemical or material (e.g., pharmaceuticals, personal care products, or unregulated contaminants) that have the potential to threaten human health, wildlife, or the environment. EPA may regulate certain ECs in the future. According to [EPA's BIL Implementation Memo](#), projects that address and/or mitigate EC that are listed on any of EPA's [Contaminant Candidate Lists \(CCL1 - CCL5\)](#) are recognized as eligible.

As the primacy agency, OHA identifies water systems to be eligible for BIL-EC grant funding. In Oregon, the unregulated contaminants listed on EPA's Contaminant Candidate Lists 1 through 5 consistently found at the entry point are

PFAS and manganese. Since cyanotoxins are not regulated at the federal level, and can pose a significant public health risk, systems with cyanotoxin detections at the intake are being targeted as well for funding.

- **For PFAS**, any system with a detection over the reporting level is included on the eligible list. This includes systems that sampled voluntarily and submitted data to OHA, and systems that sampled as part of the 2021 PFAS study conducted with DEQ.
- **For Manganese**, known systems with manganese at or above the Health Advisory Level (HAL), known systems installing treatment for manganese, and systems with manganese that contacted OHA about BIL-EC funding after March 31, 2023, are being considered for the 2023 BIL-EC grant funding.
- **For Cyanotoxins**, systems that ever had a detection of total microcystins or cylindrospermopsin at the intake or entry point are eligible.

OHA and Business Oregon intend to inform and work with our EPA Region 10 partners to ensure we are meeting all federal requirements for BIL-EC funding.

Of the BIL funding opportunities, EC is the most flexible with 100 percent of the funds to be awarded as forgivable loans (by law) and no State Match requirement. Twenty-five percent of EC funding must go to disadvantaged communities or eligible public water systems with fewer than 25,000 people.

Future BIL-EC funding opportunities (2024-2026) will continue to be opened to all eligible public water systems that meet BIL-EC funding requirements and who submit a current [Funding Interest Form](#).

Currently, Oregon's plans are to apply for the entire FFY2024 BIL-EC allotment of \$11,493,000 in the winter of 2024.

IV. The Set-Aside Activities:

A. Establishing Set-Aside Activities and Setting Funding Levels

The SDWA authorizes states to use a maximum of 31 percent of its annual grant allotments for Set-Aside activities. Set-Aside activities are utilized to administer the DWSRF program and to assist water systems in meeting the requirements of the SDWA. Annually, OHA evaluates each of the four Set-Aside activities with a view toward protecting public health through prevention, while maximizing Loan Fund dollars for capital improvement projects and compliance purposes.

Utilizing the Set-Asides available for Oregon's 2023 DWSRF – BIL-LSLR funding, OHA continues to use standard and mandated programs in each of the four Set-Aside activities as detailed below.

According to EPA 40 CFR part 35.3540(d), states are authorized to access reserved (unused) Set-Aside funds from previous grant phases. EPA Region 10 has authorized Oregon to request more than the 31 percent Set-Aside maximum when necessary. OHA will not be accessing any reserved Set-Aside funds for this 2023 grant.

Set-Aside activities needed for SFY2025-2026 include:

- Administrative Expense (4.0%)
 - Service Line Inventory Assistance – 3 Vendors
- Technical Assistance (2.0%)
 - Service Line Inventory Assistance – 3 Vendors
- State Program Management (10.0%)
 - LSLR Program Development and Management
- Local Assistance and Other State Programs (Combined 15.0%)
 - Service Line Inventory Assistance – 3 Vendors

B. Description of Oregon Health Authority’s Set-Aside Activities

Work plan summaries for each of the Set-Aside Activities are outlined here. Specific detailed work plans are included in **Appendix D** and submitted as part of the Capitalization Grant applications. Typically, the activities described are continuation of activities from the previous grant years and may include additional updates for that Set-Aside. However, three of the 2023 BIL-LSLR Set-Aside funds will be utilized entirely to support costs associated to the three contracted vendors (i.e., HBH Consulting, Oregon Association of Water Utilities, and 120 Water) as technical assistance providers to assist systems under 10,000 in population with their service line inventory collections and planning. Specific tasks include, but are not limited to:

- Training and outreach related to service line requirements, best practices, and reporting requirements.
- Individual assistance to public water systems in completing their service line inventories.
- Technical assistance and outreach prioritized to water systems serving fewer than 500 people, and systems designated by OHA as being disadvantaged.
- Development of strategies to identify unknowns.
- Providing updates to initial inventory collections made prior to vendor assistance.

Visit **Appendix F** for more details about vendor contracts.

- 1. Administrative Expense:** OHA will not be allocating any full-time equivalents (FTE) for staff to implement 2023 BIL-LSLR funding. Instead, this Set-Aside will be used entirely to support costs associated to the three vendors contracted as TA providers to assist systems under 10,000 in population with their service line inventory collections and planning, at no cost to the system. See above for types of

assistance the vendors may provide.

The 2016 WIIN Act provisions provide states three allocation options for this Set-Aside. The Act's options include:

Equal to the sum of any state fees collected and the greatest of \$400,000; 1/5 of one percent of the current fund value; and an amount equal to 4 percent of all grants awarded to the fund under this section for the fiscal year.

For 2023, OHA will plan to utilize the 4 percent option, totaling \$45,716. For more Set-Aside information, please reference the **Appendix D** section of the IUP.

- 2. Small Systems Technical Assistance:** OHA continues providing technical assistance and related services to small water systems serving 10,000 or fewer people by contracting for these services. Types of assistance may include but are not limited to: (1) Provide cost estimates for conducting service line inventories. (2) Assistance with filling out a LSLR Letter of Interest. Additionally, for 2023 BIL-LSLR funding, this Set-Aside will also be used to support costs associated to the three contracted vendors assisting systems with their service line inventory collections. See above for types of assistance the vendors may provide. OHA will not be allocating any FTE staff for 2023 BIL-LSLR funding.

Typically, a maximum of 2 percent of the annual grant allotments is allowed for this Set-Aside. For 2023, OHA is requesting 2 percent of the allotment, totaling \$22,858. For more Set-Aside information, please reference the **Appendix D** section of the IUP.

- 3. State Program Management (SPM) – State and County Program Support:** These funds typically are used to continue OHA and contractual support of County drinking water programs and of the Oregon Department of Agriculture to augment the Public Water System Supervision (Primacy) program. These activities include sanitary surveys, the investigation and resolution of significant non-compliance concerns and adjacent activity. For the 2023 BIL-LSLR funding, OHA will use 0.55 FTE to conduct direct LSLR program development and ongoing management.

Typically, a maximum of 10 percent of the annual grant allotments is authorized for this Set-Aside. For 2023, OHA is requesting the full 10 percent of the allotment, totaling \$114,290. For more Set-Aside information, please reference the **Appendix D** section of the IUP.

- 4. Local Assistance & Other State Programs:** Oregon is only allocating FFY2023 BIL-LSLR funding to the Capacity Development program in this Set-Aside. Similarly, to the Administrative Expense and Technical Assistance Set-Asides noted above, the Capacity Development program funding will be used entirely to support costs associated to the three contracted vendors assisting systems with their service line inventory collections. See above for types of assistance the vendors may provide. OHA will not be allocating any FTE staff for 2023 BIL-LSLR funding.

For 2023, OHA is requesting the full 15 percent of the allotment, totaling \$171,435. For more Set-Aside information, please reference the **Appendix D** section of the IUP.

The level of Set-Aside funding on a year-to-year basis will continue in collaboration with partner agencies to assure that public water suppliers in Oregon are well trained and knowledgeable of the most current drinking water quality standards and techniques.

Additionally, Set-Aside transfers to the Loan Fund will be performed on an as needed basis to further expedite federal funding timeline requirements.

V. Current & Future Years of the Program

This year's program represents a continuation of significant initiatives begun in 1997 by OHA, including its partner agencies (e.g., Business Oregon), stakeholder organizations, and service providers as well as public water systems. The main goal of the SRF's use of BIL-LSLR funding is to protect public health and to reduce people's exposure to lead by prioritizing infrastructure improvements that remove lead service lines or associated eligible activities. New initiatives, strategic proposals, and process improvements are continually being introduced between partnering agencies so our goals and federal crosscutter requirements (e.g., Davis Bacon, Build America, Buy America Act (BABA), American Iron & Steel (AIS), Federal Funding Accountability & Transparency Act (FFATA), etc.) continue to be met.

❖ Short-Term Goals

- Work with water systems to develop and fund projects that address confirmed lead service lines in drinking water.
- Fund inventory collection projects and provide access to direct technical assistance in communities to address their Lead and Copper Rule Revisions (LSRR) requirements.
- Operate and manage a DWSRF program in Oregon for eligible community and non-profit non-community water systems to construct needed service line improvements and meet water security needs.
- Provide 49 % subsidy to projects in disadvantaged communities, prioritizing projects that will address the greatest public health need. Continue efforts to evaluate the current disadvantaged communities definition.
- Develop technical assistance efforts that sustain and/or improve the operation, maintenance, and management of Oregon's drinking water systems.
- Evaluate and update financial offerings within the program to ensure requirements with the grant are met while also providing equitable access to needed funds. Seek to evaluate financial offerings within the program to incentivize systems to seek out

and address public and private side lead service lines.

❖ **Long-Term Goals**

- Work with water systems to develop and fund projects to address confirmed lead service lines and/or lead exposure.
- Work with water systems to develop and fund projects to address future lead service line replacement projects.
- Administer the DWSRF program in Oregon in a way that protects its revolving nature in perpetuity.
- Support the state’s goal of ensuring Oregon’s water supplies provide safe drinking water by financially contributing to needed water system improvements.
- Increase water system compliance with state and federal drinking water requirements through technical assistance and capacity development.

❖ **Financing Considerations**

➤ **Loan Principal Forgiveness**

A forgivable loan award, also known as principal forgiveness, are loan awards that are 100% forgiven if a project is completed consistent with contract terms. EPA characterizes forgivable loan awards as “subsidy” and limits the amount that can be provided from each grant awarded to the state. Forgivable loan awards are subject to annual availability based on federal subsidy limitations identified in annual program capitalization grants to the state.

All five years (2022-2026) of BIL-LSLR project funding are required to be in the form of loan with subsidy targeted only for disadvantaged communities. Business Oregon is responsible for ensuring the subsidy requirements of each DWSRF capitalization grant are met.

➤ **Loan Terms**

While there is no statutory maximum limit on the size of a funding award, the priority is to fund public health and compliance related drinking water infrastructure needs across the state. Based on funding availability and program demand, Business Oregon may offer a lower amount of assistance than requested. However, given current the underutilization of the BIL-LSLR funds, Business Oregon does not expect needing to exercise this option for this program.

Awards of \$3 million and above, or awards with increased forgivable loans, are subject to review by the IFA Board.

A loan term length of up to 30 years may be awarded but shall not exceed the expected useful life of the improvements funded in the project. The term of a loan

for a planning or design-only project shall not exceed ten years. Loan repayment must begin within one year of project completion.

➤ **Interest Rates**

BIL-LSLR mandates that forgivable loan be provided to disadvantaged communities, resulting in non-disadvantaged communities that pursue lead service line replacement projects taking on 100% loan with no principal forgiveness. Due to the 49% requirement, disadvantaged communities will have some portion of their loan that is not forgivable.

Oregon DWSRF recognizes the importance of removing lead service lines from water systems and seeks to maximize affordability across all water systems that pursue LSLR projects. Business Oregon will establish low interest rates on BIL-LSLR loans including utilizing a zero percent (0%) interest rate to incentivize water systems and reduce the debt burden for recipients.

❖ **Letter of Interest (LOI) Process**

OHA and Business Oregon have had a long-standing practice of utilizing a Letter of Interest (LOI) solicitation process to inform, gather, and process (rating and ranking) requests from eligible water systems interested in funding drinking water infrastructure planning, design, and/or construction improvements.

BIL-LSLR Letters of Interest will continue to be accepted year-round and are reviewed, rated, and ranked each year after the annual submission deadline. Beginning in 2025, Business Oregon and OHA plan to shift the LOI submission deadline to February 15 for all SDWRLF funding programs to streamline the process for applicants and agency staff. This deadline also gives applicants extra time after the busy winter season and turn of the calendar year to complete and submit LOI forms. If needed, OHA Circuit Riders and Business Oregon's Regional Development Staff are available to help with completing the LOI.

LOIs are continually being assessed and updated to reduce barriers and burdens during the initial project application process.

❖ **Federal Funding Accountability and Transparency Act (FFATA)**

The Federal Funding Accountability and Transparency Act of 2006 (FFATA), ensures that the public can access information on entities and organizations receiving Federal funds. The FFATA Subaward Reporting System (FSRS) is the reporting tool Federal prime awardees (i.e., prime grants recipients) use to capture and report subaward and executive compensation data regarding their first-tier subawards to meet the FFATA reporting requirements. On March 23, 2011, the EPA released a memo explaining this federal requirement to states and the use of the FFATA Subaward Reporting System (FSRS) tool.

States have the option to apply some Federal Crosscutting Authorities and Federal requirements to all awarded projects, or only the projects and Set-Asides equal to

(equivalent to) the annual federal award amount (i.e., 100% of the award and FFATA identified projects). During SFY2023-24, Oregon’s DWSRF program has begun applying Federal Crosscutting Authorities to the FFATA identified projects equivalent to the annual federal award amount.

BIL-LSLR funding does not access revolved funds or state match and is awarded as 100% federal funding for the purposes of FFATA and equivalency. All BIL-LSLR projects will be subject to FFATA reporting and all applicable federal requirements, including Build America, Buy America (BABA). Business Oregon works closely with communities to build contingency into the budget of projects to ensure that there is sufficient access to funding to support managing the applicable federal requirements.

In accordance with the EPA September 22, 2014, memo, “Application of Equivalency Under the FFATA,” these reporting requirements specific to the Set-Asides relate only to subaward contracted obligations at or above \$30,000 and that only those Set-Aside activities that meet or exceed this amount need to be reported into the FSRS database. Specific contract details can be found on the Set-Aside FFATA spreadsheet within the **Appendix A** section of the IUP.

Table 6 below demonstrates the projects Oregon intends to identify for the purposes of FFATA.

Table 6: FFATA Projects Summary

2023 BIL-LSL FFATA:					
Applicant	Applicant Number	Disadvantaged	Funding Request	Potential LSL Subsidy	Percentage of Request Available as Subsidy*
City of Sheridan 4100811	SD-24-L01	Yes	\$ 582,200	\$ 490,587	84.26%
Arlington City Water Supply 4100046	SD-24-L05	Yes	\$ 20,400	\$ 17,190	84.26%
Staffordshire Water System 4100290	SD-24-L02	Yes	\$ 20,001	\$ 16,853	84.26%
Fernhill Community Wtr System 4100059	SD-24-L03	Yes	\$ 42,000	\$ 35,391	84.26%
Warrenton, City of 4100932	SD-24-L04	No	\$ 124,000	\$ -	0.00%
Set-asides	n/a		\$ 354,299		
FFATA Reportable Total:			\$ 1,142,900		
FFY-2023 (BIL-LSL) Partial Grant:			\$ 1,142,900		
*BIL-LSL rules require that 49% of the grant be awarded as subsidy or loan forgiveness to disadvantaged communities. Oregon seeks to apply for a partial award of \$1,142,900 of the available 2023 BIL-LSL funding, of which 49% would be \$560,021. The above table details a proportional distribution of the \$560,021 amongst eligible disadvantaged communities. With this distribution, each disadvantaged community on the fundable list can potentially have approximately 84.26% of their project total forgiven. Principal forgiveness amounts, and funding policies may be subject to change to meet grant requirements as necessary.					

**Set-Aside contracts (i.e., county partners) of \$30,000 or above will be entered into the FSRS database.

❖ **Davis Bacon (DB) Wage Rate Compliance, American Iron & Steel (AIS) Requirements, and the Build America, Buy America Act (BABA)**

Funding recipients will be made aware of all federal programmatic requirements early on, prior to invitation. Templated, approved financing contract language and contract clauses are provided to funding recipients to assist with administering the project and will reflect those requirements. The funding recipient (water system) is responsible for ensuring these clauses are included in applicable contracts between the water system and

contractors with curated language (applicable clauses) depending on whether the contract is for professional services (e.g., engineering) or construction activities.

For BIL-LSLR funding, Business Oregon will work closely with communities to build additional contingencies into the budget of LSLR projects to ensure that there is sufficient access to funding to support managing the applicable federal requirements. Communities may hire third party support with additional funding to manage administration applicable to the federal requirements detailed below:

Davis Bacon (DB) wage rate requirements apply to all construction, alteration and repair of treatment works carried out in whole or in part with assistance made available through the DWSRF. To ensure compliance, applicable DB contract clauses are inserted into all relevant contracts. Recipients of DWSRF funds are briefed on their responsibility to ensure that all relevant DB regulations are adhered to. In addition, Business Oregon Regional Project Managers will periodically monitor certified payroll documents and other necessary and relevant documents for the adherence to DB regulations. Recipients of DWSRF funds are encouraged to contract with third party individuals or organizations that have demonstrated expertise in the administration of DB rules and regulations.

American Iron and Steel (AIS) Provisions require DWSRF assistance recipients to use iron and steel products that are produced in the United States. AIS compliance will be met as recipients adhere to procuring domestic goods under BABA, unless the community is awarded a BABA waiver to which AIS will still apply. BABA requires all iron, steel, manufactured products, and construction materials used in a project financed with federal assistance to be produced in the United States. Each recipient targeted to BIL-LSLR funding will be informed of BABA waivers as applicable.

Construction projects under BIL-LSLR will be provided language regarding the described requirements above and will be included with assistance agreements. Monitoring of compliance requirements will occur at appropriate intervals to ensure that any issues are addressed with immediacy. Funding is limited as it relates to the number of requests made by water systems, but access to additional BIL-LSLR funding to adhere to AIS and BABA is available and communicated early on with applicants to be built into budgets to ensure a fully funded project.

❖ **Program Guidelines & Applicant’s Handbook**

The [Safe Drinking Water Handbook](#) (lefthand column of webpage) provides guidance for those interested in applying for and administering awards for infrastructure, SIPP, and DWSP projects. The Handbook serves as both an internal and external resource and is a critical element to ensuring that loan and grant funds are administered in an effective and efficient manner and that regulations and guidelines are administered correctly and uniformly. BIL funding details are being incorporated into Handbook updates in 2024. For more details about the Handbook, visit the link above.

The [SDWRLF Financing Details](#) document provides more detailed information about the financial aspects of the loan terms, principal forgiveness, and amendment process. This document was primarily developed with a focus on the Base program. The last section discusses BIL funding and the subsidy requirements included in BIL.

❖ **Operating Agreement (OA)**

The original 1998 DWSRF Operating Agreement between the EPA and OHA was amended in 2016 and effective through 2021. The 2021 amended OA is expected to run through 2026. The OA explains and itemizes the agreed-upon implementation and management of Oregon's DWSRF program.

OHA and Business Oregon plan to review and amend the current OA with our EPA partners prior to the 2026 expiration.

VI. Sources & Uses / State Match

According to SDWA Section 1452(f)(3)(A), States need to expend all DWSRF funds (i.e., state and federal) in an efficient and as timely as realistically possible to remain compliant with these requirements. EPA policy memos SRF 99-05 and SRF 99-09 and DWSRF regulations at 40 CFR 35.3550(l) clarify that a State must commit all SRF funds (including repayments) to projects within one year of receiving those funds or include in the Intended Use Plan (IUP) a reasonable plan detailing how and when the funds will be used.

The IUP Sources and Uses table is the instrument that demonstrates compliance with the statutory, regulatory and policy requirements for states to identify the uses of all sources of funds in the SRF. EPA Regions are responsible for reviewing the Sources and Uses Table in the Intended Use Plan to ensure that the state has adequately demonstrated its plan for expending all funds in the SRF in a timely and expeditious manner.

A. Sources and Uses Table

Oregon's BIL-LSLR Intended Use Plan's Sources and Uses table and summaries demonstrate transparency and compliance with these statutes, regulations, and policies as set forth by the requirements noted above. The table and summary below will illustrate Oregon's intention to apply for a partial BIL-LSLR grant. EPA requires in an IUP that the state must tie the funding we are intending to receive to intended uses, by identifying there are eligible projects to fund within one year of the state obtaining the grant. Currently, many water systems are still working to comply with the initial service line inventory requirement prior to October 16, 2024. Systems have not requested an amount of planning or infrastructure funding to demonstrate to EPA in this IUP a need for applying for additional grant. The state must apply for this 2023 BIL-LSLR allotment by, at the latest, July 30th, 2024 to not risk funds being swept by EPA if not awarded by the September 30th, 2024 due date.

See table and summaries below for SFY2024 and 2025 details.

		SFY 2024	SFY 2025
		7/1/23-6/30/24	(Projected) 7/1/24-6/30/25
Sources & Uses Table for Oregon BIL-LSL Project Funds			
Beginning Project Cash Balance (BIL-LSL)		\$0	\$0
Undrawn BIL-LSL Federal Funds		\$0	\$0
Unspent Revenue Bond Balance (N/A)		\$0	\$0
State Match Balance (N/A, No State Match for LSL)		\$0	\$0
Total Funds Available - Beginning of Year		\$0	\$0
Repayments from BIL-LSL Loans		\$0	\$0
Estimated Repayments from New/Future Loans		\$0	\$0
Total Repayments		0	0
State Match for Current Year (N/A, No State Match for LSL)		\$0	\$0
State Match Bond Proceeds (N/A)		\$0	\$0
Total State Match		0	0
Revenue Bond Proceeds (N/A)		\$0	\$0
Anticipated BIL-Lead Service Line Funding (2023 BIL-LSL IUP)		\$0	\$1,142,900
Interest Earnings on Invested Funds (N/A)		\$0	\$0
Total Sources: BIL-LSL Inflows		\$0	\$1,142,900
Set-Asides Retained by OHA		\$0	(\$354,299)
Estimated Debt Service - Outstanding Revenue Bonds (N/A)		\$0	\$0
Actual Disbursements (From Committed Projects)		\$0	\$0
Projected Disbursements (Projects, Pending Contract)		\$0	(\$788,601)
Projected Disbursements (Remaining to Draw, Executed Contracts)		\$0	\$0
Total Uses: All Disbursements & Outflows		\$0	(\$1,142,900)
Fundable Projects List (PPL)		\$788,601	TBD until 2/15/25
Fund Balance Reserves		\$0	\$0
Ending Cash Balance		\$0	\$0

B. Sources & Uses Table Detailed:

Sources:

- Oregon’s DWSRF anticipates being awarded 2023’s BIL-LSLR partial grant of \$1,142,900 by 9/20/2024.
- Of the partial grant received, \$788,601 is sought for funding LSLR projects. This amount is equal to the amount requested by systems on the fundable list detailed on the BIL-LSLR PPL.
- Non-applicable sources detailed in the table:
 - Loan Repayments: This IUP describes the first slate of loans under Oregon’s BIL-LSLR funding program. Therefore, no repayments are anticipated to come in during the state fiscal year ending June 2025.
 - State Match: State Match is not a requirement of the BIL-LSLR Funding.

Uses:

- Set-Aside Activities: OHA is anticipating retaining \$354,299 from the partial grant to use for set-aside activities. This has been documented in the table under “Uses”. More information about the use of reserved Set-Aside funds explained in Section IV.
- As of July 2024, Business Oregon is not actively under contract for BIL-LSLR projects, as Oregon did not apply for any of its FY2022 BIL-LSLR allotment. Upon approval of this IUP, Business Oregon will begin outreach to move to securing funding contracts with the systems on the fundable list.
- The current BIL-LSLR Project Priority List was released May 28, 2024 and details that water systems have requested \$788,601 worth of eligible LSLR projects. The state anticipates securing \$788,601 in project funding from the BIL-LSLR grant by September 30, 2024 to meet this need.

Conclusion:

The program will continue to strive for the timely and expeditious use of funding. The BIL-LSLR funding program is in its infancy, and many systems identified as eligible for funding need additional time and support currently to get projects identified and contracts executed, provided confirmed lead service lines are identified during service line inventory collections. The specialized required focus of this fund requires close coordination, and Business Oregon works closely with OHA as the authority on drinking water contamination to ensure that systems are offered direction and opportunity to address confirmed lead service line replacements. We are unsure if the program will grow in funding needs until lead service line inventory collections are submitted and reviewed later this year.

Potential viable projects on the PPL of approximately \$788,601 have submitted LOIs requesting funding, and as such the state is applying for an amount equal to this identified need. As projects are deemed ready-to-proceed, they will be formally invited to obtain an executed contract for funding. Business Oregon carefully monitors the BIL-LSLR funding availability balance to ensure projects that address lead service lines are prioritized, and adequate funding exists to meet any existing funding obligations.

See above or **Appendix C** for Sources and Uses table details.

C. State Matching Funds

Oregon’s State Matching fund contributions are managed by Business Oregon. In accordance with [EPA's March 8, 2022 BIL Implementation Memo](#), State Match is not required for any current or future BIL-LSLR funding.

VII. Disadvantaged Community Program

Awards and subsidy provided to disadvantaged communities are tracked by Business Oregon. For the DWSRF, EPA tasks each state with establishing a definition of “disadvantaged community.” Disadvantaged community, under the SDWA section 1452(d), means the service area of a public

water system that meets certain affordability criteria. For Oregon’s DWSRF the following criteria are used by OHA to determine disadvantaged community status:

- **Median Household Income (MHI) below the state average:** A disadvantaged community is a public water system that has a service area with a MHI below the state average.

As part of the LOI rating and ranking process, OHA assesses the MHI of each water system’s service area to determine “disadvantaged” status under the DWSRF program. MHI is determined using the most recent American Community Survey (ACS) 5-year estimates available. To meet BIL-LSLR subsidy requirements, 49% of the total capitalization grant must be awarded to disadvantaged communities as principal forgiveness.

OHA and Business Oregon are currently working with EPA contractors within SFY-24 to review the current disadvantaged community definition it uses to determine disadvantaged status. The program, with the new support from contractors, hopes to understand if there are current gaps in the current method of targeting communities in need of affordable financing. This work is ongoing and is expected to continue into SFY2025. Additional updates and information regarding the research and improvements to the disadvantaged definition and project rating criteria will be shared in upcoming IUPs. The current definition of disadvantaged will be utilized for meeting the 49% subsidy requirement of the 2023 BIL-LSLR funding.

Visit OHA’s [Project Ranking and Disadvantaged Status webpage](#) for more details and updates.

VIII. Asset Management

OHA has developed a comprehensive Asset Management Implementation Plan as part of its overall Capacity Development Strategy. Plan elements include education, training and technical assistance to water systems in an effort to encourage incorporation of [Asset Management](#) into routine operational programs. Water systems are encouraged to review the educational materials and resources provided on OHA’s website under [Capacity Development](#) and take advantage of free trainings provided by partner organizations (e.g., Rural Community Action Council, Environmental Finance Center, American Water Works Association, etc.) which are listed on OHA’s training opportunities webpage. These materials offer important insights on best management practices, how to save money while being organized, and how to forecast for future infrastructure improvements. OHA’s Circuit Rider is also available to provide technical assistance in developing asset management plans. Activities encouraging asset management will be funded through the Local Assistance Set-Aside: Capacity Development Program.

In addition to the activities described above, water systems are also encouraged to apply for the SIPP program (reference Section IV above), which includes creation of Asset Management Plans as one of the eligible funding activities.

IX. Fund Linkage between DWSRF and CWSRF

In accordance with 40 Code of Regulations (CFR) part 35.3530(3)(iii)(c), a state may transfer an amount equal to 33 percent of an awarded capitalization grant between SRF programs. Per the March 2022 Implementation memo:

Given BIL’s requirements, authorities, and narrower SRF eligibilities, states may only transfer funds between the specific BIL appropriations in the equivalent CWSRF or DWSRF program... Because there is no similar CWSRF appropriation to the DWSRF BIL LSLR appropriation, no funds may be transferred from or to the DWSRF BIL LSLR appropriation.

X. Drinking Water State Revolving Fund Projects

A. Project Eligibility, Rating & Ranking Process

For 2023 BIL-LSLR funding, OHA identified water system projects and accepted 5 new [Letters of Interest \(LOI\)](#) from water systems interested in funding to assist with inventory collections and anticipated LSLR construction activities.

Business Oregon will be working with water systems who submitted LOIs for 2023 funding to determine readiness-to-proceed following the 10-day mandated PPL public comment period.

For details, see 2023 BIL-LSLR PPL in **Appendix A**.

B. Project Selection Criteria – Rating and Ranking, By-Pass

EPAs DWSRF Interim Final Rule 40 CFR Section 35.3555 (c)(1) suggests that the IUP must include a priority system for ranking individual projects for funding that is detailed and understandable.

Oregon’s infrastructure, DWSP, SIPP program, BIL-EC, and BIL-LSLR funding rating criteria are robust and meet this requirement. In summary, BIL-LSLR rating criteria is based on the water system’s size, lead action levels, lead service line types, service line inventories, cost of private lead service lines, and community affordability factors. More information related to OHA’s BIL-LSLR funding rating form and detailed criteria is available in **Appendix A**.

For FY2023, all systems on the BIL-LSLR PPL will be contacted and may be offered funding. The goal of the funding process is to assist systems with service line inventory collection efforts and potential mitigation of lead service line issues if inventories confirm lead material in service lines.

In the SDWRLF, during the process of determining whether to formally invite a water system to move forward with funding, several topics are discussed with the system including (but not limited to) if the system has demonstrated a readiness-to-proceed, anticipated project cost compared to fund availability, or whether the project has been funded by other state or federal sources. If the project is not ready to proceed or if the water system requests to be passed on for funding, the program staff implements a “by-pass” procedure by documenting the communication and proceeds to contact the next highest ranked project on the PPL.

For the 2023 BIL-LSLR funding, the state is seeking to secure funding equal to the amount of all requests on the LSLR PPL. Initially, systems seeking LSLR funding shall not be required to be “bypassed” unless they do not wish to move forward with the

program or have completed their project on their own. The program will seek to receive additional Letters of Interest at the beginning of 2025, and if a system on the current list was expected to not move forward, those available funds may be available for additional projects. It is currently “to be determined” regarding the interest expected at the beginning of 2025 for additional projects submitted.

Readiness-to-proceed factors in the SDWRLF program include but are not limited to:

- If the applicant is currently working with an engineer on the project.
- If the applicant currently has planning documentation for the project scope, which can be obtained with funding from this BIL-LSLR source.
- Detailed cost estimates have been developed, if they include additional costs from federal requirements, and if the funding available is able to cover that amount requested.
 - Available funding is clearly discussed with the applicant and additional BIL-LSLR funding is considered for subsequent project needs. Contingency budget line items are built into the application to ensure federal requirements are considered.
 - Obtaining cost estimates for BIL-LSLR has also been supported by the Circuit Rider Program.
- Permits, regulatory processes, feasibility, or required easements or land acquisition can add uncertainty to the project and impact timeframes.

This is an ongoing process, and systems are provided several opportunities to work with program staff to obtain information on funding. Unfunded Projects may remain on the PPL for up to two years from the approval of the IUP of the awarded federal grant their projects were targeted for, ensuring time available to work on project development if needed. Additional by-pass information can be provided on request.

Finally, to comply with provisions of the Bipartisan Infrastructure Law (BIL), Oregon will assure at least 49% of BIL-LSLR funding will be provided as principal forgiveness to assist disadvantaged communities. Oregon expects to meet this requirement. Currently 4 out of 5 systems on the BIL-LSLR PPL meet Oregon’s current affordability criteria to be defined disadvantaged.

XI. Public Reviews & Comments

❖ Process

The public has been invited to review and comment on Oregon’s proposed FFY2023 IUP of the BIL-LSLR grant application. If comments are received and it is determined that our IUP must be amended, we will notify the EPA Region 10 office immediately.

According to the SDWA’s Federal Register Interim Final Rule, Section “O. Meaningful Public Review of the IUP (40 CFR 35.3555 (b)),”

- *“This interim final rule does not include specific requirements as to what constitutes “meaningful public review” of the IUP. Due to the variation among States, no single approach will work under all conditions.”*

EPA interprets the above language to provide States the ability to determine what is appropriate for meeting this requirement provided an effort is made to provide the public an opportunity to make comments. The result is a more rapid process that also reduces program costs.

Below is a list of resources OHA uses when posting notices for public comments related to our annual IUP and our PPL. List includes:

- DWSRF (Base) webpage, <http://healthoregon.org/srf>. Reference Project Priority Lists and Public Notices webpage.
- BIL webpage, <http://oregon.gov/bil>
- DWS main website front page, <http://healthoregon.org/dwp>
- [OHA's GovDelivery](#) email messaging system to public water systems and other interested parties throughout Oregon.
- Publication of “Pipeline” Newsletter includes permanent information about policy, <http://public.health.oregon.gov/HealthyEnvironments/DrinkingWater/Operations/Pages/pipeline.aspx>
- Responses to public comments received on IUPs following the mandated 30-day publication shall be made available on [OHA's IUP webpage](#).

Public Notice materials can be found in **Appendix E** of the IUP.

◆ End of Summary

APPENDIX A: Required Documents

- Attorney General Certification
- 2023 BIL-Lead Service Line Replacement Project Priority List
- BIL-Lead Service Line Replacement Rating Form & Guidance
- FFATA Set-Aside Reporting Spreadsheet



DEPARTMENT OF JUSTICE

Justice Building
1162 Court Street NE
Salem, Oregon 97301-4096
Telephone: (503) 378-6002

April 24, 2024

SENT VIA EMAIL: samina.t.panwhar@oha.oregon.gov

Samina Panwhar
Manager, OHA – Drinking Water Services
800 NE Oregon Street, Suite 640
Portland, OR 97232

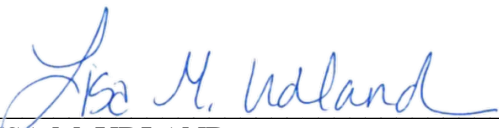
RE: Attorney General Certification for 2024 DWSRF Capitalization Grant Application
DOJ File No.: 443709-GH0203-23

Dear Ms. Panwhar:

I, Ellen F. Rosenblum, as the Attorney General for the State of Oregon, hereby certify that for the purposes of the state's application for capitalization grants for its Drinking Water State Revolving Fund (DWSRF) program:

1. The authority establishing the DWSRF program and the powers it confers are consistent with Oregon law.
2. The State of Oregon may legally bind itself to the terms of the capitalization grant agreement.
3. The DWSRF program will be administered by an instrumentality of the State of Oregon that is authorized to: enter into capitalization grant agreements with the United States Environmental Protection Agency; accept capitalization grant awards made under 42 USC § 300j-12(a)(1)(A); and otherwise manage the Fund in accordance with the requirements and the objectives of the Safe Drinking Water Act and applicable federal rules.

Dated this 24th day of April, 2024.



LISA M. UDLAND
Deputy Attorney General
On behalf of
ELLEN F. ROSENBLUM
Attorney General
Pursuant to ORS 180.130

2023	Bipartisan Infrastructure Law - Lead Service Line Replacement (BIL-LSLR) <i>(49% principal forgiveness (PF) - for disadvantaged communities (DAC))</i> <i>(Zero match requirement)</i> Combined Project Priority List (PPL)							Anticipated 2024 - 2026 BIL-LSLR Annual Allotments = \$28,650,000		
	Please see footnotes below for important PPL and project information							2023 Allotment = \$28,650,000 Partial Grant Based on Proposed Projects** = \$1,142,900 <i>(49% PF = \$560,021)</i>		
Applicant	Applicant Number	County	Population	Project Description (PD)**	Project Rating (≤ 90)	Amount Requested	LSLR Subsidy Amount (All to DAC)	Disadvantaged Community	LSLR Grant Award Targets	SFY Added to PPL
City of Sheridan 4100811	SD-24-L01	Yamhill	6,200	Service Line Inventory *	36	\$582,200	\$490,587	YES	2023	2024
Arlington City Water Supply 4100046	SD-24-L05	Gillam	628	Service Line Inventory	26	\$20,400	\$17,190	YES	2023	2024
Staffordshire Water System 4100290	SD-24-L02	Lane	150	Service Line Inventory	23	\$20,001	\$16,853	YES	2023	2024
Fernhill Community Wtr System 4100059	SD-24-L03	Clatsop	300	Service Line Inventory *	23	\$42,000	\$35,391	YES	2023	2024
Warrenton, City of 4100932	SD-24-L04	Clatsop	9,100	Service Line Inventory *	11	\$124,000	\$0	NO	2023	2024
						\$788,601	\$560,021			

* Amount requested includes service line inventory work and estimated pipe replacement costs for lead service line replacement (documentation is needed to confirm eligibility before replacement work can begin).

Total LSLR Requested Total LSLR Fundable Subsidy

FOOTNOTES:

****Partial Grant: State Drinking Water State Revolving Fund (DWSRF) programs must demonstrate to the Environmental Protection Agency (EPA) in its Bipartisan Infrastructure Law Lead Service Line Replacement (BIL-LSLR) capitalization grant application that there is an intended use for the allocated funds. State DWSRF programs are limited to applying for federal BIL funding in the total amount requested for projects and funding needed for program set-asides. Based on Letters of Interest received, Oregon's DWSRF currently demonstrates a need to apply for a partial amount (i.e., \$788,601 projects + \$354,299 set-asides) listed above for its FFY2023 grant funding. Depending on future LSL inventory results and if there are lead service line projects identified, the state DWSRF may apply for additional BIL-LSLR funding from the FFY2024 - 2026 allotments.**

This PPL contains a list of public water systems Oregon Health Authority (OHA) has recommended for 2023 BIL -LSLR Funding. Funding amounts detailed above are subject to change based on project identification, approved by OHA and EPA. OHA Drinking Water Services (DWS) rated and ranked the systems on this PPL using a scoring system with rating criteria based on the lead action level history, water system size, project type (pipe replacement or inventory assistance), and community affordability.

BIL-LSLR funding targets projects or activities that otherwise would be eligible under the "Base" DWSRF funding program, but the primary purpose must be to address and/or mitigate people's exposure to lead service lines serving drinking water.

BIL-LSL capitalization grant contains the following provision:

"The funds provided under this paragraph in this Act shall be for lead service line replacement projects and associated activities directly connected to the identification, planning, design, and replacement of lead service lines." Additionally, BIL-LSL grants require states to provide 49% of the grant amount as additional subsidization in the form of principal forgiveness to water systems that meet the state's disadvantaged community criteria as described in section 1452(d) of the SDWA.

A "Disadvantaged Community" under Oregon's DWSRF is a public water system that has a service area with a Median Household Income (MHI) below the state MHI. MHI is determined using the most recent American Community Survey (ACS) 5-year estimates available. Assessing community affordability and disadvantaged status is determined using DWSRF base program criteria. This serves two purposes 1) Prioritizes communities with socioeconomic factors affecting community affordability by ranking them higher on the BIL-LSLR PPL, and 2) Designates which PWS are considered disadvantaged to ensure meeting required target of 49% of BIL LSLR funding going to disadvantaged communities.

Business Oregon, following the ranking order on this list, will engage with systems on project identification to address the Lead Service Line Replacement identified by OHA. Eligible systems will be given the opportunity to apply for LSLR funding, but if readiness-to-proceed is not demonstrated in a timely manner, Business Oregon may utilize a "Bypass Process" if the lower-tiered projects are ready to move forward. BIL-LSLR funds must be committed by Oregon within one year of receiving the award. Initial use of BIL-LSLR funding will primarily be to assist the systems with funding inventory completion, if not already obtained, to plan and identify eligible projects to address their LSLR concerns. For those systems that budgeted for implementing replacement of lead service lines identified during the inventory, documentation will be required to confirm projects are eligible for implementation prior to moving into the replacement phase.

Additional Funding Needs: If funding allows, projects that require additional funding beyond their BIL-LSLR allocation may be considered for additional funding resources through Oregon's "Base" DWSRF, BIL-General Supplemental, or another Business Oregon funding program (if eligible).

**Bipartisan Infrastructure Law (BIL) Lead Service Line Replacement Funding
Rating Form & Guidance
Drinking Water State Revolving Fund**

****For Program Use ONLY****

Lead Service Line Replacement Funding: For water system to be eligible for funding under this BIL appropriation, it must be otherwise DWSRF eligible, and the primary purpose must be to address lead service lines.

The following describes what is considered a “lead service line”:

- A service line made of lead, which connects the water main to the building inlet. A lead service line may be owned by the water system, owned by the property owner, or both.
- A galvanized service line is considered a lead service line if it ever was or is currently downstream of any lead service line or service line of unknown material.
- Lead goosenecks, pigtails, and connectors are considered eligible, whether standalone or connected to a lead service line.

If eligible for funding, the water system will be scored on the following criteria (max 90 pts.):

- a. Water System Size: Priority will be given to systems serving < 500 people (5 pts), 500 to 3,300 people (3 pts), or 3,301 to 9,999 people (1 pts).
- b. Lead Action Level Exceedance(s): Priority will be given to water systems with 3 or more lead Action Level Exceedances in the past 5 years (10 pts).
- c. LSL Project Type (can select multiple types): priority will be given to water systems with documented lead service lines that are being replaced as part of the project (15 pts), project includes using funding to complete the inventory (10 pts) and/or project includes replacement of eligible galvanized service lines.
- d. Service Line Inventory: Priority will be given to water systems that have completed the service line inventory (statistical method not used).
- e. Cost of Private Lead Service Line: Priority will be given to systems whose project will address household affordability concerns and minimize adverse public health effects by not charging any additional cost to customers for construction activities on the private side of the service line.
- f. Community Affordability: 25 points max. See base project rating criteria. ****SCORED BY GIS SPECIALIST****
 - Note: Communities determined to be disadvantaged will be prioritized on the PPL.

Water systems eligible for lead service line replacement funding will be rated and ranked using the Lead Service Line Replacement Funding Rating Summary sheet included on the next page.

Ineligible Activities:

- Replacement of water lines not considered a “lead service line” under this funding program.
- Corrosion control studies or corrosion control infrastructure.
- Water meters
- Funding for bottled water and premise plumbing.
- Temporary pitcher filters or point-of-use (POU) devices used for LSLR projects
- **Costs related to paying in-house staff.**

Drinking Water State Revolving Fund

BIL LEAD SERVICE LINE REPLACEMENT

FUNDING RATING SUMMARY

PWS NAME:

PWSID#:

COUNTY:

LOI #: SD- -

ELIGIBLE PUBLIC WATER SYSTEMS

- Community Water System – (Public or Private Ownership)
- Non-Profit Non-Community Water System – (Public or Private Ownership)
- INELIGIBLE**

ELIGIBLE ACTIVITIES to address lead service line requirements (informational only; for complete list see the BIL-LSLR Project Eligibilities Handout)

- Activities connected to identification, planning, design or replacement of lead service lines
- Replacement of lead connectors or other service line appurtenances removed as part of the project
- Site restoration (landscape, sidewalk, etc) if removal was necessary for pipe replacement
- Inventory completion (3rd party), planning & design and associated pre-project costs

INELIGIBLE ACTIVITIES

- Replacement of non-lead service lines or water meters. If so, describe:
- Corrosion control studies or infrastructure. If so, describe:
- Funding for bottled water or premise plumbing

Exclusions? Is the System Suspended/Debarred? – See [SAM.gov using Login.gov](#) Yes No
(DWSRF Program Coordinator will sign-in and research for exclusions)

Water System is Disadvantaged: Yes No

Evaluation Criteria:

Criteria	Max Pts.	Score	Description
Water System Size	5	1	<input type="checkbox"/> 5 points to systems serving < 500 people. <input type="checkbox"/> 3 points to systems serving 500 to 3,300 people. <input type="checkbox"/> 1 point to systems serving 3,301 to 9,999 people.
Lead Action Level (ALE)	10	10	<input type="checkbox"/> 10 points for water systems with lead action level exceedance(s) in past 5 years.
LSL Project Type Select all that apply	30	30	<input type="checkbox"/> 15 points project will replace documented lead service lines <input type="checkbox"/> Completed Inventory <input type="checkbox"/> Engineering Report or other <input type="checkbox"/> 10 points project will complete service line inventory <input type="checkbox"/> 5 points project will replace eligible galvanized service lines
Service Line Inventory	10	10	<input type="checkbox"/> 10 points inventory has been completed (statistical method not applied)
Cost of Private LSL	10	10	<input type="checkbox"/> 10 points for no charge private service line replacement costs
Community Affordability	25	15	25 points max. See base project rating criteria (scored by GIS Specialist)
Total	90		

RATED BY:

DATE:

Short project summary is not required

SFY-2025 DWSRF FFATA Reportable *Set-Aside* Contracts ≥\$30,000 ONLY

Contracts		Contract # (if avail.)	Fiscal Yr. - not to exceed Contract Amount	FSRS Req?	Reason if not Req?
Circuit Rider (Civil West)		174190-1	\$ 975,000	No	Vendor Contracts are N/A
Counties* 7 of 26 contracts (Annual)	Clackamas	180003	\$ 60,416	Yes	
	Deschutes	180009	\$ 36,693	Yes	
	Jackson	180014	\$ 43,290	Yes	
	Josephine	180016	\$ 33,038	Yes	
	Lane	180019	\$ 51,410	Yes	
	Linn	180021	\$ 37,637	Yes	
	Marion	180023	\$ 44,711	Yes	
Dept. of Agriculture		169551	\$ 25,657	No	Federal entities are N/A
OAWU (\$5,965/class)		158366	\$ 596,500	No	Vendor Contracts are N/A
Needs Survey (HBH)		162617-1	\$ 233,558	No	Vendor Contracts are N/A
DWSP (Grants)	<i>Business Oregon to Manage (grants ≥\$25,000)</i>			Yes	
Only County Set-Aside FFATA TOTALS:			\$ 307,195		

PHD-PE50 Disclaimer:

All FSRS reported *Set-Aside* county contracts shown above are to be associated to CFDA: 66.468 and all open grant agreements.

FFATA reporting threshold from March 1, 2011 through September 30, 2015 was \$25,000. Since October 1, 2015, the threshold became \$30,000 (Per OMB Guidance issued on 08/27/10; Prime Grant Recipient FFATA reporting threshold, remains at \$25,000).

APPENDIX B: Supporting Documents

- 2023 Grant Allotment Use Summary – BIL Lead Service Line Replacement
- Cost Allocation & Other Payroll Expense Letters (3)

The 2023 State of Oregon's (BIL Lead Service Line Replacement) DWSRF Program
Partial - EPA Grant Allotment Use Summary

GRANT APPLICATION TOTALS			
FFY-2023 appropriation (\$28,650,000) - zero state match required			
Based on recent Letters of Interest received for LSLR funding, Oregon is submitting for a partial BIL-LSLR grant for 2023			
Program use of Grant Funding	Federal Funds	Percent of Grant*	State Match Funds (Not applicable for BIL-EC Funding)
Project Loans for Water Systems: (AC:0254) EPA Site Project Code: DA CARVE-OUTS for: • "Green Project Reserve" (GPR) projects ***No longer a mandatory requirement - Optional*** • "Principle Forgiveness" (additional subsidy) projects requires: 49% of FFY2023 BIL-LSLR funding to be subsidized only to disadvantaged communities as defined by the State.	\$788,601	69.00%	\$0
Set-Aside Activities: (maximum = 31%) 1 - Administrative Exp. (Business OR. & OHA) (1/5% of 1% of fund value, 4%, or 400K - per WIIN) (up to 4%) (AC: 0250) EPA Site Project Code: DD	\$45,716	4.00%	\$0
2 - Small System Technical Assistance (CR) (up to 2%) (AC:0251) EPA Site Project Code: DE	\$22,858	2.00%	\$0
3 - State Program Management (County and DOA support for sanitary surveys, non-compliance resolution & other water system support activity) (up to 10%) (AC:0253) EPA Site Project Code: DF	\$114,290	10.00%	\$0
4 - Local Assistance & Other State Programs (up to 15%) EPA Site Project Code: DGD • IMPLEMENTATION OF PROTECTION = N/A for BIL-LSLR Funding (DEQ, Tech Asst, GIS, Training & Support) (AC:0252) EPA Site Project Code: DGC • WATER SYSTEM CAPACITY DEVELOP = \$171,435 allocated (15%) for 2023 (Technical, Managerial, Financial skill building assistance to Water System Operators) (AC:0255) EPA Site Project Code: DGB • DRINKING WATER SOURCE PROTECTION = N/A for BIL-LSLR Funding (Loans & grants for Source Protection Projects paid out of the DWSP Fund) (AC:0256)	\$171,435	15.00%	\$0
TOTAL USE OF GRANT FUNDS	\$1,142,900	100.00%	\$0

Disclaimer ≥15% of the SDWRLF monies, "must" be awarded to Small Public Water Systems (10,000 or fewer people) each year. If it's not at the 15% mark, then "only" these small systems will be considered until this federal requirement is met.

On December 2016, the Water Infrastructure Improvement for the Nation (WIIN) Act was developed and included key provisions. One of these key provisions includes, Subtitle A (§2103) for "Safe Drinking Water" which states: SDWA §1452(g)(2) Set-aside language is revised to remove the overmatch for the 10% set-aside and change the 4% administrative set-aside to be "equal to the sum of any state fees collected and the greatest of \$400,000, 1/5% of the current fund value (2023 Total Net Position = \$330,366,751), and an amount equal to 4% of all grants awarded to the fund under this section for the fiscal year." These funds will also be subtracted from the Loan Fund to balance the increased Set-aside amount when applicable.

On October 2018, the America's Water Infrastructure Act (AWIA) provided provisions to the existing SDWA §2015 (c) for "Assistance for Disadvantaged Communities." The Section requires states to use at least 12% (from 6% to 12% per BIL Imp Memo), but no more than 35% of the capitalization grant amount for additional subsidy for state-defined Disadvantaged Communities.

Although authorized to request reserved set-asides under EPA's DWSRF Interim Final Rule, 40 CFR, Section 35.3540 (d), Oregon will not be exercising this option with our 2023 BIL Lead Service Line Replacement grant request. Oregon will also not be banking any additional set-aside authority for future use.



OREGON STATE PUBLIC HEALTH DIVISION
Office of the State Public Health Director

Tina Kotek, Governor

Oregon
Health
Authority

800 NE Oregon Street, Suite 930
Portland, OR, 97232
Phone: 971-673-1229
Fax: 971-673-1299

Memorandum

To: All Oregon Public Health Division Grantors

From: Nadia Davidson, Director of Finance

Date: July 1, 2024

Subject: Oregon Public Health Division Indirect Cost Allocation Rate

The Oregon Health Authority, Public Health Division operates under a federally approved cost allocation plan in lieu of an indirect rate agreement for administrative overhead costs. This agency-level cost allocation plan is approved by the Department of Health and Human Services, Cost Allocation Services (DHHS-CAS).

For the period of July 1, 2024 through June 30, 2025, the assumed rate of indirect cost allocation for Public Health programs is 16.96% of direct personal services and services and supplies. This is the indirect percentage built into grant proposals for this period.

The Oregon Health Authority, Public Health Division is in the process of compiling a proposal to DHHS-CAS regarding a formal indirect cost rate agreement. If a rate is approved during the period, the indirect cost allocation percentage may change to reflect the new rate.

Very truly yours,

Nadia Davidson, MPH, MSF
Director of Finance
Oregon Health Authority, Public Health Division

July 19, 2023

To: Any Concerned Parties

RE: Updated Oregon Health Authority Other Payroll Expenses 2023-25 Estimate

The current estimated Other Payroll Expense (OPE) rate for the 2023-25 biennium (from July 1, 2023 through June 30, 2025) for the Oregon Health Authority (OHA), Public Health Division (PHD) is 54.70%. OPE factors are prescribed and updated periodically by Oregon's Department of Administrative Services and are costs in addition to salary for State of Oregon employees. The current estimated OPE rate is based on a combination of actual average salaries and OPE for all positions within PHD and known OPE changes occurring this biennium.

Actual OPE rates vary based upon the salary of the individual. Therefore, the rate is a blended estimate of actual OPE costs and the fixed rates (e.g., flex or health benefits) that do not change based upon the salary of the individual. Other costs like PERS benefits vary based upon salary. Below is the OPE detail.

Variable OPE Costs:

- Public Employees Retirement System (PERS): 17.92% of salary
- PERS Pension Bonds (POB): 6.70% of salary
- Social Security and Medicare: 7.65% of salary
- Paid Family Medical Leave 0.40% of salary

Fixed OPE Costs:

- Employee Relations Board (ERB): \$2.19 per month
- Worker's Compensation: \$1.91 per month
- Flex Benefits (Health Insurance): \$1,650 per month

Sincerely,



Nadia Davidson, MPH, MS
Director of Finance
OHA-Public Health Division



August 18, 2023

Shawn Jacobsen, Controller
DHS/OHA Shared Services
Office of Financial Services
500 Summer St. NE, E-31
Salem, OR 97301

Dear Ms. Jacobsen:

This letter provides approval of the Oregon Health Authority Cost Allocation Plan (Plan) which was submitted by letter dated January 11, 2022. This Plan, which was submitted in accordance with 45 CFR 95, Subpart E, is effective July 1, 2021.

Acceptance of the actual costs in accordance with the approved Plan is subject to the following conditions:

1. The information contained in the Plan and provided by the State in connection with our review of the Plan is complete and accurate in all material respects.
2. The actual costs claimed by the State are allowable under prevailing cost principles, program regulations and law.
3. The claims conform with the administrative and statutory limitations against which they are made.

This approval relates only to the methods of identifying and allocating costs to programs, and nothing contained herein should be construed as approving activities not otherwise authorized by approved program plans or Federal legislation and regulations.

Implementation of the approved cost allocation plan may subsequently be reviewed by authorized Federal staff. The disclosure of inequities during reviews may require changes to the Plan.

If you have any questions concerning the contents of this letter, please contact Karen Wong of my staff at 415-437-7835. Please submit your next proposed Plan amendment electronically via email to CAS-SF@psc.hhs.gov.

Sincerely,

Arif M. Karim -S Digitally signed by Arif M. Karim -S
Date: 2023.08.21 17:36:13 -05'00'

Arif Karim, Director
Cost Allocation Services

cc: Terrence Perry, CDC
Elizabeth Naftchi, HRSA

Todd McMillion, CMS
Jack Goldberg, SAMHSA

Gary Tremblay, FNS

APPENDIX C: Timely & Expeditiously Use of Funds

- Sources & Uses Table

Oregon’s Safe Drinking Water Revolving Loan Fund (SDWRLF) Sources & Uses Table

SFY2024 & SFY2025 (projections)

	SFY 2024 7/1/23-6/30/24	SFY 2025 (Projected) 7/1/24-6/30/25
Sources & Uses Table for Oregon BIL-LSL Project Funds		
Beginning Project Cash Balance (BIL-LSL)	\$0	\$0
Undrawn BIL-LSL Federal Funds	\$0	\$0
Unspent Revenue Bond Balance (N/A)	\$0	\$0
State Match Balance (N/A, No State Match for LSL)	\$0	\$0
Total Funds Available - Beginning of Year	\$0	\$0
Repayments from BIL-LSL Loans	\$0	\$0
Estimated Repayments from New/Future Loans	\$0	\$0
Total Repayments	0	0
State Match for Current Year (N/A, No State Match for LSL)	\$0	\$0
State Match Bond Proceeds (N/A)	\$0	\$0
Total State Match	0	0
Revenue Bond Proceeds (N/A)	\$0	\$0
Anticipated BIL-Lead Service Line Funding (2023 BIL-LSL IUP)	\$0	\$1,142,900
Interest Earnings on Invested Funds (N/A)	\$0	\$0
Total Sources: BIL-LSL Inflows	\$0	\$1,142,900
Set-Asides Retained by OHA	\$0	(\$354,299)
Estimated Debt Service - Outstanding Revenue Bonds (N/A)	\$0	\$0
Actual Disbursements (From Committed Projects)	\$0	\$0
Projected Disbursements (Projects, Pending Contract)	\$0	(\$788,601)
Projected Disbursements (Remaining to Draw, Executed Contracts)	\$0	\$0
Total Uses: All Disbursements & Outflows	\$0	(\$1,142,900)
Fundable Projects List (PPL)	\$788,601	TBD until 2/15/25
Fund Balance Reserves	\$0	\$0
Ending Cash Balance	\$0	\$0

Explanations about the Sources and Uses Table above are referenced within the Intended Use Plans executive summary.

APPENDIX D: Set-Aside Work Plans

- Administrative Expense
- Small System Technical Assistance
- State Program Management
- Local Assistance & Other State Programs
 - i. Water System Capacity Development

**2023 Work Plan – DWSRF (BIL Lead Service Line Replacement)
Oregon Health Authority, Public Health Division
Administrative Expense – Loan Fund & Set-Aside**

General

Typically, this Set-Aside is a continuation effort to administer and operate the Loan Fund and Set-Asides, which is carried out jointly under the most current Inter-Agency Agreement (IAA) between the Oregon Health Authority (OHA) and Business Oregon.

BIL-Lead Service Line Replacement (LSLR) project funding primary purpose is focused around identifying and replacing lead service lines and gooseneck connectors. The FFY2023 BIL-LSLR Set-Aside funds will be utilized entirely to support costs associated to the three contracted vendors (i.e., HBH Consulting, Oregon Association of Water Utilities, and 120 Water) as technical assistance providers to assist systems under 10,000 in population with their service line inventory collections and planning.

Visit **Appendix F** in the Intended Use Plan for more details about vendor contracts.

Funding

Funding for this Set-Aside is **\$45,716** or 4.00% of the partial grant (i.e., \$1,142,900) that Oregon’s DWSRF will be applying for from EPA’s FFY2023 BIL-LSLR allotment to Oregon. This funding level will not be supporting any FTE for this grant phase.

These Set-Aside funds will be targeted for use during SFY-2025-26 (i.e., July 1 – June 30).

Goals and Objectives

Vendor contract goal is to provide assistance related to service line inventories to Community Water Systems (CWS) serving 10,000 people or fewer and non-profit, non-community water systems. Specific vendor contract objectives include, but are not limited to:

- < Training and outreach related to service line requirements, best practices, and reporting requirements.
- < Individual assistance to public water systems in completing their service line inventories.
- < Technical assistance and outreach provided will be prioritized to water systems serving fewer than 500 people, and systems designated by OHA as being disadvantaged.
- < Vendor coordination with OHA and other LSL vendors to ensure efficient outreach is conducted – without duplication.
- < Development of strategies to identify unknowns.
- < Provide any updates to initial inventory collections made prior to vendor assistance.

Implementation Responsibility

In coordination with OHA and to meet contract obligations, vendors will conduct outreach

efforts to targeted water systems and provide technical assistance related to service line inventories services of a short-term duration. For purposes of their contract, “short-term duration” means 6 hours or less of contractor-provided services per identified problem without the prior, written approval of OHA. If additional time is needed, vendors must make formal request to OHA for review and approval.

Evaluation of Results

The primary results of work under the Administrative Expense Set-Aside for FFY2023 will be provided monthly by the three contracted vendors in reports to OHA to provide adequate oversight of outreach efforts and to allow OHA to intervene with unresponsive systems in a timely manner. A final summary report will also be included explaining work performed, lessons learned, information on inventories collected, and any other pertinent details requested by OHA.

**2023 Work Plan – DWSRF (BIL Lead Service Line Replacement)
Oregon Health Authority, Public Health Division
Small Water System Technical Assistance**

General

BIL-Lead Service Line Replacement (LSLR) project funding primary purpose is focused around identifying and replacing lead service lines and connectors. The FFY2023 BIL-LSLR Set-Aside funds will be utilized entirely to support costs associated to the three contracted vendors (i.e., HBH Consulting, Oregon Association of Water Utilities, and 120 Water) as technical assistance providers to assist systems under 10,000 in population with their service line inventory collections and planning.

Visit **Appendix F** in the Intended Use Plan for more details about vendor contracts.

Goals and Objectives

Vendor contract goal is to provide assistance related to service line inventories to Community Water Systems (CWS) serving 10,000 people or fewer and non-profit, non-community water systems. Specific vendor contract objectives include, but are not limited to:

- < Training and outreach related to service line requirements, best practices, and reporting requirements.
- < Individual assistance to public water systems in completing their service line inventories.
- < Technical assistance and outreach provided will be prioritized to water systems serving fewer than 500 people, and systems designated by OHA as being disadvantaged.
- < Vendor coordination with OHA and other LSL vendors to ensure efficient outreach is conducted – without duplication.
- < Development of strategies to identify unknowns.
- < Provide any updates to initial inventory collections made prior to vendor assistance.

Funding

The funding from the Technical Assistance Set-Aside is **\$22,858** or **2%** of the partial grant (i.e., \$1,142,900) that Oregon’s DWSRF will be applying for from EPA’s FFY2023 BIL-LSLR allotment to Oregon. This funding level will not be supporting any FTE for this grant phase.

These set-aside funds will be targeted for use during SFY-2025-26 (i.e., July 1 – June 30).

Implementation Schedule

Vendor services are delivered statewide and prioritized to small and disadvantaged communities on as needed basis to assist water systems with their service line inventories among other eligible activities as outlined in the contract.

Implementation Responsibility

Service contracts are offered through an open competitive Request for Proposal (RFP). OHA committee selects the most qualified contractor candidates, and they will enter into a standard contract generally for a period of two years, but which can be extended or amended up to a maximum of five years with the agreement of all parties. OHA will provide contract oversight and assure contracts are current and meet state contract requirements.

Additionally, and in coordination with OHA and to meet contract obligations, vendors will conduct outreach efforts to targeted water systems and provide technical assistance related to service line inventories services of a short-term duration. For purposes of their contract, “short-term duration” means 6 hours or less of contractor-provided services per identified problem without the prior, written approval of OHA. If additional time is needed, vendors must make formal request to OHA for review and approval.

Evaluation of Results

The Department evaluates contractors periodically by reviewing contact reports of technical assistance provided, and satisfaction surveys of the water systems receiving technical assistance and training. Long-term evaluation is based on compliance status trends (such as the Oregon Benchmarks) of the water systems being served.

Finally, the Technical Assistance Set-Aside for FFY2023 will provide results of work performed monthly by the three contracted vendors in reports to OHA to provide adequate oversight of outreach efforts and to allow OHA to intervene with unresponsive systems in a timely manner. A final summary report will also be included explaining work performed, lessons learned, information on inventories collected, and any other pertinent details requested by OHA.

**2023 Work Plan – DWSRF (BIL Lead Service Line Replacement)
Oregon Health Authority, Public Health Division
State Program Management- State & Partner Support**

General

Typically, funds from this Set-Aside augment the Public Water Supply Supervision grant (PWSS). The PWSS grant work plan defines the roles, responsibilities, objectives, performance measures, annual work plan, and a compliance assurance agreement.

The Oregon Health Authority (OHA) and USEPA annually negotiate the PWSS.

BIL-Lead Service Line Replacement (LSLR) project funding primary purpose is focused around identifying and replacing lead service lines and gooseneck connectors. The FFY2023 BIL-LSLR Set-Aside funds will be utilized by OHA staff to help plan, develop, and implement BIL-LSLR program priorities.

Funding

The funding from the State Program Management (SPM) Set-Aside is **\$114,290** or **10%** of the partial grant (i.e., \$1,142,900) that Oregon’s DWSRF will be applying for from EPA’s FFY2023 BIL-LSLR allotment to Oregon.

These funds will support 0.55 FTE to support the LSLR funding program, including identifying needed service line replacement projects, project rating and ranking, developing the IUP and grant submittal materials.

These Set-Aside funds will be targeted for use during SFY-2025-26 (i.e., July 1 – June 30).

Implementation Responsibility

OHA provides the leadership for the Oregon Drinking Water Services. OHA-Drinking Water Services provides core drinking water services, including implementation of Lead and Copper Rule requirements, coordinating funding outreach and project development efforts with Technical Services as service line inventories are completed and identifying viable lead pipe related projects, if any.

Additional support will be provided for inventory collection work after the initial survey reporting period ends on 10/16/2024.

Evaluation of Results

Using the results of the inventory collected, OHA-Drinking Water Services will target funding support and project development as water systems begin the process of mitigating lead service lines throughout Oregon to reduce any remaining public health risks related to lead service lines, if any.

**2023 Work Plan – DWSRF (BIL Lead Service Line Replacement)
Oregon Health Authority
Local Assistance – Water System Capacity Program**

General

BIL-Lead Service Line Replacement (LSLR) project funding primary purpose is focused around identifying and replacing lead service lines and gooseneck connectors. The FFY2023 BIL-LSLR Set-Aside funds will be utilized entirely to support costs associated to the three contracted vendors (i.e., HBH Consulting, Oregon Association of Water Utilities, and 120 Water) as technical assistance providers to assist systems under 10,000 in population with their service line inventory collections and planning.

Visit **Appendix F** in the Intended Use Plan for more details about vendor contracts.

Funding

Funding for this Set-Aside includes **\$171,435** or 15% of the partial grant (i.e., \$1,142,900) that Oregon’s DWSRF will be applying for from EPA’s FFY2023 BIL-LSLR allotment to Oregon. This funding level will not be supporting any FTE for this grant phase.

These set-aside funds will be targeted for use during SFY-2025-26 (i.e., July 1 – June 30).

Goals and Objectives

Vendor contract goal is to provide assistance related to service line inventories to Community Water Systems (CWS) serving 10,000 people or fewer and non-profit, non-community water systems. Specific vendor contract objectives include, but are not limited to:

- < Training and outreach related to service line requirements, best practices, and reporting requirements.
- < Individual assistance to public water systems in completing their service line inventories.
- < Technical assistance and outreach provided will be prioritized to water systems serving fewer than 500 people, and systems designated by OHA as being disadvantaged.
- < Vendor coordination with OHA and other LSL vendors to ensure efficient outreach is conducted – without duplication.
- < Development of strategies to identify unknowns.
- < Provide any updates to initial inventory collections made prior to vendor assistance.

Implementation Schedule

In coordination with OHA and to meet contract obligations, vendors will conduct outreach efforts to targeted water systems and provide technical assistance related to service line inventories services of a short-term duration. For purposes of their contract, “short-term duration” means 6 hours or less of contractor-provided services per identified problem without the prior, written approval of OHA. If additional time is needed, vendors must make formal request to OHA for review and approval.

Evaluation of Results

The Local Assistance – Water System Capacity Program Set-Aside for FFY2023 will provide results of work performed monthly by the three contracted vendors in reports to OHA to provide adequate oversight of outreach efforts and to allow OHA to intervene with unresponsive systems in a timely manner. A final summary report will also be included explaining work performed, lessons learned, information on inventories collected, and any other pertinent details requested by OHA.

APPENDIX E: Public Notices

- Intended Use Plan (IUP) Public Notice Letter
- Project Priority List Public Notice Letter



PUBLIC HEALTH DIVISION
Center for Health Protection, Drinking Water Services

Tina Kotek, Governor

Oregon
Health
Authority

800 NE Oregon Street, Suite #640
Portland, OR 97232-2162
(971) 673-0405
(971) 673-0694 – FAX
<http://healthoregon.org/dwp>

July 22, 2024

Legal Notice

Legal notice of public review and comment period concerning the proposed 2023 Intended Use Plan (IUP) attached below for Oregon's new Bipartisan Infrastructure Law (BIL) Lead Service Line Replacement (LSLR) program. The BIL LSLR increases funding to Oregon's existing Drinking Water State Revolving Fund (DWSRF) program with focus on inventory collection, planning, and the replacement of known lead service lines and connectors.

One of Oregon Health Authority (OHA) Drinking Water Services (DWS) responsibilities as a state agency managing the DWSRF program as set forth under Section 1452 (40 CFR 35.555 (b)) of the amended 1996 Safe Drinking Water Act (SDWA) is to provide the public the opportunity to comment on the proposed IUP as part of the grant application process to the U.S. Environmental Protection Agency (EPA). This IUP explains how OHA-DWS prioritizes funding to eligible community and non-profit non-community public water systems and the funding of Set-Aside activities. It also is a key aspect of how we will procure the funding resources that the EPA has appropriated Oregon during Federal fiscal year 2023.

The public comment period for the IUP will be from Friday, July 26 through Monday, August 26, 2024. If you would like to make a comment, please email your comments to DWS.SRF@odhsoha.oregon.gov by no later than 5pm on Monday, August 26th to be considered. If you have questions, you may also email or call me at (503) 956-8287.

Thank you.

Adam DeSemple

PROGRAM COORDINATOR, DWSRF/BIL
Oregon Health Authority
Center for Health Protection
Drinking Water Services
800 N.E. Oregon St., STE 640
Portland, OR. 97232-2162
adam.desemple@oha.oregon.gov
<http://healthoregon.org/srf>
<http://oregon.gov/bil>



PUBLIC HEALTH DIVISION
Center for Health Protection, Drinking Water Services

Tina Kotek, Governor

Oregon
Health
Authority

800 NE Oregon Street, Suite #640
Portland, OR 97232-2162
(971) 673-0405
(971) 673-0694 - FAX
<http://healthoregon.org/dwp>

May 24, 2024

Legal Notice

Legal notice of public review and comment period concerning proposed changes to the Project Priority List (PPL) for Oregon's Drinking Water State Revolving Fund (DWSRF) for the end of the third quarter of state fiscal year 2024. This PPL exclusively includes eligible drinking water projects that will be considered for Oregon's 2023 [Bipartisan Infrastructure Law \(BIL\)](#) Lead Service Line Replacement (BIL-LSLR) funding. Oregon's priorities for BIL-LSLR funding focuses on inventory collection and identification, replacement of lead service lines, and connectors. Please reference footnotes on PPL for more information.

One of Oregon Health Authority (OHA) Drinking Water Services (DWS) responsibilities as a state agency managing the DWSRF/BIL program as set forth under Section 1452 (40 CFR 35.555 (b)) of the amended 1996 Safe Drinking Water Act (SDWA) is to provide the public the opportunity to comment on changes to the Intended Use Plan (IUP) as part of the grant application process to the U.S. Environmental Protection Agency (EPA). The PPL is important to how the DWSRF/BIL program implements the IUP. Projects have been rated (i.e., scored) by OHA staff to determine ranking and placement on the BIL-LSLR PPL. Before projects can be funded, we are obligated to provide the public the opportunity to review and comment on the proposed PPL.

The public review and comment period for the PPL will be from Tuesday, May 28 through Thursday, June 6, 2024. If you would like to make a comment, please email your comments to DWS.SRF@odhsoha.oregon.gov by no later than 5pm on Thursday, June 6th to be considered. If you have questions, you may also email or call me at (503) 956-8287.

Thank you.

Adam DeSemple

PROGRAM COORDINATOR, DWSRF/BIL
Drinking Water Services
800 N.E. Oregon St., STE 640
Portland, OR. 97232-2162
adam.desemple@oha.oregon.gov
<http://healthoregon.org/srf>
<http://Oregon.gov/bil>

APPENDIX F: Agreements

- Interagency Agreement (with Business Oregon)
- Operating Agreement (with EPA)
- 3 Vendor Contracts – Lead Service Line Inventory Collection
 - i. HBH Consulting Engineers, Inc.
 - ii. Oregon Association of Water Utilities, Inc. (OAWU)
 - iii. 120 Water Audit, Inc.

INTERAGENCY AGREEMENT

This Agreement is between the **Oregon Health Authority** (“OHA”) and the **Oregon Infrastructure Finance Authority of the Oregon Business Development Department** (“IFA”), both individually without distinction as “Party” and collectively as the “Parties.”

SECTION 1: AUTHORITY

This Agreement is entered into pursuant to the authority granted by ORS 190.110 and 283.110, allowing state agencies to enter into agreements with other state agencies to cooperate in performing duties, exercising powers or administering policies or programs.

SECTION 2: PURPOSE

- 2.1** Congress enacted the Safe Drinking Water Act Amendments of 1996, Public Law 104-182 (“Act”) to include authorization for capitalization grants to states to implement a Drinking Water State Revolving Fund (DWSRF) program and required program activities, and the US Environmental Protection Agency (“USEPA”) adopted rules that define further the DWSRF program. The Act was amended in 2018 by the Water Infrastructure Investments for the Nation Act (WIIN Act), authorizing EPA to implement a grants program to support the needs of public water systems in underserved communities that are also considered small or disadvantaged communities. Congress appropriated funds to support the grants program in 2019.
- 2.2** On November 15, 2021, the Infrastructure Investment and Jobs Act (H.R. 3684), commonly referred to as the Bipartisan Infrastructure Law (BIL) was signed into law. The law provides the US Environmental Protection Agency (EPA) with grant funds that can be appropriated to states for investments in drinking water infrastructure over five years (2022 – 2026). BIL funding is provided to Oregon in three distinct annual allocations BIL General Supplemental (BIL-GS), BIL Emerging Contaminants (BIL-EC), and BIL Lead Service Line Replacement (BIL-LSL).
- 2.3** BIL also allocated additional funding to address emerging contaminants through EPA’s Emerging Contaminants in Small or Disadvantaged Communities (EC-SDC) Grant program.
- 2.4** The Oregon Legislature has periodically authorized the issuance of lottery supported infrastructure bonds sufficient to provide proceeds to the IFA for the matching funds required from Oregon to receive federal “capitalization grants” under the Act.
- 2.5** The Oregon Health Authority, Public Health Division, Drinking Water Services (“OHA”) has the statutory responsibility for administration and enforcement of federal and state drinking water standards and rules in Oregon. OHA establishes public health priorities for public water systems and provides technical assistance and outreach utilizing fund set-asides.
- 2.6** The Oregon Infrastructure Finance Authority (“IFA”) administers the Safe Drinking Water Revolving Loan Fund (the “Fund”)(ORS 285A.213), and administers financing programs which are available to assist Oregon communities with their drinking water infrastructure projects and drinking water source protection projects. The Fund is comprised of DWSRF capitalization grant funds, state matching funds, loan principal and interest repayments, and capitalization grants under the Bipartisan Infrastructure Law General Supplemental appropriations (2022-2026)

- 2.7 The purpose of this agreement is to ensure interagency coordination and effective implementation of the DWSRF program and the WIIN Act grants program.

SECTION 3: EFFECTIVE DATE AND DURATION

This Agreement shall begin on **July 1, 2023** and shall terminate on **June 30, 2025**, unless terminated earlier in accordance with Section 7.

SECTION 4: AUTHORIZED REPRESENTATIVES

4.1 OHA's AUTHORIZED REPRESENTATIVE IS:

Anthony J. Fields
800 NE Oregon Street, Suite 640
Portland, OR 97232-2162
Office: (971) 673-2269
Fax: (971) 673-0694
Email: anthony.j.fields@oha.oregon.gov

4.2 IFA's AUTHORIZED REPRESENTATIVE IS:

Jon Unger
775 Summer Street NE, Suite 200
Salem, OR 97301
Office: (503) 507-7107
Fax: (503) 581-5115
Email: jon.unger@biz.oregon.gov

- 4.3 A party may designate a new authorized representative by written notice to the other party.

SECTION 5: RESPONSIBILITIES OF EACH PARTY

The parties agree to continue their responsibilities to meet the requirements of the Act and program as follows:

5.1 Grant Application; Budgets

OHA and IFA will coordinate on preparation of the annual Intended Use Plan (IUP) as defined in the Act. OHA will obtain public comment and otherwise be responsible for the IUP.

OHA will coordinate with IFA on preparation of the DWSRF Capitalization Grant, BIL-GS, BIL-EC, BIL-LSL, and EC-SDC grants including the percent of federal allocation set-aside for administration and the allocation of the administrative set-aside between OHA and IFA. OHA will annually prepare the requests and apply for the federal grant.

OHA and IFA will consult when preparing their respective state annual and biennial budgets to implement the DWSRF program. This includes agreeing on the amount of total transfers between OHA and IFA for annual project and administrative costs.

OHA and IFA will coordinate at fiscal year-end closing concerning transfers.

5.2 State Matching Funds

Upon notification of each capitalization grant, the IFA will deposit state monies into the Fund equal to 20 percent of the DWSRF capitalization grant or the percentage otherwise required by EPA. The match is required to be made on or before the time that EPA funds are drawn. Deposit of matching funds for Bipartisan Infrastructure Law General Supplemental appropriations will be dependent on IFA fund availability and legislative action.

5.3 Payments for Awarded Projects

All EPA funds will be received by OHA. OHA will maintain separate and identifiable accounts for the portion of the capitalization grant to be used for base program requests, disbursement requests received by IFA and for all set-aside activities and will transfer funds to IFA as requests are approved.

When it receives a disbursement request from a loan recipient based on obligated or incurred costs for a “base program” project, IFA has primary responsibility for determining allocation between the Fund and federal reimbursement. IFA will forward all such requests for federal reimbursement, and all requests related to “set-aside” projects and activities, to OHA.

5.4 Set Asides

OHA is responsible for managing set-aside activities and expenses under DWSRF annual federal capitalization grants, BIL-GS grants, BIL-EC grants, and BIL-LSL grants for:

- 5.4.1** Administrative expenses – not to exceed 4 percent of the cumulative allotment. IFA will bill OHA no more frequently than monthly for IFA’s administrative expenses.
- 5.4.2** Technical Assistance to Small Systems – not to exceed 2 percent of the cumulative allotment.
- 5.4.3** State Program Management – not to exceed 10 percent of the cumulative allotment.
- 5.4.4** Local Assistance and Other State Programs – not to exceed 15 percent of the capitalization grant and no more than 10 percent is used on any one of the defined activities.

OHA will inform IFA of the available fund balances for the administrative expenses set-aside category on a quarterly basis.

5.5 Federal Eligibility Costs

OHA is responsible for determining the eligibility of all OHA and IFA administrative expenses. The State will follow the principles and standards of 2 C.F.R. Part 225 (formerly OMB Circular A-87) for determining costs for Federal awards.

5.6 Cash Management

OHA will process all requests for federal reimbursement through the Automated Clearing House (ACH) or the Automated Standard Application for Payments (ASAP) system.

5.7 Period of Availability of Federal Funds

OHA is responsible to follow all federal requirements related to timing of capitalization grant payments and state obligation of funds (E.g., Grant payments from a capitalization grant shall begin no earlier than the quarter in which the grant is awarded, and generally end no later than eight quarters after the grant is awarded.

The State must obligate funds for eligible projects within one year of accepting a payment. Funds are disbursed for set-aside activities in accordance with costs being incurred under approved workplans. Cumulative binding commitments must be made in an amount equal to the amount of each grant payment plus the required State match that is deposited into the DWSRF within one year after the receipt of each grant payment (a binding commitment is a legal obligation by the State to a local recipient that defines the terms for assistance under the DWSRF program).

5.8 Federal Reporting

OHA is responsible for preparing and submitting Federal Financial Report (FFR) SF-425 to report expenditures under federal awards, as well as, when applicable, cash status. OHA will also obtain and report necessary subaward information as required by the Federal Funding Accountability and Transparency Act.

OHA will complete reports regarding set-aside activities and expenses as required by USEPA, including but not limited to reporting in the State Revolving Fund (SRF) Drinking Water Data System.

IFA will complete reports regarding projects using the Fund as required by USEPA, including but not limited to reporting in the SRF Drinking Water Data System.

5.9 Program Income

IFA may charge a fee on loans to non-disadvantaged communities. Such fees may be collected in an IFA account outside the Fund and used to supplement IFA administrative expenses. IFA is responsible for coordinating with OHA for the purpose of USEPA reporting of fee account details. Use of fee revenue must comply with allowed uses as prescribed by EPA.

5.10 Solicitation of Letters of Interest

IFA, in conjunction with OHA, is responsible for establishing and maintaining a system to allow submission of LOIs by potential funding recipients for infrastructure and BIL-EC projects. IFA will ensure OHA access of all relevant information.

5.11 Rating and Ranking of Projects

OHA is responsible for determining project priority and rating criteria, reviewing “Letters of Interest” from water systems, and using those criteria, will assign points to water system projects and develop a project priority list.

5.12 Disadvantaged Community Determination

As rating and ranking is conducted, OHA is responsible for identifying whether a water system is classified as a “disadvantaged community” consistent with Section 1452(d)(2) of the Safe Drinking Water Act. Any proposed changes to the definition of “disadvantaged community” will be collaboratively developed by IFA and OHA and will be subject to a public comment process.

5.13 Managerial and Technical Capacity Review

OHA will assess the managerial and technical capacity of applicants to maintain compliance with the Act and forward the assessment results to the IFA.

5.14 Financial Review

IFA will assess the financial capacity of applicants to complete the project, operate and maintain the system, and repay a loan.

5.15 Water System Eligibility and Allowable Activities

OHA has initial, and primary overall responsibility for determining applicant and activity eligibility under the Act and applicable IFA and OHA Oregon Administrative Rules, including prohibitions on contracting with or making subawards to parties that are suspended or debarred or whose principals are suspended or debarred. IFA receives and is responsible for

179523-0

reviewing loan and grant applications, which may contain more detailed information, and will remain in contact with system owners to monitor and assist with their projects. Once an application is received, IFA will implement the secondary responsibility to ensure all lower-tier activities and expenditures are eligible.

5.16 Technical Review Requirements

When required, OHA will provide technical review of engineering reports, master plans, and construction plans and specifications for projects funded by this program.

5.17 Environmental Review Requirements

OHA will maintain Oregon Administrative Rules, policies, and procedures, and be responsible for the review process of environmental impacts created by the construction of drinking water facilities funded wholly or in part by the DWSRF program, and all set-aside activities that impact the quality of human environment receiving assistance from the DWSRF program.

5.18 Communicating Federal Labor Standards Requirements to Loan Recipients

IFA will notify Recipients about the federal (and state) Labor Standards applicable to them and all contractors on their project, including prevailing wage (David-Bacon) requirements, through financing contract language, and through instructions and sample contract language and forms for use in construction contracts. IFA will forward Disadvantaged Business Enterprises activity reports to OHA, who will forward to the USEPA.

5.19 Federal Procurement Standards

As allowed by the Act, the State and subrecipients shall use state policies and procedures (that meet federal standards) for all procurements, whether with federal or state funds. IFA shall ensure that all contracts with subrecipients, and all contracts and subcontracts issued on behalf of subrecipients, specify relevant state procurement policies and procedures and include any clauses required by the Act and their implementing regulations and related executive orders.

5.20 Safe Drinking Water Revolving Loan Fund

The IFA will administer, manage, and operate the Fund. The IFA will ensure that the accounting, audit, and fiscal procedures for the Fund conform to applicable government standards, including those set forth in the capitalization grant award.

5.21 Project Financing and Project Administration

The IFA will administer the loan program for all projects funded through the Fund including, but not limited to, infrastructure projects and Sustainable Infrastructure Planning Projects. Duties and responsibilities include:

- 5.21.1** Develop and maintain, in consultation with OHA, administrative rules and state program guidelines for the Fund and program, including for source water protection projects and for other Fund assistance.
- 5.21.2** Receive electronic or hard copy letters of interest for funding assistance and ensure OHA has access for project evaluation.
- 5.21.3** Notify water systems of their LOI status on the ranked project priority list.
- 5.21.4** Determine the amount and type of financing to be awarded to applicants and verify that moneys in the Fund necessary to complete the project will be available.
- 5.21.5** Ensure that the State meets EPA grant requirements related to additional subsidy, as outlined in annual grant agreements.

179523-0

- 5.21.6** Conduct a financial review of applicants for the following fiscal attributes; adequate water rate structure, billing procedure, or alternate financial plan, to assure that funds are collected and available to repay loans from the Fund. Require recipients to adequately plan for the anticipated operation, maintenance, and replacement costs of the water system.
- 5.21.7** Coordinate with other federal, state, or private financing assistance providers on projects with multiple financing partners.
- 5.21.8** Establish standards for disbursement of funds and closeout of projects including, but not limited to, monitoring of all projects, and final inspections of construction projects; and provide fiscal tracking and loan payment systems that comply with federal standards.
- 5.21.9** Enter into contracts with recipients for financing the projects.
- 5.21.10** Take steps to ensure that recipients implement “good faith efforts” in soliciting and procuring Disadvantaged Business Enterprises, as required by the USEPA. Report to OHA the level of activity by Minority-owned and Women-owned Business Enterprises for each Fund recipient.
- 5.21.11** Complete reports as required by the USEPA, including but not limited to reporting in the SRF Drinking Water Data System.

5.22 Other Joint Responsibilities

The IFA and OHA agree to work together and cooperate in efforts necessary for efficient and effective administration, management and operation of the program and Fund, including, but not limited to rule revisions, gathering and reporting of information and preparing quarterly activity updates and annual summary reports of accomplishments, annual USEPA meetings, staff training, public information and workshops, and other activities that are needed to carry out the program and comply with federal and state laws and regulations applicable to the program.

5.23 Claims

The parties understand that each is insured with respect to tort liability by the State of Oregon Insurance Fund, established by ORS Chapter 278, and is subject to the Oregon Tort Claims Act. The parties agree that any tort liability claim, suit or loss resulting from or arising out of the party’s activities may be allocated by the Risk Management Division of the Department of Administrative Services for purposes of their respective loss experience and subsequent allocation of self-insurance assessments under ORS 278.435. Each party agrees to notify the Risk Management Division and the other party in the event it receives notice or knowledge of any such claims.

5.24 Records Maintenance Access

Each party will maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. In addition, each party will maintain other records pertinent to this Agreement to clearly document its performance. Each party acknowledges and agrees that the other party, and the federal government and their duly authorized representatives will have access to all such records and to perform examinations and audits and make excerpts and copies. Each party will retain and keep accessible all such records according to applicable state record retention schedules.

5.25 Drinking Water Source Protection Project Grants

179523-0

IFA will develop and maintain, in consultation with OHA, administrative rules and state program guidelines for source water protection projects. OHA will consult with IFA during preparation of the annual DWSRF capitalization grant to determine an amount to allocate toward drinking water source protection grants. In addition, prior to soliciting applications for new grant projects, OHA will consult with IFA on the amount to allocate toward grant projects in a given annual solicitation cycle. OHA, working with DEQ Source Water Protection staff partners, will review and rank applications and recommend projects for funding. OHA will establish and maintain a system to allow submission of LOIs by potential funding recipients for drinking water source protection projects. IFA will develop funding agreements with project recipients and administer the agreements. OHA will monitor project progress and status and coordinate with IFA regarding the need for time extensions or termination of projects that fail to progress in a timely manner.

5.26 WIIN Act Small, Disadvantaged Communities Grants

OHA will coordinate with IFA on preparation of WIIN Act Small, Disadvantaged Communities grant applications. OHA will identify and prioritize prospective grant projects, submit grant applications to EPA and administer grant awards. IFA will assist in identifying sources of grant match, administer grant project contracts, and coordinate with OHA on federal reporting. Prior to communicating with eligible water systems and applying to EPA for funding, OHA and IFA will establish mutually agreed upon written policies and procedures.

SECTION 6: COMPENSATION AND PAYMENT TERMS

OHA shall reimburse IFA up to but not in excess of **\$ 42,833,000.00** for all expenses reasonably and necessarily incurred in performing the services and delivering the goods required under this Agreement. Payment shall be made monthly for services provided and goods delivered to OHA's satisfaction during the prior month, after submission of a satisfactory invoice.

The annual DWSRF Capitalization Grant, CFDA Number: **66.468**, and the WIIN Act Small, Disadvantaged Community grant, CFDA Number: **66.442**, repayment funds, and DWSRF fees are the sources of revenue used to support activities described in this agreement. DWSRF Capitalization Grant, BIL-GS, BIL-EC, and BIL-LSL administrative set-asides will be used to fund IFA administrative costs. DWSRF loan fee revenue may also be used for EPA eligible administrative expenses incurred by the IFA as described in section 5.8 of this Agreement.

OHA and IFA will consult when preparing their respective annual and biennial budgets to implement this Agreement. **Budgets will remain within and depend upon the annual federal allotment of Oregon's DWSRF Capitalization Grant, BIL-GS Grant, BIL-EC Grant, BIL-LSL Grant and repayment funds, which will vary from year to year, and Congressional appropriations for WIIN Act Small, Disadvantaged grants.** The parties will coordinate on preparation of annual state budgets, potential revisions as necessary due to federal budget adjustments, Annual and Biennial Reports to EPA, and will assist each other in budget presentations and evaluations/audits as appropriate.

SECTION 7: TERMINATION

- 7.1 This Agreement may be terminated at any time by mutual written agreement of the Parties.
- 7.2 A Party may terminate this Agreement upon 180 days written notice to the other Party.
- 7.3 A Party may terminate this Agreement, in whole or in part, immediately upon written notice to the other Party, or at such later date as the terminating Party may specify in such notice, upon the occurrence of any of the following events:

179523-0

- 7.3.1** A party fails to receive funding, appropriations, limitations, allotments, or other expenditure authority at levels sufficient in the terminating Party's reasonable administrative discretion, to perform its duties under this Agreement;
- 7.3.2** Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the terminating Party's performance under this Agreement is prohibited or the terminating Party is prohibited from paying for such performance from the planned funding source;
- 7.3.3** The other Party materially breaches a covenant, warranty or obligation under this Agreement, or fails to perform its duties within the time specified in this Agreement or any extension of that time, or so fails to pursue its duties as to endanger that Party's performance under this Agreement in accordance with its terms, and such breach or failure is not cured within 20 days after delivery of the terminating Party's notice to the other Party of such breach or failure, or within such longer period of cure as the terminating Party may specify in such notice.

SECTION 8: AMENDMENTS

The terms of this Agreement may not be waived, altered, modified, supplemented or otherwise amended, in any manner whatsoever, except by written mutual agreement of the Parties.

SECTION 9: NOTICE

Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement shall be given in writing by email, personal delivery, facsimile, or mailing the same, postage prepaid, to a Party's Authorized Representative at the address, number or email address set forth in this Agreement, or to such other addresses or numbers as a Party may indicate pursuant to this Section 9.

SECTION 10: SURVIVAL

All rights and obligations shall cease upon termination of this Agreement, except for those rights and obligations that by their nature or express terms survive termination of this Agreement. Termination shall not prejudice any rights or obligations accrued to the Parties prior to termination.

SECTION 11: SEVERABILITY

The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

SECTION 12: COUNTERPARTS

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed shall constitute an original.

SECTION 13: LIABILITY AND INSURANCE

- 13.1** The Parties understand that each is insured with respect to tort liability by the State of Oregon Insurance Fund, a statutory system of self-insurance established by ORS Chapter 278, and subject to the Oregon Tort Claims Act (ORS 30.260 to 30.300). Each Party agrees to accept that

179523-0

coverage as adequate insurance of the other Party with respect to personal injury and property damage.

- 13.2** The Parties agree that any tort liability claim, suit, or loss resulting from or arising out of the Parties' performance of, or activities under, this Agreement shall be allocated, as between the Parties, in accordance with law by Risk Management of the Department of Administrative Services for purposes of the Parties' respective loss experiences and subsequent allocation of self-insurance assessments under ORS 278.435. Each Party to the Agreement agrees to notify Risk Management and the other Party in the event it receives notice or knowledge of any claims arising out of the Parties' performance of, or activities under, this Agreement.

SECTION 14: DAS REPORTING REQUIREMENT

The Parties agree that OHA shall be the Reporting Party for purposes of ORS 190.115, Summaries of Agreements of State Agencies. OHA shall submit a summary of this Agreement to the Oregon Department of Administrative Services through the state electronic procurement system OregonBuys, within the 30-day period immediately following the Effective Date of the Agreement.

SECTION 15: RECORDS

The Parties shall create and maintain records documenting their performance under this Agreement. The Oregon Secretary of State's Office, the federal government, the other Party, and their duly authorized representatives shall have access to the books, documents, papers, and records of a Party that are directly related to this Agreement for the purposes of making audit, examination, excerpts, and transcripts for a period of six years after termination of this Agreement.

SECTION 16: COMPLIANCE WITH LAW

In connection with their activities under this Agreement, the Parties shall comply with all applicable federal, state and local laws and regulations.

SECTION 17: NO THIRD PARTY BENEFICIARIES

OHA and DEQ are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

SECTION 18: FORCE MAJEURE

Neither Party is responsible for any failure to perform or any delay in performance of any obligation under this Agreement caused by fire, riot, acts of God, terrorism, war, or any other cause which is beyond that Party's reasonable control.

SECTION 19: MERGER, WAIVER and MODIFICATION

This Agreement and all exhibits and attachments, if any, constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.

SECTION 20: SUBCONTRACTS AND ASSIGNMENT

- 20.1** Neither Party may enter into any subcontracts for the performance of any of its obligations under this Agreement, without the prior written consent of the other Party.
- 20.2** Neither Party may assign, delegate or transfer any of its rights or obligations under this Agreement, without the prior written consent of the other Party.

179523-0

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives as of the dates set forth below.

STATE OF OREGON acting by and through its Business Oregon/Infrastructure Finance Authority:

By: Chris Cummings

Digitally signed by Chris Cummings
Date: 2023.07.31 12:40:43 -07'00'

Date

Chris Cummings
Printed Name

Deputy Director
Title

STATE OF OREGON acting by and through its Oregon Health Authority, Center for Health Protection:

By: _____

08/10/2023
Date

Andre Ourso MPH, JD
Printed Name

Nadia Davidson, CFO/Director of Finance

Administrator
Title



**OPERATING AGREEMENT:
Drinking Water State Revolving Fund
(DWSRF)**

Implementation & Management of the Program



**Between the
Oregon Health Authority – Drinking Water Services
State of Oregon
And
U.S. Environmental Protection Agency**

OHA Agreement #167726

2021-2026

TABLE OF CONTENTS

I. INTRODUCTION	
A. Background & Objective of the DWSRF.....	4
B. Purpose, Format & Structure of the Operating Agreement.....	5
C. Timing & Application Review.....	6
II. IMPLEMENTATION	
A. Parties of the Agreement.....	6
B. Summary of State & EPA Roles and Responsibilities.....	7
C. State Assurances & Certifications.....	8
D. Financial Administration of the Fund.....	14
E. Program Administration.....	18
F. Project Management & Review Procedures.....	19
G. Development of Intended Use Plan (IUP).....	19
III. REPORTING & REVIEW	
A. Biennial Report / Annual Report.....	21
B. Annual Audit.....	21
C. Annual Review.....	21
D. Sanctions & Compliance.....	22
E. National Reporting Needs.....	22
F. Records & Data Management.....	22
IV. REVISING THE OPERATING AGREEMENT	
A. Amendments.....	24
B. Designated Officials.....	24
V. EXECUTION	
A. Authority.....	25
B. Effective Date & Signatures.....	25
VI. ATTACHMENTS	
Attachment 1 Oregon’s State Enabling Legislation (ORS Chapter 448) - <i>available online or upon request</i>	
Attachment 2 Inter-Agency Agreement (IAA) with Business Oregon’s Infrastructure Finance Authority (IFA) & Oregon’s Department of Environmental Quality (DEQ) – <i>available online or upon request</i>	
Attachment 3 State Environmental Review Process (SERP) – <i>available online or upon request</i>	
Attachment 4 State Regulations – <i>available online or upon request</i>	

ACRONYMS

• ARRA	-	American Recovery and Reinvestment Act
• AWIA	-	America’s Water Infrastructure Act
• CWSRF	-	Clean Water State Revolving Fund
• DEQ	-	Department of Environmental Quality
• DWS	-	Drinking Water Services
• DWSRF	-	Drinking Water State Revolving Fund
• EPA	-	Environmental Protection Agency
• EPA-ACH	-	Automated Clearinghouse
• ER	-	Environmental Review
• ERP	-	Enforcement Response Policy
• ETT	-	Enforcement Targeting Tool
• FFATA	-	Federal Funding Accountability and Transparency Act
• FFY	-	Federal Fiscal Year
• FSRS	-	FFATA Subaward Reporting System
• GAAP	-	Generally Accepted Accounting Principles
• GASB	-	Government Accounting Standards Board
• IAA	-	Inter Agency Agreement
• IFA	-	Infrastructure Finance Authority
• IUP	-	Intended Use Plan
• MOU	-	Memorandum of Understanding
• NIMS	-	National Information Management System
• OA	-	Operating Agreement
• OFS	-	Office of Financial Services
• OHA	-	Oregon Health Authority
• OIG	-	Office of Inspector General
• OBDD	-	Oregon Business Development Department
• ORS	-	Oregon Revised Statutes
• PBR	-	Public Benefits and Reporting
• PPL	-	Project Priority List
• RA	-	Regional Administration
• SDWA	-	Safe Drinking Water Act
• SDWRLF	-	Safe Drinking Water Revolving Loan Fund
• SERP	-	State Environmental Review Process
• SFY	-	State Fiscal Year
• SPM	-	State Program Management
• WIIN	-	Water Infrastructure Improvements for the Nation Act

I. INTRODUCTION

A. Background & Objective of the DWSRF

The Safe Drinking Water Act (SDWA) Amendments of 1996 (Public Law 104-182) has authorized the creation of a Drinking Water State Revolving Fund (DWSRF) program to assist eligible public water systems to finance the costs of infrastructure needed to achieve or to maintain compliance with SDWA requirements and to protect public health. Section 1452 has authorized the Administrator of the U.S. Environmental Protection Agency (EPA) to award capitalization grants to States, which in turn can provide low cost loans and other types of financial assistance to these systems.

The SDWA Amendments of 1996 also established a strong new emphasis on preventing contamination problems through source water protection and enhanced water systems management. Central to this emphasis is the development of State prevention programs, including source water protection, capacity development, and operator certification. States have the option to use a portion of their capitalization grants to fund these eligible activities as allowed in the federal statute. The success of these activities will act to safeguard the DWSRF funds that are provided to these eligible systems for improving compliance and public health issues.

It is the intent of the DWSRF program to help provide additional assurance that our Nation's drinking water remain safe and affordable, that drinking water systems which receive funding will be properly operated and maintained, and that effectively managed and permanent institutions will exist in each State to provide financial support for eligible public water systems and drinking water related needs for years to come. Congress has placed particular emphasis on assisting smaller drinking water systems, and those serving less affluent populations, by providing greater funding flexibility for these systems under the DWSRF to ensure that systems have adequate technical, managerial, and financial resources to maintain compliance and provide safe drinking water.

Under the SDWA, a State may administer its DWSRF in combination with other State loan funds, including the Clean Water State Revolving Fund (CWSRF). A State may also transfer up to one third of the amount of its DWSRF capitalization grant to its CWSRF or an equivalent amount from its CWSRF capitalization grant to its DWSRF.

These two provisions linking the DWSRF and the CWSRF signal Congressional intent to implement and manage both programs in a similar manner. EPA also intends to administer the two programs in a consistent manner, and to apply the principles developed for the existing CWSRF to the DWSRF program to the fullest extent possible.

Like the CWSRF, the DWSRF is fundamentally a State program. Each State will have considerable flexibility to determine the design of its program and to direct funding toward its most pressing compliance and public health protection needs. Historically, only minimal Federal requirements have been imposed. However, since the 2009 American Recovery and Reinvestment Act (ARRA), Federal requirements (e.g., America's Water Infrastructure Act (AWIA) and the Water Infrastructure Improvements for the Nation Act (WIIN)) have evolved which add additional procedures and oversight requirements at both the Federal and State levels.

The SDWA Amendments of 1996 authorized \$559 million for Federal Fiscal Year (FFY) 1994, and \$1 billion per FFY from 1995 through 2003 for such grants. Funds available to States from FFY1998 appropriations and beyond are to be allotted according to a formula that reflects the proportional share of each State's needs identified in the 1995 Needs Survey conducted pursuant to Section 1452(h). EPA will conduct a Needs Survey periodically (i.e., every 4 years). The minimum proportionate share by the formula is one percent of the funds available for allotment to the States. To date, Oregon's share has ranged anywhere from one percent (1%) to as much as 1.76% (i.e., 2002 – 2020 State allotments).

B. Purpose, Format & Structure of the Operating Agreement for Oregon

This amended DWSRF Operating Agreement (OA) continues the contractual relationship between EPA and the Oregon Health Authority (OHA) and this amended OA replaces and supersedes the prior Operating Agreement: Drinking Water State Revolving Fund between EPA and OHA.

The purpose of this amended OA is to redefine and further integrate rules, regulations, guidelines, policies, procedures, and activities to be followed by EPA and the State in administering the DWSRF prescribed by Section 1452 of the 1996 SDWA amendments that are not expected to change annually. In addition, the amended OA is to demonstrate the areas where updates have been made to either or both agencies and how if any of these updates will impact the DWSRF program.

In summary, this OA specifically lists the parties to the Agreement; outlines and defines the roles and responsibilities of all the parties involved; documents the necessary assurances; explains the financial administration framework; discusses reporting and review requirements of the DWSRF program; and explains how the program will be carried out.

This OA will continue from year to year and will be incorporated by reference into the annual DWSRF capitalization grant agreement. Information that changes from year to year shall be in Oregon's annual capitalization grant agreement and in the Intended Use Plan (IUP).

OHA agrees that any modifications to this agreement that may be required by EPA regulations, policies, or program guidance, will be made and implemented where applicable on such schedule as negotiated with EPA.

This amended OA addresses many of the State requirements for the capitalization grant agreement for the DWSRF program as outlined in the Table 1 of the “Final Guidelines for Implementation of the DWSRF Program (Fed Reg Vol. 63, No. 214).”

C. Timing & Application Review

Upon implementation of this OA, EPA agrees to review the capitalization grant application and take appropriate action within 60 days of receipt of a completed application (Application for Federal Assistance with supporting document and certifications and any modifications to the OA, the annual IUP, and proposed payment schedule) in the Regional Office. EPA shall either approve the application and award the capitalization grant or shall notify OHA in writing of issues requiring resolution. OHA and EPA agree to negotiate promptly, cooperatively, and in good faith to clarify or resolve questions which may arise during review of the application. OHA agrees to act upon the capitalization grant offer within 21 calendar days of approval.

II. IMPLEMENTATION

A. Parties to the Agreement

The parties to this OA are the U.S. EPA Region 10 and OHA. OHA as the primary enforcement agency for the SDWA is designated by the State of Oregon as the lead agency, which in addition to developing the Intended Use Plan (IUP), performing technical project reviews, and monitoring program results, is responsible for coordinating the total management of the DWSRF program and is the primary contact for the EPA on DWSRF issues. OHA, as the designated instrumentality of the State of Oregon, is empowered to enter into capitalization grant agreements with the Regional Administrator (RA), to accept capitalization grant awards, and to otherwise manage the fund in accordance with the requirements and objectives of the SDWA.

OHA had a Memorandum of Understanding (MOU) with Oregon Business Development Department (OBDD) to manage a separate DWSRF account to make loans and other forms of financial assistance to eligible public water systems. This separate account is the Safe Drinking Water Revolving Loan Fund (SDWRLF) which is capitalized through Oregon’s annual DWSRF capitalization grant awards. The SDWRLF includes Federal grants, State match, loan repayments, and interest earned funds. OBDD (also known as Infrastructure Finance Authority or IFA) acts as the financing project managers for the DWSRF program.

The MOU was replaced with an Inter-Agency Agreement (IAA) between OHA and OBDD (i.e., IFA) effective February 1, 2016.

B. Summary of State and EPA Roles and Responsibilities

1. The State of Oregon has enacted enabling DWSRF legislation. **Attachment #1 is a copy of that legislation.**
2. As the lead agency, OHA will maintain a competent organization and a staff skill mix to assure that projects meet acceptable technical, managerial and financial requirements as established or referenced in this OA, and that the DWSRF will be operated continuously and effectively. Staffing plans of all State agencies involved will be submitted as part of the annual capitalization grant application and/or referenced within the program's annual report.
3. Oregon has a State Environmental Review Process (SERP). OHA will apply the SERP described in Section 5.1 of Oregon's current Program Guidelines and Handbook for SDWRLF financing. The SERP handbook can be accessed on the DWS website at <http://public.health.oregon.gov/HealthyEnvironments/DrinkingWater/SRF/Documents/srphand.pdf>. Oregon will use its State Fiscal Year (SFY), July 1 through June 30 to manage the DWSRF activities.
4. EPA agrees to provide funding through the award of a capitalization grant to OHA, upon joint acceptance of this OA and approval of a completed application agreement in accordance with 40 CFR Part E, Section 1452, and as the Federal funds are available for this purpose.
5. EPA will provide Federal grant funds to the DWSRF in accordance with the jointly developed payment schedule as a condition of the capitalization grant.
6. EPA may provide technical assistance to OHA as needed and will be available to assist OHA in developing and conducting in-servicing training programs and will provide advice and consultation.
7. OHA, upon receiving its capitalization grant, agrees to manage the DWSRF program in accordance with this OA, the terms of the grant agreement, the SDWA as amended, 40 CFR Part E Section 1452, and applicable regulations.
8. EPA will allow OHA as much discretion and flexibility in implementing and managing a DWSRF program as is permissible under the SDWA, the regulations and EPA policy/guidance.
9. EPA will oversee the State's DWSRF program to assure compliance with the SDWA, regulations and EPA policy/guidance. Generally, specific projects for

which the State has provided financial assistance will not be reviewed, except during an annual review. If evidence of non-compliance with the applicable requirements exists, EPA may conduct specific project reviews.

If the annual review or audit reveals that the State has not complied with its capitalization grant agreement or other requirements under Section 1452, EPA will notify the State of such non-compliance and prescribe the necessary corrective action. Failure to satisfy the terms of the capitalization grant agreement, including unmet assurances or invalid certifications, is grounds for a finding of non-compliance.

C. State Assurances and Certifications

The State is responsible for providing assurances in the capitalization grant agreement on how it will comply with those assurances or elements of the DWSRF program, as well as other requirements for all DWSRF funding to comply with applicable Federal requirements. In some cases, the State must simply agree or provide certification in the grant application that it will comply with the specifications. In other cases, additional documentation on the procedures by which the State plans to ensure compliance with the specifications must be furnished. This OA documents the State's agreement to many of these requirements. The following addresses the way the State will meet many of these assurances and requirements:

1. State Instrumentality and Authority

The State of Oregon has established a DWSRF created by legislation enacted by the Oregon Legislature. A copy of Oregon's enabling legislation is included in this OA in Attachment #1. This legislation grants OBDD the authority to adopt procedures, rules, and regulations, and establishes that agency as the instrumentality of Oregon to manage and operate the SDWRLF (i.e., Loan Fund) account. The State Attorney General certifies legislation grants powers and authorities necessary to implement and administer the SDWRLF account consistent with the SDWA, as amended.

If more than one State Agency is involved in the DWSRF program, the State will describe the roles and responsibilities of each agency in the grant application. OHA will submit or provide access to a copy of the IAA that describe the roles and responsibilities between state agencies as part of its grant application. The State agrees that the agency that is awarded the capitalization grant must retain ultimate responsibility for properly executing the grant agreement under federal grant regulations (40 CFR 31.3).

2. Establishment of SDWRLF and Non-Project DWSRF Accounts

OHA certifies that the SDWRLF account is a separate account, dedicated solely to providing loans and other forms of assistance for the construction of Section 1452 public water supply systems.

OHA agrees to deposit the capitalization grant in the SDWRLF account except for those portions of the grant that OHA intends to use for non-project (e.g., Set-Asides) authorized under the SDWA (Section 1452 (a)(1)(B)). The State will maintain identifiable and separate accounts for the portions of the capitalization grant to be used for non-project activities. OHA will maintain any paperwork provided by EPA that documents any transfer of funds from the non-project account to the SDWRLF and include this information in its annual report.

3. Payment Schedule

OHA will include in its annual DWSRF grant application a proposed payment schedule.

OHA agrees to accept grant payments in accordance with the negotiated payment schedule.

4. State Matching Funds

Except for payments made from the Federal Fiscal Year (FFY) 1998 appropriations, OHA agrees that State monies in an amount equaling 20 percent of the amount of each grant awarded will be deposited in to Oregon's SDWRLF on or before the date on which the State receives each payment from the grant award or the State will utilize other measures for depositing the State match allowable under Section 1452 of the SDWA. Each annual DWSRF grant application will include details on the source of State matching funds.

State Program Management (SPM) Set-Aside (i.e., 1452(g)(2)) activities no longer require the dollar for dollar (i.e., 1:1 ratio) State match requirement according to the passing of the 2016 WIIN Act.

5. Entering into Binding Commitments with Assistance Recipients

OHA through its IAA with OBDD agrees to enter into binding commitments (financing contracts) with assistance recipients within one year of receiving a capitalization grant payment. Binding commitments (financing contracts) will be in place according to the time frames established by the OBDD and the assistance recipient(s).

6. Expeditious and Timely Expenditures

OHA through its IAA with OBDD agrees to expend all funds in an expeditious and timely manner.

7. Enforceable Requirements of the Act

OHA agrees that all funds available for loans in the SDWRLF account are a result of a capitalization grant (DWSRF grant funds, State match, repayments and interest earned) will be used for projects on the Project Priority List (PPL).

8. Applicable State Laws and Procedures

OHA agrees to commit or expend each quarterly grant payment in accordance with all applicable Federal and State laws, statutes, policies and procedures.

9. State Accounting and Auditing Procedures

OHA has established fiscal controls and accounting procedures sufficient to assure sound accounting procedures promulgated by the Government Accounting Standards Board (GASB). The State of Oregon agrees to follow current procedures in accordance with the general accepted government auditing standards issued by the Comptroller General of the United States.

10. SDWRLF Assistance Recipient Accounting and Audit Procedures

OHA agrees that it will require SDWRLF assistance recipients to maintain project accounts in accordance with “generally accepted government accounting principles.” This requirement has been implemented and will continue to be implemented through an existing condition in the financial assistance agreement.

OBDD continues to implement financial oversight of all funded projects. See their contract language excerpt below:

a) Financial Records

The Recipient shall keep accurate books and records for the revenues and funds that are the source of repayment of the Loan, separate and distinct from its other books and records, and maintain them according to generally accepted accounting principles established by the Government Accounting Standards Board in effect at the time. The Recipient shall have these records audited annually by an independent certified public accountant, which may be part of the annual audit of all records of Recipient.

b) Inspections; Information

The Recipient shall permit the OBDD and any party designated by OBDD, the Oregon Secretary of State's Office, the federal government and their duly authorized representatives: (i) to inspect, at any reasonable time, the property, if any, constituting the Project; and (ii) at any reasonable time, to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other related matters, and financial statements or other documents related to its financial standing. The Recipient shall supply any related reports and information as OBDD may reasonably require. In addition, Recipient shall, upon request, provide OBDD with copies of loan documents or other financing documents and any official statements or other forms of offering prospectus relating to any other bonds, notes or other indebtedness of Recipient that are issued after the date of this Contract.

c) Records Maintenance

The Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Contract, the Project or the Financing Proceeds for a minimum of six years, or such longer period as may be required by other provisions of this Contract or applicable law, following the Project Closeout Deadline. If there are unresolved issues at the end of such period, Recipient shall retain the books, documents, papers and records until the issues are resolved.

11. Biennial Report and Annual Audit

OHA agrees to submit an Annual Report to the EPA on the use of funds and how the State has met the goals and objectives for the previous state fiscal year as identified in the IUP for the previous year. The scope of the report covers the SDWRLF and all other non-Fund activities undertaken by the State using funds in the DWSRF program. The contents of the report will conform to what is outlined in Section VI.A., of the "Final Guidelines for Implementation of the DWSRF Program (Fed Reg Vol. 63, No. 214)." The State of Oregon may have an independent audit by the State's Auditor (Secretary of State, Audits Division), of the program as part of the State's Statewide Single Audit (OMB A-133).

12. Environmental Review (ER)

OHA agrees that binding commitments on DWSRF projects will require that the recipient completes the necessary environmental review process and the review is approved by OHA.

OHA has an approved SERP for the DWSRF Program. The SERP documentation, in accordance with Section IV.B., of the “Final Guidelines for Implementation of the DWSRF Program (Fed Reg Vol. 63, No. 214),” is available upon request. The OHA is the State Agency primarily responsible for conducting the appropriate environmental reviews.

13. Intended Use Plan (IUP)

OHA agrees to prepare an annual IUP and to provide for public review and comment on the IUP. OHA agrees to include the annual IUP with the annual application for the DWSRF capitalization grant. This IUP shall include a list of projects proposed for assistance, long-term and short-term goals of the DWSRF program, information on DWSRF activities to be supported, criteria and methods for distributing DWSRF funds, and assurances and specific proposals. The State will provide the IUP and attach information in accordance with Section 1452 and in a format mutually agreeable to OHA and EPA’s Regional Administrator. OHA agrees to expend all DWSRF program funds in accordance with the IUP.

14. Repayment to the Fund

OHA agrees that all principal and interest payments on loans and returns on invested project SDWRLF funds will be credited directly to the SDWRLF account.

15. State Technical Capability

OHA agrees to provide documentation demonstrating that it has adequate personnel and resources to establish, operate and manage the DWSRF program as part of the annual capitalization grant application package.

16. Compliance with Applicable Federal Cross-Cutting Authorities

OHA agrees that as a condition of receiving project funds, recipients must comply with applicable federal cross-cutting authorities in existence at the time that a loan recipient receives a binding commitment from the SDWRLF. OHA agrees to inform EPA when consultation or coordination is necessary to resolve issues regarding compliance with those requirements.

The crosscutters will apply to an amount of funds equaling at least the amount of the Federal grant. OHA through its IAA with OBDD will determine which “equivalency” projects will be subject to federal crosscutters. OHA agrees that it will remain ultimately responsible for ensuring that assistance recipients comply with all applicable crosscutters. OHA acknowledges that applicable laws may change with time.

17. Procedures to Assure Borrowers have Dedicated Source of Repayment

Under the new IAA, OHA agrees to ensure that OBDD will make determinations whether an applicant has the ability to repay a loan according to its terms and conditions, prior to making that loan. OHA will also ensure that OBDD will develop criteria to evaluate an applicant's financial ability to repay the loan, in addition to being able to pay for operation and maintenance costs, and other necessary expenses.

18. Capacity Development Authority

OHA has legal authority to ensure that all new community water systems and new non-transient, non-community water systems commencing operation after October 1, 1999, demonstrate technical, managerial, and financial capacity in accordance with Section 1420 of the SDWA. EPA has the legal authority to withhold DWSRF funds under Section 1452 (a)(1)(G)(i) if the State has not established a Capacity Development Program.

19. Operator Certification

OHA administers an Operator Certification Program for operators of community water supply systems and non-transient, non-community water supply systems in accordance to Section 1419 of the SDWA. EPA has the legal authority to withhold DWSRF funds under Section 1452 (a)(1)(G)(ii) if the State does not have an Operator Certification Program in accordance with Section 1419.

20. Review of Technical, Financial, and Managerial Capacity of Assistance Recipients

OHA has implemented a method to review and evaluate the technical, financial, and managerial capacity of assistance recipients. OHA may revise this methodology from time to time as experience is gained.

In addition, on March 30, 2012, the States received a memorandum "Implementation of Capacity Development and DWSRF Programs to Reflect the New Enforcement Policy (ERP) and Enforcement Targeting Tool (ETT)" from the EPA with new mandated requirements to be implemented in to State's existing Capacity Development Programs. OHA has incorporated these requirements into its Capacity Development and DWSRF programs.

21. System to Minimize Risk of Waste, Fraud, Abuse and Corrective Action

OHA agrees to devise and institute measures which will alert its staff to project deficiencies as they emerge, and which will set forth state actions to correct such

deficiencies as quickly as possible so as to preclude the need for corrective action by the EPA. If the recipient of financial assistance from the State's SDWRLF funds exhibits evidence of waste, fraud or abuse, the State will impose sanctions on the recipient. Section VI.B.3 of the "Final Guidelines for Implementation of the DWSRF Program (Fed Reg Vol. 63, No. 214)" outlines procedures and potential actions to be taken by EPA and OHA in the event non-compliance is determined.

In addition, annually the EPA distributes "Final SRF Procedures" which outlines DWSRF Program requirements following the FFY appropriation announcements.

22. Development and Submittal of a Project Priority Ranking System

OHA and OBDD have a Project Priority Ranking System to determine the annual Project Priority List (PPL) required as part of the IUP, and after public review and comment, it will be submitted as part of the capitalization grant application. This system describes by-pass procedures which clearly identify the conditions that allow a project to be by-passed and the way OHA and OBDD will identify which projects by-passed will receive the funds.

D. Financial Administration of the Fund

1. Assistance Provided by the DWSRF and the SDWRLF Account

OHA certifies that only the types of assistance authorized under Section 1452 of the SDWA and the current "Program Guidelines and Handbook" will be awarded. The type of assistance for each DWSRF project shall be identified in the IUP and/or the Annual Report.

a) Direct Loans

OHA shall require loans for projects to be made only if all principal and interest payments on loans are credited directly to the SDWRLF. The annual repayment of principal and payment of interest will begin no later than one year after project completion. Most loans will fully amortize not later than 30 years after project completion. Each loan recipient will establish one or more dedicated source of revenue repayment for the loan. Where construction of a project will be phased or segmented, loan repayment requirements apply to the completion of individual phases or segments.

b) Refinancing

The SDWRLF may buy or refinance local debt obligations at or below market rates where the initial debt was incurred and construction initiated after July 1, 1993.

c) Guarantee or Purchase Insurance

The DWSRF may guarantee local debt obligations where such action would improve credit market access or reduce interest rates. The DWSRF may also purchase or provide bond insurance to guarantee debt service payment.

d) Guarantees DWSRF Debt Obligations

The DWSRF may be used as security or as a source of revenue for the payment of principal and interest on revenue or general obligation bonds issued by the State provided the net proceeds of the sale of such bonds are deposited in the DWSRF.

e) Earn Interest on Fund Accounts

The SDWRLF may earn interest on SDWRLF project accounts.

f) Administrative

OHA may use up to, but no more than four percent (4%), of the capitalization grant for costs of administering the DWSRF program. A separate account must be established for the use of the 4% Administrative Expense Set-Aside. Allowable administrative costs include: All costs incurred for management of the DWSRF program and for management of projects receiving financial assistance from the SDWRLF account. Reasonable costs unique to the DWSRF, such as costs of servicing loans and issuing debt, DWSRF program start-up costs, financial management, and legal consulting fees, and reimbursement costs for support services from other state agencies are also allowable. Expenses incurred issuing bonds guaranteed by the DWSRF, including costs of ensuring the issue, may be absorbed by the proceeds of the bonds and need not be charged against the 4% administrative costs ceiling. The net proceeds of those issued must be deposited in the SDWRLF.

g) Leveraging

The SDWRLF account may be used for leveraging. At such time as the leveraging of funds is determined to be appropriate, a proposed leveraging plan will be submitted to EPA for review and approval.

2. Process

a) Binding Commitments

OHA through its IAA with OBDD agrees to enter into binding agreements with assistance recipients under the DWSRF program. Binding commitments must be made in an amount equal to each quarterly grant payment and proportional state match, within one year after receipt of each grant payment. Projected schedules for commitment of SDWRLF funds to specific projects shall be provided in the annual IUP.

b) Payments

i. State Match

OHA agrees that state monies in an amount equal to at least twenty percent (20%) of each capitalization grant award will be deposited into the SDWRLF. The money may be made available from any or all of the following sources: State appropriations, state issued General Obligation bonds, revenues from state taxes or assessments and funds maintained in other state accounts. The source of the state match will be specified in the grant application and/or the Annual Report.

The 20% state match will be deposited in the SDWRLF account on or before the date such payments are provided under the Automated Clearinghouse (EPA-ACH) Payment System.

ii. EPA-ACH Payment System

OHA agrees to use the EPA-ACH Payment System and will follow EPA-ACH Payment System procedures indicated in the EPA-ACH Payment System Recipients' Manual, http://www.epa.gov/ocfo/finservices/recipient_manual.pdf.

EPA will authorize payments from ACH as provided for in the payment schedule as shown in the assistance agreement. Once a payment has been made by increasing the amount of funds available for cash draw in the ACH Payment System, EPA will not reduce that amount. OHA agrees to keep DWSRF cash draws separate from those of any other programs. OHA agrees to follow those EPA-ACH Payment System procedures specific to the DWSRF program listed in Exhibit J of the EPA-ACH Payment System Recipients' Manual.

iii. Payment Timing

The schedule of payments is based on the projected schedule for binding commitments included in the State's annual IUP and/or Annual Report.

iv. Separate Account

The SDWRLF Project Account is a separate account within the State's DWSRF program dedicated solely to providing loans to eligible public water systems.

c) Cash Draws

i. Rules of Cash Draw

Cash draws from the EPA-ACH Payment System are limited by the payment schedule shown in the assistance agreement and the rules of the cash draw. Money will be transferred to the DWSRF from the U.S. Department of Treasury in accordance with established EPA-ACH Payment System procedures. OHA agrees to make cash draws in accordance with the Payment Schedule as illustrated and submitted in its annual DWSRF grant application.

Loans

OHA may draw cash from the DWSRF-ACH when the SDWRLF receives a request from a loan recipient, based on incurred costs, including pre-construction and construction costs.

Refinancing and Purchase of Local Debt

For completed construction, cash draws will be made at a rate no greater than equal amounts over the maximum number of quarters that capitalization grant payments are made, and up to the portion of the DWSRF-ACH committed to the refinancing or purchase of the local debt. Cash draws for incurred building costs will generally be treated as refinanced costs. For projects or portions of projects that have not been constructed, cash may be drawn based on incurred construction costs according to the rule for loans.

For Bond Insurance

Cash draws will be made as premiums are due.

For Guarantees

In the event of an imminent default in debt service payments on a guaranteed or secured debt, OHA can draw cash immediately up to the total amount of the DWSRF-ACH that is dedicated to guarantee or security.

For Leveraging

If used, cash draws will be made in accordance with State leveraging plan submitted to the EPA for review and approval.

d) Disbursements

i. Process

OHA agrees to disburse funds from the DWSRF project account (i.e., SDWRLF) and Set-Aside accounts as costs are incurred.

ii. Construction Progress

OHA through its IAA with OBDD agrees to ensure that periodic inspections are conducted to review construction progress in order to coordinate outlay requests. Construction inspections and outlay procedures will be documented by the State.

e) Transfer of Funds to/from Clean Water SRF

A State may transfer up to a third of the amount of its DWSRF capitalization grant to its CWSRF or an equivalent amount from its CWSRF capitalization grant to its DWSRF (Title III, Section 302 of the SDWA Amendments of 1996). The State agrees to identify, document, and justify whatever transfers take place by submitting a plan for EPA review and approval.

E. Program Administration

1. Staffing and Management

OHA agrees to maintain the staff and other necessary resources to effectively administer the DWSRF program.

2. Accounting and Audit Procedures

OHA agrees to use an accounting system which meets applicable Federal regulations and policies regarding grants to States. The accounting system will

properly identify and relate State costs to the operation of the DWSRF program. To ensure that the accounting system properly reflects the full range of cost reporting needs of the program and provides for an audit trail with clearly definable bench marks, an auditor from EPA's Office of Inspector General (OIG), or a senior accountant from the financial management office of the Region may review and concur in the system's framework and operation.

OHA may have independent reviews of the DWSRF and the operation of the DWSRF. Such reviews will follow procedures in accordance with general accepted government auditing standards issued by the Comptroller of the United States. The engagement report will be submitted to the Regional Administrator, with a copy sent to EPA's OIG.

EPA agrees to notify OHA within 90 calendar days as to the technical adequacy of any audit report and its findings.

3. Fund Perpetuity

OHA agrees to consider the long-term health and viability of the fund when selecting its mix of project categories for SDWRLF funding. Each year, OHA and OBDD through the IAA will assess the financial health of the SDWRLF by examining fund balances, sources of funds, and repayment stream and revise procedures as necessary to promote fund perpetuity.

4. Fund Maintenance

OHA agrees to maintain the investment of cash in the same manner as it maintains other cash reserves.

F. Project Management and Review Procedures

Project management and DWSRF management regulations and procedures (including project review procedures) are to be followed by OHA in administering projects under the DWSRF program as set forth in Oregon's current "Program Guidelines and Handbook" and applicable administrative rules and statutes. OHA through its IAA with OBDD agree to review projects in accordance with those criteria and to document thoroughly the project file confirming that review.

G. Development of the Intended Use Plan (IUP)

Each year, an IUP will be developed and presented for public review and comment prior to submission to the EPA. To determine which projects should be funded, the most up-to-date PPL as developed under the established priority system will be reviewed.

Allocation of SDWRLF funds among these projects is a three-step process. The type of financial assistance needed for each community is determined, the source and limits of all that fiscal year's funds are identified, and the SDWRLF funds are allocated among the projects, consistent with the amount available and the financial assistance needed. Refer to the IUP for charts, figures, and any programmatic updates for the current year.

The required items of the IUP are described in detail in Section I.B., of the "Final Guidelines for Implementation of the DWSRF Program (Fed Reg Vol. 63, No. 214)." The IUP is the central component of the capitalization grant application (Section 1452 (b)), which describes how the State intends to use available funds for the year to meet the objectives of the 1996 SDWA amendments.

OHA will provide IUP information in a format and a manner that is consistent with the needs of the EPA Regional Office. OHA will prepare an IUP as long as the DWSRF program remains in operation, not just in those years in which the State submits an application for a Federal capitalization grant.

The IUP will include, but not be limited to the following:

1. List of projects, including description and size of community
2. Description of the criteria and method for the distribution funds
3. Description of financial status of the DWSRF
4. Description of the future years of the Program
5. Description of the amount transferred between the DWSRF and CWSRF
6. Description of the non-SDWRLF project activities, and percentage of funds that will be funded from the DWSRF capitalization grant, including DWSRF Set-Asides.
7. Description of how a State will define a "disadvantaged" system and the amount of SDWRLF funds that will be used for this type of loan assistance.
8. Documentation, certification and agreement to Assurances and proposals in the areas including, but not limited to: Environmental Review; Federal Crosscutters; Binding Commitments; and Timely expenditures.

As part of the IUP, OHA agrees to identify what portion of the capitalization grant will be used for Set-Aside activities. OHA agrees to establish separate Set-Aside

account(s) in order to accept these targeted funds. OHA also agrees to provide the same level of detail for projects funded through the Set-Aside accounts as is required for the SDWRLF itself.

III. REPORTING AND REVIEW

A. Biennial Report / Annual Report

OHA agrees to complete and submit an Annual Report to meet the Biennial/Annual reporting requirement (Section 1452 (g)(4)). The Report details information on how the State has met the goals and objectives of the previous state fiscal year as stated in the IUP and grant agreement. The contents and required elements of the Annual Report will conform in accordance with Section VI.A.1 of the “Final Guidelines for Implementation of the DWSRF Program (Fed Reg Vol. 63, No. 214).” The Annual Report is required for the life of the DWSRF program. Report submittal date will be included in the grant agreement. At a minimum, this report shall provide information as specified in the “EPA Federal Register’s Interim Final Rule (40 CFR Part 35).” It shall identify loan recipients, loan amounts, loan terms, project categories, progress of activities funded with Set-Aside dollars, and other details as negotiated between OHA, OBDD and EPA with emphasis on how it has met the goals set forth in the IUP and the financial health of the DWSRF program.

B. Annual Audit

The State of Oregon may conduct and submit an annual financial review in order to assure adequate financial management of the program in accordance with Section VI.A.2 of the “Final Guidelines for Implementation of the DWSRF Program (Fed Reg Vol. 63, No. 214).”

C. Annual Review

OHA and EPA will jointly plan the annual review process. An effective review requires the help and support of OBDD, DEQ, and the Office of Financial Services (OFS). However, EPA is responsible for determining whether federal requirements are adhered to and for assessing progress toward national goals and objectives. The Regional Administrator (RA) will complete the annual review according to the schedule established in the grant agreement.

In addition to the Annual Report, the IUP, and any financial reviews or audits, OHA agrees that other records the RA and EPA may reasonably require will be made available to use in conducting the annual review of the DWSRF program.

D. Sanctions and Compliance

1. Corrective Actions

If EPA determines that the State has not complied with the terms of the capitalization grant, this OA, or the IUP, the RA will notify OHA of the non-compliance and of the corrective action necessary. OHA will take corrective action or submit a plan to the EPA within 60 days that will lead to compliance.

If within 60 days of receipt of the non-compliance notice, OHA fails to take the necessary actions to obtain the results required by EPA, or provide an acceptable plan to achieve the results required, EPA may withhold future EPA-ACH System payments to the DWSRF until the State has taken acceptable actions. Once OHA has taken corrective action satisfactory to EPA, any withheld payments will be released and scheduled payments continued.

If OHA fails to take the necessary corrective action deemed adequate by EPA within twelve months of receipt of the original notice, any withheld payments shall be de-obligated and re-allotted to other States.

If EPA determines that capitalization grant funds were subject to waste, fraud or abuse, the capitalization grant may be recovered under procedures outlined in 40 CFR Part 31.

2. Disputes

The “disputes” provisions of 40 CFR Part 31, Subpart F shall be used for disputes involving EPA disapproval of an application or a capitalization grant, as well as disputes arising under a capitalization grant, including suspension or termination of assistance.

E. National Reporting Needs

Annually, OHA will provide the EPA with a specified set of project-level data in its PPL, IUP, Annual Report, and other information negotiated between the EPA and OHA.

F. Records and Data Management

1. Files

Under the IAA with OHA, OBDD will receive and review project documents from assistance applicants. These documents, together with OHA and OBDD review memos and the summary checklists, will be filed in official project files

maintained by OHA. OBDD will maintain the official financial review files and the project loan agreements. The project files shall be made available to the EPA for review based on reasonable notice by the EPA. It is expected that the files would be reviewed on a sample basis in conjunction with on-site visits scheduled as part of the Annual Review or otherwise to monitor OHA's management of the DWSRF funds.

2. Records Retention

OHA through its IAA with OBDD will retain project files in accordance with 40 CFR Part 31. The State will arrange for the storage of certain records for a period if the repayment period on any DWSRF assistance, and otherwise in accordance with State law. All records will be retained by the State for the period agreed upon for repayment, plus three (3) years following completion of repayment.

3. Access to Records

Access to all records in the possession of OHA will be in accordance with State laws governing access to information. Access to all records in the possession of the EPA will be in accordance with the U.S. Freedom of Information Act, P.L. 93-502.

Information related to the capitalization grant agreement and supporting documents located in the EPA Regional Office is available from EPA in accordance to the U.S. Freedom of Information Act.

4. National Information Management System (NIMS)

A National Information Management System (NIMS) was developed by EPA in conjunction with the States for compiling a comprehensive and consistent set of data quantifying DWSRF activities. OHA agrees to enter relevant DWSRF information into the system when required to or as needed.

EPA will have access to information in the system as needed but will not be able to modify State entered data. EPA will utilize this information to assess the Program on a national basis and to monitor OHA progress annually. The Regional Offices will use the information to assist in conducting annual reviews.

a) Public Benefits and Reporting (PBR)

EPA has developed the Public Benefits and Reporting (PBR) tool for project tracking. OHA agrees to enter relevant DWSRF information in to the PBR system, including adding new projects in the month following execution of an assistance agreement.

b) Federal Funding Accountability and Transparency Act (FFATA)

OHA also agrees to enter relevant Federal Funding Accountability and Transparency Act (FFATA) information into the FFATA Subaward Reporting System (FSRS) as required.

IV. REVISING THE OPERATING AGREEMENT (OA)

A. Amendments

This OA may be amended at any time by mutual agreement between the authorized signatories in writing. Revisions will be particularly considered following reviews of the Annual Report and/or Audit.

B. Designated Officials

All revisions regarding modifications to any attachment or procedures shall be through the designated officials indicated below.

Items significantly altering the OA and which effect program changes, may be implemented through the agreement of the designated officials named here or their successors:

1. For OHA: Andre Ourso, JD
Administrator, Center for Health Protection
Oregon Health Authority
2. For EPA: Chris Hladick
Administrator, Region 10
U.S. Environmental Protection Agency

Items not altering the OA, but involve changing implementation or review procedures, may be implemented through the agreement of the designated officials named here or their successors:

1. For OHA: André Ourso, JD, MPH
Administrator, Center for Health Protection
OREGON HEALTH AUTHORITY
2. For EPA: Karen Burgess, PE
Chief, Groundwater & Drinking Water Sections
Region 10
U.S. Environmental Protection Agency

V. EXECUTION

A. Authority

The authority for this OA is found in the Oregon Revised Statutes (ORS) Chapter 448.

40 CFR Part E is the federal regulatory authority for the DWSRF program. Should any conflicts result between the federal regulations and the OA, the federal regulations will take precedence.

B. Effective Date and Signatures

This OA will be effective commencing on _____
Date

Administrator, Region 10
U.S. Environmental Protection Agency

Administrator
Oregon Health Authority

Oregon Department of Justice
Approved via email by:
Erin Williams, AAG DATE



Contract Number 180553

**STATE OF OREGON
PERSONAL/PROFESSIONAL SERVICES CONTRACT**

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

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

**HBH Consulting Engineers, Inc.
501 E First Street
Newberg, OR 97132
Telephone: (503) 554-9553
Fax: (503) 537-9554
E-mail address: rhenry@hbh-consulting.com**

hereinafter referred to as “Contractor” or “Vendor.”

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

**OHA Public Health Division
Center for Health Protection, Drinking Water Services
800 NE Oregon Street, Suite 640
Portland, OR 97232
Contract Administrator: Anthony J. Fields or delegate
Telephone: 971-673-2269 or 503-752-8229
E-mail address: anthony.j.fields@oha.oregon.gov**

1. Effective Date and Duration.

This Contract shall become effective on the date this Contract has been fully executed by every party and, when required, approved by Department of Justice or on **July 1, 2023**, whichever date is later. Unless extended or terminated earlier in accordance with its terms, this Contract shall expire on **December 31, 2027**. Contract termination shall not extinguish or prejudice OHA’s right to enforce this Contract with respect to any default by Contractor that has not been cured.

2. Contract Documents.

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

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

There are no other contract documents unless specifically referenced and incorporated in this Contract.

b. This Contract and the documents listed in Section 2., “Contract Documents”, Subsection a. above, shall be in the following descending order of precedence: this Contract less all exhibits, Exhibits D, B, A, and C.

3. Consideration.

a. The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is **\$452,000.00**. OHA will not pay Contractor any amount in excess of the not-to-exceed compensation of this Contract for completing the Work, and will not pay for Work performed before the date this Contract becomes effective or after the termination or expiration of this Contract. If the maximum compensation is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

b. Interim payments to Contractor shall be subject to ORS 293.462, and shall be made in accordance with the payment schedule and requirements in Exhibit A, Part 2., “Payment and Financial Reporting.”

c. OHA will only pay for completed Work under this Contract. For purposes of this Contract, “Work” means the tasks or services and deliverables accepted by OHA as described in Exhibit A, Part 1, “Statement of Work.”

4. Contractor or Subrecipient Determination. In accordance with the State Controller’s Oregon Accounting Manual, policy 30.40.00.104, OHA’s determination is that:

Contractor is a subrecipient Contractor is a contractor Not applicable

Catalog of Federal Domestic Assistance (CFDA) #(s) of federal funds to be paid through this Contract: 66.468

5. Contractor Data and Certification.

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

PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION

Contractor Name (exactly as filed with the IRS): HBH Consulting Engineers, Inc

Street address: 501 E First Street

City, state, zip code: Newberg, OR 97132

Email address: mail@hbh-consulting.com

Telephone: (503) 554-9553 Fax: (503) 537-9554

Is Contractor a nonresident alien, as defined in 26 U.S.C. § 7701(b)(1)?

(Check one box): YES NO

Business Designation: (Check one box):

- | | | |
|--|--|--|
| <input type="checkbox"/> Professional Corporation | <input type="checkbox"/> Nonprofit Corporation | <input type="checkbox"/> Limited Partnership |
| <input type="checkbox"/> Limited Liability Company | <input type="checkbox"/> Limited Liability Partnership | <input type="checkbox"/> Sole Proprietorship |
| <input checked="" type="checkbox"/> Corporation | <input type="checkbox"/> Partnership | <input type="checkbox"/> Other |

Contractor Proof of Insurance. Contractor shall provide the following information upon submission of the signed Contract. All insurance listed herein and required by Exhibit C must be in effect prior to Contract execution.

If Contractor is self-insured for any of the Insurance Requirements specified in Exhibit C of this Contract, Contractor may so indicate by: (i) writing "Self-Insured" on the appropriate line(s); and (ii) submitting a certificate of insurance as required in Exhibit C.

Commercial General Liability Insurance Company: West American Insurance Company

Policy #: BKW53701580 Expiration Date: 12/23/2023

Automobile Liability Insurance Company: The Ohio Casualty Insurance Company

Policy #: BAA53701580 Expiration Date: 12/23/2023

Workers' Compensation: Does Contractor have any subject workers, as defined in ORS 656.027? (Check one box): YES NO *If YES, provide the following information:*

Workers' Compensation Insurance Company: SAIF Corporation

Policy #: 937793 Expiration Date: 03/01/2024

- b. Certification.** Without limiting the generality of the foregoing, by signature on this Contract, the undersigned hereby certifies under penalty of perjury that:
- (1) Contractor is in compliance with all insurance requirements in Exhibit C of this Contract, and notwithstanding any provision to the contrary, Contractor shall deliver to the OHA Contract Administrator (see page 1 of this Contract) the required Certificate(s) of Insurance within 30 days of execution of this Contract. By certifying compliance with all insurance as required by this Contract, Contractor acknowledges it may be found in breach of the Contract for failure to obtain required insurance. Contractor may also be in breach of the Contract for failure to provide Certificate(s) of Insurance as required and to maintain required coverage for the duration of the Contract;
 - (2) Contractor acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any “claim” (as defined by ORS 180.750) that is made by (or caused by) the Contractor and that pertains to this Contract or to the project for which the Contract work is being performed. Contractor certifies that no claim described in the previous sentence is or will be a “false claim” (as defined by ORS 180.750) or an act prohibited by ORS 180.755. Contractor further acknowledges that in addition to the remedies under this Contract, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the Contractor;
 - (3) The undersigned is authorized to act on behalf of Contractor and represents and warrants that Contractor has complied with the tax laws of the State of Oregon and the applicable tax laws of any political subdivision of Oregon. Contractor shall, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of Oregon. For the purposes of this Section, “tax laws” includes: (i) All tax laws of Oregon, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) Any tax provisions imposed by a political subdivision of Oregon that applied to Contractor, to Contractor’s property, operations, receipts, or income, or to Contractor’s performance of or compensation for any work performed by Contractor; (iii) Any tax provisions imposed by a political subdivision of Oregon that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

Contractor acknowledges that the Oregon Department of Administrative Services will report this Contract to the Oregon Department of Revenue (DOR). The DOR may take any and all actions permitted by law relative to the collection of taxes due to the State of Oregon or a political subdivision, including: (i) garnishing the Contractor’s compensation under

this Contract; or (ii) exercising a right of setoff against Contractor's compensation under this Contract for any amounts that may be due and unpaid to the State of Oregon or its political subdivisions for which the DOR collects debts;

- (4) The information shown in Section 5.a., "Contractor Information" above is Contractor's true, accurate and correct information;
- (5) To the best of the undersigned's knowledge, Contractor has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts;
- (6) Contractor and Contractor's employees and agents are not included on the list titled "Specially Designated Nationals" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at: <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>;
- (7) Contractor is not listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal procurement or Non-procurement Programs" currently found at: <https://www.sam.gov/portal/public/SAM/>;
- (8) Contractor is not subject to backup withholding because:
 - (a) Contractor is exempt from backup withholding;
 - (b) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends; or
 - (c) The IRS has notified Contractor that Contractor is no longer subject to backup withholding; and
- (9) Contractor Federal Identification Number (FEIN) or Social Security Number (SSN) provided is true and accurate. If this information changes, Contractor shall provide OHA with the new FEIN or SSN within 10 days.

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

CONTRACTOR: YOU WILL NOT BE PAID FOR SERVICES RENDERED PRIOR TO NECESSARY STATE APPROVALS.

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

HBH Consulting Engineers, Inc.

By:



Authorized Signature
President

Title

Robert M. Henry, PE

Printed Name
9/12/2023

Date

State of Oregon, acting by and through its Oregon Health Authority

By:



Authorized Signature
Administrator

Title

Andre Ourso

Printed Name
09/14/2023

Date

Approved for Legal Sufficiency:

Approved by Jeff Wahl via email
Department of Justice

8/22/2023
Date

EXHIBIT A

Part 1 Statement of Work

1. Background

Contractor to provide assistance related to service line inventories to Community Water Systems (CWS) serving 10,000 people or fewer and non-profit Non-Transient Non-Community (NTNC) water systems. Assistance to be provided: i) training and outreach related to service line requirements, best practices and reporting requirements, and ii) individual assistance to public water systems (PWSs) in completing their service line inventories. Assistance provided to PWSs is strictly on a voluntary basis, as requested by the PWS or referred to by OHA.

Provision of technical assistance and outreach shall be prioritized to water systems that serve fewer than 500 people, systems designated by OHA as being disadvantaged, Community water systems, and then NTNC water systems. Vendor will also coordinate outreach with OHA and other LSL vendors to ensure efficient outreach (avoiding multiple contacts by vendors to same system, etc.).

Vendor will provide monthly status reports to allow OHA to provide adequate oversight of outreach efforts and to allow OHA to intervene with unresponsive systems in a timely manner.

2. Deliverables Required from Contractor:

Contractor shall provide technical assistance related to service line inventories services of a short-term duration. For purposes of this Contract, “services of a short-term duration” means 6 hours or less of Contractor-provided services per identified problem without the prior, written approval of OHA.

- a. OHA will send out a notification to all NTNC and Community water systems introducing the vendors selected to provide assistance towards completing the LSL inventory. This letter will introduce each vendor selected to provide data collection assistance, training assistance, and technical assistance by name and by contact information. This information will also appear on the OHA Lead Service Line (LSL) inventory information website.
- b. Vendor will also provide introductory letter to systems assigned to them by OHA, advising assigned systems on how to contact vendor for technical assistance.
- c. Due to budgetary limitations for this Contract, vendor will prioritize their outreach efforts in the following descending order of priority: to water systems that serve fewer than 500 people, systems designated by OHA as being disadvantaged, Community water systems, and then NTNC water systems.
- d. For on-site technical assistance efforts, vendor is expected to make every possible effort to combine travel activities geographically to ensure that as many systems within the geographical area of travel are assisted per trip as possible.

- e. If the travel distance is longer than 3 hours, prior planning with OHA will be required to ensure vendor has maximized their travel and outreach efforts to ensure the maximum number of systems within the same geographical area are also contacted and visited during the trip.
- f. Vendor will coordinate outreach with OHA by submitting monthly status reports to allow OHA to provide adequate oversight of outreach efforts. This will in turn allow OHA to intervene with unresponsive systems to ensure that all water systems receive information about the offer of assistance with the LSL inventory effort and comply with the data submittal deadline of 10/16/2024.

2.1 Individual Technical Assistance

Contractor to provide both remote and in-person technical assistance to water systems operators. The assistance shall be appropriate for each water system's needs and shall clearly explain the service line inventory regulatory requirements, refer to available OHA and EPA guidance materials, describe acceptable methods for completing service line inventories and review how to compile the inventory and to submit the results to OHA. Contractor, in coordination with OHA, shall provide outreach to water system operators and representatives regarding training opportunities and available guidance.

2.2 Assistance With Record Review and Compilation.

Obtaining the historical information from several sources will aid in the development of an accurate inventory. Listed below are items and information for the PWS to review for the initial inventory. PWSs are expected to compile as much existing information as is readily available. Contractor assistance, as needed, may include providing a checklist to PWS, assisting with records searches and compilation and review of available information:

- a. Determine the location and ownership of the service lines in the PWS: entire line public (PWS), entire line private (customer), or combination.
- b. Determine if there is any local ordinance relating to use of lead in plumbing materials, and its effective date.
- c. Identify service lines installed after Oregon prohibitions on use of lead in distribution piping and plumbing were adopted in 1985. Tax assessor records may be useful to identify age of structures.
- d. Review system tap cards, which have significant information. Determine if they are available and have been maintained over time. The card typically has the meter replacement date, is listed by address or another unique identifier, and may list building usage (single-family residence, multi-family residence, K-12 school, child daycare, or business).
- e. Review private side records, if applicable, such as a permitting process or other process where records were returned to the PWS of work done on the private side of the service line.

- f. Review water main construction and replacement records, including dates of current water mains. Examples: In specific replacement projects were the service lines wholly replaced, partially replaced, or is that not known? Was there a standard practice of replacing the entire service line when a main was replaced? Are there any standard operating practices that would reliably inform service line composition? Would a newly constructed building be connected to an existing service line?
- g. Review capital improvement projects over the years to determine if certain areas had work done that affected the service lines.
- h. Data from the 1991 Lead and Copper Rule (LCR):
 - (1) Review the initial LCR Materials Inventory and any updates, which may indicate areas with lead service lines or areas where service lines were replaced.
 - (2) Review any other distribution system inspection records or studies, such as leak studies, which may have reviewed service line composition

2.3 Strategy for Identifying Unknowns.

Contractor shall assist PWS, as needed, in developing a strategy to identify unknown service line materials using guidance from OHA and EPA. Examples of acceptable methods include but are not limited to physical verification and documentation of material type based on field inspection. Physical verification of a statistical subset of service lines is allowed following OHA guidance.

3. Reporting

Contractor shall assist PWS, as needed, in summarizing service line inventory results on a report form or spreadsheet prescribed by OHA. Contractor shall submit the summary electronically to OHA no later than October 16, 2024.

4. Updates to Initial Inventory.

Contractor shall assist PWS, as needed, with updates to the initial inventory, including verification of unknown service line materials using methods and techniques acceptable to OHA.

5. Monthly Reporting

Contractor shall submit to OHA a monthly progress report which includes, at a minimum, the following:

- a. A summary of work performed during the reporting period, including, as applicable:
 - (1) Any training materials developed, and training events conducted;
 - (2) PWS contacts made and assistance with inventories provided;
 - (3) PWS inventories completed; and
 - (4) A summary of inventories that have complications and/or need additional work.
- b. An invoice for the hours worked during the period identified in the monthly progress report.

6. Final Summary Report.

Contractor shall submit to OHA a final summary report which must include, at a minimum, the following:

- a. Summary of work performed;
- b. Summary of “lessons learned”;
- c. Final summary of all inventories,
- d. Confirmation that all electronic copies of all final inventories and all associated documentation files that were submitted to OHA are complete; and
- e. Other information as requested by OHA.

7. Conflict of Interest. Except with OHA’s prior written consent, Contractor shall not engage in any activity, or accept any employment, interest or contribution that would, or would reasonably appear to, compromise Contractor’s professional judgment with respect to this Contract services, including, without limitation, concurrent employment on any project in direct competition with the Contract services.

8. Specifications or Performance Standards.

OHA requires that the Contractor meets the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services.

EXHIBIT A

Part 2

Payment and Financial Reporting

1. Payment Provisions

OHA shall compensate Contractor for the performance of Services set forth in **Exhibit A**, as follows:

- a. The Contractor will be compensated at an hourly rate of \$150.00 for a maximum duration of 6 hours (\$900.00) per water system. Additional assistance hours may be authorized and approved by the OHA Drinking Water Services Project Manager on a case-by-case basis. Travel time is considered separately from assistance hours, and travel time will be compensated at the same \$150.00 hourly rate.
- b. Contractor shall not submit invoices for, and OHA will not pay, any amount in excess of the maximum, not to exceed amount payable under this Contract. If this amount is increased by Contract amendment, the amendment must be effective before Contractor performs Services subject to the amendment. Contractor shall notify OHA's Representative identified in this Contract in writing of the expiration of the Contract, thirty (30) days prior to such expiration. No payment will be made for any Services performed prior to the Effective Date or after the expiration date of the Contract.
- c. Contractor shall **timely** submit monthly invoices for Services performed. To be processed for payment by OHA, invoices must be received within 90 days of the end of the month in which the services were provided., and must include the following basic information:
 - (1) OHA Contract #180553-0
 - (2) The correct name of OHA's authorized representative
 - (3) Invoice date
 - (4) Date range during which the Services being invoiced for were provided
 - (5) Invoice number that ends in a "— ##", which represents the correct invoice sequence of issue. The last invoice submitted on the Project must be clearly labeled "Final Invoice"
 - (6) Original Contact total, not to exceed amount:
 - (7) Paid to date amounts showing the amounts submitted for prior to the current invoice (regardless of payment status)
 - (8) Amounts being invoiced for in the current invoice, with a roll up of a "Total Amount Billed For This Invoice" line item amount
 - (9) Balances Remaining after receipt of payment for the current invoice

Contractor shall describe all Services performed with particularity and by whom it was performed and shall itemize and explain all expenses for which reimbursement is claimed.

- d. Contractor shall send invoices via email to OHA's Contract Administrator identified on Page 1 of this Contract, using the following address: anthony.j.fields@oha.oregon.gov
- e. OHA shall have the right to reject any invoice which does not have the proper information as required by this section without incurring penalty liabilities for late payment.
- f. Contractor's claims to OHA for overdue payments on invoices are subject to ORS 293.462.
- g. OHA and Contractor agree in accordance with the terms and conditions of this Contract that, if the scope of the Project or the Services are changed materially, Contractor shall request in writing an amendment to the Contract before additional Services are provided and before compensation is adjusted. All legally required approvals must be obtained for any Contract amendment before the amendment is effective and before Services may be performed or payment made under the amendment.

2. Travel Expenses:

Vendor will be compensated for travel time at \$150.00 per hour. There will not be any other reimbursement for travel expenses.

EXHIBIT A

Part 3 Special Provisions

1. Confidentiality of Information.

a. Client Information:

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

background check requirements defined in IRS Publication 1075;

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

b. Non-Client Information:

- (1) Each Party acknowledges that it and any of its officers, directors, employees and agents may, in the course of performing its responsibilities under the Contract, be exposed to or acquire information that is confidential to the other Party. To the extent permitted by law, any and all information of any form provided to a Party or its officers, directors, employees and agents in the performance of the Contract that reasonably could at the time of its disclosure be understood to be confidential shall be deemed to be confidential information of the originating Party (“Confidential Non-Client Information”).

- (2) Confidential Non-Client Information shall be deemed not to include information that:
 - (a) Is or becomes (other than by disclosure by the Party acquiring such information) publicly known or is contained in a publicly available document except to the extent applicable law still restricts disclosure;
 - (b) Is furnished by the originating Party to others without restrictions similar to those imposed on the receiving Party under the Contract;
 - (c) Is rightfully in the receiving Party's possession without the obligation of nondisclosure prior to the time of its disclosure by the originating Party under the Contract;
 - (d) Is obtained from a source other than the originating Party without the obligation of confidentiality;
 - (e) Is disclosed with the written consent of the originating Party; or
 - (f) Is independently developed by the receiving Party's officers, directors, employees and agents who can be shown to have had no access to the Confidential Non-Client Information.
- (3) Nondisclosure. The receiving Party shall hold all Confidential Non-Client Information in strict confidence, using at least the same degree of care that it uses in maintaining the confidentiality of its own confidential information; and shall not sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Non-Client Information to third parties; shall not use Confidential Non-Client Information for any purposes whatsoever other than as contemplated by this Contract or reasonably related thereto; and shall advise any of its officers, directors, employees and agents that receive or have access to the Confidential Non-Client Information of their obligations to keep Confidential Non-Client Information confidential. These confidentiality obligations do not restrict disclosure of information otherwise qualifying as Confidential Non-Client Information if the receiving Party can show that either of the following conditions exists: (i) the information was disclosed in response to a subpoena or court order duly issued in a judicial or legislative process, in which case the receiving Party shall notify the originating Party of the subpoena five days prior to the disclosure, unless such notice could not reasonably be given; or (ii) the disclosure was required to respond to a request for the information made under the Oregon Public Records Law, ORS 192.311 to 192.478. The receiving Party shall notify the originating Party of a public records request five days prior to the disclosure.
 - c. Upon request and pursuant to the instructions of OHA, Contractor shall return or destroy all copies of Confidential Information, and Contractor shall certify in writing the return or destruction of all Confidential Information.
 - d. "Client" means any individual, family or provider:

- (1) For whom OHA must provide Services and incidental or specialized Goods, in any combination thereof (“Services and Incidental Supplies”), according to state, federal law, rule, and policy. Those Services and Incidental Supplies include but are not limited to treatment, care, protection, and support without regard to the proximity of the services being provided;
- (2) Who in fact receives and utilizes services provided by OHA primarily for that individual's or family's benefit;
- (3) Who is under the custody, care, or both of OHA; or
- (4) Who provides direct care or Services and is a proxy or representative of the non-provider Client.

2. Amendments.

- a.** Subject to Section 2.c. below, OHA reserves the right to amend or extend the Contract under the following general circumstances:
 - (1) OHA may extend the Contract for additional periods of time up to a total Contract period of 5 years, and for additional money associated with the extended period(s) of time. The determination for any extension for time may be based on OHA’s satisfaction with performance of the work or services provided by the Contractor under this Contract.
 - (2) OHA may periodically amend any payment rates throughout the life of the Contract proportionate to increases in Portland Metropolitan Consumer Price Index; and to provide Cost Of Living Adjustments (COLA) if OHA so chooses. Any negotiation of increases in rates to implement a COLA will be as directed by the Oregon State Legislature. In addition, OHA may periodically amend any payment rates throughout the life of the Contract to meet current market conditions.
- b.** OHA further reserves the right to amend the Statement of Work based on the original scope of work of RFP #5396 for the following:
 - (1) Programmatic changes, additions or modifications deemed necessary to accurately reflect the original scope of work that may not have been expressed in the original Contract or previous amendments to the Contract;
 - (2) Implement additional phases of the Work; or
 - (3) As necessitated by changes in Code of Federal Regulations, Oregon Revised Statutes, or Oregon Administrative Rules, which, in part or in combination, govern the provision of services provided under this Contract.
- c.** Upon identification, by any party to this Contract, of any circumstance which may require an amendment to this Contract, the parties may enter into negotiations regarding the proposed modifications. Any resulting amendment must be in writing and be signed by all parties to the Contract before the modified or additional provisions are binding on either party. All amendments must comply

with Exhibit B, “Standard Terms and Conditions”, Section 24. “Amendments; Waiver; Consent.” of this Contract.

3. Nondiscrimination.

- a. The Contractor must provide services to OHA clients without regard to race, religion, national origin, sex, age, marital status, sexual orientation or disability (as defined under the Americans with Disabilities Act). Contracted services must reasonably accommodate the cultural, language, and other special needs of clients.
- b. Contractor certifies that Contractor has a written policy and practice that meets the requirements described in ORS 279A.112 for preventing sexual harassment, sexual assault, and discrimination against employees who are members of a protected class. Contractor agrees, as a material term of this Contract, to maintain such policy and practice in force during the entire Contract term.
- c. As required by ORS 279B.235, Contractor must comply with ORS 652.220 and shall not unlawfully discriminate against any of Contractor’s employees in the payment of wages or other compensation for work of comparable character on the basis of an employee’s membership in a protected class. “Protected class” means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability, or age. Contractor’s compliance with this Section constitutes a material element of this Contract and a failure to comply constitutes a breach that entitles OHA to terminate this Contract for cause.
- d. Contractor may not prohibit any of Contractor’s employees from discussing the employee’s rate of wage, salary, benefits, or other compensation with another employee or another person. Contractor may not retaliate against an employee who discusses the employee’s rate of wage, salary, benefits, or other compensation with another employee or another person.

4. Compliance with Executive Order (EO) 21-29:

- a. For purposes of this Section, capitalized words are defined in EO 21-29, as amended, https://www.oregon.gov/gov/Documents/executive_orders/eo_21-29.pdf or as defined in the “Executive Order 21-29 Vaccination Requirements for State Contractors Frequently Asked Questions”, as amended, found at https://www.oregon.gov/das/Procurement/Documents/ExecutiveOrder21-29_ContractorFAQ.pdf.
- b. Contractor shall comply with EO 21-29. Contractor certifies that for the term of the Contract or the duration of EO-21-29, whichever expires or terminates first, each Worker who provides goods and services at an Executive Branch Worksite is Fully Vaccinated against COVID-19 unless an exception under paragraph 6 of EO 21-29 applies. Contractor shall maintain in its records Proof of Vaccination or permitted exceptions under section 6 of EO 21-29 for such Workers providing goods and services at an Execution Branch Worksite. Contractor shall provide written certification of its compliance with EO 21-29 on request of the State. The State reserves the right to request the documentation supporting Contractor’s

certification. Any violation of this Section constitutes a material breach of this Contract entitling OHA to terminate this Contract for cause.

5. Health Equity Requirements

People in Oregon recognize that systemic racism and historical and contemporary injustices have led to health inequities in the state. Environmental threats like wildfire and smoke disproportionately impact communities of color, tribal communities, persons with physical, developmental and intellectual disabilities, persons living in congregate care and low-income communities. Complex public health problems require a nimble, community-based, and equity centered public health system. Without this system, Oregon risks its public health resilience, response and recovery, and future health threats will continue to exacerbate health inequities.

Pursuant to the Public Health Modernization Plan to eliminate health disparities by 2030, Contractor shall prioritize services to communities of color, tribal communities and low-income communities.

Additional information regarding the Public Health Modernization Plan to eliminate health disparities by 2030 can be accessed at the Public Health Modernization website: <https://www.oregon.gov/OHA/PH/About/TaskForce/Pages/index.aspx>, and also by reviewing the Public Health Modernization Plan brochure located here: <https://www.oregon.gov/oha/PH/ABOUT/TASKFORCE/Documents/Public-Health-Modernization-overview-January-2021.pdf>

EXHIBIT B

Standard Terms and Conditions

1. **Governing Law, Consent to Jurisdiction.** This Contract 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 OHA or any other agency or department of the State of Oregon, or both, and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of the jurisdiction of any court or of any form of defense to or immunity from any Claim, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum. This Section shall survive expiration or termination of this Contract.
2. **Compliance with Law.** Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to Contractor and the Contract. OHA's performance under the Contract is conditioned upon Contractor's compliance with the obligations of contractors under ORS 279B.220, 279B.230 and 279B.235, which are incorporated by reference herein. This Section shall survive expiration or termination of this Contract.
3. **Independent Contractor.**
 - a. Contractor is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.
 - b. If Contractor is currently performing work for the State of Oregon or the federal government, Contractor by signature to this Contract, represents and warrants that Contractor's Work to be performed under this Contract creates no potential or actual conflict of interest as defined by ORS Chapter 244 and that no statutes, rules or regulations of the State of Oregon or federal agency for which Contractor currently performs work would prohibit Contractor's Work under this Contract. If compensation under this Contract is to be charged against federal funds, Contractor certifies that it is not currently employed by the federal government.
 - c. Contractor is responsible for all federal and state taxes applicable to compensation paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, OHA will not withhold from such compensation any amounts to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation paid to Contractor under this Contract, except as a self-employed individual.

- d. Contractor shall perform all Work as an Independent Contractor, as defined in ORS 670.600. OHA reserves the right (i) to determine and modify the delivery schedule for the Work, and (ii) to evaluate the quality of the Work Product, however, OHA may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work.

4. Representations and Warranties.

- a. **Contractor's Representations and Warranties.** Contractor represents and warrants to OHA that:

- (1) Contractor has the power and authority to enter into and perform this Contract;
- (2) The obligations set forth in this Contract, when executed and delivered, shall be valid and binding obligations of the Contractor enforceable in accordance with its terms;
- (3) Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with the highest standards prevalent in Contractor's industry, trade or profession;
- (4) Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; and
- (5) Contractor prepared its proposal related to this Contract, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.

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

5. Time is of the Essence. Contractor agrees that time is of the essence under this Contract.

6. Funds Available and Authorized; Payments.

- a. Contractor shall not be compensated for Work performed under this Contract by any other agency or department of the State of Oregon or the federal government. OHA certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Contract within OHA's current biennial appropriation or limitation. Contractor understands and agrees that OHA's payment for Work performed is contingent on OHA receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow OHA, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract.
- b. **Payment Method.** Payments under this Contract will be made by Electronic Funds Transfer (EFT). Upon request, Contractor shall provide its taxpayer identification number (TIN) and other necessary banking information to receive EFT payment. Contractor shall maintain at its own expense a single financial

institution or authorized payment agent capable of receiving and processing EFT using the Automated Clearing House (ACH) transfer method. The most current designation and EFT information will be used for all payments under this Contract. Contractor shall provide this designation and information on a form provided by OHA. In the event that EFT information changes or the Contractor elects to designate a different financial institution for the receipt of any payment made using EFT procedures, the Contractor shall provide the changed information or designation to OHA on an OHA-approved form. OHA is not required to make any payment under this Contract until receipt of the correct EFT designation and payment information from the Contractor.

7. **Recovery of Overpayments.** IF BILLINGS UNDER THIS CONTRACT, OR UNDER ANY OTHER CONTRACT BETWEEN CONTRACTOR AND OHA, RESULT IN PAYMENTS TO CONTRACTOR TO WHICH CONTRACTOR IS NOT ENTITLED, OHA, AFTER GIVING WRITTEN NOTIFICATION TO CONTRACTOR, MAY WITHHOLD FROM PAYMENTS DUE TO CONTRACTOR SUCH AMOUNTS, OVER SUCH PERIODS OF TIME, AS ARE NECESSARY TO RECOVER THE AMOUNT OF THE OVERPAYMENT, UNLESS CONTRACTOR PROVIDES A WRITTEN OBJECTION WITHIN 14 CALENDAR DAYS FROM THE DATE OF THE NOTICE. ABSENT TIMELY WRITTEN OBJECTION, CONTRACTOR HEREBY REASSIGNS TO OHA ANY RIGHT CONTRACTOR MAY HAVE TO RECEIVE SUCH PAYMENTS. IF CONTRACTOR PROVIDES A TIMELY WRITTEN OBJECTION TO OHA'S WITHHOLDING OF SUCH PAYMENTS, THE PARTIES AGREE TO CONFER IN GOOD FAITH REGARDING THE NATURE AND AMOUNT OF THE OVERPAYMENT IN DISPUTE AND THE MANNER IN WHICH THE OVERPAYMENT IS TO BE REPAID. OHA RESERVES ITS RIGHT TO PURSUE ANY OR ALL OF THE REMEDIES AVAILABLE TO IT UNDER THIS CONTRACT AND AT LAW OR IN EQUITY INCLUDING OHA'S RIGHT TO SETOFF.

8. **Ownership of Work Product.**

- a. **Definitions.** As used in this Section 8, and elsewhere in this Contract, the following terms have the meanings set forth below:
- (1) "Contractor Intellectual Property" means any intellectual property owned by Contractor and developed independently from the Work.
 - (2) "Third Party Intellectual Property" means any intellectual property owned by parties other than OHA or Contractor.
 - (3) "Work Product" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein that Contractor is required to deliver to OHA pursuant to the Work.
- b. **Original Works.** All Work Product created by Contractor pursuant to the Work, including derivative works and compilations, and whether or not such Work Product is considered a "work made for hire," shall be the exclusive property of OHA. OHA and Contractor agree that all Work Product is "work made for hire"

of which OHA is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created pursuant to the Work is not “work made for hire,” Contractor hereby irrevocably assigns to OHA any and all of its rights, title, and interest in all original Work Product created pursuant to the Work, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon OHA's reasonable request, Contractor shall execute such further documents and instruments necessary to fully vest such rights in OHA. Contractor forever waives any and all rights relating to original Work Product created pursuant to the Work, including without limitation, any and all rights arising under 17 U.S.C. §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

- c. In the event that Work Product is Contractor Intellectual Property, a derivative work based on Contractor Intellectual Property or a compilation that includes Contractor Intellectual Property, Contractor hereby grants to OHA an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display Contractor Intellectual Property and the pre-existing elements of the Contractor Intellectual Property employed in the Work Product, and to authorize others to do the same on OHA's behalf.
- d. In the event that Work Product is Third Party Intellectual Property, a derivative work based on Third Party Intellectual Property or a compilation that includes Third Party Intellectual Property, Contractor shall secure on OHA's behalf and in the name of OHA an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property and the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, and to authorize others to do the same on OHA's behalf.

9. Indemnity.

- a. CONTRACTOR SHALL DEFEND (SUBJECT TO ORS CHAPTER 180), SAVE, HOLD HARMLESS, AND INDEMNIFY THE STATE OF OREGON AND OHA AND THEIR OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER, INCLUDING ATTORNEYS FEES, RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ACTIVITIES OF CONTRACTOR OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS CONTRACT.
- b. **INDEMNITY FOR INFRINGEMENT CLAIMS.** WITHOUT LIMITING THE GENERALITY OF SECTION 9.a. ABOVE, CONTRACTOR EXPRESSLY AGREES TO DEFEND, INDEMNIFY, AND HOLD OHA, THE STATE OF OREGON AND THEIR AGENCIES, SUBDIVISIONS, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES HARMLESS FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, LOSSES, LIABILITIES, COSTS,

EXPENSES, INCLUDING ATTORNEYS FEES, AND DAMAGES ARISING OUT OF OR RELATED TO ANY CLAIMS THAT THE WORK, THE WORK PRODUCT OR ANY OTHER TANGIBLE OR INTANGIBLE ITEMS DELIVERED TO OHA BY CONTRACTOR THAT MAY BE THE SUBJECT OF PROTECTION UNDER ANY STATE OR FEDERAL INTELLECTUAL PROPERTY LAW OR DOCTRINE, OR OHA'S USE THEREOF, INFRINGES ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, TRADE DRESS, MASK WORK, UTILITY DESIGN, OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY; PROVIDED, THAT THE STATE OF OREGON SHALL PROVIDE CONTRACTOR WITH PROMPT WRITTEN NOTICE OF ANY INFRINGEMENT CLAIM.

THIS SECTION SHALL SURVIVE EXPIRATION OR TERMINATION OF THIS CONTRACT.

10. Default; Remedies; Termination.

a. Default by Contractor. Contractor shall be in default under this Contract if:

- (1) Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or
- (2) Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under the Contract and Contractor has not obtained such license or certificate within 14 calendar days after OHA's notice or such longer period as OHA may specify in such notice; or
- (3) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Contractor's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within 14 calendar days after OHA's notice, or such longer period as OHA may specify in such notice; or
- (4) Contractor failed to comply with the tax laws of this state or a political subdivision of this state before the Contractor executed this Contract or fails to comply with the tax laws of this state or a political subdivision of this state during the term of this Contract.

b. OHA's Remedies for Contractor's Default. In the event Contractor is in default under Section 10.a. above, OHA may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to:

- (1) termination of this Contract under Section 10.e.(2) below;
- (2) withholding all monies due for Work and Work Products that Contractor has failed to deliver within any scheduled completion dates or has performed inadequately or defectively;

- (3) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief; or
- (4) exercise of its right of recovery of overpayments under Section 7., “Recovery of Overpayment”, of this Exhibit B.

These remedies are cumulative to the extent the remedies are not inconsistent, and OHA may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If a court determines that Contractor was not in default under Section 10.a. above, then Contractor shall be entitled to the same remedies as if this Contract was terminated pursuant to Section 10.e.(1) below.

- c. **Default by OHA.** OHA shall be in default under this Contract if OHA commits any material breach or default of any covenant, warranty, or obligation under this Contract, and such breach or default is not cured within 30 calendar days after Contractor's notice or such longer period as Contractor may specify in such notice.
- d. **Contractor's Remedies for OHA's Default.** In the event OHA terminates the Contract under Section 10.e.(1) below, or in the event OHA is in default under Section 10.c. above, and whether or not Contractor elects to exercise its right to terminate the Contract under Section 10.e.(3) below, Contractor's sole monetary remedy shall be: (i) with respect to Work compensable at a stated rate, a claim for unpaid invoices, time worked within any limits set forth in this Contract but not yet invoiced, authorized expenses incurred and interest within the limits permitted under ORS 293.462, and (ii) with respect to deliverable-based Work, a claim for the sum designated for completing the deliverable multiplied by the percentage of Work completed and accepted by OHA, less previous amounts paid and any claim(s) that OHA has against Contractor. In no event shall OHA be liable to Contractor for any expenses related to termination of this Contract or for anticipated profits. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section 10.d., Contractor shall immediately pay any excess to OHA upon written demand. If Contractor does not immediately pay the excess, OHA may recover the overpayments in accordance with Section 7., “Recovery of Overpayments”, and may pursue any other remedy that may be available to it.
- e. **Termination.**
 - (1) **OHA's Right to Terminate at its Discretion.** At its sole discretion, OHA may terminate this Contract:
 - (a) For its convenience upon 30 days' prior written notice by OHA to Contractor;
 - (b) Immediately upon written notice if OHA fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for the Work or Work Products;
 - (c) Immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that OHA's purchase of the Work or Work Products under this

Contract is prohibited, or OHA is prohibited from paying for such Work or Work Products from the planned funding source; or

(d) Immediately upon written notice to Contractor if there is a threat to the health, safety, or welfare of any OHA client or recipient of services under this Contract, including any Medicaid Eligible Individual, under its care.

(2) OHA's Right to Terminate for Cause. In addition to any other rights and remedies OHA may have under this Contract, OHA may terminate this Contract immediately upon written notice to Contractor, or at such later date as OHA may establish in such notice, if Contractor is in default under Section 10.a. above.

(3) Contractor's Right to Terminate for Cause. Contractor may terminate this Contract upon 30 days written notice to OHA, or at such later date as Contractor may establish in such notice, if OHA is in default under Section 10.c. above, and OHA fails to cure such default within 30 calendar days after OHA receives Contractor's notice or such longer period as Contractor may specify in such notice.

(4) Mutual Termination. The Contract may be terminated immediately upon mutual written consent of the parties or at such other time as the parties may agree in the written consent.

(5) Return of Property. Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to OHA all of OHA's property that is in the possession or under the control of Contractor at that time. This Section 10.e.(5) survives the expiration or termination of this Contract.

(6) Effect of Termination: Upon receiving a notice of termination of this Contract, or upon issuing a notice of termination to OHA, Contractor shall immediately cease all activities under this Contract, unless in a notice issued by OHA, OHA expressly directs otherwise.

11. Stop-Work Order. OHA may, at any time, by written notice to the Contractor, require the Contractor to stop all, or any part of the work required by this Contract for a period of up to 90 days after the date of the notice, or for any further period to which the parties may agree through a duly executed amendment. Upon receipt of the notice, Contractor shall immediately comply with the Stop-Work Order terms and take all necessary steps to minimize the incurrence of costs allocable to the Work affected by the stop work order notice. Within a period of 90 days after issuance of the written notice, or within any extension of that period to which the parties have agreed, OHA shall either:

- a. Cancel or modify the stop work order by a supplementary written notice; or
- b. Terminate the work as permitted by either the Default or the Convenience provisions of Section 10., "Default; Remedies; Termination."

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

12. **Limitation of Liabilities.** EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTION 9., "INDEMNITY", NEITHER PARTY SHALL BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS CONTRACT.
13. **Insurance.** Contractor shall maintain insurance as set forth in Exhibit C, attached hereto.
14. **Records Maintenance, Access.** Contractor shall maintain all financial records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records, books, documents, papers, plans, records of shipments and payments, and writings of Contractor, whether in paper, electronic or other form, that are pertinent to this Contract, in such a manner as to clearly document Contractor's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments, and writings of Contractor, whether in paper, electronic or other form, that are pertinent to this Contract, are collectively referred to as "Records." Contractor acknowledges and agrees that OHA, the Secretary of State's Office, and the federal government, and their duly authorized representatives shall have access to all Records to perform examinations and audits, and to make excerpts and transcripts. Contractor shall retain and keep accessible all Records for the longest of:
 - a. Six years following final payment and termination of this Contract;
 - b. The period as may be required by applicable law, including the records retention schedules set forth in OAR Chapter 166; or
 - c. Until the conclusion of any audit, controversy or litigation arising out of or related to this Contract.
15. **Information Privacy/Security/Access.** If the Work performed under this Contract requires Contractor or, when allowed, its subcontractor(s), to have access to or use of any OHA computer system or other OHA Information Asset for which OHA imposes security requirements, and OHA grants Contractor or its subcontractor(s) access to such OHA Information Assets or Network and Information Systems, Contractor shall comply and require all subcontractor(s) to which such access has been granted to comply with OAR 943-014-0300 through 943-014-0320, as such rules may be revised from time to time. For purposes of this Section, "Information Asset" and "Network and Information System" have the meaning set forth in OAR 943-014-0305, as such rule may be revised from time to time.
16. **Force Majeure.** No party is responsible for delay or default caused by an event beyond its reasonable control. OHA may terminate this Contract, without liability to Contractor, upon written notice after reasonably determining the delay or default reasonably prevents performance of this Contract.
17. **Foreign Contractor.** If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract.

- 18. Subcontracts; Assignment; Successors.** Contractor shall not assign, transfer, or subcontract rights or responsibilities under this Contract, in whole or in part, without the prior written approval of OHA. This Contract's provisions are binding upon and inure to the benefit of the parties to this Contract and their respective successors and assigns.
- 19. No Third Party Beneficiaries.** OHA and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract. This Section shall survive expiration or termination of this Contract.
- 20. Severability.** The parties agree that if any term or provision of this Contract 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 Contract did not contain the particular term or provision held to be invalid. This Section shall survive expiration or termination of this Contract.
- 21. Notice.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, fax, or mailing the same, postage prepaid to Contractor or OHA at the address or number set forth in this Contract, or to such other addresses or numbers as either party may indicate pursuant to this Section. Any communication or notice so addressed and mailed by regular mail shall be deemed received and effective five days after the date of mailing. Any communication or notice delivered by fax shall be deemed received and effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the recipient, or on the next business day if transmission was outside normal business hours of the recipient. Notwithstanding the foregoing, to be effective against the other party, any notice transmitted by fax must be confirmed by telephone notice to the other party. Any communication or notice given by personal delivery shall be deemed effective when actually delivered to the addressee.

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

This Section shall survive expiration or termination of this Contract.

- 22. Headings.** The headings and captions to sections of this Contract have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret this Contract.
- 23. Merger Clause.** This Contract constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, regarding this Contract not specified herein.

- 24. Amendments; Waiver; Consent.** OHA may amend this Contract to the extent provided herein, the solicitation document, if any from which this Contract arose, and to the extent permitted by applicable statutes and administrative rules. No amendment, waiver, or other consent under this Contract shall bind either party unless it is in writing and signed by both parties and when required, the Department of Justice. Such amendment, waiver, or consent shall be effective only in the specific instance and for the specific purpose given. The failure of either party to enforce any provision of this Contract shall not constitute a waiver by that party of that or any other provision. This Section shall survive the expiration or termination of this Contract.
- 25. Contractor's Failure to Perform.** Contractor's failure to perform the statement of work specified in this Contract, or to meet the performance standards established in this Contract, may result in consequences that include, but are not limited to:
- a.** Reducing or withholding payment under this Contract;
 - b.** Requiring Contractor to perform at Contractor's expense additional work necessary to perform the statement of work or meet performance standards; or
 - c.** Declaring a default of this Contract and pursuing any available remedies for default, including termination of the Contract as permitted in Section 10., "Default; Remedies; Termination", of this Contract.

EXHIBIT C

Insurance Requirements

Contractor shall obtain at Contractor's expense the insurance specified in this Exhibit C prior to performing under this Contract and shall maintain it in full force and at its own expense throughout the duration of this Contract, as required by any extended reporting period or continuous claims made coverage requirements, and all warranty periods that apply. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Agency. Coverage shall be primary and non-contributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers' Compensation. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

WORKERS' COMPENSATION & EMPLOYERS' LIABILITY

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements. If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If Contractor is an employer subject to any other state's workers' compensation law, Contractor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

COMMERCIAL GENERAL LIABILITY:

Required

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this contract, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than \$3,000,000 per occurrence. Annual aggregate limit shall not be less than \$5,000,000.

AUTOMOBILE LIABILITY INSURANCE:

Required

Automobile Liability Insurance covering Contractor's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$5,000,000 for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Use of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

PROFESSIONAL LIABILITY:

Required

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

EXCESS/UMBRELLA INSURANCE:

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

ADDITIONAL INSURED:

All liability insurance, except for Workers' Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Contract must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 07 04 or equivalent.

WAIVER OF SUBROGATION:

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

CONTINUOUS CLAIMS MADE COVERAGE:

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

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

CERTIFICATE(S) AND PROOF OF INSURANCE:

Contractor shall provide to Agency Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an

endorsed Additional Insured. The Certificate(s) shall also include all required endorsements or copies of the applicable policy language effecting coverage required by this Contract. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance Agency has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Contract.

NOTICE OF CHANGE OR CANCELLATION:

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

INSURANCE REQUIREMENT REVIEW:

Contractor agrees to periodic review of insurance requirements by Agency under this Contract and to provide updated requirements as mutually agreed upon by Contractor and Agency.

STATE ACCEPTANCE:

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

EXHIBIT D

Federal Terms and Conditions

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

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

all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section.

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

- f.** No part of any federal funds paid to Contractor under this Contract shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the United States Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.
 - g.** The prohibitions in subsections (e) and (f) of this section shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.
 - h.** No part of any federal funds paid to Contractor under this Contract may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under Section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance of that federally sponsored clinical trials are being conducted to determine therapeutic advantage.
- 6. Resource Conservation and Recovery.** Contractor shall comply and require all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 U.S.C. 6901 et. seq.). Section 6002 of that Act (codified at 42 U.S.C. 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.
- 7. Audits.**
- a.** Contractor shall comply, and require all subcontractors to comply, with applicable audit requirements and responsibilities set forth in this Contract and applicable state or federal law.
 - b.** If Contractor expends \$750,000 or more in federal funds (from all sources) in a fiscal year, Contractor shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR Subtitle B with guidance at 2 CFR Part 200. Copies of all audits must be submitted to OHA within 30 days of completion. If Contractor expends less than \$750,000 in a fiscal year, Contractor is exempt from Federal audit requirements for that year. Records must be available as provided in Exhibit B, “Records Maintenance, Access”.
- 8. Debarment and Suspension.** Contractor shall not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration’s “List of Parties Excluded from Federal Procurement or

Nonprocurement Programs” in accordance with Executive Orders No. 12549 and No. 12689, “Debarment and Suspension”. (See 2 CFR Part 180.) This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Subcontractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

9. **Pro-Children Act.** Contractor shall comply and require all subcontractors to comply with the Pro-Children Act of 1994 (codified at 20 U.S.C. Section 6081 et. seq.).
10. **Medicaid Services. [reserved]**
11. **Agency-based Voter Registration.** If applicable, Contractor shall comply with the Agency-based Voter Registration sections of the National Voter Registration Act of 1993 that require voter registration opportunities be offered where an individual may apply for or receive an application for public assistance.
12. **Disclosure. [reserved]**
13. **Federal Intellectual Property Rights Notice.** The federal funding agency, as the awarding agency of the funds used, at least in part, for the Work under this Contract, may have certain rights as set forth in the federal requirements pertinent to these funds. For purposes of this subsection, the terms “grant” and “award” refer to funding issued by the federal funding agency to the State of Oregon. The Contractor agrees that it has been provided the following notice:
 - a. The federal funding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the Work, and to authorize others to do so, for Federal Government purposes with respect to:
 - (1) The copyright in any Work developed under a grant, subgrant or contract under a grant or subgrant; and
 - (2) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.
 - b. The parties are subject to applicable federal regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.”
 - c. The parties are subject to applicable requirements and regulations of the federal funding agency regarding rights in data first produced under a grant, subgrant or contract under a grant or subgrant.
14. **Super Circular Requirements.** 2 CFR Part 200, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, including but not limited to the following:
 - a. **Property Standards.** 2 CFR 200.313, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, which generally

describes the required maintenance, documentation, and allowed disposition of equipment purchased with federal funds.

- b. Procurement Standards.** When procuring goods or services (including professional consulting services), applicable state procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C or 2 CFR §§ 200.318 through 200.326, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, as applicable.
 - c. Contract Provisions.** The contract provisions listed in 2 CFR Part 200, Appendix II, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, that are hereby incorporated into this Exhibit, are, to the extent applicable, obligations of Contractor, and Contractor shall also include these contract provisions in its contracts with non-Federal entities.
- 15. Federal Whistleblower Protection.** Contractor shall comply, and ensure the compliance by subcontractors or subgrantees, with 41 U.S.C. 4712, Enhancement of contractor protection from reprisal for disclosure of certain information.



Contract Number 180552

**STATE OF OREGON
PERSONAL/PROFESSIONAL SERVICES CONTRACT**

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

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

**Oregon Association of Water Utilities, Inc.
935 N. Main Street
Independence, OR 97351
Telephone: (503) 837-1212
Facsimile: (503) 837-1213
E-mail address: jgreen@oawu.net**

hereinafter referred to as “Contractor” or “Vendor.”

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

**OHA Public Health Division
Center for Health Protection, Drinking Water Services
800 NE Oregon Street, Suite 640
Portland, OR 97232
Contract Administrator: Anthony J. Fields or delegate
Telephone: 971-673-2269 or 503-752-8229
E-mail address: anthony.j.fields@oha.oregon.gov**

1. Effective Date and Duration.

This Contract shall become effective on the date this Contract has been fully executed by every party and, when required, approved by Department of Justice or on **July 1, 2023**, whichever date is later. Unless extended or terminated earlier in accordance with its terms, this Contract shall expire on **December 31, 2027**. Contract termination shall not extinguish or prejudice OHA’s right to enforce this Contract with respect to any default by Contractor that has not been cured.

2. Contract Documents.

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

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

There are no other contract documents unless specifically referenced and incorporated in this Contract.

b. This Contract and the documents listed in Section 2., “Contract Documents”, Subsection a. above, shall be in the following descending order of precedence: this Contract less all exhibits, Exhibits D, B, A, and C.

3. Consideration.

a. The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is **\$482,500.00**. OHA will not pay Contractor any amount in excess of the not-to-exceed compensation of this Contract for completing the Work, and will not pay for Work performed before the date this Contract becomes effective or after the termination or expiration of this Contract. If the maximum compensation is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

b. Interim payments to Contractor shall be subject to ORS 293.462, and shall be made in accordance with the payment schedule and requirements in Exhibit A, Part 2., “Payment and Financial Reporting.”

c. OHA will only pay for completed Work under this Contract. For purposes of this Contract, “Work” means the tasks or services and deliverables accepted by OHA as described in Exhibit A, Part 1, “Statement of Work.”

4. Contractor or Subrecipient Determination. In accordance with the State Controller’s Oregon Accounting Manual, policy 30.40.00.104, OHA’s determination is that:

Contractor is a subrecipient Contractor is a contractor Not applicable

Catalog of Federal Domestic Assistance (CFDA) #(s) of federal funds to be paid through this Contract: 66.468

5. Contractor Data and Certification.

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

PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION

Contractor Name (exactly as filed with the IRS): Oregon Association of Water Utilities
Street address: 935 North Main Street
City, state, zip code: Independence, OR 97351
Email address: jgreen@oawu.net
Telephone: (503) 837-1212 Fax: (503) 837-1213

Is Contractor a nonresident alien, as defined in 26 U.S.C. § 7701(b)(1)? (Check one box): [] YES [X] NO

Business Designation: (Check one box):

- [] Professional Corporation [X] Nonprofit Corporation [] Limited Partnership
[] Limited Liability Company [] Limited Liability Partnership [] Sole Proprietorship
[] Corporation [] Partnership [] Other

Contractor Proof of Insurance. Contractor shall provide the following information upon submission of the signed Contract. All insurance listed herein and required by Exhibit C must be in effect prior to Contract execution.

If Contractor is self-insured for any of the Insurance Requirements specified in Exhibit C of this Contract, Contractor may so indicate by: (i) writing "Self-Insured" on the appropriate line(s); and (ii) submitting a certificate of insurance as required in Exhibit C.

Commercial General Liability Insurance Company: BanCorp
Policy #: APWAU00161-01 Expiration Date: 11/01/2023

Automobile Liability Insurance Company:
Policy #: APWAU00161-01 Expiration Date: 11/01/2023

Workers' Compensation: Does Contractor have any subject workers, as defined in ORS 656.027? (Check one box): [] YES [X] NO If YES, provide the following information:

Workers' Compensation Insurance Company:
Policy #: Expiration Date:

- b. Certification.** Without limiting the generality of the foregoing, by signature on this Contract, the undersigned hereby certifies under penalty of perjury that:
- (1) Contractor is in compliance with all insurance requirements in Exhibit C of this Contract, and notwithstanding any provision to the contrary, Contractor shall deliver to the OHA Contract Administrator (see page 1 of this Contract) the required Certificate(s) of Insurance within 30 days of execution of this Contract. By certifying compliance with all insurance as required by this Contract, Contractor acknowledges it may be found in breach of the Contract for failure to obtain required insurance. Contractor may also be in breach of the Contract for failure to provide Certificate(s) of Insurance as required and to maintain required coverage for the duration of the Contract;
 - (2) Contractor acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any “claim” (as defined by ORS 180.750) that is made by (or caused by) the Contractor and that pertains to this Contract or to the project for which the Contract work is being performed. Contractor certifies that no claim described in the previous sentence is or will be a “false claim” (as defined by ORS 180.750) or an act prohibited by ORS 180.755. Contractor further acknowledges that in addition to the remedies under this Contract, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the Contractor;
 - (3) The undersigned is authorized to act on behalf of Contractor and represents and warrants that Contractor has complied with the tax laws of the State of Oregon and the applicable tax laws of any political subdivision of Oregon. Contractor shall, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of Oregon. For the purposes of this Section, “tax laws” includes: (i) All tax laws of Oregon, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) Any tax provisions imposed by a political subdivision of Oregon that applied to Contractor, to Contractor’s property, operations, receipts, or income, or to Contractor’s performance of or compensation for any work performed by Contractor; (iii) Any tax provisions imposed by a political subdivision of Oregon that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

Contractor acknowledges that the Oregon Department of Administrative Services will report this Contract to the Oregon Department of Revenue (DOR). The DOR may take any and all actions permitted by law relative to the collection of taxes due to the State of Oregon or a political subdivision, including: (i) garnishing the Contractor’s compensation under

this Contract; or (ii) exercising a right of setoff against Contractor's compensation under this Contract for any amounts that may be due and unpaid to the State of Oregon or its political subdivisions for which the DOR collects debts;

- (4) The information shown in Section 5.a., "Contractor Information" above is Contractor's true, accurate and correct information;
- (5) To the best of the undersigned's knowledge, Contractor has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts;
- (6) Contractor and Contractor's employees and agents are not included on the list titled "Specially Designated Nationals" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at: <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>;
- (7) Contractor is not listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal procurement or Non-procurement Programs" currently found at: <https://www.sam.gov/portal/public/SAM/>;
- (8) Contractor is not subject to backup withholding because:
 - (a) Contractor is exempt from backup withholding;
 - (b) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends; or
 - (c) The IRS has notified Contractor that Contractor is no longer subject to backup withholding; and
- (9) Contractor Federal Identification Number (FEIN) or Social Security Number (SSN) provided is true and accurate. If this information changes, Contractor shall provide OHA with the new FEIN or SSN within 10 days.

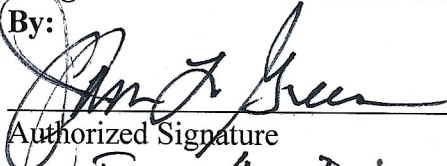
CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY ACKNOWLEDGES THAT CONTRACTOR HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

CONTRACTOR: YOU WILL NOT BE PAID FOR SERVICES RENDERED PRIOR TO NECESSARY STATE APPROVALS.

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

Oregon Association of Water Utilities, Inc.

By:



Authorized Signature
Executive Director

Title

Jason L. Green

Printed Name
07 September 2023

Date

State of Oregon, acting by and through its Oregon Health Authority

By:



Authorized Signature
Administrator

Title

Andre Ourso

Printed Name
9/13/2023

Date

Approved for Legal Sufficiency:

Approved by Jeff Wahl via email

Department of Justice
8/22/2023

Date

EXHIBIT A

Part 1 Statement of Work

1. Background

Contractor to provide assistance related to service line inventories to Community Water Systems (CWS) serving 10,000 people or fewer and non-profit Non-Transient Non-Community (NTNC) water systems. Assistance to be provided: i) training and outreach related to service line requirements, best practices and reporting requirements, and ii) individual assistance to public water systems (PWSs) in completing their service line inventories. Assistance provided to PWSs is strictly on a voluntary basis. General overview of these assistance is as follows:

- a. Development of training materials relevant to lead service line inventory process, best practices, etc.
- b. Training shall be tailored to Community and Non-Transient, Non-Community Water System needs. Provision of technical assistance and outreach to CWS and NTNC systems
- c. Prioritize all outreach to NTNC / small and disadvantaged systems
- d. Coordinate outreach with OHA and other LSL vendors to ensure efficient outreach (avoiding multiple contacts by vendors to same system, etc.).
- e. Monthly status reports to allow OHA to provide adequate oversight of outreach efforts and to allow us to intervene with unresponsive systems as we do with the Needs Survey
- f. No anticipated issues RE: statewide outreach

2. Deliverables Required from Contractor for technical assistance:

Contractor shall provide technical assistance related to service line inventories services of a short-term duration. For purposes of this Contract, “services of a short-term duration” means 6 hours or less of Contractor-provided services per identified problem without the prior, written approval of OHA.

- a. OHA will send out a notification to all NTNC and Community water systems introducing the vendors selected to provide assistance towards completing the LSL inventory. This letter will introduce each vendor selected to provide data collection assistance, training assistance, and technical assistance by name and by contact information. This information will also appear on the OHA Lead Service Line (LSL) inventory information website.
- b. Vendor will also provide introductory letter to systems assigned to them by OHA, advising assigned systems on how to contact vendor for technical assistance.
- c. Due to budgetary limitations for this Contract, vendor will prioritize their outreach efforts in the following descending order of priority: to water systems that serve fewer than 500 people, systems designated by OHA as being disadvantaged, Community water systems, and then NTNC water systems.

- d. For on-site technical assistance efforts, vendor is expected to make every possible effort to combine travel activities geographically to ensure that as many systems within the geographical area of travel are assisted per trip as possible.
- e. If the travel distance is longer than 3 hours, prior planning with OHA will be required to ensure to combine travel activities.
- f. Vendor will coordinate outreach with OHA by submitting monthly status reports to allow OHA to provide adequate oversight of outreach efforts. This will in turn allow OHA to intervene with unresponsive systems to ensure that all water systems receive information about the offer of assistance with the LSL inventory effort.

3. Deliverables Required from Contractor for training development and instruction:

- a. OHA will send out a notification to all NTNC and Community water systems introducing the vendors selected to provide assistance towards completing the LSL inventory. This letter will introduce each vendor selected to provide data collection assistance, training assistance, and technical assistance by name and by contact information. This information will also appear on the OHA Lead Service Line (LSL) inventory information website.
- b. Vendor will also provide introductory letter to systems advising them of the training content and how to access and participate in the training created for them.
- c. Vendor will also be available to water systems to answer technical questions related to the training materials.
- d. Due to budgetary limitations, live training events will not be offered as part of this Contract. Vendor will therefore develop materials that will be recorded and then hosted on the OHA Lead Service Line information website to provide relevant training for both NTNC and Community water systems to access on an on-demand basis.
- e. OHA prefers that vendor records said training but will consider alternative options for recording and posting the training.
- f. Vendor will coordinate outreach with OHA by submitting monthly status reports to allow OHA to provide adequate oversight of outreach efforts. This will in turn allow OHA to intervene with unresponsive systems to ensure that all water systems receive information about the offer of assistance with the LSL inventory effort.

4. Training and Outreach.

- a. Pre-recorded training provided by vendor shall be appropriate for community and non-transient non-community system needs and shall clearly explain the service line inventory regulatory requirements, refer to available OHA and EPA guidance materials, describe acceptable methods for completing service line inventories and review how to compile the inventory and to submit the results to OHA. Contractor, in coordination with OHA, shall provide outreach to water system

operators and representatives regarding training opportunities and available guidance.

5. Individual Technical Assistance

a. Contractor to provide both remote and in-person technical assistance to water systems operators. The assistance shall be appropriate for each water system's needs and shall clearly explain the service line inventory regulatory requirements, refer to available OHA and EPA guidance materials, describe acceptable methods for completing service line inventories and review how to compile the inventory and to submit the results to OHA. Contractor, in coordination with OHA, shall provide outreach to water system operators and representatives regarding training opportunities and available guidance.

b. Assistance With Record Review and Compilation.

Obtaining the historical information from several sources will aid in the development of an accurate inventory. Listed below are items and information for the PWS to review for the initial inventory. PWSs are expected to compile as much existing information as is readily available. Contractor assistance, as needed, may include providing a checklist to PWS, assisting with records searches and compilation and review of available information:

- (1) Determine the location and ownership of the service lines in the PWS: entire line public (PWS), entire line private (customer), or combination.
- (2) Determine if there is any local ordinance relating to use of lead in plumbing materials, and its effective date.
- (3) Identify service lines installed after Oregon prohibitions on use of lead in distribution piping and plumbing were adopted in 1985. Tax assessor records may be useful to identify age of structures.
- (4) Review system tap cards, which have significant information. Determine if they are available and have been maintained over time. The card typically has the meter replacement date, is listed by address or another unique identifier, and may list building usage (single-family residence, multi-family residence, K-12 school, child daycare, or business).
- (5) Review private side records, if applicable, such as a permitting process or other process where records were returned to the PWS of work done on the private side of the service line.
- (6) Review water main construction and replacement records, including dates of current water mains. Examples: In specific replacement projects were the service lines wholly replaced, partially replaced, or is that not known? Was there a standard practice of replacing the entire service line when a main

was replaced? Are there any standard operating practices that would reliably inform service line composition? Would a newly constructed building be connected to an existing service line?

(7) Review capital improvement projects over the years to determine if certain areas had work done that affected the service lines.

(8) Data from the 1991 Lead and Copper Rule (LCR):

(a) Review the initial LCR Materials Inventory and any updates, which may indicate areas with lead service lines or areas where service lines were replaced.

(b) Review any other distribution system inspection records or studies, such as leak studies, which may have reviewed service line composition.

c. Strategy for Identifying Unknowns.

Contractor shall assist PWS, as needed, in developing a strategy to identify unknown service line materials using guidance from OHA and EPA Examples of acceptable methods include but are not limited to physical verification and documentation of material type based on field inspection. Physical verification of a statistical subset of service lines is allowed following OHA guidance.

6. Reporting

Contractor shall assist PWS, as needed, in summarizing service line inventory results on a report form or spreadsheet prescribed by OHA. Contractor shall submit the summary electronically to OHA no later than October 16, 2024.

7. Updates to Initial Inventory.

Contractor shall assist PWS, as needed, with updates to the initial inventory, including verification of unknown service line materials using methods and techniques acceptable to OHA.

8. Monthly Reporting

Contractor shall submit to OHA a monthly progress report which includes, at a minimum, the following:

- a.** A summary of work performed during the reporting period, including, as applicable:
 - (1) Any training materials developed, and training events conducted;
 - (2) PWS contacts made and assistance with inventories provided;
 - (3) PWS inventories completed; and
 - (4) A summary of inventories that have complications and/or need additional work.
- b.** An invoice for the hours worked during the period identified in the monthly progress report.

9. Final Summary Report.

Contractor shall submit to OHA a final summary report which must include, at a minimum, the following:

- a. Summary of work performed;
- b. Summary of “lessons learned”;
- c. Final summary of all inventories,
- d. Confirmation that all electronic copies of all final inventories and all associated documentation files that were submitted to OHA are complete; and
- e. Other information as requested by OHA.

7. Conflict of Interest. Except with OHA’s prior written consent, Contractor shall not engage in any activity, or accept any employment, interest or contribution that would, or would reasonably appear to, compromise Contractor’s professional judgment with respect to this Contract services, including, without limitation, concurrent employment on any project in direct competition with the Contract services.

8. Specifications or Performance Standards.

OHA requires that the Contractor meets the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services.

EXHIBIT A

Part 2 Payment and Financial Reporting

1. Payment Provisions

OHA shall compensate Contractor for the performance of Services set forth in **Exhibit A**, as follows:

- a. The Contractor will be compensated at an hourly rate of \$150.00 for a maximum duration of 6 hours (\$900.00) per water system. Additional hours may be authorized and approved by the OHA Drinking Water Services Project Manager on a case-by-case basis. Travel time is considered separately from assistance hours, and travel time will be compensated at the same \$150.00 hourly rate.
- b. Contractor shall not submit invoices for, and OHA will not pay, any amount in excess of the maximum, not to exceed amount payable under this Contract. If this amount is increased by Contract amendment, the amendment must be effective before Contractor performs Services subject to the amendment. Contractor shall notify OHA's Representative identified in this Contract in writing of the expiration of the Contract, thirty (30) days prior to such expiration. No payment will be made for any Services performed prior to the Effective Date or after the expiration date of the Contract.
- c. Contractor shall **timely** submit monthly invoices for Services performed. To be processed for payment by OHA, invoices must be received within 90 days of the end of the month in which the services were provided., and must include the following basic information:
 - (1) OHA Contract #180552-0
 - (2) The correct name of OHA's authorized representative
 - (3) Invoice date
 - (4) Date range during which the Services being invoiced for were provided
 - (5) Invoice number that ends in a "— ##", which represents the correct invoice sequence of issue. The last invoice submitted on the Project must be clearly labeled "Final Invoice"
 - (6) Original Contract total, not to exceed amount:
 - (7) Paid to date amounts showing the amounts submitted for prior to the current invoice (regardless of payment status)
 - (8) Amounts being invoiced for in the current invoice, with a roll up of a "Total Amount Billed For This Invoice" line item amount
 - (9) Balances Remaining after receipt of payment for the current invoice

Contractor shall describe all Services performed with particularity and by whom it was performed and shall itemize and explain all expenses for which reimbursement is claimed.

- d. Contractor shall send invoices via email to OHA's Contract Administrator identified on Page 1 of this Contract, using the following address:
anthony.j.fields@oha.oregon.gov
- e. OHA shall have the right to reject any invoice which does not have the proper information as required by this section without incurring penalty liabilities for late payment.
- f. Contractor's claims to OHA for overdue payments on invoices are subject to ORS 293.462.
- g. OHA and Contractor agree in accordance with the terms and conditions of this Contract that, if the scope of the Project or the Services are changed materially, Contractor shall request in writing an amendment to the Contract before additional Services are provided and before compensation is adjusted. All legally required approvals must be obtained for any Contract amendment before the amendment is effective and before Services may be performed or payment made under the amendment.

2. Travel Expenses:

Contractor will be compensated for travel time at \$150.00 per hour. There will not be any other reimbursement for travel expenses.

EXHIBIT A

Part 3 Special Provisions

1. Confidentiality of Information.

a. Client Information:

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

background check requirements defined in IRS Publication 1075;

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

b. Non-Client Information:

- (1) Each Party acknowledges that it and any of its officers, directors, employees and agents may, in the course of performing its responsibilities under the Contract, be exposed to or acquire information that is confidential to the other Party. To the extent permitted by law, any and all information of any form provided to a Party or its officers, directors, employees and agents in the performance of the Contract that reasonably could at the time of its disclosure be understood to be confidential shall be deemed to be confidential information of the originating Party (“Confidential Non-Client Information”).

- (2) Confidential Non-Client Information shall be deemed not to include information that:
- (a) Is or becomes (other than by disclosure by the Party acquiring such information) publicly known or is contained in a publicly available document except to the extent applicable law still restricts disclosure;
 - (b) Is furnished by the originating Party to others without restrictions similar to those imposed on the receiving Party under the Contract;
 - (c) Is rightfully in the receiving Party's possession without the obligation of nondisclosure prior to the time of its disclosure by the originating Party under the Contract;
 - (d) Is obtained from a source other than the originating Party without the obligation of confidentiality;
 - (e) Is disclosed with the written consent of the originating Party; or
 - (f) Is independently developed by the receiving Party's officers, directors, employees and agents who can be shown to have had no access to the Confidential Non-Client Information.
- (3) Nondisclosure. The receiving Party shall hold all Confidential Non-Client Information in strict confidence, using at least the same degree of care that it uses in maintaining the confidentiality of its own confidential information; and shall not sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Non-Client Information to third parties; shall not use Confidential Non-Client Information for any purposes whatsoever other than as contemplated by this Contract or reasonably related thereto; and shall advise any of its officers, directors, employees and agents that receive or have access to the Confidential Non-Client Information of their obligations to keep Confidential Non-Client Information confidential. These confidentiality obligations do not restrict disclosure of information otherwise qualifying as Confidential Non-Client Information if the receiving Party can show that either of the following conditions exists: (i) the information was disclosed in response to a subpoena or court order duly issued in a judicial or legislative process, in which case the receiving Party shall notify the originating Party of the subpoena five days prior to the disclosure, unless such notice could not reasonably be given; or (ii) the disclosure was required to respond to a request for the information made under the Oregon Public Records Law, ORS 192.311 to 192.478. The receiving Party shall notify the originating Party of a public records request five days prior to the disclosure.
- c. Upon request and pursuant to the instructions of OHA, Contractor shall return or destroy all copies of Confidential Information, and Contractor shall certify in writing the return or destruction of all Confidential Information.
 - d. "Client" means any individual, family or provider:

- (1) For whom OHA must provide Services and incidental or specialized Goods, in any combination thereof (“Services and Incidental Supplies”), according to state, federal law, rule, and policy. Those Services and Incidental Supplies include but are not limited to treatment, care, protection, and support without regard to the proximity of the services being provided;
- (2) Who in fact receives and utilizes services provided by OHA primarily for that individual's or family's benefit;
- (3) Who is under the custody, care, or both of OHA; or
- (4) Who provides direct care or Services and is a proxy or representative of the non-provider Client.

2. Amendments.

- a.** Subject to Section 2.c. below, OHA reserves the right to amend or extend the Contract under the following general circumstances:
 - (1) OHA may extend the Contract for additional periods of time up to a total Contract period of 5 years, and for additional money associated with the extended period(s) of time. The determination for any extension for time may be based on OHA’s satisfaction with performance of the work or services provided by the Contractor under this Contract.
 - (2) OHA may periodically amend any payment rates throughout the life of the Contract proportionate to increases in Portland Metropolitan Consumer Price Index; and to provide Cost Of Living Adjustments (COLA) if OHA so chooses. Any negotiation of increases in rates to implement a COLA will be as directed by the Oregon State Legislature. In addition, OHA may periodically amend any payment rates throughout the life of the Contract to meet current market conditions.
- b.** OHA further reserves the right to amend the Statement of Work based on the original scope of work of RFP #5396 for the following:
 - (1) Programmatic changes, additions or modifications deemed necessary to accurately reflect the original scope of work that may not have been expressed in the original Contract or previous amendments to the Contract;
 - (2) Implement additional phases of the Work; or
 - (3) As necessitated by changes in Code of Federal Regulations, Oregon Revised Statutes, or Oregon Administrative Rules, which, in part or in combination, govern the provision of services provided under this Contract.
- c.** Upon identification, by any party to this Contract, of any circumstance which may require an amendment to this Contract, the parties may enter into negotiations regarding the proposed modifications. Any resulting amendment must be in writing and be signed by all parties to the Contract before the modified or additional provisions are binding on either party. All amendments must comply

with Exhibit B, “Standard Terms and Conditions”, Section 24. “Amendments; Waiver; Consent.” of this Contract.

3. Nondiscrimination.

- a.** The Contractor must provide services to OHA clients without regard to race, religion, national origin, sex, age, marital status, sexual orientation or disability (as defined under the Americans with Disabilities Act). Contracted services must reasonably accommodate the cultural, language, and other special needs of clients.
- b.** Contractor certifies that Contractor has a written policy and practice that meets the requirements described in ORS 279A.112 for preventing sexual harassment, sexual assault, and discrimination against employees who are members of a protected class. Contractor agrees, as a material term of this Contract, to maintain such policy and practice in force during the entire Contract term.
- c.** As required by ORS 279B.235, Contractor must comply with ORS 652.220 and shall not unlawfully discriminate against any of Contractor’s employees in the payment of wages or other compensation for work of comparable character on the basis of an employee’s membership in a protected class. “Protected class” means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability, or age. Contractor’s compliance with this Section constitutes a material element of this Contract and a failure to comply constitutes a breach that entitles OHA to terminate this Contract for cause.
- d.** Contractor may not prohibit any of Contractor’s employees from discussing the employee’s rate of wage, salary, benefits, or other compensation with another employee or another person. Contractor may not retaliate against an employee who discusses the employee’s rate of wage, salary, benefits, or other compensation with another employee or another person.

4. Compliance with Executive Order (EO) 21-29:

- a.** For purposes of this Section, capitalized words are defined in EO 21-29, as amended, https://www.oregon.gov/gov/Documents/executive_orders/eo_21-29.pdf or as defined in the “Executive Order 21-29 Vaccination Requirements for State Contractors Frequently Asked Questions”, as amended, found at https://www.oregon.gov/das/Procurement/Documents/ExecutiveOrder21-29_ContractorFAQ.pdf.
- b.** Contractor shall comply with EO 21-29. Contractor certifies that for the term of the Contract or the duration of EO-21-29, whichever expires or terminates first, each Worker who provides goods and services at an Executive Branch Worksite is Fully Vaccinated against COVID-19 unless an exception under paragraph 6 of EO 21-29 applies. Contractor shall maintain in its records Proof of Vaccination or permitted exceptions under section 6 of EO 21-29 for such Workers providing goods and services at an Execution Branch Worksite. Contractor shall provide written certification of its compliance with EO 21-29 on request of the State. The State reserves the right to request the documentation supporting Contractor’s

certification. Any violation of this Section constitutes a material breach of this Contract entitling OHA to terminate this Contract for cause.

5. Health Equity Requirements

People in Oregon recognize that systemic racism and historical and contemporary injustices have led to health inequities in the state. Environmental threats like wildfire and smoke disproportionately impact communities of color, tribal communities, persons with physical, developmental and intellectual disabilities, persons living in congregate care and low-income communities. Complex public health problems require a nimble, community-based, and equity centered public health system. Without this system, Oregon risks its public health resilience, response and recovery, and future health threats will continue to exacerbate health inequities.

Pursuant to the Public Health Modernization Plan to eliminate health disparities by 2030, Contractor shall prioritize services to communities of color, tribal communities and low-income communities.

Additional information regarding the Public Health Modernization Plan to eliminate health disparities by 2030 can be accessed at the Public Health Modernization website: <https://www.oregon.gov/OHA/PH/About/TaskForce/Pages/index.aspx>, and also by reviewing the Public Health Modernization Plan brochure located here: <https://www.oregon.gov/oha/PH/ABOUT/TASKFORCE/Documents/Public-Health-Modernization-overview-January-2021.pdf>

EXHIBIT B

Standard Terms and Conditions

1. **Governing Law, Consent to Jurisdiction.** This Contract 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 OHA or any other agency or department of the State of Oregon, or both, and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of the jurisdiction of any court or of any form of defense to or immunity from any Claim, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum. This Section shall survive expiration or termination of this Contract.
2. **Compliance with Law.** Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to Contractor and the Contract. OHA's performance under the Contract is conditioned upon Contractor's compliance with the obligations of contractors under ORS 279B.220, 279B.230 and 279B.235, which are incorporated by reference herein. This Section shall survive expiration or termination of this Contract.
3. **Independent Contractor.**
 - a. Contractor is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.
 - b. If Contractor is currently performing work for the State of Oregon or the federal government, Contractor by signature to this Contract, represents and warrants that Contractor's Work to be performed under this Contract creates no potential or actual conflict of interest as defined by ORS Chapter 244 and that no statutes, rules or regulations of the State of Oregon or federal agency for which Contractor currently performs work would prohibit Contractor's Work under this Contract. If compensation under this Contract is to be charged against federal funds, Contractor certifies that it is not currently employed by the federal government.
 - c. Contractor is responsible for all federal and state taxes applicable to compensation paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, OHA will not withhold from such compensation any amounts to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation paid to Contractor under this Contract, except as a self-employed individual.

- d. Contractor shall perform all Work as an Independent Contractor, as defined in ORS 670.600. OHA reserves the right (i) to determine and modify the delivery schedule for the Work, and (ii) to evaluate the quality of the Work Product, however, OHA may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work.

4. Representations and Warranties.

- a. **Contractor's Representations and Warranties.** Contractor represents and warrants to OHA that:

- (1) Contractor has the power and authority to enter into and perform this Contract;
- (2) The obligations set forth in this Contract, when executed and delivered, shall be valid and binding obligations of the Contractor enforceable in accordance with its terms;
- (3) Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with the highest standards prevalent in Contractor's industry, trade or profession;
- (4) Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; and
- (5) Contractor prepared its proposal related to this Contract, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.

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

5. Time is of the Essence. Contractor agrees that time is of the essence under this Contract.

6. Funds Available and Authorized; Payments.

- a. Contractor shall not be compensated for Work performed under this Contract by any other agency or department of the State of Oregon or the federal government. OHA certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Contract within OHA's current biennial appropriation or limitation. Contractor understands and agrees that OHA's payment for Work performed is contingent on OHA receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow OHA, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract.
- b. **Payment Method.** Payments under this Contract will be made by Electronic Funds Transfer (EFT). Upon request, Contractor shall provide its taxpayer identification number (TIN) and other necessary banking information to receive EFT payment. Contractor shall maintain at its own expense a single financial

institution or authorized payment agent capable of receiving and processing EFT using the Automated Clearing House (ACH) transfer method. The most current designation and EFT information will be used for all payments under this Contract. Contractor shall provide this designation and information on a form provided by OHA. In the event that EFT information changes or the Contractor elects to designate a different financial institution for the receipt of any payment made using EFT procedures, the Contractor shall provide the changed information or designation to OHA on an OHA-approved form. OHA is not required to make any payment under this Contract until receipt of the correct EFT designation and payment information from the Contractor.

7. **Recovery of Overpayments.** IF BILLINGS UNDER THIS CONTRACT, OR UNDER ANY OTHER CONTRACT BETWEEN CONTRACTOR AND OHA, RESULT IN PAYMENTS TO CONTRACTOR TO WHICH CONTRACTOR IS NOT ENTITLED, OHA, AFTER GIVING WRITTEN NOTIFICATION TO CONTRACTOR, MAY WITHHOLD FROM PAYMENTS DUE TO CONTRACTOR SUCH AMOUNTS, OVER SUCH PERIODS OF TIME, AS ARE NECESSARY TO RECOVER THE AMOUNT OF THE OVERPAYMENT, UNLESS CONTRACTOR PROVIDES A WRITTEN OBJECTION WITHIN 14 CALENDAR DAYS FROM THE DATE OF THE NOTICE. ABSENT TIMELY WRITTEN OBJECTION, CONTRACTOR HEREBY REASSIGNS TO OHA ANY RIGHT CONTRACTOR MAY HAVE TO RECEIVE SUCH PAYMENTS. IF CONTRACTOR PROVIDES A TIMELY WRITTEN OBJECTION TO OHA'S WITHHOLDING OF SUCH PAYMENTS, THE PARTIES AGREE TO CONFER IN GOOD FAITH REGARDING THE NATURE AND AMOUNT OF THE OVERPAYMENT IN DISPUTE AND THE MANNER IN WHICH THE OVERPAYMENT IS TO BE REPAID. OHA RESERVES ITS RIGHT TO PURSUE ANY OR ALL OF THE REMEDIES AVAILABLE TO IT UNDER THIS CONTRACT AND AT LAW OR IN EQUITY INCLUDING OHA'S RIGHT TO SETOFF.

8. **Ownership of Work Product.**

- a. **Definitions.** As used in this Section 8, and elsewhere in this Contract, the following terms have the meanings set forth below:
- (1) "Contractor Intellectual Property" means any intellectual property owned by Contractor and developed independently from the Work.
 - (2) "Third Party Intellectual Property" means any intellectual property owned by parties other than OHA or Contractor.
 - (3) "Work Product" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein that Contractor is required to deliver to OHA pursuant to the Work.
- b. **Original Works.** All Work Product created by Contractor pursuant to the Work, including derivative works and compilations, and whether or not such Work Product is considered a "work made for hire," shall be the exclusive property of OHA. OHA and Contractor agree that all Work Product is "work made for hire"

of which OHA is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created pursuant to the Work is not “work made for hire,” Contractor hereby irrevocably assigns to OHA any and all of its rights, title, and interest in all original Work Product created pursuant to the Work, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon OHA's reasonable request, Contractor shall execute such further documents and instruments necessary to fully vest such rights in OHA. Contractor forever waives any and all rights relating to original Work Product created pursuant to the Work, including without limitation, any and all rights arising under 17 U.S.C. §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

- c. In the event that Work Product is Contractor Intellectual Property, a derivative work based on Contractor Intellectual Property or a compilation that includes Contractor Intellectual Property, Contractor hereby grants to OHA an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display Contractor Intellectual Property and the pre-existing elements of the Contractor Intellectual Property employed in the Work Product, and to authorize others to do the same on OHA's behalf.
- d. In the event that Work Product is Third Party Intellectual Property, a derivative work based on Third Party Intellectual Property or a compilation that includes Third Party Intellectual Property, Contractor shall secure on OHA's behalf and in the name of OHA an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property and the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, and to authorize others to do the same on OHA's behalf.

9. Indemnity.

- a. CONTRACTOR SHALL DEFEND (SUBJECT TO ORS CHAPTER 180), SAVE, HOLD HARMLESS, AND INDEMNIFY THE STATE OF OREGON AND OHA AND THEIR OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER, INCLUDING ATTORNEYS FEES, RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ACTIVITIES OF CONTRACTOR OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS CONTRACT.
- b. **INDEMNITY FOR INFRINGEMENT CLAIMS.** WITHOUT LIMITING THE GENERALITY OF SECTION 9.a. ABOVE, CONTRACTOR EXPRESSLY AGREES TO DEFEND, INDEMNIFY, AND HOLD OHA, THE STATE OF OREGON AND THEIR AGENCIES, SUBDIVISIONS, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES HARMLESS FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, LOSSES, LIABILITIES, COSTS,

EXPENSES, INCLUDING ATTORNEYS FEES, AND DAMAGES ARISING OUT OF OR RELATED TO ANY CLAIMS THAT THE WORK, THE WORK PRODUCT OR ANY OTHER TANGIBLE OR INTANGIBLE ITEMS DELIVERED TO OHA BY CONTRACTOR THAT MAY BE THE SUBJECT OF PROTECTION UNDER ANY STATE OR FEDERAL INTELLECTUAL PROPERTY LAW OR DOCTRINE, OR OHA'S USE THEREOF, INFRINGES ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, TRADE DRESS, MASK WORK, UTILITY DESIGN, OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY; PROVIDED, THAT THE STATE OF OREGON SHALL PROVIDE CONTRACTOR WITH PROMPT WRITTEN NOTICE OF ANY INFRINGEMENT CLAIM.

THIS SECTION SHALL SURVIVE EXPIRATION OR TERMINATION OF THIS CONTRACT.

10. Default; Remedies; Termination.

a. Default by Contractor. Contractor shall be in default under this Contract if:

- (1) Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or
- (2) Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under the Contract and Contractor has not obtained such license or certificate within 14 calendar days after OHA's notice or such longer period as OHA may specify in such notice; or
- (3) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Contractor's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within 14 calendar days after OHA's notice, or such longer period as OHA may specify in such notice; or
- (4) Contractor failed to comply with the tax laws of this state or a political subdivision of this state before the Contractor executed this Contract or fails to comply with the tax laws of this state or a political subdivision of this state during the term of this Contract.

b. OHA's Remedies for Contractor's Default. In the event Contractor is in default under Section 10.a. above, OHA may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to:

- (1) termination of this Contract under Section 10.e.(2) below;
- (2) withholding all monies due for Work and Work Products that Contractor has failed to deliver within any scheduled completion dates or has performed inadequately or defectively;

- (3) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief; or
- (4) exercise of its right of recovery of overpayments under Section 7., “Recovery of Overpayment”, of this Exhibit B.

These remedies are cumulative to the extent the remedies are not inconsistent, and OHA may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If a court determines that Contractor was not in default under Section 10.a. above, then Contractor shall be entitled to the same remedies as if this Contract was terminated pursuant to Section 10.e.(1) below.

- c. **Default by OHA.** OHA shall be in default under this Contract if OHA commits any material breach or default of any covenant, warranty, or obligation under this Contract, and such breach or default is not cured within 30 calendar days after Contractor's notice or such longer period as Contractor may specify in such notice.
- d. **Contractor's Remedies for OHA's Default.** In the event OHA terminates the Contract under Section 10.e.(1) below, or in the event OHA is in default under Section 10.c. above, and whether or not Contractor elects to exercise its right to terminate the Contract under Section 10.e.(3) below, Contractor's sole monetary remedy shall be: (i) with respect to Work compensable at a stated rate, a claim for unpaid invoices, time worked within any limits set forth in this Contract but not yet invoiced, authorized expenses incurred and interest within the limits permitted under ORS 293.462, and (ii) with respect to deliverable-based Work, a claim for the sum designated for completing the deliverable multiplied by the percentage of Work completed and accepted by OHA, less previous amounts paid and any claim(s) that OHA has against Contractor. In no event shall OHA be liable to Contractor for any expenses related to termination of this Contract or for anticipated profits. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section 10.d., Contractor shall immediately pay any excess to OHA upon written demand. If Contractor does not immediately pay the excess, OHA may recover the overpayments in accordance with Section 7., “Recovery of Overpayments”, and may pursue any other remedy that may be available to it.
- e. **Termination.**
 - (1) **OHA's Right to Terminate at its Discretion.** At its sole discretion, OHA may terminate this Contract:
 - (a) For its convenience upon 30 days' prior written notice by OHA to Contractor;
 - (b) Immediately upon written notice if OHA fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for the Work or Work Products;
 - (c) Immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that OHA's purchase of the Work or Work Products under this

Contract is prohibited, or OHA is prohibited from paying for such Work or Work Products from the planned funding source; or

(d) Immediately upon written notice to Contractor if there is a threat to the health, safety, or welfare of any OHA client or recipient of services under this Contract, including any Medicaid Eligible Individual, under its care.

(2) OHA's Right to Terminate for Cause. In addition to any other rights and remedies OHA may have under this Contract, OHA may terminate this Contract immediately upon written notice to Contractor, or at such later date as OHA may establish in such notice, if Contractor is in default under Section 10.a. above.

(3) Contractor's Right to Terminate for Cause. Contractor may terminate this Contract upon 30 days written notice to OHA, or at such later date as Contractor may establish in such notice, if OHA is in default under Section 10.c. above, and OHA fails to cure such default within 30 calendar days after OHA receives Contractor's notice or such longer period as Contractor may specify in such notice.

(4) Mutual Termination. The Contract may be terminated immediately upon mutual written consent of the parties or at such other time as the parties may agree in the written consent.

(5) Return of Property. Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to OHA all of OHA's property that is in the possession or under the control of Contractor at that time. This Section 10.e.(5) survives the expiration or termination of this Contract.

(6) Effect of Termination: Upon receiving a notice of termination of this Contract, or upon issuing a notice of termination to OHA, Contractor shall immediately cease all activities under this Contract, unless in a notice issued by OHA, OHA expressly directs otherwise.

11. Stop-Work Order. OHA may, at any time, by written notice to the Contractor, require the Contractor to stop all, or any part of the work required by this Contract for a period of up to 90 days after the date of the notice, or for any further period to which the parties may agree through a duly executed amendment. Upon receipt of the notice, Contractor shall immediately comply with the Stop-Work Order terms and take all necessary steps to minimize the incurrence of costs allocable to the Work affected by the stop work order notice. Within a period of 90 days after issuance of the written notice, or within any extension of that period to which the parties have agreed, OHA shall either:

- a. Cancel or modify the stop work order by a supplementary written notice; or
- b. Terminate the work as permitted by either the Default or the Convenience provisions of Section 10., "Default; Remedies; Termination."

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

12. **Limitation of Liabilities.** EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTION 9., "INDEMNITY", NEITHER PARTY SHALL BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS CONTRACT.
13. **Insurance.** Contractor shall maintain insurance as set forth in Exhibit C, attached hereto.
14. **Records Maintenance, Access.** Contractor shall maintain all financial records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records, books, documents, papers, plans, records of shipments and payments, and writings of Contractor, whether in paper, electronic or other form, that are pertinent to this Contract, in such a manner as to clearly document Contractor's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments, and writings of Contractor, whether in paper, electronic or other form, that are pertinent to this Contract, are collectively referred to as "Records." Contractor acknowledges and agrees that OHA, the Secretary of State's Office, and the federal government, and their duly authorized representatives shall have access to all Records to perform examinations and audits, and to make excerpts and transcripts. Contractor shall retain and keep accessible all Records for the longest of:
 - a. Six years following final payment and termination of this Contract;
 - b. The period as may be required by applicable law, including the records retention schedules set forth in OAR Chapter 166; or
 - c. Until the conclusion of any audit, controversy or litigation arising out of or related to this Contract.
15. **Information Privacy/Security/Access.** If the Work performed under this Contract requires Contractor or, when allowed, its subcontractor(s), to have access to or use of any OHA computer system or other OHA Information Asset for which OHA imposes security requirements, and OHA grants Contractor or its subcontractor(s) access to such OHA Information Assets or Network and Information Systems, Contractor shall comply and require all subcontractor(s) to which such access has been granted to comply with OAR 943-014-0300 through 943-014-0320, as such rules may be revised from time to time. For purposes of this Section, "Information Asset" and "Network and Information System" have the meaning set forth in OAR 943-014-0305, as such rule may be revised from time to time.
16. **Force Majeure.** No party is responsible for delay or default caused by an event beyond its reasonable control. OHA may terminate this Contract, without liability to Contractor, upon written notice after reasonably determining the delay or default reasonably prevents performance of this Contract.
17. **Foreign Contractor.** If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract.

18. **Subcontracts; Assignment; Successors.** Contractor shall not assign, transfer, or subcontract rights or responsibilities under this Contract, in whole or in part, without the prior written approval of OHA. This Contract's provisions are binding upon and inure to the benefit of the parties to this Contract and their respective successors and assigns.
19. **No Third Party Beneficiaries.** OHA and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract. This Section shall survive expiration or termination of this Contract.
20. **Severability.** The parties agree that if any term or provision of this Contract 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 Contract did not contain the particular term or provision held to be invalid. This Section shall survive expiration or termination of this Contract.
21. **Notice.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, fax, or mailing the same, postage prepaid to Contractor or OHA at the address or number set forth in this Contract, or to such other addresses or numbers as either party may indicate pursuant to this Section. Any communication or notice so addressed and mailed by regular mail shall be deemed received and effective five days after the date of mailing. Any communication or notice delivered by fax shall be deemed received and effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the recipient, or on the next business day if transmission was outside normal business hours of the recipient. Notwithstanding the foregoing, to be effective against the other party, any notice transmitted by fax must be confirmed by telephone notice to the other party. Any communication or notice given by personal delivery shall be deemed effective when actually delivered to the addressee.

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

This Section shall survive expiration or termination of this Contract.

22. **Headings.** The headings and captions to sections of this Contract have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret this Contract.
23. **Merger Clause.** This Contract constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, regarding this Contract not specified herein.

- 24. Amendments; Waiver; Consent.** OHA may amend this Contract to the extent provided herein, the solicitation document, if any from which this Contract arose, and to the extent permitted by applicable statutes and administrative rules. No amendment, waiver, or other consent under this Contract shall bind either party unless it is in writing and signed by both parties and when required, the Department of Justice. Such amendment, waiver, or consent shall be effective only in the specific instance and for the specific purpose given. The failure of either party to enforce any provision of this Contract shall not constitute a waiver by that party of that or any other provision. This Section shall survive the expiration or termination of this Contract.
- 25. Contractor's Failure to Perform.** Contractor's failure to perform the statement of work specified in this Contract, or to meet the performance standards established in this Contract, may result in consequences that include, but are not limited to:
- a.** Reducing or withholding payment under this Contract;
 - b.** Requiring Contractor to perform at Contractor's expense additional work necessary to perform the statement of work or meet performance standards; or
 - c.** Declaring a default of this Contract and pursuing any available remedies for default, including termination of the Contract as permitted in Section 10., "Default; Remedies; Termination", of this Contract.

EXHIBIT C

Insurance Requirements

Contractor shall obtain at Contractor's expense the insurance specified in this Exhibit C prior to performing under this Contract and shall maintain it in full force and at its own expense throughout the duration of this Contract, as required by any extended reporting period or continuous claims made coverage requirements, and all warranty periods that apply. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Agency. Coverage shall be primary and non-contributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers' Compensation. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

WORKERS' COMPENSATION & EMPLOYERS' LIABILITY

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements. If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If Contractor is an employer subject to any other state's workers' compensation law, Contractor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

COMMERCIAL GENERAL LIABILITY:

Required

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this contract, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than \$3,000,000 per occurrence. Annual aggregate limit shall not be less than \$5,000,000.

AUTOMOBILE LIABILITY INSURANCE:

Required

Automobile Liability Insurance covering Contractor's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$5,000,000 for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Use of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

PROFESSIONAL LIABILITY:

Required

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

EXCESS/UMBRELLA INSURANCE:

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

ADDITIONAL INSURED:

All liability insurance, except for Workers' Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Contract must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 07 04 or equivalent.

WAIVER OF SUBROGATION:

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

CONTINUOUS CLAIMS MADE COVERAGE:

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

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

CERTIFICATE(S) AND PROOF OF INSURANCE:

Contractor shall provide to Agency Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an

endorsed Additional Insured. The Certificate(s) shall also include all required endorsements or copies of the applicable policy language effecting coverage required by this Contract. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance Agency has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Contract.

NOTICE OF CHANGE OR CANCELLATION:

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

INSURANCE REQUIREMENT REVIEW:

Contractor agrees to periodic review of insurance requirements by Agency under this Contract and to provide updated requirements as mutually agreed upon by Contractor and Agency.

STATE ACCEPTANCE:

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

EXHIBIT D

Federal Terms and Conditions

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

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

all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section.

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

- f.** No part of any federal funds paid to Contractor under this Contract shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the United States Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.
 - g.** The prohibitions in subsections (e) and (f) of this section shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.
 - h.** No part of any federal funds paid to Contractor under this Contract may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under Section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance of that federally sponsored clinical trials are being conducted to determine therapeutic advantage.
- 6. Resource Conservation and Recovery.** Contractor shall comply and require all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 U.S.C. 6901 et. seq.). Section 6002 of that Act (codified at 42 U.S.C. 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.
- 7. Audits.**
- a.** Contractor shall comply, and require all subcontractors to comply, with applicable audit requirements and responsibilities set forth in this Contract and applicable state or federal law.
 - b.** If Contractor expends \$750,000 or more in federal funds (from all sources) in a fiscal year, Contractor shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR Subtitle B with guidance at 2 CFR Part 200. Copies of all audits must be submitted to OHA within 30 days of completion. If Contractor expends less than \$750,000 in a fiscal year, Contractor is exempt from Federal audit requirements for that year. Records must be available as provided in Exhibit B, “Records Maintenance, Access”.
- 8. Debarment and Suspension.** Contractor shall not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration’s “List of Parties Excluded from Federal Procurement or

Nonprocurement Programs” in accordance with Executive Orders No. 12549 and No. 12689, “Debarment and Suspension”. (See 2 CFR Part 180.) This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Subcontractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

9. **Pro-Children Act.** Contractor shall comply and require all subcontractors to comply with the Pro-Children Act of 1994 (codified at 20 U.S.C. Section 6081 et. seq.).
10. **Medicaid Services. [reserved]**
11. **Agency-based Voter Registration.** If applicable, Contractor shall comply with the Agency-based Voter Registration sections of the National Voter Registration Act of 1993 that require voter registration opportunities be offered where an individual may apply for or receive an application for public assistance.
12. **Disclosure. [reserved]**
13. **Federal Intellectual Property Rights Notice.** The federal funding agency, as the awarding agency of the funds used, at least in part, for the Work under this Contract, may have certain rights as set forth in the federal requirements pertinent to these funds. For purposes of this subsection, the terms “grant” and “award” refer to funding issued by the federal funding agency to the State of Oregon. The Contractor agrees that it has been provided the following notice:
 - a. The federal funding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the Work, and to authorize others to do so, for Federal Government purposes with respect to:
 - (1) The copyright in any Work developed under a grant, subgrant or contract under a grant or subgrant; and
 - (2) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.
 - b. The parties are subject to applicable federal regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.”
 - c. The parties are subject to applicable requirements and regulations of the federal funding agency regarding rights in data first produced under a grant, subgrant or contract under a grant or subgrant.
14. **Super Circular Requirements.** 2 CFR Part 200, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, including but not limited to the following:
 - a. **Property Standards.** 2 CFR 200.313, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, which generally

describes the required maintenance, documentation, and allowed disposition of equipment purchased with federal funds.

- b. Procurement Standards.** When procuring goods or services (including professional consulting services), applicable state procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C or 2 CFR §§ 200.318 through 200.326, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, as applicable.
 - c. Contract Provisions.** The contract provisions listed in 2 CFR Part 200, Appendix II, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, that are hereby incorporated into this Exhibit, are, to the extent applicable, obligations of Contractor, and Contractor shall also include these contract provisions in its contracts with non-Federal entities.
- 15. Federal Whistleblower Protection.** Contractor shall comply, and ensure the compliance by subcontractors or subgrantees, with 41 U.S.C. 4712, Enhancement of contractor protection from reprisal for disclosure of certain information.



Contract Number 180551

**STATE OF OREGON
PERSONAL/PROFESSIONAL SERVICES CONTRACT**

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

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

**120 Water Audit, Inc.
50 South Elm Street
Zionsville, IN 46077
Attention: Paul Schuler
Telephone: 317-501-3188
E-mail address: paul.schuler@120water.com**

hereinafter referred to as “Contractor.”

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

**OHA Public Health Division
Center for Health Protection, Drinking Water Services
800 NE Oregon Street, Suite 640
Portland, OR 97232
Contract Administrator: Anthony J. Fields or delegate
Telephone: 971-673-2269 or 503-752-8229
E-mail address: anthony.j.fields@oha.oregon.gov**

1. Effective Date and Duration.

This Contract shall become effective on the date this Contract has been fully executed by every party and, when required, approved by Department of Justice or on **July 1, 2023**, whichever date is later. Unless extended or terminated earlier in accordance with its terms, this Contract shall expire on **December 31, 2027**. Contract termination shall not extinguish or prejudice OHA’s right to enforce this Contract with respect to any default by Contractor that has not been cured.

2. Contract Documents.

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

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

There are no other contract documents unless specifically referenced and incorporated in this Contract.

b. This Contract and the documents listed in Section 2., “Contract Documents”, Subsection a. above, shall be in the following descending order of precedence: this Contract less all exhibits, Exhibits D, B, A, and C.

3. Consideration.

a. The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is **\$465,000.00**. OHA will not pay Contractor any amount in excess of the not-to-exceed compensation of this Contract for completing the Work, and will not pay for Work performed before the date this Contract becomes effective or after the termination or expiration of this Contract. If the maximum compensation is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

b. Interim payments to Contractor shall be subject to ORS 293.462, and shall be made in accordance with the payment schedule and requirements in Exhibit A, Part 2., “Payment and Financial Reporting.”

c. OHA will only pay for completed Work under this Contract. For purposes of this Contract, “Work” means the tasks or services and deliverables accepted by OHA as described in Exhibit A, Part 1, “Statement of Work.”

4. Contractor or Subrecipient Determination. In accordance with the State Controller’s Oregon Accounting Manual, policy 30.40.00.104, OHA’s determination is that:

Contractor is a subrecipient Contractor is a contractor Not applicable

Catalog of Federal Domestic Assistance (CFDA) #(s) of federal funds to be paid through this Contract: 66.468

5. Contractor Data and Certification.

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

PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION

Contractor Name (exactly as filed with the IRS): 120 Water Audit, Inc.

Street address: 250 S Elm St

City, state, zip code: Zionsville, IN 46077

Email address: mboes@120water.com

Telephone: 1-800-674-7961 Fax : _____

Is Contractor a nonresident alien, as defined in 26 U.S.C. § 7701(b)(1)?

(Check one box): YES NO

Business Designation: (Check one box):

- | | | |
|--|--|--|
| <input type="checkbox"/> Professional Corporation | <input type="checkbox"/> Nonprofit Corporation | <input type="checkbox"/> Limited Partnership |
| <input type="checkbox"/> Limited Liability Company | <input type="checkbox"/> Limited Liability Partnership | <input type="checkbox"/> Sole Proprietorship |
| <input checked="" type="checkbox"/> Corporation | <input type="checkbox"/> Partnership | <input type="checkbox"/> Other |

Contractor Proof of Insurance. Contractor shall provide the following information upon submission of the signed Contract. All insurance listed herein and required by Exhibit C must be in effect prior to Contract execution.

If Contractor is self-insured for any of the Insurance Requirements specified in Exhibit C of this Contract, Contractor may so indicate by: (i) writing "Self-Insured" on the appropriate line(s); and (ii) submitting a certificate of insurance as required in Exhibit C.

Commercial General Liability Insurance Company: McGowan Insurance Group

Policy #: 7930125970000 Expiration Date: 06/07/2024

Automobile Liability Insurance Company: McGowan Insurance Group

Policy #: ENP 0499915 Expiration Date: 06/07/2024

Workers' Compensation: Does Contractor have any subject workers, as defined in ORS 656.027? (Check one box): YES NO *If YES, provide the following information:*

Workers' Compensation Insurance Company: _____

Policy #: _____ Expiration Date: _____

- b. Certification.** Without limiting the generality of the foregoing, by signature on this Contract, the undersigned hereby certifies under penalty of perjury that:
- (1) Contractor is in compliance with all insurance requirements in Exhibit C of this Contract, and notwithstanding any provision to the contrary, Contractor shall deliver to the OHA Contract Administrator (see page 1 of this Contract) the required Certificate(s) of Insurance within 30 days of execution of this Contract. By certifying compliance with all insurance as required by this Contract, Contractor acknowledges it may be found in breach of the Contract for failure to obtain required insurance. Contractor may also be in breach of the Contract for failure to provide Certificate(s) of Insurance as required and to maintain required coverage for the duration of the Contract;
 - (2) Contractor acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any “claim” (as defined by ORS 180.750) that is made by (or caused by) the Contractor and that pertains to this Contract or to the project for which the Contract work is being performed. Contractor certifies that no claim described in the previous sentence is or will be a “false claim” (as defined by ORS 180.750) or an act prohibited by ORS 180.755. Contractor further acknowledges that in addition to the remedies under this Contract, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the Contractor;
 - (3) The undersigned is authorized to act on behalf of Contractor and represents and warrants that Contractor has complied with the tax laws of the State of Oregon and the applicable tax laws of any political subdivision of Oregon. Contractor shall, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of Oregon. For the purposes of this Section, “tax laws” includes: (i) All tax laws of Oregon, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) Any tax provisions imposed by a political subdivision of Oregon that applied to Contractor, to Contractor’s property, operations, receipts, or income, or to Contractor’s performance of or compensation for any work performed by Contractor; (iii) Any tax provisions imposed by a political subdivision of Oregon that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

Contractor acknowledges that the Oregon Department of Administrative Services will report this Contract to the Oregon Department of Revenue

(DOR). The DOR may take any and all actions permitted by law relative to the collection of taxes due to the State of Oregon or a political subdivision, including: (i) garnishing the Contractor's compensation under this Contract; or (ii) exercising a right of setoff against Contractor's compensation under this Contract for any amounts that may be due and unpaid to the State of Oregon or its political subdivisions for which the DOR collects debts;

- (4) The information shown in Section 5.a., "Contractor Information" above is Contractor's true, accurate and correct information;
- (5) To the best of the undersigned's knowledge, Contractor has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts;
- (6) Contractor and Contractor's employees and agents are not included on the list titled "Specially Designated Nationals" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at: <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>;
- (7) Contractor is not listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal procurement or Non-procurement Programs" currently found at: <https://www.sam.gov/portal/public/SAM/>;
- (8) Contractor is not subject to backup withholding because:
 - (a) Contractor is exempt from backup withholding;
 - (b) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends; or
 - (c) The IRS has notified Contractor that Contractor is no longer subject to backup withholding; and
- (9) Contractor Federal Identification Number (FEIN) or Social Security Number (SSN) provided is true and accurate. If this information changes, Contractor shall provide OHA with the new FEIN or SSN within 10 days.

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

CONTRACTOR: YOU WILL NOT BE PAID FOR SERVICES RENDERED PRIOR TO NECESSARY STATE APPROVALS.

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

120 Water Audit, Inc.

By:

Matthew Boes
Authorized Signature
Vice President of Sales
Title

Matthew Boes
Printed Name
11/15/2023
Date

State of Oregon, acting by and through its Oregon Health Authority

By:

Andre Ourso
Authorized Signature
Administrator
Title

Andre Ourso
Printed Name
11/16/2023
Date

Approved for Legal Sufficiency:

Approved by Jeff Wahl via email on 10/24/2023
Department of Justice Date

EXHIBIT A

Part 1 Statement of Work

1. Background

Contractor to provide assistance related to service line inventories to Community Water Systems (CWS) serving 10,000 people or fewer and non-profit Non-Transient Non-Community (NTNC) water systems Assistance to be provided: i) training and outreach related to service line requirements, best practices and reporting requirements, and ii) individual assistance to public water systems (PWSs) in completing their service line inventories. Assistance provided to PWSs is strictly on a voluntary basis.

2. Deliverables Required from Contractor:

Contractor shall provide assistance related to service line inventories services by providing access to Contractor's proprietary online hosted software platform (also referred to as the "data portal", "Portal", or "120Water Platform") to community and non-transient non-community water systems.

- OHA will send out a notification to all NTNC and Community water systems introducing the contractors selected to provide assistance towards completing the LSL inventory. This letter will introduce each contractor selected to provide data collection assistance, training assistance, and technical assistance by name and by contact information. This information will also appear on the OHA Lead Service Line (LSL) inventory information website.
- Contractor will also provide introductory letter to systems advising them how to create / access their data within the Portal.
- Contractor will provide on-demand technical assistance and training regarding lead service line (LSL) inventory data collection and reporting relevant to their portal to facilitate water systems entering, editing, and managing their data.
- If / when Contractor's capacity for outreach or technical assistance is at or exceeds its capacity, Contractor will prioritize its outreach efforts to water systems as follows, in descending order of priority: those that serve fewer than 500 people; systems designated by OHA as being disadvantaged; Community water systems; and then NTNC water systems.
- Contractor will coordinate outreach with OHA by submitting monthly status reports to allow OHA to provide adequate oversight of outreach efforts. This will in turn allow OHA to intervene with unresponsive systems to ensure that all water systems receive information about the offer of assistance with the LSL inventory effort.

a. Training and Outreach

Contractor will provide both online virtual and telephonic training to water systems operators. The training shall be appropriate for each system's needs and shall clearly explain the service line inventory regulatory requirements, refer to available OHA and EPA guidance materials, describe acceptable methods for completing service line inventories and review how to compile the inventory and to submit the results to OHA. Contractor shall also provide training and support to water systems regarding the use of 120 Water's data portal, including how to create an account and submit

data, how to ask for assistance, and how to access other support, including contractor assistance with researching and entering public records from various governmental sources, how to obtain and utilize consumable support products, including the direct shipping of sample kits to water systems to facilitate identification of service lines on the water system customer's property (including but not necessarily limited to letters, pitchers and filters, lead swabs and magnet test kits, post cards, etc.). In coordination with OHA, Contractor shall also provide outreach to water system operators and representatives regarding training opportunities and available guidance.

3. Data Reporting Requirements

Contractor will be responsible for the following:

a. Data Sets:

- (1) Inventory summary data and detailed inventory data shall be provided in separate files.
- (2) Only report complete inventories (water system has completed their inventory), and only report them once, unless there are changes.
- (3) If a water system makes changes after data have been reported to OHA, re-submit modified records as well as any new records.
- (4) At end of contract, report any incomplete inventories.

b. Data Format:

- (1) Summary data must be provided using OHA's format for summary data reporting (including any future modifications by OHA).
- (2) Detailed (non-summary) data shall be provided as a CSV file.
 - (a) OHA desires all data fields collected by the contractor, including any unique IDs. Contractor can use their own field names and provide definitions, or OHA can provide field names to use.
 - (b) Minimally, Contractor should collect data as reflected in Oregon's LSLI Excel template.
 - (c) Must stay current with any future modifications to Oregon's template and data structure.

c. Reporting Frequency:

- (1) Upfront, provide test deliverables (both summary and detailed data sets) with real or dummy data to verify delivery mechanism and data format.
- (2) Report data to OHA bi-weekly (or more or less frequently as data are available), and upon request.
- (3) Oregon will report data to EPA via FedRep.

d. Delivery Method:

- (1) OHA prefers to have the data files sent via email at DWP.DMCE@odhsoha.oregon.gov.
- (2) If the files are ever too large for email, contractor shall make the files available on an FTP site or similar and notify OHA by e-mail when the files are available.

4. Monthly Reporting

Contractor shall submit to OHA a monthly progress report which includes, at a minimum, a summary of work performed during the reporting period, including, as applicable,

any training materials developed and training events conducted.

5. Final Summary Report.

Contractor shall submit to OHA a final summary report which must include, at a minimum, the following:

- a. Summary of work performed;
- b. Summary of “lessons learned”;
- c. Final summary of all inventories,
- d. Other information as requested by OHA.

6. Conflict of Interest. Except with OHA’s prior written consent, Contractor shall not engage in any activity, or accept any employment, interest or contribution that would, or would reasonably appear to, compromise Contractor’s professional judgment with respect to this Contract services, including, without limitation, concurrent employment on any project in direct competition with the Contract services.

7. Specifications or Performance Standards.

OHA requires that the Contractor meets the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services.

EXHIBIT A

Part 2 Payment and Financial Reporting

1. Payment Provisions

OHA shall compensate Contractor for the performance of Services set forth in **Exhibit A**, as follows:

- a. The Contractor will be compensated at the rates listed below. Additional cost may be authorized and approved by the OHA Drinking Water Services Project Manager on a case-by-case basis.

PWS Portal	
Community Water Systems	\$150.00 per water system per year
Non-Transient, Non-Community Water Systems	\$35.00 per water system per year
For a total Annual PWS Portal cost of	\$146,600
State Dashboard cost paid quarterly	\$18,750
Annual State Dashboard total	\$75,000
Initial portal setup involving - data Enrichment (est 119 CWSs), Template Development - one time charge to be paid out quarterly.	\$15,375
Total Initial One-time charge	\$61,500
PWS Portal is based on the total universe of approximately 1,259 CWS and NTNCWS throughout the State of Oregon. The State Dashboard and Public Transparency Dashboard is based on an annual license fee to access the database. Pricing for Data Enrichment and development Services are a one-time charge.	

- b. Contractor shall not submit invoices for, and OHA will not pay, any amount in excess of the maximum, not to exceed amount payable under this Contract. If this amount is increased by Contract amendment, the amendment must be effective before Contractor performs Services subject to the amendment. Contractor shall notify OHA's Representative identified in this Contract in writing of the expiration of the Contract, thirty (30) days prior to such expiration. No payment will be made for any Services performed prior to the Effective Date or after the expiration date of the Contract.
- c. Contractor shall **timely** submit quarterly invoices for Services performed. To be processed for payment by OHA, invoices must be received within 90 days of the end of the month in which the services were provided., and must include the following basic information:

- (1) OHA Contract #180551-0
- (2) The correct name of OHA's authorized representative
- (3) Invoice date
- (4) Date range during which the Services being invoiced for were provided.

- (5) Invoice number that ends in a “- ##”, which represents the correct invoice sequence of issue. The last invoice submitted on the Project must be clearly labeled “Final Invoice”.
- (6) Original Contract total, not to exceed amount:
- (7) Paid to date amounts showing the amounts submitted for prior to the current invoice (regardless of payment status)
- (8) Amounts being invoiced for in the current invoice, with a roll up of a “Total Amount Billed for This Invoice” line item amount
- (9) Balances Remaining after receipt of payment for the current invoice.

Contractor shall describe all Services performed with particularity and, for time and materials work, by whom it was performed and shall itemize and explain all expenses for which reimbursement is claimed.

- a. Contractor shall send invoices via email to OHA’s Contract Administrator identified on Page 1 of this Contract, using the following address:
anthony.j.fields@oha.oregon.gov
- b. OHA shall have the right to reject any invoice which does not have the proper information as required by this section without incurring penalty liabilities for late payment.
- c. Contractor's claims to OHA for overdue payments on invoices are subject to ORS 293.462.
- d. OHA and Contractor agree in accordance with the terms and conditions of this Contract that, if the scope of the Project or the Services are changed materially, Contractor shall request in writing an amendment to the Contract before additional Services are provided and before compensation is adjusted. All legally required approvals must be obtained for any Contract amendment before the amendment is effective and before Services may be performed or payment made under the amendment.

2. Travel Expenses:

There will not be any separate reimbursement for travel expenses.

EXHIBIT A

Part 3 Special Provisions

1. Confidentiality of Information.

a. Client Information:

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

- i. Contractor and its officers, directors and employees with access to, or who use FTI provided by OHA must meet the background check requirements defined in IRS Publication 1075;
 - ii. Any FTI made available to Contractor shall be used only for the purpose of carrying out the provisions of this Contract. Contractor shall treat all information contained in FTI as confidential and that information shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Inspection by or disclosure to anyone other than an officer or employee of the Contractor is prohibited;
 - iii. Contractor shall account for all FTI upon receipt and shall properly store all FTI before, during, and after processing. In addition, all FTI related output and products will be given the same level of protection as required for the source material;
 - iv. No work involving FTI furnished under this Contract will be subcontracted without prior written approval of the IRS;
 - v. Maintain a list of employees who are authorized access to FTI. Such list will be provided to OHA and, upon request, to the IRS reviewing office; and
 - vi. Include the provisions of this Section 1.a.(3)(b) in any subcontract.
- (c) Failure to abide by any of the requirements in this subsection could result in criminal or civil penalties and result in termination of this Contract.
 - (d) Contractor may be subject to periodic and ongoing security reviews to ensure compliance with the requirements of Section 1.a.(3).
- (4) Except as prohibited by Section 1.a.(3) above, OHA, Contractor and any subcontractor will share information as necessary to effectively serve OHA clients.
- b. Non-Client Information:**
- (1) Each Party acknowledges that it and any of its officers, directors, employees and agents may, in the course of performing its responsibilities under the Contract, be exposed to or acquire information that is confidential to the other Party. To the extent permitted by law, any and all information of any form provided to a Party or its officers, directors, employees and agents in the performance of the Contract that reasonably could at the time of its disclosure be understood to be confidential shall be

deemed to be confidential information of the originating Party (“Confidential Non-Client Information”).

- (2) Confidential Non-Client Information shall be deemed not to include information that:
 - (a) Is or becomes (other than by disclosure by the Party acquiring such information) publicly known or is contained in a publicly available document except to the extent applicable law still restricts disclosure;
 - (b) Is furnished by the originating Party to others without restrictions similar to those imposed on the receiving Party under the Contract;
 - (c) Is rightfully in the receiving Party’s possession without the obligation of nondisclosure prior to the time of its disclosure by the originating Party under the Contract;
 - (d) Is obtained from a source other than the originating Party without the obligation of confidentiality;
 - (e) Is disclosed with the written consent of the originating Party; or
 - (f) Is independently developed by the receiving Party’s officers, directors, employees and agents who can be shown to have had no access to the Confidential Non-Client Information.
- (3) Nondisclosure. The receiving Party shall hold all Confidential Non-Client Information in strict confidence, using at least the same degree of care that it uses in maintaining the confidentiality of its own confidential information; and shall not sell, assign or transfer (other than as expressly permitted under this Contract), license, market, or otherwise dispose of, give or disclose Confidential Non-Client Information to third parties; shall not use Confidential Non-Client Information for any purposes whatsoever other than as contemplated by this Contract or reasonably related thereto; and shall advise any of its officers, directors, employees and agents that receive or have access to the Confidential Non-Client Information of their obligations to keep Confidential Non-Client Information confidential. These confidentiality obligations do not restrict disclosure of information otherwise qualifying as Confidential Non-Client Information if the receiving Party can show that either of the following conditions exists: (i) the information was disclosed in response to a subpoena or court order duly issued in a judicial or legislative process, in which case the receiving Party shall notify the originating Party of the subpoena five days prior to the disclosure, unless such notice could not reasonably be given; or (ii) the disclosure was required to respond to a request for the information made under the Oregon Public Records Law, ORS 192.311 to 192.478. The receiving Party shall notify the originating Party of a public records request five days prior to the disclosure.

- c. Upon request and pursuant to the instructions of OHA, Contractor shall return or destroy all copies of Confidential Information, and Contractor shall certify in writing the return or destruction of all Confidential Information.
- d. “Client” (whether or not capitalized) means any individual, family or family care provider:
 - (1) For whom OHA must provide Services and incidental or specialized Goods, in any combination thereof (“Services and Incidental Supplies”), according to state, federal law, rule, and policy. Those Services and Incidental Supplies include but are not limited to treatment, care, protection, and support without regard to the proximity of the services being provided;
 - (2) Who in fact receives and utilizes services provided by OHA primarily for that individual's or family's benefit;
 - (3) Who is under the custody, care, or both of OHA; or
 - (4) Who provides direct care or Services and is a proxy or representative of the non-provider Client.

2. Amendments.

- a. Subject to Section 2.c. below, OHA reserves the right to amend or extend the Contract under the following general circumstances:
 - (1) OHA may extend the Contract for additional periods of time up to a total Contract period of 5 years, and for additional money associated with the extended period(s) of time. The determination for any extension for time may be based on OHA’s satisfaction with performance of the work or services provided by the Contractor under this Contract.
 - (2) OHA may periodically amend any payment rates throughout the life of the Contract proportionate to increases in Portland Metropolitan Consumer Price Index; and to provide Cost Of Living Adjustments (COLA) if OHA so chooses. Any negotiation of increases in rates to implement a COLA will be as directed by the Oregon State Legislature. In addition, OHA, subject to written approval of Contractor, may periodically amend any payment rates throughout the life of the Contract to meet current market conditions.
- b. OHA further reserves the right to amend the Statement of Work based on the original scope of work of RFP #5396 for the following:
 - (1) Programmatic changes, additions or modifications deemed necessary to accurately reflect the original scope of work that may not have been expressed in the original Contract or previous amendments to the Contract;
 - (2) Implement additional phases of the Work; or
 - (3) As necessitated by changes in Code of Federal Regulations, Oregon Revised Statutes, or Oregon Administrative Rules, which, in part or in

combination, govern the provision of services provided under this Contract.

- c. Upon identification, by any party to this Contract, of any circumstance which may require an amendment to this Contract, the parties may enter into negotiations regarding the proposed modifications. Any resulting amendment must be in writing and be signed by all parties to the Contract before the modified or additional provisions are binding on either party. All amendments must comply with Exhibit B, “Standard Terms and Conditions”, Section 24. “Amendments; Waiver; Consent.” of this Contract.

3. Nondiscrimination.

- a. The Contractor must provide services to OHA clients without regard to race, religion, national origin, sex, age, marital status, sexual orientation or disability (as defined under the Americans with Disabilities Act). Contracted services must reasonably accommodate the cultural, language, and other special needs of clients.
- b. Contractor certifies that Contractor has a written policy and practice that meets the requirements described in ORS 279A.112 for preventing sexual harassment, sexual assault, and discrimination against employees who are members of a protected class. Contractor agrees, as a material term of this Contract, to maintain such policy and practice in force during the entire Contract term.
- c. As required by ORS 279B.235, Contractor must comply with ORS 652.220 and shall not unlawfully discriminate against any of Contractor’s employees in the payment of wages or other compensation for work of comparable character on the basis of an employee’s membership in a protected class. “Protected class” means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability, or age. Contractor’s compliance with this Section constitutes a material element of this Contract and a failure to comply constitutes a breach that entitles OHA to terminate this Contract for cause.
- d. Contractor may not prohibit any of Contractor’s employees from discussing the employee’s rate of wage, salary, benefits, or other compensation with another employee or another person. Contractor may not retaliate against an employee who discusses the employee’s rate of wage, salary, benefits, or other compensation with another employee or another person.

4. Compliance with Executive Order (EO) 21-29:

- a. For purposes of this Section, capitalized words are defined in EO 21-29, as amended, https://www.oregon.gov/gov/Documents/executive_orders/eo_21-29.pdf or as defined in the “Executive Order 21-29 Vaccination Requirements for State Contractors Frequently Asked Questions”, as amended, found at https://www.oregon.gov/das/Procurement/Documents/ExecutiveOrder21-29_ContractorFAQ.pdf.
- b. Contractor shall comply with EO 21-29. Contractor certifies that for the term of the Contract or the duration of EO-21-29, whichever expires or terminates first,

each Worker who provides goods and services at an Executive Branch Worksite is Fully Vaccinated against COVID-19 unless an exception under paragraph 6 of EO 21-29 applies. Contractor shall maintain in its records Proof of Vaccination or permitted exceptions under section 6 of EO 21-29 for such Workers providing goods and services at an Execution Branch Worksite. Contractor shall provide written certification of its compliance with EO 21-29 on request of the State. The State reserves the right to request the documentation supporting Contractor's certification. Any violation of this Section constitutes a material breach of this Contract entitling OHA to terminate this Contract for cause.

5. Health Equity Requirements

People in Oregon recognize that systemic racism and historical and contemporary injustices have led to health inequities in the state. Environmental threats like wildfire and smoke disproportionately impact communities of color, tribal communities, persons with physical, developmental and intellectual disabilities, persons living in congregate care and low-income communities. Complex public health problems require a nimble, community-based, and equity centered public health system. Without this system, Oregon risks its public health resilience, response and recovery, and future health threats will continue to exacerbate health inequities.

Pursuant to the Public Health Modernization Plan to eliminate health disparities by 2030, Contractor shall prioritize services to communities of color, tribal communities and low-income communities.

Additional information regarding the Public Health Modernization Plan to eliminate health disparities by 2030 can be accessed at the Public Health Modernization website: <https://www.oregon.gov/OHA/PH/About/TaskForce/Pages/index.aspx>, and also by reviewing the Public Health Modernization Plan brochure located here: <https://www.oregon.gov/oha/PH/ABOUT/TASKFORCE/Documents/Public-Health-Modernization-overview-January-2021.pdf>

EXHIBIT B

Standard Terms and Conditions

1. **Governing Law, Consent to Jurisdiction.** This Contract 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 OHA or any other agency or department of the State of Oregon, or both, and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of the jurisdiction of any court or of any form of defense to or immunity from any Claim, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum. This Section shall survive expiration or termination of this Contract.
2. **Compliance with Law.** Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to Contractor and the Contract. OHA's performance under the Contract is conditioned upon Contractor's compliance with the obligations of contractors under ORS 279B.220, 279B.230 and 279B.235, which are incorporated by reference herein. This Section shall survive expiration or termination of this Contract.
3. **Independent Contractor.**
 - a. Contractor is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.
 - b. If Contractor is currently performing work for the State of Oregon or the federal government, Contractor by signature to this Contract, represents and warrants that Contractor's Work to be performed under this Contract creates no potential or actual conflict of interest as defined by ORS Chapter 244 and that no statutes, rules or regulations of the State of Oregon or federal agency for which Contractor currently performs work would prohibit Contractor's Work under this Contract. If compensation under this Contract is to be charged against federal funds, Contractor certifies that it is not currently employed by the federal government.
 - c. Contractor is responsible for all federal and state taxes applicable to compensation paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, OHA will not withhold from such compensation any amounts to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation paid to Contractor under this Contract, except as a self-employed individual.

- d. Contractor shall perform all Work as an Independent Contractor, as defined in ORS 670.600. OHA reserves the right (i) to determine and modify the delivery schedule for the Work, and (ii) to evaluate the quality of the Work Product, however, OHA may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work.

4. **Representations and Warranties.**

- a. **Contractor's Representations and Warranties.** Contractor represents and warrants to OHA that:

- (1) Contractor has the power and authority to enter into and perform this Contract;
- (2) The obligations set forth in this Contract, when executed and delivered, shall be valid and binding obligations of the Contractor enforceable in accordance with its terms;
- (3) Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence to perform the Work in a timely and professional manner and in accordance with the highest standards prevalent in Contractor's industry, trade or profession;
- (4) Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; and
- (5) Contractor prepared its proposal related to this Contract, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.

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

5. **Funds Available and Authorized; Payments.**

- a. Contractor shall not be compensated for Work performed under this Contract by any other agency or department of the State of Oregon or the federal government. OHA certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Contract within OHA's current biennial appropriation or limitation. Contractor understands and agrees that OHA's payment for Work performed is contingent on OHA receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow OHA, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract.

- b. **Payment Method.** Payments under this Contract will be made by Electronic Funds Transfer (EFT). Upon request, Contractor shall provide its taxpayer identification number (TIN) and other necessary banking information to receive EFT payment. Contractor shall maintain at its own expense a single financial institution or authorized payment agent capable of receiving and processing EFT using the Automated Clearing House (ACH) transfer method. The most current

designation and EFT information will be used for all payments under this Contract. Contractor shall provide this designation and information on a form provided by OHA. In the event that EFT information changes or the Contractor elects to designate a different financial institution for the receipt of any payment made using EFT procedures, the Contractor shall provide the changed information or designation to OHA on an OHA-approved form. OHA is not required to make any payment under this Contract until receipt of the correct EFT designation and payment information from the Contractor.

6. **Recovery of Overpayments.** IF BILLINGS UNDER THIS CONTRACT, OR UNDER ANY OTHER CONTRACT BETWEEN CONTRACTOR AND OHA, RESULT IN PAYMENTS TO CONTRACTOR TO WHICH CONTRACTOR IS NOT ENTITLED, OHA, AFTER GIVING WRITTEN NOTIFICATION TO CONTRACTOR, MAY WITHHOLD FROM PAYMENTS DUE TO CONTRACTOR SUCH AMOUNTS, OVER SUCH PERIODS OF TIME, AS ARE NECESSARY TO RECOVER THE AMOUNT OF THE OVERPAYMENT, UNLESS CONTRACTOR PROVIDES A WRITTEN OBJECTION WITHIN 14 CALENDAR DAYS FROM THE DATE OF THE NOTICE. ABSENT TIMELY WRITTEN OBJECTION, CONTRACTOR HEREBY REASSIGNS TO OHA ANY RIGHT CONTRACTOR MAY HAVE TO RECEIVE SUCH PAYMENTS. IF CONTRACTOR PROVIDES A TIMELY WRITTEN OBJECTION TO OHA'S WITHHOLDING OF SUCH PAYMENTS, THE PARTIES AGREE TO CONFER IN GOOD FAITH REGARDING THE NATURE AND AMOUNT OF THE OVERPAYMENT IN DISPUTE AND THE MANNER IN WHICH THE OVERPAYMENT IS TO BE REPAYED. OHA RESERVES ITS RIGHT TO PURSUE ANY OR ALL OF THE REMEDIES AVAILABLE TO IT UNDER THIS CONTRACT AND AT LAW OR IN EQUITY INCLUDING OHA'S RIGHT TO SETOFF.

7. **Ownership of Work Product.**

- a. **Definitions.** As used in this Section 8, and elsewhere in this Contract, the following terms have the meanings set forth below:
- (1) "Contractor Intellectual Property" means any intellectual property owned or licensed by Contractor and developed independently from the Work.
 - (2) "Third Party Intellectual Property" means any intellectual property owned by parties other than OHA or Contractor.
 - (3) "Work Product" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein that Contractor is required to deliver to OHA pursuant to the Work. Work.
- b. **Original Works.** All Work Product created by Contractor pursuant to the Work, including derivative works and compilations, and whether or not such Work Product is considered a "work made for hire," shall be the exclusive property of OHA. OHA and Contractor agree that all Work Product is "work made for hire" of which OHA is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created pursuant to the Work is

not “work made for hire,” Contractor hereby irrevocably assigns to OHA any and all of its rights, title, and interest in all original Work Product created pursuant to the Work, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon OHA's reasonable request, Contractor shall execute such further documents and instruments necessary to fully vest such rights in OHA. Contractor forever waives any and all rights relating to original Work Product created pursuant to the Work, including without limitation, any and all rights arising under 17 U.S.C. §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Contractor retains the right to use all Work Product during the Contract and after any expiration or termination.

- c. In the event that Work Product is Contractor Intellectual Property, a derivative work based on Contractor Intellectual Property or a compilation that includes Contractor Intellectual Property, Contractor hereby grants to OHA an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display Contractor Intellectual Property and the pre-existing elements of the Contractor Intellectual Property employed in the Work Product, and to authorize others to do the same on OHA's behalf.
- d. In the event that Work Product is Third Party Intellectual Property, a derivative work based on Third Party Intellectual Property or a compilation that includes Third Party Intellectual Property, Contractor shall secure on OHA's behalf and in the name of OHA an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property and the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, and to authorize others to do the same on OHA's behalf.
- e. Contractor shall own all rights, title and interest, including all intellectual property rights, in and to Contractor's proprietary online hosted software platform (i.e., 120Water Platform), website, operating systems, hardware, and other technical resources used by Contractor to provide the Work (which Work includes developing, training, testing, correcting, and improving the 120Water Platform, such activities for which may include the use of OHA Data), and all new programs, upgrades, modifications, or enhancements of the foregoing developed by Contractor in connection with rendering the Services to OHA.
- f. If OHA provides or otherwise makes available to Contractor any feedback, suggestions, recommendations, data, or other input regarding the 120Water Platform, Work, or Work Product, or resulting from OHA's use thereof (collectively, “**Feedback**”), OHA agrees to and does hereby assign to Contractor all right, title, and interest in and to all Feedback. Contractor shall not publicly identify OHA in any use of the Feedback. OHA has no responsibility or liability for any Feedback or for Contractor's use thereof. Contractor agrees to indemnify, defend, and hold harmless OHA for any use by Contractor of any Feedback.
- g. Ownership and Use of OHA Data.

- (1) Ownership of OHA Data. As between OHA and Contractor, OHA owns all OHA Data.
- (2) Use of OHA Data. OHA hereby grants Contractor and its contractors a limited, nonexclusive right and license to use all OHA Data during this Agreement, and, after expiration or termination as permitted herein.
- (3) Derivative Data and Usage Data. “OHA Data” means all electronic data (including, but not limited to, Personal Information, as defined under applicable data privacy law) uploaded by OHA to the Contractor Platform. “Derivative Data” means collectively, (i) information derived or generated from or based on OHA Data, but not containing OHA Data, (ii) OHA Data which has been de-identified or anonymized so that it no longer identifies a specific individual; and, (iii) OHA Data which has been aggregated with other data but which no longer identifies a specific individual or OHA. “Usage Data” means statistical data related to OHA’s access to and use of the 120Water Platform and data derived from it, that is used by Contractor, including to compile statistical and performance information related to the provision of the Work and operation of the 120Water Platform. Contractor shall irrevocably own all Derivative Data and Usage Data and may use or disclose it in any way it chooses. This Section 7.g(3) shall survive any expiration or termination of this Agreement.
- (4) Use of OHA Data after Expiration or Termination. Upon OHA’s request within thirty (30) days after the expiration or termination of this Agreement, Contractor will provide OHA with a copy of OHA Data held by Contractor. Upon expiration of such thirty (30) day period, Contractor shall convert OHA’s account to an inactive status. Contractor may, but shall not be obligated to, delete all OHA Data after OHA’s account converts to inactive status. The confidentiality obligations as are set forth in this Section 7.g(4) shall remain in force and effect at all times during this Agreement, and (i) with respect to Confidential Information that constitutes a trade secret under applicable law, for so long as such trade secret status has not been lost; and (ii) with respect to Confidential Information that does not constitute a trade secret, for five (5) years after termination or expiration of this Agreement, and (iii) with respect to personal data (i.e., OHA Data which identifies a specific identifiable individual) held by Contractor, forever.

8. Indemnity.

- a. CONTRACTOR SHALL DEFEND (SUBJECT TO ORS CHAPTER 180), SAVE, HOLD HARMLESS, AND INDEMNIFY THE STATE OF OREGON AND OHA AND THEIR OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER, INCLUDING ATTORNEYS FEES, BASED ON THIRD-PARTY CLAIMS RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ACTIVITIES OF CONTRACTOR OR ITS OFFICERS, EMPLOYEES,

SUBCONTRACTORS, OR AGENTS UNDER THIS CONTRACT, PROVIDED, THAT THE STATE OF OREGON SHALL PROVIDE CONTRACTOR WITH PROMPT WRITTEN NOTICE OF ANY SUCH THIRD-PARTY CLAIM.

- b. INDEMNITY FOR INFRINGEMENT CLAIMS.** WITHOUT LIMITING THE GENERALITY OF SECTION 8.a. ABOVE, CONTRACTOR EXPRESSLY AGREES TO DEFEND, INDEMNIFY, AND HOLD OHA, THE STATE OF OREGON AND THEIR AGENCIES, SUBDIVISIONS, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES HARMLESS FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, LOSSES, LIABILITIES, COSTS, EXPENSES, INCLUDING ATTORNEYS FEES, AND DAMAGES ARISING OUT OF OR RELATED TO ANY THIRD-PARTY CLAIMS THAT THE WORK, THE WORK PRODUCT OR ANY OTHER TANGIBLE OR INTANGIBLE ITEMS DELIVERED TO OHA BY CONTRACTOR THAT MAY BE THE SUBJECT OF PROTECTION UNDER ANY STATE OR FEDERAL INTELLECTUAL PROPERTY LAW OR DOCTRINE, OR OHA'S USE THEREOF, INFRINGES ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, TRADE DRESS, MASK WORK, UTILITY DESIGN, OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY; PROVIDED, THAT THE STATE OF OREGON SHALL PROVIDE CONTRACTOR WITH PROMPT WRITTEN NOTICE OF ANY INFRINGEMENT CLAIM.

THIS SECTION SHALL SURVIVE EXPIRATION OR TERMINATION OF THIS CONTRACT.

9. Default; Remedies; Termination.

- a. Default by Contractor.** Contractor shall be in default under this Contract if:
- (1) Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or
 - (2) Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under the Contract and Contractor has not obtained such license or certificate within 14 calendar days after OHA's notice or such longer period as OHA may specify in such notice; or
 - (3) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Contractor's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within 14 calendar days after OHA's notice, or such longer period as OHA may specify in such notice; or
 - (4) Contractor failed to comply with the tax laws of this state or a political subdivision of this state before the Contractor executed this Contract or fails to comply with the tax laws of this state or a political subdivision of this state during the term of this Contract.

b. OHA’s Remedies for Contractor’s Default. In the event Contractor is in default under Section 10.a. above, OHA may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to:

- (1) termination of this Contract under Section 9.e.(2) below;
- (2) withholding all monies due for Work and Work Products that Contractor has failed to deliver within any scheduled completion dates or has performed inadequately or defectively;
- (3) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief; or
- (4) exercise of its right of recovery of overpayments under Section 7 , “Recovery of Overpayment”, of this Exhibit B.

These remedies are cumulative to the extent the remedies are not inconsistent, and OHA may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If a court determines that Contractor was not in default under Section 10.a. above, then Contractor shall be entitled to the same remedies as if this Contract was terminated pursuant to Section 9.e.(1) below.

c. Default by OHA. OHA shall be in default under this Contract if OHA commits any material breach or default of any covenant, warranty, or obligation under this Contract, and such breach or default is not cured within 15 calendar days after Contractor's notice or such longer period as Contractor may specify in such notice.

d. Contractor’s Remedies for OHA’s Default. In the event OHA terminates the Contract under Section 10.e.(1) below, or in the event OHA is in default under Section 10.c. above, and whether or not Contractor elects to exercise its right to terminate the Contract under Section 10.e.(3) below, Contractor's sole monetary remedy shall be: (i) with respect to Work compensable at a stated rate, a claim for unpaid invoices, time worked within any limits set forth in this Contract but not yet invoiced, authorized expenses incurred and interest within the limits permitted under ORS 293.462, and (ii) with respect to deliverable-based Work, a claim for the sum designated for completing the deliverable multiplied by the percentage of Work completed and accepted by OHA, less previous amounts paid and any claim(s) that OHA has against Contractor. In no event shall OHA be liable to Contractor for any expenses related to termination of this Contract or for anticipated profits. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section 9.d., Contractor shall immediately pay any excess to OHA upon written demand. If Contractor does not immediately pay the excess, OHA may recover the overpayments in accordance with Section 6., “Recovery of Overpayments”, and may pursue any other remedy that may be available to it.

e. Termination.

- (1) **OHA’s Right to Terminate at its Discretion.** At its sole discretion, OHA may terminate this Contract:

- (a) For its convenience upon 30 days' prior written notice by OHA to Contractor;
 - (b) Immediately upon written notice if OHA fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for the Work or Work Products;
 - (c) Immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that OHA's purchase of the Work or Work Products under this Contract is prohibited, or OHA is prohibited from paying for such Work or Work Products from the planned funding source; or
 - (d) Immediately upon written notice to Contractor if there is a threat to the health, safety, or welfare of any OHA client or recipient of services under this Contract, including any Medicaid Eligible Individual, under its care.
- (2) OHA's Right to Terminate for Cause. In addition to any other rights and remedies OHA may have under this Contract, OHA may terminate this Contract immediately upon written notice to Contractor, or at such later date as OHA may establish in such notice, if Contractor is in default under Section 10.a. above.
 - (3) Contractor's Right to Terminate for Cause. Contractor may terminate this Contract upon 30 days' written notice to OHA, or at such later date as Contractor may establish in such notice, if OHA is in default under Section 9.c. above, and OHA fails to cure such default within 15 calendar days after OHA receives Contractor's notice or such longer period as Contractor may specify in such notice.
 - (4) Mutual Termination. The Contract may be terminated immediately upon mutual written consent of the parties or at such other time as the parties may agree in the written consent.
 - (5) Return of Property. Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to OHA all of OHA's property that is in the possession or under the control of Contractor at that time. This Section 9.e.(5) survives the expiration or termination of this Contract.
 - (6) Effect of Termination: Upon the effective date of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless OHA expressly directs otherwise.

10. Stop-Work Order. OHA may, at any time, by written notice to the Contractor, require the Contractor to stop all, or any part of the work required by this Contract for a period of up to 90 days after the date of the notice, or for any further period to which the parties may agree through a duly executed amendment. Upon receipt of the notice, Contractor shall immediately comply with the Stop-Work Order terms and take all necessary steps to minimize the incurrence of costs allocable to the Work affected by the stop work order

notice. Within a period of 90 days after issuance of the written notice, or within any extension of that period to which the parties have agreed, OHA shall either:

- a. Cancel or modify the stop work order by a supplementary written notice; or
- b. Terminate the work as permitted by either the Default or the Convenience provisions of Section 10., “Default; Remedies; Termination.”

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

- a. **Limitation of Liabilities.** EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTION 9., “INDEMNITY”, NEITHER PARTY SHALL BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS CONTRACT.

11. **Insurance.** Contractor shall maintain insurance as set forth in Exhibit C, attached hereto.
12. **Records Maintenance, Access.** Contractor shall maintain all financial records relating to this Contract in accordance with generally accepted accounting principles . In addition, Contractor shall maintain any other records, books, documents, papers, plans, records of shipments and payments, and writings of Contractor, whether in paper, electronic or other form, that are pertinent to this Contract, in such a manner as to clearly document Contractor's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments, and writings of Contractor, whether in paper, electronic or other form, that are pertinent to this Contract, are collectively referred to as “Records.” Contractor acknowledges and agrees that OHA, the Secretary of State's Office, and the federal government, and their duly authorized representatives shall have access to all Records to perform examinations and audits, and to make excerpts and transcripts. Contractor shall retain and keep accessible all Records for the longest of:
 - a. Six years following final payment and termination of this Contract;
 - b. The period as may be required by applicable law, including the records retention schedules set forth in OAR Chapter 166; or
 - c. Until the conclusion of any audit, controversy or litigation arising out of or related to this Contract.
13. **Information Privacy/Security/Access.** If the Work performed under this Contract requires Contractor or, when allowed, its subcontractor(s), to have access to or use of any OHA computer system or other OHA Information Asset for which OHA imposes security requirements, and OHA grants Contractor or its subcontractor(s) access to such OHA Information Assets or Network and Information Systems, Contractor shall comply and require all subcontractor(s) to which such access has been granted to comply with OAR 943-014-0300 through 943-014-0320, as such rules may be revised from time to time. For purposes of this Section, “Information Asset” and “Network and Information System” have the meaning set forth in OAR 943-014-0305, as such rule may be revised from time to time.
14. **Force Majeure.** No party is responsible for delay or default caused by an event beyond its reasonable control. OHA may terminate this Contract, without liability to Contractor,

upon written notice after reasonably determining a delay or default due to a force majeure event of at least sixty (60) consecutive days reasonably prevents performance of this Contract.

15. **Foreign Contractor.** If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract.
16. **Subcontracts; Assignment; Successors.** Contractor shall not assign, transfer, or subcontract rights or responsibilities under this Contract, in whole or in part, without the prior written approval of OHA. This Contract's provisions are binding upon and inure to the benefit of the parties to this Contract and their respective successors and assigns.
17. **No Third Party Beneficiaries.** OHA and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract. This Section shall survive expiration or termination of this Contract.
18. **Severability.** The parties agree that if any term or provision of this Contract 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 Contract did not contain the particular term or provision held to be invalid. This Section shall survive expiration or termination of this Contract.
19. **Notice.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, fax, or mailing the same, postage prepaid to Contractor or OHA at the address or number set forth in this Contract, or to such other addresses or numbers as either party may indicate pursuant to this Section. Any communication or notice so addressed and mailed by regular mail shall be deemed received and effective five days after the date of mailing. Any communication or notice delivered by fax shall be deemed received and effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the recipient, or on the next business day if transmission was outside normal business hours of the recipient. Notwithstanding the foregoing, to be effective against the other party, any notice transmitted by fax must be confirmed by telephone notice to the other party. Any communication or notice given by personal delivery shall be deemed effective when actually delivered to the addressee.

OHA: Office of Contracts & Procurement
500 Summer St NE E03
Salem, OR 97301
Telephone: 503-945-5818

This Section shall survive expiration or termination of this Contract.

20. **Headings.** The headings and captions to sections of this Contract have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret this Contract.
21. **Merger Clause.** This Contract constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, regarding this Contract not specified herein.
22. **Amendments; Waiver; Consent.** OHA may amend this Contract only to the extent expressly permitted herein, the solicitation document, if any from which this Contract arose, and to the extent permitted by applicable statutes and administrative rules. No amendment, waiver, or other consent under this Contract shall bind either party unless it is in writing and signed by both parties and when required, the Department of Justice. Such amendment, waiver, or consent shall be effective only in the specific instance and for the specific purpose given. The failure of either party to enforce any provision of this Contract shall not constitute a waiver by that party of that or any other provision. This Section shall survive the expiration or termination of this Contract.
23. **Contractor's Failure to Perform.** Contractor's failure to perform the statement of work specified in this Contract, or to meet the performance standards established in this Contract, may result in consequences that include, but are not limited to:
 - a. Reducing or withholding payment under this Contract;
 - b. Requiring Contractor to perform at Contractor's expense additional work necessary to perform the statement of work or meet performance standards; or
 - c. Declaring a default of this Contract and pursuing any available remedies for default, including termination of the Contract as permitted in Section 10., "Default; Remedies; Termination", of this Contract.

EXHIBIT C

Insurance Requirements

Contractor shall obtain at Contractor's expense the insurance specified in this Exhibit C prior to performing under this Contract and shall maintain it in full force and at its own expense throughout the duration of this Contract, as required by any extended reporting period or continuous claims made coverage requirements, and all warranty periods that apply. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Agency. Coverage shall be primary and non-contributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers' Compensation. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

WORKERS' COMPENSATION & EMPLOYERS' LIABILITY

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements. If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If Contractor is an employer subject to any other state's workers' compensation law, Contractor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

COMMERCIAL GENERAL LIABILITY:

Required

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

AUTOMOBILE LIABILITY INSURANCE:

Required

Automobile Liability Insurance covering Contractor's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$1,000,000 for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability

and Automobile Liability). Use of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

PROFESSIONAL LIABILITY:

Required

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

EXCESS/UMBRELLA INSURANCE:

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

ADDITIONAL INSURED:

All liability insurance, except for Workers' Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Contract must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 07 04 or equivalent.

WAIVER OF SUBROGATION:

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

CONTINUOUS CLAIMS MADE COVERAGE:

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

- (i) Contractor's completion and Agency's acceptance of all Services required under the Contract, or

- (ii) Agency or Contractor termination of this Contract, or
- (iii) The expiration of all warranty periods provided under this Contract.

CERTIFICATE(S) AND PROOF OF INSURANCE:

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

NOTICE OF CHANGE OR CANCELLATION:

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

INSURANCE REQUIREMENT REVIEW:

Contractor agrees to periodic review of insurance requirements by Agency under this Contract and to provide updated requirements as mutually agreed upon by Contractor and Agency.

STATE ACCEPTANCE:

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

EXHIBIT D

Federal Terms and Conditions

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

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

all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section.

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

- f.** No part of any federal funds paid to Contractor under this Contract shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the United States Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.
 - g.** The prohibitions in subsections (e) and (f) of this section shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.
 - h.** No part of any federal funds paid to Contractor under this Contract may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under Section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance of that federally sponsored clinical trials are being conducted to determine therapeutic advantage.
- 6. Resource Conservation and Recovery.** Contractor shall comply and require all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 U.S.C. 6901 et. seq.). Section 6002 of that Act (codified at 42 U.S.C. 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.
- 7. Audits.**
- a.** Contractor shall comply, and require all subcontractors to comply, with applicable audit requirements and responsibilities set forth in this Contract and applicable state or federal law.
 - b.** If Contractor expends \$750,000 or more in federal funds (from all sources) in a fiscal year, Contractor shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR Subtitle B with guidance at 2 CFR Part 200. Copies of all audits must be submitted to OHA within 30 days of completion. If Contractor expends less than \$750,000 in a fiscal year, Contractor is exempt from Federal audit requirements for that year. Records must be available as provided in Exhibit B, “Records Maintenance, Access”.
- 8. Debarment and Suspension.** Contractor shall not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration’s “List of Parties Excluded from Federal Procurement or

Nonprocurement Programs” in accordance with Executive Orders No. 12549 and No. 12689, “Debarment and Suspension”. (See 2 CFR Part 180.) This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Subcontractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

9. **Pro-Children Act.** Contractor shall comply and require all subcontractors to comply with the Pro-Children Act of 1994 (codified at 20 U.S.C. Section 6081 et. seq.).
10. **Medicaid Services. [reserved]**
11. **Agency-based Voter Registration.** If applicable, Contractor shall comply with the Agency-based Voter Registration sections of the National Voter Registration Act of 1993 that require voter registration opportunities be offered where an individual may apply for or receive an application for public assistance.
12. **Disclosure. [reserved]**
13. **Federal Intellectual Property Rights Notice.** The federal funding agency, as the awarding agency of the funds used, at least in part, for the Work Product under this Contract, may have certain rights as set forth in the federal requirements pertinent to these funds. For purposes of this subsection, the terms “grant” and “award” refer to funding issued by the federal funding agency to the State of Oregon. The Contractor agrees that it has been provided the following notice:
 - a. The federal funding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the Work Product, and to authorize others to do so, for Federal Government purposes with respect to:
 - (1) The copyright in any Work Product developed under a grant, subgrant or contract under a grant or subgrant; and
 - (2) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.
 - b. The parties are subject to applicable federal regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.”
 - c. The parties are subject to applicable requirements and regulations of the federal funding agency regarding rights in data first produced under a grant, subgrant or contract under a grant or subgrant.
14. **Super Circular Requirements.** 2 CFR Part 200, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, including but not limited to the following:
 - a. **Property Standards.** 2 CFR 200.313, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, which generally

describes the required maintenance, documentation, and allowed disposition of equipment purchased with federal funds.

- b. Procurement Standards.** When procuring goods or services (including professional consulting services), applicable state procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C or 2 CFR §§ 200.318 through 200.326, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, as applicable.
 - c. Contract Provisions.** The contract provisions listed in 2 CFR Part 200, Appendix II, or the equivalent applicable provision adopted by the awarding federal agency in 2 CFR Subtitle B, that are hereby incorporated into this Exhibit, are, to the extent applicable, obligations of Contractor, and Contractor shall also include these contract provisions in its contracts with non-Federal entities.
- 15. Federal Whistleblower Protection.** Contractor shall comply, and ensure the compliance by subcontractors or subgrantees, with 41 U.S.C. 4712, Enhancement of contractor protection from reprisal for disclosure of certain information.