

**Professional Services Contract**  
Contract No. 745

THIS AGREEMENT, entered into this 1st day of July, 2015, by and between **CLARK COUNTY**, after this called "County," a political subdivision of the State of Washington, and **OREGON PUBLIC HEALTH INSTITUTE (OPHI)** after this called "Contractor."

WITNESSETH

*WHEREAS*, County is in receipt of funding that supports active transportation in an effort to reduce the risk of chronic disease by encouraging policies, systems and environments that support active living, including the adoption of multi-modal transportation; AND

*WHEREAS*, the contractor has been chosen through an informal solicitation, Request for Application #4564; AND

*WHEREAS*, the contractor is experienced in working with communities to develop policy support for active transportation and to promote healthy communities; AND

*WHEREAS*, Clark County does not have available staff to provide such services for the benefit of the services of Clark County, NOW, THEREFORE,

THE COUNTY AND THE CONTRACTOR MUTUALLY AGREE AS FOLLOWS:

1. Services. The Contractor shall perform services as follows:

A. Generally: To provide professional services for County and to perform those services more particularly set out in the attached Statement of Work, attached hereto and incorporated herein by this reference as Exhibit "A."

2. Time. The contract shall be deemed effective beginning July 1, 2015, through September 30, 2015. The contract may be extended upon the mutual written consent of both parties for one (1) twelve (12) month period.

3. Compensation. County shall pay the Contractor for performing said services net 30 days upon receipt of a written invoice according to the Budget, attached hereto and incorporated herein as Exhibit "B", according to the following:

A. Costs are based on hourly rates of:

\$125.00 for Steve White

\$ 40.00 for the HCP Fellow

B. Hourly rates include all salary, personnel benefits, and indirect costs, including equipment and materials used to prepare project deliverables. Staff time is the only anticipated cost of project and will be the only allowable cost per this agreement.

C. Total compensation shall not exceed \$9 ,000.00 without the mutual written consent of both parties.

4. Termination. The County may terminate this contract immediately upon any breach by Contractor in the duties of Contractor as set forth in contract. The waiver by the County of one or more breach shall not be held or construed as a waiver of any subsequent breach or breaches. Further, County may terminate this contract upon immediate notice to Contractor in the event that the funding for the project ceases or is reduced in amount. The Contractor will be reimbursed for services expended up to the date of termination.

5. Monitoring Cooperation Contractor agrees to allow the County and its auditors or their designees to have immediate access to all records and the financial statements related to this agreement and/or service performed under this agreement. This shall include contracts and agreements Contractor has with other entities in fulfillment of this Contract.

6. Independent Contractor. The Contractor shall always be an independent contractor and not an employee of the County, and shall not be entitled to compensation or benefits of any kind except as specifically provided herein.

7. Indemnification / Hold Harmless. The Contractor shall defend, indemnify and hold the County, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Contractor in performance of this Agreement, except for injuries and damages caused by the sole negligence of the County. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the County, its officers, officials, employees, and volunteers, the Contractor's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the

parties. The provisions of this section shall survive the expiration or termination of this Agreement.

8. Wage and hour compliance. Contractor shall comply with all applicable provisions of the Fair Labor Standards Act and any other legislation affecting its employees and the rules and regulations issued thereunder insofar as applicable to its employees and shall always save County free, clear and harmless from all actions, claims, demands and expenses arising out of said act and the rules and regulations that are or may be promulgated in connection therewith.

9. Social Security and Other Taxes. The Contractor assumes full responsibility for the payment of all payroll taxes, use, sales, income or other form of taxes, fees, licenses, excises, or payments required by any city, federal or state legislation that is not or may during the term of this agreement be enacted as to all persons employed by the Contractor in performance of the work pursuant to this agreement and shall assume exclusive liability therefore, and meet all requirement's thereunder pursuant to any rules and regulations that are now and may be promulgated in connection therewith.

10. Contract Documents: Contract documents consist of this agreement, Exhibit "A", which consists of Statement of Work and Exhibit "B" Business Associates Agreement. Where provisions of the contract and provisions of the Request for Quote or the quote are inconsistent, the provisions of the contract shall be controlling.

11. Equal Employment Opportunity: The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, gender, sexual orientation, age, disability, marital status or national origin.

12. Changes: County may, from time to time, require changes in the scope of the services to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between County and the Contractor, shall be incorporated in the written amendments to the agreement.

13. Public Records Act. Notwithstanding the provisions of this Agreement, to the extent any record, including any electronic, audio, paper or other media, is required to be kept or indexed as a public record in accordance with the Washington Public Records Act, RCW Chapter 42.56, as may hereafter be amended, Contractor agrees to maintain all records constituting public records and to produce or assist COUNTY in producing such records, within the time frames and parameters set forth in state law. Contractor further agrees that upon receipt of any written public record request, Contractor shall, within two business days, notify County by providing a copy of the request to the County Public Records Office.

14. Governing Law. This agreement shall be governed by the laws of the State of Washington. Venue for any litigation shall be Clark County, Washington.

15. Confidentiality. All information obtained by the contractor shall remain confidential and shall be maintained in accordance with the Health Information Portability and Accountability Act. County and Contractor agree to comply with the Business Associate Agreement attached hereto and incorporated herein as Exhibit "C".

16. Debarment or Exclusion. The Contractor shall not employ any person nor contract with any person or entity that is excluded from participation in federally funded (in whole or in part) agreements, in accordance with 42 CFR Part 76 or who are

debarred, suspended, declared ineligible or voluntarily excluded. The Contractor and any subcontractors must comply with federal law and must not knowingly have a director, officer, partner or person with a beneficial ownership of the Contractor's equity, or an employee, contract or consultant who is significant or material to the provision of services under this contract, who has been or is affiliated with someone who has been, debarred, suspended or otherwise excluded by any federal agency. The Contractor shall maintain evidence of compliance in personnel files or with subcontractor's documents. The Contractor shall certify compliance with this provision to the County prior to the term of this agreement, including certification of compliance of any other parties listed above with a beneficial ownership or a party significant to the provision of services under this agreement. The Contractor shall provide the full names of these parties to the County along with certification of compliance prior to the start of this contract.

17. Anti-Terrorism Sanctions. In accepting these funds, Contractor confirms that its organization complies with all US anti-terrorism laws and regulations, including Executive Order 13224 and the Global Terrorism Sanctions regulations set forth in 31 CFR Part 594.

18. Conflict of Interest. The Contractor covenants that it has had no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services hereunder. This Contract further covenants that in the performance of this agreement, no person having such interest shall be employed.

19. Consent and Understanding. This agreement contains a complete and integrated understanding of the agreement between the parties and supersedes any understandings, agreement, or negotiations, whether oral or written, not set forth herein or in written amendments hereto duly executed by both parties.

20. Severability. If any provision of this agreement is held invalid, the remainder would then continue to conform to the terms and requirements of applicable law.

21. Insurance. The Contractor shall provide to Clark County prior to the term of this Agreement, current certificates of insurance which will be in the form of an ACORD Certificate(s), and shall assure that Clark County is listed as an additional insured, and shall include; commercial general liability and medical malpractice insurance to protect against legal liability arising out of Contract activity. Such insurance shall provide a minimum of \$1,000,000 per occurrence.

IN WITNESS THEREOF, County and the Contractor have executed this agreement on the date first above written.

**APPROVED:**  
OREGON PUBLIC HEALTH INSTITUTE

  
\_\_\_\_\_

Date: 7/8/15

**APPROVED:**  
CLARK COUNTY PUBLIC HEALTH

  
\_\_\_\_\_

Mark McCauley  
County Manager

Date: 7/6/15

APPROVED AS TO FORM ONLY  
ANTHONY F. GOLIK  
Prosecuting Attorney

  
\_\_\_\_\_

Jane Vetto  
Deputy Prosecuting Attorney



## **Exhibit A**

### **Statement of Work**

#### **Project Management Approach and Understanding**

##### **Supervisory Plan**

OPHI Project Manager, Steve White, will be responsible for ensuring the quality and timeliness of all deliverables, which will be completed according to the timeline provided in the RFP (see Table 1 below). Steve will ensure that all deliverables will be reviewed by CCPH and/or Battle Ground Public Works (BGPW) staff prior to finalization, and will be revised based on staff input. All products will not be considered final until approval is received from appropriate CCPH/BGPW staff.

OPHI assures that staff assigned to this project will be available throughout the contracted work period.

##### **Project Narrative**

The project will follow the timeline provided in the RFP (Table 1 below). Steve will attend the initial project review meeting to become further acquainted with the project and the key staff and stakeholders. During and after the meeting, OPHI will work with key staff to discuss and define the process for developing and applying project selection criteria. Based on input from CCPH/BGPW staff, OPHI will describe the process in writing and will circulate draft descriptions via email for feedback, holding ad hoc phone calls as necessary, and discussing the process in the second of the three team meetings. Development of project selection criteria will similarly be developed by sharing draft versions via email and discussing them during team meetings and ad hoc phone calls. As project selection criteria are developed and implemented, OPHI will develop supporting maps. Maps will be developed using ESRI ArcGIS software. Maps of existing conditions will be based on ArcGIS compatible shapefiles supplied by BGPW. Recommended projects will be digitized into these maps as appropriate. OPHI will work with BGPW staff to determine appropriate layout, content and symbolization for quadrant and project-specific maps, and will document map development methodology and metadata. Once the final list of projects is developed, OPHI will work with BGPW staff to develop planning level project cost estimates based on the cost assumptions used in Battle Ground's current TSP.

Once project selection and map development are complete, OPHI will prepare a report summarizing the project selection process and outcomes. The 8.5"x11" report will include appropriate text, tables and

graphics and will be formatted according to BGPW guidelines. A draft of the report will be shared with CCPH and BGPW staff and will be revised as appropriate based on their feedback.

Finally, OPHI will work with CCPH and BGPW staff to plan and prepare for presenting the project at one public meeting and one City Council meeting. OPHI will prepare meeting materials as appropriate, participate in the meetings, and support CCPH and BGPW's participation in these meetings. OPHI will also will record and compile comments made at both meetings, and incorporate the comments into the final report. Delivery of the final report will be accompanied by all electronic materials developed by OPHI for the project, including electronic versions of the final report, maps, shapefiles, and spreadsheets.



<b>Table 1: Project Deliverables and Due Dates</b>	
<b>Deliverable</b>	<b>Due Date</b>
Contract scheduled to begin	July 6, 2015
Initial project review meeting	July 6 - 10, 2015
Second team meeting: discuss and finalize criteria; review existing conditions maps	July 20-24, 2015
Third team meeting: review draft maps of draft set of prioritized projects, and develop final list of prioritized projects	August 10-14, 2015
Draft report completed	September 14, 2015
Incorporate final input if needed	September 22, 2015
Submit final report, including electronic files, detailed invoice for hours	September 29, 2015

### **Proposed Cost**

The estimated cost for OPHI to provide the services and deliverables described in the RFP is \$8,950. The cost per deliverable is detailed in Table 2 below. Table 2 also contains the key assumptions made for each estimate of hours. Costs are based on an hourly rate of \$125 for Steve White and \$40 for the HCP Fellow. Hourly rates include all salary, personnel benefits and indirect costs, including equipment and materials used to prepare project deliverables. No expenses other than staff time are anticipated for this project.

**Table 2: Proposed Cost**

Deliverable	Steve		HCP Fellow		Communications		Executive		Assumptions
	Hr	Cost	Hr	Cost	Hr	Cost	Hr	Cost	
Preparing for and attending a project kick-off meeting, and two other meetings with CCPH and the City of Battle Ground to review and discuss the project and report development.	12	\$1,500	-	-	-	-	-	-	Assumes 3 1.5 hour meetings; Steve attending all 3 meetings, HCP Fellow attending 1 meeting; includes costs for travel time (travel time is evaluated at half the standard hourly rate).
Coordinating with CCPH and the City of Battle Ground staff to discuss criteria and strategy for identifying optimum bicycle, pedestrian, and transit locations and prioritization process.	8	\$1,000	2	\$80	-	-	-	-	In addition to team meetings, coordination will take place via email and ad hoc phone calls as necessary
Establish quadrant maps identifying existing and recommended project locations and boundaries.	4	\$500	16	\$640	-	-	-	-	Assumes existing conditions shapefiles will be provided by Battle Ground Public Works
Establish a prioritized list of projects based on established criteria. Deliverables include 8.5" x 11" quadrant maps of the City illustrating project type and locations. Project lists will be identified by priority with associated cost estimates and backup documentation including cost estimation worksheets.	6	\$750	8	\$320	-	-	-	-	
Prepare project cost estimates for review and possible revision by City staff.	6	\$750	-	-	-	-	-	-	Cost estimates will be planning level, and will be based on cost assumptions used in the current TSP
Prepare a report summarizing the foregoing analysis and including the results of the mapping and priority project list described above. The 8.5"x11" report will include appropriate text, tables and graphics.	10	\$1,250	4	\$160	4	\$400	1	\$150	Includes documenting and transmitting all electronic materials such as spreadsheets and shapefiles
Review report with City staff and CCPH staff and revise as needed to prepare an adoption-ready version.	2	\$500	-	-	-	-	-	-	Includes formatting according to client specifications
Prepare for, attend and participate in one public meeting and one City Council meeting. Consultant will record and compile comments made at both meetings, incorporate these into the final report and provide technical assistance during the meetings, as needed.	8	\$750	-	-	-	-	-	-	Includes preparation of meeting materials such as handouts and presentation materials, if necessary. Includes costs for travel time (travel time is evaluated at half the standard hourly rate).
Deliverable is a final report for the City of Battle Ground Public Works Director.	2	\$250	-	-	-	-	-	-	
<b>TOTAL</b>	<b>58</b>	<b>\$7,250</b>	<b>30</b>	<b>\$1,200</b>	<b>4</b>	<b>\$400</b>	<b>1</b>	<b>\$150</b>	<b>\$9,000</b>

## Exhibit C

### **BUSINESS ASSOCIATE AGREEMENT** **Between** **OREGON PUBLIC HEALTH INSTITUTE** **And** **CLARK COUNTY PUBLIC HEALTH**

This Business Associate Agreement (the “Agreement”), dated as of January 1, 2015 is entered into between **Clark County Department of Public Health** (the “Covered Entity”) and **Oregon Public Health Institute** (the “Business Associate”).

#### **Recitals**

A. Business Associate provides certain legal services to Covered Entity (the “Services”) which sometimes may involve (i) the use or disclosure of Protected Health Information (as defined below) by Business Associate, (ii) the disclosure of Protected Health Information by Covered Entity (or another business associate of Covered Entity) to Business Associate, or (iii) the creation, receipt, maintenance, or transmission of Electronic Protected Health Information (as defined below) by Business Associate. Accordingly, the use, disclosure, transmission, or maintenance of Protected Health Information by Business Associate is subject to the privacy regulations (the “HIPAA Privacy Regulations”) and the security regulations (the “HIPAA Security Regulations”) promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), and 45 C.F.R. Parts 160 and 164 with respect to such Services. This Agreement is intended to document the business associate assurances required by the HIPAA Privacy Regulations (at 45 C.F.R. § 164.504(e)), and the HIPAA Security Regulations (at 45 C.F.R. § 164.314(a)).

B. This Agreement will govern the terms and conditions under which Covered Entity may disclose or have disclosed to Business Associate, and Business Associate may create, use, disclose, maintain, transmit or receive, Protected Health Information on behalf of Covered Entity. This Agreement will also govern the terms and conditions under which Covered Entity may disclose or have disclosed to Business Associate, and Business Associate may create, receive, maintain or transmit, EPHI on behalf of Covered Entity.

#### **Agreement**

1. **Definitions.** Capitalized terms used in this Agreement, but not otherwise defined in this Agreement, shall have the same meanings as those terms in the HIPAA Privacy Regulations and the HIPAA Security Regulations. Unless otherwise stated, a reference to a “Section” is to a Section in this Agreement. For purposes of this Agreement, the following terms shall have the following meanings.

1.1 **Breach.** “Breach” shall have the same meaning as the term “breach” in 45 C.F.R. § 164.402.

1.2 Designated Record Set. “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 C.F.R. § 164.501.

1.3 Electronic Protected Health Information or EPHI. “Electronic Protected Health Information” or “EPHI” shall have the same meaning as the term “electronic protected health information” in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

1.4 Individual. “Individual” shall mean the person who is the subject of Protected Health Information as provided in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

1.5 Individually Identifiable Health Information. “Individually Identifiable Health Information” shall have the same meaning as the term “individually identifiable health information” in 45 C.F.R. § 160.103.

1.6 Protected Health Information or PHI. “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

1.7 Required By Law. “Required By Law” shall have the same meaning as the term “required by law” in 45 C.F.R. § 164.103.

1.8 Secretary. “Secretary” shall mean the Secretary of the federal Department of Health and Human Services or that person’s designee.

1.9 Security Incident. “Security Incident” shall have the same meaning as the term “security incident” in 45 C.F.R. § 164.304.

1.10 Unsecured Protected Health Information. “Unsecured Protected Health Information” shall have the same meaning as the term “unsecured protected health information” in 45 C.F.R. § 164.402, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

## 2. Permitted Uses and Disclosures by Business Associate.

2.1 General. Except as otherwise specified in this Agreement, Business Associate may use or disclose PHI to perform its obligations for, or on behalf of, Covered Entity, provided that such use or disclosure would not violate the HIPAA Privacy Regulations if done by Covered Entity or the minimum necessary policies and procedures of Covered Entity.

2.2 Other Permitted Uses. Except as otherwise limited by this Agreement, Business Associate may use PHI it receives or creates in its capacity as a business associate of Covered Entity, if necessary:

2.2.1 for the proper management and administration of Business Associate;

2.2.2 to carry out the legal responsibilities of Business Associate; or

2.2.3 to provide Data Aggregation services to Covered Entity which relate to the health care operations of Covered Entity in accordance with the HIPAA Privacy Regulations.

2.3 Other Permitted Disclosures. Except as otherwise limited by this Agreement, Business Associate may disclose to a third party PHI it receives or creates in its capacity as a business associate of Covered Entity for the proper management and administration of Business Associate, provided that:

2.3.1 The disclosure is Required By Law; or

2.3.2 Business Associate obtains reasonable assurances from the third party to whom the information is disclosed that (i) the PHI will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the third party, and (ii) the third party notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

2.4 De-Identified Information. Health information that has been de-identified in accordance with the requirements of 45 C.F.R. §§ 164.514 and 164.502(d) and is therefore not Individually Identifiable Health Information (“De-Identified Information”) is not subject to the provisions of this Agreement. Covered Entity may disclose PHI to Business Associate to use for the purpose of creating De-Identified Information, whether or not the De-Identified Information is to be used by Covered Entity.

### 3. Obligations and Activities of Business Associate Regarding PHI.

3.1 Limitations on Uses and Disclosures. Business Associate will not use or further disclose PHI other than as permitted or required by this Agreement or as Required By Law.

3.2 Safeguards. Business Associate will use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.

3.3 Mitigation. Business Associate will mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

3.4 Reporting. Business Associate will report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement of which it becomes aware.

3.5 Agents and Subcontractors. Business Associate will ensure that any agent, including any subcontractor, to whom Business Associate provides PHI received from, or created or received by Business Associate on behalf of, Covered Entity agrees to the same restrictions



and conditions that apply through this Agreement to Business Associate with respect to such information.

3.6 Access. Where PHI held by Business Associate is contained in a Designated Record Set, within fifteen (15) days of receiving a written request from Covered Entity, Business Associate will make such PHI available to Covered Entity or, as directed by Covered Entity to an Individual, that is necessary for Covered Entity to respond to Individuals' requests for access to PHI about them in accordance with 45 C.F.R. § 164.524. Business Associate will provide such PHI in an electronic format upon request by Covered Entity unless it is not readily producible in such format in which case Business Associate will provide Covered Entity a standard hard copy format.

3.7 Amendment of PHI. Where PHI held by Business Associate is contained in a Designated Record Set, within fifteen (15) days of receiving a written request from Covered Entity or an Individual, Business Associate will make any requested amendment(s) or correction(s) to PHI in accordance with 45 C.F.R. § 164.526.

3.8 Disclosure Documentation. Business Associate will document its disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.

3.9 Accounting of Disclosures. Within thirty (30) days of receiving a request from Covered Entity, Business Associate will provide to Covered Entity information collected in accordance with Section 3.8 of this Agreement, as necessary to permit Covered Entity to make an accounting of disclosures of PHI about an Individual in accordance with 45 C.F.R. § 164.528.

3.10 Access to Business Associate's Internal Practices. Except to the extent that it violates or interferes with attorney-client privilege, the duty of client confidentiality, or the applicable rules of professional responsibility, Business Associate will make its internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of (a) PHI received from, or created or received by Business Associate on behalf of, Covered Entity; and (b) EPHI created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity, available to the Secretary or to Covered Entity, in a time and manner designated by the Secretary or reasonably specified by Covered Entity, for purposes of the Secretary determining Covered Entity's compliance with the HIPAA Privacy Regulations and HIPAA Security Regulations.

3.11 Breach Notification. Business Associate, following the discovery of a Breach of Unsecured Protected Health Information, shall notify Covered Entity of such breach. Except as otherwise required by law, Business Associate shall provide such notice without unreasonable delay, and in no case later than thirty (30) calendar days after discovery of the Breach.

3.11.1 Notice to Covered Entity required by this Section 3.11 shall include: (i) to the extent possible, the names of the individual(s) whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been accessed,

acquired, used or disclosed during the Breach; (ii) a brief description of what happened including the date of the Breach and the date of the discovery of the Breach, if known; (iii) a description of the types of Unsecured Protected Health Information that were involved in the Breach; (iv) a brief description of what Business Associate is doing or will be doing to investigate the Breach, to mitigate harm to the individual(s), and to protect against further Breaches; and (v) any other information that Covered Entity determines it needs to include in notifications to the individual(s) under 45 C.F.R. § 164.404(c).

3.11.2 After receipt of notice, from any source, of a Breach involving Unsecured Protected Health Information used, disclosed, maintained, or otherwise possessed by Business Associate or of a Breach, involving Unsecured Protected Health Information, for which the Business Associate is otherwise responsible, Covered Entity may in its sole discretion (i) require Business Associate, at Business Associate's sole expense, to use a mutually agreed upon written notice to notify, on Covered Entity's behalf, the individual(s) affected by the Breach, in accordance with the notification requirements set forth in 45 C.F.R. § 164.404, without unreasonable delay, but in no case later than sixty (60) days after discovery of the Breach; or (ii) elect to provide notice to the individual(s) affected by the Breach.

#### 4. Obligations of Covered Entity.

4.1 Requested Restrictions. Covered Entity shall notify Business Associate, in writing, of any restriction on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, which permits an Individual to request certain restrictions of uses and disclosures, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

4.2 Changes in or Revocation of Permission. Covered Entity will notify Business Associate in writing of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes or revocation may affect Business Associate's use or disclosure of PHI.

4.3 Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Regulations and HIPAA Security Regulations if done by Covered Entity, except to the extent that Business Associate will use or disclose PHI for Data Aggregation or management and administrative activities of Business Associate.

#### 5. Security Restrictions on Business Associate.

5.1 General. Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the EPHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity as required by the HIPAA Security Regulations.



5.2 Agents; Subcontractors. Business Associate will ensure that any agent, including a subcontractor, to whom Business Associate provides EPHI agrees to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of such EPHI.

5.3 Reporting of Security Incidents. Business Associate shall report to Covered Entity any Security Incident affecting EPHI created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity, of which Business Associate becomes aware. This Section constitutes notice to Covered Entity of routine and ongoing attempts to gain unauthorized access to Business Associate's information systems (each an "Unsuccessful Attack"), including but not limited to pings, port scans, and denial of service attacks, for which no additional notice shall be required provided that no such incident results in unauthorized access to Electronic PHI.

5.4 HIPAA Security Regulations Compliance. Business Associate agrees to comply with Sections 164.308, 164.310, 164.312, and 164.316 of title 45, Code of Federal Regulations.

6. Term and Termination.

6.1 Term. This Agreement shall take effect on the Effective Date (as defined below), and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section 6.

6.2 Termination for Cause. If Covered Entity determines that Business Associate has breached a material term of this Agreement, Covered Entity will provide written notice to Business Associate which sets forth Covered Entity's determination that Business Associate breached a material term of this Agreement, and Covered Entity may:

6.2.1 Provide written notice to Business Associate which provides an opportunity for Business Associate to cure the breach or end the violation, as applicable. If Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, then Covered Entity may immediately thereafter terminate this Agreement; or

6.2.2 Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible.

6.2.3 If neither termination nor cure are feasible as provided in Sections 6.2.1 and 6.2.2 of this Agreement, Covered Entity will report the violation to the Secretary.

6.3 Effect of Termination.

6.3.1 Except as provided in Section 6.3.2 of this Agreement, upon termination of this Agreement, for any reason, Business Associate will return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity.

This provision also applies to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate will retain no copies of the PHI.

6.3.2 In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate will provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon reasonable determination that return or destruction of PHI is infeasible, Business Associate will extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

7. Qualified Service Organization Agreement. Covered Entity and Business Associate hereby acknowledge that Business Associate and its agents and employees have, as applicable, complied, and will comply, with 42 USC §290dd-2 and 42 CFR Ch. 1, part 2, §§2.11 et seq. (the “Federal Drug and Alcohol Regulations”) in that:

7.1 The parties acknowledge that if Business Associate receives, processes, reviews, or otherwise deals with any Covered Entity patient records during the course of the Services Business Associate and its employees will be providing to Covered Entity, that each and every one of said employees will be fully bound by the Federal Drug and Alcohol Regulations;

7.2 Each of Business Associate’s employees and agents will maintain Covered Entity’s patient identifying information in accordance with federal and state confidentiality rules governing drug and alcohol treatment records;

7.3 Each of Business Associate’s employees and agents will comply, as applicable, with the limitations on disclosure, redisclosure and use set forth in 42 CFR Ch. 1, part 2, §§ 2.16 and 2.53; and

7.4 If necessary, each of Business Associate’s employees and agents will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by the Federal Drug and Alcohol Regulations.

8. Miscellaneous.

8.1 Regulatory References. A reference in this Agreement to a section in the HIPAA Privacy Regulations or the HIPAA Security Regulations means the section as in effect or as amended.

8.2 Amendment. If any new state or federal law, rule, regulation, or policy, or any judicial or administrative decision, affecting the use or disclosure of PHI is enacted or issued, including but not limited to any law or regulation affecting compliance with the requirements of the HIPAA Privacy Regulations or the HIPAA Security Regulations, the parties agree to take such action in a timely manner and as is necessary for Covered Entity and Business Associate to comply with such law, rule, regulation, policy or decision. If the parties are not able to agree on the terms of such an amendment, either party may terminate this Agreement on at least thirty (30) days’ prior written notice to the other party.

8.3 Survival. The respective rights and obligations of Business Associate under Section 6.3 of this Agreement (“Effect of Termination”) shall survive the termination of this Agreement.

8.4 Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Privacy Regulations, the HIPAA Security Regulations, and the Federal Drug and Alcohol Regulations. The section and paragraph headings of this Agreement are for the convenience of the reader only, and are not intended to act as a limitation of the scope or meaning of the sections and paragraphs themselves.

8.5 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Business Associate and Covered Entity and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

8.6 Assignment. This Agreement shall not be assigned or otherwise transferred by either party without the prior written consent of the other, which consent shall not be unreasonably withheld; provided that no such consent shall be required for either party’s assignment or transfer of this Agreement in connection with a sale or transfer of all or substantially all of the business or assets of the assigning party. This Agreement shall be binding on and inure to the benefit of the parties hereto and their permitted successors and assigns.

8.7 Entire Agreement. This Agreement constitutes the entire agreement between the parties as to its subject matter and supersedes all prior communications, representations, and agreements, oral or written, of the parties with respect to its subject matter.

8.8 Severability and Waiver. The invalidity of any term or provision of this Agreement will not affect the validity of any other provision. Waiver by any party of strict performance of any provision of this Agreement will not be a waiver of or prejudice any party’s right to require strict performance of the same provision in the future or of any other provision of this Agreement.

8.9 Notices. Any notices permitted or required by this Agreement will be addressed as follows or to such other address as either party may provide to the other:

If to Covered Entity:	Clark County Department of Public Health Attn: Kathy Smith, Contracts and Grants PO Box 9825 Vancouver, WA 98666-8825
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If to Business Associate:	Attention:
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8.10 Counterparts. This Agreement may be executed in multiple counterparts, all of which together will constitute one agreement, even though all parties do not sign the same counterpart.

8.11 Effective Date. This Agreement will become effective on the date first written above.

IN WITNESS WHEREOF, the parties hereto have caused this BUSINESS ASSOCIATE AGREEMENT AND QUALIFIED SERVICE ORGANIZATION AGREEMENT to be duly executed as of the Effective Date.

**CLARK COUNTY PUBLIC HEALTH      OREGON PUBLIC HEALTH INSTITUTE**

By:   
Mark McCauley  
County Manager

By: 