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**INTERGOVERNMENTAL AGREEMENT # 180824
TORT LIABILITY COVERAGE AS A PROVIDER FOR
PSYCHIATRIC SECURITY REVIEW BOARD**

This Agreement is between the State of Oregon acting by and through its Oregon Health Authority hereinafter referred to as "OHA," and Yamhill County hereinafter referred to as "County."

1. **Term.** This Agreement shall become effective on July 1, 2023, regardless of the date it was actually signed by every party. Unless otherwise terminated or extended, this Agreement expires on June 30, 2025 or when the Financial Assistance Agreement (FAA) between OHA and County during July 1, 2023 through June 30, 2025 is terminated, whichever occurs earlier.
2. **Statutory Authority.**
 - a. Pursuant to ORS 278.315, OHA may provide tort liability coverage through the Oregon Department of Administrative Services to any County or private community care provider (CMHP) that has contracted with OHA to provide supervision, care, treatment, or training of persons under the jurisdiction of the Psychiatric Security Review Board, hereinafter referred to as "PSRB," or OHA under ORS 161.315 to 161.351. The coverage provided shall be self-insurance by the State of Oregon to the limits contained in ORS 30.260 to 30.300.
 - b. Pursuant to ORS 278.405, the Oregon Department of Administrative Services has the authority to direct and manage all risk management and insurance programs of state government except for employee benefit insurance programs as otherwise provided in ORS Chapter 243.
 - c. Pursuant to ORS 278.320, ORS 30.260 to 30.300 does not apply to claims against private community care providers (CMHPs) by reason of the provision of tort liability coverage to those providers pursuant to ORS 278.315. Private community care providers that are provided tort liability coverage under ORS 278.315 remain liable for any damages, including the cost of defense, in excess of the coverage provided under ORS 278.315.

County's tort liability coverage under ORS 278.315 is to the limits contained in ORS 30.260 to 30.300 and per Section 3. Indemnity by State. County remains liable for any damages, including the cost of defense, in excess of this limit.
3. **Indemnity by State.**

From funds available in that portion of the Insurance Fund dedicated for state insurance programs, the state of Oregon, acting by and through DAS, and subject to ORS 278.120(1) and rules and policies adapted by DAS in administration of the state's insurance and risk management activities, shall defend and indemnify county or private community care provider

and its employees, but only up to the limits for tort claims specified in ORS 30.271 and 30.273 (including the costs of defense; defense cost is inside the limit, not in addition to the limit), for damages and costs of claims for torts committed or alleged to have been committed by county, private community care provider or its employees in the course of county's or private community care provider's delivery of professional services under this agreement. Subject to ORS 278.120(1), the monetary limits stated above, and rules and policies adapted by DAS in administration of the state's insurance and risk management activities, county or private community care provider and its employees are entitled to the same defense and indemnification that qualifying agents of OHA would receive under 30.260 to 30.300. However, none of the terms of this agreement are intended to – and none do – make county, private community care provider or its employees the agents or employees of OHA, DAS, or the state of Oregon generally. County or private community care provider remains liable for any damages, including the cost of defense, in excess of this Indemnity.

All private community care providers must maintain the private community care provider's own insurance in the amount required by Exhibit J, Provider Insurance Requirements, from the County's Financial Assistance Agreement (FAA). Provider must maintain the certificate of insurance and provide it to DAS Risk upon request. The County or private community care provider must immediately notify DAS Risk Management if a claim is reported to them. They must provide a copy of the notice or lawsuit immediately upon receiving. The above information should be sent to:

Department of Administrative Services
Attn: Risk Management / EGS
P.O. Box 12009
Salem, OR 97309-0009

Email: Risk.Management@DAS.Oregon.gov
FAX: 503-373-7337
If questions: 503-373-7475

4. Statement of Work and Consideration.

- a. The County shall continue to provide PSRB Mental Health Services (MHS 30-Service Description "Monitoring, Security and Supervision Services for Individuals Under the Jurisdiction of the Adult and Juvenile Panels of the Psychiatric Security Review Board," hereinafter referred to as "MHS 30"), as specified in the 2023 – 2025 FAA.
- b. The County shall submit a quarterly report of all PSRB clients that are enrolled in an educational program or that are currently independently employed or currently receiving supported employment services.
- c. OHA obligates itself to provide liability coverage, up to the limits contained in ORS 30.260 to 30.300, to the County while delivering PSRB services to the extent that any tort claim arises out of the County's provision of supervision, care, treatment or training of persons pursuant to the terms of the 2023 – 2025 FAA.

- 5. Funds Available.** OHA has sufficient funds currently available and authorized for expenditure to finance the costs of this Agreement within OHA's biennial appropriation or limitation. The County understands and agrees that OHA's payment of amounts under this Agreement are

attributable to work performed after the last day of the current biennium and are contingent on OHA receiving, from the Oregon Legislative Assembly, appropriations, limitation, or other expenditure authority sufficient to allow OHA, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement. In the event the Oregon Legislative Assembly fails to approve sufficient appropriations, limitations, or other expenditure authority, OHA may terminate this Agreement without penalty or liability to OHA, effective upon the delivery of written notice to the County, with no further liability to the County, except that termination shall not prejudice County's right to tort liability coverage under this Agreement for any covered liability incurred prior to the date of termination.

6. Termination

- a. This Agreement may be terminated by written mutual consent of both parties or by either party upon 30 calendar days written notice to the other party.
- b. OHA may terminate this Agreement effective upon delivery of written notice to the County or at such later date as may be established by OHA under any of the following conditions:
 - (1) The County is deficient in providing PSRB Services as outlined in the MHS 30 Service Description within the time specified herein or any extension thereof.
 - (2) OHA's 2023 – 2025 FAA with County is terminated.
- c. Termination under this Section shall not prejudice County's right to tort liability coverage under this Agreement for any covered liability incurred prior to the date of termination.

7. Records Maintenance and Access. County shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, County shall maintain any other records, books, documents, papers, plans, records of shipments and payments, and writings of County, whether in paper, electronic, or other form that are pertinent to this Agreement in such a manner as to clearly document County's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments, and writings of County whether in paper, electronic, or other form that are pertinent to this Agreement are collectively referred to as "Records." County acknowledges and agrees that OHA and the Oregon 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 make excerpts and transcripts. County shall retain and keep accessible all Records for a minimum of six years, or such longer period as may be required by applicable law, following final payment and expiration or termination of this Agreement, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Agreement, whichever date is later. County shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.

8. Compliance with Applicable Law. The County shall comply with all federal, state, and local laws and ordinances applicable to the services being provided under this Agreement. The County, its officers, and employees are not agents of OHA for the purposes of ORS 30.260 to 30.300. Without limiting the generality of the foregoing, County expressly agrees to comply with:

- a. Title VI of the Civil Rights Act of 1964;
- b. Section V of the Rehabilitation Act of 1973;
- c. The Americans with Disabilities Act of 1990;
- d. ORS 659A.142, and all regulations and administrative rules established pursuant to those laws; and

- e. All other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations.
9. **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.
10. **Merger Clause.** This Agreement and the attachments constitute the entire Agreement between the parties. No waiver, consent modification, or change of terms of this Agreement shall bind either party unless in writing and signed by all signatories to this Agreement. Such waiver, consent modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The County, by the signature below of its authorized representative, hereby acknowledges that he or she has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

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

11. Signatures:

Yamhill County

By: *Lindsay Berschauer*

Authorized Signature

Commissioner
Title

6.29.23
Date

State of Oregon acting by and through its Oregon Health Authority

By: Signed by:

Jon Collins

Deputy Director Health System Division
Title

8/28/2023
Date

Authorized Signature

Approved by: Director, OHA Health Systems Division

By: Signed by:

Shawna McDermott

Interim Director, Health Systems Division
Title

8/28/2023
Date

Authorized Signature

Approved for Legal Sufficiency:

By:

Approved by Steven Marlowe, Senior Assistant Attorney General, Department of Justice, Tax and Finance Section, on June 7, 2023; email in contract file.

Approved by the Department of Administrative Services:

By:

Approved by Shelly Hoffman, Risk Manager, Department of Administrative Services, on April 28, 2023; letter in contract file.

Accepted by Yamhill County
Board of Commissioners on
6.29.23 by Board Order
BO.23-250