

INTERGOVERNMENTAL AGREEMENTContract Number 4600008175

This is an Agreement between City of Portland, Parks and Recreation (CONTRACTOR) and Multnomah County (County).

PURPOSE:

The purpose of this agreement is to purchase Employment and Community Inclusion Services and Start-up/Special Projects for people with developmental disabilities.

The parties agree as follows:

I. TERM The term of this agreement shall be from July 1, 2010 to June 30, 2012.

II. RESPONSIBILITIES OF CONTRACTOR.

The CONTRACTOR agrees to provide Employment and Community Inclusion Services under Service Element DD 54 and Special Projects under Service Element DD 57. CONTRACTOR will provide Services in accordance with COUNTY and State requirements for DD 54 and DD 57 as specified within the Additional Terms and Conditions and Special Conditions of this Agreement.

III. RESPONSIBILITIES OF COUNTY.

The COUNTY agrees to compensate CONTRACTOR in accordance with the terms of this Agreement.

IV. TERMINATION

This agreement may be terminated by either party upon 30 days written notice.

V. INDEMNIFICATION

Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, County shall indemnify, defend and hold harmless CONTRACTOR from and against all liability, loss and costs arising out of or resulting from the acts of County, its officers, employees and agents in the performance of this agreement. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300 CONTRACTOR shall indemnify, defend and hold harmless County from and against all liability, loss and costs arising out of or resulting from the acts of CONTRACTOR, its officers, employees and agents in the performance of this agreement.

VI. INSURANCE

Each party shall each be responsible for providing worker's compensation insurance as required by law. Neither party shall be required to provide or show proof of any other insurance coverage.

VII. ADHERENCE TO LAW

Each party shall comply with all federal, state and local laws and ordinances applicable to this agreement.

VIII. NON-DISCRIMINATION

Each party shall comply with all requirements of federal and state civil rights and rehabilitation statutes and local non-discrimination ordinances.

IX. ACCESS TO RECORDS

Each party shall have access to the books, documents and other records of the other which are related to this agreement for the purpose of examination, copying and audit, unless otherwise limited by law.

X. SUBCONTRACTS AND ASSIGNMENT

Neither party will subcontract or assign any part of this agreement without the written consent of the other party.

XI. THIS IS THE ENTIRE AGREEMENT

This document along with Attachment A-IGA - State Required Contract Provisions and Attachment B - IGA – Required Federal Terms and Conditions, which are incorporated by this reference, constitute the entire Agreement between the parties. This Agreement may be modified or amended only by the written agreement of the parties.

XII. ADDITIONAL TERMS AND CONDITIONS:

CONTRACTOR will comply with all applicable provisions of the 2009-2011 County Financial Assistance Contract (CFAC), officially titled the 2009-11 Intergovernmental Agreement For The Financing Of Community Mental Health, Developmental Disability And Addiction Services, and the successor contract issued to COUNTY upon its expiration. In the event of a conflict between the documents comprising this Contract and the Language of the CFAC, the language in the CFAC will control. The CFAC is available for reference at the COUNTY Internet website: <http://www.co.multnomah.or.us/dchs/cfac.pdf>.

If a dispute arises between COUNTY and CONTRACTOR relating to a claim that this Contract contains terms or conditions that are not substantially similar to those established by the State's Department of Human Services Division (State), the dispute will be resolved according to procedures contained in OAR 309-014-0020(4)(b).

A. CONTRACTOR will provide Employment and Community Inclusion Services under Service Element DD 54.

1. Service Description

Employment and Community Inclusion Services (DD 54) are out-of-home employment or community training services and related supports, delivered to individuals aged 18 or older with developmental disabilities, to improve the individuals' productivity, independence and integration in the community.

For purposes of this Contract, an individual will be considered to have received DD 54 services only when one of the following conditions is met:

- a. The CONTRACTOR is actively involved in initial planning and assessment activities for the individual, including development of the individual's "Individual Support Plan" ("ISP") as defined in OAR 309-041-1300 through 309-041-1370, as such rules may be revised from time to time, prior to implementation of the ISP. Such planning activity performed on behalf of the individual will be noted on the required Attendance Records. The individual may be considered to have received DD 54 Services under this Section for a maximum of fifteen (15) consecutive days, beginning with the date the individual is first enrolled in the CONTRACTOR's services; or

- b. In any given calendar month, the individual is at the CONTRACTOR's site, or at the individual's work site, for the days and hours specified in the individual's ISP. If during that month the individual is at the CONTRACTOR's site, or at the individual's work site, for the days and hours specified in the individual's ISP, the individual will be considered to have received DD 54 Services under this Section for the entire month; or
- c. The CONTRACTOR is actively involved in job development activity for the individual while that individual is temporarily unemployed, and that job development activity has been reviewed and approved by the ISP Team, as defined in OAR 309-041-1300 through 309-041-1370, as such rules may be revised from time to time. Job development performed on behalf of the individual will be noted in the required Attendance Records. The individual may be considered to have received DD 54 Services under this Section for a maximum of ninety (90) consecutive days, unless the ISP Team approves continued job development for up to an additional forty-five (45) day period.
- d. The individual had been receiving DD 54 Services from the CONTRACTOR immediately prior to the absence and the individual is absent from CONTRACTOR's DD 54 Services for not more than five (5) consecutive days (excluding weekends and holidays), unless an exception is granted by COUNTY, as a result of incarceration or absence without leave, and it has not been determined that the individual will not be returning to CONTRACTOR's DD 54 Services; or
- e. The individual had been receiving DD 54 Services from the CONTRACTOR immediately prior to the absence and the individual is absent from CONTRACTOR's DD 54 Services for not more than fourteen (14) consecutive days, not to exceed forty-five (45) days in any one-year period unless an exception is granted by the COUNTY, as a result of being on vacation or family visit and it has not been determined that the individual will not be returning to CONTRACTOR's DD 54 Services; or
- f. The individual had been receiving DD 54 Services from the CONTRACTOR immediately prior to the absence and the individual is absent from CONTRACTOR's DD 54 Services for not more than ninety (90) consecutive days as a result of being on convalescent leave, on leave under the Family Medical Leave Act, or admittance to either a medical hospital, psychiatric hospital, or a State-Operated Community Program, and it has not been determined that the individual will not be returning to CONTRACTOR's DD 54 Services.

2. Performance Requirements

- a. CONTRACTOR must comply with OAR Chapter 411, Division 345, as such rules may be revised from time to time.
- b. All individuals receiving DD 54 Services funded through this Contract must be eligible for developmental disability services, with eligibility determined in accordance with OAR 411-320-0080, as such rule may be revised from time to time.
- c. CONTRACTOR may not expend any funds received through this Contract to cover any of the following costs arising from or related to the work of individuals receiving DD 54 Services funded through this Contract or the goods or services produced thereby:
 - 1) The wages of individuals receiving DD 54 Services funded through this Contract;
 - 2) Other indirect labor costs;

- 3) Supply, equipment or marketing costs; or
 - 4) Other production costs.
- d. Unless otherwise authorized in writing by COUNTY, all individuals receiving DD 54 Services funded through this Contract must also be receiving, at the same time, one of the following Services funded in Multnomah County:
- 1) Comprehensive In-Home Supports for Adults (DD 49);
 - 2) Residential Facilities (DD 50) Services;
 - 3) Supported Living Services (DD 51); or
 - 4) DD Foster Homes (DD 58) Services.
3. Special Reporting Requirements
- a. Attendance Records:
- CONTRACTOR will maintain daily attendance records for all individuals to whom they deliver DD 54 Services funded through this Contract and will make such records available to COUNTY upon request.
- b. For purposes of Medicaid compliance, State must be notified when an eXPRS Disbursement Claim is submitted, with respect to DD 54 Services described in this Contract. Notification required under this section must be provided to State using forms and procedures designated by State.
- c. Employment Outcomes Systems (EOS):
- CONTRACTORS of DD 54 Services funded through this Contract will submit reports, as part of the State's Employment Outcomes System (EOS), or a successor reporting system developed by the State, that include data that measure individual and program outcomes. Reports must be completed semi-annually, following instructions provided by State.
- d. Direct Care Staff Wages and Turnover:
- CONTRACTORS of DD 54 Services funded through this Contract must report to State staff wages and turnover data using forms and procedures designated by State. Data must include the following information about direct care staff: number of positions; number of vacancies and new hires; average wages and benefits paid; hours of overtime; and such other information as State reasonably requests. Data must be compiled separately for each month.
4. Payment Calculation and Disbursement Procedures
- The maximum payment for Service Element DD 54 Services is dependent on the number of clients served by CONTRACTOR and the rate per client designated in the Client Prior Authorization. DD 54 funding under this Contract for the Contract period of July 1, 2010 through June 30, 2012 will be unilaterally adjusted by COUNTY as necessary to meet service level requirements.

a. Funds Described in the Client Prior Authorization

1) Calculation of Payments:

State will issue payments for DD 54 Services, from DD 54 funds included in the Client Prior Authorization (CPA), in an amount equal to the monthly rate set forth in a CPA authorizing the use of funding for delivery of DD 54 services to an individual specified in that CPA, multiplied by the number of months of DD 54 Services delivered to that individual during the period specified in the CPA, subject to the following:

- a) Total State payments for delivery of DD 54 Services to an individual specified in a CPA will not exceed the amount of funding authorized in that CPA. If no CPAs are submitted for DD 54 Services, no payment will be provided for DD 54 Services.
- b) The payment for a partial month of DD 54 Service will be prorated.
- c) If during any month during the period specified in a particular line of the Service Element Prior Authorization that awards funds for DD 54 Services and that specifies one or more units in the Service Element Prior Authorization Detail, fewer than 95% of the units of DD 54 Service so specified are delivered under that line, State may unilaterally reduce the amount of funding specified in that line of the Service Element Prior Authorization, and the number of units of Service, to make it consistent with the actual delivery of DD 54 Services under that line.
- d) There is no obligation to provide funding for a unit of DD 54 Service, from funds described in the Client Prior Authorization, if a Disbursement Claim for payment for that unit of DD 54 Service is not entered into eXPRS by the date sixty (60) days after the earlier of termination of this Contract, termination of COUNTY's obligation to provide funding for DD 54 Services, or termination of COUNTY's obligation to include the Program Area, in which DD 54 Services fall, in its Community Mental Health Program.

2) Disbursement of Payments:

State will disburse payments awarded for DD 54 under a Client Prior Authorization in response to and as soon as reasonably possible after submission of a Disbursement Claim with respect to DD 54 Services delivered under that Authorization.

3) Exceptions to Pay Vacancies:

COUNTY may agree to provide funding for delivery of DD 54 Service capacity that is not utilized, as opposed to the normal DD 54 Services payment calculation methodology that provides payments only for DD 54 Services actually delivered. Exceptional circumstances include:

- a) When COUNTY agrees to provide funding for unutilized DD 54 Service capacity in order to ensure the availability of DD 54 Services for a particular individual in the near future, or
- b) When unexpected financial difficulties are encountered by CONTRACTOR as a result of an unusually high rate of unutilized service capacity in

CONTRACTOR's system, through no fault of that CONTRACTOR. COUNTY will award, disburse and settle funds for unutilized DD 54 Service capacity in service element DD 57 (DD Special Projects, Start-Up).

B. CONTRACTOR will provide Developmental Disability Special Projects under Service Element DD 57.

1. Service Description

Developmental Disability Special Projects provided under Service Element DD 57 are developmental disability services within the scope of ORS 430.630. DD 57 Services are generally one-time-only or time-limited activities, and may include: provision of training to Providers of State funded developmental disability services; demonstration or emergency services; activities and expenditures necessary to prepare for implementation of new or revised services ("Start-Up" activities); or other services as deemed appropriate by COUNTY.

2. Performance Requirements.

CONTRACTOR must comply with performance requirements applicable to the particular DD 57 Services provided and as specified in Project Instructions provided to CONTRACTOR by COUNTY when a DD 57 Special Project is issued. CONTRACTOR Special Instructions issued by COUNTY under Service Element DD 57 will reflect those instructions provided to the COUNTY by the State and may include but are not limited to:

- a. Services to be provided;
- b. The minimum number of individuals to be served, if applicable;
- c. Any tangible products to be produced and delivered to COUNTY;
- d. Any other requirements that must be accomplished in order to determine CONTRACTOR's minimum performance under this Contract; and/or
- e. All payment terms and expenditure amounts associated with the Special Project.

3. Special Reporting Requirements.

- a. Providers of DD 57 Services funded under this Contract must submit special programmatic and other reports applicable to the particular DD 57 Services provided as specified by COUNTY in the Project Instructions.
- b. Expenditure Reports.
 - 1) For each DD 57 Special Project funded under this Contract for which the applicable Project Instructions indicate that the basis of payment is reimbursement for actual expenditures, CONTRACTOR shall submit:
 - a) An interim report of actual revenue and expenditures for the period beginning on the date funds are first disbursed under this Contract for the project and ending on July 1 of that fiscal year. Report will be due within sixty (60) days of fiscal year close.
 - b) A final report of actual revenues and expenditures during the term of this Contract, due within sixty (60) days of fiscal year close.

- 2) Expenditure reports must be prepared:
 - a) Separately for each Special Project funded through this Contract; and
 - b) Using forms and/or procedures designated by COUNTY.
 4. Payment Terms and Procedures.
 - a. The maximum payment for Service Element DD 57 Services is dependent on the Special Project, the number of clients served by CONTRACTOR and/or the rate per client designated in the Developmental Disability Rate Schedule. DD 57 funding under this Contract for the Contract period of July 1, 2010 through June 30, 2012 will be unilaterally adjusted by COUNTY as necessary to meet service level requirements.
 - b. Basis of Payment.

COUNTY payment for DD 57 Services provided under this Contract are subject to the requirements specified in the funding award detailed in the Project Instructions issued to CONTRACTOR by COUNTY. Payment for DD 57 Services is based on reimbursement for actual allowable expenditures incurred by CONTRACTOR in delivering DD 57 Services under this Contract and the applicable Project Instructions.
 5. Disbursement of Payments.
 - a. If COUNTY allocates DD 57 Service funds, CONTRACTOR must submit a properly completed State form "Request for Payment of Start-Up Funds", line item budget and expenditure report that documents expenditure of all funds. Unless a different disbursement method is specified in the Project Instructions, COUNTY may advance up to 90 percent of funding to CONTRACTOR upon receipt and approval of the line-item budget showing proposed expenditures of funds. CONTRACTOR must prepare a final expenditure report that includes copies of receipts supporting the expenditures. The remaining funds, if any, will be provided upon receipt of final expenditure reports, but no later than the last day of the COUNTY fiscal year, June 30.
 - b. COUNTY is not obligated to pay for any DD 57 Services that are not properly reported to COUNTY through a method permitted or required by applicable Project Instructions.
 6. Contract Settlement.

Contract settlement will reconcile any discrepancies that may have occurred during the term of this Contract between actual COUNTY disbursements for DD 57 Services and amounts due for such Services based on the appropriate basis of payment as detailed in the Project Instructions.
- C. Special Conditions.
1. Notwithstanding any other provisions of the Contract regarding amendments, COUNTY may unilaterally amend this Contract by written notice to CONTRACTOR to add any provisions issued by the State and incorporated into the 2009-2011 CFAC or the successor contract issued to COUNTY upon its expiration.

2. Criminal Record Background Checks.

CONTRACTOR will comply with those provisions of ORS 181.537 et seq. and OAR 407-007-0000 thru 407-007-0380 regarding criminal record checks, which apply to their programs and will return a Certificate of Compliance (Exhibit 7) with this Contract. CONTRACTOR will make the results of the criminal records check available for review by COUNTY staff upon request.

3. Effect of Failure to Satisfy Conditions for Access to eXPRS.

If CONTRACTOR provides DD 50, DD 51, and/or DD 54 Services, and fails to satisfy the conditions for access to eXPRS, CONTRACTOR will not be able to view information in eXPRS electronically and will be required to submit Client Prior Authorizations (CPA) and Disbursement Claims, to the extent the CONTRACTOR is authorized to submit CPAs and Disbursement Claims, to State in hard copy form.

D. Compensation.

1. The maximum payment under this contract is limited by individual client rates as approved by the State and set forth in the Development Disability Rate Schedule or Service Element Prior Authorization maintained by COUNTY in accordance with the CFAC and any subsequent amendments to that agreement. In the event of a discrepancy between the rates set forth in the Developmental Disability Rate Schedule or the Service Element Prior Authorization and those rates approved by the State, the State's rate will prevail. CONTRACTOR will not be compensated beyond the amount disbursed to COUNTY by the State for services provided by CONTRACTOR. COUNTY will, at its discretion, adjust the maximum allocation as needed to reflect changes in funds awarded to COUNTY by the State.
2. COUNTY will pay CONTRACTOR an estimated monthly allotment for Service Elements DD 53 and DD 56 if applicable under this Contract. Monthly allotments provided by COUNTY under this Contract will be made at the monthly rate or rates set forth on the Developmental Disability Rate Schedule and will be based upon the sum of individual rates of clients in service at any given time, as such schedule may be amended from time to time, for Services delivered under this Contract during the period specified in Developmental Disability Rate Schedule, subject to the conditions of the Service Element defined in this Contract.

Service Elements DD 50, DD 51, and DD 54, if applicable under this Contract, will be paid on a fee-for-service basis. Claims paid for Service Elements DD 50, DD 51, and DD 54 will be based on Client Prior Authorizations in the State eXPRS payment system for the time of service for which the claim is made, subject to the conditions of the Service Element defined in this Contract.

Service Element DD 57 will be paid as determined in the DD 57 Program Instructions.

3. Chargeable Expenditures.

CONTRACTOR may charge expenditures under this Contract only if they are:

- a. In payment for services performed under this Contract;
- b. Not in excess of the amount reasonable and necessary to provide quality delivery of that service.

E. Disbursement of Funds.

1. Conditions Precedent to Disbursement.

COUNTY'S obligation to disburse payments to CONTRACTOR under this Contract is subject to satisfaction, with respect to each disbursement, that CONTRACTOR:

- a. Is not in Default as defined in this Contract and the CFAC;
- b. Representations and warranties are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.

2. Disbursement Generally.

- a. Disbursement procedures for the payments described in this Contract vary by Service. Subject to the conditions precedent set forth in this Contract and in the CFAC, COUNTY shall disburse payments described in this Contract to CONTRACTOR as required and in accordance with the procedures set forth below and, as applicable, in the Service Descriptions, the Developmental Disability Rate Schedule, the Service Element Prior Authorization, or in the case of DD 57, the Project Instructions.

- b. Disbursement of Funds Awarded for Services in Financial Assistance Award.

As set forth in the Service Description for a particular Service, COUNTY will generally disburse funding that is described in the Financial Assistance Award to CONTRACTOR in monthly allotments in advance of actual delivery of the Service.

- c. Disbursement of Payments Awarded for Services in Service Element Prior Authorization.

As set forth in the Service Description for a particular Service, COUNTY will generally disburse funding that is described in the Service Element Prior Authorization to CONTRACTOR, in response to and as soon as reasonably possible after COUNTY's receipt and verification of a Disbursement Claim. Disbursement of payments in response to a Disbursement Claim will occur only after COUNTY has verified that CONTRACTOR is authorized to receive payment for that Service, as such authorization is reflected in the Service Element Prior Authorization, that the individual identified in the Disbursement Claim is authorized to receive the unit of Service, as such authorization is reflected in a Client Prior Authorization, and that the CONTRACTOR was authorized to deliver the unit of Service, as reflected in the Client Prior Authorization. If specified in the corresponding Service Description, the State may make disbursements of payments for a Service directly to the CONTRACTOR identified in a Disbursement Claim. Disbursements made directly from the State to CONTRACTOR are made for the convenience of the CONTRACTOR only. Regardless of whether payment is disbursed to CONTRACTOR by the COUNTY or State for Services provided under this Contract, CONTRACTOR remains accountable to COUNTY for the proper use of the funding in accordance with the terms and conditions of this Contract.

- d. Disbursements Remain Subject to Recovery.

- 1) All disbursements of funding under this Contract, including disbursements made directly to CONTRACTOR from State, remain subject to recovery from CONTRACTOR under processes set forth for an Underexpenditure, Overexpenditure or Misexpenditure as defined in this Contract and the CFAC.

- 2) "Misexpenditure" means money, or an Overexpenditure, disbursed to CONTRACTOR by COUNTY under this Contract and expended by CONTRACTOR that:
- a) Is identified by the federal government as expended contrary to applicable statutes, rules, Office of Management and Budget (OMB) Circulars or any other authority that governs the permissible expenditure of such money, for which the federal government has requested reimbursement by the State and whether in the form of a federal determination of improper use of federal funds, a federal notice of disallowance, or otherwise; or
 - b) Is identified by the State or COUNTY as expended in a manner other than that permitted by this Contract, including without limitation, any money expended by CONTRACTOR, contrary to applicable statutes, rules, OMB Circulars or any other authority that governs the permissible expenditure of such money; or is identified by the State or COUNTY as expended on the delivery of a Service that did not meet the standards and requirements of this Contract with respect to that Service.
 - c) "Overexpenditure" means money, other than Working Capital, disbursed by COUNTY under this Contract and expended by CONTRACTOR that is identified by the State or COUNTY, through Contract Settlement or any other disbursement/payment reconciliation permitted or required by this Contract, as in excess of the amount CONTRACTOR is entitled to as determined in accordance with the payment calculation methodologies set forth in the applicable Service Descriptions.
 - d) Recovery of Underexpenditure, Overexpenditure or Misexpenditure.

If COUNTY believes there has been an Underexpenditure, Overexpenditure, or Misexpenditure of moneys disbursed under this Contract, COUNTY will unilaterally distribute or recover any funds involved in compliance with this Contract and the CFAC.

Upon determination that it will recover an Underexpenditure or Overexpenditure from future payments, COUNTY may recover the Underexpenditure or Overexpenditure by offsetting the amount thereof against any amount owed to CONTRACTOR by COUNTY including, but not limited to, any amount owed to CONTRACTOR by COUNTY under this Contract or any amount owed to CONTRACTOR by COUNTY under any other contract or agreement between CONTRACTOR and COUNTY, present or future.

Multnomah County Contract Number 460008175

MULTNOMAH COUNTY, OREGON:

CONTRACTOR:

JEFF COGEN/gc
County Chair or Designee

Signature: _____

Date: MAY 6, 2010

Name: _____
Please Print

Approved: [Signature]
Department Director or Designee

Title: _____

Date: 4/14/10

Date: _____

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY

Approved as to form:

APPROVED BY
By: PATRICK HENRY 2-25-10
Assistant County Attorney Date

By: _____
Date