

AGREEMENT

THIS AGREEMENT made this 1st day of July, by and between HARNEY COUNTY, hereinafter "COUNTY," and Contractor, hereinafter "CONTRACTOR."

WHEREAS, COUNTY through its COMMISSION ON CHILDREN AND FAMILIES, hereinafter "COMMISSION," solicited proposals for eligible public and private entities to provide certain services using Oregon Commission on Children and Families and/or other monies; and

WHEREAS CONTRACTOR submitted a proposal that was reviewed and recommended for funding by COMMISSION on DATE, and approved by the COUNTY on DATE;

NOW, THEREFORE, in consideration of mutual covenants herein, the parties agree as follows:

1. **SERVICES TO BE PROVIDED:** CONTRACTOR shall perform, as an independent contractor and not an agent of COUNTY, the services described in the attached Statement of Work (Exhibit "A") at the funding level prescribed in the budget approved by COUNTY. Where there is an inconsistent provision within the Request for Proposal response and the terms of this agreement, the terms of this agreement shall take precedence.

2. **AVAILABILITY OF FUNDS AND PAYMENTS:** The provisions of this agreement are contingent upon the appropriation of funds by the Oregon Commission on Children and Families and/or other state, federal or private funding sources and COUNTY. If funds are not appropriated or any party subsequently amends the annual appropriations, the provisions of this agreement become voidable or subject to amendment, at COUNTY's option. Subject to the availability of funds, CONTRACTOR shall be paid for services rendered according to the schedule outlined in Exhibit "B". Reporting of service deliveries and expenditures, and requests for payment shall be on forms as prescribed by COUNTY; required documentation must be submitted before payments are disbursed.

3. **FUNDING RESTRICTIONS:** CONTRACTOR shall use funds solely as set forth in Exhibit "A." CONTRACTOR agrees reimbursement funds shall not be used for revolving funds, debt retirement, or payment of debts of participants or others, unless otherwise authorized by COUNTY. Any equipment or capital items purchased with funds pursuant to this agreement shall be identified as property of COUNTY and shall revert to COUNTY upon conclusion of the agreement, unless otherwise authorized by COUNTY. If CONTRACTOR is found to be in violation of requirements of this paragraph, COUNTY, at its option, may terminate agreement and/or recover funds pursuant to Paragraphs 4 and 14.

4. **RECOVERY OF FUNDS AND REALLOCATION:** CONTRACTOR's expenditures may be charged to this agreement only if they: (1) are in payment for services performed under this agreement, (2) conform to applicable state and federal regulations and statutes, (3) are in payment of an obligation incurred during the agreement period, and (4) are not in excess of 100% of program costs. Any funds spent for purposes not authorized by this agreement shall be deducted from payments or refunded to the COUNTY. CONTRACTOR may not transfer funds provided under this agreement from one program to another without prior written approval of COUNTY. In the event of early termination, cancellation, or suspension of this agreement, CONTRACTOR shall submit report of expenditures to COUNTY in a form prescribed by COUNTY. Any COUNTY funds on hand and not encumbered for authorized expenditures at date of termination, cancellation, or suspension shall be refunded to COUNTY according to instructions furnished by COUNTY. CONTRACTOR agrees to make repayment to COUNTY within thirty (30) days of any sums if (1) CONTRACTOR has misused funds or owes a refund, (2) funds are disallowed as a result of an audit covered by this agreement, (3) COUNTY finds that any funds must be repaid as a result of

CONTRACTOR's performance or failure to perform under this agreement. The provisions of Paragraph 4 do not limit other available remedies to COUNTY.

5. **RECORDS:** CONTRACTOR shall create and maintain records to document and verify all contractual requirements including, but not limited to: financial records, supporting documents, statistical records, and all other records pertinent to this agreement as may be required by COUNTY. Records shall be maintained for a minimum of three (3) years after the close of the agreement. If there are unresolved audit questions at the end of the three-year period or an audit has been instigated or requested by COUNTY, records shall be maintained beyond the three-year period until authorized for release by COUNTY. In the event CONTRACTOR ceases to exist, administrative and client records shall be turned over to COUNTY for retention for the required period. Records shall remain the property of COUNTY and be made available to COUNTY upon request. CONTRACTOR shall exercise due care to maintain the confidentiality of any client records in accordance with law. COUNTY, the Secretary of State's Office of the State of Oregon, the Federal Government and their duly authorized representatives shall have access to the books, documents, papers and records of the CONTRACTOR which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcripts.

6. **REPORTS:** CONTRACTOR agrees to prepare and furnish such reports as COUNTY and/or COMMISSION may require. CONTRACTOR shall provide COUNTY with a copy of a financial statement within 150 days following completion of CONTRACTOR's fiscal year. Unless otherwise authorized by COUNTY, the minimum level of financial records that must be supplied shall be determined by the amount of funds CONTRACTOR received by COUNTY within each fiscal year:

\$100,000 or over:	Audited financial statement
\$25,000 to \$99,999:	Review statement
\$0 to \$24,999:	Compilation statement

The audited financial statement and the review statement shall be prepared by an independent certified public accountant. Either a public accountant or a certified public accountant may prepare the compilation statement. The audited financial statement shall include a management letter from the certified public accountant. Requirements for financial statements do not apply to individuals working under professional services contracts. In addition, COUNTY and/or State will be entitled to conduct an independent audit at the CONTRACTOR'S expense of the books and records of the CONTRACTOR to the extent that such books or records relate to the performance of this agreement. CONTRACTOR shall maintain such books or records in accordance with the record requirements in Paragraph 5 above.

7. **PROGRESS REVIEW:** The COUNTY or COMMISSION may periodically perform inspections of project programs, including site visits, and documentation review. CONTRACTOR is responsible for securing confidentiality releases or otherwise ensuring confidentiality of client records in accordance with law. Project reviews will be scheduled with prior notice, as much as possible, to the CONTRACTOR. Unscheduled reviews may be done if concerns are raised regarding project performance. However, the COUNTY reserves the right to perform reviews at any time.

8. **ACCEPTANCE OF PRODUCT AND SERVICES:** At the time the CONTRACTOR delivers the products or services, the COUNTY will review the work program to determine if the product or services conform satisfactorily to the contract requirements. If the deliverables are satisfactory, the COUNTY will proceed with payment. If the deliverables are unsatisfactory, the COUNTY will give the CONTRACTOR a written notice of unsatisfactory performance. This notice will also indicate necessary remedial action. Payment will be withheld until the unsatisfactory performance issues are resolved.

9. **ASSIGNMENT/DELEGATION:** Except as above, neither party shall assign, sublet or transfer any interest in or duty under this agreement without the written consent of the other, and no assignment shall be of any force or effect whatsoever unless and until the other party has so consented.

10. **STATUS OF CONTRACTOR:** The parties intend that CONTRACTOR, in performing the services specified in this agreement, shall act as an independent contractor and shall have the control of the work and the manner in which it is performed. CONTRACTOR is not to be considered an employee of the COUNTY and is not entitled to participate in any pension plan, insurance, bonus or similar benefits COUNTY provides its employees. CONTRACTOR will not be eligible for any federal social security, state workers compensation, unemployment insurance, or Public Employees Retirement System benefits from this agreement payment, except as a self-employed individual.

CONTRACTOR and any subcontractors working under this agreement are subject employers under the Oregon Workers Compensation Law and shall comply with ORS 656.017, which requires them to provide workers compensation coverage for all their subject workers. CONTRACTOR is an agent of the COUNTY as that term is used in ORS 30.265 for work done within the scope of this agreement.

If this payment is to be charged against federal funds, CONTRACTOR certifies that (s)he is not currently employed by the federal government and the amount charged does not exceed his/her normal charge for the type of service provided.

COUNTY will report the total amount of all payments to CONTRACTOR, including any expense, in accordance with Federal Internal Revenue Service and State of Oregon Department of Revenue regulations. CONTRACTOR shall be responsible for any federal or state taxes applicable to amounts paid under this agreement. CONTRACTOR certifies that it is not in violation of any tax laws described in ORS 305.380(4).

11. **INDEMNIFICATION:** COUNTY has relied upon the professional ability and training of CONTRACTOR as a material inducement to enter into this agreement. CONTRACTOR warrants that all its work will be performed in accordance with generally accepted professional practices and standards, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of CONTRACTOR's work by COUNTY shall not operate as a waiver or release. The CONTRACTOR shall hold harmless, indemnify, and defend COUNTY, its officers, agents and employees from any and all liability, actions, claims, losses, damages, or other costs including attorney's fees and witness costs (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity arising from, during, or in connection with the performance of the work described in this agreement, except liability arising out of the sole negligence of the COUNTY and its employees. Such indemnification shall also cover claims brought against COUNTY under state or federal workers compensation laws. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

12. **INSURANCE:** The CONTRACTOR shall maintain comprehensive liability insurance and property damage insurance (including automobiles) covering contracted activities in amounts not less than the current minimums of the Oregon Tort Claims Act in full force and effect throughout the term of this agreement. It is agreed that any insurance maintained by COUNTY shall apply in excess of, and not contribute with, insurance provided by CONTRACTOR. Said insurance shall not be construed to limit CONTRACTOR's liability hereunder. Notwithstanding said insurance, CONTRACTOR shall be obligated for the total amount of any damage, injury or loss caused by negligence or neglect connected with this agreement. CONTRACTOR's insurance policy or policies shall provide COUNTY with a 30-day notice of cancellation. Certificates of insurance for such coverage shall be sent to:

Harney County Commission on Children and Families
450 N. Buena Vista
Burns, OR 97720

CONTRACTOR agrees to deposit with COUNTY at the time (s)he returns the executed agreement certificates of insurance or binders of insurance, if the policy is new or has expired, sufficient to satisfy the COUNTY that the insurance provisions of this agreement have been complied with and to keep such insurance in effect and certificates and/or binders thereof on deposit with the COUNTY during the entire term of this agreement. Such certificates and/or binders must be delivered prior to commencement of the work.

13. **METHOD AND PLACE OF GIVING NOTICE, SUBMITTING BILLS AND MAKING PAYMENTS:** All notices, bills and payment shall be made in writing and may be given by personal delivery or by mail. Notices, bills and payments sent by mail should be addressed as indicated in Exhibit "B," and when so addressed, shall be deemed given upon deposit in the United State mail, postage prepaid. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills and payments are to be given by giving notice pursuant to this paragraph.

14. **TERMINATION:** This contract may be terminated in whole or part by mutual consent of both parties or by either party upon thirty (30) days written notice delivered by certified mail or in person under any of the following conditions:

(a) If COUNTY funding from federal, state or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services. The contract may be modified to accommodate a reduction in funds.

(b) If federal or state regulation or guidelines are modified, changed or interpreted in such a way that the services are no longer eligible for the funding proposed for payments authorized by this contract.

(c) If any license or certificate required by law or regulation to be held by the CONTRACTOR to provide the services required by this contract is for any reason denied, revoked or not renewed.

(d) If the CONTRACTOR fails to provide services called for by this contract within the time specified herein or any extension thereof.

(e) If the CONTRACTOR fails to perform any of the other provisions of this contract or so fails to pursue the work as to endanger performance of this contract in accordance with its terms, and after receipt of written notice from COUNTY fails to correct such failures within ten (10) days or such longer period as the COUNTY may authorize.

Any termination of this contract under conditions (a), (b), or (c) above shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination. The rights and remedies of COUNTY provided under conditions (d) and (e) above related to defaults (including breach of contract) by the CONTRACTOR shall not be exclusive and are in addition to any other right and remedies provided by law or under this contract.

15. **COMPLIANCE WITH APPLICABLE LAW:** The CONTRACTOR shall comply with all federal, state and local laws and ordinances applicable to the work to be done under this agreement.
16. **OWNERSHIP OF WORK PRODUCT:** All work products of the CONTRACTOR that result from this contract are the exclusive property of COUNTY.
17. **NONDISCRIMINATION:** CONTRACTOR agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
18. **SUCCESSORS IN INTEREST:** The provisions of this agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
19. **FORCE MAJEURE:** CONTRACTOR shall not be held responsible for delay or default caused by fire, riot, acts of God and war which was beyond the CONTRACTOR's reasonable control.
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 enforced as if the contract did not contain the particular term or provision held to be invalid.
21. **WAIVER:** The failure of the COUNTY to enforce any provision of this contract shall not constitute a waiver by the COUNTY of that or any other provision.
22. **MERGER CLAUSE:** This agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of the 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. There are no other understandings, agreements or representations, oral or written, herein regarding this agreement. CONTRACTOR, by the signature below of its authorized representative, hereby agrees to be bound by its terms and conditions.
23. **AMENDMENT OF CONTRACT:** This agreement may be voided or amended if the funds providing for this contract are not appropriated or the appropriations are amended. This agreement may be extended if the Statement of Work and the rate of compensation does not change significantly. If significant changes are involved, a new contract must be renegotiated.
24. **CHILD ABUSE REPORTING:** At any time that contractor has reasonable cause to believe that any child with whom contractor comes in contact has suffered abuse or that any person with whom contractor comes in contact has abused a child, contractor is encouraged to report or cause a report to be made to the Oregon Department of Human Services Child Welfare (DHS-CW) or a law enforcement agency.
25. **EMPLOYEE BACKGROUND CHECKS:** If this contract involves working with children, CONTRACTOR hereby gives consent for the COUNTY to make a criminal offender records check through the Law Enforcement Data System (LEDS), and/or the Computerized Criminal History (CCH) system of any employees/volunteers and/or subcontractors and their employees/volunteers. CONTRACTOR will provide COUNTY with a list of all subject employees by name, address, date of birth, and social security number. Background checks must be completed prior to start of work.

26. **CONTRACTOR DATA:**

NAME _____

ADDRESS _____

TAX ID/EIN NO. _____

By and for CONTRACTOR:

By and for HARNEY COUNTY:

Name (Please Print)

Steve Grasty, Judge

Title (Please Print)

Dan Nichols, Commissioner

Signature

Jack Drinkwater, Commissioner

Date

Date

NOTE: Paragraphs 6, 12, and 25 require submission of material by CONTRACTOR to COUNTY.

Approved As To Legal Sufficiency

Tim Colahan, District Attorney

EXHIBIT "A"
STATEMENT OF WORK

DELIVERY SCHEDULE:

Begin: July 1, 2003
End: June 30, 2004

CONDITIONS: Conditions are as outlined in the proposal solicitation material and the approved proposal and outcome measures (see attachments). Funds must be expended by project end date noted above unless otherwise specified. Providers are required to attend relevant Commission committee meeting in order to inform the Commission about its program(s) and be informed about state and local Commission planning and activities.

EXHIBIT "B"
RESPONSIBILITIES AND PAYMENT SCHEDULES

1. CONTRACTOR shall be responsible for preparing fiscal and service reports, and a request for reimbursement on COMMISSION forms and submitting to the address below for each quarter the program is funded by the COMMISSION.

Harney County Commission on Children and Families
450 North Buena Vista
Burns, OR 97720

2. CONTRACTOR shall receive reimbursement on a quarterly basis upon presentation of billings to the address above, unless otherwise arranged and approved by the COUNTY.

3. The four (4) quarters of the year are defined as follows:

First Quarter	July 1 through September 30
Second Quarter	October 1 through December 31
Third Quarter	January 1 through March 31
Fourth Quarter	April 1 through June 30

4. Prior to authorization for release of a quarter's funds, CONTRACTOR must have submitted to the COMMISSION the required report forms for the relevant quarter. The COUNTY shall release no funds unless and until these reports have been received.

5. Payments shall be made in accordance with COUNTY remittance policy, i.e., after approval by the County Court. The County Court approves billings for payment on the first and third Wednesday of every month.

6. **Total consideration:** County Budget Total and Funding Source