

**REQUEST FOR PROPOSALS (RFP)  
FOR BEHAVIORAL HEALTH HOUSING SERVICES  
IN YAMHILL COUNTY**

**1. NOTICE TO PROPOSERS**

Notice is hereby given that the Yamhill County Health and Human Services Department (“HHS” or “County”) is currently soliciting proposals from qualified organizations to increase behavioral health housing services in Yamhill County, Oregon; HHS will consider proposals to increase sheltering bed capacity; provide housing barrier removal; provide outreach and engagement items to meet immediate needs for houseless individuals such as hygiene kits, blankets, food and clothing; for operation and administrative costs to manage housing, and for Capital costs to purchase or renovate property.

A copy of the “Request for Proposal (“RFP”) for Behavioral Health Housing Services” will be available upon request at no charge from Yamhill County HHS Administration, 638 NE Davis Street, McMinnville, Oregon 97128, telephone 503-474-6821; or by emailing Claudia Rubio at [rubioc@co.yamhill.or.us](mailto:rubioc@co.yamhill.or.us); or by downloading a copy from the county’s website at <https://www.co.yamhill.or.us>

**ALL PROPOSALS MUST BE RECEIVED BY HHS BY 3:00 PM, LOCAL TIME ON June 9, 2023. NO PROPOSALS SHALL BE ACCEPTED AFTER THIS TIME AND DATE.**

All correspondence and sealed proposals shall be directed to Yamhill County HHS, BEHAVIORAL HEALTH HOUSING RFP, ATTN: Terry Malay, 638 NE Davis, McMinnville, OR 97128 or emailed to [malayt@co.yamhill.or.us](mailto:malayt@co.yamhill.or.us). **HHS will not be responsible for any costs incurred by Proposers (as defined herein) in response to this RFP and reserves the right to (i) reject any or all proposals received that are not in compliance with all prescribed procedures and requirements, (ii) reject for good cause any and all proposals upon the finding that it is in the public interest to do so and (iii) waive any and all minor informalities.**

**There will be a voluntary pre-proposal meeting at 9:00 am on Monday, May 22, 2023, at 330 NE Kirby, McMinnville, OR 97128. All proposing entities or organizations should plan to attend in person or request a meeting link by emailing Claudia Rubio at [rubioc@co.yamhill.or.us](mailto:rubioc@co.yamhill.or.us)**

**QUESTIONS AND/OR CLARIFICATIONS ABOUT THE RFP MUST BE SUBMITTED TO Claudia Rubio AT THE ABOVE LISTED ADDRESS NO LATER THAN 5:00 PM, LOCAL TIME, ON May 26, 2023. ONCE THE DEADLINE FOR RECEIVING QUESTIONS HAS PASSED, HHS SHALL PREPARE AND DISTRIBUTE RESPONSES TO THE QUESTIONS TO ALL PARTIES WHO HAVE REQUESTED A COPY OF THE RFP.**

Proposing entities or organizations (“**Proposer**”) must not be on the Comptroller General’s list of ineligible firms. The successful Proposer will be required to comply with all applicable Equal Employment Opportunity (EEO) laws and regulations. Disadvantaged Business Enterprises (DBEs) shall be afforded full opportunity to submit proposals.

## 2. GENERAL INFORMATION

HHS is soliciting proposals from qualified entities and organizations to increase behavioral health housing services in Yamhill County (refer to Section 3 for eligible program activities). The objective of this RFP is to identify and select a contractor(s) operating in Yamhill County to provide these services. Proposals should address all factors established in this RFP and should clearly indicate if they are proposing to address one or more of the eligible program activities.

**Responsibilities.** The successful Proposer or Proposers will be required to assume responsibility for all services detailed in the proposal (the “Services”) whether the Proposer or his representative or subcontractor provides them. HHS will consider the successful Proposer or Proposers responsible for any and all contractual matters and relationships.

Pursuant to ORS279B.060(2)(c), in addition to other applicable standards as outlined herein, the successful Proposer shall be required to meet the highest standards prevalent in the industry or business most closely involved in providing the same or similar services.

**Agreement Price; Payment Schedule.** HHS currently has a budget of up to \$1.5 million in funding available for Behavioral Health Housing services for a 12-month period of July 1, 2023- June 30, 2024. Proposers are required to submit a draft operating budget for a 12-month period of July 1, 2023 – June 30, 2024, in their proposal and note any one-time expenses. County is seeking services from multiple providers.

Payment for any agreement entered into as a result of this RFP will be negotiated prior to contract execution and may be either a one-time lump sum or upon receipt, review and approval of the successful Proposer’s quarterly billing statement, which must include agreed upon reporting. **Available funding is subject to change.**

**Cost of Proposal.** This RFP does not commit HHS to pay any costs incurred by any Proposer in the preparation or submission of a proposal or in conducting necessary studies for the preparation thereof, or for procuring or contracting for any Services to be furnished under the RFP.

**Reservation of Rights.** HHS expressly reserves the following rights:

- A. To accept the Proposal deemed to be the most beneficial to the public and Yamhill County.
- B. To award an agreement or agreements to a single or multiple contractors on the basis of quality of Services offered, qualifications, experience and price.
- C. To reject any or all proposals and to waive minor informalities in proposals if it is in HHS’s best interest to do so.
- D. To consider the competency and reputation of Proposers and of the proposed subcontractors, if any, in making the award or awards.
- E. In the event any Proposer to whom an agreement is awarded fails to execute the agreement prepared by HHS or fails to furnish satisfactory insurance within the time and in the manner hereinafter specified, to re-award the agreement to another Proposer.
- F. To make the award or awards based on its best judgment as to which proposal or proposals best meet HHS’s expectations and needs balancing the highest standards of quality and range of Services with the best cost.

- G. To make such changes or corrections to the Scope of Services and RFP as it may deem necessary or desirable prior to the proposal due date. Prospective Proposers will be notified of such changes in writing by addendum. **HHS shall not be responsible for oral interpretations. Any changes will be in the form of written addendum as described herein.**
- H. To extend the deadline for submission of proposals.

### 3. SCOPE OF SERVICES

- a. Increase sheltering bed capacity
- b. Provide housing barrier removal
- c. Provide outreach and engagement items to meet immediate needs for houseless individuals such as hygiene kits, blankets, food and clothing
- d. Provide grant activity/data for monthly compliance reports as requested

In addition to the above Scope of Services, eligible program activities may include:

- a. Operational and administrative costs to manage housing
- b. Capital cost – purchase or renovation of property: funding under this scope will require execution of all documents reasonably necessary to secure the real property funded under the grant agreement, including but not limited to a Declaration of Restrictive Covenant for each property (See Attachment 1).

### 4. EVALUATION AND SELECTION

**Selection Committee.** A selection committee (“**Committee**”) will assess each proposal as to completeness, qualifications, experience, understanding, overall approach and references. The Committee will either recommend that a single or multiple proposals be accepted, or recommend that the top finalists be interviewed. The Committee will recommend a single finalist or multiple finalists to HHS and the Yamhill County Board of Commissioners for a final decision and award of an agreement or agreements to the highest ranking responsive and responsible Proposer or Proposers, based on the scoring methodology and process described herein.

**Criteria and Weighting.** Responses to this RFP will be evaluated against the following criteria, each with a maximum potential of 10 points:

- Qualification/experience of Proposer with similar services; brief history of the Proposer and/or special expertise beneficial to HHS.
- Ability to provide extended hours of operation (through operational efficiencies or access to other dedicated funding sources).
- Indication of sufficient staff for all facets of the Services/Project and previous work with any proposed subcontractors if applicable.
- Identification of personnel and their qualifications for providing the Services
- Proposer’s past record of performance on similar services.
- Demonstration of understanding of the overall service goals, reporting requirements, required activities and ability to meet community need.
- Proposed total cost to provide the Services; demonstration of commitment and evidence of internal policies for meeting the budget and schedule; a schedule of fees for Proposer and any subcontractors shall also be included.
- Proposer’s and/or subcontractors’ geographic location in relation to service areas.

- Demonstrated understanding of, and familiarity with, applicable federal and state laws, regulations and standards.

Each proposal must include:

1. A narrative of the project to include (5 pages max):
  - a. Description of organization
  - b. Description of project
  - c. Description of the population it will serve
  - d. Impact expected from project
  - e. Proposed reporting (to be negotiated based on the project at contract negotiation)
2. 12-month Budget to support this activity, including rate structure.

Proposers must show sufficient staff and equipment to provide the required Services.

**Possible Interview Points.** In the event the Committee recommends that interviews be conducted, Proposers selected for interviews may be awarded up to 25 additional points based on their knowledge, experience, communications skills and perceived understanding of the required Services and ability to address community need.

**Scoring.** Points awarded from both written proposals and oral interviews (if any) will be combined to produce an overall score. Based on these scores and recommendations from the Committee, HHS and the Yamhill County Board of Commissioners will review the recommendations for award of an agreement or multiple agreements.

**Protest** A Proposer may protest an intent to award of an agreement or agreements by submitting their protest in writing to HHS and shall state the basis for the protest and the course of action that the protesting party desires HHS to take. A protest based upon restrictive specifications or other provisions of the RFP must be received by 5:00 pm at HHS at the above listed address not later than seven (7) calendar days prior to the deadline set for receipt of proposals. A protest based upon any other grounds must be received by 5:00 pm at HHS not later than seven (7) calendar days after the date HHS mails notice of highest scoring Proposer or Proposers, or within seven (7) calendar days after the time the protesting party first became aware of, or reasonably should have become aware of, the notice whichever is sooner.

If the protest does not meet these requirements, HHS may, at management's option, reject the protest or allow the protesting party a reasonable time to correct the deficiencies in the protest documentation. HHS shall not be obligated to postpone award of an agreement or agreements in order to allow a Proposer to correct a deficient protest, unless otherwise required by law. Upon receipt of a properly submitted protest, HHS shall review the protest and provide a written decision to the protesting party.

HHS shall not be obligated to postpone selection pending resolution of a protest, unless otherwise required by law.

## **5. FORM OF AGREEMENT**

The agreement between HHS and the successful Proposer or Proposers, to be prepared and provided by HHS, ("Agreement"), will be in substantially the form in Exhibit B to this RFP.

## 6. Schedule regarding Submission of Proposals

The following schedule is an estimate and may require adjustment depending on the availability of the Committee and other unforeseen circumstances:

- *RFP Issue Date:* *May 16, 2023*
  
- *Voluntary pre-proposal meeting:* *9 a.m. May 22, 2023*  
*at 330 NE Kirby, McMinnville, OR 97128*
  
- *Deadline for Submission of Questions:* *5:00 p.m.* *May 26, 2023*
  
- *Clarifications/Addenda* *June 2, 2023*
  
- *Deadline for Submission of Proposals:* *3:00 p.m.* *June 9, 2023*
  
- *Interviews (if required):* *June 12-16, 2023*
  
- *Contractor(s) Notice of Selection:* *June 22, 2023 (tentative)*
  
- *Approval of Agreement(s) by:* *June 29, 2023 (tentative)*
  
- *Start date for Contractor(s):* *July 1, 2023*
  
- *Maximum end date:* *June 30, 2024*

## 7. INSTRUCTIONS TO PROPOSERS

Proposals shall contain information that is relevant and demonstrates each Proposer's capabilities to successfully perform the Services. Responses to each section and subsection should be labeled to indicate the item being addressed. Proposal must describe in detail how requirements of this RFP will be met and may provide additional related information.

Proposers are responsible for meeting all terms and conditions described in the Scope of Services and in this RFP. **Proposers shall limit their proposals to five (5) pages, double spaced, 8.5" x 11" size, excluding cover letter, tabs (if any), and forms. Proposers should provide this information in the order described below; be sure to review Section 4 of this RFP as you prepare your proposal.** Proposers shall submit one original and three (3) additional copies. For a proposal to be accepted as responsive, the following items shall be included:

### **A. Description of Firm or Organization's Capabilities and Experience; Resident Proposer.**

Proposals shall include a description of the organization or firm including its legal status, authority and or licenses to operate. The description shall include the major business functions, history, and organizational structure including location of firm's headquarters and major offices, management organization with names and locations of managing director(s) for these Services.

Additionally, each proposer shall state in its Proposal whether it is a “Resident Proposer” of the State of Oregon. “Resident Proposer” means a Proposer that has paid unemployment taxes or income taxes in Oregon during the twelve (12) calendar months immediately preceding submission of the RFP, has a business address in Oregon, and has stated in its proposal that it is a Resident Proposer.

**B. Description of the project proposed.** Proposals shall include a description of the project, the population and locations it will serve, the impact you intend to have and proposed reporting (to be negotiated based on the project at contract negotiation).

**C. Draft Budget.** Proposals shall include a draft 12-month budget to support this activity and these Services, including rate structure. See attached supplemental information in Exhibit A for assistance in preparing this draft budget. If Proposers have additional budget questions these should be forwarded as provided herein no later than 5:00 pm on May 26, 2023.

## **8. IDENTIFICATION REQUIREMENTS FOR PROPOSALS**

PROPOSALS SHALL BE RECEIVED NO LATER THAN 3:00 PM, LOCAL TIME, June 9, 2023, AT THE OFFICES OF YAMHILL COUNTY HEALTH AND HUMAN SERVICES, 638 NE Davis, McMinnville, OREGON 97128. Each package or envelope containing proposals shall be properly identified as follows with the following information placed on the outside of the package or envelope:

Yamhill County Health and Human Services  
Attn: Terry Malay  
**BEHAVIORAL HEALTH HOUSING SERVICES  
IN YAMHILL COUNTY RFP**  
638 NE Davis  
McMinnville, OR 97128

## **Proposal for BEHAVIORAL HEALTH HOUSING SERVICES IN YAMHILL COUNTY**

**Proposal Opening Date: June 9, 2023, at 3:15 PM, local time.**  
**Proposal Opening Location: 638 NE Davis, McMinnville, OR 97128**

It shall be the Proposer’s responsibility to submit his/her proposal by the stated deadline. Proposals received after this date and time will not be accepted and will be returned to the Proposer unopened. Failure of express mail or package delivery services to deliver Proposer’s information by the designated date and time will not be the responsibility of HHS.

**Proposals will not be accepted by facsimile.**

## **9. ADDENDUM**

Any change in the conditions or terms of this RFP will be accomplished by written addendum sent to prospective Proposers. All such addendum shall become part of the RFP and the resulting Agreement. Addendum must be acknowledged either in a cover letter or by signing and returning the addendum form. Acknowledgments must be received no later than the proposal due date. Failure to properly acknowledge any addendum may result in a declaration of non-

responsiveness by HHS. RFP addendum shall only be issued in writing. HHS shall not be responsible for oral interpretations.

## **10. RIGHTS OF REJECTION; CANCELLATION**

HHS reserves the right to postpone the proposal due date for its own convenience (upon prior written notice to Proposers) and reserves the right to modify, revise, reject all proposals or cancel this RFP when rejection or cancellation is deemed to be in the best interest of HHS. HHS is not liable to any Proposer for any loss or expense caused by or resulting from the rejection or cancellation of the RFP. Receipt and evaluation of proposals or the completion of interviews do not obligate HHS to award an agreement. In HHS's discretion, litigation between HHS or Yamhill County and a Proposer shall be cause for proposal rejection, regardless of when that litigation comes to HHS or Yamhill County's attention and regardless how the submitted proposal may have been scored. Proposals may also be rejected if they use subcontractors who are involved in litigation with HHS or Yamhill County. Proposers concerned about possible rejection on this basis should contact HHS or Yamhill County before submission of a proposal for a preliminary determination of whether its proposal will be rejected.

## **11. RESPONSIVE PROPOSALS**

HHS or its designee shall solely determine if each proposal is responsive. The responsiveness of each proposal shall be determined by its conformance to the Scope of Services, instructions to Proposers, legal requirements of the RFP, and the best interests of HHS. Any proposal that fails to conform to the essential requirements of the RFP shall be deemed nonresponsive, and accordingly rejected.

## **12. RESPONSIBLE PROPOSERS**

HHS shall award an agreement or agreements only to responsible and responsive Proposers who possess the potential to perform successfully under the terms and conditions of this RFP. Consideration shall be given to such matters as each Proposer's integrity, qualifications of each Proposer's staff, experience with similar services, record of past performance, and accessibility to resources. Each Proposer shall affirmatively demonstrate its responsibility and, when necessary, the responsibility of any proposed subcontractor. If information obtained by HHS clearly indicates that a Proposer or subcontractor is not responsible and HHS has doubts about the productive capacity or past performance of a Proposer or subcontractor which cannot be resolved affirmatively, a determination that the Proposer is non-responsible shall be rendered.

## **13. WITHDRAWING PROPOSALS; VALIDITY OF PROPOSALS**

After proposals are opened by HHS, a Proposer may not withdraw proposals for sixty (60) calendar days. However, prior to the date/time set for the proposal opening, proposals may be modified or withdrawn by the Proposer's authorized representative in person, or by written notice. If proposals are modified or withdrawn in person, the authorized representative shall make his/her identity known and shall sign a receipt for the proposal. Written notices shall be received by HHS no later than the exact date and time for proposal opening.

Proposals submitted in response to this RFP must be valid for a period of one hundred and twenty (120) days from proposal due deadline, and must be so marked.

#### **14. CERTIFICATION OF NONDISCRIMINATION; PERFORMANCE STANDARDS**

By signing and submitting a proposal in response to this RFP the Proposer is certifying that the Proposer has not and will not discriminate in violation of ORS279A.110(1) against a disadvantaged business enterprise, minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business in awarding a subcontract. Further, by signing and submitting a proposal, Proposer agrees to perform the scope of work and meet the performance standards set forth in the final negotiated scope of work of the Contract.

#### **15. DISCLAIMER**

HHS has taken all reasonable efforts to include all the relevant information in this RFP, however, HHS does not warrant the accuracy or completeness of this information or the underlying data. Each Proposer bears the responsibility to make its own assessments of the information contained in the RFP and to pose questions accordingly.

#### **16. PUBLIC RECORD/CONFIDENTIAL OR PROPRIETARY INFORMATION**

Proposers should identify any portions of its proposal or any information submitted with its proposal that Proposer wishes to be kept confidential or that Proposer believes constitutes a trade secret or other proprietary information and provide justification as to why such material or information should not be made public. HHS cannot guarantee that this information will not become a public record but HHS will use their reasonable best efforts to protect such information, in accordance with applicable state and federal public records requirements. All information submitted by a Proposer shall be public record and subject to disclosure pursuant to the Oregon Public Records Act (ORS 192.410 et seq.), except such portions of the proposals for which proposer requests exemption from disclosure consistent with Oregon law.

If a Proposer believes that any portion of its proposal contains any information that is a trade secret under ORS Chapter 192.501(2), or otherwise is exempt from disclosure under the Oregon Public Records Law (ORS 192.311 through 192.478), Proposer shall so inform the County and may be asked to complete an Affidavit of Trade Secret before providing a fully redacted version of its proposal. If a Proposer fails to identify the portions of its proposal that Proposer claims are exempt from disclosure, the Proposer has waived any future claim of non-disclosure of that information. Identifying the proposal, in whole, as exempt from disclosure is not acceptable.

The fact that a Proposer marks and segregates certain information as exempt from disclosure does not mean that the information is necessarily exempt. Any portion of a Proposal that the Proposer claims constitutes a "trade secret" or is "confidential" must meet the requirements of ORS 192.501(2) and ORS 192.502(4). The County will make an independent determination regarding exemptions applicable to information that has been properly marked and redacted. Unless expressly provided otherwise in this RFP or in a separate communication, the County does not agree to withhold from public disclosure any information submitted in confidence by a Proposer unless the information is otherwise exempt under Oregon law.



If the County refuses to release the records, the Proposer agrees to provide information sufficient to sustain its position to the District Attorney of Yamhill County, who currently considers such appeals. If the District Attorney orders that the records be disclosed, the County will notify the Proposer in order for the Proposer to take all appropriate legal action. The Proposer further agrees to hold harmless, defend and indemnify the County for all costs, expenses and attorney fees that may be imposed on the County as a result of appealing any decision regarding the Proposer's records.

## **17. TERMS AND CONDITIONS; NEGOTIATIONS**

Disputes. In case of any doubt or differences of opinions as to the items or service to be furnished hereunder, or the interpretation of the provisions of the RFP, the decision of the County shall be final and binding upon all parties.

Publicity. Any publicity giving reference to this project, whether in the form of press releases, brochures, photographic coverage, or verbal announcement, shall be done only after prior approval of the County.

Conflict of Interest; Collusion. A Proposer submitting a Proposal thereby certifies that: 1) that no officer, agent, or employee of Yamhill County has a financial interest in its Proposal; 2) no officer, agent, or employee of Yamhill County who has a pecuniary interest in this RFP has participated in the contract negotiations on the part of the County; 3) that the Proposal is made in good faith without fraud, collusion, or connection of any kind with any other Proposer of the same call for proposals; and 3) the Proposer is competing solely in its own behalf without connection with or obligation to, any undisclosed person or firm.

Taxpayer Identification Number. The apparent successful Proposer shall provide its Taxpayer Identification Number (TIN) and backup withholding status on a completed W-9 form if either of the following applies:

- When requested by the County (normally in an intent to award notice), or
- When the backup withholding status or any other information of Proposer has changed since the last submitted W-9 form, if any.

The County will not make any payment until the County has a properly completed W-9.

Business Registry. If selected for award, the Proposer must be duly authorized by the State of Oregon to transact business in the State of Oregon before executing the contract. The selected Proposer shall be required to submit a current Oregon Secretary of State Business Registry number, or an explanation if not applicable.

All Corporations and other business entities (domestic and foreign) must have a Registered Agent in Oregon. See requirements and exceptions regarding Registered Agents. For more information, see Oregon Business Guide, How to Start a Business in Oregon and Laws and Rules. The titles in this subsection are available at the following Internet site:  
<http://www.filinginoregon.com/index.htm>.

Indemnification. If selected for the award, the Proposer will be expected to indemnify and hold harmless Yamhill County and each of its officers, agents, and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of

or resulting from performance of the subject work and created by any act or error of a vendor, subcontractor or anyone directly or indirectly employed by the Proposer; provided, however, that nothing herewith shall be constructed to require indemnification of Yamhill County for liability attributable to the County's sole negligence.

Compliance with ORS 279B. If selected for the award, the Proposer will be expected to comply with all provisions of ORS 279B.220, 279B.225 (where applicable), 279B.230, and 279B.235.

Records Maintenance; Access. If selected for the award, the Proposer will be expected to maintain all fiscal records relating to the work required hereunder in accordance with generally accepted accounting principles. In addition, the Proposer shall be expected to maintain any other records pertinent to the contract in such a manner as to clearly document the Proposer's performance. The County, the Oregon Secretary of State's Office, the Federal Government, and their duly authorized representatives will have access to such fiscal records and all other documents that are pertinent to the contract for the purpose of performing audits and examinations and making transcripts and excerpts. All such fiscal records and pertinent documents shall be retained in accordance with state-mandated retention schedules.

Governing Law, Jurisdiction, and Venue. This RFP, and any subsequent contract, shall be governed and construed in accordance with the laws of the State of Oregon, without resort to any jurisdiction's conflict of laws rules or doctrines. Any claim, action, suit, or proceeding (collectively, "the claim") between the County (and/or any other agency or department of Yamhill County) and a Proposer that arises from or relates to this RFP or a subsequent contract shall be brought and conducted solely and exclusively within the Circuit Court of Yamhill County for the State of Oregon. Each party shall be responsible for the party's attorney fees, costs and disbursements at all times, including appeals.

For additional terms and conditions, see sample Agreement, including Exhibits, contained herein. Notwithstanding the sample Agreement and Exhibits HHS reserves the right to negotiate final terms and conditions contained in the sample Agreement as well as other terms and conditions contained in any other documents submitted by Proposers as part of their proposal.

**RFP Exhibit A**  
Supplemental Information

**Provide a detailed 12-month budget with narrative to support your funding request, include additional lines where needed. Please include supporting details in the narrative.**

**Budget format**

Personnel Salaries	
Direct Staff	
Program and clinical supervision	
Clerical / Accounting support	
Administrative support	
Benefits	
Equipment	
Supplies	
Travel	
Consultants/Subcontracts	
Other costs	
Staff Development	
Rent / utilities	
Audit, Insurance, Payroll	
Lab services	
<b>Total</b>	

Budget Narrative:

*Note: This section explains what the role/function of the direct staff will be, and how you have arrived at the allocation method for administrative and program support. Any other specific line items that require explanation should be included in this section.*

**RFP EXHIBIT B**  
**FORM OF AGREEMENT**  
**AGREEMENT FOR BEHAVIORAL HEALTH HOUSING SERVICES**  
**IN YAMHILL COUNTY**  
**PROVIDERNAME**

THIS AGREEMENT (“Agreement”) is made by and between Yamhill County, a political subdivision of the State of Oregon acting by and through its Board of Commissioners and its Health and Human Services Department, Behavioral Health Programs (“County”) and ProviderName (“Contractor”), an Oregon type of business, Address for the services which proposal responsive to Yamhill County’s Health and Humans Services RFP were opened June 9, 2023.

**RECITALS:**

1. County through its Health and Human Services Department, Behavioral Health Programs in collaboration with the Oregon Health Authority (“OHA”) has access to funds to provide behavioral health housing services.
2. County conducted a competitive bid process to select a vendor to perform the Services. Contractor’s proposal was deemed by the County to best serve the County’s interest and needs.
3. Contractor is qualified to perform the duties required by County and imposed by this Agreement.
4. County and Contractor desire to enter into this Agreement and County is authorized to enter into this Agreement under Oregon Revised Statutes (ORS) 203.010 (3).

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein below and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, County and Contractor, intending legally to be bound, hereby agree as follows:

**Section 1. Term and Renewal.** The initial term of this Agreement is from July 1, 2023, through June 30, 2024. It is understood by both parties that no commitments have been or are made by either party beyond the termination of this Agreement.

**Section 2. Contractor’s Services.** Contractor agrees to perform the services (the “Services”) included in the “Statement of Work” which is attached hereto as Exhibit B and incorporated herein by this reference, during the term of this Agreement. Contractor hereby represents and warrants that Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence to perform the Services in a professional manner and in accordance with standards prevalent in Contractor’s industry, trade or profession. Contractor must hold all licenses, certificates, authorizations and other approvals as required by applicable law to deliver the Services under this Agreement.

**Section 3. Regulations and Duties; Compliance with Laws.**

A. County and Contractor shall comply with the rules and regulations of County, applicable state and federal regulations, executive orders and ordinances and all provisions of federal and state law relating to Contractor's performance of Services under this Agreement as they may be adopted, amended or repealed from time to time, including but not limited to the following: (i) ORS Chapter 659A.142, 659A.145, 659A.400 to 659A.409 and all regulations and administrative rules established pursuant to those laws in the construction, remodeling, maintenance and operation of any structures and facilities and in the conduct of all programs, services and training associated with the delivery of Services under this Agreement; (ii) all state laws related to client rights, OAR 943-005-000 through 943-005-0070, prohibiting discrimination against Individuals with disabilities, including compliance with Section 1557 of the Patient Protection and Affordable Care Act of 2010 prohibiting discrimination in the delivery of services in health care programs or activities based on race, color, national origin, sex, sex stereotypes, gender identity, age or disability; (iii) Oregon Health Authority (OHA) rules pertaining to the provision of integrated and coordinated care and services, OAR Chapter 410, Division 141; (iv) all other OHA Rules in OAR Chapter 410; (v) rules in OAR Chapter 309 Divisions 012, 014, 015, 018, 019, 022, 032 and 040, pertaining to the provisions of mental health services; (vi) rules in OAR Chapter 415 pertaining to the provision of Substance Use Disorders services; (vii) state law establishing requirements for Declaration for Mental Health Treatment in ORS 127.700 through 127.737; (viii) 42 CFR 438.6 and 42 CFR 438 E; (ix) ORS 279B.200 through 279B.270; (x) Article XI, Section 10, of the Oregon Constitution; (xi) all state laws requiring reporting of client abuse; and (xii) all other applicable requirements of State civil rights and rehabilitation statutes, rules and regulations and (xiii) to the extent not already specifically set forth herein, Contractor shall comply with any other provisions that must be included to comply with applicable law, or that are required to be included in a provider contract or that are necessary to implement Service delivery in accordance with the applicable Service Descriptions, Specialized Service Requirements and Special Conditions as defined in and under that certain 2022 Intergovernmental Agreement for increasing behavioral health housing (#177708), by and between County and the Oregon Health Authority dated as of October 22, 2022 ("177708 IGA") which Exhibit C, Attachment 1 and 177708 IGA (as applicable) are incorporated herein by this reference. No grant funds may be used for any harm reduction activities that would violate Oregon's drug paraphernalia law, ORS 475.525, including but not limited to the purchase or delivery of safe smoking supplies, drug testing strips, or devices used to prepare controlled substances, unless the Contractor maintains documentation that demonstrates the activities fall within an exemption under ORS 475.525 (4) or (5), or the Contractor is a syringe service program providing sterile needs and syringes and other items as part of their activities, in accordance with ORS 475.757. Failure to comply with any of the foregoing requirements is grounds for termination of the grant.

These laws, regulations, executive orders and ordinances are incorporated by reference herein to the extent that they are applicable to this Agreement and required by law to be so incorporated. Contractor agrees that Contractor has complied with the tax laws of the state of Oregon or a political subdivision of the state of Oregon, including ORS 305.620, 305.380(4) and ORS Chapters 316, 317 and 318.

B. Contractor shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

C. Contractor agrees to comply with all laws, rules, regulations, reporting requirements, policies and procedures of Medicare/Medicaid and officially made known by the Centers for Medicare & Medicaid Services and OHA as they pertain to the performance of Services under this Agreement.

D. In compliance with the Americans with Disabilities Act, any written material that is generated and provided by Contractor under this Agreement to Clients or Members, including Medicaid-Eligible Individuals, shall, at the request of such Clients or Members, be reproduced in alternate formats of communication, to include Braille, large print, audiotape, oral presentation, and electronic format. OHA shall not reimburse Contractor for costs incurred in complying with this provision. Contractor shall cause all Subcontractors under this Agreement to comply with the requirements of this provision.

E. All employers, including Contractor, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126.

**Section 4. Reporting.** Contractor agrees to prepare and furnish reports and data required by County or OHA at a minimum monthly/quarterly, including but not limited to:

A. Grant activities and any other information that County or OHA may reasonably require including but not limited to bed/unit/client capacity by property/facility.

B. All additional information and reports that County or OHA reasonably requests, including but not limited to the information or disclosure required by 42 CFR 455.104 and 42 CFR 455.434.

C. Contractor agrees to and does hereby grant County the rights to reproduce, use and disclose for County purposes, all or any part of the reports, data, and technical information furnished to County under the Agreement.

**Section 5. Records; County Monitoring.**

A. Contractor shall maintain all financial records related to this Agreement in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any clinical records, other records, books, documents, papers, plans, records of shipment and payments and writings of Contractor, whether in paper, electronic or other form, that are pertinent to this Agreement, collectively referred to as "Records" in such a manner to clearly document Contractor's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payment and writings of Contractor which in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." Contractor acknowledges and agrees that County, OHA, and the Secretary of State's Office and the federal government and their duly authorized representatives shall have access to all Records to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all Records for the longest of:

- a. Six years following final payment and termination of this Agreement.
- b. The period as may be required by applicable law, including the records retention schedules set forth in OAR Chapter 166; or

- c. Until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement.

B. Contractor agrees that the following shall be open for inspection by County, Yamhill CCO, OHA and Government Agencies or their agents, at any reasonable time during business hours: a) Services provided under this Agreement by Contractor; b) facilities used in conjunction with such Services; c) client records; d) Contractor's policies, procedures and performance data; e) information privacy and security records; f) financial records and other similar documents and Records of Contractor that pertain, or may pertain, to Services under this Agreement for the purpose of making audits, examinations, excerpts, copies and transcriptions. In addition, Contractor shall permit authorized representatives of County and the Oregon Health Authority to perform site reviews of all services delivered by Contractor hereunder. Contractor agrees to retain and keep accessible all Records for a period of seven years, or such longer period as may be required by applicable law including the retention schedules set forth in OAR Chapters 410 and 166 or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement. Contractor shall, upon request and without charge, provide a suitable work area and copying capabilities to facilitate such a review or audit. This right also includes timely and reasonable access to Contractor's personnel and Subcontractors for the purpose of interview and discussion related to such documents. The rights of access in this section are not limited to the required retention period but shall last as long as the records are retained.

C. **Expenditure Records.** Contractor shall document the expenditure of all funds paid to Contractor under this Agreement. Unless applicable federal law requires Contractor to utilize a different accounting system, Contractor shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit County and the Oregon Health Authority to verify how the funds paid to Contractor under this Agreement were expended.

D. Contractor agrees to annually provide County with copies of their Fraud and Abuse policy and documentation of rate setting methodologies. County encourages Contractor to use the Jarvis rate setting tool. County may approve an alternative method if it demonstrates a similar level of thoroughness.

E. County will provide Contractor with a copy of County's OHA approved written grievance system procedures to ensure compliance.

**Section 6. Payment.**

A. **Compensation for Services.** As compensation for performing the Services, following receipt and approval of billing documents, Contractor shall receive a payment of \$ \_\_\_\_\_ per \_\_\_\_\_. "In the event that Contractor is unable to meet targeted total numbers as outlined in Exhibit B, Contractor will be required to pay back any funds to County within 30 days of Agreement termination." County agrees to make payment within thirty days of receipt and approval of billing documents.

B. Billing documents must be received by County at a minimum quarterly and within four (4) months of the date of service unless the claim meets one of the cases listed under OAR 410-141-3420 (1)(a) in which case claim must be submitted within twelve (12) months of the

date of service. Should Yamhill County or OHA set more stringent submission timelines during the duration of this Agreement, the new timelines will apply. Routine claims not received as described above will be denied. Contractor must submit denied claims for reprocessing within 90 days of the original denial unless the claim meets one of the cases listed in OAR 410-141-3430, (4) (a) (C). The maximum amount payable for performance of Services under this Agreement for the period of July 1, 2023, through June 30, 2024, is \$\_\_\_\_\_.

C. **Excluded Services.** Where Contractor is providing services under some other contract or funding source, Contractor shall not be compensated under this Agreement for such services to individuals even though they might otherwise be eligible for Oregon Health Plan (OHP).

D. **Expenditure of Funds.** Contractor may expend the funds paid to Contractor under this Agreement solely on the delivery of Services included in Exhibit B, subject to the following limitations (in addition to any other restrictions or limitations imposed by this Agreement):

1. Contractor may not expend on the delivery of Services any funds paid to Contractor under this Agreement in excess of the amount reasonable and necessary to provide quality delivery of the Services.
2. If this Agreement requires Contractor to deliver more than one service, Contractor may not expend funds paid to Contractor under this Agreement for a particular service on the delivery of any other service.

**Section 7. Termination; No Encumbrance or Expenditure after Notice of Termination.**

A. Either party may terminate the Agreement on thirty days written notice to the other party. Termination shall not excuse liabilities incurred prior to the termination date.

B. In addition, in the event County no longer receives funds adequate to enable it to continue this Agreement; if Contractor engages in any act that would subject either County or Contractor to criminal liability; upon dissolution of County or Contractor; if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that County no longer has the authority to meet its obligations under this Agreement; or upon any of the following: (i) the insolvency of the Contractor, (ii) the filing of a voluntary or involuntary petition by or on behalf of Contractor under federal bankruptcy law, (iii) upon a party entering into an agreement with creditors for the liquidation of its assets, or (iv) upon the appointment of a receiver or trustee to take charge of all the assets of Contractor, County will provide written notice of termination of this Agreement to Contractor. Upon issuance of notice, this Agreement is immediately terminated. However, any obligations existing at the time of termination will survive termination.

C. Contractor shall not make expenditures, enter into agreements, or encumber funds in its possession, or to be transferred by County, after notice of termination or termination as set out above, without prior written approval from County.



**Section 8. Independent Contractor Representations and Warranties.** Contractor is engaged under this Agreement as an independent contractor, and will be so deemed for purposes of the following:

A. Contractor is not an officer, employee, or agent of the County or the State of Oregon as those terms are used in ORS 30.265 or otherwise.

B. If Contractor is currently performing work for the County, State of Oregon or the federal government, Contractor by signature to this Agreement, represents and warrants that (i) Contractor has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder and that execution of this Agreement shall constitute a legal, valid and binding obligation of Contractor, enforceable in accordance with its terms, (ii) the making and performance by Contractor of this Agreement has been duly authorized by all necessary action of Contractor and does not violate any provision of applicable law, rule, regulation or order of any court, regulatory commission, board or other administrative agency or any provision of Contractor's charter or other organizational document, (iii) entering into this Agreement will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Contractor is a party or by which Contractor may be bound or affected, and (iv) no authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Contractor of this Agreement,

C. Contractor further represents and warrants that (i) it has the skill and knowledge possessed by well-informed members of its industry, trade or profession and it will apply that skill and knowledge with care and diligence to perform the Services in a professional manner and in accordance with standards prevalent in Contractor's industry trade or profession (ii) it shall at all times during the term of this Agreement be qualified professionally competent and duly licenses to perform the Services and (iii) the delivery of each Service will comply with the terms and conditions of this Agreement and meet the required standards for such Service.

D. Contractor's Services to be performed under this Agreement create no potential or actual conflict of interest as defined by ORS Chapter 244 and that no statutes, rules or regulations of the County, State of Oregon or federal agency for which Contractor currently performs work would prohibit Contractor's Services under this Agreement. If compensation under this Agreement is to be charged against federal funds, Contractor certifies that it is not currently employed by the federal government.

E. Contractor is responsible for all federal and State taxes applicable to compensation paid to Contractor under this Agreement and, unless Contractor is subject to backup withholding, County will not withhold from such compensation any amounts to cover Contractor's federal or State tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation paid to Contractor under this Agreement, except as a self-employed individual.

F. Contractor shall perform all Services as an independent contractor. County reserves the right (i) to determine and modify the delivery schedule for the Services and (ii) to evaluate the quality of the Services; however, County may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Services.

**Section 9. Delegation and Reports.** Contractor shall not delegate the responsibility for providing Services under this Agreement to any other individual or agency without the written approval of County and shall provide County with periodic reports at the frequency and with the information prescribed to be reported by County.

**Section 10. Indemnification.** Contractor shall be responsible for any and all injury to any and all persons or property caused directly or indirectly by reason of any and all activities of Contractor in the performance of Services under this Agreement and Contractor agrees to indemnify, hold harmless, save and defend County, its officers, agents and employees including but not limited to the State of Oregon from and against any and all claims, suits, actions, liabilities, damages, costs, losses, fees, expenses (including attorneys' fees) or judgments resulting from, arising out of or connected with any such injury or the negligent or willful acts or omissions of Contractor or any of the officers, agents, employees or subcontractors of Contractor in the performance of the Services provided by Contractor pursuant to this Agreement.

In addition, if Contractor is not a unit of local government as defined in ORS 190.003, then Contractor shall indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of the officers, agents, employees or subcontractors of the Contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the Contractor from and against any and all Claims.

**Section 11. Insurance.** Contractor, at its expense, shall obtain the following insurance coverage and keep them in effect during the entire term of this Agreement (except with respect to Professional Liability Insurance, which shall be kept in effect for a period of the term of this Agreement plus two years):

- A. Workers' Compensation Insurance in compliance with statutory requirements;
- B. Commercial General Liability Insurance covering bodily injury and property damage in a form and coverage that are satisfactory to the County and State of Oregon. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this Agreement, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000;
- C. Professional Liability Insurance, including errors and omissions coverage, covering Contractor pursuant to this Agreement, with a per occurrence and aggregate limit of not less than \$1,000,000 per claim, to protect against all loss suffered by County or third parties, including financial and consequential loss, caused by error, omission, or negligent acts related to provision of the Services provided under this Agreement. Annual aggregate limit shall not be less than \$2,000,000;

D. Commercial Automobile Liability Insurance, with a combined single limit, or the equivalent of not less than \$1,000,000 per occurrence, for bodily injury and property damage with respect to Contractor's vehicles, whether owned, hired, or non-owned, assigned to, or used by Contractor in connection with the Services provided under this Agreement;

E. "Tail" Coverage. If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, Contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Agreement, for a minimum of 24 months following the later of : (i) the Contractor's completion and County 's acceptance of all Services required under this Agreement; or (ii) the expiration of all warranty periods provided under this Agreement. Notwithstanding the foregoing 24-month requirement, if the Contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the Contractor may request and County may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If County approval is granted, the Contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

The required insurance coverages shall be (i) with insurance companies admitted to do business in the state of Oregon and rated A or better by Best's Insurance Rating, and (ii) acceptable to County. Contractor shall furnish County with certificates of insurance for each of the required insurance coverages before Contractor performs Services under this Agreement. The certificates of insurance must specify (a) the types of insurance coverage, (b) all entities and individuals who are endorsed on the policy as Additional Insured, (c) the amounts of insurance coverage, (d) the period of insurance coverage and (e) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage. Any required insurance coverage shall provide that it may not be canceled except after at least 30 days written notice to County.

The Commercial General Liability and Commercial Automobile Liability shall (i) name the County, State of Oregon, OHA and their divisions, directors, officers, employees and agents as additional insureds, (ii) provide that it is primary insurance with respect to the interests of County and that any insurance maintained by County is excess and not contributory, and (iii) include a cross-liability and severability of interest clause and a waiver of subrogation clause but only with respect to Contractor's activities to be performed under this Agreement. Contractor shall immediately notify County orally of the cancellation or restriction and shall confirm the oral notification in writing within three days of notification by the insurance company to Contractor.

**Section 12. Confidentiality.** Contractor acknowledges that it or its agents may, in the course of their performance under this Agreement, be exposed to or acquire information that is the confidential information of County or County clients. Any and all (i) client information, (ii) information provided by County and marked confidential, (iii) Protected Health Information or EPHI as described or defined in Exhibit A, or (iv) information identified as confidential in a separate writing, that becomes available to Contractor or its agents in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items, including software, that result from Contractor's use of the Confidential Information are also deemed Confidential Information. Contractor agrees to hold Confidential Information in strict confidence, using at least the same

degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information for any purposes whatsoever, except as may be provided elsewhere under this Agreement or in conformance with Exhibit A. Contractor agrees that, upon termination of this Agreement or at County's request, Contractor will turn over to County all documents, papers and other matter in Contractor's possession that embody Confidential Information.

**Section 13. Safeguarding of Client Information.** Contractor shall maintain the confidentiality of client records as required by applicable state and federal law, including without limitation, ORS 179.495 to 179.507, 45 CFR Part 205, 42 CFR Part 2, any administrative rule adopted by the Oregon Health Authority, implementing the foregoing laws, and any written policies made available to Contractor by County or by the Oregon Health Authority. Contractor shall create and maintain written policies and procedures related to the disclosure of client information, and shall make such policies and procedures available to County and the Oregon Health Authority for review and inspection as reasonably requested by County or the Oregon Health Authority.

**Section 14. Information Privacy/Security/Access.** If the Services performed under this Agreement requires Contractor to have access to or use of any OHA, County or third-party administrators, computer systems or other OHA, County or third-party administrators Information Assets for which OHA, County or third-party administrators impose security requirements, and OHA, County or third-party administrators grant Contractor access to such OHA, County or third-party administrators Information Assets or Network and Information Systems, Contractor shall comply with OAR 943-014-0300 through 943-014-0320, as such rules may be revised from time to time. For purposes of this section, "Information Asset" and "Network and Information System" have the meaning set forth in OAR 943-014-0305, as such rule may be revised from time to time.

**Section 15. Settlement of Disputes.** Differences between Contractor and County will be resolved when possible at appropriate management levels, followed by consultation between boards, if necessary.

**Section 16. Financial Audit.** If a financial audit of Contractor concerning this Agreement is conducted by a certified public accountant, Contractor shall furnish County a copy of the audit within ninety (90) days following the termination of the Agreement.

**Section 17. Application.** Contractor prepared its application related to this Agreement, if any, independently from all other applicants, and without collusion, Fraud, or other dishonesty.

**Section 18. False Claims.** Contractor understands that Contractor may be prosecuted under applicable federal and state criminal and civil laws for submitting false claims, concealing material facts, misrepresentation, falsifying data system input, other acts of misrepresentation, or conspiracy to engage therein.

**Section 19. Authorized Transactions Only.** Contractor shall only conduct transactions that are authorized by the County for transactions with the Oregon Health Authority that involve County funds directly related to this Agreement.

**Section 20. Alternative Formats of Written Materials.** In connection with the delivery of Services, Contractor shall:

A. Make available to a Client, without charge to the Client, upon the Client's, the County's or the Oregon Health Authority's request, any and all written materials in alternate, if appropriate, formats as required by the Oregon Health Authority's administrative rules or by the Oregon Health Authority's written policies made available to Contractor.

B. Make available to a Client, without charge to the Client, upon the Client's, County's or the Oregon Health Authority's request, any and all written materials in the prevalent non-English languages in the area served by Contractor.

C. Make available to a Client, without charge to the Client, upon the Client's, County's or the Oregon Health Authority's request, oral interpretation services in all non-English languages in the area served by Contractor.

D. Make available to a Client with hearing impairments, without charge to the Client, upon the Client's, County's or the Oregon Health Authority's request, sign language interpretation services and telephone communications access services.

For purposes of the foregoing, "written materials" includes, without limitation, all written materials created or delivered in connection with the services and all Contractor agreements related to this Agreement.

**Section 21. Abuse Reporting and Protective Services.** Contractor shall comply with all protective services, investigation and reporting requirements described in OAR 943-045-0250 through 943-045-0370 and ORS 430.735 through 430.765,

**Section 22. Subcontracts; Assignment.** Contractor shall not enter into any subcontracts for any of the Services required under this Agreement without County's prior written consent. Contractor shall not assign or transfer its interest in this Agreement, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or in any other manner, without the prior written consent of County. No approval by County of any assignment or transfer of interest shall be deemed to create any obligation of County in addition to those set forth in this Agreement. Consent to subcontract shall not relieve obligations/duties under this Agreement. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties, their respective successors and permitted assigns.

**Section 23. Non-discrimination.** Contractor agrees that no person shall, on the grounds of race, color, religion, national origin, sex, marital status, age, or other category protected by Oregon or federal law suffer discrimination in the performance of this Agreement when employed by Contractor.

**Section 24. Waiver; Remedies.** County and Contractor acknowledge that any breach, violation, or default by either party of the provisions contained in this Agreement might result in damage to the other party. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

**Section 25. Governing Law; Jurisdiction; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of

conflicts of law. Any claim, action, suit or proceeding, collectively “claim”, between County and Contractor that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Yamhill County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver of the State of Oregon of the jurisdiction of any court or of any form of defense to or immunity from any claim whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise. Contractor, BY EXECUTION OF THIS AGREEMENT CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

**Section 26. 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 conditions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

**Section 27. Counterparts.** This Agreement may be executed by facsimile and in counterparts, which taken together shall form one legal instrument.

**Section 28. Attorney Fees and Costs.** In the event an action, suit or proceeding, including appeal therefrom, is brought for failure to observe any of the terms of this Agreement, each party shall be solely responsible for its own attorney's fees, expenses, costs and disbursements for said action, suit, proceeding or appeal.

**Section 29. Entire Agreement.** This Agreement, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms. This Agreement is the entire agreement between the parties, and no statements, promises, or inducements made by either party or agent of either party that are not contained in this written Agreement shall be valid or binding. No alterations, changes, or additions to this Agreement shall be made except in a written document signed by both parties.

**Section 30. Business Associate Clause - HIPAA restrictions.** Contractor acknowledges that County is subject to the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996, (HIPAA), Pub. Law No. 104-191 and subject to the Federal Confidentiality of Alcohol and Drug Abuse Patient Records law and regulations, 42 USC §290dd-2 and 42 CFR Part 2 (collectively, “Part 2”). County and Contractor hereby agree to the respective obligations in the attached Exhibit A, “Business Associate/Qualified Service Organization Agreement” which is incorporated herein by this reference.

DONE the last date set forth adjacent to the signatures of the parties below.

**PROVIDERNAME**

**YAMHILL COUNTY, OREGON**

By: \_\_\_\_\_  
(signature)  
Date: \_\_\_\_\_

\_\_\_\_\_  
LINDSAY BERSCHAUER, Chair  
Board of Commissioners  
Date: \_\_\_\_\_

\_\_\_\_\_  
(printed name)

\_\_\_\_\_  
LINDSEY MANFRIN, Director  
Department of Health & Human Services  
Date: \_\_\_\_\_

\_\_\_\_\_  
(title)

FORM APPROVED BY:

Tax ID No.: \_\_\_\_\_

\_\_\_\_\_  
CHRISTIAN BOENISCH  
County Counsel  
Date: \_\_\_\_\_

**EXHIBIT A to SAMPLE AGREEMENT  
BUSINESS ASSOCIATE/QUALIFIED SERVICE ORGANIZATION AGREEMENT**

**RECITALS**

A. The CONTRACTOR may use and disclose Protected Health Information and Electronic Protected Health Information (“EPHI”) in the performance of its obligations under the Agreement; and

B. County operates a drug and alcohol treatment program subject to the Federal Confidentiality of Alcohol and Drug Abuse Patient Records law and regulations, 42 USC §290dd-2 and 42 CFR Part 2 (collectively, “Part 2”); if CONTRACTOR is a Qualified Service Organization (QSO) under Part 2 it also must agree to certain mandatory provisions regarding the use and disclosure of substance abuse treatment information with respect to the performance of its obligations under the Agreement; and

C. The Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) and its implementing Privacy Rule and Security Rule, 45 CFR Parts 160 and 164, require that COUNTY, as a Covered Entity, obtain satisfactory assurances from its Business Associates, as that term is defined in the Privacy Rule and Security Rule, that they will comply with the Business Associate requirements set forth in 45 CFR 164.502(e) and 164.504(e) and as amended by the Health Information Technology for Economic and Clinical Health (“HITECH”) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (“ARRA”); CONTRACTOR is a Business Associate of COUNTY and desires to provide such assurances with respect to the performance of its obligations under the Agreement pursuant to this Business Associate/Qualified Service Organization Agreement (“BAA”); and

D. Both COUNTY and CONTRACTOR are committed to compliance with the standards set forth in Part 2, the Privacy Rule and Security Rule as amended by the HITECH Act, and as they may be amended further from time to time, in the performance of their obligations under the Agreement.

**NOW, THEREFORE**, in consideration of mutual and valuable consideration which the parties hereby acknowledge as received, the parties agree as follows:

**AGREEMENT.** The parties agree that the following terms and conditions shall apply to the performance of their obligations under the Agreement, effective upon execution of this BAA. Capitalized terms used, but not otherwise defined in this BAA, shall have the same meaning as those terms in Part 2, the Privacy Rule and Security Rule.

**1. SERVICES.** Pursuant to the Agreement, CONTRACTOR provides certain services for or on behalf of COUNTY, as described in the Agreement, which may involve the use and disclosure of Protected Health Information and EPHI. CONTRACTOR may make use of Protected Health Information and EPHI to perform those services if authorized in the Agreement and not otherwise limited or prohibited by this BAA, Part 2, the Privacy Rule, the Security Rule and other applicable federal or state laws or regulations. All other uses of Protected Health Information and EPHI are prohibited.



## **2. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR.**

(a) CONTRACTOR agrees to not use or disclose Protected Health Information or EPHI other than as permitted or required by the Agreement (as amended by this BAA), and as permitted by Part 2, the Privacy Rule, the Security Rule or as required by Law. Notwithstanding any other language in this BAA, CONTRACTOR acknowledges and agrees that any patient information it receives from COUNTY that is protected by Part 2 regulations is subject to protections that prohibit CONTRACTOR from disclosing such information to agents or subcontractors without the specific written consent of the subject individual.

(b) CONTRACTOR agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information and EPHI other than as provided for by the Agreement as amended by this BAA, and if necessary will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by the Part 2 regulations.

(c) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR of a use or disclosure of Protected Health Information or EPHI by CONTRACTOR in violation of the requirements of the Agreement, as amended by this BAA.

(d) CONTRACTOR agrees to report to COUNTY, as promptly as possible, any use or disclosure of the Protected Health Information or EPHI not provided for by the Agreement, as amended by this BAA, of which it becomes aware.

(e) CONTRACTOR agrees to ensure that any agent, including a contract hearing officer or other subcontractor, to whom it provides Protected Health Information or EPHI received from, or created or received by CONTRACTOR on behalf of COUNTY, agrees to the same restrictions and conditions that apply through the Agreement, as amended by this BAA, to CONTRACTOR with respect to such information.

(f) CONTRACTOR agrees to provide access, at the request of COUNTY, and in the time and manner designated by COUNTY, to Protected Health Information and EPHI in a Designated Record Set (the hearing file), to COUNTY or, as directed by COUNTY, to an Individual in order to meet the requirements under 45 CFR 164.524.

(g) CONTRACTOR agrees to make any amendment(s) to Protected Health Information and EPHI in a Designated Record Set that the COUNTY directs or agrees to pursuant to 45 CFR 164.526 at the request of COUNTY or an Individual, and in the time and manner designated by COUNTY.

(h) CONTRACTOR agrees to make internal practices, books, and records, including policies and procedures and any Protected Health Information or EPHI, relating to the use and disclosure of Protected Health Information and EPHI received from, or created or received by CONTRACTOR on behalf of COUNTY, available to COUNTY or to the Secretary, within the time and in the manner designated by COUNTY or the Secretary, for purposes of the Secretary determining COUNTY's compliance with Part 2, the Privacy Rule or Security Rule.

(i) CONTRACTOR agrees to refer requests for disclosures of Protected Health Information and EPHI to the COUNTY for response, except for requests related to conducting the contested case hearing. To the extent CONTRACTOR discloses Protected Health Information or EPHI for

purposes not related to conducting the contested case hearing, CONTRACTOR agrees to document such disclosures to the extent such documentation is required for COUNTY to respond to a request by an Individual for an accounting of disclosures of Protected Health Information and EPHI in accordance with 45 CFR 164.528.

(j) CONTRACTOR agrees to provide to COUNTY or an Individual, in time and manner to be designated by COUNTY, information collected in accordance with Section 2(i) of this BAA, to permit COUNTY to respond to a request by an Individual for an accounting of disclosures of Protected Health Information and EPHI in accordance with 45 CFR 164.528.

(k) CONTRACTOR agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the EPHI that it creates, receives, maintains, or transmits on behalf of the COUNTY.

(l) In the event of Discovery of a Breach of Unsecured Protected Health Information, CONTRACTOR shall:

(i) Notify the COUNTY of such Breach. Notification shall include identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by CONTRACTOR to have been accessed, acquired or disclosed during such Breach and any other information as may be reasonably required by the COUNTY necessary for the COUNTY to meet its notification obligations;

(ii) Confer with the COUNTY as to the preparation and issuance of an appropriate notice to each individual whose Unsecured Protected Health Information has been, or is reasonably believed by CONTRACTOR to have been accessed, acquired or disclosed as a result of such Breach;

(iii) Where the Breach involves more than 500 individuals, confer with the COUNTY as to the preparation and issuance of an appropriate notice to prominent media outlets within the State or as appropriate, local jurisdictions; and,

(iv) Confer with the COUNTY as to the preparation and issuance of an appropriate notice to the Secretary of DHHS of Unsecured Protected Health Information that has been acquired or disclosed in a Breach. CONTRACTOR understands that if the Breach was with respect to 500 or more individuals, such notice to the Secretary must be provided immediately, and therefore, time is of the essence in the obligation to confer with the COUNTY. If the Breach was with respect to less than 500 individuals, a log may be maintained of any such Breach and the log shall be provided to the Secretary annually documenting such Breaches occurring during the year involved.

(v) Except as set forth in (vi) below, notifications required by this section are required to be made without unreasonable delay and in no case later than 60 calendar days after the Discovery of a Breach. Therefore, the notification of a Breach to the COUNTY shall be made as soon as possible and CONTRACTOR shall confer with the COUNTY as soon as practicable thereafter, but in no event, shall notification to the COUNTY be later than 30 calendar days after the Discovery of a Breach. Any notice shall be provided in the manner required by the HITECH Act, sec 13402(e) and (f), Public Law 111-5, 45 CFR 164.404 through 164.410 and as agreed upon by the COUNTY.

(vi) Any notification required by this section may be delayed by a law enforcement official in accordance with the HITECH Act, sec 13402(g), Public Law 111-5.

(vii) For purposes of this section, the terms “Unsecured Protected Health Information” and “Breach” shall have the meaning set forth in 45 CFR § 164.402. A Breach will be considered as “Discovered” in accordance with the HITECH Act, sec 13402(c), Public Law 111-5, 45 CFR 164.404(a)(2).

(m) CONTRACTOR shall comply with 45 C.F.R. 164.308, 164.310, 164.312 and 164.316 and all requirements of the HITECH Act, Public Law 111-5, that relate to security and that are made applicable to Covered Entities, as if CONTRACTOR were a Covered Entity.

(n) CONTRACTOR shall be liable to the COUNTY, and shall indemnify the COUNTY for any and all direct costs incurred by the COUNTY, including, but not limited to, costs of issuing any notices required by HITECH or any other applicable law, as a result of CONTRACTOR’s Breach of Unsecured Protected Health Information.

### **3. PERMITTED USES AND DISCLOSURES BY CONTRACTOR.**

#### **(a) General Use and Disclosure Provisions.**

(1) Except as otherwise limited or prohibited by this BAA, CONTRACTOR may use or disclose Protected Health Information and EPHI to perform functions, activities, or services for, or on behalf of, COUNTY as specified in the Agreement and this BAA, provided that such use or disclosure would not violate Part 2, the Privacy Rule or Security Rule if done by COUNTY or the minimum necessary policies and procedures of COUNTY.

(2) COUNTY has determined that disclosures to CONTRACTOR under the Agreement are necessary and appropriate for COUNTY’s Treatment, Services, Payment and/or Health Care Operations under Part 2, the HIPAA Privacy Rule and Security Rule and Required By Law under Or Laws 1999, ch. 849 (HB 2525).

(3) All applicable federal and state confidentiality or privacy statutes or regulations, and related procedures, continue to apply to the uses and disclosures of information under this BAA, except to the extent preempted by Part 2 or the HIPAA Privacy Rule and Security Rule.

#### **(b) Specific Use and Disclosure Provisions.**

(1) Except as otherwise limited in this BAA, CONTRACTOR may use Protected Health Information and EPHI for the proper management and administration of the CONTRACTOR or to carry out the legal responsibilities of the CONTRACTOR.

(2) Except as otherwise limited in this BAA, CONTRACTOR may disclose Protected Health Information and EPHI for the proper management and administration of the CONTRACTOR, provided that disclosures are Required By Law, or CONTRACTOR obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was

disclosed to the person, and the person notifies the CONTRACTOR of any instances of which it is aware in which the confidentiality of the information has been breached.

(3) CONTRACTOR may use Protected Health Information and EPHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1).

(4) CONTRACTOR may not aggregate or compile COUNTY's Protected Health Information or EPHI with the Protected Health Information or EPHI of other Covered Entities unless the Agreement permits CONTRACTOR to perform Data Aggregation services. If the Agreement permits CONTRACTOR to provide Data Aggregation services, CONTRACTOR may use Protected Health Information and EPHI to provide the Data Aggregation services requested by COUNTY as permitted by 45 CFR 164.504(e)(2)(i)(B), subject to any limitations contained in this BAA. If Data Aggregation services are requested by COUNTY, CONTRACTOR is authorized to aggregate COUNTY's Protected Health Information and EPHI with Protected Health Information or EPHI of other Covered Entities that the CONTRACTOR has in its possession through its capacity as a CONTRACTOR to such other Covered Entities provided that the purpose of such aggregation is to provide COUNTY with data analysis relating to the Health Care Operations of COUNTY. Under no circumstances may CONTRACTOR disclose Protected Health Information or EPHI of COUNTY to another Covered Entity absent the express authorization of COUNTY.

#### **4. OBLIGATIONS OF COUNTY.**

(a) COUNTY shall notify CONTRACTOR of any limitation(s) in its notice of privacy practices of COUNTY in accordance with 45 CFR 164.520, to the extent that such limitation may affect CONTRACTOR's use or disclosure of Protected Health Information and EPHI. COUNTY may satisfy this obligation by providing CONTRACTOR with COUNTY's most current Notice of Privacy Practices.

(b) COUNTY shall notify CONTRACTOR of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information or EPHI, to the extent that such changes may affect CONTRACTOR's use or disclosure of Protected Health Information and EPHI.

(c) COUNTY shall notify CONTRACTOR of any restriction to the use or disclosure of Protected Health Information or EPHI that COUNTY has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect CONTRACTOR's use or disclosure of Protected Health Information or EPHI.

#### **5. PERMISSIBLE REQUESTS BY COUNTY.**

(a) COUNTY shall not request CONTRACTOR to use or disclose Protected Health Information or EPHI in any manner that would not be permissible under Part 2, the Privacy Rule or Security Rule if done by COUNTY, except as permitted by Section 3(b) above.

(b) COUNTY may conduct a survey of CONTRACTOR with respect to CONTRACTOR's compliance with the terms of this BAA and applicable law for the establishment of policies and procedures for the safeguarding of any Protected Health Information and EPHI provided to CONTRACTOR by COUNTY. CONTRACTOR shall implement any recommendations of

COUNTY resulting from such surveys as may be reasonably necessary to ensure compliance with the terms of this BAA and applicable law for the safeguarding of any Protected Health Information and EPHI provided to CONTRACTOR by COUNTY.

## **6. TERM AND TERMINATION.**

(a) Effective Date; Term. This BAA shall be effective on the date on which all parties have executed it and all necessary approvals, if any, have been granted. This BAA shall terminate on the earlier of (i) the date of termination of the Agreement, or (ii) the date on which termination of the BAA is effective under Section 6(b).

(b) Termination for Cause. In addition to any other rights or remedies provided in this BAA, upon either the COUNTY's or CONTRACTOR's knowledge of a material breach by the other party of that party's obligations under this BAA, the party not in breach shall either:

(1) Notify the other party of the breach and specify a reasonable opportunity in the Notice of Breach to the party in breach to cure the breach or end the violation, and terminate the Agreement and this BAA if the party in breach does not cure the breach of the terms of this BAA or end the violation within the time specified;

(2) Immediately terminate the Agreement and this BAA if the party in breach has breached a material term of this BAA and cure is not possible in the reasonable judgment of the party not in breach; or

(3) If neither termination nor cure is feasible, the party not in breach shall report the violation to the Secretary.

(4) The rights and remedies provided in this BAA are in addition to any rights and remedies provided in the Agreement.

(c) Effect of Termination.

(1) Except as provided in paragraph (2) of this Section 6(c), upon termination of the Agreement and this BAA, for any reason, the party in breach shall, at the other party's option, return or destroy all Protected Health Information and EPHI received from the other party, or created or received by CONTRACTOR on behalf of COUNTY. This provision shall apply to Protected Health Information and EPHI that is in the possession of CONTRACTOR or agents of CONTRACTOR. CONTRACTOR shall retain no copies of the Protected Health Information or EPHI.

(2) In the event that CONTRACTOR determines that returning or destroying the Protected Health Information or EPHI is infeasible, CONTRACTOR shall provide to COUNTY notification of the conditions that make return or destruction infeasible. Upon COUNTY's written acknowledgement that return or destruction of Protected Health Information or EPHI is infeasible, CONTRACTOR shall extend the protections of this BAA to such Protected Health Information and EPHI and limit further uses and disclosures of such Protected Health Information and EPHI to those purposes that make the return or destruction infeasible, for so long as CONTRACTOR maintains such Protected Health Information or EPHI.

## 7. MISCELLANEOUS.

(a) Regulatory References. A reference in this BAA to a section in Part 2, the Privacy Rule, or Security Rule, or the HITECH Act means the section in effect as of the effective date of this BAA or as the Rules may be subsequently amended from time to time.

(b) Amendment; Waiver. The Parties agree to take such action as is necessary to amend the Agreement and this BAA from time to time as is necessary for COUNTY to comply with the requirements of Part 2, the Privacy Rule, Security Rule, HIPAA and the HITECH Act. No provision hereof shall be deemed waived unless in writing, duly signed by authorized representatives of the parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any other right or remedy under this BAA.

(c) Survival. The respective rights and obligations of CONTRACTOR under Section 6(c), this Section 7(c), and Section 7(e) of this BAA shall survive the termination of the Agreement and this BAA.

(d) Interpretation; Order of Precedence. Any ambiguity in this BAA or the Agreement shall be resolved to permit COUNTY to comply with Part 2, the Privacy Rule, Security Rule and the HITECH Act. The terms of this BAA amend and supplement the terms of the Agreement, and whenever possible, all terms and conditions in this BAA and the Agreement are to be harmonized. In the event of a conflict between the terms of this BAA and the terms of the Agreement, the terms of this BAA shall control; provided, however, that this BAA shall not supersede any other federal or state law or regulation governing the legal relationship of the parties, or the confidentiality of records or information, except to the extent that HIPAA preempts those laws or regulations. In the event of any conflict between the provisions of the Agreement (as amended by this BAA) and Part 2, the Privacy Rule or the Security Rule, the more stringent rule shall apply.

(e) No Third-Party Beneficiaries. COUNTY and CONTRACTOR are the only parties to this BAA and are the only parties entitled to enforce its terms. Nothing in this BAA gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this BAA.

(f) Successors and Assigns. The provisions of this BAA and the Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns, if any.

(g) Except As Amended. Except as amended by this BAA, all terms and conditions of the Agreement shall remain in full force and effect.

(signature page follows)

**8. SIGNATURES.**

By signing this BAA, the parties certify that they have read and understood this BAA, that they agree to be bound by the terms of this BAA and the Agreement, as amended, and that they have the authority to sign this BAA.

**CONTRACTOR**

**COUNTY:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**END OF SAMPLE AGREEMENT**