

March 9, 2023

BCC Agenda Date/Item: _____

Board of County Commissioners
Clackamas County

Approval of Clackamas County Facility lease agreement with Genoa Healthcare, LLC for rental of clinical space. Agreement value is \$8,118.48 for 9 months. Funding is through Genoa Healthcare, LLC. No County General Funds are involved.

Previous Board Action/Review	Briefed at Issues March 7, 2023		
Performance Clackamas	1. Ensure safe, healthy, and secure communities		
Counsel Review	Yes	Procurement Review	No
Contact Person	Sarah Jacobson	Contact Phone	503-201-1890

EXECUTIVE SUMMARY: The health, Housing, and Human Services Department, Health Centers Division requests the approval of a lease agreement with Genoa Healthcare, LLC, to provide an on-site pharmacy inside the Development Services Building. Genoa Healthcare, LLC previously leased space in the Hilltop Clinic. Due to the courthouse being built on Red Soils Campus, the pharmacy must be relocated to the new Health Centers Behavioral Health space within the DSB. This on-site service will ensure that patients get their medication as prescribed by providers after their healthcare appointment.

This is a revenue contract for Health Centers Division. The agreement is projected to be \$8,118.48, with a maximum 3% increase to the monthly rental rate each fiscal year. No County General Funds are involved.

RECOMMENDATION: Staff recommends approval of this contract.

Respectfully submitted,

Rodney A. Cook

Rodney A. Cook, Director
Health, Housing & Human Services Department

Clackamas County Facility and Property License Agreement

This Facility and Property License Agreement (“Agreement”) is made between GENOA HEALTHCARE, LLC (f/k/a Genoa, A Qol Healthcare Company) (“User”) and Clackamas County (“County”), effective upon execution by both parties. For good and valuable consideration, the receipt of which is acknowledged, County hereby issues to User a non-exclusive, revocable-at-will license to enter upon, occupy, and use the real property described below (“Property”) for the limited purposes described in this Agreement. This Agreement is subject to the following terms and conditions:

1. Property. The Property is generally described as follows:

Room 304 (Pharmacy) and 306 (Vaccination/Injection) (the “Rooms”) of the Development Services Building (“DSB”) located at 150 Beaver Creek Road, Suite 305, Oregon City, OR 97045, totaling 621 square feet together with two (2) parking spaces located in the general employee and visitors parking areas at the property address cited above, further depicted on Exhibit A and Exhibit B, attached hereto and incorporated by this reference herein.

2. Scope of Use. User shall have the right to use the Property solely for the purpose of operating an on-site pharmacy and vaccination/injection room. User is further authorized to bring all personnel, equipment, and other personal property onto the Property as may be reasonably necessary for the purposes described in above.

User shall operate and maintain the Property and store materials thereon in a neat, orderly way in compliance with all applicable federal, state, and local laws. Any other use of the Property is unauthorized and shall constitute a trespass of County property.

User will secure the Rooms whenever there is an absence of staff during or outside of normal operational hours. Subject to County’s written approval, User may install, operate, and maintain a security system for the Rooms at User’s sole cost and expense.

County will provide User’s staff with access to the Property twenty four (24) hours per day, seven (7) days a week with access cards issued to User’s employees and two access keys issued to staff assigned to this pharmacy with a third access key stored in a secure lock box located within the Behavioral Health space.

3. Compensation.

The User shall pay to the County the sum of six hundred and sixty six dollars and fifty-four cents (\$666.54). User shall be responsible for paying all costs and expenses related to use of the Premises, including any real and personal property taxes, fees, insurance and all other expenses, if any.

4. Termination.
 - a. County may terminate this Agreement at any time by providing thirty (30) days written notice of revocation of the license granted herein.
 - b. Either party may, upon thirty (30) day's written notice to the other party, terminate this Agreement for convenience.
 - c. County may terminate this Agreement at any time County fails to receive appropriation of sufficient funds, as determined by County in its sole discretion, to perform under this Agreement.
 - d. County may terminate this Agreement in the event of a breach of the Agreement by User. Prior to such termination however, County shall give User fifteen (15) day's written notice of the breach and of the County's intent to terminate. If User has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, or other time as may be agreed between the parties in writing, then County may immediately terminate the Agreement. Upon termination for breach of this Agreement, County shall have all rights and remedies available to it at law, in equity, or under this Agreement.
 - e. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.

5. Revocable at Will. County's license to use the Property under this Agreement is non-exclusive and revocable at will by County, for any reason and in County's sole discretion, without additional notice to User. The license provided herein conveys no interest in the Property.

6. Dates. The Property shall be available for use by User from January 1, 2023 through June 30, 2024.

7. Compliance with Applicable Law. User shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to User's use of the Property.

8. Prior Approvals. User shall obtain all necessary permits and approvals from all federal, state, and local governments prior to or concurrent with applying to the County. The County may, in its sole discretion, require User to demonstrate such approvals as a condition precedent to User's use of the Property.

9. Condition and Alterations of Property. County has made requested alterations to the Pharmacy and Inoculation/Vaccination Room as authorized and funded by

the User. Upon termination of this license agreement, the User shall remove all trade fixtures and furnishings.

10. Cleaning and Repair Costs: User agrees to leave the Property in its original, clean condition. User will work with County Facilities Management to remove all equipment and personal property brought onto the Property. User will use reasonable care to prevent damage to the Property. User shall be responsible for any cleaning, repair, or remediation and work with County Facilities Management to maintain resolve and fund all costs arising from or related to User's use of the Property.
11. Release, Assumption of Risk, and Indemnity: User agrees to waive, release, and discharge Clackamas County, its officers, employees, officials, and agents, from any and all claims, causes of action, demands, damages, costs, of any nature whatsoever, whether known or unknown, arising out of or in any way connected with use of the Property.

User understands and appreciates the risks involved in its use of the Property and hereby expressly assumes any and all risks arising out of or relating to use of the Property, whether or not specified herein, and understand Clackamas County is not a guarantor of User's safety.

User agrees to hold harmless, defend, and indemnify Clackamas County, its elected officials, officers, employees, officials, and agents against from and against any and all claims, causes of action, demands, damages, costs, of any nature whatsoever, whether known or unknown, arising out of or in any way connected with use of the Property.

The release of claims, assumption of risk, and indemnification provided herein is intended to be as broad and inclusive as permitted by Oregon law, and that if any portion thereof is held invalid, it is agreed that the balance, notwithstanding, shall continue in full force and effect. This provision shall expressly survive revocation of this Agreement.

12. Insurance: User agrees to maintain Commercial General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form in the amount of not less than one million dollars (\$1,000,000) per occurrence and limit of not less than two million dollars (\$2,000,000) general aggregate for the protection of the County, its elected officials, officers, commissioners, and employees. Such insurance shall include "Clackamas County, its elected officials, agents, officers, and employees" as an additional insured. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice by User to the County. This policy(s) shall be primary insurance with respect to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it. User shall submit certificates of insurance to the County prior to any use of the Property.

13. Reservation of Rights: The County reserves all rights of every kind and nature whatsoever in connection with use of the Property by User. The County shall have the right personally and through County's agents and workmen to enter into the premises at any reasonable time to perform building maintenance, repairs, cleaning, inspections and examine the condition thereof, so long as the County staff are accompanied by an Oregon State licensed pharmacist.

In the event of an emergency, the County may enter the premises so long as the County workmen are accompanied by emergency personnel and a list of all personnel entering the premises is created, maintained and turned over to the User the next work day.

14. Oregon Law and Forum. This Agreement, and all rights, obligations, and disputes arising out of it, will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim, action, or suit that arises out of or relates to the performance of this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit must be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.
15. No Agency Status. Neither User nor User's employees, members, or invitees shall be considered to be employees, officers, or agents of the County for any purpose.
16. Integration. This Agreement contains the entire agreement between County and User and supersedes all prior written or oral discussions or agreements.
17. Amendments. County and User may amend this Agreement at any time. No amendment shall bind either party unless in writing and signed by all parties. Any such amendment shall be effective only in the specific instance and for the specific purpose given.
18. Waiver. Failure of County to enforce any provision of this Agreement shall not constitute a waiver or relinquishment by County of the right to such performance in the future nor of the right to enforce any other provision of this Agreement. Waiver of any default under this Agreement by County shall not be deemed to be a waiver of any subsequent default or a modification of the provisions of this Agreement.
19. Debt Limitation. This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution,

and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

20. No Third Party Beneficiaries. County and User are the only parties to the Agreement and are the only parties entitled to enforce its terms. Nothing in the Agreement 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 the Agreement.
21. Assignment. User shall not assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from County which shall be granted or denied in County's sole and absolute discretion. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
22. Invalidity. If any term or provision of this Agreement, or the application of the Agreement to any person or circumstance is, to any extent, held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected, and each term and provision of this Agreement will be valid and be enforced to the fullest extent permitted by law.
23. Force Majeure. Neither County nor User shall be held responsible for delay or default caused by events outside the County or User's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, User shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
24. Non-Waiver of Governmental Rights. Subject to the terms and conditions of this Agreement, County is specifically not obligating itself with respect to any discretionary action relating to the Property including, but not limited to, condemnation, comprehensive planning, rezoning, variances, environmental clearances or any other governmental approvals that are or may be required.
25. Entire Agreement; Counterparts. This Agreement contains the entire agreement between the parties and, except as otherwise provided, can be changed, modified, amended, or terminated only by an instrument in writing executed by the parties. User and County mutually acknowledge and agree that there are no verbal agreements or other representations, warranties, or understandings affecting this Agreement. This Agreement may be executed in any number of

counterparts, including by fax signatures, each of which will constitute an original, but all of which will constitute one Agreement

26. Binding Effect. The covenants and agreements contained in this Lease are binding on and inure to the benefit of County, User, and their respective successors and assigns.
27. Compliance with Pharmacy Laws on Termination. Notwithstanding anything set forth in this Agreement to the contrary, County shall not interfere with the User's compliance with applicable pharmacy laws, rules or regulations and the User's proper handling or disposition of its pharmaceutical products upon termination of this license agreement.
28. Access to Records. User shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Agreement. County and its duly authorized representatives shall have access to the books, documents, papers, and records of User, which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts. User shall maintain such books and records for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later
29. No Attorney Fees. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.
30. Merger. This Agreement constitutes the entire agreement between the parties with respect to the subject matter referenced therein. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No amendment, consent, or waiver of terms of this Agreement shall bind either party unless in writing and signed by all parties. Any such amendment, consent, or waiver shall be effective only in the specific instance and for the specific purpose given. User, by the signature hereto of its authorized representative, agrees to be bound by the terms and conditions of this Agreement.

By their signatures below, the parties to this Agreement agree to the terms, conditions, and content expressed herein.

Genoa Healthcare, LLC

Todd V Gustin

Todd V Gustin (Feb 17, 2023 09:48 CST)

Todd Gustin, CEO

Feb 17, 2023

Date

Clackamas County

Tootie Smith,
Board of County Commissioners; Chair

Date

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

DESCRIPTION OF PROPERTY:

The Development Services Building (DSB) is a 173,000 square foot facility located at 150 Beaver Creek Road, Oregon City, OR 97045.

Assessor's Map: 32E05C 00812

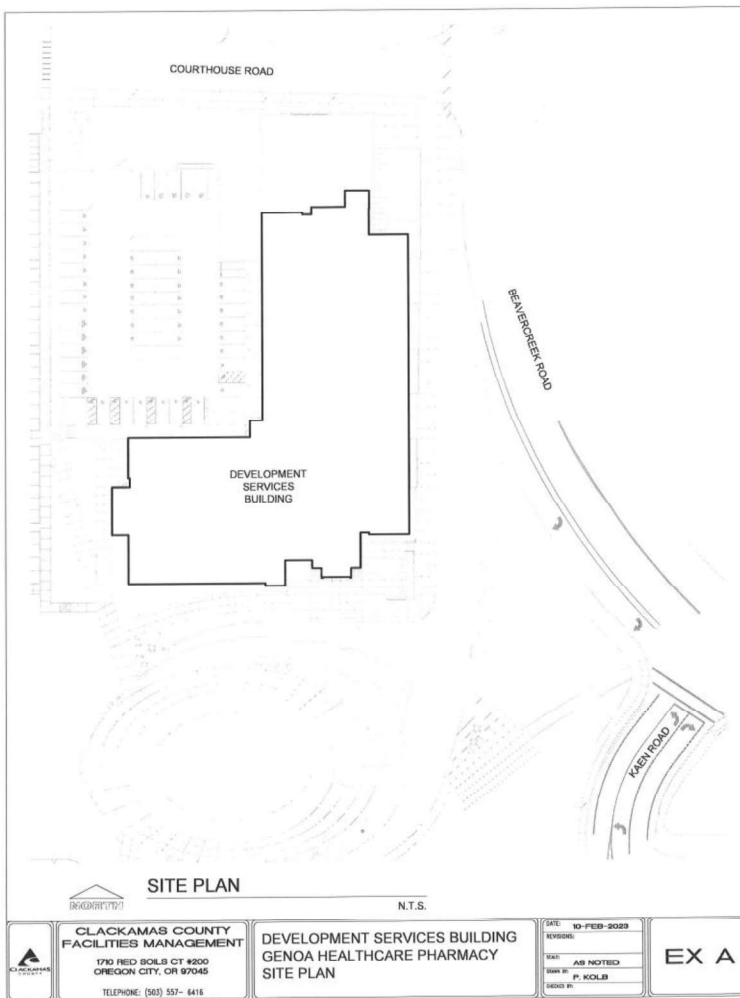


EXHIBIT B

DSB 3RD Floor Plan

The attached plan of the DSB 3rd Floor identifies the two (2) Genoa Rooms assigned for the Pharmacy and the Vaccination/Injection Room

