

February 20, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval for Agreement #9639 a Lease Agreement
between Clackamas Health Centers (CHC) and
Gladstone School District for rental of clinical spaces.

Purpose/Outcomes	Provides CHC office spaces within the Gladstone Youth and Family Community Center for primary care and dental healthcare services.
Dollar Amount and Fiscal Impact	CHC will pay \$1848.40 monthly for the primary care clinic and \$2558 monthly for the dental clinic with a 3% maximum increase each calendar year. No County General Funds are involved. No matching funds required.
Funding Source	Fees for services
Duration	Effective January 1, 2020 and it terminates on June 30, 2025.
Previous Board Action	No previous Board action.
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe 2. Ensure Safe, healthy and secure communities
Counsel Review	County Counsel has reviewed and approved this document. It was approved on February 11, 2020.
Contact Person	Deborah Cockrell 503-742-5495
Contract No.	9639

BACKGROUND:

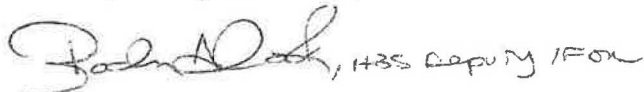
CHC of the Health, Housing and Human Services Department requests the approval of Agreement #9639 to a Lease agreement with Gladstone School District, for the purpose of providing an on-site primary care clinic and dental clinic located at the Gladstone Center for Children and Families (GCCF). These on-site services will ensure patients get their healthcare needs met at a center open to families living in the community.

This is an expense contract for CHC. The total amount of the agreement is projected to be \$346,992.79 for the duration of the five years with the 3% annual increase. No County General Funds are involved. The Agreement is effective January 1, 2020 and will terminate on June 30, 2025.

RECOMMENDATION:

Staff recommends the Board approval of this contract and authorizes Richard Swift, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,



Richard Swift, Director
Health, Housing, and Human Services

#9639

- LEASE -

BETWEEN: GLADSTONE SCHOOL DISTRICT No. 115 ("Landlord")
17789 Webster Road
Gladstone, Oregon 97027

and
("Tenant") CLACKAMAS COUNTY, ON BEHALF OF ITS HEALTH CENTERS DIVISION
2051 Kaen Road. #367
Oregon City Oregon 97045

Landlord leases to Tenant and Tenant leases from Landlord a portion of the property commonly known as The Gladstone Clinic located at:

Gladstone Health Center
18911 Portland Avenue, Gladstone, Oregon 97027

and

Gladstone Pediatric Dental Clinic
18905, Room 11, Portland Avenue, Gladstone, OR 97027

Hereinafter known as "Premises", as defined by Exhibit A and by the terms and conditions as stated below:

1 *Term of Tenancy.*

1.1 *Initial Term.* The Term of this Lease shall commence **January 1, 2020**, and shall continue through **June 30, 2025**, unless sooner terminated as hereinafter provided.

1.2 *Renewal Option.* If the Lease is not in default at the time each option is exercised or at the time the Renewal Term is to commence, Tenant shall have the option to renew this Lease for one (1) successive term of five (5) years (through June 30, 2030), as follows:

1.2.1 The Renewal Terms shall commence on the day following expiration of the initial term.

1.2.2 The option may be exercised by written notice to Landlord given not less than 180 days prior to the last day of the expiring Term. The giving of such notice shall be sufficient to make the Lease binding for the Renewal Term without further act of the parties. Landlord and Tenant shall then be bound to take the steps required in connection with the determination of rent as specified below.

1.2.3 The terms and conditions of the Lease for the Renewal Term shall be

identical with the original Term except for the amount of the Base Rent.

2 Rent –

2.1 *Premises and Base Rent*: The premises (collectively the “Premises”) and base rents subject to this Lease are situated as follows:

2.1.1 **Gladstone Center for Children and Families** at 18911 Portland Avenue, Gladstone, Oregon 97027. This leased premises consist of 1,500 square feet of only the building located on Assessor’s Map 22E, Section 20BC, Tax Lot 10600.

Lessee agrees to pay as monthly rent for the premises the sum of one thousand eight hundred forty eight dollars and forty cents (\$1,848.40) for the first six months of the lease term. The monthly rent from July 1, 2020 through December 1, 2020, shall be \$1,848.40. Beginning January 1, 2021, and each year thereafter for the remainder of the term of this Lease, the monthly rent shall be calculated by increasing the base annual rent of \$22,180.81 by the percentage change of the Consumer Price Index (CPI) of the US Dept. of Labor, Bureau of Labor Statistics for Portland, Oregon, for West Region Size A, from the last month reported to the same month of the preceding year, to be paid in twelve equal monthly payments. For example, if on January 1, 2021, the percentage change in the CPI increased by 3% over the preceding year, rent will be calculated by first determining the increase: $\$22,180.81 \times .03 = \665.42 ; second, by determining the new base annual rent: $\$22,180.81 + \$665.42 = \$22,846.23$; third, by determining the monthly rent: $\$22,846.23/12$ months = monthly rent totaling \$1,903.85.

In no event will the annual rent increase by more than 3% over the prior year’s rent.

Rent shall be payable on the first day of each month in advance at such place as may be designated by the Landlord.

and

2.1.2 **Gladstone Pediatric Dental Clinic** at 18905, Room 11 (Dental Clinic), Portland Avenue, Gladstone, Oregon 97027. This leased premises consist of 530 square feet of the only the building located on Assessor’s Map 22E, Section 20BC, Tax Lot 10600.

Lessee agrees to pay as monthly rent for the premises the sum of two thousand five hundred fifty eight dollars and thirty-three cents (\$2,558.33) for the first six months of the lease term. The monthly rent from July 1, 2020 through December 1, 2020 shall be \$2,558. Beginning January 1, 2021, and each year thereafter for the remainder of the term of this Lease, the monthly rent shall be calculated by increasing the base annual rent of \$30,700.00 by the percentage change of the Consumer Price Index (CPI) West Region Size A from the last month reported to the same month of the preceding year, to be paid in twelve equal monthly payments. For example, if on January 1, 2021, the percentage change in the CPI increased by 3% over the preceding year, rent will be calculated by first determining the increase: $\$30,700.00 \times .03 =$

\$921.00; second, by determining the new base annual rent: $\$30,700.00 + \$921.00 = \$31,621.00$; third, by determining the monthly rent: $\$31,621.00/12 \text{ months} = \text{monthly rent totaling } \$2,635.00$.

In no event will the annual rent increase by more than 3% over the prior year's rent.

Rent shall be payable on the first day of each month in advance at such place as may be designated by the Landlord. These premises are 530 square feet, but these costs do NOT reflect or correlate to square footage costs for the space. These costs are based on a share of services provided to clinic patients and include a fifty percent (50%) share of the building greeter/pediatric dental clinic receptionist position costs plus estimated utility costs, allocated maintenance and security costs and various office supplies.

2.2 Additional Rent. All taxes, insurance costs, utility charges, and maintenance that Tenant is required to pay by this Lease, and any other sum that Tenant is required by this Lease to pay to Landlord or third parties shall be Additional Rent. Landlord and Tenant are not by virtue of this section partners or joint ventures in connection with the Premises or the business carried on under this Lease and shall have no obligation with respect to the others debts or other liabilities.

3 Use of the Premises -

3.1 Permitted Use. The Premises shall be used by Tenant for a community health clinic, and all other uses reasonably associated with the same, and for no other purpose except for such other compatible uses as Landlord may hereafter approve, which approval shall not be unreasonably withheld.

3.2 Restrictions on Use. In connection with the use of the Premises, Tenant shall:

3.2.1 Conform to all applicable laws and regulations of any public authority affecting the Premises and the use, and correct at Tenant's own expense any failure of compliance created through Tenant's fault or by reason of Tenant's use.

3.2.2 Refrain from any activity that would make it impossible to insure the Premises against casualty, would increase the insurance rate, or would prevent Landlord from taking advantage of any ruling of the Oregon Insurance Rating Bureau, or its successor, allowing Landlord to obtain reduced premium rates for long-term casualty insurance policies, unless Tenant pays the additional cost of the insurance.

3.2.3 Refrain from any use that would be reasonably offensive to owners or users of neighboring premises or that would tend to create a nuisance or damage the reputation of the Premises.

3.2.4 Refrain from loading the electrical system or floors beyond the point considered safe by a competent engineer or architect selected by Landlord.

3.2.5 Tenant shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed of, or otherwise released on or under the Premises. Tenant may use or otherwise handle on the Premises only those Hazardous Substances typically used or sold in the prudent and safe operation of the business specified in ' 3.1. Tenant may store such Hazardous Substances on the Premises only in quantities necessary to satisfy Tenant's reasonably anticipated needs. Tenant shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Premises. Upon the expiration or termination of this Lease, Tenant shall remove all Hazardous Substances from the Premises, including without limitation any Hazardous Substances that were placed on the Premises by Tenant. The term "Environmental Law" shall mean any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety or the environment. The term "Hazardous Substance" shall mean any hazardous, toxic, infectious or radioactive substance, waste, and material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions.

4 *Repairs and Maintenance* -

4.1 *Landlord's Obligations.* The following shall be the responsibility of Landlord: repairs and maintenance of the roof, exterior structural walls, parking lots and exterior common areas.

4.2 *Tenant's Obligations.* Tenant shall commit no waste or strip of the Premises. The following shall be the responsibility of Tenant: repair of interior walls, ceilings, doors, windows, and related hardware; electrical work including light fixtures, switches, and wiring; plumbing from the point of entry to the Premises including dental waste removal; any repairs necessitated by the negligence of Tenant, its agents, employees, and invitees, including repairs that would otherwise be the responsibility of Landlord under ' 4.1; any repairs or alterations required under Tenant's obligation to comply with laws and regulations as set forth in ' 3.2.1; and, all other repairs to the Premises which Landlord is not required to make under ' 4.1.

4.3 *Landlord's Interference with Tenant.* In performing any repairs, replacements, alterations, or other work performed on or around the Premises, Landlord shall not cause unreasonable interference with use of the Premises by Tenant. Tenant shall have no right to an abatement of rent nor any claim against Landlord for any inconvenience or disturbance resulting from Landlord's activities performed in conformance with the requirement of this provision.

4.4 *Reimbursement for Repairs Assumed.* If Tenant fails or refuses to make repairs that are required by ' 4.2, Landlord may make the repairs and charge the actual costs of repairs to Tenant. Such expenditures by Landlord shall be reimbursed by Tenant on demand together with interest at the rate of 14.00% per annum from the date of expenditure by Landlord. Except in an emergency creating an immediate risk of personal injury or property damage, neither party may perform repairs which are the obligation of the

other party and charge the other party for the resulting expense unless at least 10 days before work is commenced the defaulting party is given notice in writing outlining with reasonable particularity the repairs required, and such party fails within that time to initiate such repairs in good faith.

4.5 *Inspection of Premises.* Landlord shall have the right to inspect the Premises at any reasonable time or times to determine the necessity of repair. Whether or not such inspection is made, the duty of Landlord to make repairs shall not mature until a reasonable time after Landlord has received from Tenant written notice of the repairs that are required.

5 *Alterations and Improvements -*

5.1 *Alterations and Improvements Require Consent.* Tenant shall make no improvements or alterations on the Premises of any kind without first obtaining Landlord's written consent. All alterations shall be made in a good and workmanlike manner, and in compliance with applicable laws and building codes.

5.2 *Ownership and Removal of Alterations.* All improvements and alterations performed on the Premises by either Landlord or Tenant shall be the property of Landlord when installed unless the applicable Landlord's Consent or Work Sheet specifically provides otherwise. Improvements and alterations installed by Tenant shall, at Landlord's option, be removed by Tenant and the premises restored to original condition unless the applicable Landlord's Consent or Work Sheet specifically provides otherwise.

6 *Insurance -*

6.1 *Property and Casualty Insurance.* Landlord shall keep the Premises insured to their full insurable value at Landlord's expense against fire and other risks covered by a standard property casual insurance policy with an endorsement for all-risk extended coverage. Landlord acknowledges Tenant is self-insured to satisfy its obligations under this Lease.

6.2 *General Liability Insurance.* Tenant shall procure and thereafter during the Term of the Lease shall continue to carry insurance at Tenant's cost or shall alternatively maintain self-insurance funds in such an amount that is acceptable to Landlord. Such insurance or self-insurance fund shall cover all risks arising directly or indirectly out of Tenant's activities on the premises. Such insurance or self-insurance funds shall protect Tenant against the claims of Landlord on account of the obligations assumed by Tenant under sections 10.2 and 10.3 of this Lease. Landlord acknowledges Tenant is self-insured to satisfy its obligations under this Lease.

7 *Payment of Utilities Charges.* Tenant shall pay when due all charges for services and utilities incurred in connection with the use, occupancy, operation, and maintenance of the portion of the Premises leased by tenant, including (but not limited to) charges for fuel, water, gas, electricity, sewage disposal, surface water, air conditioning, telephone, and janitorial services. If any utility or building service is not separately metered the expenses will be allocated and prorated by Landlord on an equitable use basis as Landlord shall

determine in its sole discretion.

8 *Damage and Destruction* -

8.1 *Partial Damage.* If the Premises are partly damaged and section 8.2 does not apply, the Premises shall be repaired in accord with this Lease. Repairs shall be accomplished with all reasonable dispatch subject to interruptions and delays from labor disputes and matters beyond the parties' control.

8.2 *Destruction.* If the Premises are destroyed or damaged such that the cost of repair exceeds 50% of the value of the structure before the damage, Landlord or Tenant may elect to terminate the Lease as of the date of the damage or destruction by notice given to the other party in writing not more than 45 days following the date of damage. In such event all rights and obligations of the parties shall cease as of the date of termination, and Tenant shall be entitled to the reimbursement of any prepaid amounts paid by Tenant and attributable to the future term. If neither party elects to terminate, the premises shall be restored pursuant to the terms of this Lease. Work shall be commenced as soon as reasonably possible and thereafter shall proceed without interruption except for work stoppages on account of labor disputes and matters beyond the parties' control.

8.3 *Rent Abatement.* Rent shall be abated during the repair of any damage to the extent the Premises are untenantable, except that there shall be no rent abatement where the damage occurred as the result of the fault of Tenant.

9 *Eminent Domain* -

9.1 *Partial Taking.* If a portion of the Premises is condemned and section 9.2 does not apply, the Lease shall continue on the following terms:

9.1.1 Landlord shall be entitled to all of the proceeds of condemnation, and Tenant shall have no claim against Landlord as a result of the condemnation.

9.1.2 Landlord shall proceed as soon as reasonably possible to make such repairs and alterations to the Premises as are necessary to restore the remaining Premises to a condition as comparable as reasonably practicable to that existing at the time of the condemnation.

9.1.3 After the date on which title vests in the condemning authority or an earlier date on which alterations or repairs are commenced by Landlord to restore the balance of the Premises in anticipation of taking, the rent shall be reduced in proportion to the reduction in value of the Premises as an economic unit on account of the partial taking. If the parties are unable to agree on the amount of the reduction of rent, the amount shall be determined by arbitration in the manner provided in this Lease.

9.1.4 If a portion of Landlord's property not included in the Premises is taken, and severance damages are awarded on account of the Premises, or an award is made for detriment to the Premises as a result of activity by a public body not involving a physical taking of any portion of the Premises, this shall be regarded as a partial

condemnation to which ' ' 9.1.1 and 9.1.3 apply, and the rent shall be reduced to the extent of reduction in rental value of the Premises as though a portion had been physically taken.

9.2 *Total Taking.* If a condemning authority takes all of the Premises or a portion sufficient to render the remaining premises reasonably unsuitable for the use that Tenant was then making of the Premises, the Lease shall terminate as of the date the title vests in the condemning authorities. Landlord shall be entitled to all of the proceeds of condemnation, and Tenant shall have no claim against Landlord as a result of the condemnation. The parties shall be entitled to share in the condemnation proceeds in proportion to the values of their respective interests in the Premises.

9.3 *Sale in Lieu of Condemnation.* Sale of all or part of the premises to a purchaser with the power of eminent domain in the face of a threat or probability of the exercise of the power shall be treated for the purposes of this 9 as a taking by condemnation.

10 *Liability and Indemnity -*

10.1 *Liens*

10.1.1 Tenant shall pay as due all claims for work done on and for services rendered or material furnished to the Premises by Tenant, and shall keep the Premises free from any liens. If Tenant fails to pay any such claims or to discharge any lien, Landlord may do so and collect the cost as additional rent. Any amount so added shall bear interest at the rate of 18% per annum from the date expended by Landlord and shall be payable on demand. Such action by Landlord shall not constitute a waiver of any right or remedy which Landlord may have on account of Tenant's default.

10.1.2 Tenant may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay. If a lien is filed as a result of nonpayment, Tenant shall, within 10 days after knowledge of the filing, secure the discharge of the lien or deposit with Landlord cash or sufficient corporate surety bond or other surety satisfactory to Landlord in an amount sufficient to discharge the lien plus any costs, attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien.

10.2 *Indemnification.* Subject to applicable provisions in the Oregon Constitution and Oregon Tort Claims Act, Tenant shall indemnify and defend Landlord from any claim, loss, or liability arising out of or related to any negligent act or omission of Tenant on the Premises or any condition of the Premises under the control of Tenant. Subject to applicable provisions in the Oregon Constitution and Oregon Tort Claims Act, Landlord shall indemnify and defend Tenant from any claim, loss, or liability arising out of or related to any negligent act or omission of Landlord on the Premises or any condition of the Premises under the control of Landlord.

11 *Estoppel Certificate -*

11.1 Either party will, within 20 days after notice from the other, execute and deliver to the other party a certificate stating whether or not this Lease has been modified and is in full force and effect and specifying any modifications or alleged breaches by the other party. The certificate shall also state the amount of monthly base rent then existing, the dates to which rent has been paid in advance, and the amount of any prepaid rent. Failure to deliver the certificate within the specified time shall be conclusive upon the party from whom the certificate was requested that the Lease is in full force and effect and has not been modified except as represented in the notice requesting the certificate.

12 *Assignment and Subletting* -

12.1 No part of the Premises may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the property be conferred on any third person by any other means by tenant or tenant's business partners, without the prior written consent of Landlord. **This shall not be construed as preventing Tenant from using contracted services or service providers on the Premises.**

13 *Default* -

The following shall be events of default:

13.1 *Default in Rent.* Failure of Tenant to pay any rent or other charge within ten (10) days of when due. Landlord will give notice of non-receipt of rent, but not more than twice in any 12-month period.

13.2 *Default in Other Covenants.* Failure of either party to comply with any term or condition or fulfill any obligation of the Lease (other than the payment of rent or other charges) within 14 days after written notice by the non-defaulting party specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 14-day period, this provision shall be complied with if the defaulting party begins correction of the default within the 14-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

13.3 *Abandonment.* Failure of Tenant for five (5) days or more to occupy the Premises with staff unless such failure is excused under other provisions of this Lease.

14 *Remedies and Termination* -

14.1 *Termination.*

14.1.1 Non-default termination.

Upon sixty (60) day's written notice to Landlord, Tenant may terminate this Lease in the event the Tenant fails to receive expenditure authority sufficient to allow the Tenant, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Lease, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that performance under this Agreement is prohibited or the

Tenant is prohibited from paying for such work from the planned funding source.

14.1.2 Termination upon default.

If Tenant fails to pay rent by the final day of the month in which it is due, Landlord may terminate this Lease by providing sixty (60) days written notice, with an opportunity to cure, to Tenant. Within sixty (60) days of receipt of said notice, Tenant shall either cure the default or vacate the premises.

If Tenant breaches any covenants or conditions of this Lease, other than payment of rent, and such breach is not corrected within thirty (30) days after receipt of written notice from Landlord claiming a default by Tenant and Landlord's intention to terminate the Lease if such breach is not corrected (except that if the breach is of a type that cannot be fully corrected within such thirty day period, Tenant must commence correction within such period and thereafter diligently pursue the correction to completion), Landlord may terminate this Lease by sixty (60) days' written notice thereof to Tenant, without waiver of any rights Landlord may have to initiate legal proceeding to recover damage or other relief. Within sixty (60) days of receipt of such notice, Tenant shall vacate the premises.

If Landlord breaches any covenants or conditions of this Lease, and such breach is not corrected within thirty (30) days after receipt of written notice from Tenant claiming a default by Landlord and Tenant's intention to terminate the Lease if such breach is not corrected (except that if the breach is of a type that cannot be fully corrected within such thirty day period, Landlord must commence correction within such period and thereafter diligently pursue the correction to completion), Tenant may terminate this Lease by sixty (60) days' written notice thereof to Landlord, without waiver of any rights Landlord may have to initiate legal proceeding to recover damage or other relief. Within sixty (60) days of receipt of such notice, Tenant shall vacate the premises. Tenant shall, to the maximum extent practicable, provide Landlord sixty (60) days' notice of termination under this Subsection 14.1.1. Upon such termination, Tenant shall be responsible for all prorated rent due on the date of termination.

The rights and remedies specified in this section shall be non-exclusive. Either party's right to terminate this Lease for default as provided herein shall not be that party's sole remedy, and such party may exercise any other right or remedy provided in this Lease or otherwise available under applicable law.

14.2 Reletting. Following reentry or abandonment, Landlord may relet the Premises and in that connection may make any suitable alterations or refurbish the Premises, or both, or change the character or use of the Premises, but Landlord shall not be required to relet for any use or purpose other than that specified in the Lease or which Landlord may reasonably consider injurious to the Premises, or to any tenant that Landlord may reasonably consider objectionable. Landlord may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the Term of this Lease, upon any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

15.1 *Condition of Premises.* Upon expiration of the Lease Term or earlier termination on account of default, Tenant shall deliver all keys to Landlord and surrender the Premises in first-class condition and broom clean. Alterations constructed by Tenant with permission from Landlord shall not be removed or restored to the original condition unless the terms of permission for the alteration so require. Depreciation and wear from ordinary use for the purpose for which Tenant is responsible shall be accepted.

15.2 *Fixtures*

15.2.1 All fixtures placed upon the Premises during the Term, other than Tenant's trade fixtures, shall, unless otherwise agreed to by the parties in writing, become the property of Landlord. All medical equipment is considered personal property of Tenant and will remain the property of the Tenant upon termination of this Lease.

15.2.2 Prior to expiration or other termination of the Lease Term, Tenant shall remove all furnishings, furniture, and trade fixtures that remain on the Premises.. If Tenant fails to do so, this shall be an abandonment of the property, and Landlord may retain the property and all rights of Tenant with respect to it shall cease or, by notice in writing given to Tenant within 20 days after removal was required

15.3 *Holdover*

15.3.1 If Tenant does not vacate the Premises at the time required, Landlord shall have the option to treat Tenant as a tenant from month to month, subject to all of the provisions of this Lease except the provisions for term and renewal and at a rental rate equal to 125 percent of the rent last paid by Tenant during the original term, or to eject Tenant from the Premises and recover damages caused by wrongful holdover. Failure of Tenant to remove fixtures, furniture, furnishings, or trade fixtures that Tenant is required to remove under this Lease shall constitute a failure to vacate to which this section shall apply if the property not removed will substantially interfere with occupancy of the Premises by another tenant or with occupancy by Landlord for any purpose including preparation for a new tenant.

15.3.2 If a month-to-month tenancy results from a holdover by Tenant under this 15.3, the tenancy shall be terminable at the end of any monthly rental period on written notice from Landlord given not less than 10 days prior to the termination date which shall be specified in the notice.

15.4 *Personal Property.* Any personal property of Tenant or any subtenant that shall remain on the Premises after the termination of this Lease and the removal of Tenant or such subtenant from the Premises may, at the option of Landlord after 30-days written notice to tenant, be deemed to have been abandoned by Tenant or such subtenant and may either be retained by Landlord as its property or be disposed of, without accountability, in such manner as Landlord may see fit, or if Landlord gives written notice to Tenant to such effect, such property shall be removed by Tenant at Tenant's sole cost and expense.

15.5 *Survival.* The provisions of this section shall survive any termination of this Lease.

16 *Transfer of Building* - If the Premises is sold or otherwise transferred by Landlord or any successor, Tenant shall attorn to the purchaser or transferee and recognize it as the lessor under this Lease, and, provided the purchaser or transferee assumes all obligations hereunder, the transferor shall have no further liability hereunder.

17 *General Terms* -

17.1 *Nonwaiver.* A provision of this Agreement may be waived only by a written instrument executed by the party waiving compliance. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or any other provision. Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

17.2 *No Attorney Fees.* In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Lease, each party shall be responsible for its own attorneys' fees and expenses..

17.3 *Notices.* Any notice required or permitted under this Lease shall be given when actually delivered in person or by regular over-night courier service obtaining a signed receipt (such as FedEx or UPS), or 48 hours after deposited in United States mail as certified mail, addressed to the party at the address set forth above or to such other address as may be specified from time to time by either of the parties in writing.

17.4 *Succession.* Subject to the above-stated limitations on transfer of Tenant's interest, this Lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

17.5 *Recordation.* This Lease will be recorded.

17.6 *Entry for Inspection.* Landlord shall have the right to enter upon the Premises at any time to determine Tenant's compliance with this Lease, to make necessary repairs to the building or to the Premises, or to show the Premises to any prospective tenant or purchaser, and in addition shall have the right, at any time during the last twelve months of the term of this Lease, to place and maintain upon the Premises notices for leasing or selling of the Premises.

17.7 *Proration of Rent.* In the event of commencement or termination of this Lease at a time other than the beginning or end of one of the specified rental periods, then the rent shall be prorated as of the date of commencement or termination and in the event of termination for reasons other than default, all prepaid rent shall be refunded to Tenant or paid on its account.

17.8 *Time of Essence.* Time is of the essence of the performance of each of Tenant's obligations under this Lease.

17.9 *Definition of Landlord.* The term "Landlord" as used in this Lease means only the owner for the time being of the Premises, so that in the event of a sale, transfer, conveyance, or other termination of Landlord's interest in the Premises, the previous owner shall be and is entirely freed and relieved of all liability of Landlord thereafter accruing, and in such event Landlord shall remit any funds held by Landlord, in which Tenant has an interest, to the successor owner of the Premises. Landlord shall remain liable for any such money not so remitted. It shall be deemed and construed without further agreement between the parties or their successors in interest, or between the parties and such successor owner of the Premises, that such successor owner has assumed and agreed to carry out any and all agreements, covenants, and obligations of Landlord thereafter accruing.

17.10 *Amendments.* This Lease may be amended only by an instrument in writing executed by all the parties.

17.11 *Counterparts.* This Lease may be executed by the parties in separate counterparts, each of which when executed and delivered shall be an original, but all of which together shall constitute one and the same instrument. Copies by facsimile transmission will be accepted as originals until the original copy is received as replacement.

17.12 *Severability.* If any provision of this Lease shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this Agreement shall not be in any way impaired.

17.13 *Construction.* As used herein, the singular shall include the plural and the plural the singular and the masculine and neuter shall each include the masculine, feminine and neuter as the context requires. The words "Landlord" and "Tenant", together with accompanying verbs and pronouns, wherever used in this Agreement, shall apply equally and be binding jointly and severally upon all persons, firms or corporations who may be or become parties hereto, the obligation of each and all to be primary and joint and several. All captions and sections used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Agreement.

17.14 *Further Assurances.* From time to time, each of the parties shall execute, acknowledge, and deliver any instruments or documents necessary to carry out the purposes of this Lease.

17.15 *No Third-Party Beneficiaries.* Nothing in this Lease, express or implied, is intended to confer on any person, other than the parties to this Lease, any right or remedy of any nature whatsoever.

17.16 *Governing Law.* This Lease has been made entirely within the state of Oregon. This Agreement shall be governed by and construed in accordance with the laws

of the state of Oregon. Any claim between Landlord and Tenant that arises from or relates to this Lease shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and 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 by Tenant of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Landlord, by execution of this Lease, hereby consents to the in personam jurisdiction of the courts referenced in this section.

.17.17 Compliance with Applicable Law. Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Lease, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Lease.

17.18 Debt Limitation. This Lease is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.

17.19. Force Majeure. Neither Landlord nor Tenant shall be held responsible for delay or default caused by events outside of the Landlord or Tenant's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, both parties 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 Lease.

Entire Agreement. This Lease sets forth the entire understanding of the parties with respect to the subject matter of this Lease and supersedes any and all prior understandings and agreements, whether written or oral, between the parties with respect to such subject matter.

Signature pages below.

This lease consists of seventeen (17) sections plus the following exhibits which by this reference is incorporated herein.

Exhibit One: Legal Description of Property

Exhibit Two: Google Earth Map of Premises

In Witness Whereof, the parties have hereunto set their hand this day and year first set forth above, intending to be bound hereby.

LANDLORD:

Gladstone School District

By: *Samantha D Nelson*

Title: *Director of Finance & Operations*

Date: *02/07/2020*

State of Oregon
County of Clackamas

This record was acknowledged before me
on
(date) *02-07-2020* by *Samantha Nelson*
as the *Landlord*.

Stamp (if required):

Notarial Officer
Signature: *Natalie Ann Weninger*

Title of Office: *Admin Assistant*

My Commission Expires: *06-08-2021*



TENANT:
Clackamas County

By: _____

Title: _____

Date: _____

State of Oregon
County of Clackamas

This record was acknowledged before me
on
(date) _____ by _____

Stamp (if required):


as the Chair of Clackamas County.

Notarial Officer
Signature: _____

Title of Office: _____

My Commission Expires: _____

Approved as to form:



Office of County Counsel

2/11/2020

Date

EXHIBIT "ONE"
LEGAL DESCRIPTION OF PREMISES

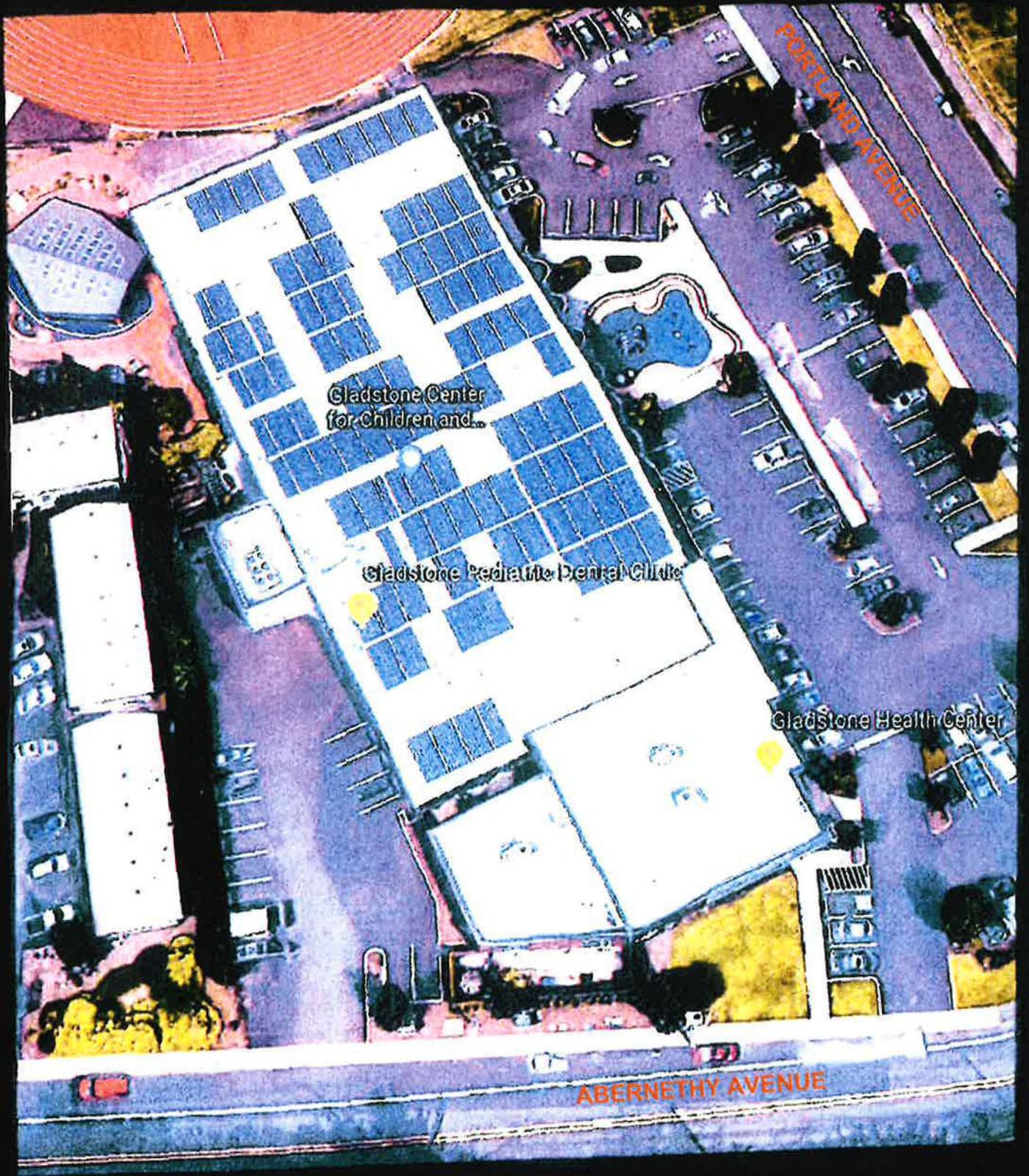
A part of Tract A, MELDRUM, in the City of Gladstone, Clackamas County, Oregon, more particularly described as follows:

Beginning at the Southeast corner of Tract A, Meldrum; thence North 25°31' West along the Northeast boundary of Tract A, 465 feet to a point; thence South 64°29' West 179.72 feet to a point which is 107 feet South of the South boundary of Division Street when measured at right angles therefrom; thence South 88°17' West parallel with and 107 feet southerly from the South boundary of Division Street, 156.40 feet to the West boundary of that tract of land described as Tract II in a deed recorded in Deed Book 596, page 363; thence South 01°43' East along said West boundary, 106.97 feet to an iron pipe; thence North 88°17' East 108.30 feet to an iron rod; thence Southerly along the Southwesterly boundary of the aforesaid Tract II, 248.92 feet (called 249.15 in Deed Book 596, page 363) to the Northerly boundary of Abernethy Lane; thence North 88°17' East along the North boundary of Abernethy Lane 360.34 feet to the place of beginning;

EXCEPT a strip of land five feet in width along the southerly South boundary of the tract herein described which is reserved for widening of Abernethy Lane;

ALSO EXCEPT that parcel conveyed to the City of Gladstone, by a Bargain and Sale Deed recorded August 30, 1984, as Fee No. 84 30426.

EXHIBIT "TWO"
GOOGLE EARTH MAP OF PREMISES



February 20, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Construction Contract between Clackamas County and
Banlin Construction LLC for the
Clackamas County Children's Commission Head Start New Classroom Project

Purpose/ Outcome	The Construction Contract will allow for the Community Development Division to hire Banlin Construction LLC to build the Clackamas County Children's Commission Head Start (CCCCHS) New Classroom Building Project at 16518 SE River Road in Milwaukie. The classifications of site work are as follows; minor excavation, concrete, carpentry, plumbing, electrical, heating air ventilation cooling (HVAC), roofing, flooring, painting and signage. The new classroom building will provide much needed new offices, workspaces, restrooms, storage rooms, a mechanical room, and a conference room.
Dollar Amount and Fiscal Impact	Community Development Block Grant funds in the amount of \$390,000. CCCCHS will provide an estimated \$1,268,148 dollars for construction funds. Total Estimated total construction cost of \$1,658,148. No County General Funds will be used for this project.
Funding Source	U.S. Department of Housing and Urban Development Community Development Block Grant (CDBG) funds
Duration	March – October 2020, Planned Construction Schedule.
Previous Board Action/ Review	CDBG Action Plan approved May 5, 2019
Strategic Plan Alignment	1. Ensure safe, healthy and secure communities. 2. Improved community safety and health.
Counsel Review	County Counsel reviewed and approved this document on December 9, 2019
Contact Person(s)	Steve Kelly – Community Development Division: Ext. 5665
Contract No.	H3S 9646

BACKGROUND: The Housing and Community Development Division of the Health, Housing and Human Services Department requests the approval of this Construction Contract with Banlin Construction LLC for the CCCCHS New Classroom Building Project. The Construction Contract determines the roles of Banlin Construction LLC and the County regarding contract administration, project management, as well as interaction with the CCCCHS hired architect during project construction.

RECOMMENDATION: We recommend the approval of this Contract and that Richard Swift H3S Director be authorized to sign on behalf of the Board of County Commissioners.

Respectfully submitted,

 *Richard A. Swift, H3S Deputy / For*

Richard Swift, Director
Health, Housing and Human Services

Healthy Families. Strong Communities.

2051 Kaen Road, Oregon City, OR 97045 • Phone (503) 650-5697 • Fax (503) 655-8677

www.clackamas.us



CLACKAMAS COUNTY PUBLIC IMPROVEMENT CONTRACT

This Public Improvement Contract (the "Contract"), is made by and between the Clackamas County, a political subdivision of the State of Oregon, hereinafter called "Owner," and Banlin Construction LLC, hereinafter called the "Contractor" (collectively the "Parties"), shall become effective on the date this Contract has been signed by all the Parties and all County approvals have been obtained, whichever is later.

Project Name: Clackamas County Children's Commission – Head Start New Classroom Building Project
Project Address: 16518 SE River Road, Milwaukie, Oregon 97267

1. Contract Price, Contract Documents and Work.

The Contractor, in consideration of the sum of One Million Six Hundred Fifty Eight Thousand One Hundred Forty Eight Dollars (\$1,658,148.00) (the "Contract Price"), to be paid to the Contractor by Owner in the manner and at the time hereinafter provided, and subject to the terms and conditions provided for in the Instructions to Bidders and other Contract Documents (as defined in the Clackamas County General Conditions for Public Improvement Contracts (1/1/2020) ("General Conditions") referenced within the Instructions to Bidders), all of which are incorporated herein by reference, hereby agrees to perform all Work described and reasonably inferred from the Contract Documents. The Contract Price is the amount contemplated by the Base Bid, together with Alternates #1 Nature Play Courtyard (\$141,441.00), #2 AC at Existing Gym and Classrooms (\$80,011.00), #3 Repaint Existing Buildings (\$22,540.00), and #4 Raised Garden Beds (\$31,325.00) (collectively the "Alternates"), as set described in the Bid Form, Page 2, Item 2, which are hereby include as part of the Contract Price, as indicated in the accepted Bid.

Note 1: The Parties agree the Contract Price of \$1,658,148.00 includes all four (#1, #2, #3, and #4) Alternate Items for this Public Improvements Contract.

Note 2: The County reserve the right to execute a deductive Change Order and remove one or more of the Alternates from this Public Improvements Contract.

Also, the following documents are incorporated by reference in this Contract and made a part hereof:

- Notice of Contract Opportunity
- Supplemental Instructions to Bidders
- Bid Form
- Performance Bond and Payment Bond
- Supplemental General Conditions
- Payroll and Certified Statement Form
- Addendum No. 1
- Instructions to Bidders
- Bid Bond
- Public Improvement Contract Form
- Clackamas County General Conditions
- Prevailing Wage Rates
- Plans, Specifications and Drawings

2. Representatives.

Contractor has named Larry Brooks as its' Authorized Representative to act on its behalf. Owner designates, or shall designate, its Authorized Representative as indicted below (check one):

Unless otherwise specified in the Contract Documents, the Owner designates Steve Kelly as its Authorized Representative in the administration of this Contract. The above-named individual shall be the initial point of contact for matters related to Contract performance, payment, authorization, and to carry out the responsibilities of the Owner.

Name of Owner's Authorized Representative shall be submitted by Owner in a separate writing.

3. Key Persons.

The Contractor's personnel identified below shall be considered Key Persons and shall not be replaced during the project without the written permission of Owner, which shall not be unreasonably withheld. If the Contractor intends to substitute personnel, a request must be given to Owner at least 30 days prior to the intended time of substitution. When replacements have been approved by Owner, the Contractor shall provide a transition period of at least 10 working days during which the original and replacement personnel shall be working on the project concurrently. Once a replacement for any of these staff members is authorized, further replacement shall not occur without the written permission of Owner. The Contractor's project staff shall consist of the following personnel:

Project Executive: Larry Brooks shall be the Contractor's project executive, and will provide oversight and guidance throughout the project term.

Project Manager: Larry Brooks shall be the Contractor's project manager and will participate in all meetings throughout the project term.

Job Superintendent: Mike Sliwinski shall be the Contractor's on-site job superintendent throughout the project term.

Project Engineer: Riley Ollero shall be the Contractor's project engineer, providing assistance to the project manager, and subcontractor and supplier coordination throughout the project term.

4. Contract Dates.

COMMENCEMENT DATE: Upon Issuance of Notice to Proceed (Month Date 2020)

SUBSTANTIAL COMPLETION DATE: 210 Days from Notice to Proceed (Month Date 2020)

FINAL COMPLETION DATE: 225 Days from Notice to Proceed (Month Date 2020)

Time is of the essence for this Contract. It is imperative that the Work in this Contract reach Substantial Completion and Final Completion by the above specified dates.

5. Insurance Certificates.

In accordance with Section G.3.5 of the General Conditions, Contractor shall furnish proof of the required insurance naming Clackamas County Community Development Division as an additional insured. Insurance certificates may be returned with the signed Contract or may be emailed to Project Coordinator, Steve Kelly at stevekel@clackamas.us.

6. Tax Compliance.

Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.

7. Confidential Information.

Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is confidential to Owner. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract shall be deemed confidential information of Owner ("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 to third

parties or use Confidential Information for any purpose unless specifically authorized in writing under this Contract.

8. Required Terms.

In addition to the terms and conditions contained in this Contract and the Contract Documents, the following terms and conditions are required by Oregon law:

- A. If the Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this contract as the claim becomes due, the proper officer representing the Owner may pay such claim to the person furnishing the labor or services and charge the amount of the payment against the funds due or to become due the Contractor by reason of the contract.
- B. If the Contractor or a first-tier subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract within 30 days after receiving payment from the contracting agency or a contractor, the Contractor or first-tier subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-day period within which payment is due under ORS 279C.580 (4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent per annum. The amount of interest may not be waived.
- C. If the Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.
- D. The Contractor shall include in each subcontract those provisions required under ORS 279C.580.
- E. For demolition tasks, if any, the Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.

9. Counterparts.

This Contract may be executed in several counterparts, all of which when taken together shall constitute an agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original.

10. Integration.

All provisions of state law required to be part of this Contract, whether listed in the General or Special Conditions or otherwise, are hereby integrated and adopted herein. Contractor acknowledges the obligations thereunder and that failure to comply with such terms is a material breach of this Contract.

The Contract Documents constitute the entire agreement between the parties. There are no other understandings, agreements or representations, oral or written, not specified herein regarding this Contract. Contractor, by the signature below of its authorized representative, hereby acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.

11. Liquidated Damages.

The Contractor acknowledges that the Owner will sustain damages as a result of the Contractor's failure to substantially complete the Project in accordance with the Contract Documents. These damages may include, but are not limited to delays in completion, use of the Project, and costs associated with Contract administration and use of temporary facilities. Liquidated Damages shall be \$1,000.00 per Calendar day if the

actual Substantial Completion exceeds the required date of Substantial Completion, and \$1,000.00 per Calendar day if the actual Final Completion exceeds the required date of Final Completion.

12. Compliance with Applicable Law. Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Work to be done under this Contract including, but not limited to, compliance with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default.

13. Compliance with Applicable Funding Source Requirements. Contractor shall further comply with any and all terms, conditions, and other obligations as may be required by the applicable State or Federal agencies providing funding for performance under this Contract, whether or not specifically referenced herein. Contractor agrees to take all necessary steps, and execute and deliver any and all necessary written instruments, to perform under this Contract including, but not limited to, executing all additional documentation necessary for County to comply with applicable State or Federal funding requirements, together with all documentation necessary to deposit withheld retainage into an escrow account in accordance with Section 14, below.

14. Use of an Escrow Account. Pursuant to ORS 279C.570, amounts deducted by County for retainage shall be kept in an escrow account under the terms and conditions of that certain escrow agreement executed by and between the County and U.S. Bank N.A. ("Escrow Agreement"), a copy of which is attached hereto as Exhibit A and incorporated by this reference herein. Contractor expressly agrees that the terms and conditions of the Escrow Agreement, together with the General Conditions, shall govern the deposit of withheld retainage into an escrow account.

15. Responsibility for Taxes. Contractor is solely responsible for payment of any federal, state, or local taxes required as a result of the Contract or the Work including, but not limited, to payment of the corporate activity tax imposed under enrolled HB 3427 (2019 Oregon regular legislative session). Contractor may not include its federal, state, or local tax obligations as part of the cost to perform the Work.

In witness whereof, Clackamas County executes this Contract and the Contractor does execute the same as of the day and year first above written.

Contractor DATA:

Banlin Construction LLC
320 W Columbia Drive
Kennewick, WA 99336


Oregon Contractor CCB#: 217136 Expiration Date: September 18, 2021
Oregon Business Registry#: 135856490 Entity Type: Limited Liability Company
State of Formation: Washington

Payment information will be reported to the IRS under the name and taxpayer ID# provided by the Contractor. Information must be provided prior to contract approval. Information not matching IRS records could subject Contractor to 28 percent backup withholding.

Banlin Construction LLC
320 W Columbia Drive
Kennewick, WA 99336

Clackamas County

Chair, Jim Bernard
Commissioner Sonya Fischer
Commissioner Ken Humberston

 2-10-2020
Signature Date

Jasen Banta
Jasen Banta, Owner-Banlin Construction LLC

900810742
Federal Tax I.D. No. or Last Four SSN

217136
Oregon Commercial Contractor's Board No.

Commissioner Paul Savas
Commissioner Martha Schrader

Richard Swift, Director Date
Health, Housing and Human
Services Department

APPROVED AS TO FORM

 2/10/2020
County Counsel Date

February 20, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement with
Clackamas Fire District #1 for the Hepatitis A Outbreak Prevention Project (HOPP)

Purpose/Outcomes	Contractor will Administer vaccines at needle exchange sites and collect data at existing Needle Exchange locations.
Dollar Amount and Fiscal Impact	The contract Maximum is \$7,175
Funding Source	The funding for this project is provided by the Hepatitis A Outbreak Prevention Project (HOPP) Grant, via the CDC and routed to Clackamas County Public Health through the LPHA Agreement. No County General Funds are involved.
Duration	Effective December 1, 2019 and terminates on June 30, 2020
Previous Board Action	No Previous Board Actions
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe 2. Ensure safe, healthy and secure communities
Counsel Review	County Counsel has reviewed and approved this document on February 05, 2020
Contact Person	Richard Swift, Interim Public Health Director , 503-650-5694 or Philip Mason-Joyner , 503-742-5956
Contract No.	9537

BACKGROUND:

The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval an Intergovernmental Agreement with Clackamas County Fire District #1 for the Hepatitis A Outbreak Prevention Project (HOPP).

Due to Clackamas County Public Health (CCPH) existing immunization delivery infrastructure, success administering vaccines in places where at-risk community members frequently visit is challenging. Clackamas Fire, through their community paramedic program has access to populations at risk for Hepatitis A. Through funding provided by the Hepatitis A Outbreak Prevention Project (HOPP) Grant, Clackamas Fire will use a tested effective service delivery model for Hepatitis A administration in the community.

Page 2 Staff Report
July 11, 2019
Clackamas Fire District #1 - Agreement #9537

This Agreement has a maximum contract value of \$7,175. This Agreement is effective December 1, 2019 and continues through June 30, 2020.

RECOMMENDATION:

Staff recommends the Board approval of this contract and authorizes Richard Swift, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,

Handwritten signature of Pamela A. Cook, H3S Deputy / For

Richard Swift, Director
Health, Housing, and Human Services

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND CLACKAMAS FIRE DISTRICT #1**

Agreement #9537

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("County"), a political subdivision of the State of Oregon, and Clackamas Fire District #1 ("Agency"), an Oregon municipal corporation, collectively referred to as the "Parties" and each a "Party."

RECITALS

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

Due to Clackamas County Public Health (CCPH) existing immunization delivery infrastructure, success administering vaccines in places where at-risk community members frequently visit, and long-standing relationships with key partners, CCPH- through funding provided by the Hepatitis A Outbreak Prevention Project (HOPP) Grant - will continue using the same effective service delivery model and expand hepatitis A vaccine administration to two existing needle exchange sites. Agency will administer vaccines, collect data and enter data into the ALERT Immunization Information System (IIS) (ALERT) vaccine tracking system.

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS

1. **Term.** This Agreement shall be effective December 1, 2019, and shall expire upon the completion of each and every obligation of the Parties set forth herein, or June 30, 2020, whichever is sooner.
2. **Scope of Work.** The Agency agrees to provide the services further identified in the Scope of Work attached hereto as Exhibit A and incorporated herein ("Work").
3. **Consideration.** The County agrees to pay Agency, from available and authorized funds, a sum not to exceed seven thousand one hundred seventy five dollars (\$7,175) for accomplishing the Work required by this Agreement.
4. **Payment.** Unless otherwise specified, the Agency shall submit monthly invoices for Work performed in accordance with Exhibit A.
5. **Representations and Warranties.**
 - A. *Agency Representations and Warranties:* Agency represents and warrants to County that Agency has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of Agency enforceable in accordance with its terms.
 - B. *County Representations and Warranties:* County represents and warrants to Agency that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.
 - C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

6. Termination.

- A. Either the County or the Agency may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
- B. Either the County or the Agency may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- C. The County or the Agency shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- D. Either party may terminate this Agreement in the event that party fails to receive expenditure authority sufficient to allow the party, in the exercise of its reasonable administrative discretion, to continue to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that performance under this Agreement is prohibited or the party is prohibited from paying for such work from the planned funding source.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

7. Indemnification.

- A. Agency shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Agency, its subcontractors, agents, or employees. The Agency agrees to indemnify, hold harmless and defend Clackamas County, and their officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Agency or the Agency's employees, subcontractors, or agents.

However, neither Agency nor any attorney engaged by Agency shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall Agency settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.

8. **Insurance.** The Agency agrees to furnish the County with evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of Clackamas County, and their officers, elected officials, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Agreement. If self-insured, Agency shall provide documentation to the County of Agency's self-insured status by completing the Self-Insurance Certification form provided by the County.

9. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

A. Anna Summer or their designee will act as liaison for the County.

Contact Information: 503-742-5382 - ASummer@clackamas.us

Amyjo Cook or their designee will act as liaison for the Agency.

Contact Information: (971) 334-9874 - amyjo.cook@ClackamasFire.com

10. General Provisions.

A. **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 between County and Agency that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and 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 by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Agency, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.

B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Agency shall further comply with any and all terms, conditions, and other obligations as may be required by the applicable State or Federal agencies providing funding for performance under this Agreement, whether or not specifically referenced herein. Failure to comply with such obligations is a material breach of this Agreement.

- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **Access to Records.** Agency shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. Agency shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, Agency shall permit the County's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Work Product.** All work performed under this Agreement shall be considered work made for hire and shall be the sole and exclusive property of the District. The District shall own any and all data, documents, plans, copyrights, specifications, working papers and any other materials produced in connection with this Agreement. On completion or termination of the Agreement, the Agency shall promptly deliver these materials to the District's Project Manager.
- F. **Hazard Communication.** AGENCY shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed, which includes any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by Oregon Administrative Rules, Chapter 137, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon County's request, Agency shall immediately provide Material Safety Data Sheets for the products subject to this provision.
- G. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- H. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- I. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties

and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.

- J. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- K. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- L. **No Third-Party Beneficiary.** Agency and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this 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 this Agreement.
- M. **Subcontract and Assignment.** Agency shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. County's consent to any subcontract shall not relieve Agency of any of its duties or obligations under this Agreement.
- N. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- O. **Survival.** All provisions in Sections 5, 7, and 10 (A), (C), (D), (G), (H), (I), (J), (L), (Q), (T), and (U) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- P. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement including, but not limited to, executing all additional documentation necessary for County to comply with applicable State or Federal funding requirements.
- Q. **Time is of the Essence.** Agency agrees that time is of the essence in the performance this Agreement.
- R. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

- S. **Force Majeure.** Neither Agency nor County shall be held responsible for delay or default caused by events outside of the Agency or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Agency 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.

- T. **Confidentiality.** Agency acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire confidential information. Any and all information of any form obtained by Agency or its employees or agents in the performance of this Agreement shall be deemed confidential information of the County ("Confidential Information"). Agency agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Agency 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 to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement.

- U. **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.

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

Clackamas County

CLACKAMAS COUNTY FIRE DISTRICT #1

Chair, Board of County Commissioners



Fred Charlton, Fire Chief

Date

2-10-2020

Date

Exhibit A

SCOPE OF WORK and COMPENSATION

Clackamas County Public Health – Vaccinate Clackamas: Expanding hepatitis A vaccine coverage through community partnerships

Hepatitis A Outbreak Prevention Project (HOPP) Grant FY 2019
Statement of Work for Clackamas Fire District #1 ("Agency" or "Clackamas Fire")

Due to CCPH's existing immunization delivery infrastructure, success administering vaccines in places where at-risk community members frequently visit is dependent on relationships with key partners. Clackamas Fire Community Paramedic Program is uniquely positioned to provide vaccine to at-risk hard to reach community members. CCPH- through funding provided by the Hepatitis A Outbreak Prevention Project (HOPP) Grant - will provide funding for Clackamas Fire to administer Hepatitis A vaccine in the community.

Clackamas Fire Community Paramedic will provide Hepatitis A vaccines at resource fairs and community events targeted at reaching at risk community members. This may be at events hosted by Clackamas Fire or by other community partners, such as the Clackamas Service Center at its needle exchange site.

Clackamas Fire reporting requirements:

Clackamas Fire will participate in planning, check-in and evaluation meetings with CCPH and CVIM approximately monthly. These monthly meetings will be hosted by CCPH from January to June, 2020.

Clackamas Fire will log vaccines administered in the ALERT vaccine tracking system documenting the number of hepatitis A vaccines administered from initiation of the project. Clackamas Fire will also log event data including the location of the event, when it was held, and attendance levels.

Clackamas Fire will submit a final report by June 30, 2020. This report will be due to the CCPH Infectious Disease Control and Prevention Manager on June 30, 2020.

COMPENSATION:

The maximum compensation for this agreement is \$7,175.

Payments will be issued on a monthly basis for true and verifiable expenses for hours worked to perform the work and services in accordance with this Agreement and budget below.

Method of Payment. To receive payment, Agency shall submit invoices as follows:

Agency shall submit invoices by the tenth day of the month following that in which service was performed. The invoice shall list the contract # 9537, dates of service, number of hours billed, and description of the Work performed. Invoices shall be submitted monthly. Payments shall be made to Agency following the County's review and approval of invoices submitted by Agency. Agency shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth in the Agreement. Invoices shall be submitted to:

Clackamas County Public Health Division
 Attn: Accounts Payable
 2051 Kaen Road, # 367
 Oregon City, Oregon 97045

Or electronically to:

PublicHealthFiscalAP@clackamas.us

When submitting electronically, designate Agency name and contract # 9537 in the subject of the e-mail.

Within thirty (30) days after receipt of the bill, provided County has approved the service specified on the invoice, County shall pay the amount requested to Agency.

Oregon Immunization Program: Hepatitis A Outbreak Prevention Project (HOPP)

November 1, 2019 - June 30, 2020					
Clackamas County Public Health - Personnel	Annual Salary	Annual Fringe		FTE	Total
Infectious Disease Control and Prevention Manager	94,002.00	57,039.00	151,041.00	0.04	6,041.64
Nurse	74,016.00	46,584.00	120,600.00	0.025	3,015.00
Personnel Subtotal	168,018.00	103,623.00	271,641.00	0.065	9,056.64
Sub-contractors					
Clackamas Fire					
Personnel = \$7,175 (salary and fringe for community paramedic at 4 hrs/week = \$205 x 35 weeks)					7,175.00
Clackamas Volunteers in Medicine					
Personnel = \$6,195 [(salary and fringe for nurse at 3 hrs/week = \$106 + salary and fringe for clinic manager and volunteer coordinator at 2 hrs/week x 2 = \$71) x 35 weeks]					12,376.00
Supplies = \$6,181 (Model #FFJ-60LT vaccine refrigerator storage, battery backup system, LogTag VFC 400 Vaccine Monitoring data logger (x 2))					
Sub-contractors Subtotal					19,551.00
Total Direct Charges					9,056.64
Indirect					
Public Health Division Indirect @ 10.21%					924.68
Indirect Subtotal					924.68
Total					29,532.32

Board of Commissioners
Clackamas County

Members of the Board:

Approval of a Personal Services Contract with Grin In-Home Care, Inc. d/b/a Comfort Keepers, Inc. for Oregon Project for Independence In-home Care Services

Purpose/Outcomes	To provide Oregon Project for Independence (“OPI”) funded in-home care to Clackamas County residents. These services enable residents to remain in their community.
Dollar Amount and Fiscal Impact	The maximum total contract value is \$298,000.00 over 5 years.
Funding Source	The Oregon Project Independence (OPI) allocated State General Funds - no County General Funds are involved.
Duration	Effective from date of execution through June 30, 2021, with four (4), one (1) year renewal options.
Previous Board Action	None
Strategic Plan Alignment	1. This funding aligns with the strategic priority to increase self-sufficiency for our clients. 2. This funding aligns with the strategic priority to ensure safe, healthy and secure communities by addressing needs of older adults in the community.
Counsel Review	Counsel Approved as to Form on February 5, 2020
Contact Person	Brenda Durbin, Director, Social Services Division 503-655-8641
Contract No.	H3S #9555 / Procurement Contract #2259

BACKGROUND:

The purpose of the in-home services to be provided is to assist frail, at-risk Clackamas County residents 60 years or older, or under age 60 with a diagnosis of Alzheimer’s Disease or a related neurological disorder, to remain living in their homes and maintain the highest level of independence possible. The desired outcomes of this contract are; to provide services for the client which will stabilize the client's environment and, if possible, to maintain and improve the client's condition.

Procurement Process

On May 16, 2019, a Request for Proposals (RFP) was posted. The RFP closed June 18, 2019, and the review committee recommended Grin In-Home Care, Inc. d/b/a Comfort Keepers, Inc.; to be awarded a contract. The contract would be effective on January 1, 2020 through June 30, 2021, with four (4), one (1) year renewal options. County Counsel reviewed and approved this contract as to form.

RECOMMENDATION:

Staff recommends the Board approval of this agreement and that Richard Swift, H3S Director; or his designee, be authorized to sign on behalf of Clackamas County.

Respectfully submitted,

Richard Swift, Director
Health, Housing and Human Services

Placed on the Agenda of _____ by the Procurement Division



**CLACKAMAS COUNTY
PERSONAL SERVICES CONTRACT
Contract #2259 and H3S#9555**

This Personal Services Contract (this “Contract”) is entered into between **Grin In-Home Care, Inc. DBA Comfort Keepers** (“Contractor”), and Clackamas County, a political subdivision of the State of Oregon (“County”) on behalf of its Health, Housing and Human Services Department.

ARTICLE I.

1. **Effective Date and Duration.** This Contract shall become effective upon signature of both parties (“effective date”). Unless earlier terminated or extended, this Contract shall expire on **June 30, 2021**. This Contract may, upon written agreement by both parties, be renewed for up to four (4), one (1) year terms. Any optional renewals must be made by an amendment to this contract and at an annual payment amount to be agreed to, in writing, by the parties as part of the amendment.

2. **Scope of Work.** Contractor shall provide the following personal services: Oregon Project for Independence (“OPI”) In-Home Care Services (“Work”), further described in **Exhibit A** and **Exhibit B** the RFP 2019-39 issued May 16, 2019.

3. **Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed **thirty-eight thousand dollars (\$38,000.00)** for Work performed from the contract effective date through June 30, 2020. From July 1, 2020 through June 30, 2021, the maximum annual payments under this Contract shall not exceed **sixty-five thousand dollars (\$65,000.00)**. The maximum not to exceed total contract value for accomplishing the Work required by this Contract, excluding all possible renewal terms, is **two hundred ninety-eight thousand dollars (\$298,000.00)**. Consideration rates are on a time and material basis in accordance with the hourly rates and costs specified in Exhibit A. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit A.

4. **Invoices and Payments.** Unless otherwise specified, Contractor shall submit monthly invoices, in a form approved by County, for Work performed. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The invoices shall include the total amount billed to date by Contractor prior to the current invoice. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Payments shall be made to Contractor following the County’s review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not be obligated to pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

Invoices shall be submitted to: Stefanie Reid-Danielson by email at Stefanierei@co.clackamas.or.us

5. **Travel and Other Expense.** Authorized: Yes No
If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: <http://www.clackamas.us/bids/terms.html>. Travel expense reimbursement is not in excess of the not to exceed consideration.

6. **Contract Documents.** This Contract consists of the following documents, which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibit A (Scope of Work), Exhibit B (RFP 2019-39), Exhibit C (Contractor’s Proposal), and Exhibit D

(Business Associate Agreement). Unless explicitly agreed to by the parties in this Contract, any additional terms and conditions that may be contained in Exhibit C are void.

7. Contractor and County Contacts.

Contractor	County
Administrator: Krista Grinstead Phone: 503-462-1455 Email: kgrinstead@comfortkeepers.com	Administrator: Stefanie Reid-Danielson Phone: 503-655-8330 Email: Stefanierei@co.clackamas.or.us

Payment information will be reported to the Internal Revenue Service (“IRS”) under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records will subject Contractor payments to backup withholding.

ARTICLE II.

1. **ACCESS TO RECORDS.** Contractor 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 Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor, which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Contractor 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 Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
2. **AVAILABILITY OF FUTURE FUNDS.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the County in its sole administrative discretion.
3. **CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
4. **COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time. Contractor shall further comply with any and all terms, conditions, and other obligations as may be required by applicable State and Federal agencies providing funding for performance under this Contract, whether or not specifically referenced herein.
5. **COUNTERPARTS.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
6. **GOVERNING LAW.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract 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 may 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. In no event shall this section be construed as a waiver by the

County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.

7. **RESPONSIBILITY FOR DAMAGES; INDEMNITY.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall Contractor settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.

8. **INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot 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 Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; and (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits.

9. **INSURANCE.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. Contractor shall provide proof of said insurance and name the County as an additional insured on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us.

Required - Workers Compensation: Contractor shall comply with the workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.126.
<input checked="" type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
<input checked="" type="checkbox"/> Required – Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
<input checked="" type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage.
<input checked="" type="checkbox"/> Required – Sexual Molestation/Abuse: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000.

This policy(s) shall be primary insurance as respects to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it. Any obligation that County agree to a waiver of subrogation is hereby stricken.

- 10. LIMITATION OF LIABILITIES.** This Contract 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. Except for liability arising under or related to Article II, Section 13 or Section 20 neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms.
- 11. NOTICES.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article 1, Section 6. If notice is sent to County, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during County's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.
- 12. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Notwithstanding the above, County shall have no rights in any pre-existing Contractor intellectual property provided to County by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for County use only.
- 13. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; and (E) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 14. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Sections 1, 6, 7, 11, 13, 14, 16, 21, and 27 and all other rights and obligations which by their context are intended to survive. However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.

- 15. SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 16. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Sections 1, 7, 8, 13, 16 and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- 17. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- 18. TAX COMPLIANCE CERTIFICATION.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.
- 19. TERMINATIONS.** This Contract may be terminated for the following reasons: (A) by mutual agreement of the parties or by the County (i) for convenience upon thirty (30) days written notice to Contractor, or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County; or (B) if contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure.
- Upon receipt of written notice of termination from the County, Contractor shall immediately stop performance of the Work. Upon termination of this Contract, Contractor shall deliver to County all documents, Work Product, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the Work.
- 20. REMEDIES.** If terminated by the County due to a breach by the Contractor, then the County shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Contractor's sole remedy is payment for the goods and services delivered and accepted by the County, less any setoff to which the County is entitled.
- 21. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract 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 Contract.

- 22. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 23. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
- 24. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by events outside the County or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor 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 Contract.
- 25. WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.
- 26. PUBLIC CONTRACTING REQUIREMENTS.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes ("ORS") Chapter 279B.220 through 279B.235, Contractor shall:
- a. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
 - b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
 - c. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.
 - d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
 - e. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.
 - f. If the Work involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.
- 27. NO ATTORNEY FEES.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.
- 28. CONFIDENTIALITY.** Contractor acknowledges that it and its employees and agents may, in the course of performing their obligations under this Contract, be exposed to or acquire information that the County desires or is required to maintain as confidential. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract, including but not limited to Personal Information (as "Personal Information" is defined in ORS 646A.602(11)), shall be deemed to be confidential information of the County ("Confidential Information"). Any reports or other documents or items (including software) which result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the 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 to third parties or use Confidential Information for any purposes whatsoever (other than in the performance of this Contract), and to advise each of its employees and agents of their obligations to keep Confidential Information confidential.

Contractor agrees that, except as directed by the County, Contractor will not at any time during or after the term of this Contract, disclose, directly or indirectly, any Confidential Information to any person, and that upon termination or expiration of this Contract or the County's request, Contractor will turn over to the County all documents, papers, records and other materials in Contractor's possession which embody Confidential Information. Contractor acknowledges that breach of this Contract, including disclosure of any Confidential Information, or disclosure of other information that, at law or in good conscience or equity, ought to remain confidential, will give rise to irreparable injury to the County that cannot adequately be compensated in damages. Accordingly, the County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the County and are reasonable in scope and content.

Contractor agrees to comply with all reasonable requests by the County to ensure the confidentiality and nondisclosure of the Confidential Information, including if requested and without limitation: (a) obtaining nondisclosure agreements, in a form approved by the County, from each of Contractor's employees and agents who are performing services, and providing copies of such agreements to the County; and (b) performing criminal background checks on each of Contractor's employees and agents who are performing services, and providing a copy of the results to the County.

Contractor shall report, either orally or in writing, to the County any use or disclosure of Confidential Information not authorized by this Contract or in writing by the County, including any reasonable belief that an unauthorized individual has accessed Confidential Information. Contractor shall make the report to the County immediately upon discovery of the unauthorized disclosure, but in no event more than two (2) business days after Contractor reasonably believes there has been such unauthorized use or disclosure. Contractor's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the Confidential Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by the County.

Notwithstanding any other provision in this Contract, Contractor will be responsible for all damages, fines and corrective action (including credit monitoring services) arising from disclosure of such Confidential Information caused by a breach of its data security or the confidentiality provisions hereunder.

The provisions in this Section shall operate in addition to, and not as limitation of, the confidentiality and similar requirements set forth in the rest of the Contract, as it may otherwise be amended. Contractor's obligations under this Contract shall survive the expiration or termination of the Contract, as amended, and shall be perpetual.

29. HIPAA COMPLIANCE. Subject to the U.S. Health Insurance Portability and Accountability Act (HIPAA) of 1996 and its implementing regulation, the Standard of Privacy of Individuals Identifiable Health Information at 45 C.F.R. Part 160 and 164, Subpart A and E, the County is required to enter into a Business Associate Agreement, attached hereto as Exhibit F, with the Contractor prior to the commencement of any work under this Contract. Contractor acknowledges and agrees that protected health information ("PHI") disclosed by County to Contractor may only be used by or disclosed to

Contractor pursuant the Business Associate Agreement or pursuant to a written consent in compliance with 42 C.F.R. Part 2, as may be amended from time to time. Contractor agrees to comply with any and all applicable privacy laws including without limitation, 42 C.F.R. Part 2.

30. CRIMINAL BACKGROUND CHECK REQUIREMENTS. Contractor shall be required to have criminal background checks (and in certain instances fingerprint background checks) performed on all employees, agents, or subcontractors that perform services under this Contract. Only those employees, agents, or subcontractors that have met the acceptability standards of the County may perform services under this Contract or be given access to Personal Information, Confidential Information or access to County facilities. County's acceptability standards include Contract and all of its employees, agents, volunteers or subcontractors that perform services under this Contract having met the provider requirements set forth in Oregon Administrative Rules ("OAR") OAR 407-007-0200 through 407-0107-0370,; as well as Oregon Revised Statutes ("ORS") 181A195, ORS181A200 , and ORS 443.004.

a) Contractor shall meet this requirement by processing Criminal Record Checks via the Oregon Department of Human Services ("DHS") Criminal Records Information Management System ("CRIMS") for all Contractor's subject individuals.

31. FURTHER ASSURANCES. Contractor agrees to take all steps, and execute and deliver any and all necessary written instruments, to perform under this Contract including, but not limited to, executing all additional documentation necessary for County to comply with applicable State or Federal funding requirements.

32. MERGER. THIS CONTRACT 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 CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT 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. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT, AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

SIGNATURE PAGE FOLLOWS

**EXHIBIT A
SCOPE OF WORK**

Contractor shall perform all Work in accordance with the following requirements and specifications as well as the Scope outlined in RFP 2019-39.

CONSIDERATION RATES

- a. Contractor shall not perform any Work under this Contract without first having received authorization from the County as described under the Description of Service Delivery Program section of this Exhibit A.
- b. Time and material rates are further described by the following hourly rates:

Type of Work*	Hourly Rate
Home Care/Independent Activities of Daily Living Care	\$25.97/hr.
Personal Care/Activities of Daily Living Care	\$25.97/hr.
Nursing Care Service	\$70.35/hr.

*Each Type of Work is further defined below.

ADDITIONAL REQUIREMENTS

- The Contractor’s employees providing Work under this Contract shall each have a minimum of two years direct experience providing the same Work as the kind described in Section 3.3-3.3.9 of the RFP 2019-39, issued May 16, 2019. This experience may be any two full calendar years within the five (5) calendar years prior to the date that applications are due. In addition, Contractor’s employees providing Work as a registered nurse (RN) shall be and remain, during the term of this Contract, a licensed RN in good standing in the State of Oregon.
- The Contractor shall be, and remain during the term of this Contract, an in-home care agency currently licensed, in good standing, by the Oregon Health Authority.
- The Contractor shall maintain established business location(s) within 1 hour commute of Public Services Building in Oregon City, Oregon. Employees of Contractor will be available to provide Work throughout all of Clackamas County.

Types of Work:

Contractor shall provide home care services/independent activities of daily living (HC/IADL), Personal care/activities of daily living (PC/ADL) care services and Registered Nursing (RN) care services for Oregon Project Independence (OPI) eligible Clackamas County Social Services Division / Aging and Disability Services (CCSS/ADS) clients living in Clackamas County, Oregon who are referred to Contractor by CCSS/ADS. Contractor shall comply with Oregon Administrative Rules (“OAR”) 333-536-0000 through 0125, OAR 411-032- 000 through 411-032-050. Contractor shall be licensed in accordance with the aforementioned OAR.

Description of Service Delivery Program

- A. The Contractor must be available to perform the Work twenty-four (24) hours, seven (7) days a week. After business hours, weekends and holidays the client/designated care provider must be able to reach Contractor’s supervisor or staffing coordinator by dialing Contractor’s regular business phone number. It is acceptable if an answering service take the reason for the call and inform the caller that their call will be immediately forwarded to either the staffing coordinator or on-call R.N. supervisor (who shall both carry pagers) depending on the nature of the call.

- B.** The County OPI Case Managers will authorize in-home services from the Contractor for identified clients. Authorizations will be for a set number of hours per month. Work must be provided as specified by County OPI Case Manager. Contractor may round to ¼ hour increments for hours provided. Exceptions will be made by mutual agreement between Contractor and County.
- C.** Upon verbal receipt of client data and authorization for Work by County, Contractor shall have its staff coordinator, or designee, contact the client and/or responsible party by phone for introduction and confirmation of Work to be delivered. Possible times of service delivery will also be discussed at this time. Contractor is also responsible for the following:
- a. Contractor's staffing coordinator, or designee, will inform the appropriate supervisor (R.N. for ADL/Personal Care or Home Care Supervisor for Home Care) of the new client and the authorized Work.
 - b. R.N. Supervisor for ADL/Personal Care and/or RN Care Services will visit the client and perform a R.N. assessment prior to the start of care in order to establish the Contractor's plan of care which Contractor shall sign and then forwarded to the County's Case Manager. This will be reviewed every 180 days and re-submitted to the County's Case Manager. If a hospitalization or other event occurs that changes the client's status and/or needs, the care plan will be reviewed, updated and forwarded to the County's Case Manager. The Contractor may bill up to one (1) hours at the RN Service rate for the initial assessment, however reassessments, required at 180 day intervals, may not be billed.
 - c. The client who is authorized for home care/IADL services only will be visited by Contractor's Home Care Supervisor, or designee, within ten (10) working days. The plan of care or task list for home care will be established with a copy left in the home with appropriate flow sheets. The task list will be reviewed every 180 days.
 - d. Contractor's Home Care Supervisor, or designee, will contact the assigned care aide with the necessary information regarding client Work. R.N. Supervisor may also contact the ADL/Personal Care aide if the client's condition needs further explanation or the care plan requires special attention due to the condition of the client.
- D.** Contractor reserves the right to a written 30-day notice of termination of Work to a specified client by the Contractor. The written notice must be provided to both the Client and County and specify the reason(s) for the termination with the following exception:
- a. Contractor reserves the right to provide Client immediate oral or written notice of termination of Work by the Contractor at the time the Contractor determines that the safety of its staff or the client cannot be ensured. If oral notice is given, the Contractor must also subsequently provide both the client and OPI Case Manager a written confirmation of the oral notice of termination of Work.
 - b. Contractor will endeavor to assign each client with acceptable field staff. In some cases a given client-aide match is not workable. In such cases, the Contractor will attempt to change the aide assignment. If, after three attempted matches, acceptable staffing has not been achieved, the Contractor reserves the right to refuse to staff that client. Such a determination shall be made by the program manager or designee, in consultation with the client's OPI Case Manager.
- E.** Contractor reserves the right to reassign an aide when a client repeatedly refuses service or is not home at scheduled time of service.

- F. Contractor shall furnish a Service Understanding to all clients that outlines the client's responsibilities in receiving service. The Service Understanding shall specify the items listed in D-G above.
- G. In medical emergencies, clients will be verbally instructed to call "911" or report to an emergency room.
- H. In non-emergent medical situations clients will be instructed to call their physician or report to an immediate care center.

Agency Personal Care/ADL Care Services and/or RN Care Services Detail

- A. Contractor will provide essential supportive services that enable an individual to return to or remain in his/her own home. ADL care services will be performed by a qualified and trained Contractor's staff trained and certified as Agency Personal Care Aides (APCA) or RN as appropriate for the Work authorized.
- B. Provided Work includes, but is not limited to:
 1. Basic personal hygiene, including bathing, grooming, nail care, foot care, dressing, and skin care;
 2. Toileting / bowel and bladder care, including bowel care requiring delegation by an RN
 3. Mobility and transfers, including assistance with ambulating and positioning.
 4. Nutrition, hydration, feeding;
 5. Medications/Oxygen use - assisting with administration of medications and assuring medications are taken as ordered by the physician and refilled as appropriate, maintain clean oxygen equipment and assuring adequate oxygen supply; and
 6. RN Care Services - For clients whose conditions are stable and predictable, the Contractor will conduct nursing assessment, monitoring, intermittent nursing care, and delegation of special tasks of nursing care. Nursing services will be conducted in accordance with the Oregon State Board of Nursing Administrative Rules and State of Oregon Department of Human Services (DHS), Public Health regarding In-Home Care Agencies.

Agency Personal Care Aides (APCA) Requirements

- A. Contractor will ensure that its staff are and remain qualified, trained, and of sufficient number to meet the needs of the clients receiving Work.
- B. Contractor will ensure that all APCA staff employed by the Contractor are at least 18 years old, be in compliance with DHS Criminal History Clearance set forth in OAR 125-007-0200 through 125-007-0330; OAR 407-007-0200 through 407-007-0370 and ORS 181A.195; 181A.200; ORS 409.025, ORS 409.027 and ORS443.004, and have sufficient communication and language skills to enable them to perform their duties and interact effectively with clients, other Contractor staff and COUNTY staff.
- C. Contractor will ensure that all APCAs have completed the Contractor's specific orientation, conducted by the Contractor or designee, prior to independently providing Work to clients. The orientation should include: APCA duties and responsibilities, client rights, confidentiality, infection control, and any other requirements as specified in OAR 333-536-0070.
- D. Contractor will supervise APCAs, observe job performance in the home at least quarterly, and document job performance after probationary period and annually thereafter as specified in OAR 333-536-0070.

- E. Contractor will post a prioritized emergency contact list (e.g., physician, ambulance, fire department, etc.) by the client's telephone and give a copy of the list to the APCA.
- F. Contractor will ensure that the APCA receives a copy of the Contractor's emergency procedure, local area disaster plan and understands the importance of following the plan.
- G. Contractor will reassess the client at least quarterly or within one week following emergency treatment and revise the service plan as changes occur.
- H. Contractor will conduct an initial screening in the prospective client's home to evaluate the requested service and needs prior to accepting the prospective client and assigning an APCA. The Contractor may bill one (1) hour at the RN care rate for the initial assessment.
- I. Contractor's RN Care services will be authorized and billed at the RN Care rate which is separate from Personal Care/ADL Care Services.

Agency Home Care/ IADL Services Details

Contractor will provide home care services to eligible clients. Home care services include self-management and household tasks that do not require RN supervision. Contractor will ensure its Agency Home Care Specialists (AHCS) are supervised and will verify and monitor ongoing adequacy in the provision of Work.

Agency Home Care/IADL Specialist Tasks vary and may include:

- A. Housekeeping tasks necessary to maintain the client in a healthy and safe environment, including cleaning, laundry, shopping, and meal preparation.
- B. Observation of client's status and reporting of any significant changes to physician and case manager.
- C. Handling first aid and other emergencies.
- D. Providing extra support for clients with confusion, dementia, mental illness or other cognitive deficits.
- E. Arranging or assisting in arranging necessary medical appointments and transportation to the appointment.

Agency Home Care Specialist Training Requirements

- A. Contractor will ensure that its AHCS staff has capability to perform the tasks authorized for the clients they serve; and that the AHCS staff is qualified, competent, trained and capable of meeting the client's individual care needs as determined by the CCSS case manager.
- B. Contractor will ensure that all AHCSs employed by the Contractor are at least 18 years old, are in compliance with DHS Criminal History Clearance set forth in OAR 125-007-0200 through 125-007-0330; OAR 407-007-0200 through 407-007-0370 and ORS 181A.195; 181A.200; ORS 409.025, ORS 409.027 and ORS443.004, and have sufficient communication and language skills to enable them to perform their duties and interact effectively with clients, other Contractor staff and CCSS staff.
- C. Contractor will ensure that all of its AHCSs can provide tasks requiring the skills of an In-Home Care Contractor Personal Care Aide when they have received adequate training and are supervised by the home care manager or designee.

Contract's Home Care Supervisor

Contractor will ensure that its Home Care Supervisor has the training and/or experience leading to demonstrated knowledge and skills in performing those tasks described as Home Care Services. The Home Care Supervisor will supervise AHCS through telephone conferences, face-to-face conferences, as needed, and quarterly on-site monitoring of the Work they provide in the home.

Miscellaneous Contractor Service Requirements. Contractor will perform the following additional service tasks:

- A. Recruit, select and maintain adequate numbers of qualified staff to provide Work required under the contract.
- B. Have planning in place to build capacity and bring new employees onboard as necessary to meet Contract delivery needs.
- C. Maintain good communication channels with County OPI Staff.
- D. Familiarize staff with Clackamas County Social Services Division (“CCSS”) policies, procedures, and in-home service requirements.
- E. Provide authorized Work for each eligible person referred to Contractor. Work must be provided within the maximum number of hours authorized by CCSS. Provisions of Work will be available twenty four (24) hours per day, seven (7) days per week, per full calendar year.
- F. Promptly assign and begin Work as indicated in all cases referred as follows:
 - a. within twenty-four (24) hours from referral on emergency cases
 - b. within three (3) calendar days from referral on expedited cases
 - c. within five (5) calendar days from referral on non-emergency cases
- G. Notify the referring CCSS case manager by noon the following day if the client refuses to accept Work.
- H. Submit invoice for CCSS referred clients on CCSS approved form to CCSS/ADS Contract Coordinator within (10) calendar days after the end of the month in which Work was provided. The invoice will indicate the month Work was provided, the clients for whom Work was provided, the type and numbers of units of service authorized, the type and numbers of units of service provided, and the amount being billed by service. CCSS will use its best efforts to make payment to Contractor within 21 days after receipt of an accurately completed invoice.

On-site Monitoring and Assessment

- A. The Contractor will provide information and documents as requested by CCSS/ADS. This information may include the client's records (OAR 333-536-0085), client's nursing services (OAR 333-536-0080) quality improvement records (OAR 333-536-0090) protective service investigation findings (OAR 333-536-0040), organization, administration, and personnel (OAR 333-536-0050) along with other areas as defined in the State of Oregon DHS Public Health, In-Home Care Agencies (OAR 333-536-0000 through 333-536-0095). This information will be received by CCSS/ADS within five (5) working days, unless determined to involve client safety, well-being or protective service investigation in which the information will be received within twenty four (24) hours.
- B. The Contractor will cooperate with any CCSS quality assurance visits regarding monitoring of contract content, statement of work, and assessment of Work.
- C. The Contractor will participate in client conferences with CCSS/ADS case managers, as requested and as defined in the contract.
- D. The Contractor will complete an annual self-evaluation / assessment of the In-Home Care Contractor's internal program delivery as defined in the CCSS contract and OHA-Public Health Division OAR 333-536-0041. Evaluation will include a survey of client's satisfaction with the In-Home Care Contractor's services, CCSS/ADS case managers / supervisors and input from the In-Home Care Contractor's Supervisors, APCAs and AHCSs. This information will be presented to CCSS within fourteen (14) days of the completion of the self-evaluation.
- E. The Contractor will operate a business office within one hour's commute of the CCSS/ADS office in Oregon City, and within local telephone coverage of Clackamas County.

EXHIBIT B
RFP 2019-39 OPI IN-HOME CARE SERVICES

EXHIBIT C
CONTRACTOR'S PROPOSAL

**EXHIBIT D
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement shall become effective upon signature of both parties (“Effective Date”) by and between **Clackamas County, on behalf of its Department of Health, Housing and Human Services, Behavioral Health Division** (“Covered Entity”) and **Grin In-Home Care, Inc. DBA Comfort Keepers** (“Business Associate”) in conformance with the Health Insurance Portability and Accountability Act of 1996, and its regulations (“HIPAA”).

RECITALS

Whereas, the Covered Entity has engaged the services of the Business Associate, as defined under 45 CFR §160.103, for or on behalf of the Covered Entity;

Whereas, the Covered Entity may wish to disclose Individually Identifiable Health Information to the Business Associate in the performance of services for or on behalf of the Covered Entity as described in a Services Agreement (“Agreement”);

Whereas, such information may be Protected Health Information (“PHI”) as defined by the HIPAA Rules promulgated in accordance with the Administrative Simplification provisions of HIPAA;

Whereas, the Parties agree to establish safeguards for the protection of such information;

Whereas, the Covered Entity and Business Associate desire to enter into this Business Associate Agreement to address certain requirements under the HIPAA Rules;

Now, Therefore, the parties hereby agree as follows:

SECTION I – DEFINITIONS

- 1.1 “Breach” is defined as any unauthorized acquisition, access, use or disclosure of Unsecured PHI, unless the Covered Entity demonstrates that there is a low probability that the PHI has been compromised. The definition of Breach excludes the following uses and disclosures:
 - 1.1.1 Unintentional access by a Covered Entity or Business Associate in good faith and within an Workforce member’s course and scope of employment or placement;
 - 1.1.2 Inadvertent one time disclosure between Covered Entity or Business Associate Work force members; and
 - 1.1.3 The Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain the information.
- 1.2 “Covered Entity” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §160.103.
- 1.3 “Designated Record Set” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §164.501.
- 1.4 “Effective Date” shall be the Effective Date of this Business Associate Agreement.
- 1.5 "Electronic Protected Health Information" or "Electronic PHI" shall have the meaning given to such term at 45 CFR §160.103, limited to information of the Covered Entity that the Business Associate creates, receives, accesses, maintains or transmits in electronic media on behalf of the Covered Entity under the terms and conditions of this Business Associate Agreement.
- 1.6 “Health Care Operations” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §164.501.
- 1.7 “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules codified at 45 CFR Part 160 and Part 164.

- 1.8 “Individual” shall have the meaning given to such term in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- 1.9 “Individually Identifiable Health Information” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §160.103.
- 1.10 “Protected Health Information” or “PHI” means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an Individual; the provision of health care to an Individual; or the past, present or future payment for the provision of health care to an Individual; and (ii) that identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual, and shall have the meaning given to such term under the HIPAA Rules, 45 CFR §160.103 and §164.501.
- 1.11 “Protected Information” shall mean PHI provided by the Covered Entity to Business Associate or created, maintained, transmitted or received by Business Associate on Covered Entity’s behalf.
- 1.12 “Required by Law” shall have the meaning given to such phrase in 45 CFR §164.103.
- 1.13 “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- 1.14 “Security Incident” shall have the meaning given to such phrase in 45 CFR §164.304.
- 1.15 “Unsecured Protected Health Information” shall mean protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in accordance with 45 CFR §164.402.
- 1.16 Workforce means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a Covered Entity or Business Associate, is under the direct control of such Covered Entity or Business Associate, whether or not they are paid by the Covered Entity or Business Associate.

SECTION II – OBLIGATIONS AND ACTIVITIES OF THE BUSINESS ASSOCIATE

The Business Associate agrees to the following:

- 2.1 Not to use or further disclose PHI other than as permitted or required by this Business Associate Agreement or as Required by Law;
- 2.2 To use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Business Associate Agreement;
- 2.3 To mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by the Business Associate in violation of the requirements of this Business Associate Agreement;
- 2.4 To immediately report to the Covered Entity any use or disclosure of PHI not provided for by this Business Associate Agreement of which it becomes aware, including any Security Incident of which it becomes aware;
- 2.5 In accordance with 45 CFR §§164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any agent, including a subcontractor, that creates, receives, maintains, or transmits PHI on behalf of the Business Associate agrees in writing to the same restrictions, conditions and requirements that apply to the Business Associate with respect to such PHI;
- 2.6 To provide access, at the request of the Covered Entity, and in the time and manner designated by the Covered Entity, to PHI in a Designated Record Set, to the Covered Entity or, as directed by the Covered Entity, to the Individual or the Individual’s designee as necessary to meet the Covered Entity’s obligations under 45 CFR §164.524; provided, however, that this Section 2.6 is applicable

- only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
- 2.7 To make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of the Covered Entity or an Individual, and in the time and manner designated by the Covered Entity; provided, however, that this Section 2.7 is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
 - 2.8 To make internal practices, books and records, including policies and procedures on PHI, relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of, the Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary's determining the Covered Entity's and the Business Associate's compliance with the HIPAA Rules;
 - 2.9 To document such disclosures of PHI and information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
 - 2.10 To provide to the Covered Entity or an Individual, in a time and manner designated by the Covered Entity, information collected in accordance with Section 2.9 of this Business Associate Agreement, to permit the Covered Entity to respond to a request by an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
 - 2.11 That if it creates, receives, maintains, or transmits any Electronic PHI on behalf of the Covered Entity, it will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI, and it will ensure that any agents (including subcontractors) to whom it provides such Electronic PHI agrees to implement reasonable and appropriate security measures to protect the information. The Business Associate will report to the Covered Entity any Security Incident of which it becomes aware;
 - 2.12 To retain records related to the PHI hereunder for a period of six (6) years unless the Business Associate Agreement is terminated prior thereto. In the event of termination of this Business Associate Agreement, the provisions of Section V of this Business Associate Agreement shall govern record retention, return or destruction;
 - 2.13 To promptly notify the Covered Entity of a Breach of Unsecured PHI as soon as practicable, but in no case later than 10 calendar days, after the discovery of such Breach in accordance with 45 CFR §164.410. A Breach shall be treated as discovered as of the first day on which such Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or agent of Business Associate. The notification shall include, to the extent possible, the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach in addition to the information required in Section V. In addition, Business Associate shall provide the Covered Entity with any other available information that the Covered Entity is required to include in the notification to the individual under 45 CFR §164.404(c); and
 - 2.14 To the extent Business Associate is to carry out one or more of the Covered Entity's obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

SECTION III – THE PARTIES AGREE TO THE FOLLOWING PERMITTED USES AND DISCLOSURES BY THE BUSINESS ASSOCIATE:

- 3.1 Business Associate agrees to make uses and disclosures and requests for PHI consistent with the Covered Entity's minimum necessary policies and procedures.
- 3.2 Except as otherwise limited in this Business Associate Agreement, the Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, the Covered Entity as specified in the Services Agreement, provided that such use or disclosure would not violate the HIPAA Rules if done by the Covered Entity; and,
- 3.3 Except as otherwise limited in this Business Associate Agreement, the Business Associate may:
 - a. **Use for management and administration.** Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate; and,
 - b. **Disclose for management and administration.** Disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are Required by Law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

SECTION IV – NOTICE OF PRIVACY PRACTICES

- 4.1 If requested, the Covered Entity shall provide the Business Associate with the notice of privacy practices that the Covered Entity produces in accordance with 45 CFR §164.520, as well as any changes to such notice. Covered Entity shall (a) provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures; (b) notify the Business Associate of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restrictions may affect the Business Associate's use or disclosure of PHI; and (c) not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Standards if done by the Covered Entity, except as set forth in Section 3.2 above.

SECTION V – BREACH NOTIFICATION REQUIREMENTS

- 5.1 With respect to any Breach, the Covered Entity shall notify each individual whose Unsecured PHI has been, or is reasonably believed by the Covered Entity to have been, accessed, acquired, used, or disclosed as a result of such Breach, except when law enforcement requires a delay pursuant to 45 CFR §164.412. This notice shall be:
 - a. Without unreasonable delay and in no case later than 60 calendar days after discovery of a Breach.
 - b. In plain language including and to the extent possible:
 - 1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - 2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - 3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;

- 4) A brief description of what the Covered Entity and/or Business Associate is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any further Breaches; and,
 - 5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
- c. By a method of notification that meets the requirements of 45 CFR §164.404(d).
 - d. Provided to the media when required under 45 CFR §164.406 and to the Secretary pursuant to 45 CFR §164.408.
- 5.2. Business Associate shall promptly provide any information requested by Covered Entity to provide the information described in Section 5.1.

SECTION VI – TERM AND TERMINATION

6.1 **Term.** The term of this Business Associate Agreement shall be effective as of the date set forth above in the first paragraph and shall terminate when all of the PHI created, maintained, transmitted or received by the Business Associate on behalf of the Covered Entity, is destroyed or returned to the Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

6.2 **Termination for Cause.** Upon the Covered Entity’s knowledge of a material breach of this Business Associate Agreement by the Business Associate, the Covered Entity shall provide an opportunity for the Business Associate to cure the breach or end the violation. The Covered Entity shall terminate this Business Associate Agreement and the Services Agreement if the Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity, or immediately terminate this Business Associate Agreement if cure is not reasonably possible.

If the Business Associate fails to cure a breach for which cure is reasonably possible, the Covered Entity may take action to cure the breach, including but not limited to obtaining an injunction that will prevent further improper use or disclosure of PHI. Should such action be taken, the Business Associate agrees to indemnify the Covered Entity for any costs, including court costs and attorneys' fees, associated with curing the breach.

Upon the Business Associate's knowledge of a material breach of this Business Associate Agreement by the Covered Entity, the Business Associate shall provide an opportunity for the Covered Entity to cure the breach or end the violation. The Business Associate shall terminate this Business Associate Agreement and the Services Agreement if the Covered Entity does not cure the breach or end the violation within the time specified by the Business Associate, or immediately terminate this Business Associate Agreement if the Covered Entity has breached a material term of this Business Associate Agreement if cure is not reasonably possible.

6.3 **Effect of Termination.**

a. **Return or Destruction of PHI.** Except as provided in Section 6.3(b), upon termination of this Business Associate Agreement, for any reason, the Business Associate shall return, or if agreed to by the Covered Entity, destroy all PHI received from the Covered Entity, or created, maintained or received by the Business Associate on behalf of the Covered Entity and retain no copies. This provision shall apply to PHI that is in the possession of subcontractors or agents of the Business Associate.

b. **Return or Destruction of PHI Infeasible.** In the event that the Business Associate determines that returning or destroying PHI is infeasible, the Business Associate shall provide to the Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of the PHI is infeasible, the Business

Associate shall extend the protections of this Business Associate Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the Business Associate maintains such PHI. In addition, the Business Associate shall continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI to prevent use or disclosure of the PHI, for as long as the Business Associate retains the PHI.

SECTION VII – GENERAL PROVISIONS

- 7.1 **Regulatory references.** A reference in this Business Associate Agreement to the HIPAA Rules or a section in the HIPAA Rules means that Rule or Section as in effect or as amended from time to time.
- 7.2 **Compliance with law.** In connection with its performance under this Business Associate Agreement, Business Associate shall comply with all applicable laws, including but not limited to laws protecting the privacy of personal information about Individuals.
- 7.3 **Amendment.** The Parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time. All amendments must be in writing and signed by both Parties.
- 7.4 **Indemnification by Business Associate.** Business Associate agrees to indemnify, defend and hold harmless the Covered Entity and its commissioners, employees, directors, officers, subcontractors, agents or other members of its workforce, each of the foregoing hereinafter referred to as “Indemnified Party,” against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with Business Associate’s breach of Sections II and III of this Business Associate Agreement. Accordingly, on demand, Business Associate shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, fines, penalties, costs or expenses (including reasonable attorneys’ fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results for Business Associate’s breach hereunder. The obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement for any reason.
- 7.5 **Survival.** The respective rights and obligations of Business Associate under Section II of this Business Associate Agreement shall survive the termination of the Services Agreement and this Business Associate Agreement.
- 7.6 **Interpretation.** Any ambiguity in this Business Associate Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Rules.

[Signature Page for BAA Follows]

Board of Commissioners
Clackamas County

Members of the Board:

**Approval of a Personal Services Contract with Mt. Hood Home Care Service, LLC
for Oregon Project for Independence In-home Care Services**

Purpose/Outcomes	To provide Oregon Project for Independence (“OPI”) funded in-home care to Clackamas County residents. These services enable residents to remain in their community.
Dollar Amount and Fiscal Impact	The maximum total contract value is \$448,000.00 over 5 years.
Funding Source	The Oregon Project Independence (OPI) allocated State General Funds - no County General Funds are involved.
Duration	Effective from date of execution through June 30, 2021, with four (4), one (1) year renewal options.
Previous Board Action	None
Strategic Plan Alignment	1. This funding aligns with the strategic priority to increase self-sufficiency for our clients. 2. This funding aligns with the strategic priority to ensure safe, healthy and secure communities by addressing needs of older adults in the community.
Counsel Review	Counsel Approved as to Form on February 5, 2020
Contact Person	Brenda Durbin, Director, Social Services Division 503-655-8641
Contract No.	H3S #9556 / Procurement Contract #2231

BACKGROUND:

The purpose of the in-home services to be provided is to assist frail, at-risk Clackamas County residents 60 years or older, or under age 60 with a diagnosis of Alzheimer’s Disease or a related neurological disorder, to remain living in their homes and maintain the highest level of independence possible. The desired outcomes of this contract are; to provide services for the client which will stabilize the client's environment and, if possible, to maintain and improve the client's condition.

Procurement Process

On May 16, 2019, a Request for Proposals (RFP) was posted. The RFP closed June 18, 2019, and the review committee recommended Mt. Hood Home Care Service, LLC; to be awarded a contract. The contract would be effective on January 1, 2020 through June 30, 2021, with four (4), one (1) year renewal options. County Counsel reviewed and approved this contract as to form.

RECOMMENDATION:

Staff recommends the Board approval of this agreement and that Richard Swift, H3S Director; or his designee, be authorized to sign on behalf of Clackamas County.

Respectfully submitted,

Richard Swift, Director
Health, Housing and Human Services

Placed on the Agenda of _____ by the Procurement Division



**CLACKAMAS COUNTY
PERSONAL SERVICES CONTRACT
Contract #2231 and H3S#9556**

This Personal Services Contract (this “Contract”) is entered into between **Mt. Hood Home Care Service, LLC** (“Contractor”), and Clackamas County, a political subdivision of the State of Oregon (“County”) on behalf of its Health, Housing and Human Services Department.

ARTICLE I.

- 1. Effective Date and Duration.** This Contract shall become effective upon signature of both parties (“effective date”). Unless earlier terminated or extended, this Contract shall expire on **June 30, 2021**. This Contract may, upon written agreement by both parties, be renewed for up to four (4), one (1) year terms. Any optional renewal must be made by an amendment to this Contract and at an annual payment amount to be agreed to, in writing, by the parties as part of the amendment.
- 2. Scope of Work.** Contractor shall provide the following personal services: Oregon Project for Independence (“OPI”) In-Home Care Services (“Work”), further described in **Exhibit A** and **Exhibit B** the RFP 2019-39 issued May 16, 2019.
- 3. Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed **sixty four thousand dollars (\$64,000.00)** for Work performed from the contract effective date through June 30, 2020. From July 1, 2020 through June 30, 2021, the maximum annual payments under this Contract shall not exceed **one hundred twenty eight thousand dollars (\$128,000.00)**. The maximum not to exceed total contract value for accomplishing the Work required by this Contract, excluding all possible renewal terms, is **four hundred forty eight thousand dollars (\$448,000.00)**. Consideration rates are on a time and material basis in accordance with the hourly rates and costs specified in Exhibit A. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit A.
- 4. Invoices and Payments.** Unless otherwise specified, Contractor shall submit monthly invoices, in a form approved by County, for Work performed. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The invoices shall include the total amount billed to date by Contractor prior to the current invoice. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Payments shall be made to Contractor following the County’s review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not be obligated to pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

Invoices shall be submitted to: Stefanie Reid-Danielson by email at Stefanierei@co.clackamas.or.us

- 5. Travel and Other Expense.** Authorized: Yes No
If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: <http://www.clackamas.us/bids/terms.html>. Travel expense reimbursement is not in excess of the not to exceed consideration.
- 6. Contract Documents.** This Contract consists of the following documents, which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibit A (Scope of Work), Exhibit B (RFP 2019-39), Exhibit C (Contractor’s Proposal), and Exhibit D

(Business Associate Agreement). Unless explicitly agreed to by the parties in this Contract, any additional terms and conditions that may be contained in Exhibit C are void.

7. Contractor and County Contacts.

Contractor	County
Administrator: Shannon Christie Phone: 503-826-8285 Email: shannon@mthoodhomecare.com	Administrator: Stefanie Reid-Danielson Phone: 503-655-8330 Email: Stefanierei@co.clackamas.or.us

Payment information will be reported to the Internal Revenue Service (“IRS”) under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records will subject Contractor payments to backup withholding.

ARTICLE II.

- 1. ACCESS TO RECORDS.** Contractor 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 Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor, which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Contractor 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 Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
- 2. AVAILABILITY OF FUTURE FUNDS.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the County in its sole administrative discretion.
- 3. CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
- 4. COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time. Contractor shall further comply with any and all terms, conditions, and other obligations as may be required by applicable State and Federal agencies providing funding for performance under this Contract, whether or not specifically referenced herein.
- 5. COUNTERPARTS.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- 6. GOVERNING LAW.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract 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 may 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. In no event shall this section be construed as a waiver by the

County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.

7. **RESPONSIBILITY FOR DAMAGES; INDEMNITY.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall Contractor settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.

8. **INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot 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 Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; and (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits.

9. **INSURANCE.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. Contractor shall provide proof of said insurance and name the County as an additional insured on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us.

Required - Workers Compensation: Contractor shall comply with the workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.126.
<input checked="" type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
<input checked="" type="checkbox"/> Required – Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
<input checked="" type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage.
<input checked="" type="checkbox"/> Required – Sexual Molestation/Abuse: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000.

This policy(s) shall be primary insurance as respects to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it. Any obligation that County agree to a waiver of subrogation is hereby stricken.

- 10. LIMITATION OF LIABILITIES.** This Contract 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. Except for liability arising under or related to Article II, Section 13 or Section 20 neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms.
- 11. NOTICES.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article 1, Section 6. If notice is sent to County, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during County's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.
- 12. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Notwithstanding the above, County shall have no rights in any pre-existing Contractor intellectual property provided to County by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for County use only.
- 13. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; and (E) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 14. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Sections 1, 6, 7, 11, 13, 14, 16, 21, and 27 and all other rights and obligations which by their context are intended to survive. However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.

- 15. SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 16. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Sections 1, 7, 8, 13, 16 and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- 17. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- 18. TAX COMPLIANCE CERTIFICATION.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.
- 19. TERMINATIONS.** This Contract may be terminated for the following reasons: (A) by mutual agreement of the parties or by the County (i) for convenience upon thirty (30) days written notice to Contractor, or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County; or (B) if contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure.
- Upon receipt of written notice of termination from the County, Contractor shall immediately stop performance of the Work. Upon termination of this Contract, Contractor shall deliver to County all documents, Work Product, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the Work.
- 20. REMEDIES.** If terminated by the County due to a breach by the Contractor, then the County shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Contractor's sole remedy is payment for the goods and services delivered and accepted by the County, less any setoff to which the County is entitled.
- 21. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract 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 Contract.

- 22. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 23. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
- 24. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by events outside the County or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor 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 Contract.
- 25. WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.
- 26. PUBLIC CONTRACTING REQUIREMENTS.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes ("ORS") Chapter 279B.220 through 279B.235, Contractor shall:
- a. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
 - b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
 - c. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.
 - d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
 - e. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.
 - f. If the Work involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.
- 27. NO ATTORNEY FEES.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.
- 28. CONFIDENTIALITY.** Contractor acknowledges that it and its employees and agents may, in the course of performing their obligations under this Contract, be exposed to or acquire information that the County desires or is required to maintain as confidential. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract, including but not limited to Personal Information (as "Personal Information" is defined in ORS 646A.602(11)), shall be deemed to be confidential information of the County ("Confidential Information"). Any reports or other documents or items (including software) which result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the 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 to third parties or use Confidential Information for any purposes whatsoever (other than in the performance of this Contract), and to advise each of its employees and agents of their obligations to keep Confidential Information confidential.

Contractor agrees that, except as directed by the County, Contractor will not at any time during or after the term of this Contract, disclose, directly or indirectly, any Confidential Information to any person, and that upon termination or expiration of this Contract or the County's request, Contractor will turn over to the County all documents, papers, records and other materials in Contractor's possession which embody Confidential Information. Contractor acknowledges that breach of this Contract, including disclosure of any Confidential Information, or disclosure of other information that, at law or in good conscience or equity, ought to remain confidential, will give rise to irreparable injury to the County that cannot adequately be compensated in damages. Accordingly, the County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the County and are reasonable in scope and content.

Contractor agrees to comply with all reasonable requests by the County to ensure the confidentiality and nondisclosure of the Confidential Information, including if requested and without limitation: (a) obtaining nondisclosure agreements, in a form approved by the County, from each of Contractor's employees and agents who are performing services, and providing copies of such agreements to the County; and (b) performing criminal background checks on each of Contractor's employees and agents who are performing services, and providing a copy of the results to the County.

Contractor shall report, either orally or in writing, to the County any use or disclosure of Confidential Information not authorized by this Contract or in writing by the County, including any reasonable belief that an unauthorized individual has accessed Confidential Information. Contractor shall make the report to the County immediately upon discovery of the unauthorized disclosure, but in no event more than two (2) business days after Contractor reasonably believes there has been such unauthorized use or disclosure. Contractor's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the Confidential Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by the County.

Notwithstanding any other provision in this Contract, Contractor will be responsible for all damages, fines and corrective action (including credit monitoring services) arising from disclosure of such Confidential Information caused by a breach of its data security or the confidentiality provisions hereunder.

The provisions in this Section shall operate in addition to, and not as limitation of, the confidentiality and similar requirements set forth in the rest of the Contract, as it may otherwise be amended. Contractor's obligations under this Contract shall survive the expiration or termination of the Contract, as amended, and shall be perpetual.

29. HIPAA COMPLIANCE. Subject to the U.S. Health Insurance Portability and Accountability Act (HIPAA) of 1996 and its implementing regulation, the Standard of Privacy of Individuals Identifiable Health Information at 45 C.F.R. Part 160 and 164, Subpart A and E, the County is required to enter into a Business Associate Agreement, attached hereto as Exhibit F, with the Contractor prior to the commencement of any work under this Contract. Contractor acknowledges and agrees that protected health information ("PHI") disclosed by County to Contractor may only be used by or disclosed to

Contractor pursuant the Business Associate Agreement or pursuant to a written consent in compliance with 42 C.F.R. Part 2, as may be amended from time to time. Contractor agrees to comply with any and all applicable privacy laws including without limitation, 42 C.F.R. Part 2.

30. CRIMINAL BACKGROUND CHECK REQUIREMENTS. Contractor shall be required to have criminal background checks (and in certain instances fingerprint background checks) performed on all employees, agents, or subcontractors that perform services under this Contract. Only those employees, agents, or subcontractors that have met the acceptability standards of the County may perform services under this Contract or be given access to Personal Information, Confidential Information or access to County facilities. County's acceptability standards include Contract and all of its employees, agents, volunteers or subcontractors that perform services under this Contract having met the provider requirements set forth in Oregon Administrative Rules ("OAR") OAR 407-007-0200 through 407-0107-0370,; as well as Oregon Revised Statues ("ORS") 181A195, ORS181A200 , and ORS 443.004.

a) Contractor shall meet this requirement by processing Criminal Record Checks via the Oregon Department of Human Services ("DHS") Criminal Records Information Management System ("CRIMS") for all Contractor's subject individuals.

31. FURTHER ASSURANCES. Contractor agrees to take all steps, and execute and deliver any and all necessary written instruments, to perform under this Contract including, but not limited to, executing all additional documentation necessary for County to comply with applicable State or Federal funding requirements.

32. MERGER. THIS CONTRACT 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 CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT 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. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT, AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

SIGNATURE PAGE FOLLOWS

**EXHIBIT A
SCOPE OF WORK**

Contractor shall perform all Work in accordance with the following requirements and specifications as well as the Scope outlined in RFP 2019-39.

CONSIDERATION RATES

- a. Contractor shall not perform any Work under this Contract without first having received authorization from the County as described under the Description of Service Delivery Program section of this Exhibit A.
- b. Time and material rates are further described by the following hourly rates:

Type of Work*	Hourly Rate
Home Care/Independent Activities of Daily Living Care	\$25.97/hr.
Personal Care/Activities of Daily Living Care	\$25.97/hr.
Nursing Care Service	\$70.35/hr.

*Each Type of Work is further defined below.

ADDITIONAL REQUIREMENTS

- The Contractor’s employees providing Work under this Contract shall each have a minimum of two years direct experience providing the same Work as the kind described in Section 3.3-3.3.9 of the RFP 2019-39, issued May 16, 2019. This experience may be any two full calendar years within the five (5) calendar years prior to the date that applications are due. In addition, Contractor’s employees providing Work as a registered nurse (RN) shall be and remain, during the term of this Contract, a licensed RN in good standing in the State of Oregon.
- The Contractor shall be, and remain during the term of this Contract, an in-home care agency currently licensed, in good standing, by the Oregon Health Authority.
- The Contractor shall maintain established business location(s) within 1 hour commute of Public Services Building in Oregon City, Oregon. Employees of Contractor will be available to provide Work throughout all of Clackamas County.

Types of Work:

Contractor shall provide home care services/independent activities of daily living (HC/IADL), Personal care/activities of daily living (PC/ADL) care services and Registered Nursing (RN) care services for Oregon Project Independence (OPI) eligible Clackamas County Social Services Division / Aging and Disability Services (CCSS/ADS) clients living in Clackamas County, Oregon who are referred to Contractor by CCSS/ADS. Contractor shall comply with Oregon Administrative Rules (“OAR”) 333-536-0000 through 0125, OAR 411-032- 000 through 411-032-050. Contractor shall be licensed in accordance with the aforementioned OAR.

Description of Service Delivery Program

- A. The Contractor must be available to perform the Work twenty-four (24) hours, seven (7) days a week. After business hours, weekends and holidays the client/designated care provider must be able to reach Contractor’s supervisor or staffing coordinator by dialing Contractor’s regular business phone number. It is acceptable if an answering service take the reason for the call and inform the caller that their call will be immediately forwarded to either the staffing coordinator or on-call R.N. supervisor (who shall both carry pagers) depending on the nature of the call.

- B.** The County OPI Case Managers will authorize in-home services from the Contractor for identified clients. Authorizations will be for a set number of hours per month. Work must be provided as specified by County OPI Case Manager. Contractor may round to ¼ hour increments for hours provided. Exceptions will be made by mutual agreement between Contractor and County.
- C.** Upon verbal receipt of client data and authorization for Work by County, Contractor shall have its staff coordinator, or designee, contact the client and/or responsible party by phone for introduction and confirmation of Work to be delivered. Possible times of service delivery will also be discussed at this time. Contractor is also responsible for the following:
- a. Contractor's staffing coordinator, or designee, will inform the appropriate supervisor (R.N. for ADL/Personal Care or Home Care Supervisor for Home Care) of the new client and the authorized Work.
 - b. R.N. Supervisor for ADL/Personal Care and/or RN Care Services will visit the client and perform a R.N. assessment prior to the start of care in order to establish the Contractor's plan of care which Contractor shall sign and then forwarded to the County's Case Manager. This will be reviewed every 180 days and re-submitted to the County's Case Manager. If a hospitalization or other event occurs that changes the client's status and/or needs, the care plan will be reviewed, updated and forwarded to the County's Case Manager. The Contractor may bill up to one (1) hours at the RN Service rate for the initial assessment, however reassessments, required at 180 day intervals, may not be billed.
 - c. The client who is authorized for home care/IADL services only will be visited by Contractor's Home Care Supervisor, or designee, within ten (10) working days. The plan of care or task list for home care will be established with a copy left in the home with appropriate flow sheets. The task list will be reviewed every 180 days.
 - d. Contractor's Home Care Supervisor, or designee, will contact the assigned care aide with the necessary information regarding client Work. R.N. Supervisor may also contact the ADL/Personal Care aide if the client's condition needs further explanation or the care plan requires special attention due to the condition of the client.
- D.** Contractor reserves the right to a written 30-day notice of termination of Work to a specified client by the Contractor. The written notice must be provided to both the Client and County and specify the reason(s) for the termination with the following exception:
- a. Contractor reserves the right to provide Client immediate oral or written notice of termination of Work by the Contractor at the time the Contractor determines that the safety of its staff or the client cannot be ensured. If oral notice is given, the Contractor must also subsequently provide both the client and OPI Case Manager a written confirmation of the oral notice of termination of Work.
 - b. Contractor will endeavor to assign each client with acceptable field staff. In some cases a given client-aide match is not workable. In such cases, the Contractor will attempt to change the aide assignment. If, after three attempted matches, acceptable staffing has not been achieved, the Contractor reserves the right to refuse to staff that client. Such a determination shall be made by the program manager or designee, in consultation with the client's OPI Case Manager.
- E.** Contractor reserves the right to reassign an aide when a client repeatedly refuses service or is not home at scheduled time of service.

- F. Contractor shall furnish a Service Understanding to all clients that outlines the client's responsibilities in receiving service. The Service Understanding shall specify the items listed in D-G above.
- G. In medical emergencies, clients will be verbally instructed to call "911" or report to an emergency room.
- H. In non-emergent medical situations clients will be instructed to call their physician or report to an immediate care center.

Agency Personal Care/ADL Care Services and/or RN Care Services Detail

- A. Contractor will provide essential supportive services that enable an individual to return to or remain in his/her own home. ADL care services will be performed by a qualified and trained Contractor's staff trained and certified as Agency Personal Care Aides (APCA) or RN as appropriate for the Work authorized.
- B. Provided Work includes, but is not limited to:
 1. Basic personal hygiene, including bathing, grooming, nail care, foot care, dressing, and skin care;
 2. Toileting / bowel and bladder care, including bowel care requiring delegation by an RN
 3. Mobility and transfers, including assistance with ambulating and positioning.
 4. Nutrition, hydration, feeding;
 5. Medications/Oxygen use - assisting with administration of medications and assuring medications are taken as ordered by the physician and refilled as appropriate, maintain clean oxygen equipment and assuring adequate oxygen supply; and
 6. RN Care Services - For clients whose conditions are stable and predictable, the Contractor will conduct nursing assessment, monitoring, intermittent nursing care, and delegation of special tasks of nursing care. Nursing services will be conducted in accordance with the Oregon State Board of Nursing Administrative Rules and State of Oregon Department of Human Services (DHS), Public Health regarding In-Home Care Agencies.

Agency Personal Care Aides (APCA) Requirements

- A. Contractor will ensure that its staff are and remain qualified, trained, and of sufficient number to meet the needs of the clients receiving Work.
- B. Contractor will ensure that all APCA staff employed by the Contractor are at least 18 years old, be in compliance with DHS Criminal History Clearance set forth in OAR 125-007-0200 through 125-007-0330; OAR 407-007-0200 through 407-007-0370 and ORS 181A.195; 181A.200; ORS 409.025, ORS 409.027 and ORS443.004, and have sufficient communication and language skills to enable them to perform their duties and interact effectively with clients, other Contractor staff and COUNTY staff.
- C. Contractor will ensure that all APCAs have completed the Contractor's specific orientation, conducted by the Contractor or designee, prior to independently providing Work to clients. The orientation should include: APCA duties and responsibilities, client rights, confidentiality, infection control, and any other requirements as specified in OAR 333-536-0070.
- D. Contractor will supervise APCAs, observe job performance in the home at least quarterly, and document job performance after probationary period and annually thereafter as specified in OAR 333-536-0070.

- E. Contractor will post a prioritized emergency contact list (e.g., physician, ambulance, fire department, etc.) by the client's telephone and give a copy of the list to the APCA.
- F. Contractor will ensure that the APCA receives a copy of the Contractor's emergency procedure, local area disaster plan and understands the importance of following the plan.
- G. Contractor will reassess the client at least quarterly or within one week following emergency treatment and revise the service plan as changes occur.
- H. Contractor will conduct an initial screening in the prospective client's home to evaluate the requested service and needs prior to accepting the prospective client and assigning an APCA. The Contractor may bill one (1) hour at the RN care rate for the initial assessment.
- I. Contractor's RN Care services will be authorized and billed at the RN Care rate which is separate from Personal Care/ADL Care Services.

Agency Home Care/ IADL Services Details

Contractor will provide home care services to eligible clients. Home care services include self-management and household tasks that do not require RN supervision. Contractor will ensure its Agency Home Care Specialists (AHCS) are supervised and will verify and monitor ongoing adequacy in the provision of Work.

Agency Home Care/IADL Specialist Tasks vary and may include:

- A. Housekeeping tasks necessary to maintain the client in a healthy and safe environment, including cleaning, laundry, shopping, and meal preparation.
- B. Observation of client's status and reporting of any significant changes to physician and case manager.
- C. Handling first aid and other emergencies.
- D. Providing extra support for clients with confusion, dementia, mental illness or other cognitive deficits.
- E. Arranging or assisting in arranging necessary medical appointments and transportation to the appointment.

Agency Home Care Specialist Training Requirements

- A. Contractor will ensure that its AHCS staff has capability to perform the tasks authorized for the clients they serve; and that the AHCS staff is qualified, competent, trained and capable of meeting the client's individual care needs as determined by the CCSS case manager.
- B. Contractor will ensure that all AHCSs employed by the Contractor are at least 18 years old, are in compliance with DHS Criminal History Clearance set forth in OAR 125-007-0200 through 125-007-0330; OAR 407-007-0200 through 407-007-0370 and ORS 181A.195; 181A.200; ORS 409.025, ORS 409.027 and ORS443.004, and have sufficient communication and language skills to enable them to perform their duties and interact effectively with clients, other Contractor staff and CCSS staff.
- C. Contractor will ensure that all of its AHCSs can provide tasks requiring the skills of an In-Home Care Contractor Personal Care Aide when they have received adequate training and are supervised by the home care manager or designee.

Contract's Home Care Supervisor

Contractor will ensure that its Home Care Supervisor has the training and/or experience leading to demonstrated knowledge and skills in performing those tasks described as Home Care Services. The Home Care Supervisor will supervise AHCS through telephone conferences, face-to-face conferences, as needed, and quarterly on-site monitoring of the Work they provide in the home.

Miscellaneous Contractor Service Requirements. Contractor will perform the following additional service tasks:

- A. Recruit, select and maintain adequate numbers of qualified staff to provide Work required under the contract.
- B. Have planning in place to build capacity and bring new employees onboard as necessary to meet Contract delivery needs.
- C. Maintain good communication channels with County OPI Staff.
- D. Familiarize staff with Clackamas County Social Services Division (“CCSS”) policies, procedures, and in-home service requirements.
- E. Provide authorized Work for each eligible person referred to Contractor. Work must be provided within the maximum number of hours authorized by CCSS. Provisions of Work will be available twenty four (24) hours per day, seven (7) days per week, per full calendar year.
- F. Promptly assign and begin Work as indicated in all cases referred as follows:
 - a. within twenty-four (24) hours from referral on emergency cases
 - b. within three (3) calendar days from referral on expedited cases
 - c. within five (5) calendar days from referral on non-emergency cases
- G. Notify the referring CCSS case manager by noon the following day if the client refuses to accept Work.
- H. Submit invoice for CCSS referred clients on CCSS approved form to CCSS/ADS Contract Coordinator within (10) calendar days after the end of the month in which Work was provided. The invoice will indicate the month Work was provided, the clients for whom Work was provided, the type and numbers of units of service authorized, the type and numbers of units of service provided, and the amount being billed by service. CCSS will use its best efforts to make payment to Contractor within 21 days after receipt of an accurately completed invoice.

On-site Monitoring and Assessment

- A. The Contractor will provide information and documents as requested by CCSS/ADS. This information may include the client's records (OAR 333-536-0085), client's nursing services (OAR 333-536-0080) quality improvement records (OAR 333-536-0090) protective service investigation findings (OAR 333-536-0040), organization, administration, and personnel (OAR 333-536-0050) along with other areas as defined in the State of Oregon DHS Public Health, In-Home Care Agencies (OAR 333-536-0000 through 333-536-0095). This information will be received by CCSS/ADS within five (5) working days, unless determined to involve client safety, well-being or protective service investigation in which the information will be received within twenty four (24) hours.
- B. The Contractor will cooperate with any CCSS quality assurance visits regarding monitoring of contract content, statement of work, and assessment of Work.
- C. The Contractor will participate in client conferences with CCSS/ADS case managers, as requested and as defined in the contract.
- D. The Contractor will complete an annual self-evaluation / assessment of the In-Home Care Contractor's internal program delivery as defined in the CCSS contract and OHA-Public Health Division OAR 333-536-0041. Evaluation will include a survey of client's satisfaction with the In-Home Care Contractor's services, CCSS/ADS case managers / supervisors and input from the In-Home Care Contractor's Supervisors, APCAs and AHCSs. This information will be presented to CCSS within fourteen (14) days of the completion of the self-evaluation.
- E. The Contractor will operate a business office within one hour's commute of the CCSS/ADS office in Oregon City, and within local telephone coverage of Clackamas County.

EXHIBIT B
RFP 2019-39 OPI IN-HOME CARE SERVICES

**EXHIBIT C
CONTRACTOR'S PROPOSAL**

EXHIBIT D
BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement shall become effective upon signature of both parties (“Effective Date”) by and between **Clackamas County, on behalf of its Department of Health, Housing and Human Services, Behavioral Health Division** (“Covered Entity”) and **Mt. Hood Home Care Service, LLC** (“Business Associate”) in conformance with the Health Insurance Portability and Accountability Act of 1996, and its regulations (“HIPAA”).

RECITALS

Whereas, the Covered Entity has engaged the services of the Business Associate, as defined under 45 CFR §160.103, for or on behalf of the Covered Entity;

Whereas, the Covered Entity may wish to disclose Individually Identifiable Health Information to the Business Associate in the performance of services for or on behalf of the Covered Entity as described in a Services Agreement (“Agreement”);

Whereas, such information may be Protected Health Information (“PHI”) as defined by the HIPAA Rules promulgated in accordance with the Administrative Simplification provisions of HIPAA;

Whereas, the Parties agree to establish safeguards for the protection of such information;

Whereas, the Covered Entity and Business Associate desire to enter into this Business Associate Agreement to address certain requirements under the HIPAA Rules;

Now, Therefore, the parties hereby agree as follows:

SECTION I – DEFINITIONS

- 1.1 “Breach” is defined as any unauthorized acquisition, access, use or disclosure of Unsecured PHI, unless the Covered Entity demonstrates that there is a low probability that the PHI has been compromised. The definition of Breach excludes the following uses and disclosures:
 - 1.1.1 Unintentional access by a Covered Entity or Business Associate in good faith and within an Workforce member’s course and scope of employment or placement;
 - 1.1.2 Inadvertent one time disclosure between Covered Entity or Business Associate Work force members; and
 - 1.1.3 The Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain the information.
- 1.2 “Covered Entity” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §160.103.
- 1.3 “Designated Record Set” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §164.501.
- 1.4 “Effective Date” shall be the Effective Date of this Business Associate Agreement.
- 1.5 "Electronic Protected Health Information" or "Electronic PHI" shall have the meaning given to such term at 45 CFR §160.103, limited to information of the Covered Entity that the Business Associate creates, receives, accesses, maintains or transmits in electronic media on behalf of the Covered Entity under the terms and conditions of this Business Associate Agreement.
- 1.6 “Health Care Operations” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §164.501.
- 1.7 “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules codified at 45 CFR Part 160 and Part 164.

- 1.8 “Individual” shall have the meaning given to such term in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- 1.9 “Individually Identifiable Health Information” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §160.103.
- 1.10 “Protected Health Information” or “PHI” means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an Individual; the provision of health care to an Individual; or the past, present or future payment for the provision of health care to an Individual; and (ii) that identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual, and shall have the meaning given to such term under the HIPAA Rules, 45 CFR §160.103 and §164.501.
- 1.11 “Protected Information” shall mean PHI provided by the Covered Entity to Business Associate or created, maintained, transmitted or received by Business Associate on Covered Entity’s behalf.
- 1.12 “Required by Law” shall have the meaning given to such phrase in 45 CFR §164.103.
- 1.13 “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- 1.14 “Security Incident” shall have the meaning given to such phrase in 45 CFR §164.304.
- 1.15 “Unsecured Protected Health Information” shall mean protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in accordance with 45 CFR §164.402.
- 1.16 Workforce means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a Covered Entity or Business Associate, is under the direct control of such Covered Entity or Business Associate, whether or not they are paid by the Covered Entity or Business Associate.

SECTION II – OBLIGATIONS AND ACTIVITIES OF THE BUSINESS ASSOCIATE

The Business Associate agrees to the following:

- 2.1 Not to use or further disclose PHI other than as permitted or required by this Business Associate Agreement or as Required by Law;
- 2.2 To use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Business Associate Agreement;
- 2.3 To mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by the Business Associate in violation of the requirements of this Business Associate Agreement;
- 2.4 To immediately report to the Covered Entity any use or disclosure of PHI not provided for by this Business Associate Agreement of which it becomes aware, including any Security Incident of which it becomes aware;
- 2.5 In accordance with 45 CFR §§164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any agent, including a subcontractor, that creates, receives, maintains, or transmits PHI on behalf of the Business Associate agrees in writing to the same restrictions, conditions and requirements that apply to the Business Associate with respect to such PHI;
- 2.6 To provide access, at the request of the Covered Entity, and in the time and manner designated by the Covered Entity, to PHI in a Designated Record Set, to the Covered Entity or, as directed by the Covered Entity, to the Individual or the Individual’s designee as necessary to meet the Covered Entity’s obligations under 45 CFR §164.524; provided, however, that this Section 2.6 is applicable

- only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
- 2.7 To make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of the Covered Entity or an Individual, and in the time and manner designated by the Covered Entity; provided, however, that this Section 2.7 is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
 - 2.8 To make internal practices, books and records, including policies and procedures on PHI, relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of, the Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary's determining the Covered Entity's and the Business Associate's compliance with the HIPAA Rules;
 - 2.9 To document such disclosures of PHI and information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
 - 2.10 To provide to the Covered Entity or an Individual, in a time and manner designated by the Covered Entity, information collected in accordance with Section 2.9 of this Business Associate Agreement, to permit the Covered Entity to respond to a request by an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
 - 2.11 That if it creates, receives, maintains, or transmits any Electronic PHI on behalf of the Covered Entity, it will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI, and it will ensure that any agents (including subcontractors) to whom it provides such Electronic PHI agrees to implement reasonable and appropriate security measures to protect the information. The Business Associate will report to the Covered Entity any Security Incident of which it becomes aware;
 - 2.12 To retain records related to the PHI hereunder for a period of six (6) years unless the Business Associate Agreement is terminated prior thereto. In the event of termination of this Business Associate Agreement, the provisions of Section V of this Business Associate Agreement shall govern record retention, return or destruction;
 - 2.13 To promptly notify the Covered Entity of a Breach of Unsecured PHI as soon as practicable, but in no case later than 10 calendar days, after the discovery of such Breach in accordance with 45 CFR §164.410. A Breach shall be treated as discovered as of the first day on which such Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or agent of Business Associate. The notification shall include, to the extent possible, the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach in addition to the information required in Section V. In addition, Business Associate shall provide the Covered Entity with any other available information that the Covered Entity is required to include in the notification to the individual under 45 CFR §164.404(c); and
 - 2.14 To the extent Business Associate is to carry out one or more of the Covered Entity's obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

SECTION III – THE PARTIES AGREE TO THE FOLLOWING PERMITTED USES AND DISCLOSURES BY THE BUSINESS ASSOCIATE:

- 3.1 Business Associate agrees to make uses and disclosures and requests for PHI consistent with the Covered Entity's minimum necessary policies and procedures.
- 3.2 Except as otherwise limited in this Business Associate Agreement, the Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, the Covered Entity as specified in the Services Agreement, provided that such use or disclosure would not violate the HIPAA Rules if done by the Covered Entity; and,
- 3.3 Except as otherwise limited in this Business Associate Agreement, the Business Associate may:
 - a. **Use for management and administration.** Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate; and,
 - b. **Disclose for management and administration.** Disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are Required by Law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

SECTION IV – NOTICE OF PRIVACY PRACTICES

- 4.1 If requested, the Covered Entity shall provide the Business Associate with the notice of privacy practices that the Covered Entity produces in accordance with 45 CFR §164.520, as well as any changes to such notice. Covered Entity shall (a) provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures; (b) notify the Business Associate of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restrictions may affect the Business Associate's use or disclosure of PHI; and (c) not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Standards if done by the Covered Entity, except as set forth in Section 3.2 above.

SECTION V – BREACH NOTIFICATION REQUIREMENTS

- 5.1 With respect to any Breach, the Covered Entity shall notify each individual whose Unsecured PHI has been, or is reasonably believed by the Covered Entity to have been, accessed, acquired, used, or disclosed as a result of such Breach, except when law enforcement requires a delay pursuant to 45 CFR §164.412. This notice shall be:
 - a. Without unreasonable delay and in no case later than 60 calendar days after discovery of a Breach.
 - b. In plain language including and to the extent possible:
 - 1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - 2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - 3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;

- 4) A brief description of what the Covered Entity and/or Business Associate is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any further Breaches; and,
 - 5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
- c. By a method of notification that meets the requirements of 45 CFR §164.404(d).
 - d. Provided to the media when required under 45 CFR §164.406 and to the Secretary pursuant to 45 CFR §164.408.
- 5.2. Business Associate shall promptly provide any information requested by Covered Entity to provide the information described in Section 5.1.

SECTION VI – TERM AND TERMINATION

6.1 **Term.** The term of this Business Associate Agreement shall be effective as of the date set forth above in the first paragraph and shall terminate when all of the PHI created, maintained, transmitted or received by the Business Associate on behalf of the Covered Entity, is destroyed or returned to the Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

6.2 **Termination for Cause.** Upon the Covered Entity’s knowledge of a material breach of this Business Associate Agreement by the Business Associate, the Covered Entity shall provide an opportunity for the Business Associate to cure the breach or end the violation. The Covered Entity shall terminate this Business Associate Agreement and the Services Agreement if the Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity, or immediately terminate this Business Associate Agreement if cure is not reasonably possible.

If the Business Associate fails to cure a breach for which cure is reasonably possible, the Covered Entity may take action to cure the breach, including but not limited to obtaining an injunction that will prevent further improper use or disclosure of PHI. Should such action be taken, the Business Associate agrees to indemnify the Covered Entity for any costs, including court costs and attorneys' fees, associated with curing the breach.

Upon the Business Associate's knowledge of a material breach of this Business Associate Agreement by the Covered Entity, the Business Associate shall provide an opportunity for the Covered Entity to cure the breach or end the violation. The Business Associate shall terminate this Business Associate Agreement and the Services Agreement if the Covered Entity does not cure the breach or end the violation within the time specified by the Business Associate, or immediately terminate this Business Associate Agreement if the Covered Entity has breached a material term of this Business Associate Agreement if cure is not reasonably possible.

6.3 **Effect of Termination.**

a. **Return or Destruction of PHI.** Except as provided in Section 6.3(b), upon termination of this Business Associate Agreement, for any reason, the Business Associate shall return, or if agreed to by the Covered Entity, destroy all PHI received from the Covered Entity, or created, maintained or received by the Business Associate on behalf of the Covered Entity and retain no copies. This provision shall apply to PHI that is in the possession of subcontractors or agents of the Business Associate.

b. **Return or Destruction of PHI Infeasible.** In the event that the Business Associate determines that returning or destroying PHI is infeasible, the Business Associate shall provide to the Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of the PHI is infeasible, the Business

Associate shall extend the protections of this Business Associate Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the Business Associate maintains such PHI. In addition, the Business Associate shall continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI to prevent use or disclosure of the PHI, for as long as the Business Associate retains the PHI.

SECTION VII – GENERAL PROVISIONS

- 7.1 **Regulatory references.** A reference in this Business Associate Agreement to the HIPAA Rules or a section in the HIPAA Rules means that Rule or Section as in effect or as amended from time to time.
- 7.2 **Compliance with law.** In connection with its performance under this Business Associate Agreement, Business Associate shall comply with all applicable laws, including but not limited to laws protecting the privacy of personal information about Individuals.
- 7.3 **Amendment.** The Parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time. All amendments must be in writing and signed by both Parties.
- 7.4 **Indemnification by Business Associate.** Business Associate agrees to indemnify, defend and hold harmless the Covered Entity and its commissioners, employees, directors, officers, subcontractors, agents or other members of its workforce, each of the foregoing hereinafter referred to as “Indemnified Party,” against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with Business Associate’s breach of Sections II and III of this Business Associate Agreement. Accordingly, on demand, Business Associate shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, fines, penalties, costs or expenses (including reasonable attorneys’ fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results for Business Associate’s breach hereunder. The obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement for any reason.
- 7.5 **Survival.** The respective rights and obligations of Business Associate under Section II of this Business Associate Agreement shall survive the termination of the Services Agreement and this Business Associate Agreement.
- 7.6 **Interpretation.** Any ambiguity in this Business Associate Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Rules.

[Signature Page for BAA Follows]

