

SECOND AMENDMENT TO AGREEMENT
Yamhill County and Virginia Garcia Memorial Health Center
Oregon Health Plan Contracted Services

THIS SECOND AMENDMENT TO AGREEMENT ("Amendment #2") is made effective July 1, 2015, between Yamhill County, a political subdivision of the State of Oregon, acting by and through its Department of Health and Human Services ("**County**"), and **Virginia Garcia Memorial Health Center ("VGMHC")**, an Oregon non-profit corporation 1151 N. Adair Street, Cornelius, OR 97113, Tax Identification Number 930717997.

RECITALS:

A. County and VGMHC are parties to that certain agreement dated as of May 1, 2014, Board Order 14-235 (the "Underlying Agreement"), pursuant to which VGMHC provides treatment and counseling to Yamhill Community Care Organization (YCCO) eligible Oregon Health Plan children and adult members and within the general guidelines set forth in County's membership agreement with the Mid Valley Behavioral Care Network and YCCO. The Underlying Agreement was first amended on August 18, 2014.

B. County and VGMHC now desire to further amend the Underlying Agreement upon the terms and conditions as more particularly set forth herein below.

C. Capitalized terms not defined herein shall have the meanings attributed to such terms in the Agreement.

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

1. Section 1 of the Underlying Agreement is hereby deleted in its entirety and replaced with the following: The initial term of this Agreement is from April 15, 2014 through July 31, 2016. Upon conclusion of the initial term of this Agreement, this Agreement will automatically be renewed on a year-by-year basis, under the same terms and conditions as set forth herein, unless terminated as allowed by Section 7 of this Agreement. It is understood by both parties that no commitments have been or are made by either party beyond the termination of this Agreement.

2. Section 3 of the Underlying Agreement is hereby amended to include the following:

Effective August 1, 2015, as base compensation for providing services required by Section 2 of the Underlying Agreement, VGMHC shall receive a quarterly payment of \$34,514.86 on or about the first of the month proceeding the next three months of services. This amount includes the quarterly payment of \$5,500 for the post-masters degree bilingual intern.

3. The balance of Section 3 of the Underlying Agreement remains unchanged.

4. Section 4 "Regulations and Duties" of the Underlying Agreement is hereby deleted in its entirety and replaced with the following: "**Regulations and Duties; Compliance by Law.** County and VGMHC agree to comply with the rules and regulations of County, applicable state and federal regulations, executive orders and ordinances and all provisions of federal and state law relating to VGMHC's performance of Services under this Agreement as they may be adopted, amended or repealed from time to time, including but not limited to the following: (i) ORS Chapter 659A.142; (ii) Oregon Health Authority (OHA) rules pertaining to the provision of integrated and coordinated care and services, Oregon Administrative Rules (OAR) Chapter 410, Division 141; (iii) all other OHA Rules in OAR Chapter 410; (iv) rules in OAR Chapter 309 pertaining to the provisions of mental health services; (v) rules in OAR Chapter 415 pertaining to the provision of Substance Use Disorders services; (vi) state law establishing requirements for Declaration for Mental Health Treatment in ORS 127.700 through 127.737; (vii) 42 CFR 438.6 and 42 CFR 438 E; (viii) ORS 279B.200 through 279B.270; (ix) Article XI, Section 10, of the Oregon Constitution; and (x) all other applicable requirements of State civil rights and rehabilitation statutes, rules and regulations. These laws, regulations, executive orders and ordinances are incorporated by reference herein to the extent that they are applicable to this Agreement and required by law to be so incorporated. In addition, VGMHC agrees to comply with all laws, rules, regulations, reporting requirements, policies and procedures of Medicare/Medicaid and officially made known by the Centers for Medicare & Medicaid Services and OHA as they pertain to the performance of Services under this Agreement."

5. Section 5 "Reporting" of the Underlying Agreement is hereby deleted in its entirety and replaced with the following: "**Reporting.** VGMHC agrees to prepare and furnish reports and data required by County, YCCO or OHA at a minimum quarterly, including but not limited to compliance with data submission specifications by entering data in the MOTS (Measures and Outcome Tracking System) Client Entry Data Collection application as specified in the OHA's MOTS user guide located at: <http://www.oregon.gov/OHA/amh/Pages/reporting-reqs.aspx>. VGMHC agrees to and does hereby grant County the rights to reproduce, use and disclose for County purposes, all or any part of the reports, data, and technical information furnished to County under the Agreement."

6. Section 6 "County Monitoring" of the Underlying Agreement is hereby deleted in its entirety and replaced with the following:
Records; County Monitoring.

A. VGMHC shall maintain all financial records related to this Agreement in accordance with generally accepted accounting principles or National Association of Insurance Commissioners accounting standards. In addition, VGMHC shall maintain any other records, books, documents, papers, plans, records of shipment and payments and writings of VGMHC, whether in paper, electronic or other form, that are pertinent to this Agreement, collectively referred to as "Records" in such a manner to clearly document VGMHC's performance.

B. VGMHC agrees that the following shall be open for inspection by County, YCCO, OHA and Government Agencies or its agents, at any reasonable time during business hours: a) Services provided under this Agreement by VGMHC; b) facilities used in conjunction with such Services; c) client records; d) VGMHC's policies, procedures and performance data; e) financial records and other similar documents and records of VGMHC that pertain, or may pertain, to Services under this Agreement. VGMHC agrees to retain such records and documents

for a period of seven years, or such longer period as may be prescribed for records and documents by the state archivist.

C. VGMHC agrees to annually provide County with copies of their Fraud and Abuse policy and documentation of rate setting methodologies. County encourages VGMHC to use the Jarvis rate setting tool. County may approve an alternative method if it demonstrates a similar level of thoroughness. VGMHC will comply with County's quality and utilization management protocols established in partnership with YCCO and YCCO's Quality Assurance and Performance Improvement Plan. VGMHC shall provide documentation regarding training, NPI numbers and background checks for each person providing services under this agreement where applicable upon request."

7. Section 7 "Termination; No Encumbrance or Expenditure After Notice of Termination" is hereby deleted in its entirety and replaced with the following:

"Termination; No Encumbrance or Expenditure after Notice of Termination.

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

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

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

8. Section 8 "Independent Contractor" of the Underlying Agreement is hereby deleted in its entirety and replaced with the following:

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

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

B. If VGMHC is currently performing work for the County, State of Oregon or the federal government, VGMHC by signature to this Agreement, represents and warrants that VGMHC's Services to be performed under this Agreement creates no potential or actual conflict of interest as defined by ORS Chapter 244 and that no statutes, rules or regulations of the County, State of Oregon or federal agency for which VGMHC currently performs work would

prohibit VGMHC's Services under this Agreement. If compensation under this Agreement is to be charged against federal funds, VGMHC certifies that it is not currently employed by the federal government.

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

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

9. Section 10 "Requirements Imposed by Law" of the Underlying Agreement is hereby deleted in its entirety.

10. Section 11 "Indemnification" of the Underlying Agreement is hereby deleted in its entirety and replaced with the following: "**Indemnification**. VGMHC shall be responsible for any and all injury to any and all persons or property caused directly or indirectly by reason of any and all activities of VGMHC in the performance of Services under this Agreement and further agrees to indemnify, hold harmless, save and defend County, its officers, agents and employees including but not limited to the State of Oregon from and against any and all claims, suits, actions, damages, costs, losses, fees, expenses or judgments resulting from, arising out of or connected with any such injury or the Services provided by VGMHC pursuant to this Agreement."

11. Section 12 "Insurance" of the Underlying Agreement is hereby amended to include the following: "The Commercial General Liability and Commercial Automobile Liability shall (i) name the County, State of Oregon, OHA and their divisions, directors, officers, and employees as additional insureds, (ii) provide that it is primary insurance with respect to the interests of County and that any insurance maintained by County is excess and not contributory, and (iii) include a cross-liability and severability of interest clause and a waiver of subrogation clause but only with respect to VGMHC's activities to be performed under this Agreement. VGMHC shall immediately notify County orally of the cancellation or restriction and shall confirm the oral notification in writing within three days of notification by the insurance company to VGMHC."

12. The balance of Section 12 of the Underlying Agreements remains unchanged.

13. Section 15 "Subcontracts: Assignment" of the Underlying Agreement is hereby deleted in its entirety and replaced with the following: "VGMHC shall not enter into any subcontracts for any of the Services required under this Agreement without County's prior written consent. This Agreement shall not be assigned by VGMHC without the prior written consent of County. No approval by County of any assignment or transfer of interest shall be

deemed to create any obligation of County in addition to those set forth in this Agreement. Consent to subcontract shall not relieve obligations/duties under this Agreement.”

14. Section 16 “Renewal” of the Underlying Agreement is hereby deleted in its entirety.

15. Section 19 “Governing Law; Jurisdiction; Venue” of the Underlying Agreement is hereby deleted in its entirety and replaced with the following: “**Governing Law; Jurisdiction; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of law. Any claim, action, suit or proceeding, (collectively “Claim”) between County and VGMHC that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Yamhill County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver of the State of Oregon of the jurisdiction of any court or of any form of defense to or immunity from any claim whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise. VGMHC, BY EXECUTION OF THIS AGREEMENT VGMHC HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.”

16. Section 25 “Medicare/Medicaid Participation” is hereby added to the Underlying Agreement as follows: “**Medicare/Medicaid Participation.** VGMHC hereby represents and warrants that no Personnel, Directors or Officers, nor anyone who will provide services pursuant to this Agreement, is presently debarred, suspended, proposed for debarment, declared ineligible, or excluded from participation in any federally funded health care program, including Medicare and Medicaid, or under investigation by any federally or state funded health care program. VGMHC hereby agrees to immediately notify County of any threatened, proposed, or actual debarment, suspension, or exclusion from any federally funded health care program, including Medicare and Medicaid, that affects any Personnel or subcontractor providing services under this Agreement.”

17. Section 26 “Information Privacy/Security Access” is hereby added to the Underlying Agreement as follows: “**Information Privacy/Security/Access.** If the Services performed under this Agreement requires VGMHC to have access to or use of any OHA, County or third-party administrators, currently Performance Health Technology (PH Tech), computer systems or other OHA, County or third-party administrators Information Assets for which OHA, County or third-party administrators impose security requirements, and OHA, County or third-party administrators grant VGMHC access to such OHA, County or third-party administrators Information Assets or Network and Information Systems, VGMHC shall comply with OAR 943-014-0300 through 943-014-0320, as such rules may be revised from time to time.”

18. Section 27 “Prevention/Detection of Fraud and Abuse” is hereby added to the Underlying Agreement as follows: “**Prevention/Detection of Fraud and Abuse.** VGMHC will comply with County’s Fraud, Waste and Abuse policy attached as Exhibit C and which is incorporated herein by this reference.”

19. Section 28 "Abuse Reporting and Protective Services" is hereby added to the Underlying Agreement as follows: "**Abuse Reporting and Protective Services**. VGMHC shall comply with all protective services, investigation and reporting requirements described in OAR 943-045-0250 through 943-045-0370 and ORS 430.735 through 430.765."

20. The balance of the Underlying Agreement remains unchanged.

21. Ratification. Except as otherwise expressly modified by the terms of this Amendment #2, the Underlying Agreement shall remain unchanged and continue in full force and effect. All terms, covenants and conditions of the Underlying Agreement not expressly modified herein are hereby confirmed and ratified and remain in full force and effect, and constitute valid and binding obligations of County and VGMHC enforceable according to the terms thereof.

22. Authority. County and VGMHC and each of the persons executing this Amendment #2 on behalf of County and VGMHC hereby covenants and warrants that: (i) such party has full right and authority to enter into this Amendment #2 and has taken all action required to authorize such party (and each person executing this Amendment #2 on behalf of such party) to enter into this Amendment #2, and (ii) the person signing on behalf of such party is authorized to do so on behalf of such entity.

23. Binding Effect. All of the covenants contained in this Amendment #2 shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives and permitted successors and assigns.

24. Counterparts. This Amendment #2 may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute one and the same Amendment #2.

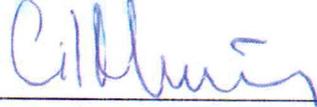
25. Recitals. The foregoing recitals are intended to be a material part of this Amendment #2 and are incorporated herein by this reference.

(signature page follows)

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed on the date indicated by their duly authorized officials, this Amendment #2 in duplicate, each of which shall be deemed an original on the date executed by all parties.

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

**VIRGINIA GARCIA MEMORIAL
HEALTH CENTER**

By: 
(signature)
Date: 7/30/15

Gil Muñoz
(printed name)

CEO
(title)

Tax ID No.: 93-0717997

YAMHILL COUNTY, OREGON


ALLEN SPRINGER, Chair
Board of Commissioners
Date: 8-6-15


SILAS HALLORAN-STEINER, Director
Department of Health & Human Services
Date: 7/31/15

FORM APPROVED BY: 
CHRISTIAN BOENISCH
County Counsel
Date: 8/11/15

Accepted by Yamhill County
Board of Commissioners on
8.6.15 by Board Order
15-304