

FIRST AMENDMENT TO
INDEPENDENT CONTRACTOR AGREEMENT
Cheri F. O'Halloran

THIS FIRST AMENDMENT TO AGREEMENT ("Amendment #1) is made effective January 1, 2018 by and between Yamhill County, a political subdivision of the State of Oregon, acting by and through its Board of Commissioners and its Health and Human Services Department, Behavioral Health Programs ("County") and Cheri F. O'Halloran, an individual ("O'Halloran").

RECITALS:

- A. The County and O'Halloran are parties to that certain agreement dated as of January 12, 2017 (the "Underlying Agreement"), pursuant to which O'Halloran provides certain guardianship services to a County client (ID#003441) who is within the County's system of care. The Underlying Agreement is memorialized in Yamhill County records as Board Order 17-07.
- B. County and O'Halloran 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 O'Halloran, intending legally to be bound, hereby agree as follows:

- 1. Section 2 of the Underlying Agreement is hereby amended to extend the term through December 31, 2019 and include the following: "Termination shall not excuse liabilities incurred prior to termination date. In addition, in the event County no longer receives funds adequate to enable it to continue this Agreement, if O'Halloran engages in any act that would subject County or O'Halloran to criminal liability; upon dissolution of County; or upon any of the following (i) the insolvency of the O'Halloran, (ii) the filing of a voluntary or involuntary petition by or on behalf of O'Halloran 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 O'Halloran, County will provide written notice of termination of this Agreement to O'Halloran. Upon issuance of notice, this Agreement is terminated. However, any obligations existing at the time of termination will survive termination. O'Halloran 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."
- 2. The balance of Section 2 of the Underlying Agreement remains unchanged.
- 3. Section 3 of the Underlying Agreement is hereby amended to include the following: "County will pay O'Halloran for costs related to the guardianship beginning January 1, 2018

through December 31, 2019 at a rate of up to \$100.00 per hour for each hour of services performed. The maximum amount payable for guardianship services for the period of January 1, 2018 through December 31, 2019 is \$2,000. Additionally, County will pay O'Halloran up to \$1,000 for necessary legal fees incurred related to providing guardianship services under this Agreement for the period of January 1, 2018 through December 31, 2019. The maximum not-to-exceed amount paid by County under this Agreement for the period of January 1, 2018 through December 31, 2019 is \$3,000. O'Halloran shall submit a statement for services performed under this Agreement, for review and approval, on a form approved by County to the program supervisor annually by January 31st. Any expenses incurred by O'Halloran in the performance of the terms and conditions of this Agreement not specifically provided for in this Agreement shall be the sole and separate responsibility of O'Halloran. The maximum amount payable under this Agreement is \$4,500."

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

5. Section 14 "Insurance" is hereby added to the Underlying agreement as follows:
"Insurance. O'Halloran, at O'Halloran's own expense, shall obtain the following insurance coverage and keep them in effect during the entire term of this Agreement (except with respect to Professional Liability Insurance, which shall be kept in effect for a period of the term of this Agreement plus two years):

- A. Workers' Compensation Insurance in compliance with statutory requirements;
- B. Commercial General Liability Insurance (including contractual liability and completed operations coverage, and coverage for liability resulting from hazardous substances), on an occurrence basis, with not less than \$2,000,000 per occurrence for bodily injury and property damage liability, with an annual aggregate limit of \$3,000,000;
- C. Professional Liability Insurance, including errors and omissions coverage, covering O'Halloran pursuant to this Agreement, with a per occurrence and aggregate limit of not less than \$1,000,000, to protect against all loss suffered by County or third parties, including financial and consequential loss, caused by error, omission, or negligent acts related to provision of the Services provided under this Agreement;
- D. Commercial Automobile Liability Insurance, with a combined single limit, or the equivalent of not less than \$1,000,000 per occurrence, for bodily injury and property damage, with an annual aggregate limit of \$2,000,000 with respect to O'Halloran's vehicles, whether owned, hired, or non-owned, assigned to, or used by O'Halloran in connection with the Services provided under this Agreement;
- E. "Tail" Coverage. If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, Contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Agreement, for a minimum of 24 months following the later of: (i) the Contractor's completion and County's acceptance of all Services required under this Agreement; or (ii) the expiration of all warranty periods provided under this Agreement. Notwithstanding the foregoing 24-month requirement, if the Contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the Contractor may request and County may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If County approval is granted, the Contractor shall

maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

The required insurance coverages shall be (i) with insurance companies admitted to do business in the state of Oregon and rated A or better by Best's Insurance Rating, and (ii) acceptable to County. At County's request, O'Halloran shall furnish County with certificates of insurance for each of the required insurance coverages. The certificates of insurance shall indicate (a) the types of insurance coverage, (b) the identity of all persons or entities covered, (c) the amounts of insurance coverage, and (d) the period of insurance coverage. Any required insurance coverage shall provide that it may not be canceled except after at least 30 days written notice to County.

The Commercial General Liability and Commercial Automobile Liability shall (i) name the County, State of Oregon, OHA and their divisions, directors, officers, 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 O'Halloran's activities to be performed under this Agreement. O'Halloran 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 O'Halloran."

6. Section 15 "Subcontracts; Assignment" is hereby added to the Underlying Agreement as follows: "**Subcontracts; Assignment.** O'Halloran 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 O'Halloran without the prior written consent of County. No approval by County of any assignment or transfer of interest shall be deemed to create any obligation of County in addition to those set forth in this Agreement. Consent to subcontract shall not relieve obligations/duties under this Agreement. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties, their respective successors and permitted assigns."

7. Section 16 "Attorney Fees and Costs" is hereby added to the Underlying Agreement as follows: "**Attorney Fees and Costs.** In the event an action, suit or proceeding, including appeal therefrom, is brought for failure to observe any of the terms of this Agreement, each party shall be solely responsible for its own attorney's fees, expenses, costs and disbursements for said action, suit, proceeding or appeal."

8. The balance of the Underlying Agreement remains unchanged.

9. Ratification. Except as otherwise expressly modified by the terms of this Amendment #1, 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, as further amended hereby, constitute valid and binding obligations of O'Halloran enforceable according to the terms thereof.

10. Authority. County and O'Halloran and each of the persons executing this Amendment #1 on behalf of County and O'Halloran hereby covenants and warrants that: (i) such party has full right and authority to enter into this Amendment #1 and has taken all action required to authorize such party (and each person executing this Amendment #1 on behalf of such party) to enter into this Amendment #1, and (ii) the person signing on behalf of such party is authorized to do so on behalf of such entity.

11. Binding Effect. All of the covenants contained in this Amendment #1 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.

12. Counterparts. This Amendment #1 may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute one and the same Amendment #1.

13. Recitals. The foregoing recitals are intended to be a material part of this Amendment #1 and are incorporated herein by this reference.

IN WITNESS WHEREOF the parties hereto have executed, or caused to be executed on the date indicated by their duly authorized officials, this Amendment #1 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.

Cheri O'Halloran
CHERI O'HALLORAN

Date: 6/20/18

SSN: (on file)

YAMHILL COUNTY, OREGON

Mary Starrett
MARY STARRETT, Chair
Board of Commissioners

Date: 6/28/18

Silas Halloran-Steiner
SILAS HALLORAN-STEINER, Director
Department of Health & Human Services

Date: 6/21/18

APPROVED AS TO FORM

By: Christian Boenisch
CHRISTIAN BOENISCH
County Counsel

Accepted by Yamhill County
Board of Commissioners on
6/28/18 by Board Order
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