

AGREEMENT FOR SERVICES
Yamhill County Department of Community Justice
(Yamhill County and Barclay Pennington LLC)

THIS AGREEMENT ("Agreement") is made effective the last date set forth adjacent to the signatures of the parties below between **Yamhill County**, a political subdivision of the State of Oregon (referred to as "County" in this Agreement) and **Barclay Pennington LLC**, located at 1113 N Pennington Drive Newberg, OR 97132, (referred to as "Contractor" in this Agreement) for performance of transitional services with the County.

- A. County has funds available to retain a qualified Contractor to provide correctional housing to County; and
- B. Contractor has the skills, experience and proper insurance coverage to provide housing to County; and
- C. County and Contractor desire to enter into this Agreement for Contractor to perform the services described herein in Yamhill County. NOW, THEREFORE,

AGREEMENT: In consideration of the mutual covenants contained below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, County and Contractor agree as follows:

1. **Scope of work.** Contractor will perform those services identified in Exhibit A, which is attached hereto and incorporated herein by this reference (the "Services"), to assist the County.
2. **Agreement performed at Contractor's expense.** Contractor will furnish all the materials, supplies, tools, equipment, labor, repairs, maintenance, and other goods and services necessary for the performance of work under this agreement. No expenses related to the work performed under this agreement will be paid by County except for the compensation provided for in section 5.
3. **Term and Renewal.** Contractor will commence providing the Services as soon as reasonably practicable after this Agreement is approved by County. The initial term of this Agreement is from June 1, 2022, to May 31, 2023. 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 modified in a writing signed by both parties or terminated in accordance with Section 18 below. It is understood by both parties that no commitments have been or are made by either party beyond the termination of this Agreement.
4. **Access for Walk-throughs and Searches.** Contractor agrees to allow County to conduct walk-throughs and searches of the housing premises covered by this Agreement and, if necessary, to provide a means of access to common areas and rooms in the residence.
5. **Compensation.** Contractor agrees to perform the Services as detailed in the Scope of Work in Exhibit A at the rate of \$1,400.00 per month to retain 4 beds for exclusive use by County, regardless of whether the beds are occupied. Additional beds provided over the 4 monthly beds will

Initial JP

AGREEMENT
Page 1 of 6

B.O. 22-224

be compensated at the rate of \$350.00 per month. Payment will be made monthly within 15 days of County's receipt, review, and approval of Contractor's invoice identifying the Services performed.

6. **Incorporation of statutory provisions required for public contracts.** Contractor certifies it shall comply with all applicable Public Contract Laws to include ORS 279B.200 through 279B.240 and ORS 279C.500 through 279C.530. ORS 279B.200 through 279B.240 and ORS 279C.500 through 279C.530 are incorporated into this Agreement by reference.

7. **Workers' compensation.** Contractor, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers.

8. **Independent Contractor.** Contractor is engaged hereby as an independent contractor, and will be so deemed for purposes of the following:

- a. Contractor will be solely responsible for payment of any federal or state taxes required as a result of this Agreement. County will not withhold any state or federal income taxes from payments owed Contractor.
- b. As an independent contractor, Contractor acknowledges and agrees that Contractor is not entitled to any benefits granted to County employees. Without limitation, but by way of illustration, the benefits which are not granted to Contractor include 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, except insofar as any such benefits are otherwise required by law.
- c. Contractor is an independent contractor for purposes of the Oregon Workers' Compensation law (ORS Chapter 656) and is solely liable for any Workers' Compensation coverage under this Agreement. If Contractor has the assistance of other persons in the performance of this Agreement, Contractor will qualify and remain qualified for the term of this Agreement as a carrier-insured employer or a self-insured employer under ORS 656.403 et. seq.

9. **Insurance.** Contractor, at its 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;

Initial JA

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

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 Contractor 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 County, its 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.

10. **Confidentiality.** Contractor acknowledges that Contractor may, in the course of its performance under this Agreement, be exposed to or acquire information that is the confidential information of County or County's clients. Any and all (i) client information, (ii) information provided by County and marked confidential, (iii) Protected Health Information or EPHI, including alcohol and drug abuse treatment records, or (iv) information identified as confidential in a separate writing, that becomes available to Contractor in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items, including software, that result from Contractor's use of the Confidential Information are also deemed Confidential Information. Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of Contractor's own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information for any purposes whatsoever, except as may be provided elsewhere under this Agreement or in conformance with Exhibit A. Contractor agrees that, upon termination of this Agreement or at County's request, Contractor will turn over to County all documents, papers and other matter in Contractor's possession that embody Confidential Information.

11. **Rules and Regulations; Compliance with Laws.** County and Contractor shall comply with the rules and regulations of County, applicable state and federal regulations, executive orders and ordinances and all provisions of federal and state law relating to Contractor's performance of Services under this Agreement as they may be adopted, amended, or repealed from time to time. Contractor certifies, under penalty of perjury, that Contractor is not in violation of any Oregon tax laws and further agrees that Contractor has complied with the tax laws of the state of Oregon or a

Initial JA

political subdivision of the state of Oregon, including ORS 305.620, 305.380(4) and ORS Chapters 316, 317 and 318.

12. **Status of the Project Supervisor.** Jessica Beach, Director of the Department of Community Justice shall be the project supervisor for County for this Agreement (the "Supervisor"). The Supervisor or her designee shall decide questions that arise in the execution of the Scope of Work.

13. **Prohibition of Discrimination.** In hiring employees for performance of work under this Agreement, no contractor, subcontractor, or any person acting on their behalf shall by reason of race, religion, age, color, creed, physical handicap, or sex discriminate against a person who is qualified and available to perform work to which employment relates.

14. **Indemnification.** Contractor shall indemnify, defend, and save harmless County from and against any suits, actions, legal or administrative proceedings, demands, claims, liabilities, fines, penalties, losses, injuries, damages, expenses, or costs, including interest and attorney fees, arising from the wrongful or negligent acts, errors, or omissions of Contractor and those whom Contractor is legally liable under this Agreement.

15. **WAIVER OF LIABILITY.** Except in instances of intentional, reckless, or grossly negligent conduct, Contractor and County agree that County will not be liable for any property loss or damage sustained by Contractor arising in any manner in connection with the performance of activities carried out pursuant to this Agreement. This waiver of liability applies to all damages of any sort or nature, including but not limited to any direct, indirect, special, incidental, or consequential damages or other loss of revenue, loss of profits, or business injury.

16. **Nonwaiver.** No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law. The failure of County to enforce at any time any of the terms of this Agreement, or to exercise any option which is provided, or to require at any time performance by Contractor of any of the provisions, shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of any part of this Agreement, or the right of County to thereafter enforce each and every provision.

17. **Ownership of documents.** All documents prepared or furnished by Contractor or its subcontractors, pursuant to this Agreement are instruments of service. As such, County shall retain ownership and property interest in all associated documents subject to Contractor's ability to make and retain copies of similar documents for information and reference. Any reuse by Contractor will require written authorization by the County. The County, in turn, agrees that any reuse by the County of any document prepared under this Agreement shall be at the County's own risk.

18. **Termination.** County or Contractor may terminate this Agreement, in whole or in part, by giving four months' written notice if the other party substantially fails to fulfill its obligations under this Agreement through no fault of the terminating party. Additionally, either party may terminate this Agreement without cause on four months' written notice to the other party. The parties further

Initial JB

agree that upon termination Contractor shall be paid for all its services and expenses incurred in the delivery of the Services up to the date of termination.

19. **Severability.** Should any clause or section of this Agreement be declared by court to be void or voidable, the remainder of this Agreement shall remain in full force and effect.

20. **Dispute resolution through mediation and arbitration.** Any dispute between the parties to this Agreement shall be resolved according to the following process:

(a) The parties first shall submit to mediation of the dispute to be conducted by a mutually acceptable mediator. If the parties cannot agree on a mediator, they shall request a mediator to be appointed by the U.S. Mediation and Arbitration service, or its successor, in Portland, Oregon. The mediator's charges and expenses shall be borne equally by the parties. All other expenses, including attorney fees and costs, shall be borne exclusively by the party requiring the service or for which payment is to be made.

(b) If the dispute is not resolved in mediation, the parties shall then submit the dispute to binding arbitration. Arbitration shall be conducted in accordance with the rules set forth in the Oregon International Commercial Arbitration and Conciliation Act, ORS 36.450 to 36.558, 2007 replacement part. The decision of the arbitrator shall be final and binding on the parties. The party that does not prevail, as determined by the arbitrator, shall pay the arbitrator's fees and expenses in arbitration. All other expenses, including attorney fees and costs, shall be borne exclusively by the party requiring the service or for which payment is to be made.

21. **Attorney fees and costs.** In the event that either party to this Agreement shall take any action, judicial or otherwise, to enforce or interpret any of the terms of this Agreement, each party shall be wholly responsible for its own expenses which it may incur in taking such action, including costs and attorney fees, whether incurred in a suit or action or appeal from a judgment or decree therein or in connection with any nonjudicial action.

22. **Governing Law.** 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.

23. **Subcontractors bound.** Contractor covenants and agrees to bind any and all Subcontractor(s) for performance of work under this Agreement. Any reference to Contractor shall include any and all Subcontractor(s) ad infinitum.

24. **Written changes required.** The rights and duties under this Agreement shall not be modified, delegated, transferred, or assigned, except upon written signed consent of both parties.

25. **Successors bound.** This Agreement may be assigned only with the written, mutual consent of the parties. If assigned, this Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

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

Initial *JA*

THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE IN TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY FOR THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

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

BARCLAY PENNINGTON LLC

YAMHILL COUNTY, OREGON

Joanne Hansen
Joanne Hansen, Member

Lindsey Berschauer
Lindsey Berschauer, Chair

Date: June 2, 2022

Date: 7-7-2022

Fed Tax I.D. No. 88-1824733

Jessica Beach
JESSICA BEACH, Director
Yamhill County Department of Community Justice

Date: 7/1/22

APPROVED AS TO FORM:

By: Christian Boenisch

CHRISTIAN BOENISCH
County Counsel

Initial JB

Accepted by Yamhill County
Board of Commissioners on
7-7-2022 by Board Order
22-224

AGREEMENT
Page 6 of 6

Exhibit A - Scope of Work

Purpose:

Barclay Pennington LLC ("Contractor") manages the rental property located at 701 Rodeo Drive, Dayton Oregon 97114. This property is designated by Contractor to provide dorm-style occupancy (the "Dorm") and private room rentals to those who are often turned away by other landlords due to their criminal records. Contractor shall provide designated beds under an agreement with the Yamhill County Department of Community Justice ("YCDCJ") to allow recently released Justice Involved Individuals ("JII") to occupy the Dorm for a monthly fee.

Description of Services:

Contractor will provide recently released JII with a safe congregant living setting where drugs, alcohol, and minors are not allowed on the premises. Contractor will communicate regularly with assigned POs to ensure JII are making progress toward full reintegration into law-abiding productive citizenry. As rooms become available, Contractor will offer compliant occupants of the Dorm an opportunity to personally rent an upstairs private room in the home.

Occupants will be expected to obey house rules, complete assigned chores, and abide by all conditions of post-prison supervision.

Occupancy fees paid by YCDCJ include bed space rental, a shared bathroom, shared kitchen access, full bedding, towels, basic utilities (electricity, water, sewer, garbage, and internet), basic house supplies (paper towels, toilet paper, and cleaning supplies), laundry access, shared refrigerator, shared garage storage, and yard access. Occupants must provide their own laundry products, toiletries, and food.

All persons referred to the Dorm will be required to sign an occupancy agreement specifying the house rules and expectations for living in the home. The primary contact for Contractor is Joanne ("Jodi") Hansen and all referrals to the Dorm should be coordinated with her via email or phone.

Initial JH