

**AGREEMENT FOR
JANITORIAL SERVICES
(Yamhill County and Colombia Cleaning Services, LLC)**

THIS AGREEMENT ("Agreement") is made by and between **Yamhill County** ("County"), a political subdivision of the State of Oregon, and **Colombia Cleaning Services, LLC**, an Oregon limited liability company, located at 878 Ben Brown Lane, Woodburn, OR 97071 ("Contractor").

RECITALS:

A. County, through its Health and Human Services Department, has determined the need for regular janitorial and related services at the County owned property located at 2318 E. Portland Rd, Newberg, OR, 97132, and that is it necessary for County to contract with Contractor to provide janitorial and related services at that location.

B. County has budgeted funds and County conducted a competitive quote process to select the most qualified vendor to provide the services described herein.

C. Contractor was the most qualified vendor and is qualified to provide the required janitorial and related services required by County and imposed by this Agreement. County and Contractor desire to enter into this Agreement and County is authorized to enter into this Agreement under ORS 203.010(3).
NOW, THEREFORE

AGREEMENT:

In exchange for the promises and other consideration as set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. **Services of Contractor.** Contractor agrees to perform the following services (the "Services"), in accordance with Exhibit A, which is attached hereto and incorporated herein by this reference. Any additional work beyond the Services may be negotiated individually at Contractor's hourly rate or at a negotiated project rate. Services under this Agreement will be provided at the request of the County after the close of normal working hours (8 a.m. to 6 p.m., Monday through Friday), typical schedule to include Monday, Wednesday and Friday evening services or different if specifically stated herein, provided that County will give a minimum of 24 hours' notice of its intention to use Contractor's services, but that the notice requirements may be waived at the sole discretion of Contractor.

2. **Keys.** Contractor shall not be provided master keys to any property. Should access to a master key be required, Client will provide a key box or lock box for such master key(s) at property. Notwithstanding anything to the contrary in this Agreement, Contractor shall not be responsible for any damages including, without limitation, any costs incurred in re-keying or changing locks caused by the loss or theft of such key(s).

3. **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,

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Workers' Compensation, unemployment compensation, or retirement benefits, except as 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.

4. Compensation; Payment Schedule. Unless previously terminated in accordance with Section 8, Contractor will provide the Services for a weekly fixed fee of \$735.00 inclusive of any reimbursable expenses. Any expenses incurred by Contractor in the performance of the Services under the terms and conditions of this Agreement not specifically provided for herein shall be the sole and separate responsibility of Contractor, unless preapproved in writing by County. The only compensation due Contractor is specifically stated in this Agreement. Payment will be made by County check or electronic fund transfer within 30 days after receipt, review and approval of invoices by County.

5. INDEMNIFICATION. CONTRACTOR AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS COUNTY AND EACH OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM CONTRACTOR'S PERFORMANCE OF THE SUBJECT WORK AND SERVICES UNDER THIS AGREEMENT OR CREATED BY ANY ACT OR ERROR OF A VENDOR, SUBCONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE CONTRACTOR; PROVIDED HOWEVER, NOTHING HEREIN SHALL BE CONSTRUED TO REQUIRE INDEMNIFICATION OF YAMHILL COUNTY FOR LIABILITY ATTRIBUTABLE TO YAMHILL COUNTY'S SOLE NEGLIGENCE.

6. Insurance. Contractor, at Contractor'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 \$1,000,000 per occurrence for bodily injury and property damage liability, with an annual aggregate limit of \$2,000,000;
- c. 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.

7. Term; Termination; Default.

a. **Term.** Unless terminated in accordance with subsection 6.b, the term of this Agreement is from July 11, 2022, through June 30, 2023, and supersedes any prior agreements between the parties regarding the subject matter. Upon the expiration of the initial term this Agreement shall automatically renew for additional one-year periods, subject to the right of either party to terminate this Agreement as provided below.

b. **Termination.** Either party may terminate this Agreement on ten (10) calendar days written notice to the other party. In addition, in the event County no longer receives funds adequate to enable it to continue this Agreement, it will provide written notice of immediate termination of this Agreement to Contractor. Upon issuance of notice, this Agreement is terminated. However, any obligations existing at the time of termination will survive termination. Contractor 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. Termination shall not excuse liabilities incurred prior to the termination date.

c. **Default.** If Contractor defaults in the performance of any of its material obligations under this Agreement for a period of thirty (30) days after the County sends notice of such default to the address on this Agreement, County may, at its option, terminate the Agreement, such termination to be effective immediately upon expiration of the thirty day notice period; provided, however, that in the event Contractor provides written notice to County that the default cannot reasonably be cured by Contractor within said thirty (30) day period and the Contractor provides written certification that it is, in good faith, endeavoring to cure said default, then the thirty (30) day cure period shall be extended for an additional reasonable period to allow for such cure, but any such extended period shall not exceed 30 additional days, unless otherwise mutually agreed in writing by both County and Contractor.

8. Compliance with Applicable Laws; Compliance with Tax Laws. Contractor agrees to comply with the rules and regulations of County, applicable state and federal regulations and all other provisions of state and federal law relating to Contractor's performance of Services under this Agreement. To the extent applicable 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.545 and 279C.580 (3) and (4). ORS 279B.200 through 279B.240 and ORS 279C.500 through 279C.545 and ORS 279C.580(3) and (4) are incorporated into this Agreement by reference. Contractor will provide Services to County clients without regard for race, color, creed, religion or national origin in compliance with Title IV, Civil Rights Act, 1954. Further, Contractor certifies compliance with the tax laws of the State of Oregon or a political subdivision of the state, including ORS 305.620 and ORS Chapters 316, 317 and 318.

9. Subcontracts; Assignment. Contractor shall not enter into any subcontracts for any of the Services required under this Agreement without County's prior written consent. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld).

10. Governing Law; Jurisdiction; Venue. This Agreement, and any disputes arising out of or related hereto, shall be governed exclusively by the internal laws of the State of Oregon without regard to its conflicts of laws rules. Any claim, action, suit or proceeding between County and Contractor that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Oregon for Yamhill County. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THESE COURTS AND WAIVES ANY OBJECTION TO VENUE IN THESE COURTS AND ANY CLAIM THAT THIS FORUM IS AN INCONVENIENT FORUM.

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

12. Waiver and Cumulative Remedies. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

13. Attorney Fees. In the event of legal suit or action, including any appeals therefrom, brought by either party against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions under this Agreement, each party shall pay their own attorney's fees and costs incurred in the suit or action, including investigation costs, expert witness fees and all costs of depositions.

14. Severability. If any term of this Agreement is held to be invalid or unenforceable, it shall be severed from this Agreement and the balance of the Agreement shall be reasonably construed to carry out the intent of the parties as evidenced by the terms of this Agreement.

15. No Third-Party Beneficiaries. Except as expressly provided herein, nothing contained in this Agreement is intended, nor shall it be construed to create rights for the benefit of third parties.

16. Certification of reading and understanding of documents; Precedence. The Contractor hereby certifies it has read and fully understands and this Agreement and Contractor accepts this Agreement and its terms and conditions, including solicitation documents. The Contractor understands and acknowledges that in signing this Agreement the Contractor waives all rights to plead any misunderstandings regarding the same. **In the event of a discrepancy or inconsistency between Contractor's proposed Services in Exhibit A or any other contract document, including this Agreement, this Agreement shall take precedence.**

17. Exhibits and Recitals. All exhibits and schedules referenced herein are incorporated herein. The recitals set forth above are incorporated into this Agreement as a material and substantive part of this Agreement.

18. Time is of the Essence. Time is of the essence in the performance of this Agreement. However, if the Contractor is delayed by causes outside its control, any governing schedule shall be extended by a reasonable time.

19. Status of the Project Supervisor. Jason Henness is the Project Supervisor (the "Supervisor"). The Supervisor or his designee shall perform inspections of Services and shall have authority to stop the Services whenever such stoppage shall be necessary to insure proper execution of the Agreement. The Supervisor or his designee may reject all Services and materials that do not conform to the Agreement and shall decide questions that arise in the execution of the Project Services. The Supervisor has authority to reject or accept the Project Services.

20. Prohibition of Discrimination. In hiring employees or subcontractors for performance of Services under this Agreement neither Contractor, any subcontractor or any other 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 Services to which employment relates.

21. Business Associate Clause - HIPAA restrictions. Contractor acknowledges that County is subject to the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996, (HIPAA), Pub. Law No. 104-191 and subject to the Federal Confidentiality of Alcohol and Drug Abuse Patient Records law and regulations, 42 USC §290dd-2 and 42 CFR Part 2 (collectively, "Part 2"). County and Contractor hereby agree to the respective obligations in the attached Exhibit B, "Business Associate/Qualified Service Organization Agreement" which is incorporated herein by this reference.

22. **Integration.** This Agreement, along with its Exhibits, constitutes the entire agreement between and among the parties, integrates all the terms and conditions mentioned herein or incidental hereto and supersedes all prior written or oral discussions or agreements between the parties or their predecessors-in-interest with respect to all or any part of the subject matter hereof.

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. THERE ARE NO UNDERSTANDINGS, AGREEMENTS OR REPRESENTATIONS, ORAL OR WRITTEN NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. THE CONTRACTOR, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth adjacent to their signatures below.

COLOMBIA CLEANING SERVICES, LLC

YAMHILL COUNTY, OREGON

Miguel A Madrigal
Print Name/ Title Owner
Date: 7/12/2022
SS# /Tax ID#: 47-5460763

[Signature]
KENNETH HUPFER,
County Administrator
Date: 8/23/2022

CCB#: _____

Digitally signed by Lindsey Manfrin
DN: dc=us, dc=or, dc=yamhill, dc=co, ou=County,
ou=HHS, ou=Public Health, cn=Lindsey Manfrin,
email=lmanfrin@co.yamhill.or.us
Date: 2022.07.13 07:56:21 -0700
Lindsey Manfrin
LINDSEY MANFRIN, HHS Director
Date: _____

APPROVED AS TO FORM

CHRISTIAN BOENISCH
[Signature]
By: _____
County Counsel

Accepted by Yamhill County
Board of Commissioners on
7-7-2022 by Board Order
22-226

Exhibit A

COLOMBIA CLEANING SERVICES LLC
878 BEN BROWN LN
WOODBURN, OR 97071
contact@colombiaclean.com
503 498 1287



www.colombiaclean.com

JASON HENNESS
YAMHILL COUNTRY BLDGS

2318 PORTLAND RD,
NEWBERG, OR 97132

QUOTE

Quote # 0000001

Quote Date 06/02/2022

Item	Description	Unit Price	Quantity	Amount
Service	JANITORIAL HOURLY WEEKLY ESTIMATE COST INCLUDING SUPPLY	105.00	7.00	735.00
<p><u>NOTES:</u> This quote includes the total cost of supply. This quote is hourly work It also includes a calculation of three hours of service, which would be nine hours a week, this quote is calculated for the total of one week of service</p> <p>THE WORK WILL BE CARRIED OUT FOLLOWING THE JANITORIAL CHECKLIST LIST PROVIDED BY THE BUILDING.</p>				
				Subtotal 735.00
				Total 735.00
				Amount Paid 0.00
				Quote \$735.00

Exhibit A

YAMHILL COUNTY BLDGS / DAILY JANITORIAL CHECKLIST		
BUILDING:	DATE:	EMPLOYEE:

OFFICES:

- Remove all trash/recycle, replace liners
- Dust horizontal surfaces
- Vacuum carpet/sweep hard floor surfaces

RESTROOMS:

- Remove trash, replace liners
- Disinfect all toilets, sinks, urinals (do not cross-contaminate)
- Restock all toilet paper, paper towels, soap dispensers
- Sweep & mop floor

BREAKROOMS:

- Remove all trash/recycle, replace liners
- Wipe and clean all tabletops, counters, and sinks
- Restock all paper towel and soap dispensers

COMMON AREAS (HALLWAYS/ENTRANCES/LOBBIES/STAIRS):

- Remove all trash/recycle, replace liners
- Vacuum all carpet, sweep/mop all hard floor surfaces

CONFERENCE ROOMS:

- Remove all trash/recycle, replace liners
- Dust horizontal surfaces
- Vacuum carpet/sweep hard floor surfaces

OTHER (LIST SPECIFIC AREA): _____

- Remove all trash/recycle, replace liners
- Vacuum all carpet, sweep/mop all hard floor surfaces
- Dust horizontal surfaces
- Restock all consumable dispensers (paper products, soap, etc.)

COMMENTS:

YAMHILL COUNTY BLDGS / DIARIO LISTA DE VERIFICACIÓN DE LIMPIEZA

EDIFICIO: _____ **FECHA:** _____ **EMPLEADO:** _____

OFICINAS:

- Eliminar toda basura o recicle, reemplazar los trazadores de líneas
- Polvo de las superficies horizontales
- Superficies de piso duro vacío alfombra/barrido

BAÑOS:

- Quitar basura, cambie los trazadores de líneas
- Desinfectar los inodoros, fregaderos, urinarios (no Cruz-contaminar)
- Reponer todo el papel higiénico, toallas de papel, dispensadores de jabón
- Barrer y trapear el piso

BREAKROOMS:

- Eliminar toda basura o recicle, reemplazar los trazadores de líneas
- Limpie y limpie todas las mesas, mostradores y fregaderos
- Reponer todos los dispensadores de jabón y toalla de papel

ZONAS COMUNES (PASILLOS, ENTRADAS, VESTÍBULOS/ESCALERAS):

- Eliminar toda basura o recicle, reemplazar los trazadores de líneas
- Todas las alfombras del vacío, barrido/RP todas las superficies de piso duro

SALAS DE CONFERENCIAS:

- Eliminar toda basura o recicle, reemplazar los trazadores de líneas
- Polvo de las superficies horizontales
- Superficies de piso duro vacío alfombra/barrido

OTROS (ÁREA ESPECÍFICA DE LA LISTA): _____

- Eliminar toda basura o recicle, reemplazar los trazadores de líneas
- Todas las alfombras del vacío, barrido/RP todas las superficies de piso duro
- Polvo de las superficies horizontales
- Reponer todos los dispensadores de consumibles (productos de papel, jabón, etc.)

COMENTARIO:

EXHIBIT B
BUSINESS ASSOCIATE/QUALIFIED SERVICE ORGANIZATION AGREEMENT

RECITALS

A. The CONTRACTOR may use and disclose Protected Health Information and Electronic Protected Health Information (“EPHI”) in the performance of its obligations under the Agreement; and

B. County operates a drug and alcohol treatment program subject to the Federal Confidentiality of Alcohol and Drug Abuse Patient Records law and regulations, 42 USC §290dd-2 and 42 CFR Part 2 (collectively, “Part 2”); if CONTRACTOR is a Qualified Service Organization (QSO) under Part 2 it also must agree to certain mandatory provisions regarding the use and disclosure of substance abuse treatment information with respect to the performance of its obligations under the Agreement; and

C. The Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) and its implementing Privacy Rule and Security Rule, 45 CFR Parts 160 and 164, require that COUNTY, as a Covered Entity, obtain satisfactory assurances from its Business Associates, as that term is defined in the Privacy Rule and Security Rule, that they will comply with the Business Associate requirements set forth in 45 CFR 164.502(e) and 164.504(e) and as amended by the Health Information Technology for Economic and Clinical Health (“HITECH”) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (“ARRA”); CONTRACTOR is a Business Associate of COUNTY and desires to provide such assurances with respect to the performance of its obligations under the Agreement pursuant to this Business Associate/Qualified Service Organization Agreement (“BAA”); and

D. Both COUNTY and CONTRACTOR are committed to compliance with the standards set forth in Part 2, the Privacy Rule and Security Rule as amended by the HITECH Act, and as they may be amended further from time to time, in the performance of their obligations under the Agreement.

NOW, THEREFORE, in consideration of mutual and valuable consideration which the parties hereby acknowledge as received, the parties agree as follows:

AGREEMENT. The parties agree that the following terms and conditions shall apply to the performance of their obligations under the Agreement, effective upon execution of this BAA. Capitalized terms used, but not otherwise defined in this BAA, shall have the same meaning as those terms in Part 2, the Privacy Rule and Security Rule.

1. SERVICES. Pursuant to the Agreement, CONTRACTOR provides certain services for or on behalf of COUNTY, as described in the Agreement, which may involve the use and disclosure of Protected Health Information and EPHI. CONTRACTOR may make use of Protected Health Information and EPHI to perform those services if authorized in the Agreement and not otherwise limited or prohibited by this BAA, Part 2, the Privacy Rule, the Security Rule and other applicable federal or state laws or regulations. All other uses of Protected Health Information and EPHI are prohibited.

2. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR.

(a) CONTRACTOR agrees to not use or disclose Protected Health Information or EPHI other than as permitted or required by the Agreement (as amended by this BAA), and as permitted by Part 2, the Privacy Rule, the Security Rule or as required by Law. Notwithstanding any other language in this BAA, CONTRACTOR acknowledges and agrees that any patient information it receives from COUNTY that is protected by Part 2 regulations is subject to protections that prohibit CONTRACTOR from disclosing

such information to agents or subcontractors without the specific written consent of the subject individual.

(b) CONTRACTOR agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information and EPHI other than as provided for by the Agreement as amended by this BAA, and if necessary will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by the Part 2 regulations.

(c) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR of a use or disclosure of Protected Health Information or EPHI by CONTRACTOR in violation of the requirements of the Agreement, as amended by this BAA.

(d) CONTRACTOR agrees to report to COUNTY, as promptly as possible, any use or disclosure of the Protected Health Information or EPHI not provided for by the Agreement, as amended by this BAA, of which it becomes aware.

(e) CONTRACTOR agrees to ensure that any agent, including a contract hearing officer or other subcontractor, to whom it provides Protected Health Information or EPHI received from, or created or received by CONTRACTOR on behalf of COUNTY, agrees to the same restrictions and conditions that apply through the Agreement, as amended by this BAA, to CONTRACTOR with respect to such information.

(f) CONTRACTOR agrees to provide access, at the request of COUNTY, and in the time and manner designated by COUNTY, to Protected Health Information and EPHI in a Designated Record Set (the hearing file), to COUNTY or, as directed by COUNTY, to an Individual in order to meet the requirements under 45 CFR 164.524.

(g) CONTRACTOR agrees to make any amendment(s) to Protected Health Information and EPHI in a Designated Record Set that the COUNTY directs or agrees to pursuant to 45 CFR 164.526 at the request of COUNTY or an Individual, and in the time and manner designated by COUNTY.

(h) CONTRACTOR agrees to make internal practices, books, and records, including policies and procedures and any Protected Health Information or EPHI, relating to the use and disclosure of Protected Health Information and EPHI received from, or created or received by CONTRACTOR on behalf of COUNTY, available to COUNTY or to the Secretary, within the time and in the manner designated by COUNTY or the Secretary, for purposes of the Secretary determining COUNTY's compliance with Part 2, the Privacy Rule or Security Rule.

(i) CONTRACTOR agrees to refer requests for disclosures of Protected Health Information and EPHI to the COUNTY for response, except for requests related to conducting the contested case hearing. To the extent CONTRACTOR discloses Protected Health Information or EPHI for purposes not related to conducting the contested case hearing, CONTRACTOR agrees to document such disclosures to the extent such documentation is required for COUNTY to respond to a request by an Individual for an accounting of disclosures of Protected Health Information and EPHI in accordance with 45 CFR 164.528.

(j) CONTRACTOR agrees to provide to COUNTY or an Individual, in time and manner to be designated by COUNTY, information collected in accordance with Section 2(i) of this BAA, to permit COUNTY to respond to a request by an Individual for an accounting of disclosures of Protected Health Information and EPHI in accordance with 45 CFR 164.528.

(k) CONTRACTOR agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the EPHI that it

creates, receives, maintains, or transmits on behalf of the COUNTY.

(l) In the event of Discovery of a Breach of Unsecured Protected Health Information, CONTRACTOR shall:

(i) Notify the COUNTY of such Breach. Notification shall include identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by CONTRACTOR to have been accessed, acquired or disclosed during such Breach and any other information as may be reasonably required by the COUNTY necessary for the COUNTY to meet its notification obligations;

(ii) Confer with the COUNTY as to the preparation and issuance of an appropriate notice to each individual whose Unsecured Protected Health Information has been, or is reasonably believed by CONTRACTOR to have been accessed, acquired or disclosed as a result of such Breach;

(iii) Where the Breach involves more than 500 individuals, confer with the COUNTY as to the preparation and issuance of an appropriate notice to prominent media outlets within the State or as appropriate, local jurisdictions; and,

(iv) Confer with the COUNTY as to the preparation and issuance of an appropriate notice to the Secretary of DHHS of Unsecured Protected Health Information that has been acquired or disclosed in a Breach. CONTRACTOR understands that if the Breach was with respect to 500 or more individuals, such notice to the Secretary must be provided immediately, and therefore, time is of the essence in the obligation to confer with the COUNTY. If the Breach was with respect to less than 500 individuals, a log may be maintained of any such Breach and the log shall be provided to the Secretary annually documenting such Breaches occurring during the year involved.

(v) Except as set forth in (vi) below, notifications required by this section are required to be made without unreasonable delay and in no case later than 60 calendar days after the Discovery of a Breach. Therefore, the notification of a Breach to the COUNTY shall be made as soon as possible and CONTRACTOR shall confer with the COUNTY as soon as practicable thereafter, but in no event, shall notification to the COUNTY be later than 30 calendar days after the Discovery of a Breach. Any notice shall be provided in the manner required by the HITECH Act, sec 13402(e) and (f), Public Law 111-5, 45 CFR 164.404 through 164.410 and as agreed upon by the COUNTY.

(vi) Any notification required by this section may be delayed by a law enforcement official in accordance with the HITECH Act, sec 13402(g), Public Law 111-5.

(vii) For purposes of this section, the terms "Unsecured Protected Health Information" and "Breach" shall have the meaning set forth in 45 CFR § 164.402. A Breach will be considered as "Discovered" in accordance with the HITECH Act, sec 13402(c), Public Law 111-5, 45 CFR 164.404(a)(2).

(m) CONTRACTOR shall comply with 45 C.F.R. 164.308, 164.310, 164.312 and 164.316 and all requirements of the HITECH Act, Public Law 111-5, that relate to security and that are made applicable to Covered Entities, as if CONTRACTOR were a Covered Entity.

(n) CONTRACTOR shall be liable to the COUNTY, and shall indemnify the COUNTY for any and all direct costs incurred by the COUNTY, including, but not limited to, costs of issuing any notices required by HITECH or any other applicable law, as a result of CONTRACTOR's Breach of Unsecured Protected Health Information.

3. PERMITTED USES AND DISCLOSURES BY CONTRACTOR.

(a) General Use and Disclosure Provisions.

(1) Except as otherwise limited or prohibited by this BAA, CONTRACTOR may use or disclose Protected Health Information and EPHI to perform functions, activities, or services for, or on behalf of, COUNTY as specified in the Agreement and this BAA, provided that such use or disclosure would not violate Part 2, the Privacy Rule or Security Rule if done by COUNTY or the minimum necessary policies and procedures of COUNTY.

(2) COUNTY has determined that disclosures to CONTRACTOR under the Agreement are necessary and appropriate for COUNTY's Treatment, Services, Payment and/or Health Care Operations under Part 2, the HIPAA Privacy Rule and Security Rule and Required By Law under Or Laws 1999, ch. 849 (HB 2525).

(3) All applicable federal and state confidentiality or privacy statutes or regulations, and related procedures, continue to apply to the uses and disclosures of information under this BAA, except to the extent preempted by Part 2 or the HIPAA Privacy Rule and Security Rule.

(b) Specific Use and Disclosure Provisions.

(1) Except as otherwise limited in this BAA, CONTRACTOR may use Protected Health Information and EPHI for the proper management and administration of the CONTRACTOR or to carry out the legal responsibilities of the CONTRACTOR.

(2) Except as otherwise limited in this BAA, CONTRACTOR may disclose Protected Health Information and EPHI for the proper management and administration of the CONTRACTOR, provided that disclosures are Required By Law, or CONTRACTOR obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the CONTRACTOR of any instances of which it is aware in which the confidentiality of the information has been breached.

(3) CONTRACTOR may use Protected Health Information and EPHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1).

(4) CONTRACTOR may not aggregate or compile COUNTY's Protected Health Information or EPHI with the Protected Health Information or EPHI of other Covered Entities unless the Agreement permits CONTRACTOR to perform Data Aggregation services. If the Agreement permits CONTRACTOR to provide Data Aggregation services, CONTRACTOR may use Protected Health Information and EPHI to provide the Data Aggregation services requested by COUNTY as permitted by 45 CFR 164.504(e)(2)(i)(B), subject to any limitations contained in this BAA. If Data Aggregation services are requested by COUNTY, CONTRACTOR is authorized to aggregate COUNTY's Protected Health Information and EPHI with Protected Health Information or EPHI of other Covered Entities that the CONTRACTOR has in its possession through its capacity as a CONTRACTOR to such other Covered Entities provided that the purpose of such aggregation is to provide COUNTY with data analysis relating to the Health Care Operations of COUNTY. Under no circumstances may CONTRACTOR disclose Protected Health Information or EPHI of COUNTY to another Covered Entity absent the express authorization of COUNTY.

4. OBLIGATIONS OF COUNTY.

(a) COUNTY shall notify CONTRACTOR of any limitation(s) in its notice of privacy practices of COUNTY in accordance with 45 CFR 164.520, to the extent that such limitation may affect CONTRACTOR's use or disclosure of Protected Health Information and EPHI. COUNTY may satisfy this obligation by providing CONTRACTOR with COUNTY's most current Notice of Privacy Practices.

(b) COUNTY shall notify CONTRACTOR of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information or EPHI, to the extent that such changes may affect CONTRACTOR's use or disclosure of Protected Health Information and EPHI.

(c) COUNTY shall notify CONTRACTOR of any restriction to the use or disclosure of Protected Health Information or EPHI that COUNTY has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect CONTRACTOR's use or disclosure of Protected Health Information or EPHI.

5. PERMISSIBLE REQUESTS BY COUNTY.

(a) COUNTY shall not request CONTRACTOR to use or disclose Protected Health Information or EPHI in any manner that would not be permissible under Part 2, the Privacy Rule or Security Rule if done by COUNTY, except as permitted by Section 3(b) above.

(b) COUNTY may conduct a survey of CONTRACTOR with respect to CONTRACTOR's compliance with the terms of this BAA and applicable law for the establishment of policies and procedures for the safeguarding of any Protected Health Information and EPHI provided to CONTRACTOR by COUNTY. CONTRACTOR shall implement any recommendations of COUNTY resulting from such surveys as may be reasonably necessary to ensure compliance with the terms of this BAA and applicable law for the safeguarding of any Protected Health Information and EPHI provided to CONTRACTOR by COUNTY.

6. TERM AND TERMINATION.

(a) Effective Date; Term. This BAA shall be effective on the date on which all parties have executed it and all necessary approvals, if any, have been granted. This BAA shall terminate on the earlier of (i) the date of termination of the Agreement, or (ii) the date on which termination of the BAA is effective under Section 6(b).

(b) Termination for Cause. In addition to any other rights or remedies provided in this BAA, upon either the COUNTY's or CONTRACTOR's knowledge of a material breach by the other party of that party's obligations under this BAA, the party not in breach shall either:

(1) Notify the other party of the breach and specify a reasonable opportunity in the Notice of Breach to the party in breach to cure the breach or end the violation, and terminate the Agreement and this BAA if the party in breach does not cure the breach of the terms of this BAA or end the violation within the time specified;

(2) Immediately terminate the Agreement and this BAA if the party in breach has breached a material term of this BAA and cure is not possible in the reasonable judgment of the party not in breach; or

(3) If neither termination nor cure is feasible, the party not in breach shall report the violation to the Secretary.

(4) The rights and remedies provided in this BAA are in addition to any rights and remedies provided in

the Agreement.

(c) Effect of Termination.

(1) Except as provided in paragraph (2) of this Section 6(c), upon termination of the Agreement and this BAA, for any reason, the party in breach shall, at the other party's option, return or destroy all Protected Health Information and EPHI received from the other party, or created or received by CONTRACTOR on behalf of COUNTY. This provision shall apply to Protected Health Information and EPHI that is in the possession of CONTRACTOR or agents of CONTRACTOR. CONTRACTOR shall retain no copies of the Protected Health Information or EPHI.

(2) In the event that CONTRACTOR determines that returning or destroying the Protected Health Information or EPHI is infeasible, CONTRACTOR shall provide to COUNTY notification of the conditions that make return or destruction infeasible. Upon COUNTY's written acknowledgement that return or destruction of Protected Health Information or EPHI is infeasible, CONTRACTOR shall extend the protections of this BAA to such Protected Health Information and EPHI and limit further uses and disclosures of such Protected Health Information and EPHI to those purposes that make the return or destruction infeasible, for so long as CONTRACTOR maintains such Protected Health Information or EPHI.

7. MISCELLANEOUS.

(a) Regulatory References. A reference in this BAA to a section in Part 2, the Privacy Rule, or Security Rule, or the HITECH Act means the section in effect as of the effective date of this BAA or as the Rules may be subsequently amended from time to time.

(b) Amendment; Waiver. The Parties agree to take such action as is necessary to amend the Agreement and this BAA from time to time as is necessary for COUNTY to comply with the requirements of Part 2, the Privacy Rule, Security Rule, HIPAA and the HITECH Act. No provision hereof shall be deemed waived unless in writing, duly signed by authorized representatives of the parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any other right or remedy under this BAA.

(c) Survival. The respective rights and obligations of CONTRACTOR under Section 6(c), this Section 7(c), and Section 7(e) of this BAA shall survive the termination of the Agreement and this BAA.

(d) Interpretation; Order of Precedence. Any ambiguity in this BAA or the Agreement shall be resolved to permit COUNTY to comply with Part 2, the Privacy Rule, Security Rule and the HITECH Act. The terms of this BAA amend and supplement the terms of the Agreement, and whenever possible, all terms and conditions in this BAA and the Agreement are to be harmonized. In the event of a conflict between the terms of this BAA and the terms of the Agreement, the terms of this BAA shall control; provided, however, that this BAA shall not supersede any other federal or state law or regulation governing the legal relationship of the parties, or the confidentiality of records or information, except to the extent that HIPAA preempts those laws or regulations. In the event of any conflict between the provisions of the Agreement (as amended by this BAA) and Part 2, the Privacy Rule or the Security Rule, the more stringent rule shall apply.

(e) No Third-Party Beneficiaries. COUNTY and CONTRACTOR are the only parties to this BAA and are the only parties entitled to enforce its terms. Nothing in this BAA 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 BAA.

(f) Successors and Assigns. The provisions of this BAA and the Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns, if any.

(g) Except As Amended. Except as amended by this BAA, all terms and conditions of the Agreement shall remain in full force and effect.

8. SIGNATURES.

By signing this BAA, the parties certify that they have read and understood this BAA, that they agree to be bound by the terms of this BAA and the Agreement, as amended, and that they have the authority to sign this BAA.

CONTRACTOR:

By: Miguel A Madrigal

Title: Owner

Date: 7/12/2022

COUNTY:

By: Lindsey Manfrin

Title: _____

Date: _____

Digitally signed by Lindsey Manfrin
DN: cn=Lindsey Manfrin, email=Lindsey.Manfrin@countyofsanjose.ca.gov, o=County of San Jose, ou=Public Health, cn=Lindsey Manfrin
Date: 2022.07.13 07:52:38 -0700