

PROFESSIONAL SERVICES CONTRACT
THURSTON COUNTY SUPERIOR COURT

THIS CONTRACT is entered into in duplicate originals between **THURSTON COUNTY, SUPERIOR COURT**, at 2000 Lakeridge Drive S.W., Olympia, Washington 98502, hereinafter "**COURT**," and, Treatment case management services provider hereinafter "**CONTRACTOR**."

In consideration of the mutual benefits and covenants contained herein, the parties agree as follows:

1. **DURATION OF CONTRACT**

The term of this Contract shall begin on _____, 2018 and shall terminate on _____, 2019.

2. **SERVICES PROVIDED BY THE CONTRACTOR**

The CONTRACTOR represents that it is qualified and possesses the necessary expertise, knowledge, training, and skills, and has the necessary licenses and/or certification to perform the services set forth in this Contract.

The CONTRACTOR shall perform the following services:

PROJECT MANAGEMENT SERVICES

- a. A detailed description of the services to be performed by the CONTRACTOR is set forth in Exhibit A, which is attached hereto and incorporated herein by reference.
- b. The CONTRACTOR agrees to provide its own labor and materials. Unless otherwise provided for in the Contract, no material, labor, or facilities will be furnished by the COURT.
- c. The CONTRACTOR shall perform according to standard industry practice of the work specified by this Contract.
- d. The CONTRACTOR shall complete its work in a timely manner and in accordance with the schedule agreed to by the parties.
- e. The CONTRACTOR shall, from time to time, during the progress of the work, confer with the COURT. At the COURT'S request, the CONTRACTOR shall prepare and present status reports on its work.

3. **SERVICES PROVIDED BY THE COURT**

In order to assist the CONTRACTOR in fulfilling its duties under this Contract, the COURT shall provide the following:

- a. Relevant information as exists to assist the CONTRACTOR with the performance of the CONTRACTOR'S services.

b. Coordination with other County Departments or other Consultants as necessary for the performance of the CONTRACTOR'S services.

c. Services documents, or other information identified in Exhibit A.

4. **CONTRACT REPRESENTATIVES**

Each party to this Contract shall have a contract representative. Each party may change its representative upon providing written notice to the other party. The parties' representatives are as follows:

a. For CONTRACTOR:

Name of Representative:

Title:

Mailing Address:

City, State and Zip Code:

Telephone Number:

Fax Number

E-mail Address:

b. For COURT:

Name of Representative: Pamela Hartman Beyer

Title: Thurston County Superior Court Administrator

Mailing Address: 2000 Lakeridge Drive SW

City, State and Zip Code: Olympia, WA 98502

Telephone Number: 360-786-5559

Fax Number: NA

E-mail Address: Hartmap@co.thurston.wa.us

5. **COMPENSATION**

a. For the services performed hereunder, the CONTRACTOR shall be paid based upon mutually agreed rates contained in Exhibit A, which is attached hereto and incorporated herein by reference. The maximum total amount payable by the COURT to the CONTRACTOR under this Contract shall not exceed \$_____.

b. No payment shall be made for any work performed by the CONTRACTOR, except for work identified and set forth in this Contract or supporting exhibits or attachments incorporated by reference into this Contract.

c. The CONTRACTOR may, in accordance with Exhibit A, submit invoices to the COUNTY not more often than once per month during the progress of the work for partial payment of work completed to date. Invoices shall cover the time CONTRACTOR performed work for the COUNTY during the billing period. The COURT shall pay the CONTRACTOR for services rendered in the month following the actual delivery of the work and will remit payment within thirty (30) days from the date of receipt of billing.

d. The CONTRACTOR shall not be paid for services rendered under the CONTRACT unless and until they have been performed to the satisfaction of the COURT.

e. In the event the CONTRACTOR has failed to perform any substantial obligation to be performed by the CONTRACTOR under this Contract and such failure has not been cured within ten (10) days following notice from the COURT, then the COURT may, in its sole discretion, upon written notice to the CONTRACTOR, withhold any and all monies due and payable to the CONTRACTOR, without penalty until such failure to perform is cured or otherwise adjudicated. "Substantial" for purposes of this Contract means faithfully fulfilling the terms of the contract with variances only for technical or minor omissions or defects.

f. Unless otherwise provided for in this Contract or any exhibits or attachments hereto, the CONTRACTOR will not be paid for any billings or invoices presented for payment prior to the execution of the Contract or after its termination.

6. SAFEGUARDING CONFIDENTIAL INFORMATION

a. Confidential Information collected, used or acquired in connection with this Contract shall be used solely for the purposes of this Contract. CONTRACTOR shall not use, publish, transfer, sell or otherwise disclose any Confidential Information gained by reason of this Contract for any purpose that is not directly connected with the performance of the services, except:

(1) As provided by law; or,

(2) In the case of Personal Information, as provided by law or with the prior written consent of the person or personal representative of the person who is the subject of the Personal Information.

b. The CONTRACTOR agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access, use, disclosure, modification or loss of Confidential Information. This duty requires the CONTRACTOR to employ reasonable security measures, which includes restricting access to the Confidential Information by: (1) allowing access only to staff that have an authorized business requirement to view the Confidential Information; and (2) physically securing any computers, documents, or other media containing the Confidential Information. The COUNTY reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used or acquired by the CONTRACTOR through this Contract. To the extent allowed by law, the CONTRACTOR shall certify the return or destruction of all Confidential Information upon expiration of this Contract.

c. Any breach of this Section may result in termination of the Contract and the demand for return of all records in connection with this Contract. The CONTRACTOR agrees to indemnify and hold harmless the COUNTY for any damages related to the CONTRACTOR'S unauthorized use or disclosure of Confidential Information.

d. The provisions of this Section shall be included in any CONTRACTOR'S subcontract(s) relating to the services provide under this Contract.

e. Paper documents with Confidential Information may be recycled through a contracted firm, provided the contract with the recycler specifies that the confidentiality of information will be protected, and the information destroyed through the recycling process. Paper documents containing Confidential Information requiring special handling (e.g., protected health information) must be destroyed through shredding, pulping, or incineration.

f. "Confidential Information" means information that is exempt from disclosure to the public or other unauthorized persons under Chapter 42.56 RCW or other federal or state laws. Confidential Information includes, but is not limited to, Personal Information.

g. "Personal Information" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, drivers license numbers, other identifying numbers, and any financial identifiers. Personal Information includes "Protected Health Information" as set forth in 45 CFR §160.103 as currently drafted and subsequently amended or revised and other information that may be exempt from disclosure to the public or other unauthorized persons under either Chapter 42.56 RCW, 42 USC §§1320 et seq., 42 CFR Part 2, Chapters 70.02, 70.24. 70.96A and 71.05 RCW or other state and federal statutes and regulations governing confidentiality or disclosure.

7. AMENDMENTS AND CHANGES IN WORK

a. In the event of any errors or omissions by the CONTRACTOR in the performance of any work required under this Contract, the CONTRACTOR shall make any and all necessary corrections without additional compensation. All work submitted by the CONTRACTOR shall be certified by the CONTRACTOR and checked for errors and omissions. The CONTRACTOR shall be responsible for the accuracy of the work, even if the work is accepted by the COURT.

b. No amendment, modification or renewal shall be made to this Contract unless set forth in a written Contract Amendment, signed by both parties and attached to this Contract. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the COURT.

8. HOLD HARMLESS AND INDEMNIFICATION

a. The CONTRACTOR shall hold harmless, indemnify and defend Thurston County, Thurston County Superior Court, and their officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, losses, expenses, damages, and judgments of any nature whatsoever, including costs and attorneys fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the CONTRACTOR'S acts, errors or omissions or the acts, errors or omissions of its employees, agents, subcontractors or anyone for whose acts any of them may be liable, in the performance of this Contract. Claims shall include, but not be limited to, assertions that information supplied or used by the CONTRACTOR or subcontractor infringes any patent, copyright, trademark, trade name, or otherwise results in an unfair trade practice. PROVIDED

HOWEVER, that the CONTRACTOR'S obligations hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of Thurston County, Thurston County Superior Court, or their officers, officials, employees or agents. PROVIDED FURTHER, that in the event of the concurrent negligence of the parties, the CONTRACTOR'S obligations hereunder shall apply only to the percentage of fault attributable to the CONTRACTOR, its employees, agents or subcontractors.

b. In any and all claims against Thurston County, Thurston County Superior Court, or their officers, officials, employees and agents by any employee of the CONTRACTOR, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under Worker's Compensation acts, disability benefits acts, or other employee benefits acts, it being clearly agreed and understood by the parties hereto that the CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under Title 51 RCW. By executing the Contract, the CONTRACTOR acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this Section shall be incorporated, as relevant, into any contract the CONTRACTOR makes with any subcontractor or agent performing work hereunder.

c. The CONTRACTOR'S obligations hereunder shall include, but are not limited to, investigating, adjusting and defending all claims alleging loss from action, error or omission, or breach of any common law, statutory or other delegated duty by the CONTRACTOR, the CONTRACTOR'S employees, agents or subcontractors.

9. **INSURANCE**

a. **Professional Legal Liability:** The CONTRACTOR, if he is a licensed professional, shall maintain Professional Legal Liability or Professional Errors and Omissions coverage appropriate to the CONTRACTOR'S profession and shall be written subject to limits of not less than \$1,000,000 per loss.

The coverage shall apply to liability for a professional error, act or omission arising out of the scope of the CONTRACTOR'S services defined in this Contract. Coverage shall not exclude bodily injury or property damage. Coverage shall not exclude hazards related to the work rendered as part of the Contract or within the scope of the CONTRACTOR'S services as defined by this Contract including testing, monitoring, measuring operations, or laboratory analysis where such services are rendered as part of the Contract.

b. **Workers' Compensation (Industrial Insurance):** The CONTRACTOR shall maintain workers' compensation insurance as required by Title 51 RCW, and shall provide evidence of coverage to the Thurston County Risk Management Division.

c. **Commercial General Liability:** The CONTRACTOR shall maintain Commercial General Liability coverage for bodily injury, personal injury and property damage, subject to limits of not less than \$NA per loss. The general aggregate limit shall apply separately to this Contract and be no less than \$NA.

- i. The CONTRACTOR shall provide Commercial General Liability coverage which does not exclude any activity to be performed in fulfillment of this Contract. Specialized forms specific to the industry of the CONTRACTOR will be deemed equivalent provided coverage is no more restrictive than would be provided under a standard Commercial General Liability policy, including contractual liability coverage.
- ii. The CONTRACTOR'S Commercial General Liability insurance shall include the COUNTY, its officers, officials, employees and agents with respect to performance of services, and shall contain no special limitations on the scope of protection afforded to the COUNTY as additional insured.
- iii. The CONTRACTOR shall furnish the COUNTY with evidence that the additional insured provision required above has been met. An acceptable form of evidence is the endorsement pages of the policy showing the COUNTY as an additional insured.
- iv. If the CONTRACTOR'S liability coverage is written as a claims made policy, then the CONTRACTOR must evidence the purchase of an extended reporting period or "tail" coverage for a three-year period after project completion, or otherwise maintain the coverage for the three-year period.
- v. If the Contract is over \$50,000 then the CONTRACTOR shall also maintain Employers Liability Coverage with a limit of not less than \$1 million.

d. Automobile Liability: The CONTRACTOR shall maintain Automobile Liability insurance with a limit of not less than \$25,000 each accident combined Bodily Injury and Property Damages. Coverage shall include owned, hired and non-owned automobiles.

e. Other Insurance Provisions:

- i. The CONTRACTOR'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering Thurston County, Thurston County Superior Court, their elected and appointed officers, officials, employees and agents.
- ii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided.
- iii. The CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- iv. The CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.
- v. The insurance limits mandated for any insurance coverage required by this Contract are not intended to be an indication of exposure nor are they limitations on indemnification.

- vi. The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced.

f. **Verification of Coverage and Acceptability of Insurers:** The CONTRACTOR shall place insurance with insurers licensed to do business in the State of Washington and having A.M. Best Company ratings of no less than A-, with the exception that excess and umbrella coverage used to meet the requirements for limits of liability or gaps in coverage need not be placed with insurers or re-insurers licensed in the State of Washington.

- i. Certificates of Insurance shall show the Certificate Holder as Thurston County and include c/o of the Office or Department issuing the Contract. The address of the Certificate Holder shall be shown as the current address of the Office or Department.
- ii. Written notice of cancellation or change shall be mailed to the COUNTY at the following address:

Attn: Risk Analyst
Human Resources
2000 Lakeridge Drive S.W.
Olympia, Washington 98502

- iii. The CONTRACTOR shall furnish the COUNTY with properly executed certificated of insurance or a signed policy endorsement which shall clearly evidence all insurance required in this section prior to commencement of services. The certificate will, at a minimum, list limits of liability and coverage. The certificate will provide that the underlying insurance contract will not be canceled or allowed to expire except on thirty (30) days prior written notice to the COUNTY.
- iv. The CONTRACTOR or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Thurston County Risk Management Division.

10. **TERMINATION**

a. The COURT may terminate this Contract for convenience in whole or in part whenever the COURT determines, in its sole discretion, that such termination is in the best interests of the COURT. The COURT may terminate this Contract upon giving ten (10) days written notice by Certified Mail to the CONTRACTOR. In that event, the COURT shall pay the CONTRACTOR for all costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with Section 5 of this Contract.

b. In the event that funding for this project is withdrawn, reduced or limited in any way after the effective date of this Contract, the COURT may summarily terminate this Contract notwithstanding any other termination provision of the Contract. Termination under this paragraph shall be effective upon the date specified in the written notice of termination sent by

the COUNTY to the CONTRACTOR. After the effective date, no charges incurred under this Contract are allowable.

c. If the CONTRACTOR breaches any of its obligations hereunder, and fails to cure the breach within ten (10) days of written notice to do so by the COURT, the COURT may terminate this Contract, in which case the COURT shall pay the CONTRACTOR only for the costs of services accepted by the COURT, in accordance with Section 5 of this Contract. Upon such termination, the COURT, at its discretion, may obtain performance of the work elsewhere, and the CONTRACTOR shall bear all costs and expenses incurred by the COURT in completing the work and all damage sustained by the COURT by reason of the CONTRACTOR'S breach. If, subsequent to termination, it is determined for any reason that (1) the CONTRACTOR was not in default, or (2) the CONTRACTOR'S failure to perform was not its fault or its subcontractor's fault or negligence, the termination shall be deemed to be a termination under subsection a of this section.

11. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

a. The CONTRACTOR shall perform the terms of the Contract using only its bona fide employees or agents who have the qualifications to perform under this Contract. The obligations and duties of the CONTRACTOR under this Contract shall not be assigned, delegated, or subcontracted to any other person or firm without the prior express written consent of the COURT.

b. The CONTRACTOR warrants that it has not paid nor has it agreed to pay any company, person, partnership, or firm, other than a bona fide employee working exclusively for CONTRACTOR, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Contract.

12. NON-WAIVER OF RIGHTS

The parties agree that the excuse or forgiveness of performance, or waiver of any provision(s) of this Contract does not constitute a waiver of such provision(s) or future performance, or prejudice the right of the waiving party to enforce any of the provisions of this Contract at a later time.

13. INDEPENDENT CONTRACTOR

a. The CONTRACTOR'S services shall be furnished by the CONTRACTOR as an Independent Contractor and not as an agent, employee or servant of the COURT. The CONTRACTOR specifically has the right to direct and control CONTRACTOR'S own activities in providing the agreed services in accordance with the specifications set out in this Contract.

b. The CONTRACTOR acknowledges that the entire compensation for this Contract is set forth in Section 5 of this Contract, and the CONTRACTOR is not entitled to any County benefits, including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, fringe benefits, or any other rights or privileges afforded to Thurston County employees.

c. The CONTRACTOR shall have and maintain complete responsibility and control over all of its subcontractors, employees, agents, and representatives. No subcontractor, employee, agent or representative of the CONTRACTOR shall be or deem to be or act or purport to act as an employee, agent or representative of the COURT.

d. The CONTRACTOR shall assume full responsibility for the payment of all payroll taxes, use, sales, income or other form of taxes, fees, licenses, excises, or payments required by any city, county, federal or state legislation which is now or may during the term of this Contract be enacted as to all persons employed by the CONTRACTOR and as to all duties, activities and requirements by the CONTRACTOR in performance of the work on this project and under this Contract and shall assume exclusive liability therefore, and meet all requirements thereunder pursuant to any rules or regulations.

e. The CONTRACTOR agrees to immediately remove any of its employees or agents from assignment to perform services under this Contract upon receipt of a written request to do so from the COURT'S contract representative or designee.

14. **COMPLIANCE WITH LAWS**

The CONTRACTOR shall comply with all applicable federal, state and local laws, rules and regulations in performing this Contract.

15. **INSPECTION OF BOOKS AND RECORDS**

The COUNTY may, at reasonable times, inspect the books and records of the CONTRACTOR relating to the performance of this Contract. The CONTRACTOR shall keep all records required by this Contract for six (6) years after termination of this Contract for audit purposes.

16. **NONDISCRIMINATION**

The CONTRACTOR, its assignees, delegates or subcontractors shall not discriminate against any person in the performance of any of its obligations hereunder on the basis of race, color, creed, ethnicity, religion, national origin, age, sex, marital status, veteran or military status, sexual orientation or the presence of any disability. Implementation of this provision shall be consistent with RCW 49.60.400.

17. **OWNERSHIP OF MATERIALS/WORK PRODUCED**

a. Material produced in the performance of the work under this Contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the COUNTY. This material includes, but is not limited to, books, computer programs, plans, specifications, documents, films, pamphlets, reports, sound reproductions, studies, surveys, tapes, and/or training materials. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights. The COUNTY agrees that if it uses any materials prepared by the CONTRACTOR for purposes other than those intended by this Contract, it does so at its sole

risk and it agrees to hold the CONTRACTOR harmless therefore to the extent such use is agreed to in writing by the CONTRACTOR.

b. An electronic copy of all or a portion of material produced shall be submitted to the COUNTY upon request or at the end of the job using the word processing program and version specified by the COUNTY.

18. **DISPUTES**

Differences between the CONTRACTOR and the COURT, arising under and by virtue of this Contract, shall be brought to the attention of the COURT at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due the CONTRACTOR shall be decided by the COURT'S Contract representative or designee. All rulings, orders, instructions and decisions of the COURT'S contract representative shall be final and conclusive, subject to the CONTRACTOR'S right to seek judicial relief pursuant to Section 18.

19. **CHOICE OF LAW, JURISDICTION AND VENUE**

a. This Contract has been and shall be construed as having been made and delivered within the State of Washington, and it is agreed by each party hereto that this Contract shall be governed by the laws of the State of Washington, both as to its interpretation and performance.

b. Any action at law, suit in equity, or judicial proceeding arising out of this Contract shall be instituted and maintained only in any of the courts of competent jurisdiction in Thurston County, Washington.

20. **SEVERABILITY**

a. If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

b. If any provision of this Contract is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

c. Should the COURT determine that the severed portions substantially alter this Contract so that the original intent and purpose of the Contract no longer exists, the COURT may, in its sole discretion, terminate this Contract.

21. **ENTIRE AGREEMENT**

The parties agree that this Contract is the complete expression of its terms and conditions. Any oral or written representations or understandings not incorporated in this Contract are specifically excluded.

22. **NOTICES**

Any notices shall be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the addresses set out in Section 4. Notice may also be given by facsimile with the original to follow by regular mail. Notice shall be deemed to be given three days following the date of mailing or immediately if personally served. For service by facsimile, service shall be effective upon receipt during working hours. If a facsimile is sent after working hours, it shall be effective at the beginning of the next working day.

The parties hereto acknowledge that the waiver of immunity set out in Section 7.b. was mutually negotiated and specifically agreed to by the parties herein.

CONTRACTOR:

Thurston County, Washington

Firm: _____

By: _____

By: _____

Title: Presiding Judge/ Court Administrator

Signature: _____
(Authorized Representative)

Date _____

Date _____

Title: _____

Address: _____

EXHIBIT A
PROFESSIONAL SERVICES CONTRACT
THURSTON COUNTY SUPERIOR COURT

SCOPE OF SERVICES

And

COMPENSATION