

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

MOTION NO. 21-060

APPROVAL OF PROFESSIONAL SERVICES AGREEMENT FOR
CONTRACT MEDICAL STAFFING WITH HEALTH PROS NORTHWEST

WHEREAS, the County operates a medical clinic in a corrections institution and may require nursing and healthcare personnel, on an as needed or when needed basis, to work various shifts in the clinic to temporarily supplement County staff; and

WHEREAS, the County wishes to engage Health Pros Northwest for provision of such temporary personnel and Health Pros Northwest is willing and able to do so;

NOW, THEREFORE ON MOTION, the Snohomish County Council approves and authorizes the County Executive to sign the contract with Health Pros Northwest, copies of which are attached hereto and incorporated herein by reference.

DATED this 17th day of February, 2021.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington



Council Vice Chair

ATTEST:



Asst. Clerk of the Council

CONSULTANT: Health Pros Northwest
CONTACT PERSON: Bethany Stout
ADDRESS: P.O. Box 4384
Olympia, WA 98501
TELEPHONE/FAX NUMBER: 360.996-4487
COUNTY DEPT: Snohomish County Sheriff's Office
DEPT. CONTACT PERSON: Chief Norm Link
TELEPHONE: 425-388-3419
PROJECT: Agency Staffing Agreement
AMOUNT: \$3,750,000
FUND SOURCE: 002 538 364 4127 & 124 502 38 331 4101
CONTRACT DURATION: January 1, 2021 through
December 31, 2025 - with three possible
one-year extensions

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT (the "Agreement") is made by and between SNOHOMISH COUNTY, a political subdivision of the State of Washington (the "County") and Health Pros Northwest, Inc., a Washington corporation (the "Contractor"). In consideration of the mutual benefits and covenants contained herein, the parties agree as follows:

1. Purpose of Agreement; Scope of Services. The purpose of this Agreement is to provide the terms under which the Contractor will provide temporary nursing and healthcare personnel to the Snohomish County Corrections Bureau at the Snohomish County Jail ("County Facility") The Contractor will provide services to the County as follows:
 - a. Request for Personnel. The County will request assignment of Contractor Personnel once the need for personnel is known. The County may, when necessary, place emergency requests for Contractor Personnel. At the time of the request, the County will provide all available information regarding the reporting time and assignment.
 - b. Personnel Qualifications. Upon receiving a request of assignment from the County, the Contractor will provide the County with qualified temporary health care personnel (collectively, "Contractor Personnel") for supplemental staffing, subject to the availability of qualified Personnel.
 - a. Qualified Contractor Personnel are individuals who meet the following criteria:
 - i. Possess current license/registration and/or certification, as applicable and appropriate for the services provided to County, and, in addition to other appropriate licenses/registrations and certifications, possess current CPR certification to be presented to the County Administrator upon request.

- ii. Meet Contractor and County conditions of employment regarding health clearance (to include proof of TB skin testing and health statement), provision of professional references, drug screen, criminal background check, and any other applicable hiring criteria, documentation of which will be provided to the County and kept in the Contractor's employee file.
 - iii. Shall have at least one (1) year of relevant professional experience which shall be documented by references and kept in the Contractor's employee file.
 - c. Changes/Cancellation. If the County changes or cancels a request for assignment less than four (4) hours prior to the start of the assigned shift, the Contractor may bill County for four (4) hours at the established fee for each scheduled person. If cancelled staff previously assigned for the request was provided lodging by Contractor, the County will be billed \$100 for lodging reimbursement.
 - d. Failure to Request/Staff Order Cancellation. This Agreement does not guarantee certain level of work to the Contractor. If the County does not request Personnel, such failure to request results in no penalty and does not constitute a breach of this Agreement.
- 2. Term of Agreement; Time of Performance. This Agreement shall be effective January 1, 2021 (the "Effective Date"), and shall terminate on December 31, 2025, PROVIDED, HOWEVER, that the term of this Agreement may be extended or renewed for up to three (3) additional one year (1) year terms, at the sole discretion of the County, by written notice from the County to the Contractor, PROVIDED, HOWEVER, that the County's obligations after December 31, 2021 are contingent upon local legislative appropriation of necessary funds for this specific purpose in accordance with the County Charter and applicable law.
- 3. Compensation.
 - a. Services. The County will pay the Contractor for services as and when set forth in Exhibit A, which is attached hereto and by this reference made a part of this Agreement.
 - b. Overhead and Expenses. The Contractor's compensation for services set forth in section 3 includes overhead and expenses and no separate claims for reimbursement of overhead or expenses will be allowed under this Agreement.
 - c. Invoices. The Contractor shall submit properly executed invoices to the County no more frequently than monthly either via email to the County contact person identified below and by U.S. mail to the following address:

Snohomish County Sheriff's Office
Attn: Corrections Finance
3000 Rockefeller Avenue M/S 509
Everett, WA 98201

By agreement, invoices may also be provided electronically to a designated email address maintained by the County. Each invoice shall include an itemization of the dates on which services were provided, including the number of hours and a brief description of the work performed on each such date.

Unless there is a dispute regarding billing as otherwise set forth herein, the County will pay such invoices within thirty (30) calendar days of receipt and acceptance of properly executed invoices for Contractor.

Except as otherwise provided and agreed herein, the County will send all payments via U.S. Mail to the following address:

Health Pros Northwest
P.O. Box 4384
Olympia, WA 98501

- d. Payment. The County's preferred method of payment under this contract is electronic using the County's "e-Payable" system with Bank of America. The Contractor is highly encouraged to take advantage of the electronic payment method.

In order to utilize the electronic payment method, the Contractor shall email SnocoEpayables@snoco.org and indicate it was awarded a contract with Snohomish County and will be receiving payment through the County's e-Payable process. The Contractor needs to provide contact information (name, phone number and email address). The Contractor will be contacted by a person in the Finance Accounts Payable group and assisted with the enrollment process. This should be done as soon as feasible after County award of a contract or purchase order, but not exceeding ten (10) business days.

Department approved invoices received in Finance will be processed for payment within seven calendar days for e-Payable contractors. Invoices are processed for payment by Finance two times a week for contractors who have selected the e-Payable payment option.

In the alternative, if the Contractor does not enroll in the electronic ("e-Payable") payment method described above, contract payments will be processed by Finance with the issuance of paper checks or, if available, an alternative electronic method. Alternative payment methods, other than e-Payables, will be processed not more than 30 days from receipt of department approved invoices to Finance.

Upon acceptance of payment, the Contractor waives any claims for the goods or services covered by the Invoice. No advance payment shall be made for the goods or services furnished by Contractor pursuant to this Contract.

- e. Payment Method. In addition to Payment section above, the County may make payments for purchases under this contract using the County's VISA purchasing card (PCARD).

Are you willing to accept PCARD payments without any fees or surcharges?

Yes No

- f. Contract Maximum. Total charges under this Agreement, all fees and expenses included, shall not exceed \$3,750,000 for the initial term of this Agreement (excluding extensions or renewals, if any).
 - g. Late Payment. Invoices not paid within thirty (30) days of receipt and acceptance of properly executed invoices by the County will accumulate interest, until paid, at the rate of one percent (1%) per month on the unpaid balance, equating to an annual percentage rate of twelve percent (12%).
 - h. Rate Change. Any change in rates will be mutually agreed upon in a written amendment to the contract, signed by an authorized representative of each party. Any agreed upon rate increase will become effective upon the date of final signature or as otherwise provided in such executed amendment.
4. Independent Contractor. The Contractor agrees that Contractor will perform the services under this Agreement as an independent contractor and not as an agent, employee, or servant of the County. This Agreement neither constitutes nor creates an employer-employee relationship. The parties agree that the Contractor is not entitled to any benefits or rights enjoyed by employees of the County. 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 Agreement. The County shall only have the right to ensure performance. Nothing in this Agreement shall be construed to render the parties partners or joint venturers.

The Contractor shall furnish, employ and have exclusive control of all persons to be engaged in performing the Contractor's obligations under this Agreement (the "Contractor Personnel"). Such Contractor Personnel shall for all purposes be solely the employees or agents of the Contractor and shall not be deemed to be employees or agents of the County for any purposes whatsoever. With respect to Contractor Personnel, the Contractor shall be solely responsible for compliance with all rules, laws and regulations relating to employment of labor, hours of labor, working conditions, payment of wages and payment of taxes, including applicable contributions from Contractor Personnel when required by law.

Because it is an independent contractor, the Contractor shall be responsible for all obligations relating to federal income tax, self-employment or FICA taxes and contributions, and all other so-called employer taxes and contributions including, but not limited to, industrial insurance (workers' compensation). The Contractor agrees to indemnify, defend and hold the County harmless from any and all claims, valid or otherwise, made to the County because of these obligations.

The Contractor assumes 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 are now or may during the term of the Agreement 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 under this Agreement. The Contractor shall assume exclusive liability therefor and shall meet all requirements thereunder pursuant to any rules or regulations that are now or may be promulgated in connection therewith.

5. Ownership. Any and all data, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the Contractor or the Contractor's subcontractors or consultants for delivery to the County under this Agreement shall be the sole and absolute property of the County. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the County at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the Contractor uses to perform this Agreement but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the County is owned by the Contractor and is not "work made for hire" within the terms of this Agreement.
6. Changes. No changes or additions shall be made in this Agreement except as agreed to by both parties, reduced to writing and executed with the same formalities as are required for the execution of this Agreement.
7. County Contact Person. The assigned contact person (or project manager) for the County for this Agreement shall be:

Name: Nadia Nikolina
Title: Finance Supervisor
Department: Snohomish County Sheriff's Office Corrections Bureau
Telephone: (425) 388-5327
Email: Nadia.Nikolina@snoco.org

8. County Review and Approval. When the Contractor has completed any discrete portion of the services, the Contractor shall verify that the work is free from errors and defects and otherwise conforms to the requirements of this Agreement. The Contractor shall then notify the County that said work is complete. The County shall promptly review and inspect the work to determine whether the work is acceptable. If the County determines the work conforms to the requirements of this Agreement, the County shall notify the Contractor that the County accepts the work. If the County determines the work contains errors, omissions, or otherwise fails to conform to the requirements of this Agreement, the County shall reject the work by providing the Contractor with written notice describing the problems with the work and describing the necessary corrections or modifications to same. In such event, the Contractor shall promptly remedy the problem or problems and re-submit the work to the County. The Contractor shall receive no additional compensation for time spent correcting errors. Payment for the work will not be made until the work is accepted by the County. The Contractor shall be responsible for the accuracy of work even after the County accepts the work.

If the Contractor fails or refuses to correct the Contractor's work when so directed by the

County, the County may withhold from any payment otherwise due to the Contractor an amount that the County in good faith believes is equal to the cost the County would incur in correcting the errors, in re-procuring the work from an alternate source, and in remedying any damage caused by the Contractor's conduct.

9. Subcontracting and Assignment. The Contractor shall not subcontract, assign, or delegate any of the rights, duties or obligations covered by this Agreement without prior express written consent of the County. Any attempt by the Contractor to subcontract, assign, or delegate any portion of the Contractor's obligations under this Agreement to another party in violation of the preceding sentence shall be null and void and shall constitute a material breach of this Agreement.
10. Status reports. The Contractor will prepare and present status reports and other information regarding performance of the Agreement as the County may request.
11. Responsibility for Patient Care. The County retains full authority for patient care while using Contractor personnel. Services provided by Contractor Personnel are subject to the professional and administrative oversight of the County and its staff.
12. Permanent Employment of Contractor Personnel.
 - a. The parties acknowledge that:
 - i. Contractor has an ongoing relationship with its employees and incurs expenses in recruiting and maintaining staffing resources for County.
 - ii. Contractor relies on services of its employees or contractors for financial stability of their business.
 - b. For a period of 12 months from the date of last placement of an employee or contractor, or providing a requested applicant profile to County, County will not hire Contractor employee as their own employee or private contractor, unless the provisions in sections 14 (c and d) are followed.
 - c. If County wishes to hire a Health Pros Northwest employee or contractor as an employee or contractor of their own, County will pay Contractor a placement fee, as detailed below.
 - d. Other options for permanent placement can be arranged if agreed upon in writing by both parties.
 - e. Once the placement fee is paid, the medical provider, at the County's discretion, may be hired as a County employee pursuant to the fees contained in the following chart:

<u>Total Hours Worked Prior to Notice of Intent to Hire</u>	<u>General Placement Fee</u>	<u>Physician, Dentist, ARNP, PA, & Pharmacist Placement Fee</u>
0 months – 1 year	20% first years' salary	20% first years' salary
1 year & above	10% first years' salary	10% first years' salary

- f. SCC 2.50.075, "Restrictions on future employment of County employees," imposes certain restrictions on the subsequent employment and compensation of County employees. The Contractor represents and warrants to the County that it does not at the time of execution of this Agreement, and that it shall not during the term of this Agreement, employ a former or current County employee in violation of SCC 2.50.075. For breach or violation of these representations and warranties, the County shall have the right to terminate this Agreement without liability.
13. Right to Dismiss. If the County's Health Services Administrator (or designee) or other authority designated by the County determines that any Contractor Personnel is not competent, has engaged in misconduct, has been negligent, and/or otherwise not appropriate for healthcare work at Snohomish County Jail and/or with other County or Contractor employees, the County may require the individual to leave the premises and will notify Contractor as soon as practicable. The County shall have sole discretion to determine that any Contractor Personnel is not competent, has engaged in misconduct, has been negligent, and/or otherwise not appropriate for healthcare work at Snohomish County Jail and/or with other County or Contractor employees. The County's obligation to compensate Contractor for such individual's services will be limited to the number of hours actually worked. In the event that any Contractor Personnel is directed to leave the County pursuant to this section, the Contractor shall have the obligation to provide the County with replacement personnel, at no cost to the County.
14. Information of Contractor Personnel. The County will verify the identity of Contractor employee/contractor on-site prior to services being provided by Contractor Personnel. The County will request, in writing, any additional credentialing of Contractor Personnel. Additionally, the County will make the Contractor aware immediately of any complaints, grievances, incidents or other pertinent information related to the actions or conduct of Contractor Personnel.
15. Records and Access; Audit; Ineligible Expenditures. The Contractor shall maintain adequate records to support billings. Said records shall be maintained for a period of seven (7) years after completion of this Agreement by the Contractor. The County or any of its duly authorized representatives shall have access at reasonable times to any books, documents, papers and records of the Contractor which are directly related to this Agreement for the purposes of making audit examinations, obtaining excerpts, transcripts or copies, and ensuring compliance by the County with applicable laws. Expenditures under this Agreement, which are determined by audit to be ineligible for reimbursement and for which payment has been made to the Contractor, shall be refunded to the County by the Contractor.

Contractor will maintain all Contractor Personnel records and make those records available to County, if requested, until the expiration of four (4) years after services are furnished under this Agreement.

16. Indemnification.

- a. Professional Liability. The Contractor agrees to indemnify the County, its officers, officials, agents and employees from damages and liability for damages, including reasonable attorneys' fees, court costs, expert witness fees, and other claims-related expenses, arising out of the performance of the Contractor's professional services under this Agreement, to the extent that such liability is caused by the negligent acts, errors or omissions of the Contractor, its principals, employees or subcontractors. The Contractor has no obligation to pay for any of the indemnitees' defense-related cost prior to a final determination of liability or to pay any amount that exceeds Contractor's finally determined percentage of liability based upon the comparative fault of the Contractor, its principals, employees and subcontractors. For the purpose of this section, the County and the Contractor agree that the County's costs of defense shall be included in the definition of damages above.
- b. All Other Liabilities Except Professional Liability. To the maximum extent permitted by law and except to the extent caused by the sole negligence of the County the Contractor shall indemnify and hold harmless the County and the State, their officers, officials, agents and employees, from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatsoever kind or nature arising out of, in connection with, or incidental to the services and/or deliverables provided by or on behalf of the Contractor. In addition, the Contractor shall assume the defense of the County its officers and employees in all legal or claim proceedings arising out of, in connection with, or incidental to such services and/or deliverables and shall pay all defense expenses, including reasonable attorneys' fees, expert fees and costs incurred by the County on account of such litigation or claims.

The above indemnification obligations shall include, but are not limited to, all claims against the County by an employee or former employee of the Contractor or its subcontractors, and the Contractor, by mutual negotiation, expressly waives all immunity and limitation on liability, as respects only the County under any industrial insurance act, including Title 51 RCW, other worker's compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim.

In the event that the County incurs any judgment, award and/or cost including attorneys' fees arising from the provisions of this section, or to enforce the provisions of this section, any such judgment, award, fees, expenses and costs shall be recoverable from the Contractor.

In addition to injuries to persons and damage to property, the term "claims," for purposes of this provision, shall include, but not be limited to, assertions that the use or transfer of any software, book, document, report, film, tape, or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, and/or otherwise results in an unfair trade practice.

The indemnification, protection, defense and save harmless obligations contained herein shall survive the expiration, abandonment or termination of this Agreement.

Nothing contained within this provision shall affect or alter the application of any other provision contained within this Agreement.

17. Insurance Requirements. The Contractor shall procure by the time of execution of this Agreement, and maintain for the duration of this Agreement, (i) insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the services hereunder by the Contractor, its agents, representatives, or employees, and (ii) a current certificate of insurance and additional insured endorsement when applicable.

- a. General. Each insurance policy shall be written on an "occurrence" form, except that Professional Liability, Errors and Omissions coverage, if applicable, may be written on a claims-made basis. If coverage is approved and purchased on a "claims made" basis, the Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the work which is the subject of this Agreement.

By requiring the minimum insurance coverage set forth in section 19, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Agreement. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

- b. No Limitation on Liability. The Contractor's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or in equity.
- c. Minimum Scope and Limits of Insurance. The Contractor shall maintain coverage at least as broad as, and with limits no less than:
 - i. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$2,000,000 aggregate limit. CG 00 01 current edition, including Products and Completed Operations;

- ii. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage. CA 0001 current edition, Symbol 1;
 - iii. Workers' Compensation: To meet applicable statutory requirements for workers' compensation coverage of the state or states of residency of the workers providing services under this Agreement;
 - iv. Employers' Liability or "Stop Gap" coverage: \$1,000,000;
 - v. Professional Liability/Errors & Omissions: \$2,000,000.
- d. Other Insurance Provisions and Requirements. The insurance coverages required in this Agreement for all liability policies except workers' compensation and Professional Liability, if applicable, must contain, or must be endorsed to contain, the following provisions:
- i. The County, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Agreement. Such coverage shall be primary and non-contributory insurance as respects the County, its officers, officials, employees and agents. Additional Insured Endorsement shall be included with the certificate of insurance, "CG 2026 07/04" or its equivalent is required.
 - ii. The Contractor's insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
 - iii. Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to the County and shall be the sole responsibility of the Contractor.
 - iv. Insurance coverage must be placed with insurers with a Best's Underwriting Guide rating of no less than A:VIII, or, if not rated in the Best's Underwriting Guide, with minimum surpluses the equivalent of Best's surplus size VIII. Professional Liability, Errors and Omissions insurance coverage, if applicable, may be placed with insurers with a Best's rating of B+:VII. Any exception must be approved by the County.

Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits until after forty-five (45) calendar days' prior written notice has been given to the County.

If at any time any of the foregoing policies fail to meet minimum requirements, the Contractor shall, upon notice to that effect from the County, promptly obtain a new policy, and shall

submit the same to the County, with the appropriate certificates and endorsements, for approval.

18. Orientation. Contractor will cooperate with the County to provide Contractor Personnel with an adequate and timely orientation to the County's Facility. Contractor Personnel may not provide services until County orientation is completed. At a minimum, the County will orient Contractor Personnel to its hazard communication procedures and the County-specific Exposure Control Plan as it pertains to OSHA requirements for blood borne pathogens. County will inform Contractor staff of County specific policies and procedures. County will make County staff and resources available to on-site Contractor Personnel should questions or concerns arise while working at County Facility.
19. County Non-discrimination. It is the policy of the County to reject discrimination which denies equal treatment to any individual because of his or her race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability as provided in Washington's Law against Discrimination, Chapter 49.60 RCW, and the Snohomish County Human Rights Ordinance, Chapter 2.460 SCC. These laws protect against specific forms of discrimination in employment, credit transactions, public accommodation, housing, county facilities and services, and county contracts.

The Contractor shall comply with the substantive requirements of Chapter 2.460 SCC, which are incorporated herein by this reference. Execution of this Agreement constitutes a certification by the Contractor of the Contractor's compliance with the requirements of Chapter 2.460 SCC. If the Contractor is found to have violated this provision, or to have furnished false or misleading information in an investigation or proceeding conducted pursuant to this Agreement or Chapter 2.460 SCC, this Agreement may be subject to a declaration of default and termination at the County's discretion. This provision shall not affect the Contractor's obligations under other federal, state, or local laws against discrimination.

20. Federal Non-discrimination. Snohomish County assures that no persons shall on the grounds of race, color, national origin, or sex as provided by Title VI of the Civil Rights Act of 1964 (Pub. L. No. 88-352), as amended, and the Civil Rights Restoration Act of 1987 (Pub. L. No. 100-259) be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any County sponsored program or activity. Snohomish County further assures that every effort will be made to ensure nondiscrimination in all of its programs and activities, whether those programs and activities are federally funded or not.
21. Compliance with Other Laws. The Contractor shall comply with all other applicable federal, state and local laws, rules, and regulations in performing this Agreement.
22. Compliance with Grant Terms and Conditions. The Contractor shall comply with any and all conditions, terms and requirements of any federal, state or other grant, if any, that wholly or partially funds the Contractor's work hereunder.
23. Prohibition of Contingency Fee Arrangements. The Contractor warrants that it has not

employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the County shall have the right to terminate this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

24. **Force Majeure.** If either party is unable to perform any of its obligations under this Agreement as a direct result of an unforeseeable event beyond that party's reasonable control, including but not limited to an act of war, act of nature (including but not limited to earthquake and flood), embargo, riot, sabotage, labor shortage or dispute (despite due diligence in obtaining the same), or governmental restriction imposed subsequent to execution of the Agreement (collectively, a "force majeure event"), the time for performance shall be extended by the number of days directly attributable to the force majeure event. Both parties agree to use their best efforts to minimize the effects of such failures or delays.
25. **Suspension of Work.** The County may, at any time, instruct the Contractor in writing to stop work effective immediately, or as directed, pending either further instructions from the County to resume the work or a notice from the County of breach or termination under section 28 of this Agreement.
26. **Non-Waiver of Breach; Termination.**
 - a. The failure of the County to insist upon strict performance of any of the covenants or agreements contained in this Agreement, or to exercise any option conferred by this Agreement, in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.
 - b. If the Contractor breaches any of its obligations hereunder, and fails to cure the same within twenty (20) business days of written notice to do so by the County, the County may terminate this Agreement, in which case the County shall pay the Contractor only for the services and corresponding reimbursable expenses, if any, accepted by the County in accordance with the provisions of the Agreement.
 - c. The County or Contractor may terminate this Agreement upon 60 business days' advance written notice of the termination date to the other party, for any reason other than stated in subparagraph b above, in which case payment shall be made in accordance with this Agreement for the services and corresponding reimbursable expenses, if any, reasonably and directly incurred by the Contractor in performing this Agreement prior to receipt of the termination notice. Such termination will have no effect upon the rights and obligations from any transactions occurring prior to the effective date of the termination.

Agreement is subject to the following requirements:

b.

1. Definitions. Capitalized terms used in this Agreement, but not otherwise defined in this Agreement shall have the same meanings as those terms in the HIPAA Privacy and Security Regulations at 45 C.F.R. Parts 160 and 164. Unless otherwise stated, a reference to a "Section" is to a Section in this Agreement. For Purposes of this Agreement, the following terms shall have the following meanings.
 - 1.1. Breach. "Breach" shall have the same meaning as the term "breach" in 45 C.F.R. § 164.402
 - 1.2. Designated Record Set. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 C.F.R. § 164.501.
 - 1.3. Electronic Protected Health Information or EPHI. "Electronic Protected Health Information" or "EPHI" shall have the same meaning as the term "electronic protected health information" in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
 - 1.4. Individual. "Individual" shall mean the person who is the subject of Protected Health Information as provided in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
 - 1.5. Individually Identifiable Health Information. "Individually Identifiable Health Information" shall have the same meaning as the term "individually identifiable health information" in 45 C.F.R. § 160.103.
 - 1.6. Protected Health Information or PHI. "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
 - 1.7. Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103.
 - 1.8. Secretary. "Secretary" shall mean the Secretary of the federal Department of Health and Human Services or that person's designee.
 - 1.9. Security Incident. "Security Incident" shall have the same meaning as the term "security incident" in 45 C.F.R. § 164.304.
 - 1.10. Unsecured Protected Health Information. "Unsecured Protected Health Information" shall have the same meaning as the term "unsecured protected health information" in 45 C.F.R. § 164.402, limited to the information created or received by

Business Associate from or on behalf of Covered Entity.

2. Permitted Uses and Disclosures by Business Associate.

2.1. General. Except as otherwise specified in this Agreement, Business Associate may use or disclose PHI to perform its obligations for, or on behalf of, Covered Entity provided that Business Associate uses and discloses PHI in the following manner:

2.1.1 Consistent with the minimum necessary policies and procedures of Covered Entity; and

2.1.2 Would not violate 45 C.F.R. Subpart E if done by Covered Entity, except as specified in paragraphs 2.2 and 2.2 of this section

2.2. Other Permitted Uses. Except as otherwise limited by this Agreement, Business Associate may use PHI it receives or creates in its capacity as a business associate of Covered Entity, if necessary:

2.2.1. For the proper management and administration of Business Associate;

2.2.2. To carry out the legal responsibilities of Business Associate; or

2.2.3. To provide Data Aggregation services to Covered Entity that relate to the health care operations of Covered Entity in accordance with the HIPAA Privacy Regulations.

2.3. Other Permitted Disclosures. Except as otherwise limited by this Agreement, Business Associate may disclose to a third party PHI it receives or creates in its capacity as a business associate of Covered Entity for the proper management and administration of Business Associate, provided that:

2.3.1. The disclosure is Required By Law; or

2.3.2. Business Associate obtains reasonable assurances from the third party to whom the information is disclosed that (i) the PHI will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the third party, and (ii) the third party notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

2.4. De-Identified Information. Health information that has been de-identified in accordance with the requirements of 45 C.F.R. §§ 164.514 and 164.502(d) and is therefore not Individually Identifiable Health Information (“De-Identified Information”) is not subject to the provisions of this Agreement. Covered Entity may disclose PHI to Business Associate to use for the purpose of creating De-Identified Information, whether or not the De-Identified Information is to be used by Covered Entity.

3. Obligations and Activities of Business Associate Regarding PHI.

- 3.1. Limitations on Uses and Disclosures. Business Associate will not use or further disclose PHI other than as permitted or required by this Agreement or as Required By Law.
- 3.2. Safeguards. Business Associate will use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.
- 3.3. Mitigation. Business Associate will mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or subcontractor or agent of Business Associate in violation of the requirements of this Agreement.
- 3.4. Reporting. Business Associate will report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement of which it becomes aware.
- 3.5. Agents and Subcontractors. Business Associate will ensure that any agent, including any subcontractor to whom Business Associate provides PHI that was created for or received from or on behalf of Covered Entity, has executed an agreement containing the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. Business Associate will ensure only those who reasonably need to know such information in order to perform Services receive such information and, in such case, only the minimum amount of such PHI is disclosed as is necessary for such performance.
- 3.6. Access. Where PHI held by Business Associate is contained in a Designated Record Set, within fifteen (15) days of receiving a written request from Covered Entity, Business Associate will make such PHI available to Covered Entity or, as directed by Covered Entity, to an Individual, that is necessary for Covered Entity to respond to Individuals' requests for access to PHI in accordance with 45 C.F.R. § 164.524. Business Associate will provide such PHI in an electronic format upon request by Covered Entity unless it is not readily producible in such format in which case Business Associate will provide Covered Entity a readable electronic format as agreed to by Covered entity and Individual.
- 3.7. Compliance with Requirements. To the extent Business Associate is to carry out Covered Entity's obligation under HIPAA, Business Associate will comply with the requirement applicable to such obligation.
- 3.8. Amendment of PHI. Where PHI held by Business Associate is contained in a Designated Record Set, within fifteen (15) days of receiving a written request from Covered Entity or an Individual, Business Associate will make any requested amendment(s) or correction(s) to PHI in accordance with 45 C.F.R. § 164.526.

- 3.9. Disclosure Documentation. Business Associate will document its disclosure of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with C.F.R. § 164.528.
- 3.10. Accounting of Disclosures. Within thirty (30) days of receiving a request from Covered Entity, Business Associate will provide to Covered Entity information collected in accordance with Section 3.8 of this Agreement, as necessary to permit Covered Entity to make an accounting of disclosures of PHI about an Individual in accordance with 45 C.F.R. § 164.528.
- 3.11. Access to Business Associate's Internal Practices. Business Associate will make its internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI, including EPHI, created, used, disclosed, received, maintained, or transmitted by Business Associate on behalf of Covered Entity, available to the Secretary or to Covered Entity, available to the Secretary or to the Covered Entity, in a time and manner designated by the Secretary or reasonably specified by Covered Entity, for purposes of the Secretary determining Business Associate or Covered Entity's compliance with the HIPAA Privacy Regulations and HIPAA Security Regulations.
- 3.12. Breach Notification. Business Associate, following the discovery of a Breach of Unsecured Protected Health Information, shall notify Covered Entity of such Breach. Except as otherwise required by law, Business Associate shall provide such notice without unreasonable delay, and in no case later than thirty (30) calendar days after discovery of the Breach.
- 3.12.1. Notice to Covered Entity required by this Section 3.12 shall include (i) to the extent possible, the names of the individual(s) whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been accessed, acquired, used or disclosed during the Breach; (ii) a brief description of what happened including the date of the Breach and the date of the discovery of the Breach, if known; (iii) a description of the types of Unsecured Protected Health Information that were involved in the Breach; (iv) a brief description of what Business Associate is doing or will be doing to investigate the Breach to mitigate harm to the individual(s) and to protect against further Breaches; and (v) any other information that Covered Entity determines it needs to include in notifications to the individual(s) under 45 C.F.R. §164.404(c).
- 3.12.2. After receipt of notice, from any source, of a Breach involving Unsecured Protected Health Information used, disclosed, maintained or otherwise possessed by Business Associate, or of a Breach involving Unsecured Protected Health Information for which the Business Associate is otherwise responsible, Covered Entity may in its sole discretion (i) require Business

Associate, at Business Associate's sole expense, to use a mutually agreed upon written notice to notify, on Covered Entity's behalf, the individual(s) affected by the Breach, in accordance with the notification requirements set forth in 45 C.F.R. § 164.404, without unreasonable delay, but in no case later than sixty (60) days after discovery of the Breach; or (ii) elect to provide notice to the individual(s) affected by the Breach.

- 3.13. Remuneration in Exchange for PHI. Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI unless Covered Entity notifies Business Associate that it obtained a valid authorization from the Individual specifying that the Individual's PHI may be exchanged for remuneration by the entity receiving such Individual's PHI.
- 3.14. Marketing. Business Associate must obtain or confirm that Covered Entity has obtained an authorization for any use or disclosure of PHI for marketing, as defined in 45 C.F.R. § 164.501.
- 3.15. Exporting Information. Business Associate shall ensure that any agent or subcontractor to whom Business Associate provides PHI, as well as Business Associate, not export PHI beyond the borders of the United States of America.

4. Obligations of Covered Entity

- 4.1. Limited Disclosure Obligations. Covered Entity will limit the PHI provided to Business Associate to only that necessary to the business needs of Covered Entity. Prior to the transmission of PHI to Business Associate, Covered Entity will notify Business Associate of the need to transmit PHI and will arrange with Business Associate for the proper and secure transmission of such PHI.
- 4.2. Requested Restrictions. Covered Entity shall notify Business Associate, in writing, of any restriction on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, which permits an Individual to request certain restrictions or uses and disclosures, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- 4.3. Changes in or Revocation of Permission. Covered Entity will notify Business Associate in writing of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes or revocation may affect Business Associate's use or disclosure of PHI.
- 4.4. Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Regulations and the HIPAA Security Regulations if done by Covered Entity, except to the extent that Business Associate will use or disclose PHI for Data Aggregation or management and administrative activities and legal responsibilities of Business Associate.

5. Security Restrictions on Business Associate

- 5.1. General. Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the EPHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity as required by the HIPAA Security Regulations.
- 5.2. Agents; Subcontractors. Business Associate will ensure that any agent, including a subcontractor, to whom Business Associate provides EPHI, agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of such EPHI.
- 5.3. Reporting of Security Incidents. Business Associate shall report to Covered Entity any Security Incident affecting EPHI created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity, of which Business Associate becomes aware.
- 5.4. HIPAA Security Regulations Compliance. Business Associate agrees to comply with Sections 164.306, 164.308, 164.310, 164.312, and 164.316 of Title 45, Code of Federal Regulations with respect to all EPHI.

b. Prison Rape Elimination Act (PREA) – Sexual Misconduct. The Contractor agrees to ensure that all of the contractor's employee's that are assigned to the Snohomish County Jail comply with requirements of the Prison Rape Elimination Act of 2003 (PREA) and maintain zero tolerance toward all forms of sexual abuse and sexual harassment.

1. The requirements of the Prison Rape Elimination Act (PREA) shall apply to all Contractor Personnel having contact with Snohomish County Jail inmates. The Contractor's responsibilities under PREA include, but are not limited to:
 - 1.1. Familiarize Contractor Personnel with PREA law, relevant Washington State laws and Snohomish County policies regarding PREA and sexual misconduct.
 - 1.2. Ensure that anyone who may have contact with County inmates complete PREA/Sexual Misconduct training and comply with all PREA standards.
 - 1.3. All Contractor Personnel must certify that he/she has not:
 - 1.3.1. Engaged in sexual misconduct in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution as defined in 42 U.S.C. 1997;
 - 1.3.2. Been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or
 - 1.3.3. Been civilly or administratively adjudicated to have engaged in the activity described above.

- 1.4. The Contractor shall forward all completed sexual misconduct disclosure certifications to Snohomish County Corrections Bureau Counselor Supervisor.
 - 1.5. The Contractor will ensure that each Contractor Personnel submits to a criminal background check at least once every five years.
 - 1.6. The Contractor acknowledges and agrees that it has an affirmative duty to report any conviction or adjudication of a violation of any of the offenses listed in Section 29.b.1.3.:
2. The County will investigate any allegation of the Contractor's failure to conform with PREA standards and/or County sexual misconduct standards and policies.
 3. If the Contractor fails to conform with PREA and/or County's sexual misconduct standards and policies, the County's remedies shall include, but are not limited to:
 - 3.1. Removing Contractor Personnel from proximity to inmates;
 - 3.2. Removing the Contractor Personnel from contract work at the County;
 - 3.3. Reporting conduct to law enforcement and relevant licensing bodies, where applicable,
 - 3.4. Termination of this Agreement.
- c. City and County Jails Act, chapter 70.48 RCW.
30. Public Records Act. This Agreement and all public records associated with this Agreement shall be available from the County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County. If the Contractor considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Contractor and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The County shall not be liable to the Contractor for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

31. Interpretation. This Agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the parties. The language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either of the parties hereto. The captions and headings of this Agreement are used only for convenience and are not intended to affect the interpretation of the provisions of this Agreement. This Agreement shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.
32. Complete Agreement. This Agreement constitutes the entire understanding of the parties. Any written or verbal agreements that are not set forth herein or incorporated herein by reference are expressly excluded.
33. Conflicts between Attachments and Text. Should any conflicts exist between any attached exhibit or schedule and the text or main body of this Agreement, the text or main body of this Agreement shall prevail.
34. No Third Party Beneficiaries. The provisions of this Agreement are for the exclusive benefit of the County and the Contractor. This Agreement shall not be deemed to have conferred any rights, express or implied, upon any third parties.
35. Governing Law; Venue. This Agreement shall be governed by the laws of the State of Washington. The venue of any action arising out of this Agreement shall be in the Superior Court of the State of Washington, in and for Snohomish County.
36. Severability. Should any clause, phrase, sentence or paragraph of this agreement be declared invalid or void, the remaining provisions of this Agreement shall remain in full force and effect.
37. Authority. Each signatory to this Agreement represents that he or she has full and sufficient authority to execute this Agreement on behalf of the County or the Contractor, as the case may be, and that upon execution of this Agreement it shall constitute a binding obligation of the County or the Contractor, as the case may be.
38. Survival. Those provisions of this Agreement that by their sense and purpose should survive expiration or termination of the Agreement shall so survive.
39. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement.

Exhibit A

Contractor Personnel Rates for Snohomish County

CAN	\$33.60
LPN	\$51.52
RN	\$69.44
Nurse Practitioner	\$106.40
Dental Assistant	\$33.60
Dental Hygienist	\$69.44
Pharmacist	\$106.40
Pharmacy Tech	\$35.84
Medical Assistant	\$35.84
PMHNP	\$165.00
MHP	\$63.64

Time Calculation: The Contractor may account and invoice for Contractor Personnel time in fractional hours in increments of no less than fifteen (15) minutes.

Overtime: shall be 1 ½ (One and one half) times the listed rate and shall be charged for time in excess of forty (40) hours per week when all forty (40) hours upon which the overtime is based were worked at County location.

Holiday Rate: is 1 ½ (One and one half) times the listed rate for the hours worked Between 0000 and 2400 on the actual date of the holiday.

Holiday Rate applies to the following dates:

- New Year's Day
- M.L. King, Jr. Day
- Memorial Day
- Independence Day (July 4th)
- Veterans Day
- Labor Day
- Thanksgiving Day
- Christmas Day

Overtime and Holiday Rates may NOT be combined for additional payment. Time and a half is the highest rate that County will pay under the terms of this Agreement.

Overnight Stay: In addition to hourly rates set forth in this Exhibit A, if Contractor Personnel are required to stay overnight in order to perform the services required by this Agreement, the Contractor shall be compensated \$100 for each night's stay. If housing is provided by County, no compensation for overnight stays shall be required.