

	PROFESSIONAL SERVICES CONTRACT for Long Term Care for Behavioral Health and Property Management	HCA Contract Number: K Resulting from Solicitation Number (If applicable): Contractor/Vendor Contract Number:
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THIS CONTRACT is made by and between the Washington State Health Care Authority, (HCA) and _____, (Contractor).

CONTRACTOR NAME		CONTRACTOR DOING BUSINESS AS (DBA)		
CONTRACTOR ADDRESS	Street	City	State	Zip Code
CONTRACTOR CONTACT	CONTRACTOR TELEPHONE	CONTRACTOR E-MAIL ADDRESS		

Is Contractor a Subrecipient under this Contract?
 YES NO

HCA PROGRAM 90- to 180-day Civil Commitment Beds	HCA DIVISION/SECTION Division of Behavioral Health and Recovery
HCA CONTACT NAME AND TITLE 	HCA CONTACT ADDRESS Health Care Authority 626 8th Avenue SE PO Box 42730 Olympia, WA 98504-2730
HCA CONTACT TELEPHONE (360) 725-	HCA CONTACT E-MAIL ADDRESS

CONTRACT START DATE July 1, 2024	CONTRACT END DATE June 30, 2029	TOTAL MAXIMUM CONTRACT AMOUNT
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PURPOSE OF CONTRACT:
The purpose of this contract is to provide intensive mental health treatment services and long-term civil commitment for Adult Evaluation and Treatment services for individuals who are civilly committed, with an emphasis on psychiatric stabilization, rehabilitation, and community re-integration. Provider will also include property management and operations of Fern Lodge Behavioral Wellness at Stanwood.

The parties signing below warrant that they have read and understand this Contract and have authority to execute this Contract. This Contract will be binding on HCA only upon signature by both parties.

CONTRACTOR SIGNATURE	PRINTED NAME AND TITLE	DATE SIGNED
HCA SIGNATURE	PRINTED NAME AND TITLE	DATE SIGNED

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Attachments

Attachment 1: HCA RFP 2022HCA37
Attachment 2: Contractor Response to HCA RFP 2022HCA37

Schedules

Schedule A: Statement of Work

Exhibits

- Exhibit A: Core Provider Agreement
- Exhibit B: Sublease Agreement
- Exhibit C: Regional Service Area
- Exhibit D: Bed Tracker Monthly Reporting Form
- Exhibit E: 90- and 180- Day Civil Commitment Bed Rate Policy
- Exhibit F: Explanation of Non-Admittance
- Exhibit G: Explanation of Request to Transfer from Contracted 90- and 180- Day Bed to State Hospitals
- Exhibit H: Conditional Use Permit, Operating Conditions

Recitals

The State of Washington, acting by and through the Health Care Authority (HCA), issued a Request for Proposals (RFP) dated [date], (Attachment 1) for the purpose of purchasing intensive mental health treatment services and property management of one (1) sixteen (16) bed Evaluation and Treatment (E&T) facility in accordance with its authority under chapters 39.26 and 41.05 RCW.

[Contractor Name] submitted a timely Response to HCA's RFP#2022HCA37 (Attachment 2).

HCA evaluated all properly submitted Responses to the above-referenced RFP and has identified [Contractor Name] as the Apparent Successful Bidder.

HCA has determined that entering into a Contract with [Contractor Name] will meet HCA's needs and will be in the State's best interest.

THEREFORE, HCA awards to [Contractor Name] this Contract, the terms and conditions of which will govern Contractor's providing to HCA the services for intensive mental health treatment services and property management for one (1) secure sixteen (16) bed E&T at Fern Lodge Behavioral Wellness at Stanwood (Fern Lodge), and will serve adults aged 18 and over who have been civilly committed pursuant to RCW 71.05.

IN CONSIDERATION of the mutual promises as set forth in this Contract, the parties agree as follows:

1. **STATEMENT OF WORK (SOW)**

The Contractor will provide the services and staff as described in Schedule A: *Statement of Work*.

2. **DEFINITIONS**

"Admission" or "Admit" means a decision by a physician, physician assistant, or psychiatric advanced registered nurse practitioner that a person should be examined or treated as a patient in a hospital.

"Authorized Representative" means a person to whom signature authority has been delegated in writing acting within the limits of his/her authority.

"Behavioral Health Administrative Services Organization" or "BH-ASO" means any county authority or group of county authorities or other entity recognized by the state to administer behavioral health services in a defined region.

"Business Associate" means a Business Associate as defined in 45 C.F.R. § 160.103, who performs or assists in the performance of an activity for or on behalf of HCA, a Covered Entity, that involves the use or Disclosure of Protected Health Information (PHI). Any reference to Business Associate in this Contract includes Business Associate's employees, agents, officers, Subcontractors, third party contractors, volunteers, or directors.

“Business Days” means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

“Civil Commitment” means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting.

“Civil Conversion” means conversion of an individual who was initially detained through the criminal court system under RCW 10.77.086 or 10.77.088, whose charges were dismissed, and who were subsequently converted to involuntary commitment by a civil (not criminal) action for 90- to 180-days under the civil Involuntary Treatment Act (RCW 71.05).

“Community Hospital” means acute care hospitals as defined under chapter 70.41 RCW and freestanding psychiatric hospitals as defined under chapter 71.12 RCW.

“Centers for Medicare and Medicaid Services” or “CMS” means the federal office under the Secretary of the United States Department of Health and Human Services, responsible for the Medicare and Medicaid programs.

“C.F.R.” means the Code of Federal Regulations. All references in this Contract to C.F.R. chapters or sections include any successor, amended, or replacement regulation. The C.F.R. may be accessed at <http://www.eC.F.R.gov/cgi-bin/EC.F.R.?page=browse>.

“Client” means an individual who is eligible for or receiving services through HCA program(s).

“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 comprises both Category 3 and Category 4 Data as described in Attachment 4, Section 3 *Data Classification*, which includes, but is not limited to, Personal Information and Protected Health Information. For the purposes of this Contract, Confidential Information means the same as “Data”.

“Contract” means this Contract document and all schedules, exhibits, attachments, incorporated documents and amendments.

“Contract Administrator” means the HCA individual designated to receive legal notices and to administer, amend, or terminate this Contract.

“Contract Manager” means the individual identified on the cover page of this Contract who will provide oversight of the activities conducted under this Contract.

“Contractor” means [Contractor Name], its employees and agents. Contractor includes any firm, provider, organization, individual or other entity performing services under this Contract. It also includes any Subcontractor retained by Contractor as permitted under the terms of this Contract.

“Covered Entity” has the same meaning as defined in 45 C.F.R. 160.103.

“Data” means information produced, furnished, acquired, or used by Contractor in meeting requirements under this Contract.

“Discharge” means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order.

“Disclosure” means the release, transfer, provision of, access to, or divulging in any other manner of information outside the entity holding the information.

“Effective Date” means the first date this Contract is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this Contract.

“Electronic Protected Health Information” or “ePHI” means Protected Health Information that is transmitted by electronic media or maintained in any medium described in the definition of electronic media at 45 C.F.R. § 160.103.

Evaluation and Treatment Facility or “E&T” means any facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and timely an appropriate inpatient care to persons suffering from a mental disorder, and which is licensed or certified as such by the department.

“HCA Contract Manager” means the individual identified on the cover page of this Contract who will provide oversight of the Contractor’s activities conducted under this Contract.

“Health Care Authority” or “HCA” means the Washington State Health Care Authority, any division, section, office, unit or other entity of HCA, or any of the officers or other officials lawfully representing HCA.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, as amended by the American Recovery and Reinvestment Act of 2009 (“ARRA”), Sec. 13400 – 13424, H.R. 1 (2009) (HITECH Act). HIPAA includes the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.

“Individual(s)” means Patients admitted to the program under the Involuntary Treatment Act (RCW 71.05.280) for up to 90- or 180- days of inpatient psychiatric treatment, or longer. Under RCW 71.05.280, Individuals being treated may have a mental disorder, be gravely disabled, and/or present a likelihood of serious harm as defined in RCW 71.05.020 respectively).

Institution for Mental Diseases or “IMD” An institute for mental disease is defined in federal statute as a hospital, nursing facility, or other institution of more than sixteen (16) beds, that is primarily engaged in providing diagnosis, treatment, or care of people with mental diseases, including medical attention, nursing care, and related services.

“Licensed Service Provider” or “licensed” means an entity licensed according to this chapter or chapter [71.05](#) or [70.96A](#) RCW or an entity deemed to meet state minimum standards as a result of accreditation by a recognized behavioral health accrediting body recognized and having a current agreement with the department, or tribal attestation that meets state minimum standards, or persons licensed under chapter [18.57](#), [18.57A](#), [18.71](#), [18.71A](#), [18.83](#), or [18.79](#) RCW, as it applies to registered nurses and advanced registered nurse practitioners.

“Limited Data Set(s)” means a data set that meets the requirements of 45 C.F.R. §§ 164.514(e)(2) and 164.514(e)(3).

“Long Term Inpatient Care” means inpatient services for persons committed for, or voluntarily receiving intensive treatment for, periods of ninety days or greater under chapter [71.05](#) RCW.

"Long-term inpatient care" as used in this chapter does not include: (a) Services for individuals committed under chapter [71.05](#) RCW who are receiving services pursuant to a conditional release or a court-ordered less restrictive alternative to detention; or (b) services for individuals voluntarily receiving less restrictive alternative treatment on the grounds of the state hospital.

"Managed Care Organization" or "MCO" means an organization having a certificate of authority or certificate of registration from the Washington State Office of Insurance Commissioner that contracts with HCA under a comprehensive risk contract to provide prepaid health care services to HCA enrollees under HCA managed care programs.

"Medical Necessity" means a requested service which is reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent the worsening of conditions in the recipient that; endanger life, cause pain and suffering, result in illness or infirmity, threaten to cause or aggravate a handicap, or cause physical deformity or malfunction, and there is no other equally effective, more conservative, or substantially less costly course of treatment available or suitable for the person requesting service. "Course of treatment" may include mere observation or, where appropriate, no treatment at all.

"Mental Disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on a person's cognitive or volitional functions.

"Mental Health Professional" or "MHP" means a psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter.

"Mental Health Services" means all services provided by behavioral health organizations and other services provided by the state for persons who are mentally ill.

"Overpayment" means any payment or benefit to the Contractor in excess of that to which the Contractor is entitled by law, rule, or this Contract, including amounts in dispute.

"Permissible Use" means only those uses authorized in this Contract and as specifically defined herein.

"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 (including or excluding zip code), telephone numbers, social security numbers, driver's license numbers, credit card numbers, any other identifying numbers, and any financial identifiers.

"Program" Center for Behavioral Health at Stanwood, that serves adults aged 18 and over who have been involuntarily committed by a civil (not criminal) action for 90 or 180 days under the state's Involuntary Treatment Act per RCW 71.05.280.

"Proprietary Information" refers to any information which has commercial value and is either: (1) technical information, including patent, copyright, trade secret, and other proprietary information, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents, and formulae related to the current, future, and proposed products and services; or (2) non-technical information relating to products, including without limitation pricing, margins, merchandising plans and strategies, finances, financial and accounting data and information, suppliers, customers, customer lists, purchasing data, sales

and marketing plans, future business plans, and any other information which is proprietary and confidential. Contractor's Proprietary Information is information owned by Contractor to which Contractor claims a protectable interest under law.

"Regional Service Area" means a geographic region appropriate for effective health planning. The service area for Fern Lodge is the North Sound region which includes Whatcom, Skagit, Snohomish, Island and San Juan counties and is Exhibit C hereto.

"Response" means Contractor's Response to HCA's RFP #2022HCA37 for long-term civil commitment Adult Evaluation and Treatment Services and is Attachment 2 hereto.
Residential Treatment Facility or "RTF"- A Residential Treatment Facility are licensed, community-based facilities that provide twenty-four (24)-hour inpatient care for people with mental health disorders in a residential treatment setting. Also referred to as an Evaluation and Treatment Facility (E&T).

"RCW" means the Revised Code of Washington. All references in this Contract to RCW chapters or sections include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at: <http://apps.leg.wa.gov/rcw/>.

"Regulation" means any federal, state, or local regulation, rule, or ordinance.

"RFP" means the Request for Proposals used as the solicitation document to establish this Contract, including all its amendments and modifications and is Attachment 1 hereto.

"Statement of Work" or "SOW" means a detailed description of the work activities the Contractor is required to perform under the terms and conditions of this Contract, including the deliverables and timeline, and is Attachment 3 hereto.

"Subcontract" means any separate agreement or contract between the Contractor and an individual or entity ("Subcontractor") to perform any duties that give rise to a business requirement to access the Data that is the subject of this Contract.

"Subcontractor" means a person or entity that is not in the employment of the Contractor, who is performing all or part of the business activities under this Contract under a separate contract with Contractor. The term "Subcontractor" means subcontractor(s) of any tier.

"Trauma -Informed Care" TIC is a trauma informed approach to the delivery of behavioral health services that includes an understanding of trauma and an awareness of the impact it can have across settings, services and populations. TIC view trauma through an ecological and cultural lens and recognizes that context plays a significant role in how individuals perceive and process traumatic events, whether acute or chronic. TIC involved vigilance in anticipating and avoiding institutional processes and individual practices that are likely to retraumatize individuals who already have histories of trauma.

"USC" means the United States Code. All references in this Contract to USC chapters or sections will include any successor, amended, or replacement statute. The USC may be accessed at <http://uscode.house.gov/>.

"WAC" means the Washington Administrative Code. All references to WAC chapters or sections will include any successor, amended, or replacement regulation. Pertinent WACs may be accessed at: <http://app.leg.wa.gov/wac/>.

3. SPECIAL TERMS AND CONDITIONS

3.1 PERFORMANCE EXPECTATIONS

Expected performance under this Contract includes, but is not limited to, the following:

- 3.1.1 Knowledge of applicable state and federal laws and regulations pertaining to subject of contract;
- 3.1.2 Use of professional judgment;
- 3.1.3 Collaboration with HCA staff in Contractor's conduct of the services;
- 3.1.4 Conformance with HCA directions regarding the delivery of the services;
- 3.1.5 Timely, accurate and informed communications;
- 3.1.6 Regular completion and updating of project plans, reports, documentation and communications;
- 3.1.7 Regular, punctual attendance at all meetings; and
- 3.1.8 Provision of high-quality services.

Prior to payment of invoices, HCA will review and evaluate the performance of Contractor in accordance with Contract and these performance expectations and may withhold payment if expectations are not met or Contractor's performance is unsatisfactory.

3.2 TERM

- 3.2.1 The Contractor will have ramp up and start up activities, however, the initial term of the Contract will commence on February X, 2025, and continue through January X, 2030, unless terminated sooner as provided herein.
- 3.2.2 This Contract may be extended annually or in whatever time increments HCA deems appropriate, by mutually agreed amendment, for up to an additional five (5) years. No change in terms and conditions will be permitted during these extensions unless specifically agreed to in writing.
- 3.2.3 Work performed without a contract or amendment signed by the authorized representatives of both parties will be at the sole risk of the Contractor. HCA will not pay any costs incurred before a contract or any subsequent amendment(s) is fully executed.

3.3 COMPENSATION

- 3.3.1 The Maximum Compensation payable to Contractor for the performance of all things necessary for or incidental to the performance of work as set forth in

Schedule A: Statement of Work and includes allowable expenses. Compensation for satisfactory performance of the work will not exceed this amount unless the parties agree to a higher amount through an amendment.

- 3.3.2 Contractor's compensation for services rendered will be in accordance with *Schedule A: Statement of Work*, and Exhibit E, *90- and 180-day Civil Commitment Beds Rate Policy*.

3.4 INVOICE AND PAYMENT

This section only applies to monthly reimbursement for the Unoccupied Beds. All other expenses are reimbursed via ProviderOne.

- 3.4.1 Contractor must submit accurate A19 invoices to the following address for all amounts to be paid by HCA via e-mail to the HCA Contract Manager at LTCAuths@hca.wa.gov. Include the HCA Contract number in the subject line of the email and include the *Monthly Bed Tracker Reporting Form*, as referenced in Exhibit D, as an attachment that accompanies the invoice.
- 3.4.2 HCA will return incorrect or incomplete A19 invoices to the Contractor for correction and reissue. The Contract Number must appear on the A19 invoice, and correspondence relating to this Contract.
- 3.4.3 Payment will be considered timely if made by HCA within thirty (30) calendar days of receipt of properly completed invoices. Payment will be directly deposited in the bank account or sent to the address Contractor designated in its registration.
- 3.4.4 Upon expiration of the Contract, any claims for payment for costs due and payable under this Contract that are incurred prior to the expiration date must be submitted by the Contractor to HCA within sixty (60) calendar days after the Contract expiration date. HCA is under no obligation to pay any claims that are submitted sixty-one (61) or more calendar days after the Contract expiration date ("Belated Claims"). HCA will pay Belated Claims at its sole discretion, and any such potential payment is contingent upon the availability of funds.

3.5 CONTRACTOR AND HCA CONTRACT MANAGERS

- 3.5.1 Contractor's Contract Manager will have prime responsibility and final authority for the services provided under this Contract and be the principal point of contact for the HCA Contract Manager for all business matters, performance matters, and administrative activities.
- 3.5.2 HCA's Contract Manager is responsible for monitoring the Contractor's performance and will be the contact person for all communications regarding contract performance and deliverables.

3.5.3 The contact information provided below may be changed by written notice of the change (email acceptable) to the other party.

CONTRACTOR Contract Manager Information		Health Care Authority Contract Manager Information	
Name:		Name:	Margot Somers (Program CM) Kelly Palmer (Property Management CM)
Title:		Title:	Medical Program Specialist 3 Facilities Manager ERD
Address:		Address:	
Phone:		Phone:	
Email:		Email:	

3.6 LEGAL NOTICES

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law is effective only if it is in writing and signed by the applicable party, properly addressed, and delivered in person, via email, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid certified mail, return receipt requested, to the parties at the addresses provided in this section.

3.6.1 In the case of notice to the Contractor:

[Contractor Contact Information]

3.6.2 In the case of notice to HCA:

Attention: Contracts Administrator
Health Care Authority
Division of Legal Services
Post Office Box 42702
Olympia, WA 98504-2702
contracts@hca.wa.gov

3.6.3 Notices are effective upon receipt or four (4) Business Days after mailing, whichever is earlier.

3.6.4 The notice address and information provided above may be changed by written notice of the change given as provided above.

3.7 INCORPORATION OF DOCUMENTS AND ORDER OF PRECEDENCE

Each of the documents listed below is by this reference incorporated into this Contract. In the event of an inconsistency, the inconsistency will be resolved in the following order of precedence:

- 3.7.1 Applicable Federal and State of Washington statutes and regulations;
- 3.7.2 Recitals;
- 3.7.3 Special Terms and Conditions;
- 3.7.4 General Terms and Conditions;
- 3.7.5 Attachment 3(s): Statement(s) of Work;
- 3.7.6 Attachment B: Lease Agreement
- 3.7.7 Attachment 1: HCA RFP 2022HCA37;
- 3.7.8 Attachment 2: Contractor Response to HCA RFP 2022HCA37; and
- 3.7.9 Any other provision, term or material incorporated herein by reference or otherwise incorporated.

3.8 INSURANCE

Contractor must provide insurance coverage as set out in this section. The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of Contractor or Subcontractor, or agents of either, while performing under the terms of this Contract. Contractor must provide insurance coverage that is maintained in full force and effect during the term of this Contract, as follows:

- 3.8.1 Commercial General Liability Insurance Policy - Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1 million per occurrence/\$2 million general aggregate. Additionally, Contractor is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of Subcontracts.
- 3.8.2 Business Automobile Liability. In the event that services delivered pursuant to this Contract involve the use of vehicles, either owned, hired, or non-owned by the Contractor, automobile liability insurance is required covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability. The minimum limit for automobile liability is \$1,000,000 per

occurrence, using a Combined Single Limit for bodily injury and property damage.

3.8.3 Professional Liability Errors and Omissions – Provide a policy with coverage of not less than \$1 million per claim/\$2 million general aggregate.

3.8.4 Industrial Insurance Coverage

Prior to performing work under this Contract, Contractor must provide or purchase industrial insurance coverage for the Contractor's employees, as may be required of an "employer" as defined in Title 51 RCW and must maintain full compliance with Title 51 RCW during the course of this Contract.

3.8.5 The insurance required must be issued by an insurance company/ies authorized to do business within the state of Washington, and must name HCA and the state of Washington, its agents and employees as additional insureds under any Commercial General and/or Business Automobile Liability policy/ies. All policies must be primary to any other valid and collectable insurance. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Contract, Contractor must provide written notice of such to HCA within one (1) Business Day of Contractor's receipt of such notice. Failure to buy and maintain the required insurance may, at HCA's sole option, result in this Contract's termination.

3.8.6 Upon request, Contractor must submit to HCA a certificate of insurance that outlines the coverage and limits defined in the Insurance section. If a certificate of insurance is requested, Contractor must submit renewal certificates as appropriate during the term of the contract.

4. GENERAL TERMS AND CONDITIONS

4.1 ACCESS TO DATA

In compliance with RCW 39.26.180 (2) and federal rules, the Contractor must provide access to any data generated under this Contract to HCA, the Joint Legislative Audit and Review Committee, the State Auditor, and any other state or federal officials so authorized by law, rule, regulation, or agreement at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.

4.2 ACCESSIBILITY

4.2.1 REQUIREMENTS AND STANDARDS. Each Information and Communication Technology (ICT) product or service furnished under this Contract shall be accessible to and usable by individuals with disabilities in accordance with the Americans with Disabilities Act (ADA) and other applicable Federal and State

laws and policies, including OCIO Policy 188, *et seq.* For purposes of this clause, Contractor shall be considered in compliance with the ADA and other applicable Federal and State laws if it satisfies the requirements (including exceptions) specified in the regulations implementing Section 508 of the Rehabilitation Act, including the Web Content Accessibility Guidelines (WCAG) 2.1 Level AA Success Criteria and Conformance Requirements (2008), which are incorporated by reference, and the functional performance criteria.

- 4.2.2 DOCUMENTATION. Contractor shall maintain and retain, subject to review by HCA, full documentation of the measures taken to ensure compliance with the applicable requirements and functional performance criteria, including records of any testing or simulations conducted.
- 4.2.3 REMEDIATION. If Contractor claims that its products or services satisfy the applicable requirements and standards specified in Section 4.2.1 and it is later determined by HCA that any furnished product or service is not in compliance with such requirements and standards, HCA will promptly inform Contractor in writing of noncompliance. Contractor shall, at no additional cost to HCA, repair or replace the non-compliant products or services within the period specified by HCA. If the repair or replacement is not completed within the specified time, HCA may cancel the Contract, delivery, task order, or work order, or purchase line item without termination liabilities or have any necessary changes made or repairs performed by employees of HCA or by another contractor, and Contractor shall reimburse HCA for any expenses incurred thereby.
- 4.2.4 DEFINITION. Information and Communication Technology (ICT) means information technology and other equipment, systems, technologies, or processes, for which the principal function is the creation, manipulation, storage, display, receipt, or transmission of electronic data and information, as well as any associated content. Examples include computers and peripheral equipment; information kiosks and transaction machines; telecommunications equipment; customer premises equipment; multifunction office machines; software; applications; websites; videos; and electronic documents.
- 4.2.5 INDEMNIFICATION. Contractor agrees to indemnify and hold harmless HCA from any claim arising out of failure to comply with the aforesaid requirements.

4.3 ADVANCE PAYMENT PROHIBITED

No advance payment will be made for services furnished by the Contractor pursuant to this Contract.

4.4 AMENDMENTS

This Contract may be amended by mutual agreement of the parties. Such amendments will not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

4.5 ASSIGNMENT

4.5.1 Contractor may not assign or transfer all or any portion of this Contract or any of its rights hereunder, or delegate any of its duties hereunder, except delegations as set forth in Section 4.35, *Subcontracting*, without the prior written consent of HCA. Any permitted assignment will not operate to relieve Contractor of any of its duties and obligations hereunder, nor will such assignment affect any remedies available to HCA that may arise from any breach of the provisions of this Contract or warranties made herein, including but not limited to, rights of setoff. Any attempted assignment, transfer or delegation in contravention of this Subsection 4.5.1 of the Contract will be null and void.

4.5.2 HCA may assign this Contract to any public agency, commission, board, or the like, within the political boundaries of the State of Washington, with written notice of thirty (30) calendar days to Contractor.

4.5.3 This Contract will inure to the benefit of and be binding on the parties hereto and their permitted successors and assigns.

4.6 ATTORNEYS' FEES

In the event of litigation or other action brought to enforce the terms of this Contract, each party agrees to bear its own attorneys' fees and costs.

4.7 CHANGE IN STATUS

In the event of any substantive change in its legal status, organizational structure, or fiscal reporting responsibility, Contractor will notify HCA of the change. Contractor must provide notice as soon as practicable, but no later than thirty (30) calendar days after such a change takes effect.

4.8 CONFLICT OF INTEREST

Contractor represents and warrants that it has not undertaken and will not undertake any work with third parties that will conflict with the work Contractor is performing for HCA under this Contract. In case of doubt, before commencing such activities, Contractor shall review areas of possible conflict with HCA and obtain HCA's approval prior to commencing such activities.

4.9 CONFORMANCE

If any provision of this Contract is in conflict with or violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

4.10 COVERED INFORMATION PROTECTION

- 4.10.1 Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of HCA Proprietary Information or Confidential Information. For the purposes of this section, HCA Proprietary Information and Confidential Information are together referred to as Covered Information.
- 4.10.2 Nondisclosure and Non-Use Obligations. In the event of Disclosure of Covered Information to Contractor by HCA, Contractor agrees to: (1) hold Covered Information in strictest confidence and to take all reasonable precautions to protect such Covered Information (including, without limitation, all precautions the Contractor employs with respect to its own confidential materials); (2) not disclose any such Covered Information or any other information derived therefrom to any third party; (3) not make use of Covered Information for any purpose other than the performance of this Contract; (4) release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract; and (5) not release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without HCA's express written consent or as provided by law.
- 4.10.3 Contractors that come into contact with Protected Health Information may be required to enter into a Business Associate Agreement with HCA in compliance with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, as modified by the American Recovery and Reinvestment Act of 2009 ("ARRA"), Sec. 13400 – 13424, H.R. 1 (2009) (HITECH Act) (HIPAA).
- 4.10.4 HCA reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Contract. Violation of this section by Contractor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.
- 4.10.5 The obligations set forth in this Section will survive completion, cancellation, expiration, or termination of this Contract.

4.11 CONTRACTOR'S PROPRIETARY INFORMATION

Contractor acknowledges that HCA is subject to chapter 42.56 RCW, the Public Records Act, and that this Contract will be a public record as defined in chapter 42.56 RCW. Any

specific information that is claimed by Contractor to be Proprietary Information must be clearly identified as such by Contractor. To the extent consistent with chapter 42.56 RCW, HCA will maintain the confidentiality of Contractor's information in its possession that is marked Proprietary. If a public disclosure request is made to view Contractor's Proprietary Information, HCA will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, HCA will release the requested information on the date specified.

4.12 COVENANT AGAINST CONTINGENT FEES

Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for the purpose of securing business. HCA will have the right, in the event of breach of this clause by the Contractor, to annul this Contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

4.13 DEBARMENT

By signing this Contract, Contractor certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded in any Washington State or Federal department or agency from participating in transactions (debarred). Contractor agrees to include the above requirement in any and all Subcontracts into which it enters, and also agrees that it will not employ debarred individuals. Contractor must immediately notify HCA if, during the term of this Contract, Contractor becomes debarred. HCA may immediately terminate this Contract by providing Contractor written notice, if Contractor becomes debarred during the term hereof.

4.14 DISPUTES

The parties will use their best, good faith efforts to cooperatively resolve disputes and problems that arise in connection with this Contract. Both parties will continue without delay to carry out their respective responsibilities under this Contract while attempting to resolve any dispute. When a genuine dispute arises between HCA and the Contractor regarding the terms of this Contract or the responsibilities imposed herein and it cannot be resolved between the parties' Contract Managers, either party may initiate the following dispute resolution process.

- 4.14.1 The initiating party will reduce its description of the dispute to writing and deliver it to the responding party (email acceptable). The responding party will respond in writing within five (5) Business Days (email acceptable). If the initiating party is not satisfied with the response of the responding party, then the initiating party

may request that the HCA Director review the dispute. Any such request from the initiating party must be submitted in writing to the HCA Director within five (5) Business Days after receiving the response of the responding party. The HCA Director will have sole discretion in determining the procedural manner in which he or she will review the dispute. The HCA Director will inform the parties in writing within five (5) Business Days of the procedural manner in which he or she will review the dispute, including a timeframe in which he or she will issue a written decision.

4.14.2 A party's request for a dispute resolution must:

- A. Be in writing;
- B. Include a written description of the dispute;
- C. State the relative positions of the parties and the remedy sought; and
- D. State the Contract Number and the names and contact information for the parties.

4.14.3 This dispute resolution process constitutes the sole administrative remedy available under this Contract. The parties agree that this resolution process will precede any action in a judicial or quasi-judicial tribunal.

4.15 ENTIRE AGREEMENT

HCA and Contractor agree that the Contract is the complete and exclusive statement of the agreement between the parties relating to the subject matter of the Contract and supersedes all letters of intent or prior contracts, oral or written, between the parties relating to the subject matter of the Contract, except as provided in Section 4.43, *Warranties*.

4.16 FORCE MAJEURE

A party will not be liable for any failure of or delay in the performance of this Contract for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to acts of God, war, strikes or labor disputes, embargoes, government orders or any other force majeure event.

4.17 FUNDING WITHDRAWN, REDUCED, OR LIMITED

If HCA determines in its sole discretion that the funds it relied upon to establish this Contract have been withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding after the effective date of this contract but prior to the normal completion of this Contract, then HCA, at its sole discretion, may:

4.17.1 Terminate this Contract pursuant to Section 4.38.3, *Termination for Non-Allocation of Funds*;

- 4.17.2 Renegotiate the Contract under the revised funding conditions; or
- 4.17.3 Suspend Contractor's performance under the Contract upon five (5) Business Days' advance written notice to Contractor. HCA will use this option only when HCA determines that there is reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow Contractor's performance to be resumed prior to the normal completion date of this Contract.
- A. During the period of suspension of performance, each party will inform the other of any conditions that may reasonably affect the potential for resumption of performance.
 - B. When HCA determines in its sole discretion that the funding insufficiency is resolved, it will give Contractor written notice to resume performance. Upon the receipt of this notice, Contractor will provide written notice to HCA informing HCA whether it can resume performance and, if so, the date of resumption. For purposes of this subsection, "written notice" may include email.
 - C. If the Contractor's proposed resumption date is not acceptable to HCA and an acceptable date cannot be negotiated, HCA may terminate the contract by giving written notice to Contractor. The parties agree that the Contract will be terminated retroactive to the date of the notice of suspension. HCA will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the retroactive date of termination.

4.18 GOVERNING LAW

This Contract is governed in all respects by the laws of the state of Washington, without reference to conflict of law principles. The jurisdiction for any action hereunder is exclusively in the Superior Court for the state of Washington, and the venue of any action hereunder is in the Superior Court for Thurston County, Washington. Nothing in this Contract will be construed as a waiver by HCA of the State's immunity under the 11th Amendment to the United States Constitution.

4.19 HCA NETWORK SECURITY

Contractor agrees not to attach any Contractor-supplied computers, peripherals or software to the HCA Network without prior written authorization from HCA's Chief Information Officer. Unauthorized access to HCA networks and systems is a violation of HCA Policy and constitutes computer trespass in the first degree pursuant to RCW 9A.52.110. Violation of any of these laws or policies could result in termination of the contract and other penalties.

Contractor will have access to the HCA visitor Wi-Fi Internet connection while on site.

4.20 INDEMNIFICATION

Contractor must defend, indemnify, and save HCA harmless from and against all claims, including reasonable attorneys' fees resulting from such claims and breach of confidentiality obligations as contained herein, arising from intentional or negligent acts or omissions of Contractor, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents, in the performance of this Contract.

4.21 INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this Contract. Contractor and its employees or agents performing under this Contract are not employees or agents of HCA. Contractor will not hold itself out as or claim to be an officer or employee of HCA or of the State of Washington by reason hereof, nor will Contractor make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with Contractor.

4.22 LEGAL AND REGULATORY COMPLIANCE

- 4.22.1 During the term of this Contract, Contractor must comply with all local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this Contract and all other applicable federal, state and local laws, rules, and regulations.
- 4.22.2 While on the HCA premises, Contractor must comply with HCA operations and process standards and policies (e.g., ethics, Internet / email usage, data, network and building security, harassment, as applicable). HCA will make an electronic copy of all such policies available to Contractor.
- 4.22.3 Failure to comply with any provisions of this section may result in Contract termination.

4.23 LIMITATION OF AUTHORITY

Only the HCA Authorized Representative has the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Contract is not effective or binding unless made in writing and signed by the HCA Authorized Representative.

4.24 NO THIRD-PARTY BENEFICIARIES

HCA and Contractor are the only parties to this contract. Nothing in this Contract gives or is intended to give any benefit of this Contract to any third parties.

4.25 NONDISCRIMINATION

- 4.25.1 Nondiscrimination Requirement. During the term of this Contract, Contractor, including any subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3); Title VII of the Civil Rights Act, 42 U.S.C. §12101 et seq.; the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §12101 et seq., and 28 C.F.R. Part 35. In addition, Contractor, including any subcontractor, shall give written notice of this nondiscrimination requirement to any labor organizations with which Contractor, or subcontractor, has a collective bargaining or other agreement.
- 4.25.2 Obligation to Cooperate. Contractor, including any subcontractor, shall cooperate and comply with any Washington state agency investigation regarding any allegation that Contractor, including any subcontractor, has engaged in discrimination prohibited by this Contract pursuant to RCW 49.60.530(3).
- 4.25.3 Default. Notwithstanding any provision to the contrary, HCA may suspend Contractor, including any subcontractor, upon notice of a failure to participate and cooperate with any state agency investigation into alleged discrimination prohibited by this Contract, pursuant to RCW 49.60.530(3). Any such suspension will remain in place until HCA receives notification that Contractor, including any subcontractor, is cooperating with the investigating state agency. In the event Contractor, or subcontractor, is determined to have engaged in discrimination identified at RCW 49.60.530(3), HCA may terminate this Contract in whole or in part, and Contractor, subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. Contractor or subcontractor may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.
- 4.25.4 Remedies for Breach. Notwithstanding any provision to the contrary, in the event of Contract termination or suspension for engaging in discrimination, Contractor, subcontractor, or both, shall be liable for contract damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, which damages are distinct from any penalties imposed under Chapter 49.60, RCW. HCA shall have the right to deduct from any monies due to Contractor or subcontractor, or that thereafter become due, an amount for damages Contractor or subcontractor will owe HCA for default under this provision.

4.26 OVERPAYMENTS TO THE CONTRACTOR

In the event that overpayments or erroneous payments have been made to the Contractor under this Contract, HCA will provide written notice to Contractor and Contractor will refund the full amount to HCA within thirty (30) calendar days of the notice. If Contractor fails to make timely refund, HCA may charge Contractor one percent (1%) per month on the amount due, until paid in full. If the Contractor disagrees with HCA's actions under this section, then it may invoke the dispute resolution provisions of Section 4.14, *Disputes*.

4.27 PAY EQUITY

- 4.27.1 Contractor represents and warrants that, as required by Washington state law (Engrossed House Bill 1109, Sec. 211), during the term of this Contract, it agrees to equality among its workers by ensuring similarly employed individuals are compensated as equals. For purposes of this provision, employees are similarly employed if (i) the individuals work for Contractor, (ii) the performance of the job requires comparable skill, effort, and responsibility, and (iii) the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed.
- 4.27.2 Contractor may allow differentials in compensation for its workers based in good faith on any of the following: (i) a seniority system; (ii) a merit system; (iii) a system that measures earnings by quantity or quality of production; (iv) bona fide job-related factor(s); or (v) a bona fide regional difference in compensation levels.
- 4.27.3 Bona fide job-related factor(s)” may include, but not be limited to, education, training, or experience, that is: (i) consistent with business necessity; (ii) not based on or derived from a gender-based differential; and (iii) accounts for the entire differential.
- 4.27.4 A “bona fide regional difference in compensation level” must be (i) consistent with business necessity; (ii) not based on or derived from a gender-based differential; and (iii) account for the entire differential.
- 4.27.5 Notwithstanding any provision to the contrary, upon breach of warranty and Contractor’s failure to provide satisfactory evidence of compliance within thirty (30) Days of HCA’s request for such evidence, HCA may suspend or terminate this Contract.

4.28 PUBLICITY

- 4.28.1 The award of this Contract to Contractor is not in any way an endorsement of Contractor or Contractor’s Services by HCA and must not be so construed by Contractor in any advertising or other publicity materials.
- 4.28.2 Contractor agrees to submit to HCA, all advertising, sales promotion, and other publicity materials relating to this Contract or any Service furnished by Contractor in which HCA’s name is mentioned, language is used, or Internet links are provided from which the connection of HCA’s name with Contractor’s Services may, in HCA’s judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, marketing, sales promotion materials, publicity or the like through print, voice, the Web, and other communication media in existence or hereinafter developed without the express written consent of HCA prior to such use.

4.29 RECORDS AND DOCUMENT REVIEW

- 4.29.1 The Contractor must maintain books, records, documents, magnetic media, receipts, invoices or other evidence relating to this Contract and the performance of the services rendered, along with accounting procedures and practices, all of which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. At no additional cost, these records, including materials generated under this Contract, are subject at all reasonable times to inspection, review, or audit by HCA, the Office of the State Auditor, and state and federal officials so authorized by law, rule, regulation, or agreement [See 42 USC 1396a(a)(27)(B); 42 USC 1396a(a)(37)(B); 42 USC 1396a(a)(42)(A); 42 C.F.R. 431, Subpart Q; and 42 C.F.R. 447.202].
- 4.29.2 The Contractor must retain such records for a period of six (6) years after the date of final payment under this Contract.
- 4.29.3 If any litigation, claim or audit is started before the expiration of the six (6) year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved.

4.30 REMEDIES NON-EXCLUSIVE

The remedies provided in this Contract are not exclusive but are in addition to all other remedies available under law.

4.31 RIGHT OF INSPECTION

The Contractor must provide right of access to its facilities to HCA, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.

4.32 RIGHTS IN DATA/OWNERSHIP

- 4.32.1 HCA and Contractor agree that all data and work products produced pursuant to this Contract (collectively "Work Product") will be considered a "*work made for hire*" as defined under the U.S. Copyright Act of 1976 and Title 17 U.S.C. §101 *et seq*, and will be owned by HCA. Contractor is hereby commissioned to create the Work Product. Work Product includes, but is not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.

- 4.32.2 If for any reason the Work Product would not be considered a “*work made for hire*” under applicable law, Contractor assigns and transfers to HCA, the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.
- 4.32.3 Contractor will execute all documents and perform such other proper acts as HCA may deem necessary to secure for HCA the rights pursuant to this section.
- 4.32.4 Contractor will not use or in any manner disseminate any Work Product to any third party, or represent in any way Contractor ownership of any Work Product, without the prior written permission of HCA. Contractor will take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors will not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.
- 4.32.5 Material that is delivered under this Contract, but that does not originate therefrom (“Preexisting Material”), must be transferred to HCA with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such Preexisting Material, and to authorize others to do so. Contractor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Preexisting Material. HCA will have the right to modify or remove any restrictive markings placed upon the Preexisting Material by Contractor.
- 4.32.6 Contractor must identify all Preexisting Material when it is delivered under this Contract and must advise HCA of any and all known or potential infringements of publicity, privacy or of intellectual property affecting any Preexisting Material at the time of delivery of such Preexisting Material. Contractor must provide HCA with prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Contractor with respect to any Preexisting Material delivered under this Contract.

4.33 SEVERABILITY

If any provision of this Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity will not affect the other provisions or applications of this Contract that can be given effect without the invalid provision, and to this end the provisions or application of this Contract are declared severable.

4.34 SITE SECURITY

While on HCA premises, Contractor, its agents, employees, or Subcontractors must conform in all respects with physical, fire or other security policies or regulations. Failure to comply with these regulations may be grounds for revoking or suspending security access to these facilities. HCA reserves the right and authority to immediately revoke

security access to Contractor staff for any real or threatened breach of this provision. Upon reassignment or termination of any Contractor staff, Contractor agrees to promptly notify HCA.

4.35 SUBCONTRACTING

- 4.35.1 Neither Contractor, nor any Subcontractors, may enter into Subcontracts for any of the work contemplated under this Contract without prior written approval of HCA. HCA has sole discretion to determine whether or not to approve any such Subcontract. In no event will the existence of the Subcontract operate to release or reduce the liability of Contractor to HCA for any breach in the performance of Contractor's duties.
- 4.35.2 Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Contract are included in any Subcontracts.
- 4.35.3 If at any time during the progress of the work HCA determines in its sole judgment that any Subcontractor is incompetent or undesirable, HCA will notify Contractor, and Contractor must take immediate steps to terminate the Subcontractor's involvement in the work.
- 4.35.4 The rejection or approval by the HCA of any Subcontractor or the termination of a Subcontractor will not relieve Contractor of any of its responsibilities under the Contract, nor be the basis for additional charges to HCA.
- 4.35.5 HCA has no contractual obligations to any Subcontractor or vendor under contract to the Contractor. Contractor is fully responsible for all contractual obligations, financial or otherwise, to its Subcontractors.
- 4.35.6 Contractor is responsible for completing a new vendor registration in Access Equity. Access Equity is a secure business diversity management system online at <https://omwbe.diversitycompliance.com/>.
- 4.35.7 Confidential Information (e.g., Tax ID, etc.) will not be published in Access Equity. Contractors that have previously registered with B2Gnow for any public entity, must verify and ensure that Access Equity contains their most up-to-date registration information. Contractors can navigate online to Access Equity at <https://omwbe.diversitycompliance.com/> or through a direct link on the Office of Minority and Women's Business Enterprises (OMWBE) website at: <https://omwbe.wa.gov/>.
- 4.35.8 During the contract term, the Contractor will report monthly payments to all relevant Subcontractors in Access Equity. Monthly reporting information includes total dollar payments made to relevant Subcontractors, payment dates, and any additional information required to verify payment to Subcontractors. The Contractor will enter this payment information into Access Equity, and the

Subcontractors will verify this payment information in the system. This requirement applies to both Contractors and Subcontractors. Online training is available through Access Equity.

4.36 SURVIVAL

The terms and conditions contained in this Contract that, by their sense and context, are intended to survive the completion, cancellation, termination, or expiration of the Contract will survive. In addition, the terms of the sections titled *Covered Information Protection, Contractor's Proprietary Information, Disputes, Overpayments to Contractor, Publicity, Records and Documents Review, Rights in Data/Ownership, and Subsection 13, Survival*, will survive the termination of this Contract. The right of HCA to recover any overpayments will also survive the termination of this Contract.

4.37 TAXES

HCA will pay sales or use taxes, if any, imposed on the services acquired hereunder. Contractor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property. HCA, as an agency of Washington State government, is exempt from property tax.

Contractor must complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

4.38 TERMINATION

4.38.1 Termination for Default

In the event HCA determines that Contractor has failed to comply with the terms and conditions of this Contract, HCA has the right to suspend or terminate this Contract. HCA will notify Contractor in writing of the need to take corrective action. If corrective action is not taken within five (5) Business Days, or other time period agreed to in writing by both parties in accordance with Section 7 in the Schedule A: Statement of Work, the Contract may be terminated. HCA reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by Contractor or a decision by HCA to terminate the Contract.

In the event of termination for default, Contractor will be liable for damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or cover Contract and all administrative costs directly related to the replacement Contract, e.g., cost of the competitive bidding, mailing, advertising, and staff time.

If it is determined that Contractor: (i) was not in default, or (ii) its failure to perform was outside of its control, fault or negligence, the termination will be deemed a "Termination for Convenience."

4.38.2 Termination for Convenience

When, at HCA's sole discretion, it is in the best interest of the State, HCA may terminate this Contract in whole or in part by providing ninety (90) calendar days' written notice prior to the effective date of such termination. If this Contract is so terminated, HCA will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. No penalty will accrue to HCA in the event the termination option in this section is exercised.

4.38.3 Termination for Nonallocation of Funds

If funds are not allocated to continue this Contract in any future period, HCA may immediately terminate this Contract by providing written notice to the Contractor. The termination will be effective on the date specified in the termination notice. HCA will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. HCA agrees to notify Contractor of such nonallocation at the earliest possible time. No penalty will accrue to HCA in the event the termination option in this section is exercised.

4.38.4 Termination for Withdrawal of Authority

In the event that the authority of HCA to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, HCA may immediately terminate this Contract by providing written notice to the Contractor. The termination will be effective on the date specified in the termination notice. HCA will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. HCA agrees to notify Contractor of such withdrawal of authority at the earliest possible time. No penalty will accrue to HCA in the event the termination option in this section is exercised.

4.38.5 Termination for Conflict of Interest

HCA may terminate this Contract by written notice to the Contractor if HCA determines, after due notice and examination, that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, HCA will be entitled to pursue the same remedies against the Contractor as it could pursue in the event Contractor breaches the contract.

4.39 TERMINATION PROCEDURES

- 4.39.1 Upon termination of this Contract, HCA, in addition to any other rights provided in this Contract, may require Contractor to deliver to HCA any property specifically produced or acquired for the performance of such part of this Contract as has been terminated.
- 4.39.2 Upon termination of this Contract for any reason, HCA will work closely with the Contractor for discharging any Individuals.
- 4.39.3 Upon receiving notice of the termination of the Contract, HCA will cease payments for unoccupied beds, should the unoccupied beds is applicable during time of termination.
- 4.39.4 HCA shall pay the Contractor for all services provide to all of such discharged Individuals to the date of discharge, which payment for each discharged Individual shall be made to Contractor no later than thirty (30) days after the discharge date of each such Individual. Discharge dates for all such Individuals shall be completed by HCA no later than thirty (30) days after the termination of the Contract.
- 4.39.5 HCA will pay Contractor the agreed-upon price, if separately stated, for completed work and services accepted by HCA and the amount agreed upon by the Contractor and HCA for (i) completed work and services for which no separate price is stated; (ii) partially completed work and services; (iii) other property or services that are accepted by HCA; and (iv) the protection and preservation of property, unless the termination is for default, in which case HCA will determine the extent of the liability. Failure to agree with such determination will be a dispute within the meaning of Section 4.14, *Disputes*. HCA may withhold from any amounts due the Contractor such sum as HCA determines to be necessary to protect HCA against potential loss or liability.
- 4.39.6 After receipt of notice of termination, and except as otherwise directed by HCA, Contractor must:
- A. Stop work under the Contract on the date of, and to the extent specified in, the notice;
 - B. Place no further orders or Subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract that is not terminated;
 - C. Assign to HCA, in the manner, at the times, and to the extent directed by HCA, all the rights, title, and interest of the Contractor under the orders and Subcontracts so terminated; in which case HCA has the right, at its

discretion, to settle or pay any or all claims arising out of the termination of such orders and Subcontracts;

- D. Settle all outstanding liabilities and all claims arising out of such termination of orders and Subcontracts, with the approval or ratification of HCA to the extent HCA may require, which approval or ratification will be final for all the purposes of this clause;
- E. Transfer title to and deliver as directed by HCA any property required to be furnished to HCA;
- F. Complete performance of any part of the work that was not terminated by HCA; and
- G. Take such action as may be necessary, or as HCA may direct, for the protection and preservation of the records related to this Contract that are in the possession of the Contractor and in which HCA has or may acquire an interest;
- H. Contractor will provide HCA with transition and discharge plan for Individuals working closely with applicable with managed care organizations and BHASO;
- I. Contractor will not admit any new Individuals after receipt of termination notice without the prior approval of HCA;
- J. Contractor will continue to manage the facility and property during transition planning.
- K. Contractor will continue to abide by the conditions of the Conditional Use Permit during the transition planning.
- L. Contractor is required to ensure individuals receiving treatment will have safe and appropriate discharge.
- M. Contractor will ensure and attest the facility is in the same condition as it was when it was received, free of any needed substantial repairs and/or alterations and will ensure all required maintenance of the facility and grounds are maintained to the standards as contained by this Contract.

4.40 TRANSITION OBLIGATIONS

Contractor must provide for reasonable transition assistance requested by HCA to allow for the expired or terminated Contract, in whole or in part, to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to HCA or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this Contract, except for those terms or conditions that do not reasonably apply to such transition assistance.

4.41 TREATMENT OF ASSETS

4.41.1 Ownership

HCA shall retain title to all property furnished by HCA to Contractor under this Contract. Title to all property furnished by Contractor, for the cost of which the Contractor is entitled to reimbursement as a direct item of cost under this Contract, excluding intellectual property provided by Contractor, shall pass to and vest in HCA upon delivery of such property by Contractor. Title to other property, the cost of which is reimbursable to Contractor under this Contract, shall pass to and vest in HCA upon (i) issuance for use of such property in the performance of this Contract, (ii) commencement of use of such property in the performance of this Contract, or (iii) reimbursement of the cost thereof by HCA, in whole or in part, whichever occurs first.

4.41.2 Use of Property

Any property furnished to Contractor shall, unless otherwise provided herein, or approved in writing by the HCA Contract Manager, be used only for the performance of and subject to the terms of this Contract. Contractor's use of the equipment shall be subject to HCA's security, administrative, and other requirements.

4.41.3 Damage to Property

Contractor shall continuously protect and be responsible for any loss, destruction, or damage to property which results from or is caused by Contractor's acts or omissions. Contractor shall be liable to HCA for costs of repair or replacement for property or equipment that has been lost, destroyed, or damaged by Contractor or Contractor's employees, agents, or Subcontractors. Cost of replacement shall be the current market value of the property and equipment on the date of the loss as determined by HCA.

4.41.4 Notice of Damage

Upon the loss of, destruction of, or damage to any of the property, Contractor shall notify the HCA Contract Manager thereof within one (1) Business Day and shall take all reasonable steps to protect that property from further damage.

4.41.5 Surrender of Property

Contractor will ensure that the property will be returned to HCA in like condition to that in which it was furnished to Contractor, reasonable wear and tear expected. Contractor shall surrender to HCA all property upon the earlier of expiration or termination of this Contract.

4.42 WAIVER

Waiver of any breach of any term or condition of this Contract will not be deemed a waiver of any prior or subsequent breach or default. No term or condition of this Contract will be held to be waived, modified, or deleted except by a written instrument signed by the parties. Only the HCA Authorized Representative has the authority to waive any term or condition of this Contract on behalf of HCA.

4.43 WARRANTIES

- 4.43.1 Contractor represents and warrants that its services will be of professional quality and will be rendered in accordance with prevailing professional standards and ethics. Services performed by Contractor under this Contract shall be conducted in a manner consistent with the level of care and skill standard to the industry. Contractor agrees to immediately re-perform any services that are not in compliance with this representation and warranty at no cost to HCA.
- 4.43.2 Contractor represents and warrants that it will comply with all applicable local, State, and federal licensing, accreditation and registration requirements and standards necessary in the performance of the Services.
- 4.43.3 EXECUTIVE ORDER 18-03 – WORKERS’ RIGHTS (MANDATORY INDIVIDUAL ARBITRATION). Contractor represents and warrants that Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that, during the term of this Contract, Contractor shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.
- 4.43.4 Any written commitment by Contractor within the scope of this Contract will be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and will render Contractor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor to HCA or contained in any Contractor publications, or descriptions of services in written or other communication medium, used to influence HCA to enter into this Contract.

ATTACHMENT 1: HCA RFP 2022HCA37

RFP 2022HCA37 dated _____, including any and all amendments, is an integral part of this Contract and is incorporated herein by reference.

ATTACHMENT 2: CONTRACTOR RESPONSE TO HCA RFP 2022HCA37

Contractor's response to RFP 2022HCA37, dated _____, is an integral part of this Contract and is incorporated herein reference.

SCHEDULE A: STATEMENT OF WORK

The Contractor will provide inpatient mental health treatment and property management services at the Fern Lodge Behavioral Wellness at Stanwood (Fern Lodge), a secure sixteen (16) bed Evaluation & Treatment (E&T) facility and will serve adults aged 18 and over who have been involuntarily committed by civil action.

1) REQUIREMENTS

- a) **Pre-Program Activities.** The Contractor will adhere to the pre-program schedule as listed in Schedule B. If Contractor anticipates any delays, Contractor will notify HCA and participate in technical assistance.
- b) **Regulatory Requirements.** The Contractor will comply with all applicable federal, state, and local laws and regulations. The Contractor will at all times cooperate with the licensing authorities of the State of Washington and will facilitate on-site visits by reviewers as designated in [WAC 246-337](#) or successor. Contractual, state and federal requirements will be monitored by HCA Contract Manager and designated representatives of HCA. The Contractor will:
 - i) Maintain a Department of Health license as set forth in WAC [246-337](#) or its successors.
 - ii) Meet Evaluation and Treatment certification standards in WAC [246-337](#) and WAC [246-341](#) or its successors.
 - iii) Ensure all federal Medicaid standards are met for Inpatient Psychiatric Services for individuals over age 18 in Psychiatric Facilities or Programs as outlined in [42 CFR § 424.14](#).
 - iv) Meet requirements for individualized discharge plan as set forth in RCW [71.05.365](#). Discharge must occur within 14 days of determination that the individual no longer requires active psychiatric treatment at an inpatient level of care.
 - v) Meet RCW [71.05.217](#) Rights of involuntarily detained persons.
- c) **Target Population.** The target population that will be served by Fern Lodge will be adults, ages 18 and older, who have been involuntarily committed by a civil action the Involuntary Treatment Act and RCW 71.05. Determination of appropriateness and priority of admit is determined using the below criteria:
 - i) Individuals who are members of the Tulalip Tribes of Washington will receive preference for admittance at Fern Lodge.
 - ii) Individuals in the Regional Service Area that require 90- to 180- civil commitments. Regional Service Area map is found in Exhibit C: Contractor's Regional Service Area Map.
 - iii) Transfers from an acute care hospital setting where individuals have received a 90- or 180-day order for mental health treatment, are on a single bed certification and require a Long-Term placement.
 - iv) Admissions from outside of the Contractor's Regional Service Area who are awaiting an LTCC bed.

2) EVALUATION AND TREATMENT (E&T) SERVICES

Contractor will provide clinical services that are in accordance with the Substance Abuse and Mental Health Service's (SAMHSA) recovery principles, a Trauma Informed Care (TIC) approach, and commitment to culturally linguistically appropriate treatment.

a) Admissions

Contractor will evaluate Individual's behavioral health history and current symptom presentation to determine whether the program services can meet the Individual's needs. The process for admissions includes:

- i) Individuals 18 and older who have received a long-term civil commitment order for the treatment of a mental health disorder.
- ii) Full medical and physical health history will be assessed within twenty-four (24) hours of admission and conducted by personnel licensed to provide such an assessment. Assessment must include at minimum medical history, current medications, allergies, substance use and abuse history, health issues affecting the safety for admission, pain, nutrition, and dental treatment, etc.
- iii) Admission screening will be conducted by a licensed nurse and will include medical clearance, diagnostic testing, review of vital signs, basic neurological screening, substance use history, medication use, etc. to ensure Individuals meet legal and program requirements for admission.
- iv) Contractor will participate in admission protocol as defined in Section 1(b) Target Population.
- v) Exclusionary criteria includes but is not limited to:
 - (1) Any Individual falling outside the medically determined parameters of the facility will be referred to the hospital emergency room for further assessment and treatment. The Individual will be referred back to the Facility when their medical condition returns within allowable parameters;
 - (2) Sexual violent predators being detained pursuant to RCW 71.09 will not be served;
 - (3) Any individual who requires detoxification from alcohol and/or other drugs shall be excluded from admission, until after detoxification from substances has occurred;
 - (4) Individuals with a primary diagnosis of substance use; and
 - (5) Severe developmental disabilities or organic brain syndromes that would preclude participation in emergency procedures shall be excluded from admission.
- vi) Contractor will not admit any new client for a voluntary or short-term involuntary treatment order who was not established as a long-term care client immediately preceding the new admission.
 - (1) Instances of short-term admissions may occur when:
 - (a) An Individual who is admitted on a long-term stay is discharged by order of the court, however, the Contractor does not believe the person is safe for discharge. In this case, the Contractor may request a new DCR evaluation which may lead to a short-term involuntary treatment order and thus, a new "technical" admission to Fern Lodge;

- (b) An Individual on a long-term civil commitment is determined to be clinically appropriate for voluntary treatment, and ongoing voluntary treatment is determined necessary for the Individual;
- (2) In these circumstances the Contractor will grant time limited admission for those Individuals who are considered outside of the target population. The Contractor will then be required to find an alternative placement for these Individuals within an appropriate facility.
- (3) Contractor will not be eligible to receive payment from HCA for time limited short-term or voluntary admissions and will need to seek compensation from the Individual's insurance provider, e.g. MCO or BH-ASO.
 - (a) The Contractor is encouraged to enter into contractual arrangements with MCO and/or BH-ASO.
- vii) Contractor will comply with RCW 71.05 including petitioning for further detention as necessary and providing notifications. This process includes:
 - (1) Record review
 - (2) An interview with the Individual;
 - (3) Direct observation;
 - (4) Preparation and filing a petition with the court; and
 - (5) Court testimony in support of the petition.
- viii) Contractor will comply with any further direction from the Snohomish County Superior Court.

b) Treatment Program and Services

Treatment program and services will be provided with an emphasis on promoting wellness and recovery and be tied to the appropriate level of services based on risk factors. The program will be trauma-informed in its policies and procedures.

- i) Contractor will treat Individuals and provide a program utilizing a recovery-oriented program that instills hope, fosters self-determination and self-responsibility, builds on strengths and supports Individual's connection to family, friends and informal support to include:
 - (1) Review the [90- and 180- day Civil Commitment Best Practices Toolkit](#) for Community Hospitals and Freestanding Evaluation and Treatment Centers for clinical evidence-based and best practices facility set up and programming.
 - (2) Assessment and psychiatric evaluation for admissions to include:
 - (a) Documentation of the medical necessity for the admission;
 - (b) Completion of a history and physical;
 - (c) Completion of a psychosocial evaluations;
 - (d) Formulation of a diagnosis and identification of problems to be addressed during the stay;
 - (e) Assessment of the need for referral to other treatment, e.g. substance use disorder treatment or medical treatment; and
 - (f) Consideration of the need for psychiatric medication.

- (3) Psychiatric medication management and medication monitoring
 - (4) Nursing care-assistance in daily activities of living, daily vitals, room checks, physical assessment, supervision of individuals during grooming, milieu management, medication administration, IVs, and wound care.
 - (5) Individual and group or family therapies including trauma-informed treatment, cognitive behavioral approaches, experiential and psychoeducation groups, and process and skill building groups.
- ii) Contractor will have treatment team members who will have contact with Individuals regularly for observation and evaluation. Contractor will make recommendations about the continued commitment status of the Individual and consider adjustments to the plan of care and plan for discharge from the facility and aftercare.
 - iii) Contractor will ensure the Facility is staffed, at minimum, at a ratio of at least one (1) credentialed direct service staff member four (4) Individuals.
 - iv) Contractor will ensure medical issues will be addressed by in-house or contracted medical staff. Medical and dental issues requiring more than routine care will be referred to physicians and dentists who have agreed to provide services to this population.
 - (1) Contractor will ensure Facility staff will accompany Individuals to outside appointments to ensure connection to services, coordination of care, and safe conditions.
 - (2) Contractor will utilize program vehicles to be used for transportation to and from appointments, except for cases where ambulance transportation is required.
 - v) Contractor will determine whether the Individual is under the jurisdiction of DOC in accordance with RCW 71.05.445.
 - vi) Contractor must provide activities for Individuals including:
 - (1) Formal therapy:
 - (a) Assessments and exams
 - (b) Treatment planning
 - (c) Daily Community Meetings
 - (d) Treatment
 - (e) Individual therapy
 - (f) Group therapy
 - (g) Medication management
 - (h) Consultation/collateral contact
 - (i) Discharge planning
 - (j) Peer counseling
 - (k) Access to recovery groups
 - (l) Access to religious services and representatives

- (2) Visitation by families and other approved visitors
 - (3) Recreation
 - (a) Sedentary leisure, such as board games, books, art, and audio/video
 - (b) Active leisure, such as games, exercise
 - (c) Exercise, including space for large body movement
 - (d) Decompression/quiet time
 - (e) "Air Breaks," regularly scheduled time to allow access to the fenced outside area of the unit for fresh air and exposure to outside elements and natural lighting
 - (f) Free time
 - (4) Daily Living Activities:
 - (a) Meals/Snacks – meals will be served three (3) times daily in the dining area/lounge, snacks will be served in the day room
 - (b) Grooming: within the grooming station or individual bathrooms/bedrooms
 - (c) Medications will be dispensed in the lounge or near the medication room
 - (d) Individual's laundry: under staff supervision, individuals will do their own laundry individually in the individual laundry room
 - (e) Sleep and changing clothing: individual bedrooms
- vii) Contractor will provide culturally and linguistically appropriate services to Individuals to include:
- (1) Translation services for non-English speaking Individuals;
 - (2) Understanding of needs for American Indian and Alaska Native (AI/AN) populations to include Indian Health Service, tribal governments, and urban Indian health programs to serve these Individuals' needs;
 - (3) Cultural, ethnical, and racial minority populations;
 - (4) Lesbian, gay, bi-sexual, transgender, and questioning (LGBTQ+) Individuals; and
 - (5) Deaf and hard of hearing Individual's who require an American Sign Language interpretation.
- viii) Contractor will provide additional services to support operations as required to run program services to include:
- (1) Medical services;
 - (2) Meal services;
 - (3) Prescription services;
 - (4) Laundry and custodial services;

- (5) Transportation beyond the need of Facility vehicle; and
- (6) Property management services beyond what Contractor offers in-house.

c) Discharge Planning

Contractor will be proactive in creating a robust individualized discharged plan. Contractor will evaluate outcomes and promote linkage for outpatient and other levels of care as part of discharge planning. Contractor will collaborate with Individuals to develop a comprehensive discharge plan that will address the following:

- i) Ongoing Mental health treatment;
 - ii) Life skills to foster success in the community;
 - iii) Housing or placement needs;
 - (1) Refer to Housing And Recovery Peer Services (HARPS)
 - (2) Refer to Governor's Opportunity Supportive Housing (GOSH)
 - (3) Contractor must make determination about Program for Assertive Community Treatment (PACT) referral.
 - (4) Refer to Home and Community Services (HCS)
 - iv) Connection with insurance or financial benefits;
 - v) Substance use services referral/follow-up when indicated;
 - vi) Other health needs;
 - vii) Medication supply; and
 - viii) Transportation
 - (1) Contractor will comply with the CUP conditions to ensure Individual's will not be discharged from the Facility as a pedestrian;
 - (2) Contractor will work closely with Individuals to facilitate transportation from the Facility to the Individual's next residence.
 - ix) When an Individual requires, Contractor will consult with Individual's primary care provider and schedule follow up appointments on an outpatient basis as part of the discharge plan, upon discharge from the Facility.
 - x) Contractor will communicate regularly with MCOs, BH ASOs, state hospital liaisons and all relevant professional for assistance in discharge planning, in alignment with RCW [71.05.365](#).
 - xi) Work with assigned [Peer Bridger](#) for each individual admitted to your facility. The Peer Bridger program is Legislative directed ([2ESHB 2376](#)) to promote continuity of service as individuals return to their communities.
 - xii) Throughout the discharge planning process of those under DOC jurisdiction, the Contractor will work collaboratively with the DOC.
- d) Additional Program Requirements**
- i) Contractor will maintain written procedures for notification of the public in case of elopement. Written procedures will be updated every three (3) years.

- ii) Contractor will maintain a emergency management plan to ensure program and facility maintenance continuance in emergency events. Emergency management plan will include:
 - (1) Emergency Management Plan;
 - (2) Campus Emergency Operations Plan;
 - (3) Continuity of Operations Plan; and
 - (4) Disaster recovery plan

e) **Property Management**

Contractor will provide around-the-clock property management services for facility repairs and maintenance. Maintenance and repairs will include scheduled maintenance items such as regular window washings, lawn maintenance, air filter replacements, etc.; and as-need repairs and maintenance such as snow removal, parking lot striping, plumbing repair and replacement, etc. A full description of property maintenance services requirements is incorporated in the property sublease agreement between HCA and the Contractor in Exhibit B: Sublease Agreement.

3) HCA Responsibilities

HCA is responsible for administering the state's Involuntary Treatment Act (ITA), and therefore has an interest in ensuring that Contractor is providing Individuals with psychiatric treatment in accordance with the ITA per chapter RCW 71.05.

- a) HCA, Office of the State Auditor, or any of their duly authorized representatives reserves the right to conduct quality reviews which may include the following:
 - i) Onsite visits, announced (24-hour notice) and unannounced to include but is not limited to:
 - (1) Facility layout;
 - (2) Surveys, audits, and review of compliance with licensing and certification requirements and the terms of this Contract;
 - (3) Audits regarding the quality, appropriateness, and timeliness of behavioral health services provided under this Contract; and
 - (4) Audits and inspections of financial records; and
 - (5) Discharge practices;
 - (6) Clinical practices and records;
 - (7) Environment of care,
 - (8) Outcomes;
 - (9) Model of care;
 - (10) Court Documents
 - (11) Interview Individuals and staff
 - (12) Property management
- b) HCA is the Sublandlord in the Sublease Agreement between HCA and the Contractor. See Exhibit B for Sublease Agreement.

4) Contractor Responsibilities

- a) **Operating Conditions.** Contractor will comply with operating conditions of the Conditional Use Permit in Exhibit H and will agree to work in a collaborative manner with stakeholders to ensure they are acting as a good neighbor for the Stanwood community.
- b) **Policies and Procedures.** Contractor will provide written policies and procedures in accordance with Department of Health requirements for an Evaluation and Treatment Facility including but not limited to:
 - i) Discharge of any Individual prior to successful completion of treatment;
 - ii) For instances of required and time limited short term or voluntary stays strictly for the purposes of providing continuity of care and to limit care disruption for existing Individuals, and ensures property transportation arrangements for discharged Individuals.
 - iii) Emergency Management operating procedures to include:
 - (1) Emergency Management Plan;
 - (2) Campus Emergency Operations Plan;
 - (3) Continuity of Operations Plan;
 - (4) Disaster Recovery Plan
 - iv) Behavior Management plans'
 - v) Elopement
- c) **Staffing.** Contractor will ensure Fern Lodge will have appropriate staffing of one (1) credentialed direct services staff member per four (4) Individual, at minimum, unless standards or best practices identify a higher ratio of staff to Individuals.
 - i) The Contractor will notify the HCA Contract Manager whenever there is a change in leadership at Fern Lodge, or if there is staff turnover in any one month greater than 10%.
 - ii) Minimum Staffing Pattern
 - (1) This schedule is based on an eight (8)- hour shift pattern and utilizes Full Time Equivalencies (FTE). Facilities operating on a twelve (12)- hour shift pattern should adjust the eight (8)- hour table to maintain the staffing ration indicated in the table presented.

Shift	Staff	Time
Day Shift 1	Direct Care Staff: Three (3) Mental Health Technicians, Two (2) Nurses – Two (2) Registered Nurses (RNs); or One (1) RN and one (1) Licensed Practical Nurse (LPN), One (1) Peer Counselor,	6:30am – 3pm

	One (1) Activities and Recreation Therapist	
Day Shift 2	Direct Care Staff: One (1) Case Manager/ Discharge Planner, One and Half (1.5) Mental Health Professional/Therapist (non-medical)	9am – 5pm
Swing Shift	Direct Care Staff: Three (3) Mental Health Technicians, Two (2) Nurses – Two (2) RNs; or one (1) RN and one (1) LPN; and One (1) Peer Counselor	2:30pm- 11:00 pm
Nocturnal (night) Shift	Direct Care Staff: Three (3) Mental Health Technicians; One (1) licensed Nurse	10:30pm – 7am
On Call and Varied Schedule	Half (0.5) Program Administrator; One (1) dedicated LTCC Clinical Director; One (1) dedicated LTCC Nurse Manager; and One (1) Psychiatrist, Psychiatric Nurse Practitioner or Physician Assistant	Varied

- d) **Occupancy.** Contractor will be proactive in efforts to keep contracted beds filled at all times.
- i) Efforts should include not limited to:
- (1) Working with local hospital liaisons to identify Individuals placed on a 90 or 180 day civil commitment order or received a 90 or 180 day order following a revocation order in a Community Hospital or free standing E&T.
 - (2) Working with region’s Community Hospital and free-standing E&Ts to identify Individuals placed on a 90- and 180-day civil commitment order or received a 90- or 180-day order following a revocation order.
 - (3) Working with HCA to report the number of empty contracted 90-180 day beds is required. This information will be distributed to stakeholders.

- (4) Review and follow the 90- and 180- day Civil Commitment Best Practices Toolkit for Community Hospitals and Freestanding Evaluation and Treatment Centers for clinical evidence-based and best practices facility set up and programming.

e) **Distinct Coordination with Stakeholders**

- i) The Contractor will notify the Managed Care Organization (MCO) or Behavioral Health Administrative Services Organization (BH-ASO) within 48 hours of an admission, discharge, change in Enrollee Medicaid eligibility and MCO enrollment.
 - (1) Contractor must request from the referring hospital, the name of the MCO the patient is enrolled with if the patient is eligible for Medicaid and will check in ProviderOne. If the patient is not eligible for Medicaid the regional BH-ASO should be contacted.
- ii) The Contractor will develop policy and procedures for including MCOs/BH-ASOs in team meetings or case reviews based on a structure/cadence that works best for the facility and addresses HIPAA. The contractor may provide advance copies of policy that impacts MCO/ASO and receive feedback as appropriate.
- iii) The Contractor will participate in a quarterly learning collaborative meeting with peer LTCC facilities and MCOs/BH-ASOs to discuss barriers and/or challenges with admissions or discharge planning processes, to share care coordination best practices and participate in educational opportunities.
 - (1) The Contractor will work with peer Long Term Civil Commitment (LTCC) facilities and MCOs and BH-ASO to identify representative(s) to co-lead, to organize and conduct these meetings.
 - (2) The Learning Collaborative will assess LTCC utilization data to support quality improvement and reduce recidivism.
 - (3) The Learning Collaborative will develop initial LTCC Discharge Coordination Guidelines that will delineate discharge planning responsibilities for LTCC facilities, MCOs, and BH-ASOs and annually review and revise as required.
- iv) The Contractor will coordinate with the MCOs/BH-ASOs to assist in the elements of the discharge planning process as agreed upon in the Learning Collaborative LTCC Discharge Coordination Guidelines.
- v) The Contractor will notify the MCO/BH-ASO when the treatment team has determined that the patient is ready for discharge. Contractor will collaborate with HCA, the Tulalip Tribe, local law enforcement, and Snohomish County to develop a written process to notify the public if an elopement occurs.
 - (1) Contractor will collaborate with HCA, the Tulalip Tribe, local law enforcement and Snohomish County to update elopement process every three (3) years.
- vi) Contractor will work with HCA on exclusionary criteria. Any changes to exclusionary criteria must be approved by HCA prior to implementation.
- vii) Contractor will collaborate with Snohomish County Superior Court to facilitate ITA court proceedings and abide by RCW 71.05.

- f) **Critical Incident Management System.** The Contractor must establish a Critical Incident Management System consistent with all applicable laws and will include policies and procedures for identification of incidents, reporting protocols and oversight responsibilities. The Contractor will designate a Critical Incident Manager responsible for

administering the Incident Management System and ensuring compliance with the requirements of this Section.

- g) **Reporting.** The Contractor will submit the following reports:
- i) Utilization Reports;
 - ii) Explanation of Admission Denial (template located in Exhibit F);
 - iii) Discharge Information (part of the authorization extension and discharge procedures)
 - iv) Critical Incident Report for the following incidents that occur:
 - (1) To an individual and occurred within a contracted behavioral health facility (inpatient psychiatric, behavioral health agencies) by independent behavioral health provider:
 - (a) Abuse, neglect, or sexual/financial exploitation;
 - (b) Death;
 - (c) Severely adverse medical outcome or death occurring within 72 hours of transfer from a contracted behavioral health facility to a medical treatment setting.
 - (2) By an Individual, with a behavioral health diagnosis, or history of behavioral health treatment within the previous 365 days. Acts allegedly committed, to include:
 - (a) Homicide or attempted homicide.
 - (b) Arson.
 - (c) Assault or action resulting serious bodily harm which has the potential to cause prolonged disability or death.
 - (d) Kidnapping.
 - (e) Sexual assault
 - (3) Unauthorized leave from a behavioral health facility during an involuntary detention.
 - (4) Any event involving an individual that has attracted or is likely to attract media coverage. The Contractor shall include the link to the source of the media, as available.
 - (5) Contractor must report critical incidents within one business day of becoming aware of the incident and must report incidents that have occurred within the last 30 calendar days, with the exception of incidents that have resulted in or are likely to attract media coverage. Media related incidents should be reported to HCA as soon as possible, not to exceed one business day.
 - (6) Contractor will enter the initial report, follow-up, and actions taken into HCA Incident Reporting System <https://fortress.wa.gov/hca/ics/>, using the report template within the system.
 - (7) If the system is unavailable the Contractor will report Critical Incidents to hcacriticalincidents@hca.wa.gov.

- h) Contractor will participate in on-site or virtual quality review meetings by HCA's Quality Administrator who may perform onsite review, review of clinical documents for utilization reviews and management, data and reports, and will write summary reports for HCA.
 - i) Contractor must report any and all clinical event reportable to the DOH to the HCA during the contract period.
 - ii) HCA may ask for additional information as required for further research and reporting. The Contractor must provide information within three (3) business days.

5) COMPENSATION

Compensation for this Contract is [INSERT AMOUNT] and covers the following:

- a) Unoccupied Bed Rates is found in Exhibit E;
- b) An enhanced rate of \$500.00 is available in addition to the daily per diem rate of \$1,250 per Individuals that have more complex medical and/or behavioral health needs with a prior authorization from HCA.
 - i) Cases will be subject to a consultation meeting with HCA staff for final approval.

6) BILLING AND PAYMENT

- a) The Contractor will submit billings for services through the ProviderOne Billing System.
- b) All individuals admitted in an HCA contracted bed on a 90- or 180-day civil commitment need to have an authorization created by DBHR using the Secure Access Washington (SAW) system.
- c) Admission/Demographic form must be submitted within seventy-two (72) hours of being admitted into an HCA contracted beds.
- d) An Extension Request form must be submitted in the inpatient stay is determined to be medically necessary by the clinical staff, approved by the court with the additional civil commitment order to accompany the request.
- e) A Discharge Request form must be submitted when a discharge from an ICA contracted bed occurs.
- f) Review Section III of the current [Mental Health Services Billing guide](#) for information on this program.
- g) Provider billing instructions and guides are posted on the HCA website: <https://www.hca.wa.gov/billers-providers-partners/prior-authorization-claims-and-billing/provider-billing-guides-and-fee-schedules>.
 - i) Mental Health Services. Using the website referenced above, choose "Mental Health Services" on the menu title, under the "Billing guides" section, select the "Mental health services billing guide" with the most current date in the title.
 - ii) Inpatient Hospital Services. Using the website referenced above, choose "Inpatient hospital" on the menu title, under the "Billing guides" section, select the "Inpatient hospital services billing guide" with the most current date in the title.
 - iii) Professional fees may be billed separately as referenced in the [billing guide](#) located on the HCA website.
 - (1) Prescription medication costs, may be billed separately according to the [Mental](#)

[Health Services Billing Guide.](#)

(2) Medical care provided by professionals outside of the hospital may be billed separately according to the [Physician-Related Services/Health Care Professional Services](#) guide.

(3) Other Billing Guides/Fee Schedules can be found [here](#).

h) **Unoccupied Rate Bed Days.** Billing for bed days during the startup process, will be processed monthly by using a Washington State A19 billing form, provided to the Contractor. An additional tracking form will be used and submitted to a secure email server with the monthly A19 submittal via email to the HCA Contract Manager at LTCAuths@hca.wa.gov.

i) **No Identified Insurance.** Individuals without identified insurance will be covered.

i) Contractor will send the admitted individual's information to HCA Secure Access Washington (SAW) where information must be provided via online formsto receive authorization and discharge information plus corresponding civil commitment court orders.

Facility Name
NPI Number
Individual's Full Name (confirm correct spelling)
Individual's Date of Birth
Individual's Home City
Individual's Provider One ID Number (ending with WA)
Transfer from Western or Eastern?
ICD 10 Diagnosis (e.g., F20.9)
Medicaid Insurance ProviderName (Molina, CHPW, etc.)
Additional Insurance if any (e.g., Medicare or private insurance)
Requested ITA eligibility segment for the length of stay if no insurance
Date of Admit to Long Term Bed
Type of Court Order - Please be specific (e.g., 90 Day, 180 Day,

90 Day LRA Revocation, 180 Day LRA Revocation)
Anticipated Discharge Date

- j) Primary Insurance. If the admitted individual has primary insurance in addition to Medicaid coverage, primary insurance is to be billed first; Medicaid is considered secondary/tertiary insurance and is to be billed last.

7) SANCTIONS

- a) If Contractor fails to meet one or more of its obligations under the terms of this Contract or other applicable law, HCA may:
 - i) Initiate remedial action if it is determined that any of the following situations exist:
 - (1) Contractor has failed to perform any of the Contracted Services;
 - (2) Contractor has failed to develop, produce, and/or deliver to HCA any of the statements, reports, data, data corrections, accountings, claims, and/or documentation described in this Contract;
 - (3) Contractor has failed to perform any administrative function required under this contract;
 - (4) Contractor has failed to implement corrective action required by the state and within HCA prescribed timeframes.
 - ii) Impose any of the following remedial actions:
 - (1) Require the Contractor to develop and execute a corrective action plan. Corrective action plans developed by the Contractor must be submitted for approval to HCA within thirty (30) calendar days of notification. HCA may accept the plan, require modifications or reject the plan. Corrective action plans may require modification of any policies or procedures by the Contractor relating to the fulfillment of its obligations pursuant to this Contract. HCA may extend or reduce the time allowed for corrective action depending upon the nature of the situation. Corrective action plans shall include:
 - (a) A brief description of the situation requiring corrective action.
 - (b) The specific actions to be taken to remedy the situation;
 - (c) A timetable for completion of the action(s); and
 - (d) Identification of individuals responsible for implementation of the plan.
- b) If Contractor continues to fail to cure the deficiencies for the corrective action by the time as specified by the HCA, in writing, HCA may sanction the Contractor as follows:
 - i) \$[Dollar Amount to be determined] per violation;
 - ii) Stop the placement of an Individual at Fern Lodge; and/or
 - iii) Termination of Contract per Section 4.38.

8) PERFORMANCE GUARANTEES AND INCENTIVES

- a) HCA will evaluate Contractor’s performance of meeting contractual obligation by utilizing a Quality Review Tool to be developed by the HCA Quality Review Manager. The

Quality Review Tool will include measures on, but not limited to, the following components:

- i) Quality of Care
 - ii) Occupancy Rate
 - iii) Billing Compliance
 - iv) Staff Turnover
 - v) Property and Facility Maintenance and Upkeep
 - vi) Facility Accreditation
 - vii) CUP compliance
- b) Contractor agrees to the Performance Guarantees and incentives as outlined in Table 1- Quality Review Performance Guarantees (PGs).
- i) Each item listed in Table 1 below is key to Contractor’s providing the services agreed to under this Contract and must be achieved and certified by HCA per the Measurement Period identified in the table for the PGs to be met.

Table 1- Quality Review Performance Guarantees			
Performance Guarantees	Performance Metric	Measurement Period	Incentive Bonus
Quality Review	Contractor receives a review outcome of “exceeds expectations”.	[To be determined]	[Percent range to be determined] of annual contracted bed days
Annual Staff Turnover	Contractor achieves an annual staff turnover of less than [percentage rate to be determined].	[To be determined]	Employee retention bonus of [Dollar amount to be determined] to be distributed fully, directly, and equitably among employees of the program
Commission on Accreditation of Rehabilitation Facilities (CARF)	Contractor receives CARF accreditation	[To be determined]	Contractor will receive a bonus of [Dollar amount to be determined].

Maintenance of CARF Accreditation	Contractor maintains CARF accreditation	Upon accrediting body recommendation	[To Be Determined]
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- ii) Contractor must measure and report performance with respect to the above PGs as set forth in Table 1- Quality Review Performance Guarantees, must be delivered to HCA within X Business Days after the end of the fiscal year, quarter or month that is being measured.
- c) Failures Caused by HCA
 - i) Contractor will have no liability if failure to meet PGs is the result of a written directive from HCA to modify services or due to failure of a payer to timely discharge its duties under Washington law after notice from Contractor of such failure.
- d) Waiver
 - i) Notwithstanding any other provisions of this Contract, HCA may waive all or part of performance metrics at its sole discretion.

SCHEDULE B: PRE-PROGRAM SCHEDULE

The Contractor shall follow the pre-program schedule to obtain proper licensure to operate the Fern Lodge Behavioral Wellness Facility:

No.	Task	Due by Date
1	Submit Policies and Procedures to DOH (Admittance, Discharge, Transportation, General Liability, Continuity of Care, Emergency Management, Incident Reporting, BHASO/MCO Communication, etc.)	
2	Submit DOH RTF License	
3	Submit DOH Behavioral Health Agency (BHA) License	
4	Submit Health Care Entity (HCE) License	
5	Submit Drug Enforcement Agency (DEA) Application	
6	Submit Fire Alarm Monitoring System Plan to Fire Marshall	
7	Begin Patient Admittance	

EXHIBIT A: CORE PROVIDER AGREEMENT

[Core Provider Agreement \(09-015\) \(wa.gov\)](#)

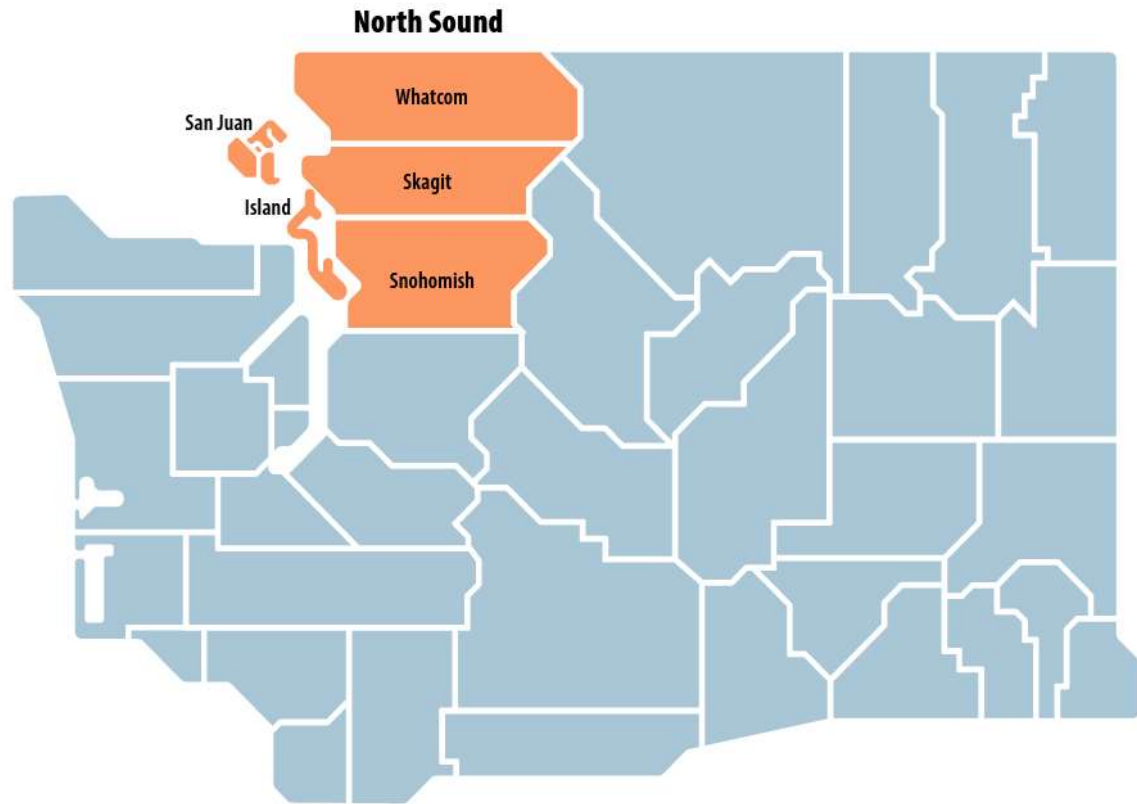
EXHIBIT B: SUBLEASE AGREEMENT

EXHIBIT C: REGIONAL SERVICE AREA

Behavioral Health: Administrative Services Organizations (BH-ASO) North Sound region

North Sound counties

Island, San Juan, Snohomish, Skagit, and Whatcom



Regional crisis assistance (24/7/365) for mental health and substance use disorder crises available to all individuals, regardless of their insurance status or income level.

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EXHIBIT D: BED TRACKER MONTHLY REPORTING FORM

In conjunction with Schedule A: Statement of Work, Section 6, Billing and Payment, subsection h.), Unoccupied Bed Days, Contractor will provide HCA Contract Manager with monthly reporting form, the electronic form for the sample below, via a secure email server.

[FACILITY NAME]

Bed Number	Wednesday 7/1/20	Thursday 7/2/20	Friday 7/3/20	Saturday 7/4/20	Sunday 7/5/20	Monday 7/6/20
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						

Bed Number	Tuesday 7/7/20	Wednesday 7/8/20	Thursday 7/9/20	Friday 7/10/20	Saturday 7/11/20	Sunday 7/12/20
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						

Bed Number	Monday 7/13/20	Tuesday 7/14/20	Wednesday 7/15/20	Thursday 7/16/20	Friday 7/17/20	Saturday 7/18/20
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						

EXHIBIT E: 90- AND- 180 DAY CIVIL COMMITMENT BED RATE POLICY

The Health Care Authority (HCA) will purchase psychiatric inpatient bed capacity in free standing Evaluation & Treatment (E&T) facilities, E&T units in Community Hospitals, and in psychiatric hospitals. These facilities will provide inpatient psychiatric care, as defined in Chapters 246-320 and 246-322 WAC. (Please see individual contract specific language for the pre-determined number of beds.)

The identified population are clients who have been mandated by court process for a civil commitment stay that is 90- or-180 days (reference RCW 71.05).

The start-up rate was formerly called the “empty bed rate”. This rate is provided to assist facilities during the start-up period including transitioning beds from being occupied by individuals on short term civil commitment orders to individuals on long term civil commitment orders. The rate is in place for the first fiscal year of being under contract to allow the facility to develop an admit/discharge process that will create the necessary beds for individuals who are on a 90- or 180-day civil commitment order needing inpatient psychiatric care. The state rate is used to calculate the start-up rate where applicable. Start-up rate reimbursement is not applicable if termination of contract occurs.

Utilization reviews will be conducted. Underutilization of contracted beds may result in a reduction of the number of contracted beds. For example, if in FY 2025, for a facility that is contracted to provide three (3) long term beds and the reported empty bed number is 20 or more per month for a period of 3 consecutive months, the number of beds may be reduced by one (1).

An Explanation of Non-Admittance form is required to be completed if a detained individual is declined admittance to the facility, Exhibit F. Utilization reviews of denials will be conducted.

This form will be included as Exhibit E to the contract.

1. Table: Unoccupied Bed Rate

Facility Type	FY 2025 Unoccupied Rate
All contracted facilities - Available during the first fiscal year the facility is operating (not to exceed a period of 12 months)	Not to exceed 6% of annual contracted bed days (ESSB 5693) 50% of unoccupied beds

EXHIBIT F: EXPLANATION OF NON-ADMITTANCE

Explanation of Non-Admittance to Facility

Facility NPI Number:

Facility Name and Address:

Provider One ID Number	Last Name, First Name, MI	Primary Diagnosis	Date of Assessment	Date of Denial	Detailed Reason for Denial
XXXXXXXXXXWA	XXX, XXX	Fxx.xx	mm/dd/yyyy	mm/dd/yyyy	<p>Example of insufficient detail: Hx of violence</p> <p>Medical complexity</p> <p>Detailed information is expected to be provided as to why you are unable to treat/manage the behavior(s)</p>

EXHIBIT G: EXPLANATION OF REQUEST TO TRANSFER FROM CONTRACTED 90- AND 180- DAY BED TO STATE HOSPITALS

Explanation of Transfer from Contracted 90-and 180 Day Bed to State Hospital(s)

Facility NPI Number:

Facility Name and Address:

Provider One ID Number	Last Name, First Name, MI	Primary Diagnosis	Date of Request to Transfer	Date of Potential Transfer	Detailed Reason for Transfer Request
XXXXXXXXXXWA	XXX, XXX	Fxx.xx	mm/dd/yyyy	mm/dd/yyyy	Example of insufficient detail: Acuity of care Programming not provided Medical complexity Detailed information is expected to be provided as to why you are unable to treat/manage the behavior(s)

EXHIBIT H: CONDITIONAL USE PERMIT, OPERATING CONDITIONS

Operating Conditions:

1. The facility and its operation shall comply with all applicable federal and state laws and regulations, including those of the Washington State departments of Social and Health Services and Health. If applicable state or federal standards and regulations change, the facility and its operation shall comply with the changed regulation within the timelines required by the revised regulation.
2. The use of external speakers or an external public address system is prohibited.
3. Patients shall not be discharged as pedestrians at the facility's location. Discharge plans shall include transportation from the facility to the patient's next residence. For example, a patient should not be allowed to walk out the facility's doors on discharge except to a waiting vehicle that will transport them to their next residence, such as a friend, family, or caregiver's vehicle, medical transport vehicle, taxi, or shared ride service vehicle.
4. Tulalip Tribes will develop written procedures for notification of the public in case of elopement. The procedures will be developed in consultation with law enforcement and with due regard for privacy and safety of the patient and community. The procedures may provide for different notification procedures and recipients for different situations. The procedures will be available to the public upon request and a copy provided to PDS. The procedures shall be finalized prior to occupancy and shall be updated no less often than every three years.
5. The facility will be staffed at a ratio of at least one clinical staff per four patients, unless subsequent standards or best practices identify a higher ratio of staff to patients.
6. All approved landscaping shall be maintained after installation. Dead or significantly damaged plants and other landscaping material shall be replaced within three months of the death or damage. PDS may authorize delay in replacement up to 180-days when plant death or damage occurs outside the normal planting season.
7. Buildings shall be equipped with NFPA automatic sprinkler systems and NFPA fire alarm systems, which shall be maintained in good working order.
8. All exterior lighting installed initially or in the future shall prevent glare and light pollution on adjacent properties by being shielded, directed downward, and have full-cutoff features. All site area lighting shall be equipped with (a) motion sensors and (b) integral photocells for dusk to dawn operation. All building-mounted exterior lighting shall be controlled by dusk to dawn sensor.
9. Access from and to 300 28th St. NW shall be restricted to right-in/right-out only, as required by the EDDS deviation approved by the County Traffic Engineer.
10. Minor and major revisions to the administrative site plan shall be subject to SCC 30.70.210 or 30.70.220.
11. Nothing in this approval excuses Tulalip Tribes, an owner, lessee, agent, successor or assigns from compliance with any other federal, state, or local statutes, ordinances, or regulations applicable to this project.