

**MID-VALLEY BEHAVIORAL CARE NETWORK  
PROFESSIONAL SERVICES AGREEMENT**

MID-VALLEY BEHAVIORAL CARE NETWORK, an Oregon Revised Statutes (ORS) Chapter 190 intergovernmental organization, hereinafter called MVBCN, enters into this Agreement with «insert legal name», a «insert entity type» in the State of Oregon, hereinafter called CONTRACTOR.

1. This Agreement is effective for «insert effective date», through December 31, 2018, when signed by both parties, regardless of the date of signature.
2. CONTRACTOR agrees to perform the services described in Attachment A: Statement of Work.
3. MVBCN agrees to pay CONTRACTOR as described in Attachment B: Payment & Budget. The maximum amount allowable under this Agreement is «insert contract max». The final invoice for services provided under this Agreement must be submitted to MVBCN not more than thirty (30) days from the end of the period for this Agreement.
4. The Peer Network Program Coordinator of MVBCN shall serve as CONTRACTOR's contact and shall monitor services to be provided by CONTRACTOR.
5. CONTRACTOR shall comply with all federal, state, and local laws, rules and regulations applicable to the work performed under this Agreement, including, but not limited to, all applicable federal and state civil rights and rehabilitation statutes, rules, and regulations.
6. The performance of this Agreement is at CONTRACTOR's sole risk. CONTRACTOR is solely liable for any workers' compensation coverage; social security, unemployment insurance or retirement payments; and federal or state taxes due as a result of payments under this Agreement. Any subcontractor hired by CONTRACTOR shall be similarly responsible.
7. CONTRACTOR shall not be eligible for any social security, workers' compensation, unemployment insurance or Public Employees Retirement System benefits from MVBCN under this Agreement.
8. MVBCN shall report the total amount of all payments to CONTRACTOR, including any expenses, in accordance with federal Internal Revenue Service regulations.
9. CONTRACTOR shall not assign, subcontract or transfer any interest in or duty under this Agreement without the written consent of MVBCN. Written consent shall be obtained from MVBCN at least sixty (60) days in advance of assignment, subcontract or transfer, unless the parties agree in writing to a different timeframe. Any such assignment, subcontract or transfer, if approved, is subject to such conditions and provisions as MVBCN may deem necessary. No approval by MVBCN of any assignment, subcontract or transfer shall be deemed to create any obligation of MVBCN in addition to those set forth in the Agreement. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties, their respective

successors and permitted assigns.

10. CONTRACTOR represents that he/she holds him-/herself out to the public as an independent contractor, and qualifies as such under the provisions of ORS 670.600 and Attachment C: Definition of Independent Contractor, which is incorporated herein. The service or services to be rendered under this Agreement are those of an independent CONTRACTOR who is not an officer, employee or agent of the MVBCN as those terms are used in ORS 30.265. MVBCN does reserve the right to (i) determine and modify the delivery schedule for work to be performed and (ii) evaluate the quality of the completed performance.

11. CONTRACTOR warrants that all of its work shall be performed in accordance with generally accepted business practices and standards as well as the requirements of applicable federal, state, and local laws, it being understood that acceptance of CONTRACTOR's work by MVBCN shall not operate as a waiver or release.

CONTRACTOR agrees to indemnify, defend and hold MVBCN, its agents, officers and employees harmless and defend all damages, losses and expenses including but not limited to attorney fees and to defend all claims, proceedings, lawsuits and judgments arising out of or resulting from CONTRACTOR's negligence in performance of this Agreement.

In accordance with the Oregon Tort Claims Act and the Oregon Constitution, MVBCN agrees to indemnify, defend and hold CONTRACTOR, its agents, officers and employees harmless and defend all damages, losses and expenses including but not limited to attorney fees and to defend all claims, proceedings, lawsuits and judgments arising out of or resulting from MVBCN's negligence in performance of this Agreement.

12. CONTRACTOR shall maintain insurance as specified in Attachment D: Insurance Requirements.

13. By execution of this Agreement, CONTRACTOR certifies under penalty of perjury that:

- a. To the best of CONTRACTOR's knowledge, CONTRACTOR is not in violation of any tax laws described in ORS 305.380(4); and
- b. CONTRACTOR has not discriminated against and will not discriminate against a minority, women or emerging small business enterprise certified under ORS 200.055 in obtaining any required subcontracts.

14. CONTRACTOR shall comply with all applicable federal, state, and local laws, rules, and regulations on nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, or disability.

15. CONTRACTOR's employees, Board members, independent contractors, and subcontractors must not be excluded from participation in federal health care programs (Medicaid, Medicare and other federally-funded programs that provide health benefits); and must not be excluded from participation in federal procurement (Federal Acquisition Regulation) and non-procurement activities (Executive Order No. 12549).

16. All notices may be given by personal delivery or by mail. Notices sent by mail should be addressed to the persons at the addresses identified on the signature page of this Agreement. Notices shall be given by mail with return receipt and shall be considered given as of the date noted on the return receipt. Changes may be made in the names and addresses of the person to whom notices and payments are to be given by giving notice pursuant to this paragraph.
17. This writing is intended both as the final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.

#### 18. REMEDIES SHORT OF TERMINATION

- a. If CONTRACTOR fails to perform any of its obligations under this Agreement, within the time and in the manner provided, or otherwise violates any of the terms of this Agreement or applicable federal, state, and local statutes and rules, MVBCN may, at its option, pursue any or all of the remedies short of termination available to it under this Agreement and at law or equity including, but not limited to:
- i. Withholding some or all payments due to CONTRACTOR under this Agreement; and/or
  - ii. Issuing a “stop work” order for some or all services performed by CONTRACTOR under this Agreement.
- b. Upon cure of CONTRACTOR’s breach to the satisfaction of MVBCN, payments to and/or services by CONTRACTOR shall resume.
- c. MVBCN shall not be liable for losses incurred by CONTRACTOR directly or indirectly related to MVBCN’s exercise of its option to pursue remedies short of termination.
- d. MVBCN shall not be obligated to pursue remedies short of termination and may, at its discretion, pursue contract termination in accordance with Section 19 of the Agreement.

#### 19. TERMINATION

- a. *MVBCN’s Right to Terminate at Its Discretion:* At its sole discretion, MVBCN may terminate this Agreement:
- i. For its convenience with thirty (30) days written notice to CONTRACTOR; or
  - ii. Immediately upon written notice to CONTRACTOR if there is a threat to the health, safety or welfare of any individual under its care.
  - iii. Notice of termination shall be deemed given when sent by certified mail, return receipt requested.
- b. *MVBCN’s Right to Terminate Due to Willamette Valley Community Health, LLC, (WVCH) Contract Termination:* The prerequisite to this Agreement is the existence of a contract between WVCH, which is a Coordinated Care Organization (CCO) contracted by the Oregon Health Authority (OHA), and MVBCN for Oregon Health Plan (OHP) mental health services. If the contract between WVCH and MVBCN is terminated or not renewed, then this Agreement between MVBCN and CONTRACTOR may be terminated and without penalty to MVBCN. The effective date of termination pursuant to this subsection shall be the same as the effective date of termination of the contract between WVCH and MVBCN, unless otherwise communicated in writing by MVBCN to CONTRACTOR. Notice of termination shall be deemed given when sent by certified mail, return receipt requested.

- c. *MVBCN's Right to Terminate Due to MVBCN Non-Appropriation:* If the MVBCN Board of Directors fails to appropriate funds for this Agreement during or for any fiscal period, this Agreement is terminated without penalty to MVBCN. The effective date of termination pursuant to this subsection shall be the commencement date of the fiscal period for which funds are not appropriated, unless otherwise communicated in writing by MVBCN to CONTRACTOR. Notice of termination shall be deemed given when sent by certified mail, return receipt requested.
- d. *MVBCN's Right to Terminate for Cause:* MVBCN may recommend termination of this Agreement for cause:
  - i. If CONTRACTOR fails to perform any of its obligations under this Agreement, within the time and in the manner provided, or otherwise violates any of the terms of this Agreement or applicable federal, state, and local statutes and rules; or
  - ii. If CONTRACTOR institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis.
  - iii. Recommendation for contract termination pursuant to this subsection must be approved by the MVBCN Board of Directors. This Agreement shall then terminate thirty (30) days, unless otherwise specified by the Board, from the date of the Board's acceptance of the recommendation for contract termination.
- e. *Contractor's Right to Terminate for Cause:* If MVBCN fails to perform any of its obligations under this Agreement, within the time and in the manner provided, or otherwise violates any of the terms of this Agreement or applicable federal, state, and local statutes and rules, CONTRACTOR shall provide an opportunity for MVBCN to cure the breach within ten (10) business days, unless otherwise specified by CONTRACTOR. If CONTRACTOR determines that MVBCN's efforts to cure the breach within this timeframe are insufficient or ineffective, CONTRACTOR may terminate this Agreement with thirty (30) days written notice. Notice of termination pursuant to this Section shall be made by certified mail, return receipt requested.
- f. *Termination by Mutual Consent:* Either party may suggest termination of this Agreement by giving the other party thirty (30) days written notice, unless otherwise agreed by both parties. Such written notice shall be deemed given when sent by certified mail, return receipt requested. The other party must agree in writing.

20. RIGHTS AND OBLIGATIONS FOLLOWING TERMINATION OR EXPIRATION:

- a. CONTRACTOR shall be entitled to payment for all services satisfactorily rendered to the date of termination or expiration, as described in Attachment A: Statement of Work.
- b. Upon termination or expiration, MVBCN has a right to full disclosure of CONTRACTOR's records required by this Agreement. CONTRACTOR shall promptly provide such disclosure to MVBCN upon demand.
- c. The rights and obligations of MVBCN and CONTRACTOR arising under the following sections of this Agreement shall survive the termination or expiration of this Agreement: Section 25 regarding dispute resolution and Attachment D: Insurance Requirements.
- d. In the event of contract termination or expiration, CONTRACTOR shall ensure timely submission of information, reports and records required to be provided to MVBCN during the term of this Agreement.

21. CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services. CONTRACTOR further covenants that in the performance of this Agreement no person having any such interest shall be employed.

22. ACCESS TO AND MAINTENANCE OF RECORDS; AUDIT:

- a. CONTRACTOR shall maintain records, whether in paper, electronic or other form, to assure conformance with the terms and conditions of this Agreement, and to assure adequate performance and accurate expenditures within the Agreement period. CONTRACTOR shall maintain financial records related to this Agreement in accordance with generally accepted accounting principles. CONTRACTOR agrees to provide MVBCN, WVCH, the State of Oregon, the federal government, or their duly authorized representatives access to all records pertaining to this Agreement to perform examinations and audits. CONTRACTOR shall retain and keep accessible all records for the longer of:
  - i. Seven (7) years following final payment and termination of this Agreement;
  - ii. The period as may be required by applicable law, including the records retention schedules set forth in OAR Chapter 166; or
  - iii. Until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement.
- b. CONTRACTOR shall, upon request and without charge, provide a suitable work area and copying capabilities to facilitate such a review or audit. This right also includes timely and reasonable access to CONTRACTOR's personnel and subcontractors for the purpose of interview and discussion related to such documents. The rights of access in this subsection are not limited to the required retention period, but shall last as long as the records are retained.

23. DRUG-FREE WORKPLACE:

- a. CONTRACTOR shall comply with the following provisions to maintain a drug-free workplace:
  - i. CONTRACTOR certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in CONTRACTOR's workplace or while providing services to WVCH Members. CONTRACTOR's notice shall specify the actions that will be taken by CONTRACTOR against its employees for violation of such prohibitions;
  - ii. CONTRACTOR will establish a drug-free awareness program to inform its employees about: the dangers of drug abuse in the workplace, CONTRACTOR's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations;
  - iii. CONTRACTOR will provide each employee to be engaged in the performance of services under the Agreement a copy of the statement mentioned in subsection 23.a.i above;
  - iv. CONTRACTOR will notify each employee in the statement required by subsection 23.a.i

- that, as a condition of employment to provide services under this Agreement, the employee will: abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- v. CONTRACTOR will notify MVBCN and WVCH within ten (10) days after receiving notice under subsection 23.a.iv from an employee or otherwise receiving actual notice of such conviction;
  - vi. CONTRACTOR will impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988;
  - vii. CONTRACTOR will make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs 23.a.i through 23.a.vi;
  - viii. None of CONTRACTOR's employees, officers or agents may provide any service required under the Agreement while under the influence of drugs. For purposes of this provision, "under the influence" means: observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe CONTRACTOR's employee, officer or agent has used a controlled substance, prescription or non-prescription medication that impairs CONTRACTOR's employee, officer or agent performance of essential job function or creates a direct threat to WVCH Members or others. Examples of abnormal behavior include, but are not limited to: hallucinations, paranoia or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to: slurred speech, difficulty walking or performing job activities.

24. TRUTH IN LOBBYING:

- a. CONTRACTOR certifies, to the best of CONTRACTOR's knowledge and belief that:
  - i. No federal appropriated funds have been paid or will be paid, by or on behalf of CONTRACTOR, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
  - ii. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, CONTRACTOR shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

25. Any and all disputes between the parties hereto shall be resolved in binding arbitration as set forth hereafter. The parties acknowledge that mediation usually helps parties to resolve disputes that have arisen regarding contract interpretation and administration. Therefore before proceeding to arbitration, the parties agree to mediate their differences. In the event mediation is unsuccessful, the parties agree to submit the dispute to Arbitration Service of Portland, Inc. for final and binding arbitration pursuant to its then existing rules. All costs of arbitration shall be

shared equally between the parties hereto, and such costs may be awarded to either party by the arbitrator as a part of the award. The arbitrator shall also require the party not prevailing to pay the prevailing party's attorney fees, costs and disbursements. Any award entered pursuant to this section shall be reduced to the form of a judgment and may be entered in the judgment docket or registry of Marion County Circuit Court.

26. The venue for any action arising out of or relating to this Agreement shall be in Marion County, Oregon. Any court action arising out of or relating to this Agreement shall be filed in the Circuit Court of Marion County, Oregon. The applicable laws for any action arising out of or relating to this Agreement shall be the laws of the State of Oregon. CONTRACTOR specifically agrees to abide by the provisions of ORS 279, incorporated by this reference.

27. MVBCN shall not be obligated to pay any amount greater than that stated above.

28. Modifications or amendments to this Agreement shall be in writing and executed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed, either as individuals or by their officers, thereunto duly authorized.

SIGNATURES

CONTRACTOR

MID-VALLEY BEHAVIORAL CARE NETWORK

\_\_\_\_\_  
Authorized Representative                      Date

\_\_\_\_\_  
Craig Pope    Date  
Chair, Board of Directors

\_\_\_\_\_  
Printed Name

2965 Ryan Drive SE, Suite150  
Salem, Oregon 97301

\_\_\_\_\_  
Address

Approved as to form:

\_\_\_\_\_  
Federal tax identification number

\_\_\_\_\_  
Wallace W. Lien    Date  
MVBCN Legal Counsel

**Attachment A – STATEMENT OF WORK**

**SAMPLE**

**Attachment B – PAYMENT & BUDGET**

**SAMPLE**

**Attachment C – DEFINITION OF INDEPENDENT CONTRACTOR**

1. CONTRACTOR represents that he/she holds him-/herself out to the public as an independent contractor, and qualifies as such under the provisions of ORS 670.600 as follows:

a. CONTRACTOR is free from direction and control over the means and manner of providing the goods, materials, equipment and services, subject to the right of MVBCN to specify the desired results.

b. CONTRACTOR is customarily engaged in an independently established business, shown by CONTRACTOR's meeting any three of the following requirements:

i) CONTRACTOR does not rely solely on one person or one entity to obtain customers or CONTRACTOR performs all labor or services in his own name or business name and collects payment for the labor or services directly from the customer;

ii) CONTRACTOR assumes the risk of loss related to the business or the performance of labor or services as shown by fixed-price contracts, commission-based earnings, responsibility to correct defective work, responsibility for extension of warranties, negotiated indemnification agreements or purchase of liability insurance, performance bonds or errors and omissions insurance;

iii) CONTRACTOR performs contracted labor or services for two or more different persons or business entities within a 12-month period or routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to perform similar labor or services;

iv) CONTRACTOR makes a significant investment in the business, including but not limited to: (A) purchase of tools or equipment necessary to perform the labor or services; (B) payment for the premises or facilities where the labor or services are performed; and (C) payment for specialized training or licenses required to perform the labor or services; or

v) CONTRACTOR has the authority to hire and fire persons to perform the labor or services.

c. CONTRACTOR is licensed under ORS Chapter 701 if the individual performs labor or services for which licensure under ORS Chapter 701 is required; and

d. CONTRACTOR is personally responsible for obtaining other licenses or certificates necessary to perform the labor or services.

## **Attachment D – INSURANCE REQUIREMENTS**

1. CONTRACTOR shall not be subject to the requirements of this Attachment D if CONTRACTOR is a unit of local government as defined in ORS 190.003.
2. CONTRACTOR shall: i) obtain insurance specified under “Workers’ Compensation”, “Professional Liability”, “Commercial General Liability” and “Automobile Liability” and meeting the requirements under “Additional Insured”, “Notice of Cancellation or Change”, “Proof of Insurance” and “Tail Coverage” before CONTRACTOR performs any work under this Agreement, and ii) maintain the insurance in full force throughout the duration of this Agreement. The insurance must be provided by insurance companies that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to the Oregon Health Authority (OHA) and MVBCN.
  - a. *Workers’ Compensation.* Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers’ compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employers Liability insurance with coverage limits of not less than \$500,000 must be included.
  - b. *Professional Liability.* Covers any damages caused by an error, omission or any negligent acts related to the services to be provided by CONTRACTOR under this Agreement. Coverage shall be written in amounts with a combined single limit per accident or occurrence of not less than \$1,500,000 and an annual aggregate limit for all claims of not less than \$3,000,000.
  - c. *Commercial General Liability.* Covers bodily injury, death and property damage in a form and with coverages that are satisfactory to OHA and MVBCN. This insurance shall include personal injury liability, products liability and completed operations. Coverage shall be written in amounts with a combined single limit per accident or occurrence of not less than \$1,500,000 and an annual aggregate limit for all claims of not less than \$3,000,000.
  - d. *Automobile Liability.* If the provision of any services or performance of any activities pursuant to this Agreement involves the use of vehicles owned, hired or operated by CONTRACTOR, then CONTRACTOR shall maintain Automobile Liability insurance. Covers all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance, with separate limits for Commercial General Liability and Automobile Liability. Automobile Liability insurance shall be written in amounts not less than: \$1,000,000 combined single limit - or - \$500,000 per person for bodily injury, \$1,000,000 per occurrence for bodily injury and \$500,000 per occurrence for property damage.
  - e. *Umbrella / Excess Liability.* CONTRACTOR may utilize umbrella / excess liability insurance to meet the required liability limits for Professional Liability, Commercial General Liability and/or Automobile Liability. CONTRACTOR shall ensure that the per occurrence and aggregate limits of this insurance are sufficient to meet the separate per occurrence and aggregate limits for each type of insurance to which the policy applies.
  - f. *Additional Insured.* The Commercial General Liability, Automobile Liability and Umbrella/Excess Liability insurance policies must include the State of Oregon, WVCH, and

- MVBCN, their respective officers, employees and agents as Additional Insureds but only with respect to CONTRACTOR's activities to be performed under this Agreement. Coverage must be primary and noncontributory with any other insurance.
- g. *Notice of Cancellation or Change.* CONTRACTOR or its insurer shall provide thirty (30) days written notice to MVBCN before cancellation of material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).
  - h. *Proof of Insurance.* CONTRACTOR shall provide to MVBCN a certificate(s) of insurance for all required insurance before CONTRACTOR performs any services required under this Agreement. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insureds, and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.
  - i. *"Tail" Coverage.* If any of the required liability insurance policies, such as professional liability insurance, is written on a "claims made" basis, CONTRACTOR shall maintain either "tail" coverage or continuous "claims made" liability coverage for a minimum of 24 months following the later of (i) CONTRACTOR's completion and MVBCN's acceptance of all Services required under the Agreement, or, (ii) the expiration of all warranty periods provided under the Agreement. The effective date of any continuous "claim made" coverage shall be on or before the effective of the Agreement. If CONTRACTOR elects to maintain "tail" coverage and the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then CONTRACTOR may request to MVBCN, and MVBCN shall in turn request to OHA, and OHA may in writing approve CONTRACTOR's maintenance of the maximum "tail" coverage period reasonably available in the marketplace.
3. CONTRACTOR shall not perform any work under this Agreement if CONTRACTOR is not in compliance with the insurance requirements specified in this Attachment D. MVBCN is obligated to take all reasonable steps to enforce CONTRACTOR's compliance with the insurance requirements. MVBCN's enforcement steps may include pursuing remedies short of termination and/or pursuing contract termination, which are described in Sections 18 and 19 in the main body of the Agreement.
  4. Any subcontractor engaged by CONTRACTOR to perform services under this Agreement must meet the insurance requirements stated in Section 2(a-f) except where CONTRACTOR's insurance specifically extends the required coverage(s) and limits to the subcontractor. CONTRACTOR shall require the subcontractor to provide to MVBCN a certificate(s) of insurance for all required insurance before performing any services. CONTRACTOR shall not permit the subcontractor to perform any work under this Agreement if the subcontractor is not in compliance with the insurance requirements.