

STATE OF OREGON PERSONAL/PROFESSIONAL SERVICES CONTRACT

This Contract is between the State of Oregon, acting by and through its Department of Corrections, hereafter called **Agency**,

and
William Steven Strauss, MD
PO Box 5951
Salem, OR 97304
Phone: (503) 585-1628
Fax: (503) 540-6466

Hereafter called **Contractor**.

Agency's Contract Administrator for this Contract is

Christy Martino, Fiscal Analyst
Oregon Dept. of Corrections – Health Services
2575 Center Street NE
Salem, OR 97301-4667
Phone: (503) 378-6428
Fax: (503) 378-5597
Christy.A.Martino@doc.state.or.us
<http://www.oregon.gov/DOC/index.shtml>

1. Contract Period. This Contract shall become effective on the later of **July 1, 2009**, or the date this Contract has been fully executed by every party and, when required, approved by the Department of Administrative Services and the Department of Justice. Unless extended or terminated earlier in accordance with its terms, this Contract shall terminate when Agency accepts Contractor's completed performance or on **June 30, 2011**, whichever date occurs last. Contract termination shall not extinguish or prejudice Agency's right to enforce this Contract with respect to any default by Contractor that has not been cured.

2. Statement of Work. Contractor shall perform the work as set forth in the Statement of Work ("the "Work" or "Services"), which includes the delivery schedule for such Work, and that is attached hereto as Exhibit A. Contractor shall perform the Work in accordance with the terms and conditions of this Contract.

3. Consideration

a. The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is **\$402,840**. Agency will not pay Contractor any amount in excess of the not-to-exceed compensation of this Contract for completing the Work, and will not pay for Work performed before the date this Contract becomes effective or after the termination of this Contract. If the maximum compensation is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

b. Interim payments to Contractor shall be subject to ORS 293.462, and shall be made in accordance with the payment schedule and requirements in Exhibit A.

c. Agency will pay only for completed Work that is accepted by Agency.

d. Contractor shall submit monthly invoices to Agency's Contract Administrator for Work performed. The invoices shall describe all Work performed with particularity and by whom it was performed and shall itemize and explain all expenses that this Contract requires Agency to pay and for which Contractor claims reimbursement. Each invoice also shall include the total amount invoiced to date by Contractor prior to the current invoice. Contractor will specifically note in the appropriate invoice when it has requested payment for one-third and two-thirds of the maximum, not-to-exceed compensation. Contractor shall send invoices to Agency's Contract Administrator.

4. Contract Documents. This Contract consists of the following documents, which are listed in descending order of precedence: this Contract less all exhibits, attached Exhibit A (the Statement of Work), Exhibit B (Required Insurance), Exhibit C (Independent Contractor Certification Statement) and Exhibit D (Department of Corrections Code of Ethics). Exhibits A through D are attached hereto and incorporated herein by this reference.

5. Independent Contractor; Responsibility for Taxes and Withholding

a. Contractor shall perform all Work as an independent contractor. The Agency reserves the right (i) to determine and modify the delivery schedule for the Work and (ii) to evaluate the quality of the Work Product, however, the Agency may not and will not

control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work.

b. If Contractor is currently performing work for the State of Oregon or the federal government, Contractor by signature to this Contract, represents and warrants that: Contractor's Work to be performed under this Contract creates no potential or actual conflict of interest as defined by ORS 244 and no statutes, rules or regulations of the state or federal agency for which Contractor currently performs work would prohibit Contractor's Work under this Contract.

c. Contractor understands and agrees that it is not an "officer", "employee", or "agent" of the Agency, as those terms are used in ORS 30.265 or otherwise.

d. Contractor shall be responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, Agency will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.

6. Subcontracts, Successors, and Assignments

a. Contractor shall not enter into any subcontracts for any of the Work required by this Contract without Agency's prior written consent. In addition to any other provisions Agency may require, Contractor shall include in any permitted subcontract under this Contract provisions to ensure that Agency will receive the benefit of subcontractor performance as if the subcontractor were the Contractor with respect to Sections 5, 6, 7, 9, 10, 11, 12, 15, 16, 17, 19, and 24. Agency's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

b. The provisions of this Contract shall be binding upon and inure to the benefit of the parties, their respective successors, and permitted assigns, if any.

c. Contractor shall not assign, delegate or transfer any of its rights or obligations under this Contract without Agency's prior written consent.

7. No Third Party Beneficiaries. Agency and Contractor are the only parties to this Contract and are the only parties entitled to enforce the terms of this Contract. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

8. Funds Available and Authorized; Payments. Contractor shall not be compensated for Work performed under this Contract by any other agency or department of the State of Oregon. Agency certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Contract within the Agency's current biennial appropriation or limitation. Contractor understands and agrees that Agency's payment of amounts under this Contract is contingent on Agency receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract.

9. Representations and Warranties.

a. Contractor's Representations and Warranties. Contractor represents and warrants to Agency that (1) Contractor has the power and authority to enter into and perform this Contract, (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms, (3) Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in Contractor's industry, trade or profession, (4) Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work, (5) all computer hardware and software delivered under this Contract will, individually and in combination, correctly process, sequence, and calculate all date and date-related data for all dates prior to, through and after January 1, 2000, (6) any software products delivered under this Contract that process date or date-related data shall recognize, store and transmit date data in a format which explicitly and unambiguously specifies the correct century, and (7) Contractor prepared its proposal related to this Contract, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.

b. Warranties cumulative. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

10. Ownership of Work Product.

a. Definitions. As used in this Section 10, and elsewhere in this Contract, the following terms have the meanings set forth below:

(i) "Contractor Intellectual Property" means any intellectual property owned by Contractor and developed independently from the Work.

(ii) "Third Party Intellectual Property" means any intellectual property owned by parties other than Agency or Contractor.

(iii) "Work Product" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein that Contractor is required to deliver to Agency pursuant to the Work.

b. Original Works. All Work Product created by Contractor pursuant to the Work, including derivative works and compilations, and whether or not such Work Product is considered a work made for hire or an employment to invent, shall be the exclusive property of Agency. Agency and Contractor agree that such original works of authorship are "work made for hire" of which Agency is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created pursuant to the Work is not "work made for hire," Contractor hereby irrevocably assigns to Agency any and all of its rights, title, and interest in all original Work Product created pursuant to the Work, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Agency's reasonable request, Contractor shall execute such further documents and instruments necessary to fully vest such rights in Agency. Contractor forever waives any and all rights relating to original Work Product created pursuant to the Work, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

In the event that Work Product created by Contractor under this Contract is a derivative work based on Contractor Intellectual Property, or is a compilation that includes Contractor Intellectual Property, Contractor hereby grants to Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Contractor Intellectual Property employed in the Work Product, and to authorize others to do the same on Agency's behalf.

In the event that Work Product created by Contractor under this Contract is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Contractor shall secure on the Agency's behalf and in the name of the Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, and to authorize others to do the same on Agency's behalf.

c. Contractor Intellectual Property. In the event that Work Product is Contractor Intellectual Property Contractor hereby grants to Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Contractor Intellectual Property, and to authorize others to do the same on Agency's behalf.

d. Third Party Works. In the event that Work Product is Third Party Intellectual Property, Contractor shall secure on the Agency's behalf and in the name of the Agency, an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on Agency's behalf.

11. Indemnity by Contractor.

A. CLAIMS. EXCEPT AS PROVIDED IN PART B. OF THIS SECTION, CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY THE STATE OF OREGON AND AGENCY AND THEIR OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (COLLECTIVELY, "CLAIMS") OF ANY NATURE WHATSOEVER RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ACTIVITIES OF CONTRACTOR OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS CONTRACT, INCLUDING BUT NOT LIMITED TO, UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL RECORDS, PROFESSIONAL MALFEASANCE, INTENTIONAL, WILLFUL, OR WANTON WRONGFUL ACTS, AND ACTS OUTSIDE THE SCOPE OF WORK SET FORTH IN THIS CONTRACT. CONTRACTOR SHALL ALSO DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY THE STATE OF OREGON AND AGENCY AND THEIR OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS RESULTING FROM, ARISING OUT OF, OR RELATING TO AGENCY'S DENIAL OF ACCESS TO A FACILITY.

CONTRACTOR SHALL SELECT LEGAL COUNSEL REASONABLY ACCEPTABLE TO THE OREGON ATTORNEY GENERAL TO ACT IN THE NAME OF, OR REPRESENT THE INTERESTS OF, THE STATE OF OREGON, AGENCY AND/OR THEIR OFFICERS, EMPLOYEES AND AGENTS. SUCH LEGAL COUNSEL MUST ACCEPT APPOINTMENT AS A SPECIAL ASSISTANT ATTORNEY GENERAL UNDER ORS CHAPTER 180 BEFORE SUCH ACTION OR REPRESENTATION. FURTHER, THE STATE OF OREGON, ACTING BY AND THROUGH ITS DEPARTMENT OF JUSTICE, MAY ASSUME ITS OWN DEFENSE, INCLUDING THAT OF ITS OFFICERS, EMPLOYEES AND AGENTS, AT ANY TIME WHEN IN THE STATE OF OREGON'S SOLE DISCRETION IT DETERMINES THAT (I) PROPOSED COUNSEL IS PROHIBITED FROM THE PARTICULAR REPRESENTATION CONTEMPLATED; (II) COUNSEL IS NOT ADEQUATELY DEFENDING THE INTERESTS OF THE STATE OF OREGON AND/OR ITS OFFICERS, EMPLOYEES AND AGENTS; (III) IMPORTANT GOVERNMENTAL INTERESTS ARE AT STAKE; OR (IV) THE BEST INTERESTS OF THE STATE OF OREGON ARE SERVED THEREBY. CONTRACTOR'S OBLIGATION TO PAY FOR ALL COSTS

AND EXPENSES SHALL INCLUDE THOSE INCURRED BY THE STATE OF OREGON IN ASSUMING ITS OWN DEFENSE AND/OR THAT OF ITS OFFICERS, EMPLOYEES, AND AGENTS UNDER (I) AND (II) ABOVE.

FURTHER, CONTRACTOR IS NOT AUTHORIZED TO SETTLE OR COMPROMISE ANY CLAIM REFERENCED IN THIS SECTION WITHOUT THE EXPRESS WRITTEN CONSENT OF AGENCY.

B. EXCEPTION. THE FOREGOING INDEMNITY PROVISION HAS NO EFFECT WITH RESPECT TO CLAIMS COVERED BY INDEMNITY BY THE STATE OF OREGON UNDER SECTION 13, PROVIDED THAT CONTRACTOR:

(I) PROMPTLY REPORTS ANY CLAIM OR OCCURRENCE THAT COULD GIVE RISE TO A CLAIM IN WRITING TO RISK MANAGEMENT DIVISION, 1225 FERRY STREET SE, U150, SALEM, OREGON, 97301-7337 (OR ANY SUBSEQUENT ADDRESS OF SUCH DIVISION); AND

(II) CONTRACTOR COOPERATES FULLY IN THE INVESTIGATION AND DEFENSE OF ANY CLAIM COVERED BY THE INSURANCE.

12. Insurance. Contractor shall maintain insurance as set forth in Exhibit B, which is attached hereto.

13. Indemnity by State. From funds available in that portion of the Insurance Fund dedicated for state insurance programs, the State of Oregon, acting by and through its Department of Administrative Services (DAS), shall defend and indemnify Contractor and its employees, but only up to the limits for tort claims against the State of Oregon specified in Oregon Laws 2009, chapter 67, sections 3 and 5 (including the costs of defense), for all damages and costs of claims for torts committed or alleged to have been committed by Contractor or its employees in the course of Contractor's delivery of professional services under this Agreement. Subject to the monetary limits stated above, Contractor and its employees are entitled to the same defense and indemnification that qualifying agents of the Agency would receive under ORS 30.260 to 30.300. However, none of the terms of this Agreement are intended to – and none do – make Contractor or its employees the agents or employees of Agency, DAS, or the State of Oregon generally.

14. Default; Remedies; Termination.

a. Default by Contractor. Contractor shall be in default under this Contract if:

(i) 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; or

(ii) Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under the Contract and Contractor has not obtained such license or certificate within fourteen (14) calendar days after Agency's notice or such longer period as Agency may specify in such notice; or

(iii) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Contractor's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within fourteen (14) calendar days after Agency's notice, or such longer period as Agency may specify in such notice.

b. Agency's Remedies for Contractor's Default. In the event Contractor is in default under Section 14.a, Agency may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to:

(i) termination of this Contract under Section 14.e(ii);

(ii) withholding all monies due for Work and Work Products that Contractor has failed to deliver within any scheduled completion dates or has performed inadequately or defectively;

(iii) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief;

(iv) exercise of its right of setoff.

These remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If a court determines that Contractor was not in default under Sections 14.a, then Contractor shall be entitled to the same remedies as if this Contract was terminated pursuant to Section 14.e(i).

c. Default by Agency. Agency shall be in default under this Contract if:

(i) Agency fails to pay Contractor any amount pursuant to the terms of this Contract, and Agency fails to cure such failure within thirty (30) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice; or

(ii) Agency commits any material breach or default of any covenant, warranty, or obligation under this Contract, and such breach or default is not cured within thirty (30) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice.

d. Contractor's Remedies for Agency's Default. In the event Agency terminates the Contract under Section 14.e(i), or in the event Agency is in default under Section 14.c and whether or not Contractor elects to exercise its right to terminate the Contract under Section 14.e(iii), Contractor's sole monetary remedy shall be (a) with respect to services compensable on an hourly basis, a claim for unpaid invoices, hours worked within any limits set forth in this Contract but not yet billed, authorized expenses incurred and interest within the limits permitted under ORS 293.462, and (b) with respect to deliverable-based Work, a claim for the sum designated for completing the deliverable multiplied by the percentage of Work completed and accepted by Agency, less previous amounts paid and any claim(s) that Agency has against Contractor. In no event shall Agency be liable to Contractor for any expenses related to termination of this Contract or for anticipated profits. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section 14.d, Contractor shall pay immediately any excess to Agency upon written demand provided in accordance with Section 21.

e. Termination.

(i) **Agency's Right to Terminate at its Discretion.** At its sole discretion, Agency may terminate this Contract:

(A) For its convenience upon thirty (30) days' prior written notice by Agency to Contractor;

(B) Immediately upon written notice if Agency fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for the Work or Work Products; or

(C) Immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the Agency's purchase of the Work or Work Products under this Contract is prohibited or Agency is prohibited from paying for such Work or Work Products from the planned funding source.

(ii) **Agency's Right to Terminate for Cause.** In addition to any other rights and remedies Agency may have under this Contract, Agency may terminate this Contract immediately upon written notice by Agency to Contractor, or at such later date as Agency may establish in such notice, or upon expiration of the time period and with such notice as provided in Section 14.e(ii)(B) and 14.e(ii)(C) below, upon the occurrence of any of the following events:

(A) Contractor is in default under Section 14.a(i) because 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;

(B) Contractor is in default under Section 14.a(ii) because Contractor no longer holds a license or certificate that is required for it to perform services under the Contract and Contractor has not obtained such license or certificate within fourteen (14) calendar days after Agency's notice or such longer period as Agency may specify in such notice; or

(C) Contractor is in default under Section 14.a(iii) because Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Contractor's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within fourteen (14) calendar days after Agency's notice, or such longer period as Agency may specify in such notice.

(iii) **Contractor's Right to Terminate for Cause.** Contractor may terminate this Contract with such written notice to Agency as provided in Sections 14.e(iii)(A) and 14.e(iii)(B) below, or at such later date as Contractor may establish in such notice, upon the occurrence of the following events: (A) Agency is in default under Section 14.c(i) because Agency fails to pay Contractor any amount pursuant to the terms of this Contract, and Agency fails to cure such failure within thirty (30) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice; or (B) Agency is in default under Section 14.c(ii) because Agency commits any material breach or default of any covenant, warranty, or obligation under this Contract, fails to perform its commitments hereunder within the time specified or any extension thereof, and Agency fails to cure such failure within thirty (30) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice.

(iv) Return of Property. Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to Agency all of Agency's property (including without limitation any Work or Work Products for which Agency has made payment in whole or in part) that is in the possession or under the control of Contractor in whatever stage of development and form of recordation such Agency property is expressed or embodied at that time. Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless Agency expressly directs otherwise in such notice of termination. Upon Agency's request, Contractor shall surrender to anyone Agency designates, all documents, research or objects or other tangible things needed to complete the Work and the Work Products.

15. Records Maintenance; Access. Contractor shall maintain all financial records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that Agency and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of Contractor that are pertinent to this Contract, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

16. Compliance with Applicable Law. Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Contract. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated. Agency's performance under the Contract is conditioned upon Contractor's compliance with the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 which are incorporated by reference herein. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

17. Foreign Contractor. If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract. Contractor shall demonstrate its legal capacity to perform the Work under this Contract in the State of Oregon prior to entering into this Contract.

18. Force Majeure. Neither Agency nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, terrorist acts, or other acts of political sabotage, or war where such cause was beyond the reasonable control of Agency or Contractor, respectively. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

19. Survival. All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Sections 1, 7, 8, 9, 10, 11, 12, 13, 14, 15, 19, 22, 24, and 25.

20. Time is of the Essence. Contractor agrees that time is of the essence under this Contract.

21. Notice. Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by email, personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or Agency at the address, number or email address set forth in this Contract, or to such other addresses or numbers as either party may indicate pursuant to this Section 21. Any communication or notice so addressed and mailed shall be effective five (5) days after mailing. Any communication or notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours, or on the next business day, if

transmission was outside normal business hours of the recipient. To be effective against Agency, any notice transmitted by facsimile must be confirmed by telephone notice to Agency's Contract Administrator. Any communication or notice given by personal delivery shall be effective when actually delivered. Any communication or notice given by email shall be effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system.

22. Severability. The parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

23. Counterparts. This Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original.

24. Governing Law; Venue; Consent to Jurisdiction. This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between Agency (and/or any other agency or department of the State of Oregon) and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

25. Merger Clause; Waiver. This Contract and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. No waiver, consent, modification or change of terms of this Contract shall bind all parties unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of Agency to enforce any provision of this Contract shall not constitute a waiver by Agency of that or any other provision.

26. Amendments.

Agency may amend this Contract to the extent permitted by applicable statutes and administrative rules. Additionally, for Anticipated Amendments (as defined in OAR 125-246-0560(2)(a)(A)) Agency may amend this Contract i) to the extent provided in the solicitation document, if any, from which this Contract arose, and ii) to the extent described in Exhibit A. No amendment to this Contract shall be effective unless it is in writing signed by the parties, and all approvals required by applicable law have been obtained before becoming effective.

27. Contractor Data and Certification.**a. Contractor Tax Identification Information.** Contractor shall provide the additional information set forth below.Name (tax filing): William Steven Strauss, MDAddress: PO Box 5951 Salem, OR 97304Citizenship, if applicable: Non-resident alien ☐ Yes ☐ No

Business Designation (check one):

☐ Professional Corporation ☐ Partnership ☐ Limited Partnership ☐ Limited Liability Company ☐ Limited Liability Partnership☐ Sole Proprietorship ☐ Other _____

b. Certification. The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury that: (a) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; (b) s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, Contractor is not in violation of any Oregon tax laws named in ORS 305.380(4), including without limitation the state inheritance tax, gift tax, personal income tax, withholding tax, corporation income and excise taxes, amusement device tax, timber taxes, cigarette tax, other tobacco tax, 9-1-1 emergency communications tax, the homeowners and renters property tax relief program and local taxes administered by the Department of Revenue, including the Multnomah County Business Income Tax, Lane Transit District Tax, Tri-Metropolitan Transit District Employer Payroll Tax, and Tri-Metropolitan District Self-Employment Tax; (c) Contractor is an independent contractor as defined in ORS 670.600; and (d) the supplied Contractor data is true and accurate.

CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY ACKNOWLEDGES THAT CONTRACTOR HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

CONTRACTORS: YOU WILL NOT BE PAID FOR SERVICES RENDERED PRIOR TO NECESSARY STATE APPROVALS

CONTRACTOR

Authorized

Signature: _____ Title: _____ Date: _____

AGENCY

Authorized

Signature: _____ Title: _____ Date: _____

Max Williams, Director

Approved for Legal Sufficiency: /s/: Susan Kanclier, Senior AAG 06/29/09

EXHIBIT A
STATEMENT OF WORK
PERSONAL/PROFESSIONAL SERVICES CONTRACT #4089

Part I. General Information. Under this Contract, Contractor shall provide general medical services at Agency's Institutions to inmates as referred by Agency's Health Services staff as more specifically described in Part II, below.

Part II. Work; Acceptance Criteria; Deliverables and Delivery Schedule. Contractor shall schedule the Work with the Institutions in such a manner as to meet the clinical needs of the Institutions and the inmates, while keeping in mind the unique nature of the secure prison facility in which the Work will be conducted.

2.1 Contractor shall, for no less than **48 hours per month** during the term of this Contract, provide general medical services for inmates referred to Contractor by Agency's Health Services staff. In providing these services, Contractor shall:

- 2.1.1 Perform medical evaluations of referred inmates, including review of medical information obtained by other health care providers; complete history of previous medical, psychiatric, dental treatment and immunizations; review results of lab and other diagnostic tests; physically examine inmates for presence of pathology; establish diagnoses for medical problems; prescribe treatment and a follow-up plan for abnormal conditions; document normal and abnormal findings in the medical record; and
- 2.1.2 Prescribe treatment for referred inmates' medical conditions on the physician's order form, including further diagnostic procedures, monitoring of vital signs, pharmacotherapeutic agents, admission to and release from health care facilities (infirmary, hospital, emergency room), and curative or palliative interventions (surgery, prosthetic devices, special diets, etc.); and initiate referrals to other treatment specialists; and
- 2.1.3 Obtain written informed consent from inmates prior to administration of any medically diagnostic or treatment procedure that poses a material risk of substantial pain or harm to the inmate, including prior to recommending psychotropic medication; provide information and consultation to inmates and their families, as appropriately requested, about medical findings and prescribed treatment; and
- 2.1.4 Provide information to Institutions employees and other health care providers as requested to ensure continuity of prescribed treatment and programmatic function of the inmate and to maintain the safety and security of the Institution; and
- 2.1.5 Participate with other members of the health care team in the development of individualized treatment plans for inmates with chronic medical problems requiring supervision; and
- 2.1.6 Perform emergency medical interventions; assist in the preparation of staff and equipment for emergency medical response, including emergency evaluations of self-destructive, mentally disordered behavior; maintain certification in cardiopulmonary resuscitation procedures; and
- 2.1.7 Document the results of physical examination, diagnosis and treatment in the individual inmate's medical record, using the problem oriented charting format; and
- 2.1.8 Maintain current and accurate clinical records for inmates referred according to professional standards and Agency's Health Services ("HLT") policies and procedures; and
- 2.1.9 Meet and maintain for the duration of the Contract Oregon State licensing requirements for Contractor's specialty; and
- 2.1.10 Comply with Agency and HLT policies and procedures in the performance of this Contract; and
- 2.1.11 Complete all security training and security reviews required by Agency; and
- 2.1.12 Avoid any conflict of interest or any appearance of a conflict of interest by not providing community treatment to any inmates the Contractor has formerly provided services to under this Contract without prior approval of HLT.

3. Special Considerations.

3.1 Contractor Access to Agency Facilities.

Agency shall have the right to deny Contractor's agents and employees--and the agents and employees of its subcontractors (if any)--access to any premises controlled, held, leased, or occupied by Agency if Agency at its sole discretion determines that such personnel pose a threat to any of Agency's reasonable security interests. Contractor agrees that action taken pursuant to this authority by Agency will not give rise to any contractual, tort or constitutional claims.

3.2 Criminal Conviction Information.

Upon request by Agency, Contractor shall provide (at its own expense) Agency with sufficient personal information about its agents and employees--and the agents and employees of its subcontractors (if any)--who will enter upon premises controlled, held, leased, or occupied by Agency during the course of performing this Contract, to facilitate Agency's criminal record check of such personnel at state expense.

3.3 Confidentiality.

For and during the entire term of this Contract, Contractor shall consider and keep any information or data received from the Agency as the private and privileged records of the Contractor and will not divulge any such information or data in any form to any person, firm, corporation, or other entity except on the direct written authorization of the Agency. Further, upon the termination or expiration of this Contract for any cause, the Contractor shall continue to treat as private and privileged such information or data received from the Agency and will not release any such information or data to any person, firm, corporation, or other entity, either by statement, publication, deposition, or as a witness, except upon the direct written authorization of the Agency, and the Agency shall be entitled to an injunction by any competent court to enjoin and restrain the unauthorized disclosure of such information. This subsection 3.3 shall survive expiration or earlier termination of this Contract and be fully enforceable thereafter.

3.4 Code of Ethics.

As a condition to the effectiveness of this contract, a copy of the attached Exhibit D must be duly executed and delivered to Agency and by this reference is incorporated herein.

4. CONSIDERATION:

4.1 Subject to the terms and conditions of this Contract, Contractor may bill, and Agency shall pay Contractor at the monthly rate of **\$16,660** for Work performed pursuant to this Contract. Payment for all Work performed under this Contract shall be subject to the provisions of ORS 293.462 and shall not exceed the total maximum sum of **\$402,840**. Agency shall pay invoices only after Agency Contract Administrator has reviewed and approved the invoices submitted in accordance with Sections 4.2 and 4.3, below.

4.2 Contractor shall not submit invoices for, and Agency will not pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment. Contractor shall notify Agency's Contract Administrator in writing thirty (30) calendar days before this Contract expires of the upcoming expiration of the Contract. No payment will be made for any Work performed before the beginning date or after the expiration date of this Contract, as it may be amended from time to time in accordance with its terms.

4.3. Contractor shall submit monthly invoices for Work performed. The invoices shall describe all Work performed and by whom, and shall, if expense reimbursement is provided under this Contract, itemize and explain all expenses for which reimbursement is claimed. The invoices also shall include the total amount invoiced to date by Contractor prior to the current invoice. Contractor will specifically note in the appropriate invoice when one-third and two-thirds of the maximum Contract amount, including expense reimbursement if provided under this Contract, has been expended.

5. **Anticipated Contract Amendments.** The Agency reserves the right to amend the Contract for the Anticipated Amendments, listed below, in accordance with OAR 125-246-0560.

5.1 Circumstances Requiring Amendments.

Agency may request Contractor to provide additional quantities of Work in the event the parties expend the maximum, not-to-exceed compensation payable to Contractor, and additional quantities of Work must be performed to meet Agency program needs. Agency may also request Contractor to provide additional quantities of Work that may be required after the expiration date of this Contract to meet Agency program needs or may determine a need for Contractor to perform new Work to the extent permitted by applicable statutes and administrative rules. Also, Agency may request a change in the Statement of Work to conform to legislative or administrative rule requirements or to meet an operational or practice change. In addition, Agency may decrease the quantity of Work or delete Work, and correspondingly decrease the maximum, not-to-exceed compensation payable to Contractor if Agency program needs are less than originally anticipated by Agency, and/or if legislative action so requires in the exercise of Agency's reasonable administrative discretion. Agency may also increase the rate payable to Contractor to meet legislative action, changes in applicable rules, changes in operations or practice,

changes in the market place or increases in Agency standard payment rates. To address the circumstances described in this Section 5.1, the parties may amend this Contract in accordance with Section 5.2.

5.2 Scope of Amendments.

During the term of this Contract, one or more of the following amendments may be made to this Contract:

- 5.2.1** Amendments to extend the term of this Contract for additional periods;
- 5.2.2** Amendment to increase the quantity of Work;
- 5.2.3** Amendments to add new Work to the extent permitted by applicable statutes and administrative rules;
- 5.2.4** Amendments to increase the maximum, not-to-exceed compensation payable to Contractor to cover new Work or additional quantity of Work added to the Contract;
- 5.2.5** Amendments to conform the Work to legislative or administrative rule requirements, or operational and practice changes;
- 5.2.6** Amendments to delete Work;
- 5.2.7** Amendments to decrease the maximum, not-to-exceed compensation payable to Contractor; and
- 5.2.8** Amendments to increase the rate payable to Contractor, but only in the circumstances described in Section 5.1.

5.3 Amendment Process.

Upon identification of any of the circumstances set forth in Section 5.1 requiring an amendment to this Contract by either party, the parties may enter into negotiations regarding the proposed amendment to this Contract. All amendments must comply with Section 26 of the Contract document.

6. TRAVEL AND OTHER EXPENSES:

Agency will not reimburse Contractor for travel or other expenses under this Contract.

EXHIBIT B
INSURANCE REQUIREMENTS
PERSONAL/PROFESSIONAL SERVICE CONTRACT #4089

During the term of this Contract Contractor shall maintain in force at its own expense, each insurance noted below:

(Agency must check boxes for #2, #3, & #4 as to whether insurance is required or not.)

1. Required by Agency of contractors with one or more workers, as defined by ORS 656.027.

Workers' Compensation: All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements.

2. ▪ Required by Agency ☐ Not required by Agency.

Professional Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 each claim, incident or occurrence. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract.

3. ▪ Required by Agency ☐ Not required by Agency.

General Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Contract. It shall provide that the State of Oregon, Department of Corrections, and their divisions, officers and employees are Additional Insureds but only with respect to the Contractor's services to be provided under this Contract.

4. ▪ Required by Agency ☐ Not required by Agency.

Automobile Liability insurance with a combined single limit, or the equivalent, of not less than ☐ Oregon Financial Responsibility Law (ORS 806.060), ▪ \$1,000,000 each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.

5. Notice of cancellation or change. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days prior written notice from the Contractor or its insurer(s) to the Oregon Department of Corrections;

6. Certificates of insurance. As evidence of the insurance coverages required by this Contract, the Contractor shall furnish acceptable insurance certificates to the **Oregon Department of Corrections, Contracts Unit, 2575 Center Street NE, Salem, OR, 97301**, prior to commencing the work. The certificate will specify all of the parties who are Additional Insureds. Insuring companies or entities are subject to State acceptance. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the State. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

EXHIBIT C
CERTIFICATION STATEMENT FOR AN INDEPENDENT CONTRACTOR
PERSONAL/PROFESSIONAL SERVICES CONTRACT #4089

1. I am free from direction and control over the means and manner of providing the services, subject only to the right of the person for whom the services are provided to specify the desired results;
2. I am registered under ORS Chapter 58, 60, 62, 63, 65, 67, 70 or 648 to provide the services, if such registration is required.
3. I am responsible for obtaining other licenses or certificates necessary to provide the services.
4. I am customarily engaged in an independently established business because at least **three** of the following requirements are satisfied:
 - ____ A. I maintain a business location:
 - 1) That is separate from the business or work location of the person for whom the services are provided; or
 - 2) That is in a portion of my residence, and that portion is used primarily for business.
 - ____ B. I bear the risk of loss related to the business or the provision of services as shown by factors such as:
 - 1) Entering into a fixed-price contract;
 - 2) Being required to correct defective work;
 - 3) Warranting the services provided; or
 - 4) Negotiating indemnification agreements, or purchasing indemnification liability insurance, performance bonds or errors and omissions insurance.
 - ____ C. I provide contracted services for two or more different persons within a 12-month period, or routinely engage in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
 - ____ D. I make a significant investment in the business, through means such as:
 - 1) Purchasing tools or equipment necessary to provide the services;
 - 2) Paying for the premises or facilities where the services are provided; or
 - 3) Paying for licenses, certificates or specialized training require to provide the services.
 - ____ E. I have the authority to hire other persons to provide or to assist in providing the services and have the authority to fire those persons.

(Section 4 does not apply if a Person files a Schedule F as part of an income tax return and the Person provides farm labor or farm services that are reportable on Schedule C of an income tax return.)

Contractor Signature _____ Date _____

Name: _____

Title: _____

EXHIBIT D
DEPARTMENT OF CORRECTIONS CODE OF ETHICS
PERSONAL/PROFESSIONAL SERVICES CONTRACT #4089

[Contractor must read and sign pursuant to DOC Policy 20.1.2(c)]

As an employee, volunteer or contract service provider of the Oregon Department of Corrections, I will value and maintain the highest ideals of professional and compassionate public service by respecting the dignity, cultural diversity and human rights of all persons, and protecting the safety and welfare of the public.

I accept that my fundamental duty is to serve the public; to safeguard lives and property, to protect Department of Corrections incarcerated persons against deception, oppression or intimidation, violence or disorder.

I will be constantly mindful of the welfare of others. To the best of my ability, I will remain calm in the face of danger and maintain self-restraint in the face of scorn or ridicule.

I will be honest and truthful. I will be exemplary in obeying the law, following the regulations of the department, and reporting dishonest or unethical conduct.

I acknowledge that I have been selected for a position of public trust and I will constantly strive to be worthy of that trust and to be true to the mission and values of the Department of Corrections.

Contractor's Signature

Date