

**AGREEMENT
HARMONY LIVING**

THIS AGREEMENT ("Agreement") is made by and between Yamhill County, a political subdivision of the State of Oregon acting by and through its Board of Commissioners and its Health and Human Services Department, Behavioral Health Programs ("County") and Harmony Living, Inc., an Oregon corporation ("Contractor"), 1535 SW Shirley Ann Drive, McMinnville, OR 97128.

RECITALS:

1. County through its Health and Human Services Department, Behavioral Health Programs provides services for individuals experiencing mental illness and/or behavioral disorders. County desires to use funds provided by the Health Systems Division of the Oregon Health Authority ("Division") to serve certain eligible individuals experiencing serious and persistent mental illness and co-occurring medical conditions and/or aging issues. The County's Enhanced Care Services program provides intensive behavioral and rehabilitative mental health services to eligible individuals who reside in Aging and People with Disabilities (APD) licensed homes or facilities.
2. Contractor operates an Enhanced Care Facility in McMinnville, Oregon which provides housing and care for eligible individuals in a 16-bed community-based secure Residential Care Facility licensed by APD.
3. County and Contractor recognize that basic levels of payment for room, board and personal care will be paid by third parties including state and federal sources. However, by this Agreement County contracts with Contractor to furnish enhanced nursing and care services beyond its customary residential care services to Residents (as defined below) placed in Contractor's Facility and in accordance with the terms of this Agreement.
4. Individuals housed by Contractor who are clients of County will be referred to in this Agreement as "Residents". Contractor's Enhanced Care Facility in McMinnville will be referred to in this Agreement as either "the ECF" or "the Facility".
5. County and Contractor desire to enter into this Agreement and County is authorized to enter into this Agreement under ORS 203.010 (3). NOW, THEREFORE,

AGREEMENT

In exchange for the promises and other consideration as set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, IT IS HERBY AGREED BETWEEN THE PARTIES AS FOLLOWS:

Section 1. Term and Renewal. The initial term of this Agreement shall be effective July 1, 2016 through June 30, 2017 and supersedes any prior agreements between the parties. Upon conclusion of the initial term of this Agreement, this Agreement will automatically be renewed

on a year-by-year basis, under the same terms and conditions as set forth herein, unless terminated in accordance with Section 17 of this Agreement. It is understood by both parties that no commitments have been or are made by either party beyond the termination of this Agreement.

Section 2. General Duties of County.

A. County will provide Residents with mental and behavioral health services for a minimum of 12 hours per day, seven days per week including a minimum of three hours of rehabilitative services per day.

B. County staff will coordinate weekly Interdisciplinary team meetings (IDT) to develop the Service Plan, review the behavior support plan and to coordinate care planning.

C. County will conduct quarterly mental health in-service trainings for Contractor and Facility staff.

D. County will develop and implement individual behavior support strategies for Residents.

Section 3. County minimum staffing levels

A. **Psychiatric consultation services provided by County.** County shall provide the psychiatric consultation services of a Licensed Medical Practitioner (“LMP”), to Residents specified under this Agreement. Psychiatric consultation services provided by County shall include, at a minimum, the following services for approximately two hours per week:

1. Resident evaluation;
2. Psychotropic medication management;
3. Participation in IDT meetings and overall service planning; and
4. Staff consultation and development.

B. **Mental Health Professional services provided by County.** County shall provide the services of a mental health specialist with a master’s degree, who meets the criteria for Qualified Mental Health Professional (“QMHP”) under administrative rules for Medicaid outpatient health care services, to coordinate mental health services. QMHP services provided by County shall include, at a minimum, the following:

1. Resident assessment, service planning, individual therapy and behavior support plans;
2. Coordination of Resident entry and transitions
3. Coordination of IDT meetings
4. Clinical supervision of mental health staff (QMHPs); and
5. Staff consultation and training.

C. **Qualified Mental Health Associates provided by County.** County shall provide at a minimum, the services of three qualified mental health associates (“QMHPAs”). Services provided shall include, at a minimum, the following services provided seven days per week:

1. Daily individual and group skills training activities; treatment and activity plans will be carried out in accordance with OAR 309-019-0155

2. Behavior assessment, development and implementation of targeted interventions and;
3. Assistance with milieu management at the Facility.

D. Crisis / additional Mental Health staff coverage.

1. Holiday staff coverage: County shall provide at least one Mental Health staff (QMHA or QMHP) to work on-site at the Facility for a minimum of eight hours on each recognized County holiday while this Agreement is in effect.
2. After-hours crisis services: County will provide access to after-hours crisis support either directly or through contracted agencies as needed to respond to behavioral emergencies involving Residents during evening and nighttime hours when no other County mental health staff is on-site at the program. County will provide information and training for Facility staff regarding accessing police and other necessary services. County will monitor this access of services.

Section 4. General duties of Contractor.

A. Contractor agrees to provide residential care services in compliance with governing Oregon Administrative Rules and federal regulations, consistent with the objectives and terms of this Agreement. Among other administrative rules, Contractor will abide by rules and standards set by APD for Residential Care and Assisted Living Facilities (OAR 411-054-0000 to 411-054-0300) and the standards set by the Division and Oregon Health Authority for Enhanced Care Services (OAR 309-019-0155) entitled " Enhanced Care Services and Enhanced Care Outreach Services."

B. Contractor agrees to comply with all applicable federal, state, county and local statutes, ordinances and rules and funding criteria including those governing services, facilities and operations. Contractor further agrees to maintain clinical and fiscal records consistent with Oregon Administrative Rules and generally accepted accounting principles.

C. Contractor agrees to maintain current licenses as required by state, county and city governments to operate a residential care facility. Contractor further agrees to supply County with copies of all required licenses upon County's request.

D. Contractor will provide adequate staff training for all Contractor staff (per applicable OAR's).

E. Contractor staff will participate in IDT meetings.

Section 5. Minimum facility staffing levels. To care for Residents under this Agreement, Contractor shall provide, at a minimum, the staff listed in this subsection for the Facility based on 16 beds. All of Contractor's staff will be employees of Contractor and subject to the direction and supervision of Contractor. Contractor's minimum staffing levels for this Agreement are as follows:

A. **Facility Administrator.** Facility shall provide the services of an Administrator who meets the criteria for the position (per applicable OAR's) to oversee day to day Facility

operations. This position will provide, at a minimum, the following services for 40 hours per week:

1. Ensure the Facility and Contractor staff remain in compliance with all applicable administrative rules;
2. Oversight of Facility operations (including budgets, payroll, quality assurance, inspections, repairs and upkeep);
3. Management of Resident finances and Social Security Representative Payee responsibilities as outlined in the Social Security Guide for Organization Representative Payees;
4. Oversee delivery of Resident care plans and coordinate with County staff, other professionals/agencies, family and significant others
5. Participation in screenings and decisions regarding Resident admission and transitions;
6. Supervision of RN, Facility care staff and maintenance staff.

B. **Nursing.** Facility shall provide nursing services to oversee medical and physical care of Residents seven days a week for approximately 55 hours. Registered Nurse (RN) and/or Licensed Practical Nurse (LPN) will provide, at a minimum, the following services:

1. Monthly and ongoing assessments of Resident conditions;
2. Processing and reconciling physician's orders;
3. Direct oversight of medication administration and related functions;
4. Coordination with other medical providers; and
5. Service planning.

C. **Care Staff.** Facility shall provide qualified care staff to address Resident's daily needs including passing medications, providing Activities of Daily Living assistance (ADL), preparing meals, cleaning/housekeeping services, coordinating medical appointments (including arranging transportation and accompanying Residents to appointments), routine behavioral interventions, and routine milieu management. Coverage will be based on the following staffing pattern (at a minimum unless occupancy levels drop significantly) and will be adjusted accordingly based on resident needs:

Day Shift: At least three (3) Care Staff, seven (7) days/week, 365 days/year

Evening Shift: At least three (3) Care Staff, seven (7) days/week, 365 days/year

Night Shift: At least two (2) Care Staff, seven (7) days/week, 365 days/year

D. **Social Services/Activity Coordinator.** Facility shall provide one full time Social Services/Activity Coordinator to assist the Administrator and support Residents. Examples of assigned tasks include processing Facility and Resident mail, food orders, social security issues, PIF distribution, basic office duties, Facility audits and assisting with and new employee orientation. May assist with screenings and new Resident admission process. Develops individualized activity plans for each Resident and creates activity program to complement services provided by mental health staff.

Section 6. Provision of office space for County at Facility. Contractor will provide separate office space (referred to as “the Mental Health Offices”) for County at the Facility at no charge to County. The office(s) will have locking doors. The offices will be used by County staff assigned to the Facility. The offices will include telephone lines provided by Contractor, but County will be responsible for obtaining and paying for its own telephone service. County may furnish the County office and may retain any furnishings upon termination of this Agreement.

Section 7. Resident Placement and Census Management.

A. The services specified in Sections 4 and 5 of this Agreement shall be provided by Contractor to APD service eligible Residents who are enrolled in Enhanced Care services with the Division. County shall have the right to place such Residents in the program at any time during the duration of this Agreement.

B. Final decision on which Residents are placed into the Facility will be made mutually by Contractor and County along with the concurrence of the local APD case manager for the Facility. Either party may deny a potential admission to the Facility if it is determined the party could not effectively meet that client’s needs. The Enhanced Care Services Referral Outcome form will document the final decision about whether or not a client is accepted for admission to the Facility, and, if a client is not accepted, the form will document the reason for denying admission. County, Contractor and APD staff will make decision jointly about transitioning Residents who are no longer appropriate for the Facility setting due to a change in physical or mental health care needs.

Section 8. Critical incidents reporting and evaluation. Both County and Contractor are subject to mandatory abuse reporting statutes applicable to vulnerable populations receiving behavioral health services. Both Contractor and County staff are responsible for reporting abuse and critical incidents including but not limited to abuse, neglect, exploitation, rights violations, serious injury, missing person, death, medical emergency, restraints, medical errors, law enforcement contact and suicide attempt. Both parties will have policies and procedures in place for reporting and evaluating critical incidents.

Section 9. Policy and procedure manuals. Both County and Contractor agree to develop and implement written policies and procedures that promote high quality services, health and safety for Residents and incorporate the community-based care principles of individuality, independence, dignity, privacy, choice and a homelike environment per applicable OARs. In addition, both County and Contractor hereby grant the other party access to policies and procedures for review.

Section 10. Compensation for services. Contractor shall provide medical billing documentation as required by Oregon Health Authority (OHA) in order to secure compensation for services under this Agreement. Documentation shall be in the form specified by OHA. County shall complete any pre-authorization if required to approve eligible Residents for payment.

Section 11. Reporting. Contractor agrees to prepare and furnish reports and data required by County or the Oregon Health Authority (OHA). Contractor agrees to and does hereby grant

County and the Division the rights to reproduce, use, and disclose for County purposes, all or any part of the reports, data, and technical information furnished to County under this Agreement.

Section 12. Compliance with applicable laws. County and Contractor agree to comply fully with the rules and regulations of County, applicable state and federal regulations, executive orders and ordinances and all provisions of federal and state law in the performance of services under this Agreement as they may be adopted, amended or repealed from time to time, including but not limited to the following: (i) ORS Chapter 659A.142; (ii) Oregon Health Authority (OHA) rules pertaining to the provision of integrated and coordinated care and services, OAR Chapter 410, Division 141; (iii) all other OHA Rules in OAR Chapter 410; (iv) rules in OAR Chapter 309 pertaining to the provisions of mental health services; (v) rules in OAR Chapter 415 pertaining to the provision of Substance Use Disorders services; (vi) state law establishing requirements for Declaration for Mental Health Treatment in ORS 127.700 through 127.737; (vii) 42 CFR 438.6 and 42 CFR 438 E; (viii) ORS 279B.200 through 279B.270; (ix) Article XI, Section 10, of the Oregon Constitution; and (x) all other applicable requirements of State civil rights and rehabilitation statutes, rules and regulations. These laws, regulations, executive orders and ordinances are incorporated by reference herein to the extent that they are applicable to this Agreement and required by law to be so incorporated. In addition, Contractor agrees to comply with all laws, rules, regulations, reporting requirements, policies and procedures of Medicare/Medicaid and officially made known by the Centers for Medicare & Medicaid Services and OHA as they pertain to the performance of services under this Agreement. In addition, Contractor agrees that it has complied with the tax laws of the state of Oregon or a political subdivision of the state of Oregon, including ORS 305.620 and ORS Chapters 316, 317 and 318.

Section 13. Workers' Compensation Insurance. County, Contractor, their subcontractors, if any, and all other employers working under this Agreement are subject employers under the Oregon Workers' Compensation law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers.

Section 14. Agreement Monitoring.

A. Contractor agrees that the following shall be open for inspection by County or its agents, at any reasonable time during business hours: i) services provided under this Agreement by Contractor; ii) facilities used in conjunction with such services; iii) client and Resident records; iv) Contractor's policies, procedures and performance data; v) information privacy and security records, vi) financial records and other similar documents and records of Contractor that pertain, or may pertain to Residents or services under this Agreement. Contractor agrees to retain such records and documents for a period of seven years, or such longer period as may be prescribed for records and documents by the state archivist.

B. All records maintained by the County which relate to this Agreement shall be open for inspection to the Division inspectors or Contractor's authorized representative during business hours.

C. Contractor shall permit authorized representative of the Division and the Oregon Department of Human Services to perform site review of all services delivered by County or Contractor at the Facility.

D. Special rules applicable to state agencies. In accordance with the County's Agreement with the Division, Contractor shall allow authorized representatives of the Division, the Oregon Department of Human Services, the Oregon Secretary of State's Audits Division, the Oregon Department of Administrative Services, the Oregon Department of Justice and the applicable audit agencies of the United States Government to review the records of Contractor in order to satisfy audit or program evaluation purposes to the extent those records exist. Audit and program evaluation purposes include, but are not limited to the following: (i) To document the relationship between the financial assistance paid by County under this Agreement with h Division funds and the amounts expended by County or Contractor on the delivery of services; (ii) To document that the amounts expended by County or Contractor on the delivery of a service are reasonable and necessary to ensure quality of service; and (iii) To ensure that the County's or Contractor's expenses are in accordance with federal OMB Circular A-133 as applicable on allowable costs.

Section 15. Indemnification.

A. Contractor shall indemnify, hold harmless, save and defend County, its officers, agents and employees including but not limited to the State of Oregon from and against any and all claims, suits, actions, damages, costs, losses, fees, expenses or judgments resulting from, arising out of or connected with any such injury or the Services provided by Contractor pursuant to this Agreement. Contractor shall not be responsible for any injury to any person or property resulting from the negligent or intentional acts of County, its officers, agents or employees.

B. County shall, within the limits of Article II, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act, indemnify, hold harmless, save and defend Contractor, its officers, agents and employees from and against any and all claims, suits, actions, damages, costs, losses, fees, expenses or judgments resulting from, arising out of or connected with any such injury or the Services provided by County pursuant to this Agreement. County shall not be responsible for any injury to any person or property resulting from the negligent or intentional acts of Contractor, its officers, agents or employees.

Section 16. Insurance. Contractor shall obtain and at all times during the term of this Agreement keep in effect, comprehensive liability and property damage insurance covering activities and operation of Contractor. The amount of liability insurance coverage shall be equivalent to or greater than the limits of public body tort liability as specified in ORS 30.271. Contractor shall immediately notify County verbally and in writing of the cancellation or restriction of its insurance coverage for whatever reason. County will maintain the required insurance coverage as appropriate for services provided under this Agreement. Contractor shall provide insurance documentation to County upon request.

Section 17. Termination.

A. Either party may terminate the Agreement on ninety (90) days written notice to the other party.

B. In addition, in the event County no longer receives funds adequate to enable it to continue this Agreement, County will provide written notice of termination of this Agreement to Contractor. Upon issuance of notice, this Agreement is terminated. However, any obligations existing at the time of termination will survive termination. County acknowledges that Contractor has a statutory duty independent of this Agreement with regard to the transfer of Residents receiving services pursuant to this Agreement, and that such obligations might require Contractor to provide services to such Residents after termination. In the event of termination resulting from a cessation of funding, County shall use its best efforts to obtain sufficient funding until all Residents have been transferred pursuant to State administrative rules, but shall in no way be liable to Contractor if such efforts fail.

Section 18. Settlement of Disputes. Differences between Contractor and County will be resolved when possible at appropriate management levels, followed by:

A. Mediation. The parties first shall submit to mediation of the dispute to be conducted by a mutually acceptable mediator. Mediation shall take place in McMinnville, Oregon. If the parties cannot agree on a mediator, they shall request a mediator to be appointed by the American Arbitration Association. The mediator's charges and expenses shall be borne equally by the parties. All other expenses, including attorney fees and costs, shall be borne exclusively by the party requiring the service or for which payment is to be made.

B. Arbitration. If the dispute is not resolved in mediation, the parties shall then submit the dispute to binding arbitration. Arbitration shall take place in McMinnville, Oregon. Arbitration shall be conducted in accordance with the rules set forth in the Oregon International Commercial Arbitration and Conciliation Act, ORS 36.450 to 36.558, 2007 replacement part. The decision of the arbitrator shall be final and binding on the parties. The fees and expenses of the arbitrator or arbitrator's association shall be borne equally by the parties. All other expenses, including attorney fees and costs, shall be borne exclusively by the party requiring the service or for which payment is to be made.

Section 19. Attorney Fees and Costs. In the event an action, suit or proceeding, including appeal therefrom, is brought for failure to observe any of the terms of this Agreement, each party shall be solely responsible for its own attorney's fees, expenses, costs and disbursements for said action, suit, proceeding or appeal.

Section 20. Abuse Reporting and Protective Services. County and Contractor shall comply with all protective services, investigation and reporting requirements described in OAR 943-045-0250 through 943-045-0370 and ORS 430.735 through 430.765,

Section 21. Subcontracts; Assignment. Contractor shall not enter into any subcontracts for any of the Services required under this Agreement without County's prior written consent. This Agreement shall not be assigned by Contractor without the prior written consent of County. No approval by County of any assignment or transfer of interest shall be deemed to create any obligation of County in addition to those set forth in this Agreement. Consent to subcontract shall not relieve obligations/duties under this Agreement.

Section 22. Non-discrimination. County and Contractor agree that no person shall, on the grounds of race, color, religion, national origin, sex, marital status, or age, suffer discrimination by County, Contractor or any subcontractors, employees or agents of County or Contractor in the performance of this Agreement.

Section 23. Waiver; Remedies. County and Contractor acknowledge that any breach, violation, or default by either party of the provisions contained in this Agreement might result in damage to the other party. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

Section 24. Severability. The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

Section 25. Counterparts. This Agreement may be executed by facsimile and in counterparts, which taken together shall form one legal instrument.

Section 26. Entire Agreement. This Agreement is the entire agreement between the parties, and no statements, promises, or inducements made by either party or agent of either party that are not contained in this written Agreement shall be valid or binding. No alterations, changes, or additions to this Agreement shall be made except in a written document signed by both parties.

Section 27. Business Associate Clause - HIPAA restrictions. Contractor acknowledges that County is subject to the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996, (HIPAA), Pub. Law No. 104-191 and subject to the Federal Confidentiality of Alcohol and Drug Abuse Patient Records law and regulations, 42 USC §290dd-2 and 42 CFR Part 2 (collectively, "Part 2"). County and Contractor hereby agree to the respective obligations in the attached Exhibit A, "Business Associate/Qualified Service Organization Agreement" which is incorporated herein by this reference.

Section 28. Governing Law; Jurisdiction; Venue. This Agreement 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 County and Contractor that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Yamhill County for the State of Oregon. CONTRACTOR, BY EXECUTION OF THIS AGREEMENT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS

Section 29. Confidentiality. Contractor acknowledges that it or its agents may, in the course of their performance under this Agreement, be exposed to or acquire information that is the confidential information of County or County clients or patients. Any and all (i) County client or patient information, (ii) information provided by County and marked confidential, (iii) Protected

Health Information or EPHI, including electronic health information accessed by Contractor through County's electronic records system, or (iv) information identified as confidential in a separate writing, that becomes available to Contractor or its agents in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items, including software, that result from Contractor's use of the Confidential Information are also deemed Confidential Information. Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information for any purposes whatsoever, except as may be provided elsewhere under this Agreement. Contractor agrees that, upon termination of this Agreement or at County's request, Contractor will turn over to County all documents, papers and other matter in Contractor's possession that embody Confidential Information

DONE the last date set forth adjacent to the signatures of the parties below.

HARMONY LIVING, INC.

By: [Signature]
POONEH ENTEZARI
Date: 8/31/16

president / owner
(title)

Tax ID No.: _____

YAMHILL COUNTY, OREGON

[Signature]
MARY STARRETT, Chair
Board of Commissioners
Date: 9-16-16

[Signature]
SILAS HALLORAN-STEINER, Director
Department of Health & Human Services
Date: 9/19/16

FORM APPROVED BY:
[Signature]
CHRISTIAN BOENISCH
County Counsel
Date: 9/15/16

Accepted by Yamhill County
Board of Commissioners on
9-15-16 by Board Order
16-380

EXHIBIT A
BUSINESS ASSOCIATE/QUALIFIED SERVICE ORGANIZATION AGREEMENT

RECITALS

- A. The CONTRACTOR may use and disclose Protected Health Information and Electronic Protected Health Information (“EPHI”) in the performance of its obligations under the Agreement; and
- B. County operates a drug and alcohol treatment program subject to the Federal Confidentiality of Alcohol and Drug Abuse Patient Records law and regulations, 42 USC §290dd-2 and 42 CFR Part 2 (collectively, “Part 2”); if CONTRACTOR is a Qualified Service Organization (QSO) under Part 2 it also must agree to certain mandatory provisions regarding the use and disclosure of substance abuse treatment information with respect to the performance of its obligations under the Agreement; and
- C. The Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) and its implementing Privacy Rule and Security Rule, 45 CFR Parts 160 and 164, require that COUNTY, as a Covered Entity, obtain satisfactory assurances from its Business Associates, as that term is defined in the Privacy Rule and Security Rule, that they will comply with the Business Associate requirements set forth in 45 CFR 164.502(e) and 164.504(e) and as amended by the Health Information Technology for Economic and Clinical Health (“HITECH”) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (“ARRA”); CONTRACTOR is a Business Associate of COUNTY and desires to provide such assurances with respect to the performance of its obligations under the Agreement; and
- D. Both COUNTY and CONTRACTOR are committed to compliance with the standards set forth in Part 2, the Privacy Rule and Security Rule as amended by the HITECH Act, and as they may be amended further from time to time, in the performance of their obligations under the Agreement.

NOW, THEREFORE, in consideration of mutual and valuable consideration which the parties hereby acknowledge as received, the parties agree as follows:

AGREEMENT. The parties agree that the following terms and conditions shall apply to the performance of their obligations under the Agreement, effective upon execution of this Amendment. Capitalized terms used, but not otherwise defined in this Amendment, shall have the same meaning as those terms in Part 2, the Privacy Rule and Security Rule.

1. SERVICES. Pursuant to the Agreement, CONTRACTOR provides certain services for or on behalf of COUNTY, as described in the Agreement, which may involve the use and disclosure of Protected Health Information and EPHI. CONTRACTOR may make use of Protected Health Information and EPHI to perform those services if authorized in the Agreement and not otherwise limited or prohibited by this Amendment, Part 2, the Privacy Rule, the Security Rule and other applicable federal or state laws or regulations. All other uses of Protected Health Information and EPHI are prohibited.

2. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR.

(a) CONTRACTOR agrees to not use or disclose Protected Health Information or EPHI other than as permitted or required by the Agreement (as amended by this Amendment), and as permitted by Part 2, the Privacy Rule, the Security Rule or as required by Law. Notwithstanding any other language in this Agreement, CONTRACTOR acknowledges and agrees that any patient information it receives from COUNTY that is protected by Part 2 regulations is subject to protections that prohibit CONTRACTOR

from disclosing such information to agents or subcontractors without the specific written consent of the subject individual.

(b) CONTRACTOR agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information and EPHI other than as provided for by the Agreement as amended by this Amendment, and if necessary will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by the Part 2 regulations.

(c) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR of a use or disclosure of Protected Health Information or EPHI by CONTRACTOR in violation of the requirements of the Agreement, as amended by this Amendment.

(d) CONTRACTOR agrees to report to COUNTY, as promptly as possible, any use or disclosure of the Protected Health Information or EPHI not provided for by the Agreement, as amended by this Amendment, of which it becomes aware.

(e) CONTRACTOR agrees to ensure that any agent, including a contract hearing officer or other subcontractor, to whom it provides Protected Health Information or EPHI received from, or created or received by CONTRACTOR on behalf of COUNTY, agrees to the same restrictions and conditions that apply through the Agreement, as amended by this Amendment, to CONTRACTOR with respect to such information.

(f) CONTRACTOR agrees to provide access, at the request of COUNTY, and in the time and manner designated by COUNTY, to Protected Health Information and EPHI in a Designated Record Set (the hearing file), to COUNTY or, as directed by COUNTY, to an Individual in order to meet the requirements under 45 CFR 164.524.

(g) CONTRACTOR agrees to make any amendment(s) to Protected Health Information and EPHI in a Designated Record Set that the COUNTY directs or agrees to pursuant to 45 CFR 164.526 at the request of COUNTY or an Individual, and in the time and manner designated by COUNTY.

(h) CONTRACTOR agrees to make internal practices, books, and records, including policies and procedures and any Protected Health Information or EPHI, relating to the use and disclosure of Protected Health Information and EPHI received from, or created or received by CONTRACTOR on behalf of COUNTY, available to COUNTY or to the Secretary, within the time and in the manner designated by COUNTY or the Secretary, for purposes of the Secretary determining COUNTY's compliance with Part 2, the Privacy Rule or Security Rule.

(i) CONTRACTOR agrees to refer requests for disclosures of Protected Health Information and EPHI to the COUNTY for response, except for requests related to conducting the contested case hearing. To the extent CONTRACTOR discloses Protected Health Information or EPHI for purposes not related to conducting the contested case hearing, CONTRACTOR agrees to document such disclosures to the extent such documentation is required for COUNTY to respond to a request by an Individual for an accounting of disclosures of Protected Health Information and EPHI in accordance with 45 CFR 164.528.

(j) CONTRACTOR agrees to provide to COUNTY or an Individual, in time and manner to be designated by COUNTY, information collected in accordance with Section 2(i) of this Amendment, to permit COUNTY to respond to a request by an Individual for an accounting of disclosures of Protected Health Information and EPHI in accordance with 45 CFR 164.528.

(k) CONTRACTOR agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the EPHI that it creates, receives, maintains, or transmits on behalf of the COUNTY.

(l) In the event of Discovery of a Breach of Unsecured Protected Health Information, CONTRACTOR shall:

(i) Notify the COUNTY of such Breach. Notification shall include identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by CONTRACTOR to have been accessed, acquired or disclosed during such Breach and any other information as may be reasonably required by the COUNTY necessary for the COUNTY to meet its notification obligations;

(ii) Confer with the COUNTY as to the preparation and issuance of an appropriate notice to each individual whose Unsecured Protected Health Information has been, or is reasonably believed by CONTRACTOR to have been accessed, acquired or disclosed as a result of such Breach;

(iii) Where the Breach involves more than 500 individuals, confer with the COUNTY as to the preparation and issuance of an appropriate notice to prominent media outlets within the State or as appropriate, local jurisdictions; and,

(iv) Confer with the COUNTY as to the preparation and issuance of an appropriate notice to the Secretary of DHHS of Unsecured Protected Health Information that has been acquired or disclosed in a Breach. CONTRACTOR understands that if the Breach was with respect to 500 or more individuals, such notice to the Secretary must be provided immediately, and therefore, time is of the essence in the obligation to confer with the COUNTY. If the Breach was with respect to less than 500 individuals, a log may be maintained of any such Breach and the log shall be provided to the Secretary annually documenting such Breaches occurring during the year involved.

(v) Except as set forth in (vi) below, notifications required by this section are required to be made without unreasonable delay and in no case later than 60 calendar days after the Discovery of a Breach. Therefore, the notification of a Breach to the COUNTY shall be made as soon as possible and CONTRACTOR shall confer with the COUNTY as soon as practicable thereafter, but in no event, shall notification to the COUNTY be later than 30 calendar days after the Discovery of a Breach. Any notice shall be provided in the manner required by the HITECH Act, sec 13402(e) and (f), Public Law 111-5, 45 CFR 164.404 through 164.410 and as agreed upon by the COUNTY.

(vi) Any notification required by this section may be delayed by a law enforcement official in accordance with the HITECH Act, sec 13402(g), Public Law 111-5.

(vii) For purposes of this section, the terms "Unsecured Protected Health Information" and "Breach" shall have the meaning set forth in 45 CFR § 164.402. A Breach will be considered as "Discovered" in accordance with the HITECH Act, sec 13402(c), Public Law 111-5, 45 CFR 164.404(a)(2).

(m) CONTRACTOR shall comply with 45 C.F.R. 164.308, 164.310, 164.312 and 164.316 and all requirements of the HITECH Act, Public Law 111-5, that relate to security and that are made applicable to Covered Entities, as if CONTRACTOR were a Covered Entity.

(n) CONTRACTOR shall be liable to the COUNTY, and shall indemnify the COUNTY for any and all direct costs incurred by the COUNTY, including, but not limited to, costs of issuing any notices required

by HITECH or any other applicable law, as a result of CONTRACTOR's Breach of Unsecured Protected Health Information.

3. PERMITTED USES AND DISCLOSURES BY CONTRACTOR.

(a) General Use and Disclosure Provisions.

(1) Except as otherwise limited or prohibited by this Amendment, CONTRACTOR may use or disclose Protected Health Information and EPHI to perform functions, activities, or services for, or on behalf of, COUNTY as specified in the Agreement and this Amendment, provided that such use or disclosure would not violate Part 2, the Privacy Rule or Security Rule if done by COUNTY or the minimum necessary policies and procedures of COUNTY.

(2) COUNTY has determined that disclosures to CONTRACTOR under the Agreement are necessary and appropriate for COUNTY's Treatment, Services, Payment and/or Health Care Operations under Part 2, the HIPAA Privacy Rule and Security Rule and Required By Law under Or Laws 1999, ch. 849 (HB 2525).

(3) All applicable federal and state confidentiality or privacy statutes or regulations, and related procedures, continue to apply to the uses and disclosures of information under this Amendment, except to the extent preempted by Part 2 or the HIPAA Privacy Rule and Security Rule.

(b) Specific Use and Disclosure Provisions.

(1) Except as otherwise limited in this Amendment, CONTRACTOR may use Protected Health Information and EPHI for the proper management and administration of the CONTRACTOR or to carry out the legal responsibilities of the CONTRACTOR.

(2) Except as otherwise limited in this Amendment, CONTRACTOR may disclose Protected Health Information and EPHI for the proper management and administration of the CONTRACTOR, provided that disclosures are Required By Law, or CONTRACTOR obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the CONTRACTOR of any instances of which it is aware in which the confidentiality of the information has been breached.

(3) CONTRACTOR may use Protected Health Information and EPHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1).

(4) CONTRACTOR may not aggregate or compile COUNTY's Protected Health Information or EPHI with the Protected Health Information or EPHI of other Covered Entities unless the Agreement permits CONTRACTOR to perform Data Aggregation services. If the Agreement permits CONTRACTOR to provide Data Aggregation services, CONTRACTOR may use Protected Health Information and EPHI to provide the Data Aggregation services requested by COUNTY as permitted by 45 CFR 164.504(e)(2)(i)(B), subject to any limitations contained in this Amendment. If Data Aggregation services are requested by COUNTY, CONTRACTOR is authorized to aggregate COUNTY's Protected Health Information and EPHI with Protected Health Information or EPHI of other Covered Entities that the CONTRACTOR has in its possession through its capacity as a CONTRACTOR to such other Covered Entities provided that the purpose of such aggregation is to provide COUNTY with data analysis relating to the Health Care Operations of COUNTY. Under no circumstances may CONTRACTOR disclose

Protected Health Information or EPHI of COUNTY to another Covered Entity absent the express authorization of COUNTY.

4. OBLIGATIONS OF COUNTY.

(a) COUNTY shall notify CONTRACTOR of any limitation(s) in its notice of privacy practices of COUNTY in accordance with 45 CFR 164.520, to the extent that such limitation may affect CONTRACTOR's use or disclosure of Protected Health Information and EPHI. COUNTY may satisfy this obligation by providing CONTRACTOR with COUNTY's most current Notice of Privacy Practices.

(b) COUNTY shall notify CONTRACTOR of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information or EPHI, to the extent that such changes may affect CONTRACTOR's use or disclosure of Protected Health Information and EPHI.

(c) COUNTY shall notify CONTRACTOR of any restriction to the use or disclosure of Protected Health Information or EPHI that COUNTY has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect CONTRACTOR's use or disclosure of Protected Health Information or EPHI.

5. PERMISSIBLE REQUESTS BY COUNTY.

(a) COUNTY shall not request CONTRACTOR to use or disclose Protected Health Information or EPHI in any manner that would not be permissible under Part 2, the Privacy Rule or Security Rule if done by COUNTY, except as permitted by Section 3(b) above.

(b) COUNTY may conduct a survey of CONTRACTOR with respect to CONTRACTOR's compliance with the terms of this Agreement and applicable law for the establishment of policies and procedures for the safeguarding of any Protected Health Information and EPHI provided to CONTRACTOR by COUNTY. CONTRACTOR shall implement any recommendations of COUNTY resulting from such surveys as may be reasonably necessary to ensure compliance with the terms of this Agreement and applicable law for the safeguarding of any Protected Health Information and EPHI provided to CONTRACTOR by COUNTY.

6. TERM AND TERMINATION.

(a) Effective Date; Term. This Amendment shall be effective on the date on which all parties have executed it and all necessary approvals, if any, have been granted. This Amendment shall terminate on the earlier of (i) the date of termination of the Agreement, or (ii) the date on which termination of the Amendment is effective under Section 6(b).

(b) Termination for Cause. In addition to any other rights or remedies provided in this Agreement, upon either the COUNTY's or CONTRACTOR's knowledge of a material breach by the other party of that party's obligations under this Amendment, the party not in breach shall either:

(1) Notify the other party of the breach and specify a reasonable opportunity in the Notice of Breach to the party in breach to cure the breach or end the violation, and terminate the Agreement and this Amendment if the party in breach does not cure the breach of the terms of this Amendment or end the violation within the time specified;

(2) Immediately terminate the Agreement and this Amendment if the party in breach has breached a material term of this Amendment and cure is not possible in the reasonable judgment of the party not in breach; or

(3) If neither termination nor cure is feasible, the party not in breach shall report the violation to the Secretary.

(4) The rights and remedies provided in this Amendment are in addition to any rights and remedies provided in the Agreement.

(c) Effect of Termination.

(1) Except as provided in paragraph (2) of this Section 6(c), upon termination of the Agreement and this Amendment, for any reason, the party in breach shall, at the other party's option, return or destroy all Protected Health Information and EPHI received from the other party, or created or received by CONTRACTOR on behalf of COUNTY. This provision shall apply to Protected Health Information and EPHI that is in the possession of CONTRACTOR or agents of CONTRACTOR. CONTRACTOR shall retain no copies of the Protected Health Information or EPHI.

(2) In the event that CONTRACTOR determines that returning or destroying the Protected Health Information or EPHI is infeasible, CONTRACTOR shall provide to COUNTY notification of the conditions that make return or destruction infeasible. Upon COUNTY's written acknowledgement that return or destruction of Protected Health Information or EPHI is infeasible, CONTRACTOR shall extend the protections of this Amendment to such Protected Health Information and EPHI and limit further uses and disclosures of such Protected Health Information and EPHI to those purposes that make the return or destruction infeasible, for so long as CONTRACTOR maintains such Protected Health Information or EPHI.

7. MISCELLANEOUS.

(a) Regulatory References. A reference in this Amendment to a section in Part 2, the Privacy Rule, or Security Rule, or the HITECH Act means the section in effect as of the effective date of this Amendment or as the Rules may be subsequently amended from time to time.

(b) Amendment; Waiver. The Parties agree to take such action as is necessary to amend the Agreement and this Amendment from time to time as is necessary for COUNTY to comply with the requirements of Part 2, the Privacy Rule, Security Rule, HIPAA and the HITECH Act. No provision hereof shall be deemed waived unless in writing, duly signed by authorized representatives of the parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any other right or remedy under this Amendment.

(c) Survival. The respective rights and obligations of CONTRACTOR under Section 6(c), this Section 7(c), and Section 7(e) of this Amendment shall survive the termination of the Agreement and this Amendment.

(d) Interpretation; Order of Precedence. Any ambiguity in this Amendment or the Agreement shall be resolved to permit COUNTY to comply with Part 2, the Privacy Rule, Security Rule and the HITECH Act. The terms of this Amendment amend and supplement the terms of the Agreement, and whenever possible, all terms and conditions in this Amendment and the Agreement are to be harmonized. In the event of a conflict between the terms of this Amendment and the terms of the Agreement, the terms of this Amendment shall control; provided, however, that this Amendment shall not supercede any other

federal or state law or regulation governing the legal relationship of the parties, or the confidentiality of records or information, except to the extent that HIPAA preempts those laws or regulations. In the event of any conflict between the provisions of the Agreement (as amended by this Amendment) and Part 2, the Privacy Rule or the Security Rule, the more stringent rule shall apply.

(e) No Third-Party Beneficiaries. COUNTY and CONTRACTOR are the only parties to this Amendment and are the only parties entitled to enforce its terms. Nothing in this Amendment gives, is intended to give, or shall be construed to give or provide any benefit or right, 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 Amendment.

(f) Successors and Assigns. The provisions of this Amendment and the Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns, if any.

(g) Except As Amended. Except as amended by this Amendment, all terms and conditions of the Agreement shall remain in full force and effect.

8. SIGNATURES.

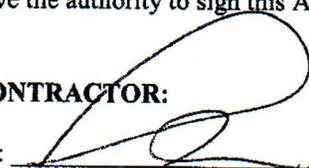
By signing this Amendment, the parties certify that they have read and understood this Amendment, that they agree to be bound by the terms of this Amendment and the Agreement, as amended, and that they have the authority to sign this Amendment.

CONTRACTOR:

By: _____

Title: _____

Date: _____



president/owner
8/31/16

COUNTY:

By: _____

Title: _____

Date: _____



Chair, Board of Commissioners
9/19/16