

**AGREEMENT FOR
GUARDIANSHIP ESTABLISHMENT SERVICES
PARKER & GRIFFITH, PC**

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 Parker & Griffith, PC, an Oregon professional corporation, 1845 Commercial Street SE, Salem, OR 97302 ("Contractor").

RECITALS:

1. County through its Health and Human Services Department provides behavioral health and developmental disabilities program services for its clients. In order for County to provide adequate services for its clients, it is necessary for County to contract with a qualified provider with training and experience in the establishment of legal guardianships.
2. County and Contractor desire Contractor to provide certain services associated with establishment of legal guardianships for adult individuals enrolled in County's Health and Human Services programs when deemed necessary. Contractor is qualified to perform the duties required by County and imposed by this Agreement. County and Contractor desire to enter into this Agreement and County is authorized to enter into this Agreement under Oregon Revised Statutes (ORS) 203.010 (3).

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein below and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, County and Contractor, intending legally to be bound, hereby agree as follows:

Section 1. Term and Renewal. The initial term of this Agreement is from December 1, 2018 through June 30, 2019. 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 5 below. 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. Contractor's Services. Contractor agrees to provide services associated with establishing legal guardianships for adult individuals enrolled in County's Health and Human Services programs (the "Services") during the term of this Agreement. The Services include all elements of establishing a legal guardianship including but not limited to, attorney fees, petition filing, notice preparation, fees for service of notice, and court appointed visitor costs. Cases will be referred to Contractor by County's Health and Human Services Director or designee. Contractor cannot guarantee a guardian will be appointed and Contractor will not be responsible for identifying suitable individual(s) to serve as guardian(s). Contractor hereby represents and warrants that 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 Services in a professional manner and in accordance with standards

prevalent in Contractor's industry, trade or profession. Contractor must hold all licenses, certificates, authorizations and other approvals as required by applicable law to deliver the Services under this Agreement.

Section 3. Regulations and Duties; Compliance with Laws.

County and Contractor shall comply with the rules and regulations of County, applicable state and federal regulations, executive orders and ordinances and all provisions of federal and state law relating to Contractor's 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, 659A.145, 659A.400 to 659A.409 and all regulations and administrative rules established pursuant to those laws in the construction, remodeling, maintenance and operation of any structures and facilities and in the conduct of all programs, services and training associated with the delivery of Services under this Agreement; (ii) all state laws related to client rights, OAR 943-005-000 through 943-005-0070, prohibiting discrimination against Individuals with disabilities; (iii) ORS Chapter 125; (iv) ORS 279B.200 through 279B.270; (v) Article XI, Section 10, of the Oregon Constitution; (vi) all state laws requiring reporting of client abuse; and (vii) all other applicable requirements of State civil rights and rehabilitation statutes, rules and regulations. Contractor agrees that Contractor has complied with the tax laws of the state of Oregon or a political subdivision of the state of Oregon, including ORS 305.620, 305.380(4) and ORS Chapters 316, 317 and 318.

Section 4. Payment. County will pay Contractor a flat fee of \$1,500.00 per uncontested guardianship set-up within 30 days of receipt of invoice. This flat fee includes all elements of the legal work necessary to obtain a judgment appointing the guardian including but not limited to filing fee, fee to serve the notice(s), court visitor costs, and attorney's fees. Contractor will allocate payment to cover attorney, court, process server and court visitor costs. Contractor cannot guarantee a guardian will be appointed; payment is earned upon receipt and not dependent upon the success of the case. County will pay Contractor an additional flat fee of \$750.00 to complete the guardianship set-up if there is an objection and guardianship is contested. This additional fee of \$750.00 will be paid to Contractor within 30 days of receipt of notice and review and approval of invoice from Contractor that an objection has been filed. County acknowledges that it does not have an attorney-client relationship with Contractor in any matter referred to Contractor under this Agreement. County agrees that it may not direct or regulate Contractor's professional judgment in rendering the Services pursuant to this Agreement and County has no legal or contractual right to examine or otherwise demand any attorney-client files from Contractor. Any expenses incurred by Contractor providing the Services not specifically provided for in this Agreement shall be the sole and separate responsibility of Contractor. The maximum not-to-exceed amount paid by County under this Agreement is \$15,000.00.

Section 5. Termination; No Encumbrance or Expenditure after Notice of Termination.

A. Either party may terminate the Agreement on thirty days written notice to the other party. Termination shall not excuse liabilities incurred prior to the termination date.

B. In addition, in the event County no longer receives funds adequate to enable it to continue this Agreement; if Contractor engages in any act that would subject either County or Contractor to criminal liability; upon dissolution of County or Contractor; if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon

Legislative Assembly, the federal government or a court in such a way that County no longer has the authority to meet its obligations under this Agreement; or upon any of the following: (i) the insolvency of the Contractor, (ii) the filing of a voluntary or involuntary petition by or on behalf of Contractor under federal bankruptcy law, (iii) upon a party entering into an agreement with creditors for the liquidation of its assets, or (iv) upon the appointment of a receiver or trustee to take charge of all the assets of Contractor, County will provide written notice of termination of this Agreement to Contractor. Upon issuance of notice, this Agreement is immediately terminated. However, any obligations existing at the time of termination will survive termination.

C. Contractor shall not make expenditures, enter into agreements, or encumber funds in its possession, or to be transferred by County, after notice of termination or termination as set out above, without prior written approval from County.

Section 6. Independent Contractor Representations and Warranties. Contractor is engaged under this Agreement as an independent contractor, and will be so deemed for purposes of the following:

A. Contractor is not an officer, employee, or agent of the County or the State of Oregon as those terms are used in ORS 30.265 or otherwise.

B. If Contractor is currently performing work for the County, State of Oregon or the federal government, Contractor by signature to this Agreement, represents and warrants that (i) Contractor has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder and that execution of this Agreement shall constitute a legal, valid and binding obligation of Contractor, enforceable in accordance with its terms, (ii) the making and performance by Contractor of this Agreement has been duly authorized by all necessary action of Contractor and does not violate any provision of applicable law, rule, regulation or order of any court, regulatory commission, board or other administrative agency or any provision of Contractor's charter or other organizational document, (iii) entering into this Agreement will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Contractor is a party or by which Contractor may be bound or affected, and (iv) no authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Contractor of this Agreement,

C. Contractor further represents and warrants that (i) it has the skill and knowledge possessed by well-informed members of its industry, trade or profession and it will apply that skill and knowledge with care and diligence to perform the Services in a professional manner and in accordance with standards prevalent in Contractor's industry trade or profession (ii) it shall at all times during the term of this Agreement be qualified professionally competent and duly licensed to perform the Services and (iii) the delivery of each Service will comply with the terms and conditions of this Agreement and meet the required standards for such Service.

D. Contractor's Services to be performed under this Agreement create no potential or actual conflict of interest as defined by ORS Chapter 244 and that no statutes, rules or regulations of the County, State of Oregon or federal agency for which Contractor currently performs work would prohibit Contractor's Services under this Agreement. If compensation

under this Agreement is to be charged against federal funds, Contractor certifies that it is not currently employed by the federal government.

E. Contractor is responsible for all federal and State taxes applicable to compensation paid to Contractor under this Agreement and, unless Contractor is subject to backup withholding, County will not withhold from such compensation any amounts 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 paid to Contractor under this Agreement, except as a self-employed individual.

F. Contractor shall perform all Services as an independent contractor. County reserves the right (i) to determine and modify the delivery schedule for the Services and (ii) to evaluate the quality of the Services; however, County 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 Services.

Section 7. Delegation and Reports. Contractor shall not delegate the responsibility for providing Services under this Agreement to any other individual or agency without the written approval of County and shall provide County with periodic reports at the frequency and with the information prescribed to be reported by County.

Section 8. Indemnification. Contractor shall be responsible for any and all injury to any and all persons or property caused directly or indirectly by reason of any and all activities of Contractor in the performance of Services under this Agreement and Contractor agrees to 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, liabilities, damages, costs, losses, fees, expenses (including attorneys' fees) or judgments resulting from, arising out of or connected with any such injury or the negligent or willful acts or omissions of Contractor or any of the officers, agents, employees or subcontractors of Contractor in the performance of the Services provided by Contractor pursuant to this Agreement.

In addition, if Contractor is not a unit of local government as defined in ORS 190.003, then Contractor shall indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of the officers, agents, employees or subcontractors of the Contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the Contractor from and against any and all Claims.

Section 9. Insurance. Contractor, at its expense, shall obtain the following insurance coverage and keep them in effect during the entire term of this Agreement (except with respect to Professional Liability Insurance, which shall be kept in effect for a period of the term of this Agreement plus two years):

A. Workers' Compensation Insurance in compliance with statutory requirements;

B. Commercial General Liability Insurance on a per occurrence basis, with not less than \$2,000,000 per occurrence for bodily injury and property damage liability, with an annual aggregate limit of \$3,000,000;

C. Professional Liability Insurance, including errors and omissions coverage, covering Contractor pursuant to this Agreement, with a per occurrence and aggregate limit of not less than \$1,000,000, to protect against all loss suffered by County or third parties, including financial and consequential loss, caused by error, omission, or negligent acts related to provision of the Services provided under this Agreement;

The required insurance coverages shall be (i) with insurance companies admitted to do business in the state of Oregon and rated A or better by Best's Insurance Rating, and (ii) acceptable to County. Contractor shall furnish County with certificates of insurance for each of the required insurance coverages before Contractor performs Services under this Agreement. The certificates of insurance must specify (a) the types of insurance coverage, (b) all entities and individuals who are endorsed on the policy as Additional Insured, (c) the amounts of insurance coverage, (d) the period of insurance coverage and (e) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage. Any required insurance coverage shall provide that it may not be canceled except after at least 30 days written notice to County.

Section 10. 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. Any and all (i) client information, (ii) information provided by County and marked confidential, (iii) Protected Health Information or EPHI as described or defined in Exhibit A, 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 or in conformance with Exhibit A.

Section 11. Settlement of Disputes. Differences between Contractor and County will be resolved when possible at appropriate management levels.

Section 12. Abuse Reporting and Protective Services. 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 13. Subcontracts; Assignment. Contractor shall not enter into any subcontracts for any of the Services required under this Agreement without County's prior written consent. Contractor shall not assign or transfer its interest in this Agreement, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or in any other manner, 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. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties, their respective successors and permitted assigns.

Section 14. Non-discrimination. Contractor agrees that no person shall, on the grounds of race, color, religion, national origin, sex, marital status, or age, suffer discrimination in the performance of this Agreement when employed by Contractor.

Section 15. 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 16. 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; provided, however, if a claim must be brought in a federal forum, then it shall be 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 of the State of Oregon of the jurisdiction of any court or of any form of defense to or immunity from any claim whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise. Contractor, BY EXECUTION OF THIS AGREEMENT CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

Section 17. 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 18. Counterparts. This Agreement may be executed by facsimile and in counterparts, which taken together shall form one legal instrument.

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. Entire Agreement. This Agreement, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms. 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 21. 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 22. Incorporation. The introductory paragraph and recitals appearing at the beginning of this Agreement are hereby incorporated into and made a part of this Agreement as if fully set forth herein.

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

PARKER & GRIFFITH, P.C.

By: 
(signature)
Date: 11/15/18

Nathan M. Parker
(printed name)
President
(title)

Tax ID No.: 81-1984323

YAMHILL COUNTY, OREGON


MARY STARRETT, Chair
Board of Commissioners
Date: 11/29/18


SILAS HALLORAN-STEINER, Director
Department of Health & Human Services
Date: 11/28/18

FORM APPROVED BY:

CHRISTIAN BOENISCH
County Counsel
Date: 12/3/18

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 pursuant to this Business Associate/Qualified Service Organization Agreement (“BAA”); 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 BAA. Capitalized terms used, but not otherwise defined in this BAA, 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 BAA, 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 BAA), and as permitted by Part 2, the Privacy Rule, the Security Rule or as required by Law. Notwithstanding any other language in this BAA, 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 BAA, 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 BAA.

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

(b) Termination for Cause. In addition to any other rights or remedies provided in this BAA, upon either the COUNTY's or CONTRACTOR's knowledge of a material breach by the other party of that party's obligations under this BAA, 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 BAA if the party in breach does not cure the breach of the terms of this BAA or end the violation within the time specified;

(2) Immediately terminate the Agreement and this BAA if the party in breach has breached a material term of this BAA 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 BAA 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 BAA, 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 BAA 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 BAA 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 BAA 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 BAA 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 BAA.

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

(d) Interpretation; Order of Precedence. Any ambiguity in this BAA 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 BAA amend and supplement the terms of the Agreement, and whenever possible, all terms and conditions in this BAA and the Agreement are to be harmonized. In the event of a conflict between the terms of this BAA and the terms of the Agreement, the terms of this BAA shall control; provided, however, that this BAA shall not supersede 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 BAA) 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 BAA and are the only parties entitled to enforce its terms. Nothing in this BAA 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 BAA.

(f) Successors and Assigns. The provisions of this BAA 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 BAA, all terms and conditions of the Agreement shall remain in full force and effect.

8. SIGNATURES.

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

CONTRACTOR:

By: [Signature]

Title: President

Date: 11/15/18

COUNTY:

By: [Signature]

Title: MHS DIRECTOR

Date: 11/28/18