

INTERGOVERNMENTAL AGREEMENT

(Yamhill County and Housing Authority of Yamhill County, Housing Stabilization for Special Needs Populations)

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made effective March 1, 2019 by and between Yamhill County, a political subdivision of the State of Oregon operating by and through its Health and Human Services Department (referred to herein as "County" or "YCHHS") and the Housing Authority of Yamhill County, a public corporation created under Oregon Revised Statutes Chapter 456 ("HAYC") for purposes of coordination between the County and HAYC to identify eligible individuals/families for Section 8 vouchers.

RECITALS:

- A. County, through its YCHHS, works with individuals and families who have significant and varied housing needs.
- B. HAYC has programs, including access to Section 8 vouchers, designed to assist qualified individuals and families find housing.
- C. The County and HAYC recognize the need to provide quick housing stabilization for special needs populations in order to assist in breaking the cycle of poverty and furthering self-sufficiency opportunities.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE COUNTY AND HAYC AS FOLLOWS:

Section 1. HAYC RESPONSIBILITIES. HAYC has the following responsibilities under this Agreement.

- 1. Assist in providing YCHHS the following number of Section 8 vouchers to assist individuals and families referred by YCHHS:
 - A. Aspen Ridge Apartments – 15 vouchers
 - B. Baker Field Apartments – 8 vouchers
 - C. Bridges – 1 voucher
 - D. Deskins Commons – 12 vouchers
 - E. Homeport – 12 vouchers
 - F. Sunnyside Apartments – 14 vouchers
 - G. Sheridan – 65 vouchers (including 10 Veteran's Preference Vouchers) upon completion of the project and certificate of occupancy.
- 2. Determine whether individuals and families referred by YCHHS are eligible for Section 8 rental assistance programs, advise YCHHS of eligibility, and place on wait list.

3. Review existing and new Section 8 applicants to identify individuals and families that may be eligible for YCHHS services. If not referred by YCHHS, submit to YCHHS for a determination of whether the individual or family meets YCHHS' eligibility requirements.
4. Expedite the process for third party verifications and eligibility determinations to the maximum extent possible; desired verification timeline shall be 5 business days or less from receipt of complete application.
5. Make changes in administrative plan and equal opportunity plan where necessary.
6. Commit staff to provide case management to ensure compliance with housing regulations.
7. Reissue available vouchers to other eligible individuals and families.
8. Maintain quality program data for future program evaluation.
9. Assess YCHHS for the cost to repair any Unit (as defined below) damages by the tenant over and above regular wear and tear. Definitions of normal wear and tear and excessive damages are included in Exhibit A, which is attached hereto and incorporated herein by this reference.
10. Assess YCHHS for the cost of rents and/or damages that could not be collected from any tenant that has moved out provided that HAYC has been sending monthly report for balances owed during the tenant occupancy period. For damages HAYC will send out an invoice upon being made aware of the damage and completing the repair.
11. Repairs within normal wear and tear Units owned by HAYC shall be completed within 7 business days from the start date of a vacancy provided that a proper 30-day notice was given by the tenant. If a 30-day notice is not given this time period will be dependent on the results of a Unit inspection. Upon certification that the Unit is ready to lease, this certification date will start the period of time for calculation of the vacancy loss fee (see below). HAYC shall immediately provide County with notice of such certification.

Section 2. COUNTY'S RESPONSIBILITIES County has the following responsibilities under this Agreement.

1. Establish and implement a system to identify eligible individuals and families and review referrals from HAYC. YCHHS is responsible for prescreening individuals and families for eligibility for Section 8 vouchers.
2. Provide written certification to the HAYC that a family or individual appears qualified for the program.
3. Maintain relevant data and provide written information as agreed upon by HAYC and YCHHS for program evaluation.
4. Commit staff to provide resources to support this program. YCHHS will partner with HAYC staff to assist qualified individuals and families in completing forms and with referral assistance when needed to locate suitable housing. When possible and warranted, YCHHS will also assist qualified individuals and families with moving in costs, security deposits and/or first month rent payments within budgetary funding.
5. Provide ongoing case management in order to support individuals and families to remain in compliance with tenant responsibilities.
6. Agrees to pay HAYC a monthly management fee of \$137 per managed unit. A managed unit is defined as a unit that is facility-based such as those listed in A-G above ("Unit"). After 1 year the fee will increase 2% each year starting January 1, 2020. This fee will replace the current contracted monthly charges for management services under contracts BOC #11-253, #18-088, #16-113, #11-254, which contracts shall be amended within thirty (30) days of the effective date of this Agreement to reflect such fee changes, retroactive to

March 1, 2019. The fee pays for the administration of the landlord/tenant agreements that HAYC will produce and administer, including collection of rent such as is currently done at Aspen Ridge and Baker Field and will be done in the future at Sheridan.

7. Agrees to pay HAYC a vacancy loss fee of \$102.90 per Unit per month that has been vacant 14 days or more as long as the required 30-day notice was given on the Unit. In the event that notice is less than 30 days the time will be calculated as 30 days plus 14 days before assessment of the vacancy loss fee. After 1 year the fee will increase 2% each year starting January 1, 2020. Upon certification that the Unit is ready to lease this certification date will start the period of time for calculation of the vacancy loss fee (see below). HAYC shall immediately provide County with notice of such certification. Additionally, the vacancy loss fee will not apply to new housing development project start-up for the initial period of 3 months of obtaining Certificate of Occupancy.
8. Reimburse HAYC for the cost of Unit damages by the tenant over and above regular wear and tear.
9. Definitions of normal wear and tear and excessive damages are included in Exhibit A.
10. Reimburse HAYC for the cost of any rents and/or damages that could not be collected from any tenant that has moved out provided that HAYC has been sending monthly report for balances owed during the tenant occupancy period. For damages HAYC will send out an invoice upon being made aware of the damage and completing the repair.
11. Make a one-time payment to HAYC in the amount of \$11,500 to help sustain future programs and to help offset costs associated with excessive damage to Units at properties owned by the HAYC and that occurred within the three previous calendar years.

Section 3. VOUCHER AVAILABILITY

1. Vouchers will be made available only as HAYC's lease-up rate and HUD funding allow. If the HAYC is over 100% leased or funds are depleted, it will notify YCHHS that no Section 8 vouchers are currently available and YCHHS will cease to forward applicants to HAYC until they are notified further that it is allowable to do so. No Vacancy Loss Fees will be assessed in such a scenario.

Section 4. TERM AND TERMINATION

1. Term. Unless terminated in accordance with subsection (2), upon signature by both parties, the effective date of this Agreement is March 1, 2019. The term of this Agreement is March 1, 2019 through June 30, 2019. Thereafter, it shall be automatically renewed for successive one-year terms beginning July 1, 2019 unless terminated in accordance with subsection (2), below.

2. Termination. Either party may terminate this Agreement for convenience upon 30 days advance written notice to the other party. Termination shall not excuse liabilities incurred prior to the termination date.

Section 5. BOTH PARTIES AS INDEPENDENT CONTRACTORS

1. HAYC and County are both acting as independent contractors under this Agreement and will be individually responsible for payment of any compensation or benefits due to their respective employees, including but not limited to payment of federal or state taxes

or withholdings required as a result of this Agreement. Neither HAYC or its employees is entitled to any County benefits other than the compensation expressly provided by this Agreement. Neither County nor HAYC or their respective employees will be considered the employee of the other. Both parties are independent contractors for the purposes of the Oregon Workers' Compensation law (ORS Chapter 656) and are individually liable for any Workers' Compensation coverage for their officers, employees or agents.

Section 6. INDEMNIFICATION AND INSURANCE

1. To the maximum extent permitted by Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.400), County shall indemnify and hold HAYC harmless for the negligence or willful misconduct of County's own officers, employees, and agents. HAYC shall indemnify and hold County harmless for the negligence or willful misconduct of HAYC's own officers, employees, and agents. The parties agree that neither is indemnifying or holding the other harmless for acts of negligence or willful misconduct of third parties or of the other's own officers, employees, or agents.

2. Each party shall maintain in full force and effect prudent levels of general liability, public liability and property damage insurance or self-insurance to cover any claims that may arise by virtue of their actions. HAYC shall furnish proof of coverage to County upon request.

Section 7. COSTS AND ATTORNEYS FEES

1. In the event that either party to this Agreement shall take any action, judicial or otherwise, to interpret any of the terms of this Agreement, each party shall be wholly responsible for its own expenses which it may incur in taking such action, including costs and attorney fees, whether incurred in a suit or action or appeal from a judgment or decree therein or in connection with any non-judicial action.

Section 8. NON-DISCRIMINATION

1. County and HAYC agree that no person shall, on the grounds of race, color, religion, national origin, sex, marital status, age, or domestic partnership, suffer discrimination in the performance of this Agreement when employed by County or HAYC. Further, County and HAYC agree to comply with the Civil Rights Act of 1964 and 1991, Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, and Title VI as implemented by 45 CFR 80 and 84. Title VI as implemented by 45 CFR 80 and 84, states in part that "No qualified person shall on the basis of disability, race, color, or national origin be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receive or benefits from federal financial assistance."

Section 9. GOVERNING LAW. This Agreement shall be governed and construed in accordance with the laws of the State of Oregon. Any claim, action, suit or proceeding, (collectively "Claim") between COUNTY and HAYC 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. HAYC, BY EXECUTION OF THIS AGREEMENT HAYC HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

Section 10. MODIFICATION OF AGREEMENT.

1. Any modification of the terms of this Agreement shall be executed in writing with the mutual consent of both parties.

Section 11. COMPLIANCE WITH APPLICABLE LAWS.

1. County and HAYC agree to comply with applicable local, state and federal regulations and all provisions of federal and state law relating to both parties performance under this Agreement. In addition, HAYC 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 12. COUNTERPARTS AND FACSIMILE SIGNATURES.

1. The parties may execute this Agreement in counterparts, each of which shall be deemed to be an original thereof. The parties agree that facsimile signatures shall be accepted as original signatures with respect to this Agreement

Section 13. BUSINESS ASSOCIATE CLAUSE - HIPAA RESTRICTIONS.

1. HAYC 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. Substantial revisions were made to the Privacy Rule effective 2010. County and HAYC agree to the respective obligations in the "Business Associate Addendum", attached hereto as Exhibit B, which is incorporated herein by this reference.

Section 14. ENTIRE AGREEMENT; SEVERABILITY

1. 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. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 15. SUBCONTRACTS; ASSIGNMENT

1. HAYC shall not enter into any subcontracts for any of the services or responsibilities required under this Agreement without County's prior written consent. This Agreement shall not be assigned by HAYC 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.

DONE the date and year set forth adjacent to the parties' signatures below.

**HOUSING AUTHORITY OF
YAMHILL COUNTY**

By: _____

(signature)

Date: 3/6/2019

MASSEY CASTER

(printed name)

EXECUTIVE DIRECTOR

(title)

YAMHILL COUNTY, OREGON

RICK OLSON, Chair

Date: 3/11/19

SILAS HALLORAN-STEINER
Director of Health and Human Services

FORM APPROVED BY:

CHRISTIAN BOENISCH
County Counsel

Exhibit A

Normal Wear and Tear:

Normal wear and tear is the expected decline in the condition of a property due to normal everyday use. It is deterioration that occurs in the course of living in a property. It is not caused by abuse or neglect. Normal wear and tear assumes resident has cleaned and maintained the premises during the tenancy in compliance with the Rental Agreement.

- Fading, peeling, or cracked paint
- Small chips in plaster
- Nail holes, pin holes, or cracks in wall
- Door sticking from humidity
- Cracked window pane from faulty foundation or building settling
- Floors needing coat of varnish
- Carpet faded or worn thin from walking/Replace with Color of carpet or hardwood fading due to exposure to Sunlight.
- Worn or scratched enamel in old bathtubs, sinks, or toilets
- A couple of small stains on carpet.
- Dirty or faded lamp or window shades

Tenant Damage often requires more extensive repair, and at greater cost than “normal wear and tear” and are often the result of a tenant’s abuse or negligence that is above and beyond normal wear and tear. Damage is not naturally occurring.

- Gaping holes in walls or plaster
- Drawings, crayon markings, or wallpaper that owner did not approve
- painted walls other than standard color from move in
- Chipped or gouged wood floors
- Doors ripped off hinges
- Holes on doors
- Broken windows
- Missing fixtures
- Holes in ceiling from removed fixtures
- Holes, stains, or burns in carpet
- Missing or cracked bathroom tiles
- Chipped and broken enamel in bathtubs and sinks
- Clogged or damaged toilet from improper use
- Missing or bent shower rods
- Torn, stained, or missing lamp and window shades
- Pet Damage
- Pet Stains
- Broken toilet seats
- Excessive stains on carpet
- No cleaning of unit at move out.
- Missing doors/window screens
- Torn window/door screens

Exhibit B
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: _____

Title: _____

Date: _____

COUNTY:

By: _____

Title: _____

Date: _____