

Keri Hinton

B.O. 16-514

From: Silas Halloran-Steiner
Sent: Friday, December 16, 2016 11:36 AM
To: Mary Starrett; Laura Tschabold; Ken Huffer
Cc: Keri Hinton; Lucy Flores Mendez; Terry Malay; Christina Malae; Lindsey Manfrin; Jason Hennes
Subject: Board Consideration: Oregon Family Support Network amendment
Attachments: Oregon Family Support Network Amend 3 sig.pdf

Hi Mary, Ken and Laura,

Attached is an amendment to our agreement with Oregon Family Support Network (OFSN) effective July 1, 2016 through June 30, 2017. This amendment includes a 2.6% market adjustment, stipend funds for a Family Advocate, and language updates including compliance with Code of Federal Regulations 42 CFR Part 2. The majority of the not to exceed amount of \$155,331.92 for 2016-2017 were included in the 2016-2017 Health and Human Services Adopted budget. The amount of \$2,200, stipend funds for a Family Advocate, was not included, however, we have sufficient expense authority.

Oregon Family Support Network provides medically necessary intensive family support services to families with children who are at risk of out of home placement or reuniting with families after out of home placement and foster or adoptive families who have children experience disruptive placements. OFSN services are part of the Wraparound service array the Family and Youth provides to young people and their families.

I recommend approval of this amendment as written. Please let me know if you have any questions.

Lucy/Keri: please place this item on next week's Board Agenda. Suggested Board Agenda language:

"Approve amendment #3 to the agreement between Yamhill County Health and Human Services and Oregon Family Support Network (OFSN) retroactive from July 1, 2016 through June 30, 2017."

Thanks,

Silas Halloran-Steiner
Director, Yamhill County Health and Human Services Department
Phone: (503) 434-7523
Cell: (503) 435-7572
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627 NE Evans
McMinnville, OR 97128

Our Vision: People in Yamhill County live, work, learn, and play in safe communities that support wellness and dignity.

Our Mission: To promote the public's physical, emotional and social well-being through services, prevention, education, and partnerships.

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**THIRD AMENDMENT TO AGREEMENT
FOR FAMILY SUPPORT SERVICES
OREGON FAMILY SUPPORT NETWORK**

THIS THIRD AMENDMENT TO AGREEMENT ("Amendment #3") is made effective July 1, 2016 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 Oregon Family Support Network ("Contractor"), an Oregon nonprofit corporation, 1300 Broadway Street NE, Suite 403, Salem, OR 97301.

RECITALS:

A. County and Contractor are parties to that certain agreement dated as of September 25, 2014 (the "Underlying Agreement"). The Underlying Agreement was first amended on July 2, 2015 ("First Amendment"). The Underlying Agreement was further amended on July 31, 2015 ("Second Amendment"). Pursuant to the underlying agreement, Contractor provides medically necessary intensive family support services to families in which children ages 0-19 enrolled in YCCO or Oregon Health Plan (OHP) Open Card are at risk of out of home placement, are reuniting with families after out of home placement, or are foster or adoptive families who have children experiencing disruptive placements. County and Contractor now desire to amend the Underlying Agreement upon the terms and conditions as more particularly set forth herein below.

B. Capitalized terms not defined herein shall have the meanings attributed to such terms in the 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:

1. Section 2 "Contractor's Services" of the Underlying Agreement is hereby amended to include the following: "The target population includes families of young adults entering services prior to their 18th birthday who continue receiving services through 25 years of age; are enrolled in Yamhill Community Care Organization (Yamhill CCO) or Oregon Health Plan (OHP) Open Card and are at risk of out of home placement, are reuniting with families after out of home placement, or are foster or adoptive families who have children experiencing disruptive placements."

2. The balance of Section 2 of the Underlying Agreement remains unchanged.

3. Section 3 "Regulations and Duties" of the Underlying Agreement is deleted in its entirety and replaced with the following: "**Section 3. Regulations and Duties; Compliance with Laws.** County and Contractor agree to 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; (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, Provider agrees that Provider 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.”

4. Section 5 “Records; County Monitoring” of the Underlying Agreement is deleted in its entirety and replaced with the following: “**Section 5. Records; County Monitoring.**

A. Contractor shall maintain all financial records related to this Agreement in accordance with generally accepted accounting principles or National Association of Insurance Commissioners accounting standards. In addition, Contractor shall maintain any other records, books, documents, papers, plans, records of shipment and payments and writings of Contractor, whether in paper, electronic or other form, that are pertinent to this Agreement, collectively referred to as "Records" in such a manner to clearly document Contractor's performance.

B. Contractor agrees that the following shall be open for inspection by County, YCCO, OHA and Government Agencies or its agents, at any reasonable time during business hours: a) Services provided under this Agreement by Contractor; b) facilities used in conjunction with such Services; c) client records; d) Contractor’s policies, procedures and performance data; e) information privacy and security records; f) financial records and other similar documents and records of Contractor that pertain, or may pertain, to 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.

C. Contractor agrees to annually provide County with copies of their Fraud and Abuse policy and documentation of rate setting methodologies. County encourages Contractor to use the Jarvis rate setting tool. County may approve an alternative method if it demonstrates a similar level of thoroughness. Contractor will comply with County’s quality and utilization management protocols established in partnership with YCCO and YCCO’s Quality Assurance and Performance Improvement Plan. Contractor shall provide documentation regarding training, NPI numbers and background checks for each person providing services under this agreement where applicable upon request.

D. County will provide Contractor with a copy of County’s OHA approved written grievance system procedures to ensure compliance.”

5. Section 6 “Payment” of the Underlying Agreement is hereby amended to including the following:

“A. **Compensation for Services.** Effective July 1, 2016 as compensation for performing the Services required by Section 2, following receipt and approval of billing documents, Contractor shall receive a monthly payment of \$11,767.57 on or about the first of the month following the

month of service. The maximum amount payable for the performance of Services under this Agreement for the period of July 1, 2016 through June 30, 2017 is \$155,331.92. The maximum amount payable under this Agreement is \$416,521.73.

Adjust for final payment. Final payment for performing Services described in Section 2 will be adjusted after June 30th each year based on actual reported Services for the prior twelve months ending June 30th and meeting OHP eligibility qualified diagnoses. However, in no event shall additional compensation exceed more than 10% beyond the monthly payments; \$14,121.08 for the period of July 1, 2016 through June 30, 2017. The calculation to determine the adjustment, if any, will be based on State of Oregon Medicaid FFS Procedure Codes and Reimbursement rates and standards in effect on the date of service for OHP eligible services.”

6. The balance of Section 6 of the Underlying Agreement remains unchanged.

7. Section 25 “Business Associate Clause – HIPAA restrictions” of the Underlying Agreement is hereby deleted in its entirety and replaced with the following: “**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.”

8. Section 26 “Medicare/Medicaid Participation” of the Underlying Agreement is hereby amended to include:

“Contractor agrees to screen its personnel and subcontractors at a minimum monthly against the Office of the Inspector General (OIGs) List of Excluded Individual and Entities (LEIE) and the System for Award Management (SAM) list for exclusions.”

9. The balance of Section 26 of the Underlying Agreement remains unchanged.

10. The balance of the Underlying Agreement remains unchanged.

11. **Ratification**. Except as otherwise expressly modified by the terms of this Amendment #3, the Underlying Agreement shall remain unchanged and continue in full force and effect. All terms, covenants and conditions of the Underlying Agreement not expressly modified herein are hereby confirmed and ratified and remain in full force and effect, and, as further amended hereby, constitute valid and binding obligations of Contractor enforceable according to the terms thereof.

12. **Authority**. County and Contractor and each of the persons executing this Amendment #3 on behalf of County and Contractor hereby covenants and warrants that: (i) such party has full right and authority to enter into this Amendment #3 and has taken all action required to authorize such party (and each person executing this Amendment #3 on behalf of such party) to enter into this Amendment #3, and (ii) the person signing on behalf of such party is authorized to do so on behalf of such entity.

13. Binding Effect. All of the covenants contained in this Amendment #3 shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives and permitted successors and assigns.

14. Counterparts. This Amendment #3 may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute one and the same Amendment #3.

15. Recitals. The foregoing recitals are intended to be a material part of this Amendment #3 and are incorporated herein by this reference.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed on the date indicated by their duly authorized officials, this Amendment #3 in duplicate, each of which shall be deemed an original on the date executed by all parties.

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

OREGON FAMILY SUPPORT NETWORK

By: Savana Bumpus
(signature)
Date: 12/12/2016

Savana Bumpus
(printed name)

Executive Director
(title)

Tax ID No.: 93-4114601

YAMHILL COUNTY, OREGON

Mary Starrett
MARY STARRETT, Chair
Board of Commissioners
Date: 12-21-16

Silas Halloran-Steiner
SILAS HALLORAN-STEINER, Director
Department of Health & Human Services
Date: 12/15/16

FORM APPROVED BY:
Christian Boenisch
CHRISTIAN BOENISCH
County Counsel
Date: 12/21/16

Accepted by Yamhill County
Board of Commissioners on
12.20.16 by Board Order
16-514

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 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 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.

(signature page follows)

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: Sandra Blanga
Title: Executive Director
Date: 12/12/2016

COUNTY:

By: J. L. L.
Title: HHS DIRECTOR
Date: 12/15/16

Accepted by Yamhill County
Board of Commissioners on

12-20-16 by Board Order
16-514