

ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
2100 CLARENDON BOULEVARD, SUITE 500
ARLINGTON, VIRGINIA 22201

NOTICE OF AWARD OF CONTRACT

TO: Community Residences 14160 Newbrook Drive Chantilly, Virginia 20151	DATE ISSUED: July 8, 2015
	CURRENT CONTRACT NO: 651-15.2
	CONTRACT TITLE: DHS - Developing a Group Home

THIS IS A NOTICE OF AWARD OF CONTRACT AND NOT AN ORDER. NO WORK IS AUTHORIZED UNTIL THE VENDOR RECEIVES A VALID COUNTY PURCHASE ORDER ENCUMBERING CONTRACT FUNDS.

Your firm is awarded the above referenced contract. The contract term covered by this Notice of Award is effective immediately and expires on June 30, 2020, with optional renewals through June 30, 2025.

The contract documents consist of the terms and conditions of Agreement No. 651-15.2, including any exhibits, attachments, or amendments thereto.

ATTACHMENTS: AGREEMENT NO. 651-15.2

CONTRACT PRICING: REFER TO AGREEMENT 651-15.2


EMPLOYEES NOT TO BENEFIT:

NO COUNTY EMPLOYEE SHALL RECEIVE ANY SHARE OR BENEFIT OF THIS CONTRACT NOT AVAILABLE TO THE GENERAL PUBLIC.

VENDOR CONTACT: <u>Mary Jayne Panek</u>	TELEPHONE NO.: <u>703-842-2327</u>
VENDOR PAYMENT TERMS: <u>NET 30 DAYS</u>	EMAIL ADDRESS: <u>mjpanek@comres.org</u>

COUNTY CONTACT: <u>Joanna Wise-Barnes</u>	TELEPHONE NO.: <u>703-228-1736</u>
EMAIL ADDRESS: <u>jwisebarnes@arlingtonva.us</u>	

CONTRACT AUTHORIZATION


Guinevere Bruner, CPPB
Procurement Officer

7/8/15
Date

ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
SUITE 500, 2100 CLARENDON BOULEVARD
ARLINGTON, VA 22201

AGREEMENT NO. 651-15.2

THIS AGREEMENT (hereinafter "Agreement") is made, on the date of execution by the County, between Community Haven, Inc. and Community Residences, Inc., 14160 Newbrook Drive, Chantilly, Virginia 20151 ("Contractor") a Virginia Corporation authorized to do business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia ("County"). The County and the Contractor, for the consideration hereinafter specified, agree as follows:

1. CONTRACT DOCUMENTS

The contract documents consist of:

This Agreement

Attachment A – Scope of Work

Attachment B – Business Associate Agreement

(collectively "Contract Documents").

Where the terms and provisions of this Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of this Agreement shall prevail over the other Contract Documents and the remaining Contract Documents shall be complementary to each other and if there are any conflicts the most stringent terms or provisions shall prevail.

The Contract Documents set forth the entire agreement between the County and the Contractor. The County and the Contractor agree that no representative or agent of either of them has made any representation or promise with respect to the parties' agreement, which is not contained in the Contract Documents. The Contract Documents may be referred to herein below as the "Contract" or the "Agreement".

2. SCOPE OF WORK

The Contractor agrees to perform the services described in the Contract Documents (hereinafter "the Work"). The primary purpose of the Work is to develop one (1) group home and the provision of congregate residential services for adults with intellectual disabilities transitioning from institutional to community settings. The Scope of Work is more fully described in Attachment A. The Contract Documents set forth the minimum work estimated by the County and the Contractor to be necessary to complete the Work. It shall be the Contractor's responsibility, at its sole cost, to provide the specific services set forth in the Contract Documents and sufficient services to fulfill the purposes of the Work. Nothing in the Contract Documents shall be construed to limit the Contractor's responsibility to manage the details and execution of the Work.

3. CONTRACT TERM

Time is of the essence. The Work shall commence on the date of the execution of the Agreement by the County, and terminate after Contractor has provided ten (10) years of services as outlined in this Agreement ("Contract Term"), subject to any modifications as provided for in the Contract Documents regarding the Contract Term. Work under this Agreement shall be performed in the following phases:

Phase 1 – Group Home Development

Phase 1 (Group Home Development) shall commence upon execution of the Agreement by the County, and shall be completed no later than November 30, 2015. No work shall be deemed complete until it is accepted by the Project Officer. Failure to meet due dates specified may be construed as breach of contract, and will be considered sufficient grounds for contract termination

Phase 2 – Ongoing operations/group home services

Phase 2 (Ongoing Operations/Group Home Services) shall commence upon the opening of the group home. Contractor shall provide group home services as outlined in this Agreement for a period of ten (10) years from the commencement date of Phase 2.

4. CONTRACT AMOUNT

This is a lump-sum, fixed-price contract. The Contractor agrees that the total payment for all tasks described under this Agreement will not exceed \$544,500.00 ("Contract Amount"), regardless of the number of hours spent in the performance of the tasks or the amount of reimbursable expenses previously approved by the County. No additional compensation will be paid for work within the scope of Work of the Contract. The Contractor agrees that it shall complete the Work for the total Contract Amount specified in this section unless such amount is modified as provided in this Contract.

Payment will occur in two (2) stages.

Stage 1: County will pay Contractor one-half (1/2) of Phase 1 Payment at the financial Closing on the property. Financial closing will be assured by the following measures: The Contractor shall provide the County with a copy of the signed demolition and construction contract for said closing and the deed of declaration, and shall demonstrate in writing that project financing is in place. This payment will be: \$272,250.00.

Following the Financial closing, the conceptual master plan for the site must be approved by the County on the time schedule incorporated in the Development Plan within the approved Contract.

Stage 2: County will pay the Contractor the final half of Phase 1 Payment when the final Certificate of Occupancy is received. If the Certificate of Occupancy is not received by November 30, 2015, the Contractor shall forfeit the right to final half of Phase 1 Payment unless they have sought and received written approval for an extension of the timeline via a contract amendment. This payment will be: \$272,250.00.

5. [INTENTIONALLY LEFT BLANK]

6. PAYMENT

Payment will be made by the County to the Contractor within thirty (30) days after receipt by the County Project Officer of an invoice for work done which is reasonable and allocable to the Contract and which has been performed to the satisfaction of the Project Officer. Amounts on invoices shall not include amounts allocated to tasks (as shown in Attachment A) on which no Work has been done. The Project officer will either approve the invoice or require corrections. The number of the County Purchase Order pursuant to which authority goods or services have been performed or delivered shall appear on all Invoices.

7. PROJECT OFFICER

The performance of the Contractor is subject to the review and approval of the County Project Officer ("Project Officer") who shall be appointed by the Director of the Arlington County department or agency requesting the work under this Contract. However, it shall be the responsibility of the Contractor to manage the details of the execution and performance of its work pursuant to the Contract Documents.

8. ADDITIONAL SERVICES

The Contractor shall not be compensated for any goods or services provided except those included in Attachment A and included in the Contract Amount unless those goods or services are covered by a written amendment to this Contract signed by the County and the Contractor and a County purchase order is issued covering the expected cost of such services.

Additional services agreed upon by the parties will be billed at the rates set forth in Attachment B unless otherwise agreed by the parties in writing.

9. REIMBURSABLE EXPENSES

No reimbursable expenses are allowed under this Contract. The Contract Amount includes all costs and expenses of providing to the County the services described in this Contract.

10. [INTENTIONALLY LEFT BLANK]

11. PAYMENT OF SUBCONTRACTORS

The Contractor is obligated to take one of the two following actions within seven (7) days after receipt of amounts paid to the Contractor by the County for work performed by any subcontractor under this Contract:

- a. Pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under this Contract; or
- b. Notify the County and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after seven (7) days following receipt by the Contractor of payment from the County for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in subsection b., above. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent (1%) per month.

The Contractor shall include in each of its subcontracts, if any are permitted, a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this section may not be construed to be an obligation of the County. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

12. [INTENTIONALLY LEFT BLANK]

13. RESPONSIBILITY FOR CLAIMS AND LIABILITIES

The County's review, approval, or acceptance of, or payment for, any services required under this Contract shall not be construed to operate as a waiver by the County of any rights or of any cause of action arising out of the Contract. The Contractor shall be and remains liable to the County for the accuracy and competency of plans, specifications, or other documents, within the Customary Standard of Care.

14. NON-APPROPRIATION

All funds for payments by the County to the Contractor pursuant to this Contract are subject to the availability of an annual appropriation for this purpose by the County Board of Arlington County, Virginia. In the event of non-appropriation of funds by the County Board of Arlington County, Virginia for the goods or services provided under this Contract or substitutes for such goods or services which are as advanced or more advanced in their technology, the County will terminate the Contract, without termination charge or other liability to the County, on the last day of the then current fiscal year or when the appropriation made for the then current year for the services covered by this Contract is spent, whichever event occurs first.

15. ESTIMATED QUANTITIES/NON-EXCLUSIVITY OF CONTRACTOR ACKNOWLEDGEMENT

Offerors acknowledge that the contract that will be entered into as a result of this solicitation will not obligate the County to purchase a specific quantity of items or services during the Contract Term. Any quantities which are included in the Contract Documents are the present expectations of those who are planning for the County for the period of the Contract. The amount is only an estimate and the Contractor understands and agrees that the County is under no obligation to the Contractor to buy that amount, or any amount as a result of having provided this estimate or of having had any normal or otherwise measurable requirement in the past. Offerors further understand that the County may require goods and/or services in excess of the estimated annual contract amount and that such excess shall not give rise to any claim for compensation other than at the unit prices and/or rates set forth in the resulting Contract. Further, Offerors acknowledge that the items or services covered by this contract may be available or become available under other County contract(s), and that in analyzing its needs, the County may determine that it is in its best interest to procure the items or services through such other contract(s). Therefore, the County does not guarantee that the Contractor will be the exclusive provider of the goods or services covered by the resulting contract.

16. COUNTY PURCHASE ORDER REQUIREMENT

County purchases are authorized only if a County Purchase Order is issued in advance of the transaction, indicating that the ordering agency has sufficient funds available to pay for the purchase. Such a Purchase Order is to be provided to the Contractor by the ordering agency. The County will not be liable for payment for any purchases made by its employees without appropriate purchase authorization issued by the County Purchasing Agent. If the Contractor provides goods or services without a signed County Purchase Order, it does so at its own risk and expense.

17. PROJECT STAFF

The County will, throughout the Initial Contract Term and any Subsequent Contract Term have the right of reasonable rejection and approval of staff or subcontractors assigned to the project by the Contractor. If the County reasonably rejects staff or subcontractors pursuant to this section, the Contractor must

provide replacement staff or subcontractors satisfactory to the County in a timely manner and at no additional cost to the County. The day-to-day supervision and control of the Contractor's employees, and employees of any of its subcontractors, shall be the sole responsibility of the Contractor.

17. [INTENTIONALLY LEFT BLANK]

18. [INTENTIONALLY LEFT BLANK]

19. SUPERVISION BY CONTRACTOR

The Contractor shall at all times enforce strict discipline and good order among the employees and subcontractors performing under this Contract, and shall not employ on the work any person not reasonably proficient in the work assigned.

20. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

During the performance of its Work pursuant to this Contract, the Contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by state law related to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an Equal Opportunity Employer.
- C. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- D. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment and mandates their full participation in both publicly and privately provided services and activities.
- E. The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

21. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED

In accordance with §2.2-4311.1 of the Code of Virginia, as amended, the Contractor acknowledges that it does not, and shall not during the performance of this Contract for goods and/or services in the Commonwealth, knowingly employ an unauthorized alien as that term is defined in the federal Immigration Reform and Control Act of 1986.

22. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000.00 relating to this Contract, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor by Arlington County in accordance with the Arlington County Purchasing Resolution, the employees of which Contractor are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

23. SAFETY

The Contractor shall comply with, and ensure that the Contractor's employees and subcontractors comply with, all current applicable local, state and federal policies, regulations and standards relating to safety and health, including, by way of illustration and not limitation, the standards of the Virginia Occupational Safety and Health program of the Department of Labor and Industry for General Industry and for the Construction Industry, the Federal Environmental Protection Agency standards and the applicable standards of the Virginia Department of Environmental Quality.

24. TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE

The Contract shall remain in force for the Initial Contract Term or any Subsequent Contract Term(s) and until the County determines that all of the following requirements and conditions have been satisfactorily met: the County has accepted the Work, and thereafter until the Contractor has met all requirements and conditions relating to the Work under the Contract Documents, including warranty and guarantee periods. However, the County shall have the right to terminate this Contract sooner if the Contractor is in breach or default or has failed to perform satisfactorily the Work required, as determined by the County in its discretion.

If the County determines that the Contractor has failed to perform satisfactorily, then the County will give the Contractor written notice of such failure/s and the opportunity to cure such failure/s within at least fifteen (15) days before termination of the Contract takes effect ("Cure Period"). If the Contractor fails to cure within the Cure Period or as otherwise specified in the notice, the Contract may be terminated for the Contractor's failure to provide satisfactory Contract performance. Upon such termination, the Contractor may apply for compensation for Contract services satisfactorily performed by the Contractor, allocable to the Contract and accepted by the County prior to such termination unless otherwise barred by the Contract ("Termination Costs"). In order to be considered, such request for Termination Costs, with all supporting documentation, must be submitted to the County Project Officer within fifteen (15) days after the expiration of the Cure Period. The County may accept or reject, in whole or in part, the application for Termination Costs and notify the Contractor of same within a reasonable time thereafter.

If the County terminates the Contract for default or breach of any Contract provision or condition, then the termination shall be immediate after notice from the County to the Contractor (unless the County in its discretion provides for an opportunity to cure) and the Contractor shall not be permitted to seek Termination Costs.

Upon any termination pursuant to this section, the Contractor shall be liable to the County for all costs incurred by the County after the effective date of termination including costs required to be expended by the County to complete the Work covered by the Contract, including costs of delay in completing the Work or the cost of repairing or correcting any unsatisfactory or non-compliant work performed or provided by the Contractor or its subcontractors. Such costs shall be either deducted from any amount due the Contractor or shall be promptly paid by the Contractor to the County upon demand by the County. Additionally, and notwithstanding any provision in this Contract to the contrary, the Contractor is liable to the County, and the County shall be entitled to recover, all damages to which the County is entitled by this Contract or by law, including and without limitation, direct damages, indirect damages, consequential damages, delay damages, replacement costs, refund of all sums paid by the County to the Contractor under the Contract and all attorney fees and costs incurred by the County to enforce any provision of this Contract.

Except as otherwise directed by the County in the notice, the Contractor shall stop work on the date of receipt of notice of the termination or other date specified in the notice, place no further orders or subcontracts for materials, services, or facilities except as are necessary for the completion of such portion of the Work not terminated, and terminate all vendors and subcontracts and settle all outstanding liabilities and claims. Any purchases after the date of termination contained in the notice shall be the sole responsibility of the Contractor.

In the event any termination for cause, default, or breach shall be found to be improper or invalid by any court of competent jurisdiction then such termination shall be deemed to have been a termination for convenience.

25. TERMINATION FOR THE CONVENIENCE OF THE COUNTY

The performance of work under this Contract may be terminated by the County Purchasing Agent in whole or in part whenever the Purchasing Agent shall determine that such termination is in the County's best interest. Any such termination shall be effected by the delivery to the Contractor of a written notice of termination at least fifteen (15) days before the date of termination, specifying the extent to which performance of the work under this Contract is terminated and the date upon which such termination becomes effective. The Contractor will be entitled to receive compensation for all Contract services satisfactorily performed by the Contractor and allocable to the Contract and accepted by the County prior to such termination and any other reasonable termination costs as negotiated by the parties, but no amount shall be allowed for anticipatory profits.

After receipt of a notice of termination and except as otherwise directed, the Contractor shall stop all designated work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for materials, services or facilities except as are necessary for the completion of such portion of the work not terminated; immediately transfer all documentation and paperwork for terminated work to the County; and terminate all vendors and subcontracts and settle all outstanding liabilities and claims.

26. INDEMNIFICATION

The Contractor covenants for itself, its employees, and subcontractors to save, defend, hold harmless and indemnify the County, and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards, and commissions (collectively the "County" for purposes of this section) from and against any and all claims made by third parties or by the County for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, demands or exposure, however caused, resulting from, arising out of, or in any way connected with the Contractor's acts or omissions, including the acts or omissions of its employees and/or subcontractors, in performance or nonperformance of the work called for by the Contract Documents. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract. If, after notice by the County, the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor shall be liable for and reimburse the County for any and all expenses, including but not limited to, reasonable attorneys' fees incurred and any settlements or payments made. The Contractor shall pay such expenses upon demand by the County and failure to do so may result in such amounts being withheld from any amounts due to Contractor under this Contract.

27. INTELLECTUAL PROPERTY INDEMNIFICATION

The Contractor warrants and guarantees that no intellectual property rights (including, but not limited to, copyright, patent, mask rights and trademark) of third parties are infringed or in any manner involved in or related to the services provided hereunder.

The Contractor further covenants for itself, its employees, and subcontractors to save, defend, hold harmless, and indemnify the County, and all of its officers, officials, departments, agencies, agents, and employees from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, or exposure, however caused, for or on account of any trademark, copyright, patented or unpatented invention, process, or article manufactured or used in the performance of this Contract, including its use by the County. If the Contractor, or any of its employees or subcontractors, uses any design, device, work, or materials covered by letters patent or copyright, it is mutually agreed and understood, without exception, that the Contract Amount includes all royalties, licensing fees, and any other costs arising from the use of such design, device, work, or materials in any way involved with the Work. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract. If, after Notice by the County, the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor shall be liable for and reimburse the County for any and all expenses, including but not limited to, reasonable attorneys' fees incurred and any settlements or payments made. The Contractor shall pay such expenses upon demand by the County and failure to do so may result in such amounts being withheld from any amounts due to Contractor under this Contract.

28. COPYRIGHT

The Contractor hereby irrevocably transfers, assigns, sets over and conveys to the County all right, title and interest, including the sole exclusive and complete copyright interest, in any and all copyrightable works created pursuant to this Contract. The Contractor further agrees to execute such documents as the County may request to effect such transfer or assignment.

Further, the Contractor agrees that the rights granted to the County by this paragraph are irrevocable. Notwithstanding anything else in this Contract, the Contractor's remedy in the event of termination or dispute over the terms of this Contract shall not include any right to rescind, terminate or otherwise revoke or invalidate in any way the rights conferred pursuant to the provisions of this paragraph.

Similarly, no termination of this Contract shall have the effect of rescinding, terminating or otherwise invalidating the rights acquired pursuant to the provisions of this "Copyright" paragraph.

The use of subcontractors or third parties in developing or creating input into any copyrightable materials produced as a part of this Contract is prohibited unless the County approves the use of such subcontractors or third parties in advance and such subcontractors or third parties agree to include the provisions of this paragraph as part of any contract they enter into with the Contractor for work related to work pursuant to this Contract.

29. OWNERSHIP AND RETURN OF RECORDS

This Contract confers no ownership rights to the Contractor, nor any rights or interests to use or disclose the County's data or inputs.

The Contractor agrees that all information, findings, memoranda, correspondence, documents or records of any type, whether written or oral or electronic and all documents generated by the Contractor or its subcontractors as a result of the County's request for services under this Contract, are the exclusive property of the County ("Record" or "Records"), and all such Records shall be provided to and/or returned to the County upon completion, termination, or cancellation of this Contract notwithstanding any exclusions this clause shall not include blueprints and/or architectural drawings. The Contractor shall not use, willingly allow, or cause such materials to be used for any other purpose other than performance of all obligations under the Contract without the written consent of the County. Additionally, the Contractor agrees that the Records are confidential records and neither the Records nor their contents shall be released by the Contractor, its subcontractors, or other third parties; nor shall their contents be disclosed to any person other than the Project Officer or his or her designee. The Contractor agrees that all oral or written inquiries from any person or entity regarding the status of any Record generated as a result of the existence of this Contract shall be referred to the Project Officer or his or her designee for response. At the County's request, the Contractor shall deliver all Records to the Project Officer, including "hard copies" of computer records, and at the County's request, shall destroy all computer records created as a result of the County's request for services pursuant to this Contract.

The Contractor agrees to include the provisions of this section as part of any contract or agreement the Contractor enters into with subcontractors or other third parties for work related to work pursuant to this Contract.

No termination of this Contract shall have the effect of rescinding, terminating or otherwise invalidating this section of the Contract.

30. CONFIDENTIAL INFORMATION

The Contractor, and its employees, agents, and subcontractors, hereby agree to hold as confidential all County information obtained as a result of its Work under this Contract. Confidential information includes, but is not limited to, nonpublic personal information, personally identifiable health information, social security numbers, addresses, dates of birth, other contact information or medical information about a person, information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans, expertise and any information entrusted to any affiliate of the parties. The Contractor shall take reasonable measures to ensure that all of its employees, agents, and subcontractors are informed of, and abide by, this requirement.

31. [INTENTIONALLY LEFT BLANK]

32. ETHICS IN PUBLIC CONTRACTING

This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as any state or federal law related to ethics, conflicts of interest, or bribery, including by way of illustration and not limitation, the State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq., and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its offer was made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

33. COUNTY EMPLOYEES

No employee of Arlington County, Virginia, shall be admitted to any share in any part of this Contract or to any benefit that may arise therefrom which is not available to the general public.

34. FORCE MAJEURE

The Contractor shall not be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, acts of terrorism, or an act of God beyond control of the Contractor and outside and beyond the scope of the Contractor's then current, by industry standards, disaster plan, that make performance impossible or illegal, unless otherwise specified in the Contract.

The County shall not be held responsible for failure to perform its duties and responsibilities imposed by the Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, acts of terrorism, or an act of God beyond control of the County that make performance impossible or illegal, unless otherwise specified in the Contract.

35. AUTHORITY TO TRANSACT BUSINESS

The Contractor shall pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the Initial Term and any Subsequent Contract Term(s) of this Contract. A contract entered into by a Contractor in violation of this requirement is voidable, without any cost or expense, at the sole option of the County.

36. RELATION TO COUNTY

The Contractor is an independent contractor and neither the Contractor nor its employees or subcontractors will, under any circumstances, be considered employees, servants or agents of the County. The County will not be legally responsible for any negligence or other wrongdoing by the Contractor, its employees, servants or agents. The County will not withhold payments to the Contractor for any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Furthermore, the County will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation, normally provided by the County for its employees.

37. ANTITRUST

By entering into this Contract, the Contractor conveys, sells, assigns and transfers to the County all rights, title, and interest in and to all causes of action the Contractor may now have or hereafter acquire under the antitrust laws of the United States or the Commonwealth of Virginia, relating to the goods or services purchased or acquired by the County under this Contract.

38. REPORT STANDARDS

Reports or written material prepared by the Contractor in response to the requirements of this Contract or a request of the Project Officer shall, unless otherwise provided for in the Contract, meet standards of professional writing established for the type of report or written material provided, shall be thoroughly researched for accuracy of content, shall be grammatically correct and not contain spelling errors, shall be submitted in a format approved in advance by the Project Officer, and shall be submitted for advance review and comment by the Project Officer. The cost of correcting grammatical errors, correcting report data, or other revisions required to bring the report or written material into compliance with these requirements shall be borne by the Contractor.

When submitting documents to the County, the Contractor shall comply with the following guidelines:

- All submittals and copies shall be printed on at least thirty percent (30%) recycled-content and/or tree-free paper;
- All copies shall be double-sided;
- Report covers or binders shall be recyclable, made from recycled materials, and/or easily removable to allow for recycling of report pages (reports with glued bindings that meet all other requirements are acceptable);
- The use of plastic covers or dividers should be avoided; and
- Unnecessary attachments or documents not specifically asked for should not be submitted, and superfluous use of paper (e.g. separate title sheets or chapter dividers) should be avoided.

39. AUDIT

The Contractor shall secure an independent certified public accountant's audit of its finances and program operation after the close of each fiscal year (June 30), but no later than November 30 of each such year, and shall forward to the County the findings of such audit in whole, including the management letter or other ancillary audit components, and permit the County to make such review of the records of the Contractor as may be deemed necessary by the County to satisfy audit purposes within fifteen (15) calendar days of receiving the findings. In instances where a management letter was not prepared as an audit function, the Contractor must so certify in writing to the County at the time the audit report is submitted. All accounts of the Contractor are subject to such audit, regardless whether the funds are used exclusively for specific program activities or mingled with funds for other agency activities.

The Contractor agrees to retain all books, records and other documents related to this Contract for at least five (5) years after final payment. The County or its authorized agents shall have full access to and the right to examine any of the above documents during this period and during the Initial Contract Term and any Subsequent Contract Term. The Contractor shall provide any documentation requested by the County within fifteen (15) calendar days of such request. If the Contractor wishes to destroy or dispose of records (including confidential records to which the County does not have ready access) within five (5) years after final payment, the Contractor shall notify the County at least thirty (30) days prior to such disposal, and if the County objects, shall not dispose of the records.

40. ASSIGNMENT

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of any award, or any or all of its rights, obligations, or interests under this Contract, without the prior written consent of the County.

41. AMENDMENTS

This Contract shall not be modified except by written amendment executed by persons duly authorized to bind the Contractor and the County.

42. ARLINGTON COUNTY PURCHASING RESOLUTION AND COUNTY POLICIES

Notwithstanding any provision to the contrary herein, no provision of the Arlington County Purchasing Resolution or any applicable County policy is waived in whole or in part.

43. DISPUTE RESOLUTION

All disputes arising under this Agreement, or its interpretation, whether involving law or fact, or extra work, or extra compensation or time, and all claims for alleged breach of Contract shall be submitted in writing to the Project Officer for decision at the time of the occurrence or beginning of the work upon which the claim is based, whichever occurs first. Any such claims shall state the facts surrounding it in sufficient detail to identify it together with its character and scope. In accordance with the Arlington County Purchasing Resolution, claims denied by the Project Officer may be submitted to the County Manager in writing no later than sixty (60) days after final payment. The time limit for final written decision by the County Manager in the event of a contractual dispute, as that term is defined in the Arlington County Purchasing Resolution, is fifteen (15) days. Procedures for considering contractual claims, disputes, administrative appeals, and protests are contained in the Purchasing Resolution, which is incorporated herein by reference. A copy of the Arlington County Purchasing Resolution is available upon request from the Office of the Purchasing Agent. The Contractor shall not cause a delay in the Work pending a decision of the Project Officer, County Manager, County Board, or a court of law.

44. APPLICABLE LAW, FORUM, VENUE AND JURISDICTION

This Contract and the work performed hereunder shall be governed in all respects by the laws of the Commonwealth of Virginia and the jurisdiction, forum, and venue for any litigation with respect thereto shall be in the Circuit Court for Arlington County, Virginia, and in no other court. In performing the Work under this Contract, the Contractor shall comply with applicable federal, state, and local laws, ordinances and regulations.

45. ARBITRATION

It is expressly agreed that nothing under the Contract shall be subject to arbitration, and any references to arbitration are expressly deleted from the Contract.

46. NONEXCLUSIVITY OF REMEDIES

All remedies available to the County under this Contract are cumulative, and no such remedy shall be exclusive of any other remedy available to the County at law or in equity.

47. NO WAIVER

The failure of either party to exercise in any respect a right provided for in this Contract shall not be deemed to be a subsequent waiver of the same right or any other right.

48. SEVERABILITY

The sections, paragraphs, sentences, clauses and phrases of this Contract are severable, and if any phrase, clause, sentence, paragraph or section of this Contract shall be declared invalid by a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Contract.

49. NO WAIVER OF SOVEREIGN IMMUNITY

Notwithstanding any other provision of this Contract, nothing in this Contract or any action taken by the County pursuant to this Contract shall constitute or be construed as a waiver of either the sovereign or governmental immunity of the County. The parties intend for this provision to be read as broadly as possible.

50. SURVIVAL OF TERMS

In addition to any numbered section in this Agreement which specifically state that the term or paragraph survives the expiration or termination of this Contract, the following sections if included in this Contract also survive: INDEMNIFICATION; RELATION TO COUNTY; OWNERSHIP AND RETURN OF RECORDS; AUDIT; COPYRIGHT; INTELLECTUAL PROPERTY INDEMNIFICATION; AND CONFIDENTIAL INFORMATION.

51. HEADINGS

The section headings in this Contract are inserted only for convenience and are not to be construed as part of this Contract or a limitation on the scope of the particular section to which the heading precedes.

52. AMBIGUITIES

Each party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

53. NOTICES

Unless otherwise provided herein, all notices and other communications required by this Contract shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered by an agent, such as an overnight or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, addressed as follows:

TO THE CONTRACTOR:
Community Residences, Inc.
Attn: Mary Jayne Panek
14160 Newbrook Drive
Chantilly, Virginia 20151

TO THE COUNTY:
Joanna Welss-Barnes
Arlington County, Department of Human Services
2100 Washington Boulevard
Arlington, Virginia 22204

AND

Michael E. Bevis, Purchasing Agent
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 500
Arlington, Virginia 22201

54. NON-DISCRIMINATION NOTICE

Arlington County does not discriminate against faith-based organizations.

55. LIMITED ENGLISH PROFICIENCY

The Contractor shall comply with Executive Order 13166, Title VI of the Civil Rights Act of 1964 and make reasonable efforts to ensure that adequate communication and/or interpretation/translation services are available to persons seeking services who have limited ability to communicate and/or limited English proficiency. If such services are not included in contract scope of services and pricing, the Contractor agrees to use services of a County-contracted service provider and fees will be paid for by the County at prevailing contract rates.

56. ACCESSIBILITY OF WEB SITE

If any work performed under this Contract results in design, development, maintenance or responsibility for content and/or format of any County websites, or County's presence on other party websites, the Contractor shall perform such work in compliance with the requirements set forth in the U.S. Department of Justice document entitled "Accessibility of State and Local Government Websites to People with Disabilities." The document is located at: <http://www.ada.gov/websites2.htm>.

57. HIPAA COMPLIANCE

The Contractor shall comply with all applicable legislative and regulatory requirements of privacy, security, and electronic transaction components of the Health Insurance portability and Accountability Act of 1996, as amended ("HIPAA"). Pursuant to 45 C.F.R. §164.502(e) and §164.504(e), the Contractor shall be designated a Business Associate pursuant and will be required to execute an Arlington County Business Associate Agreement. If Contractor engages a subcontractor or subcontractors in the performance of Work under this Agreement, Contractor shall enter into an agreement with each of its subcontractors pursuant to 45 C.F.R. § 164.308(b)(1) and the Health Information Technology for Economic and Clinic Health (HITECH) Act § 13401 that is appropriate and sufficient to require each subcontractor to protect Protected Health Information to the same extent required of Contractor under Arlington County's Business Associate Agreement and in a form approved by the County. The Contractor shall ensure that its subcontractors notify the Contractor, immediately, of any breaches in security regarding Protected Health Information.

Contractor takes full responsibility for any failure to execute the appropriate agreements with its subcontractors and for the failure of its subcontractors to comply with the existing or future regulations of HIPAA and/or HITECH, and shall indemnify County for any and all loss, damages, liability, exposure, or costs resulting therefrom.

58. ADA COMPLIANCE

Compliance with the Americans with Disabilities Act of 1990 ("ADA") shall be the sole responsibility of the Contractor. The Contractor shall defend and hold the County harmless from any expense or liability

arising from the Contractor's non-compliance therewith. The Contractor's responsibilities related to ADA compliance shall include, but not be limited to, the following:

- a. **Access to Programs, Services and/or Facilities:** The Contractor shall ensure its programs, services and facilities are accessible to persons with disabilities. If a particular facility or program is not accessible, the Contractor shall provide equivalent services in an accessible alternate location or manner to ensure that persons with disabilities are not denied access to services.
- b. **Effective Communication:** The Contractor, upon request, shall provide appropriate aids and services to facilitate effective communication with qualified persons with disabilities so that such persons can participate equally in the Contractor's programs, services, and activities, including qualified sign language interpreters, documents in Braille, and other ways of making information and communications accessible to people who have speech, hearing, or vision impairments, as required by the ADA.
- c. **Modifications to Policies and Procedures:** The Contractor shall make the necessary modifications to its policies and procedures to ensure that people with disabilities have an equal opportunity to enjoy the Contractor's programs, services, and activities, as may be required by the ADA. For example, individuals with service animals are welcomed in the Contractor's offices or facilities, even where pets are generally prohibited.
- d. The Contractor shall not place a surcharge on a person with a disability or any group of individuals with disabilities to cover the cost of providing auxiliary aids/services or reasonable modifications of policy.
- e. **Employment:** The Contractor shall not discriminate on the basis of disability in its hiring or employment practices.
- f. **Responding to Inquiries from the U.S. Department of Labor.**

59. INSURANCE REQUIREMENTS

The Contractor shall provide to the County Purchasing Agent a Certificate of Insurance indicating that the Contractor has in force the coverage below prior to the start of any Work under this Contract and upon any contract extension. The Contractor agrees to maintain such insurance until the completion of this Contract or as otherwise stated in the Contract Documents. All required insurance coverages must be acquired from insurers authorized to do business in the Commonwealth of Virginia, with a rating of "A-" or better and a financial size of "Class VII" or better in the latest edition of the A.M. Best Co. Guides, and acceptable to the County. The minimum insurance coverage shall be:

- a. **Workers Compensation - Virginia Statutory Workers Compensation (W/C) coverage including Virginia benefits and employers liability with limits of \$100,000/100,000/500,000.** The County will not accept W/C coverage issued by the Injured Worker's Insurance Fund, Towson, MD.
- b. **Commercial General Liability - \$1,000,000 combined single limit coverage with \$2,000,000 general aggregate covering all premises and operations and including Personal Injury, Completed Operations, Contractual Liability, Independent Contractors, and Products Liability.** The general

aggregate limit shall apply to this Contract. Evidence of Contractual Liability coverage shall be typed on the certificate.

- c. Business Automobile Liability - \$1,000,000 Combined Single Limit (Owned, non-owned and hired).
- d. The Contractor shall carry Errors and Omissions or Professional Liability Insurance which will pay for Injuries arising out of errors or omissions in the rendering, or failure to render services or perform Work under the contract, in the amount of \$1,000,000.
- e. Additional Insured - Arlington County, and its officers, elected and appointed officials, employees, and agents shall be named as an additional insureds on all policies except Workers Compensation and Auto and Professional Liability; and evidence of the Additional Insured endorsement shall be typed on the certificate.
- f. Cancellation - If there is a material change or reduction in coverage the Contractor shall notify the Purchasing Agent immediately upon Contractor's notification from the insurer. It is the Contractor's responsibility to notify the County upon receipt of a notice indicating that the policy will not be renewed or will be materially changed. Any policy on which the Contractor has received notification from an insurer that the policy has or will be cancelled or materially changed or reduced must be replaced with another policy consistent with the terms of this Contract, and the County notified of the replacement, in such a manner that there is no lapse in coverage. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.
- g. Any insurance coverage that is placed as a "claims made" policy must remain valid and in force, or the Contractor must obtain an extended reporting endorsement consistent with the terms of this Contract, until the applicable statute of limitations has expired, such date as determined to begin running from the date of the Contractor's receipt of final payment.
- h. Contract Identification - The insurance certificate shall state this Contract's number and title.
- i. Certificate Holder - Arlington County, Office of the Purchasing Agent, 2100 Clarendon Boulevard, Arlington, Virginia 22201

The Contractor must disclose the amount of any deductible or self-insurance component applicable to the General Liability, Automobile Liability, Professional Liability, Intellectual Property or any other policies required herein, if any. The County reserves the right to request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible. Thereafter, at its option, the County may require a lower deductible, funds equal to the deductible be placed in escrow, a certificate of self-insurance, collateral, or other mechanism in the amount of the deductible to ensure protection for the County.

The Contractor shall require all subcontractors to maintain during the term of this Contract, Commercial General Liability Insurance, Business Automobile Liability Insurance, and Workers' Compensation Insurance in the same form and manner as specified for the Contractor. The Contractor shall furnish subcontractors' certificates of Insurance to the County immediately upon request by the County.

No acceptance or approval of any insurance by the County shall be construed as relieving or excusing the Contractor from any liability or obligation imposed upon the Contractor by the provisions of the Contract Documents

The Contractor shall be responsible for the work performed under the Contract Documents and every part thereof, and for all materials, tools, equipment, appliances, and property of any description used in connection with the work. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed on or in connection with the Work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract, or in connection in any way whatsoever with the contracted work.

The Contractor shall be as fully responsible to the County for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.

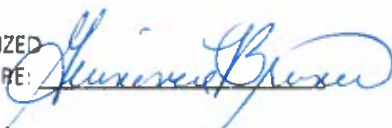
Notwithstanding any of the above, the Contractor may satisfy its obligations under this section by means of self-insurance for all or any part of the insurance required, provided that the Contractor can demonstrate financial capacity and the alternative coverages are submitted to and acceptable to the County. The Contractor must also provide its most recent actuarial report and provide a copy of its self-insurance resolution to determine the adequacy of the insurance funding.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA

COMMUNITY RESIDENCES, INC.

AUTHORIZED
SIGNATURE:



AUTHORIZED
SIGNATURE:



NAME: MICHAEL E. BEVIS
TITLE: PURCHASING AGENT

NAME AND
TITLE: Terry Hurley, VP+CFO

DATE: 7/7/15

DATE: 7/7/15

ARLINGTON COUNTY, VIRGINIA

EXHIBIT A

SCOPE OF SERVICES

Phase I. Scope of Work – Group Home Development

Phase 1 will be the development of the group home. Community Residences, Inc. (hereinafter "The Contractor") shall submit a development plan and a timeline to culminate in certificate(s) of occupancy by November 15, 2015 and the admission of residents by November 30, 2015.

The Contractor shall develop an Americans with Disabilities Act (ADA) accessible group home with ADA design features that will accommodate four or five adults with an intellectual disability who are discharged from a State training center to Arlington County. The Contractor shall meet the needs of these four or five group home residents who need ADA accessibility, (including individualized environmental modifications and assistive technology) who have medical and physical challenges requiring supports to include physical and medical assistance (including skilled nursing), positive behavioral supports, crisis supervision and intervention, and transportation.

The Contractor shall demolish an existing six-bed group home at 803 N. Lincoln Street, Arlington, Virginia 22201. This home and property is currently owned by Community Havens, Inc. which is an affiliate of and is the property division of Community Residences, Inc. The six residents of the current group home at that location will be relocated to other group homes owned by Community Residences, Inc. and to apartments where congregate residential services (staffing and supports) are provided by Community Residences, Inc. The relocations of these group home residents will be accomplished in compliance with Virginia's Department of Behavioral Health and Development Services' Licensure Regulations and person-centered planning process, and must be approved by the Arlington County Project Officer and by the Arlington County Support Coordinator for each group home resident.

The Contractor shall construct a new group home at 803 N. Lincoln Street, Arlington, Virginia 22201. The new group home shall be a minimum of a 2,400 square foot one-level home with five bedrooms and three bathrooms. The new group home shall feature an open floor plan with good natural light and ADA accessibility and design features. The new group home shall maximize the safety of residents in an emergency that requires evacuation. The three full bathrooms shall have roll-in showers or two roll-in showers and one with an appropriate accessible tub. The five bedrooms and three full bathrooms shall have a truss system carry a minimum 350-pound load to allow for safety in transferring residents between beds, wheelchairs, and the bathroom. The ceiling track shall be added to each room depending on resident needs and shall be in place prior to the individual's admittance. The group home shall have adequate space for multiple pieces of adaptive equipment such as a mat table, standing box, shower chair, hi-low bed, mechanical lift, transport wheelchair, and more. There shall be a residential sprinkler system to residential code for safety.

The Contractor shall develop a group home with adequate and accessible internal spaces for social and recreational group activities, including two separate common areas. There shall also be spaces for securing financial documents, a locking medical cabinet, a computer desk and bookcases. Outdoor space shall be adequate for group activities, and for at least four vehicles, including rear-loading accessible vehicles. The home's appearance shall be consistent with the architectural history and style of the Arlington neighborhood in which the home is located. The group home shall be subject to the Arlington County zoning ordinance and permitting processes as a single-family residence in Arlington County.

The Contractor agrees to enter into a deed of declaration, for the duration of this contract including any renewal periods in accordance with the Department of Behavioral Health Developmental Services Contract No. 720C-0441-15B, with the County, in a form approved by the County, to restrict the use of the building to group home use. The deed of declaration shall name either the Arlington County Community Services Board's Executive Director or his/her designee and/or a designee of the Arlington County Board as the trustee.

The Contractor shall comply with all federal, state, and local laws/codes as it relates to the development of the group home, including but not limited to, Virginia Department of Behavioral Health and Developmental Services (DBHDS), Office of Licensure standards.

The Contractor shall guarantee that the group home will continue to operate in accordance with this contract of up to ten (10) years after the date in which this agreement is fully executed. The initial contract term will be five years, with an option to renew for an additional five (5) years, for a total of ten (10) years.

Neither DBHDS nor the County shall be required to rebuild or make any repairs, renewals, or replacements on the group homes of any nature whatsoever.

Group Home Standards

- The Contractor shall develop a group home that is designed and constructed according to sound construction, engineering and architectural principles and commonly accepted safety standards, and that meets all the DBHDS, Office of Licensure requirements and County codes.
- The group home shall meet the accessibility, equipment and behavioral support needs of the residents to be served, including barrier-free design and special construction design and materials as needed.
- Each resident shall have a private bedroom.
- There shall be at least three full bathroom that are ADA accessible.
- Common spaces shall be adequate for residents, staff and visitors, as determined by the County.
- Parking shall be adequate for the Contractor's staff and visitor's vehicles.
- There shall be adequate outdoor space, as determined by the County.
- The group homes shall have a home-like and therapeutic environment.
- The Contractor shall provide a generator for the group home in case of power outages.
- The Contractor shall keep the group home in as reasonably safe condition as its operation shall permit and in good repair and operating condition, ensuring that all necessary repairs, renewals, and replacements, interior and exterior, structural and nonstructural, are made in a timely manner.
- Subject to compliance with the provisions of this Agreement, the Contractor, in their discretion and at their expense, may make any additions, enlargements, improvements and expansions to, or repairs, reconstruction and restoration of, or install machinery, equipment and furnishings in and about, the group home that it deems desirable. Any damage resulting from such modifications or removal shall be repaired by the Contractor.
- The Contractor shall comply with all laws, rules, regulations and other government requirements with respect to the group homes, regardless of whether existing or later enacted, foreseen or unforeseen, or involving any change, or requiring structural repairs or alterations, which may be applicable to the group home or the use of the group home.

- The Contractor shall not commit, suffer or permit to exist any waste or damage to, or public or private nuisance upon, the group home.

Phase 1: Group Home Development Timeline

Date	Action
July 8, 2015	Contract with Contractor finalized as per Purchasing Office protocols
July 15 – August 15, 2015	Contractor retains architect; develops demolition and construction plans and budgets; obtains contractor bids; selects contractor; secures private financing for demolition and construction; applies for building permits; closes on financing; obtains building permits
August 15 – August 31, 2015	Contractor provides conceptual master plan for group home to County; County approves plan
October 31, 2015	Construction complete
November 15, 2015	Certificate of occupancy and license received
November 30, 2015	Residents transition from TC to GHs

Phase 1: Deliverables

The Contractor shall provide the following deliverables for the group home to the County Project Officer:

- A monthly report shall be provided by the third (3rd) day of each proceeding month, that includes written narrative and a project plan with milestone activities, which communicates the level of progress being made by the Contractor with respect to delivering the group home by the November 15, 2015 date;
- Written documentation demonstrating that project financing is in place and a copy of the conceptual master plan;
- A copy of an approved Arlington County building permit(s) and any executed construction contract(s) by the Contractor (if applicable); and
- A copy of the permanent Arlington County Certificate of Occupancy for the group home.
- A copy of the License received from Virginia’s Department of Behavioral Health and Developmental Services, Office of Licensure
- See Phase 1 Reporting Requirements for Group Home Development, attached.

Phase I: Group Home Development Funding

The Contractor shall agree to the following funding conditions:

- Arlington County will award a total amount of \$544,500.00; this amount is intended to cover portions of the Contractor’s capital expenses incurred in relationship to the Statement of Work outlined above, to include portions of demolition and construction costs of the group home. The total dollar amount of \$544,500.00 illustrated in this contract is a fixed price, unless the contract is modified and approved in writing by both parties.
- Arlington County shall make payments to the Contractor in two (2) installments as follows:
 - o Stage 1: The County shall pay the Contractor one-half of the funding amount or \$272,250.00 at the closing on the financing for group home demolition and construction. The Contractor shall provide the County with a copy of the signed demolition and

construction contract for said closing and the deed of declaration, and shall demonstrate in writing that project financing is in place.

- Stage 2: The County shall pay the Contractor one-half of the funding amount or \$272,250.00 when the final Certificate of Occupancy for the group home is received. If the Certificate of Occupancy is not received by November 30, 2015, the Contractor shall refund to the County the Stage 1 payment, and shall forfeit its right to Stage 2 payment, unless they have sought and received written approval from an extension of the timeline from both the County and DBHDS.
- In the event of termination of an agreement, the Contractor shall make an accounting, in writing, of funds expended and funds not expended, and shall return to the County any unexpended balance of State funds, excluding termination costs allowed under the agreement.

Phase II. Scope of Services – Group Home Operation

Phase II will be the ongoing operation of the group home, for an initial contract term of five (5) years, with an option to renew for an additional five (5) years, for a total of ten (10) years.

The Contractor shall comply with all federal, state, and local laws as it relates to the operation of the group home, including but not limited to, Virginia Department of Behavioral Health and Developmental Services (DBHDS), Office of Licensure standards.

The Contractor shall guarantee that the group home will continue to operate in accordance with this contract for up to ten (10) years after the date in which this agreement is fully executed.

The Contractor shall be approved by the Virginia Department of Medical Assistance Services (DMAS) as a provider of congregate residential services, and of all other ID Waiver services needed by group home residents, including but not limited to:

- Transportation: In addition to transportation to and from community activities and medical appointments, the Contractor shall supply transportation services to group home residents attending habilitation/supported employment programs within Arlington County, in such instances when residents are unable to use Medicaid-funded transportation services and are also unable to use public transportation systems.
- Skilled Nursing Services: If assessed as needed, the Contractor shall supply skilled nursing services to group home residents.
- Therapeutic Consultation Services (Behavioral): If assessed as needed, the Contractor shall supply behavioral therapeutic consultation services to group home residents.
- Crisis Supervision Services: if assessed as needed, the Contractor shall supply crisis supervision services to group home residents.
- Crisis Intervention Services: if assessed as needed, the Contractor shall supply crisis intervention services to group home residents.

The Contractor shall be licensed by the DBHDS Office of Licensure to provide all services the Contractor intends to provide to group home residents, including all services the group home residents need as per assessments.

The Contractor must maintain its licenses and provider approvals throughout the term of this contract.

The Contractor's staff shall meet the minimum qualifications for direct care staff working with persons with an Intellectual disability, and shall be supervised by a Qualified Intellectual Disability Professional (QIDP). Staff shall receive all ID orientation training required by the Commonwealth of Virginia prior to beginning work and thereafter, including but not limited to:

- Orientation to Intellectual disability
- Confidentiality, including HIPAA regulations
- Human rights regulations and reporting
- Incident reporting, Adult Protective Services reporting
- OSHA universal precautions and infection control
- First aid and CPR, and safety monitoring
- Behavioral support techniques
- Licensing regulations, including smoking
- Crisis prevention and intervention
- Emergency preparedness and response
- Psychiatric disorders and treatments within the mental health system
- Psychotropic medications and side effects
- Medication administration

The Contractor shall provide services as per licensure standards and as described in the Medicaid Intellectual Disability (ID) Waiver Home and Community-Based Services Provider Manual under allowable activities: <https://www.virginiamedicaid.dmas.virginia.gov/wps/portal/ProviderManual>

The Contractor shall operate a group home under the contract that serves four (4) or five (5) adults. Residents will be selected from the list and from referrals provided by the Arlington County Department of Human Services (DHS)/Developmental Disability Services (DDS). DDS will refer residents of State Training Centers to the Contractor. The Contractor shall accept referrals for group home residents only from DDS. DDS will serve as the screening, referral and case management (support coordination) unit for services resulting from this proposal. Any person who is not a resident of Arlington County must have the written approval of DDS for admission. At no time shall the Contractor's group home serve more than five (5) residents.

The Contractor shall submit the following documentation and ongoing reporting to the County DDS during the life of the contract:

- Reporting Requirements –attached
- Mandatory ID Waiver documentation – see ID Waiver manual standards for documentation: <https://www.virginiamedicaid.dmas.virginia.gov/wps/portal/ProviderManualMandatory>
- Intellectual Disability On-Line System (IDOLS) training manual: <http://www.dbhds.virginia.gov/library/document-library/idoIs%20service%20authorization%20manual%205%2025%2013.pdf>

As specified in the provider manual for Medicaid (ID) Waiver Home and Community-Based Services, Arlington County support coordinators will provide targeted (State Plan Option) case management. Details about those services are found at:

<https://www.virginiamedicaid.dmas.virginia.gov/wps/portal/ProviderManual>

To fulfill its targeted case management responsibilities, Arlington County maintains the right to inspect the group homes as a function of ensuring quality service delivery, the health and safety of each resident, and adherence to resident protections.

The Contractor shall agree to make available to the County, upon request, any data, procedures, or policies related to programs and services covered by the contract. The Contractor agrees to allow County staff members – support coordinators, their supervisors, and the project officer - physical access to the Contractor's offices as needed during the Contractor's Identified business hours, and to group homes anytime, without the giving of prior notice.

The Contractor agrees that the group home residents shall have the right to live in the group home for as long as they choose to live there and the Contractor may not remove the individuals from the group home prior to receiving written prior approval from DBHDS.

Discharges from the group home shall follow protocols set forth by the DBHDS, Office of Licensure. In addition, and prior to discharge notification, the Contractor shall take at least the following steps to prevent discharges. All actions appropriate to the individual under consideration for discharge are expected.

- Implement all services which are appropriate for the individual and circumstance
- Contact Arlington DDS support coordinator to request referral to the Regional Support Team
- Request that DDS support coordinator make a referral to DBHDS Central Office Critical and Complex Consultation Team

The Contractor shall fill any future group home vacancies with other individuals from Virginia state facilities that have been approved by DBHDS and the County. In the event that other individuals from Virginia state facilities are not available to fill future vacancies at the group home, the Contractor agrees that DBHDS and the County will have the discretion to decide which other individuals are chosen to occupy the group home.

Phase 2: Services Funding

The Contractor agrees to the following funding conditions:

- In the event that State Medicaid ID Waiver funds for services specified by agreement are not available for reasons beyond the control of the County, the County is not obligated to make payment in lieu of State funds.
- Residents may choose to leave the services/group homes anytime within the term of the contract. The County does not guarantee the continuity of individuals as assigned to the Contractor.
- The County is not obligated under this Contract to reimburse the Contractor for residents' services or any other service performed during Phase 2.
- The Contractor shall be solely responsible for billing and obtaining reimbursement for services performed during Phase 2. The Contractor may obtain reimbursement for its services through the following sources: ID Waiver reimbursement of claims to the Virginia Department of Medical Assistance Services in amounts authorized by Virginia's Department of Behavioral Health and Development Services for congregate residential services and other Waiver services in Northern Virginia
- Residents' co-payments for ID Waiver services as specified in forms DMAS-225
- Residents' room and board fees as per the Contractor's policy and procedures for settling and collecting such fees.

- The Contractor shall apply to DHBHS for bridge funding for resident-specific start-up and ongoing costs, if applicable and as allowed by and available from DBHDS.

Financial Management

The Contractor shall agree to maintain a financial accounting system that includes:

- Operation of financial management, procurement and contracting systems that are consistent with Financial Management Standards for Community Services Boards, Accounts Receivable and Reimbursement Procedures, and Community Services Boards Procurement Procedures Manuals Issued by DBHDS.
- An accounting system which operates in a way as to provide financial reporting in accordance with Generally Accepted Accounting Principles (GAAP). It shall include necessary personal and financial records and a fixed assets system. It shall provide for the practice of fund accounting and be adaptable to the needs of cost accounting.
- A system where employees with financial responsibilities are bonded
- Retention of financial records for a minimum period of five (5) years after the expiration of this agreement or until the records are audited by the County, whichever occurs first.
- Maintenance of appropriate records and accounts related to this Agreement, including personnel and financial records and a fixed asset inventory for items valued at more than One Thousand dollars (\$1,000). All expenditures made pursuant to this Agreement shall be properly supported by payroll records, invoices, orders, vouchers, contracts, canceled checks and any other necessary documentation. Financial records shall be maintained in such manner as to report data to the County if required, on the same fiscal calendar as the County for a fiscal year.
- Complying with Sections 37.2-504, 1-202, and 20-61 of the Code of Virginia and charts that identify staff members, flow charts, and specific job descriptions for all personnel involved in the reimbursement system
- Maintenance of fee collection policies and procedures that are adequate to maximize revenues from residents and responsible third party payers
- Maintenance of a schedule of fees for all services, that such charges are related reasonably to the cost of the services, and are applicable to all recipients of the services
- Operate, subject to approval by the County, in a manner that complies with applicable state and federal regulations that are used to evaluate the ability of each resident to pay fees for the room and board and a co-payment for services he or she receives. The co-payment collected from each resident will not exceed the amount specified in the individual's form DMAS-225.
- Assurance of records of residents' fee assessments and payments for five (5) years after the expiration of this agreement, and shall attempt to notify responsible persons of their liability in writing prior to destroying such records
- Compliance with all applicable laws and regulations.

Reporting Requirements – Phase 1 – Group Home Development

Report or Designated Product	Copies Required	Due Date or Frequency	Designated County Staff
A monthly report shall be provided by the third (3 rd) day of each proceeding month, that includes written narrative and a project plan with milestone activities, which communicates the level of progress being made by the Contractor with respect to delivering the group home by the November 15, 2015 date	1	Monthly by the 3 rd of each proceeding month, beginning immediately after contract signature	Project Officer
Written documentation demonstrating that project financing is in place	1	Date of execution	Project Officer
A copy of the conceptual master plan	1	Date of execution	Project Officer
The deed of declaration, deed of trust note, and/or any other security instrument naming either the Arlington County Community Services Board's Executive Director or his/her designee and/or a designee of the Arlington County Board as the trustee	1	Date of financial closing	Project Officer
Copy(ies) of all executed construction contract(s)	1	Date of financial closing	Project Officer
Copy(ies) of (an) approved Arlington County building	1	Date(s) received	Project Officer

permit(s)			
A copy of the permanent Arlington County Certificate of Occupancy for the group home	1	Date received	Project Officer
A copy of license received from DBHDS Office of Licensure to provide congregate residential services in the group home	1	Date received	Project Officer
Acceptance and admission date(s) for each group home resident	1	November 30, 2015	Project Officer
Written request for an extension of the timeline in contract	1	Immediately, if and as needed	Project Officer

Reporting Requirements – Phase 2 – Group Home On-going Operation

<u>Report or Designated Product:</u>	<u>Copies Required:</u>	<u>Date Due or Frequency:</u>	<u>Designated County Staff</u>
A. Part V. Plan for Supports	1	Annually, 10 days following annual meeting	Project Officer
B. Person-Centered Reviews	1	Quarterly, 10 days after quarter ends	Project Officer
C. Incident Reports	1	Within 24 hrs for Serious Incidents; All others within 5 business days	Project Officer
D. IDOLS Requests	1	Within 30 business days of start date	Support Coordinator
E. Physicians' Consultation Forms	1	Per Occurrence	Support Coordinator
F. Response to Referrals	1	Within 10 business days	Support Coordinator
G. Discharge Reports	1	Within 10 days of discharge	Support Coordinator
H. Annual Report	1	Upon request	Project Officer
I. Annual Audit	1	Annually prior to November 30	Project Officer
J. DBHDS Licensure Reports & Corrective Action Plans	1	Within 5 business days upon receipt	Project Officer
K. Policies & Procedures	1	Upon request	Project Officer
L. Other reports as deemed necessary	1	Upon request	Project Officer
M. Citizen Complaints	1	Next business day	Project Officer
N. Qualitative Outcome Data	1	August 31	Project Officer
O. Monthly/Quarterly Invoice	1	By the 10 th of the month	Project Officer
P. Monthly Data for In-home Services	1	By the 5 th of the month	Project Officer
Q. Personal Property Inventory Log for Each Resident	1	Annually by July 31	Project Officer

ARLINGTON COUNTY, VIRGINIA
ATTACHMENT B

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement is hereby entered into between Community Residences, Inc., 14160 Newbrook Drive, Chantilly, Virginia 20151 (hereafter referred to as "Business Associate") and the County Board of Arlington County, Virginia (hereafter referred to as "Covered Entity" or "County") (collectively "the parties") and is hereby made a part of any Underlying Agreement for goods or services entered into between the parties.

Recitals

The County provides services to its residents and employees which may cause it or others under its direction or control to serve as covered entities for purposes of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

The County, in its capacity as a covered entity, may provide Business Associate with certain information that may include Protected Health Information (PHI), so that Business Associate may perform its responsibilities pursuant to its Underlying Agreement(s) with and on behalf of County.

Covered Entity and Business Associate intend to protect the privacy of PHI and provide for the security of any electronic PHI received by Business Associate from Covered Entity, or created or received by Business Associate on behalf of Covered Entity in compliance with HIPAA; in compliance with regulations promulgated pursuant to HIPAA, at 45 CFR Parts 160 and Part 164; and in compliance with applicable provisions of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (the "HITECH Act") and any applicable regulations and/or guidance issued by the U.S. Department of Health and Human Services ("DHHS") with respect to the HITECH Act (collectively "federal law").

WHEREAS, federal law and the specific regulations promulgated pursuant to HIPAA at 45 CFR § 164.314, 45 CFR § 164-502(e) and 45 CFR § 164.504(e) require a Covered Entity to enter into written agreements with all Business Associates (hereinafter "Business Associate Agreement");

WHEREAS, the parties desire to comply with HIPAA and desire to secure and protect such PHI from unauthorized disclosure;

THEREFORE, Business Associate and Covered Entity, intending to be legally bound, agree as follows. The obligations, responsibilities and definitions may be changed from time to time as determined by federal law and such changes are incorporated herein as if set forth in full text:

1) Definitions

The capitalized terms used in this Business Associate Agreement shall have the meaning set out below:

- a) **Accounting.** "Accounting" means a record of disclosures of protected health information made by the Business Associate.
- b) **Breach.** "Breach" means the acquisition, access, use, or disclosure of protected health information in a manner not permitted by this Business Associate Agreement and/or by HIPAA which compromises the security or privacy of the protected health information. For purposes of this Business Associate Agreement, any unauthorized acquisition, access, use, or disclosure of protected health information shall be presumed to be a breach.
- c) **Business Associate.** "Business Associate" means a person who creates, receives, maintains, or transmits protected health information on behalf of a Covered Entity to accomplish a task regulated by HIPAA and not as a member of the Covered Entity's workforce. A Business Associate shall include, but is not limited to, a non-workforce person/entity who performs data processing/analysis/transmission, billing, benefit management, quality assurance, legal, actuarial, accounting, administrative and/or financial services on behalf of the Covered Entity involving protected health information. A Business Associate also includes a subcontractor.
- d) **Covered Entity.** "Covered Entity" means a health plan, a health care clearinghouse, and/or a health care provider who transmits any health information in electronic form in connection with an activity regulated by HIPAA.
- e) **Data Aggregation.** "Data Aggregation" means, with respect to PHI created or received by Business Associate in its capacity as the Business Associate of Covered Entity, the combining of such PHI by the Business Associate with the PHI received by the Business Associate in its capacity as a Business Associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.
- f) **Designated Record Set.** "Designated Record Set" means all records, including medical, enrollment, billing, payment, claims, and/or case management maintained by and/or for a Covered Entity.
- g) **Discovery.** "Discovery" shall mean the first day an unauthorized use or disclosure is known or reasonably should have been known by Business Associate, including when it is or should have been known by any person other than the person who engaged in the unauthorized use/disclosure who is an employee, officer, or agent of Business Associate.
- h) **Electronic Protected Health Information.** "Electronic Protected Health Information" means individually identifiable health information that is transmitted by or maintained in electronic media.
- i) **HIPAA.** "HIPAA" means the Health Insurance Portability and Accountability Act of 1996 as in effect and/or as amended.
- j) **HITECH Act.** "HITECH Act" means the portions of the Health Information Technology for Economic and Clinical Health Act which serve as amendments to HIPAA. HITECH is included within the definition of HIPAA unless stated separately.

- k) Individual. "Individual" means the person who is the subject of protected health information and/or a person who would qualify as a personal representative of the person who is the subject of protected health information.
- l) Protected Health Information. "Protected Health Information" or "PHI" means individually identifiable health information transmitted and/or maintained in any form.
- m) Remuneration. "Remuneration" means direct or indirect payment from or on behalf of a third party.
- n) Required By Law. "Required By Law" means an activity which Business Associate is required to do or perform based on the provisions of state and/or federal law.
- o) Secretary. "Secretary" means the Secretary of the Department of Health and Human Services or the Secretary's designee.
- p) Security Incident. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with the system operations in an information system.
- q) Underlying Agreement. "Underlying Agreement" means the County contract for goods or services made through the County's procurement office which the parties have entered into and which the County has determined requires the execution of this Business Associate Agreement.
- r) Unsecured Protected Health Information. "Unsecured Protected Health Information" means protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology approved by the Secretary.

2) Obligations and Activities of Business Associate

- a) Business Associate acknowledges and agrees that it is obligated by law (or upon the effective date of any portion thereof shall be obligated) to meet the applicable provisions of HIPAA and such provisions are incorporated herein and made a part of this Business Associate Agreement. Covered Entity and Business Associate agree that any regulations and/or guidance issued by DHHS with respect to HIPAA that relate to the obligations of business associates shall be deemed incorporated into and made a part of this Business Associate Agreement.
- b) In accordance with 45 CFR §164.502(a)(3), Business Associate agrees not to use or disclose PHI other than as permitted or required by this Business Associate Agreement or as Required by Law.
- c) Business Associate agrees to develop, implement, maintain and use appropriate administrative, technical, and physical safeguards that reasonably prevent the use or disclosure of PHI other than as provided for by this Business Associate Agreement, in accordance with 45 CFR §§164.306, 310 and 312. Business Associate agrees to develop, implement, maintain and use administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality,

integrity, and availability of Electronic PHI, in accordance with 45 CFR §§164.306, 308, 310, and 312. In accordance with 45 CFR §164.316, Business Associate shall also develop and implement policies and procedures and meet the documentation requirements as and at such time as may be required by HIPAA.

- d) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate, of a use or disclosure of PHI by Business Associate in violation of the requirements of this Business Associate Agreement.
- e) In accordance with 45 CFR §§164.308, 314 and 502, Business Associate will ensure that any workforce member or agent, including a vendor or subcontractor, whom Business Associate engages to create, receive, maintain, or transmit PHI on Business Associates' behalf agrees to the same restrictions and conditions that apply through this Business Associate Agreement to Business Associate with respect to such information, including minimum necessary limitations. Business Associate will ensure that any workforce member or agent, including a vendor or subcontractor, whom Business Associate engages to create, receive, maintain, or transmit PHI on Business Associates' behalf, agrees to implement reasonable and appropriate safeguards to ensure the confidentiality, integrity, and availability of the PHI.
- f) At the request of Covered Entity, Business Associate will provide Covered Entity, or as directed by Covered Entity, an Individual, access to PHI maintained in a Designated Record Set in a time and manner that is sufficient to meet the requirements of 45 CFR § 164.524, and, where required by HIPAA, shall make such information available in an electronic format where directed by the Covered Entity.
- g) At the written request of Covered Entity, (or if so directed by Covered Entity, at the written request of an Individual), Business Associate agrees to make any amendment to PHI in a Designated Record Set, in a time and manner that is sufficient to meet the requirements of 45 CFR § 164.526.
- h) In accordance with 45 CFR §164.504(e)(2), Business Associate agrees to make its internal practices, books, and records, including policies and procedures, and any PHI, relating to the use and disclosure of PHI, available to Covered Entity or to the Secretary for purposes of determining compliance with applicable law. To the extent permitted by law, said disclosures shall be held in strictest confidence by the Covered Entity. Business Associate will provide such access in a time and manner that is sufficient to meet any applicable requirements of applicable law.
- i) Business Associate agrees to document and maintain a record of disclosures of PHI and information related to such disclosures, including the date, recipient and purpose of such disclosures, in a manner that is sufficient for Covered Entity or Business Associate to respond to a request by Covered Entity or an Individual for an Accounting of disclosures of PHI and in accordance with 45 CFR § 164.528. Business Associate further shall provide any additional information where required by HIPAA and any implementing regulations. Unless otherwise provided under HIPAA, Business Associate will maintain the Accounting with respect to each disclosure for at least six years following the date of the disclosure.

- j) Business Associate agrees to provide to Covered Entity upon written request, or, as directed by Covered Entity, to an Individual, an Accounting of disclosures in a time and manner that is sufficient to meet the requirements of HIPAA, in accordance with 45 CFR §164.528. In addition, where Business Associate is contacted directly by an Individual based upon information provided to the Individual by Covered Entity and where so required by HIPAA and/or any implementing regulations, Business Associate shall make such Accounting available directly to the Individual.
- k) In accordance with 45 CFR §164.502(b), Business Associate agrees to make reasonable efforts to limit use, disclosure, and/or requests for PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request. Where required by HIPAA, Business Associate shall determine (in its reasonable judgment) what constitutes the minimum necessary to accomplish the intended purpose of a disclosure.
- l) In accordance with 45 CFR §502(a)(5), Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual, except with the express written pre-approval of Covered Entity.
- m) To the extent Business Associate is to carry out one or more of the Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).
- n) In accordance with 45 CFR §164.314(a)(1)(i)(C), Business Associate agrees to promptly report to Covered Entity any Security Incident of which Business Associate becomes aware.
- o) In accordance with 45 CFR §164.410 and the provisions of this Business Associate Agreement, Business Associate will report to Covered Entity, following Discovery and without unreasonable delay, but in no event later than five business days following Discovery, any Breach of Unsecured Protected Health Information. Business Associate shall cooperate with Covered Entity in investigating the Breach and in meeting Covered Entity's obligations under HIPAA and any other applicable security breach notification laws, including but not limited to providing Covered Entity with such information in addition to Business Associate's report as Covered Entity may reasonably request, e.g., for purposes of Covered Entity making an assessment as to whether/what Breach Notification is required.

Business Associate's report under this subsection shall, to the extent available at the time the initial report is required, or as promptly thereafter as such information becomes available but no later than 30 days from discovery, include:

1. The identification (if known) of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach;
2. A description of the nature of the unauthorized acquisition, access, use, or disclosure, including the date of the Breach and the date of discovery of the Breach;
3. A description of the type of Unsecured PHI acquired, accessed, used or disclosed in the Breach (e.g., full name, Social Security number, date of birth, etc.);

4. The identity of the individual(s) who made and who received the unauthorized acquisition, access, use or disclosure;
 5. A description of what Business Associate is doing to investigate the Breach, to mitigate losses, and to protect against any further breaches; and
 6. Contact information for Business Associate's representatives knowledgeable about the Breach.
- p) Business Associate shall maintain for a period of six years all information required to be reported under paragraph "o". This records retention requirement does not in any manner change the obligation to timely disclose all required information relating to a non-permitted acquisition, access, use or disclosure of Protected Health Information to the County Privacy Officer and the County Project Officer or designee five business days following Discovery.

3) Permitted Uses and Disclosures by Business Associate

Except as otherwise limited in this Business Associate Agreement, Business Associate may use or disclose PHI, consistent with HIPAA, as follows:

- a) Business Associate may use or disclose PHI as necessary to perform functions, activities, or services to or on behalf of Covered Entity under any service agreement(s) with Covered Entity, including Data Aggregation services related to the health care operations of Covered Entity, if called for in the Underlying Agreement, if Business Associate's use or disclosure of PHI would not violate HIPAA if done by Covered Entity.
- b) Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
- c) Business Associate may disclose PHI for the proper management and administration of Business Associate if:
 1. Disclosure is Required by Law;
 2. Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that the PHI will remain confidential, and will be used or further disclosed only as Required By Law or for the purpose for which it was disclosed, and the person agrees to promptly notify Business Associate of any known breaches of the PHI's confidentiality; or
 3. Disclosure is pursuant to an order of a Court or Agency having jurisdiction over said information.
- d) Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

4) Obligations of Covered Entity

- a) Covered Entity will notify Business Associate of any limitations on uses or disclosures described in its notice of privacy practices (NOPP).
- b) Covered Entity will notify Business Associate of any changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent that such changes or revocation may affect Business Associate's use or disclosure of PHI.
- c) Covered Entity will notify Business Associate of any restriction of the use or disclosure of PHI, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- d) Covered Entity will notify Business Associate of any alternative means or locations for receipt of communications by an individual which must be accommodated or permitted by Covered Entity, to the extent that such alternative means or locations may affect Business Associate's use or disclosure of PHI.
- e) Except as otherwise provided in this Business Associate Agreement, Covered Entity will not ask Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA if such use and/or disclosure was made by Covered Entity.

5) Term, Termination and Breach

- a) This Business Associate Agreement is effective when fully executed and will terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, including any material provided to subcontractors. If it is infeasible to return or destroy all PHI, protections are extended to such information, in accordance with the Section 5(d) and 5(e) below.
- b) Upon Covered Entity's determination that Business Associate has committed a violation or material breach of this Business Associate Agreement, and in Covered Entity's sole discretion, Covered Entity may take any one or more of the following steps:
 - 1. Provide an opportunity for Business Associate to cure the breach or end the violation, and if Business Associate does not cure the Breach or end the violation within a reasonable time specified by Covered Entity, terminate this Business Associate Agreement;
 - 2. Immediately terminate this Business Associate Agreement if Business Associate has committed a material breach of this Business Associate Agreement and cure of the material breach is not feasible; or,
 - 3. If neither termination nor cure is feasible, elect to continue this Business Associate Agreement and report the violation or material breach to the Secretary.

- c) If Business Associate believes Covered Entity has failed to fulfill any of its duties under this Business Associate Agreement, Business Associate will promptly notify Covered Entity as to same and Covered Entity shall promptly address the matter with Business Associate.
- d) Except as provided in Section 5(e) upon termination of this Business Associate Agreement for any reason, Business Associate will return or destroy, at the discretion of Covered Entity, all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision will also apply to PHI that is in the possession of workforce members, subcontractors, or agents of Business Associate. Neither Business Associate, nor any workforce member, subcontractor, or agent of Business Associate, will retain copies of the PHI.
- e) If Business Associate determines that returning or destroying all or part of the PHI received or created by and/or on behalf of Covered Entity is not feasible, Business Associate will notify Covered Entity of the circumstances making return or destruction infeasible. If Covered Entity agrees that return or destruction is infeasible, then Business Associate will extend the protections of this Business Associate Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. Business Associate further agrees to retain the minimum necessary PHI to accomplish those tasks/responsibilities which make return and/or destruction infeasible.

6) Miscellaneous

- a) Covered Entity and Business Associate agree to take any action necessary to amend this Business Associate Agreement from time to time as may be necessary for Covered Entity or Business Associate to comply with the requirements of HIPAA, and/or any other implementing regulations or guidance.
- b) Notwithstanding the expiration or termination of this Business Associate Agreement or any Underlying Agreement, it is acknowledged and agreed that those rights and obligations of Business Associate which by their nature are intended to survive such expiration or termination shall survive, including but not limited to Sections 5(d) and 5(e) herein.
- c) In the event the terms of this Business Associate Agreement conflict with the terms of any other agreement between Covered Entity and Business Associate or the Underlying Agreement, then the terms of this Business Associate Agreement shall control.
- d) Notices and requests provided for under this Business Associate Agreement will be made in writing to Covered Entity, delivered by hand-delivery, overnight mail or first class mail, postage prepaid at:

(1) Marcy Foster,
Arlington County Privacy Officer
2100 Clarendon Blvd.
Suite 511
Arlington, Virginia 22201

(2) Stephen MacIsaac
County Attorney
2100 Clarendon Blvd.
Suite 511
Arlington, Virginia 22201

(3) County Project Officer
Joanna Welss-Barnes
Arlington County Department of Human Services
2100 Washington Boulevard
Arlington, Virginia 22204

Notice and requests provided for under this Business Associate Agreement will be made in writing in the manner described above to Business Associate at:

Community Residences, Inc.
Attn: Mary Jayne Panek
14160 Newbrook Drive
Chantilly, Virginia 20151

- e) Covered Entity will have the right to inspect any records of Business Associate or to audit Business Associate to determine whether Business Associate is in compliance with the terms of this Business Associate Agreement. However, this provision does not create any obligation on the part of Covered Entity to conduct any inspection or audit.
- f) Nothing in this Business Associate Agreement shall be construed to create a partnership, joint venture, or other joint business relationship between the parties or any of their affiliates, or a relationship of employer and employee between the parties. Rather, it is the intention of the parties that Business Associate shall be an independent contractor.
- g) Nothing in this Business Associate Agreement provides or is intended to provide any benefit to any third party.
- h) The Business Associate will indemnify and hold harmless Arlington County, its elected officials, officers, directors, employees and/or agents from and against any employee, federal administrative action or third party claim or liability, including attorney's fees and costs, arising out of or in connection with the Business Associate's violation (or alleged violation) and/or any violation and/or alleged violation by Business Associate's workforce, agent/s, or subcontractor/s of the terms of this Business Associate Agreement, federal law, HIPAA, the HITECH Act, and/or other implementing regulations or guidance or any associated audit or investigation.

The obligation to provide indemnification under this Business Associate Agreement shall be contingent upon the party seeking indemnification providing the indemnifying party with written notice of any claim for which indemnification is sought. Any limitation of liability provisions contained in the Underlying Agreement do not supersede, pre-empt, or nullify this provision or the Business Associate Agreement generally.

This Indemnification shall survive the expiration or termination of this Business Associate Agreement or the Underlying Agreement.

- i) Any ambiguity in this Business Associate Agreement shall be resolved to permit the parties to comply with HIPAA, its implementing regulations, and associated guidance. The sections, paragraphs, sentences, clauses and phrases of this Business Associate agreement are severable. If any phrase, clause, sentence, paragraph or section of this Business Associate Agreement is declared invalid by a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences and sections of this Business Associate Agreement.
- j) If any dispute or claim arises between the parties with respect to this Business Associate Agreement, the parties will make a good faith effort to resolve such matters informally, it being the intention of the parties to reasonably cooperate with each other in the performance of the obligations set forth in this Business Associate Agreement. The Dispute Resolution clause of the Underlying Agreement ultimately governs if good faith efforts are unsuccessful.
- k) 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 as to any subsequent events.
- l) Neither party may assign any of its rights or obligations under this Business Associate Agreement without the prior written consent of the other party.
- m) This Business Associate Agreement and the rights and obligations of the parties hereunder shall be construed, interpreted, and enforced with, and shall be governed by, the laws of the Commonwealth of Virginia and the United States of America.
- n) This Business Associate Agreement shall remain in effect for the duration of the Underlying Agreement between the parties, any renewals, extension or continuations thereof, and until such time as all PHI in the possession or control of the Business Associate has been returned to the Covered Entity and/or destroyed. If such return or destruction is not feasible, the Business Associate shall use such PHI only for such limited purposes that make such return or destruction not feasible and the provision of this Business Associate Agreement shall survive with respect to such PHI.
- o) The Business Associate shall be deemed to be in violation of this Business Associate Agreement if it knew of, or with the exercise of reasonable diligence or oversight should have known of, a pattern of activity or practice of any subcontractor, subsidiary, affiliate, agent or workforce member that constitutes a material violation of that entity's obligations in regard to PHI unless the Business Associate took prompt and reasonable steps to cure the breach or end the violation, as applicable, and if such steps were unsuccessful, terminated the contract or arrangement with such entity, if feasible.
- p) Upon the enactment of any law or regulation affecting the use or disclosure of PHI, or any change in applicable federal law including revisions to HIPAA; upon publication of any decision of a court of the United States or of the Commonwealth of Virginia, relating to PHI or applicable federal law; upon the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of PHI disclosures or applicable federal law, the County reserves the right,

upon written notice to the Business Associate, to amend this Business Associate Agreement as the County determines is necessary to comply with such change, law or regulation. If the Business Associate disagrees with any such amendment, it shall so notify the County in writing within thirty (30) days of the County's notice. In case of disagreement, the parties agree to negotiate in good faith the appropriate amendment(s) to give effect to such revised obligation. In the County's discretion, the failure to enter into an amendment shall be deemed to be a default and good cause for termination of the Underlying Agreement.

- q) The County makes no warranty or representation that compliance by the Business Associate with this Business Associate Agreement, HIPAA, the HITECH Act, federal law or the regulations promulgated thereunder will be adequate or satisfactory for the Business Associate's own purposes or to ensure its compliance with the above. The Business Associate is solely responsible for all decisions made by it, its workforce members, agents, employees, subsidiaries and subcontractors regarding the safeguarding of PHI and compliance with federal law.
- r) The Business Associate agrees that its workforce members, agents, employees, subsidiaries and subcontractors shall be bound by the confidentiality requirements herein and the provisions of this Business Associate Agreement shall be incorporated into any training or contracts with the same.
- s) This Business Associate Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.
- t) This Business Associate Agreement shall replace and supersede any prior Business Associate Agreement entered between the parties.

IN WITNESS WHEREOF, each party hereto has executed this Business Associate Agreement in duplicate originals on the date below written:

Arlington County, Virginia

Community Residences

By: <u>Marcy Foster</u>	By: <u>T. Husley</u>
(Signature)	(Signature)
Name: <u>Marcy Foster</u>	Name: <u>Terry Husley</u>
Title: <u>County Privacy Officer</u>	Title: <u>VP-CFO</u>
Date: <u>7/8/15</u>	Date: <u>7/7/15</u>