

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

CONTRACT AWARD COVERPAGE

TO: CITY OF ALEXANDRIA, VIRGINIA, ALEXANDRIA COMMUNITY SERVICE BOARD 702 NORTH SAINT ASAPH STREET ALEXANDRIA, VA 22314	DATE ISSUED: CONTRACT NO: CONTRACT TITLE:	<u>JULY 1, 2020</u> <u>21-DHS-EP-192</u> <u>NARCOTIC TREATMENT PROGRAM</u>
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**THIS IS A NOTICE OF CONTRACT AWARD AND NOT AN ORDER. NO WORK IS AUTHORIZED UNTIL THE VENDOR RECEIVES A
VALID COUNTY PURCHASE ORDER ENCUMBERING CONTRACT FUNDS.**

The Contract Documents consist of the terms and conditions of Arlington County Agreement No. 21-DHS-EP-192, including any exhibits, attachment, or amendments thereto.

EFFECTIVE DATE: JULY 1, 2020

EXPIRES: JUNE 30, 2023

RENEWALS: TWO (2), ONE (1) YEAR RENEWAL OPTIONS FROM JULY 1, 2023 TO JUNE 30, 2025

COMMODITY CODE(S): 95200

LIVING WAGE: N

ATTACHMENTS:

STANDARD FORM AGREEMENT NO. 21-DHS-EP-192

EMPLOYEES NOT TO BENEFIT:

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

VENDOR CONTACT: SUSAN TATUM **VENDOR TEL. NO.:** (703) 746-3648

EMAIL ADDRESS: SUSAN.TATUM@ALEXANDRIAVA.GOV

COUNTY CONTACT: PENELOPE DONOVAN, DHS **COUNTY TEL. NO.:** (703) 228-5018

COUNTY CONTACT EMAIL: PDONOVAN@ARLINGTONVA.US

PURCHASING DIVISION AUTHORIZATION

Kaylin Schreiber **Title: Procurement Officer** **Date: 9/25/2020**

ARLINGTON COUNTY, VIRGINIA

STANDARD FORM AGREEMENT No. 21-DHS-EP-192

THIS AGREEMENT ("Agreement") is made on **July 1, 2020** between the **COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA** ("County") and the **CITY OF ALEXANDRIA, VIRGINIA, ALEXANDRIA COMMUNITY SERVICE BOARD** with a principal place of business located at 720 North Saint Asaph Street, Alexandria, Virginia 22314 ("Contractor").

1. The Contractor agrees to provide the following goods or services:

Contractor shall provide a narcotics treatment program in accordance with the scope of work included as Exhibit A.

2. The County will have no obligation to the Contractor if no goods or services are required.
3. The Contractor's provision of these goods or services is subject to review and approval by the County's Project Officer.
4. The Contractor shall provide the goods or services covered by the Contract beginning on July 1, 2020. Unless terminated as provided below, the Agreement shall continue until June 30, 2023. This Agreement may be renewed by the County for not more than two (2) additional twelve (12) month periods from July 1, 2023 to June 30, 2025.
5. The County will pay the Contractor, for services or goods that the Project Officer accepts, up to the maximum amount of \$99,089 per year. The Contractor must invoice the County according to Attachment 1, Scope of Work, D. Pricing and Invoicing. The County will pay the Contractor net 45 days from receipt of an invoice that the Project Officer approves for payment.
6. The Contractor is an independent contractor, and the County will not withhold from the Contractor's compensation any federal or Virginia unemployment taxes, federal or Virginia income taxes, Social Security tax or any other amounts for benefits to the Contractor or its agents or employees.
7. 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 Agreement:
 - 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 Agreement; 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 any 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 Agreement, except for amounts withheld as allowed in section b., above. Unless otherwise provided under the terms of this Agreement, interest shall accrue at the rate of one percent (1%) per month.

The Contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements as those contained in this Agreement with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to the above provisions 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.

8. The County may terminate this Agreement by 30 days' written notice whenever the Purchasing Agent determines that termination is in the County's best interest. The Contractor will be entitled to receive compensation for all goods or services that the County accepted before the termination notice.
9. The County may terminate this Agreement by 48 hours' written notice if the Contractor fails to provide satisfactory goods or services, in the determination of the Project Officer. The notice will be effective upon receipt by the Contractor or three days after the County mails the notice, whichever is sooner. The Contractor will be entitled to receive compensation only for goods or services that the County accepted before the County mailed the notice. The Contractor will be liable to the County for all costs that the County incurs after the termination takes effect to complete the Work covered by the Contract, including delay costs and costs to repair or replace any unsatisfactory work. The County may deduct these costs from any amount that it owes the Contractor or require that the Contractor pay the costs on demand.
10. Time is of the essence and the Contractor agrees that failure to provide timely service will render this Agreement null and void.
11. The Contractor must provide a certificate of proof of the insurance coverages before the start of work:
 - Workers Compensation-Standard Virginia Workers Compensation Policy.

- Commercial General Liability (CGL) - \$500,000 combined single limit with \$1,000,000 aggregate coverage to include Personal Injury, Completed Operations, Contractual Liability and, where applicable to the services, Products and Independent Contractors. "The County Board of Arlington County, Virginia, and its officers, employees and agents" must be additional named insureds on the CGL policy.
- Automobile Bodily Injury and Property Damage Liability - \$500,000 Combined Single Limit (Owned, non-owned, or hired, as applicable)

12. The Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, national origin, age, disability or on any other basis prohibited by Virginia or federal law and must post in this nondiscrimination clause in conspicuous places, available to employees and applicants for employment.
- b. The Contractor must state that it is an Equal Opportunity Employer in all solicitations or advertisements for employees that it places or causes to be placed.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall meet the requirements of this section.
- d. The Contractor must include the provisions of the foregoing paragraphs a), b), and c) in every subcontract or Purchase Order in excess of \$10,000.00, so that the provisions will be binding upon each subcontractor and/or supplier.

13. The Contractor must 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 publicly- and privately-provided services and activities.

14. The Contractor must (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 marijuana or any other controlled substance 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 in excess of \$10,000.00, so that the provisions will be binding upon each subcontractor or supplier. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with this Agreement.

15. The Contractor acknowledges that it does not, and will not during the performance of this Agreement, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
16. This Agreement is governed by the Arlington County Purchasing Resolution, which is incorporated by reference. The time limit for decision by the County Manager in Contractual Disputes, as that term is used in the Purchasing Resolution, is thirty (30) days.
17. This Agreement is not effective until the County issues a valid County Purchase Order covering the amount of the Agreement.
18. All 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 ("Board"). In the event that the Board does not appropriate funds for the goods or services provided under this Contract, the County will terminate the Contract, without termination charge or other liability to the County, on the last day of the fiscal year or when the previous appropriation has been spent, whichever event occurs first.
19. This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as all state and federal laws related to ethics, conflicts of interest or bribery, including 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 proposal was made without collusion or fraud; 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.
20. No Arlington County employee may share in any part of this Contract or receive any benefit from the Contract that is not available to the general public
21. The County does not discriminate against faith-based organizations.
22. The Contractor and its employees, agents and subcontractors will hold as confidential all County Information that they obtain under this Agreement. Confidential Information includes, but is not limited to, nonpublic personal information; personally, identifiable health information; security numbers; addresses; dates of birth; information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans and expertise. The Contractor must take reasonable measures to ensure that all of its employees, agents, and subcontractors are informed

of and abide by this requirement.

23. The Contractor must comply with the provisions of Chapter 11 of the Arlington County Code covering business licenses as applicable.
24. The Contractor must remain authorized to transact business in the Commonwealth of Virginia during the term of this Agreement.
25. This Agreement is governed in all respects by the laws of the Commonwealth of Virginia, and the jurisdiction and venue for any litigation is in the Circuit Court for Arlington County, Virginia, and in no other court.
26. Notices will be effective when made in writing and either (a) delivered in person, (b) delivered to an overnight delivery service or (c) deposited in the United States mail, certified or registered. Notices should be addressed as follows:

TO THE CONTRACTOR:

Susan Tatum
City of Alexandria, Virginia, Alexandria Community Service Board
720 North Saint Asaph Street
Alexandria, VA 22314

TO THE COUNTY:

The County Project Officer
Penelope Donovan
2120 Washington Blvd. 3rd Floor
Arlington, VA 22206

AND

Kaylin Schreiber, Procurement Officer
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 500A
Arlington, Virginia 22201

27. The Contractor must retain all books, records and other documents related to this Contract for at least five years after the final payment and must allow the County or its authorized agents to examine the documents during this period and during the Contract Term. Consistent with Federal managed care regulations at 42 CFR 438.3(u), the Contractor shall maintain books, records, documents, and other evidence of administrative, medical, and accounting procedures and practices for ten (10) years.
https://www.govregs.com/regulations/expand/title42_chapterIV_part438_subpartA_section438.3#title42_chapterIV_part438_subpartA_section438.3

28. The Contractor must provide any requested documents to the County for examination within 15 days of the request, at the Contractor's expense. Should the County's examination reveal any overcharging by the Contractor, the Contractor must, within 30 days of County's request, reimburse the County for the overcharges and for the reasonable costs of the County's examination, including, but not limited to, the services of external audit firm and attorney's fees; or the County may deduct the overcharges and examination costs from any amount that the County owes to the Contractor. If the Contractor wishes to destroy or dispose of any records related to this Contract (including confidential records to which the County does not have ready access) within ten years after the final payment, the Contractor must give the County at least 30 days' notice and must not dispose of the documents if the County objects.
29. The Contractor must comply with all applicable legislative and regulatory requirements of the privacy, security and electronic transaction components of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). If applicable, the Contractor shall be designated a business associate pursuant and will be required to execute an Arlington County Business Associate Agreement, included in this Agreement as Exhibit B, pursuant to 45 C.F.R. §164.502(e) and §164.504(e).
30. The Contractor must comply with Executive Order 13166, Title VI of the Civil Rights Act of 1964 and make reasonable efforts to ensure that as part of the services that it provides, adequate communication services, including interpretation and translation, are available to persons who have limited English proficiency. If such services are not included in the Contract's scope of services and pricing, the Contractor will use a County-contracted service provider, and the County will pay the fees.
31. The Contractor shall not assign or transfer this Agreement, or any of its rights or interests, without the County's prior written consent.
32. This Agreement may be modified only by written amendment.
33. All remedies available to the County under this Agreement are cumulative, and no remedy is exclusive of any other that is available to the County at law or in equity.
34. The sections, paragraphs, sentences, clauses and phrases of this Agreement are severable; and if any part is held to be invalid, the rest of the Agreement will remain in effect.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE AFFIXED THEIR SIGNATURES.

THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA

CITY OF ALEXANDRIA, VIRGINIA,
ALEXANDRIA COMMUNITY SERVICE
BOARD

SIGNED: *Kaylin Schreiber*

SIGNED: *Carol Layer*

KAYLIN SCHREIBER

PRINTED NAME: Carol Layer

PROCUREMENT OFFICER

PRINTED TITLE: Director

DATE: 7/15/2020

DATE: 6-29-20

EXHIBIT A

SCOPE OF WORK

Program Description

The Alexandria Opioid Treatment Program administers, dispenses, and utilizes FDA approved medication to treat clients who meet the criteria for opioid dependence and Opioid Use Disorder, meet the medical criteria to be treated with these medications, consent to be treated with such medication, and agree to engage in such treatment in a way that promotes safety. Treatment shall be provided in conformance with program, state and federal regulations and established medical protocols. Each client seeking admission to the program shall be evaluated by the program's Medical Supervisor to determine whether Methadone or Buprenorphine is medically indicated. The Medical Supervisor or qualified designee prescribes the medication and dosage to be administered at induction and throughout treatment, and monitors the effects of the medications throughout treatment.

The Contractor shall provide opioid treatment services for Arlington County adult clients with Opioid Use Disorder, including individuals with co-occurring substance use or behavioral health disorders who meet eligibility criteria and shall include:

Opioid Treatment Program (OTP) Services (Methadone or Buprenorphine)

A. Eligibility Criteria:

1. The client has a documented Opioid Use Disorder with:
 - a. Self-administration of opioids for at least one (1) year; or
 - b. Has a documented history of Opioid Use Disorder and is within six (6) months release from a correctional institution; or
 - c. Is pregnant.
2. The client is willing to provide informed consent for treatment, including medication.

B. Service Requirements:

1. Provide Medication Assisted Treatment/Opioid Treatment Program outpatient services appropriate to the client's level of functioning and need, as assessed by the OTP clinician, and in accordance with American Society of Addiction Medicine (ASAM) and Department of Behavioral Health and Disability Services (DBHDS) guidelines (<http://www.dbhds.virginia.gov/library/licensing/OL%20%20Chapter%20105%20Rules%20and%20Regulations%20for%20Licensing%20Providers%20by%20the%20Department%20of%20Behavioral%20Health%20and%20Developmental%20Services%2003.pdf>).
2. Conduct an Intake/Assessment for new Arlington clients, upon referral.

3. Monitor the psychiatric stability of each client. If emergency psychiatric care is needed, the Contractor shall arrange transportation to Emergency Services at either the Community Service Board (CSB) at Alexandria or the Arlington County CSB location. Assessment and ongoing management of psychiatric needs shall be provided through Arlington County CSB.
4. Depending on the client's needs, provide medical and nursing services related to the provision of Medicated Assisted Treatment for Opioid Use Disorders (physical examinations at admission, annually and medical evaluation as needed, nursing assessments and services, medication administration, urinalysis and other screens and labs, methadone or suboxone detoxification and/or maintenance, as appropriate);
5. Assign a primary therapist to work in coordination with medical staff and client to develop an individual treatment plan and monitor progress toward goals; provide as indicated individual ongoing group and/or family therapy; and other services as appropriate and agreed upon in consultation with the Arlington County Project Officer.
6. Collect client fees as outlined by insurance payors. Arlington County will be billed for services if the client does not have insurance or is under-insured (i.e. the insurance does not cover the service).
7. Test all clients that are admitted to the program for Tuberculosis. Clients who test positive must immediately be referred to client's primary care physician or to Arlington County Public Health Department's Chest Clinic and the County Project Officer must be notified immediately.
8. If the Contractor deems a client no longer appropriate for the program, the Contractor must inform the County Project Officer and the County Substance Use Disorder Case Manager as soon as possible and work with County staff on finding alternative solutions for the client. Should the client present a risk to self or others, he or she must immediately be assessed by Alexandria or Arlington County Emergency Services. The Contractor and the County will work collaboratively to determine alternate placement options.
9. Coordinate with the Arlington County Substance Use Disorder Case Manager about the following:
 - a. Authorization of admission for all Arlington County residents;
 - b. Client progress updates; and
 - c. Participation in treatment planning, discharge planning, case review meeting, and referral to other resources for treatment.

C. General Requirements:

1. Comply with all applicable Federal, State and local laws, statutes, regulations, standards, policies and procedures in the operation of the program.
2. Maintain a Virginia Department of Behavioral Health and Developmental Services licensure.

3. Establish and adhere to procedures for client appeals and quality assurance.
4. In accordance with the Limited English Proficiency Clause, LEP (Clause 30), the Contractor must have policies and procedures in place to implement the services including staff training. Policies must be made available upon request.
5. Coordinate client admissions through the Arlington County Substance Use Disorder Case Manager as the single point of entry. The Contractor shall have the right to refuse entry and/or participation of a client only upon written submission of justification for such refusal.
6. Ensure that client services are provided in the least restrictive environment that is appropriate to meet the client's needs. If a client or a client's advocate petitions the County alleging that the client services plan is contrary to these expectations, the matter may be appealed to the Arlington County or Alexandria CSB Executive Director for resolution; however, the client may further appeal the resolution in the following order: to the Local Human Rights Committee, to the Commonwealth of Virginia Human Rights Committee. Arlington will comply with the recommendations of the Human Rights Committee(s).
7. The Contractor shall make available individual clients' records to County program staff in order to assure collaborative case management and satisfaction of County responsibilities related to State certification requirements and completion of program evaluations. Release of records to County staff or a consultant designated by the County shall be performed in a timely manner and the records will be used in accordance with all Federal and State regulations related to confidentiality of information.
8. All client specific clinical records pertaining to services provided to current or former clients as a result of this contract or its predecessor contract(s) upon termination of this contract by either party, shall be made available to any successor service provider upon formal written request of the County and with written authorization of the client. Further, to protect the interest of clients in this matter, the County will serve as custodian of the records in the event of any interim interruption of service.
9. The Contractor shall obtain prior authorization from Medicaid to bill for services provided. Should there be any delay in payment coverage, the Contractor shall notify Arlington County. A Purchase Order will then be issued to ensure reimbursement for services until Medicaid reimbursement is authorized.
10. The Contractor shall obtain prior authorization, through an Arlington County Purchase Order, before the commencement of services for non-insured referrals. For under-insured clients, a denial documentation must be provided prior to approval.

D. Pricing and Invoicing:

1. The Contractor must invoice the County according to the prescribed Virginia Medicaid rates (<https://www.magellanofvirginia.com/media/4665/va-medicaid-dmas-rates-7-1-2019-v7-1-2019.pdf>) for services rendered to clients that are not insured, or under insured by Medicaid.

The Contractor must invoice the County on a monthly basis separately for each client, in accordance with their billing schedule. Each invoice must include: the number and types of units rendered for the time period billed, the costs of each, the total amount due, the individual clients purchase order number, contractor signature, and date.

2. Medicaid Billing

- a. The Contractor must request, document, and verify client Medicaid billing information upon program admission.
- b. The Contractor must bill Medicaid payers in accordance with requirements of applicable law and the terms of applicable Medicaid payer contracts for all eligible clients and services.
- c. The Contractor may bill the County monthly only for clients not covered by Medicaid payors and not to exceed total contract amount.
- d. The Contractor may bill the County monthly for current services and those items unpaid/denied/late by payer covered within that timely filing period. This shall only be for clients not covered by Medicaid payors and not to exceed the total contract amount.
- e. The Contractor must make and document reasonable efforts to collect balances, including fixing claim errors, communicating and following up with payers.

E. Data and Reporting Requirements

The Contractor must provide the following data, information, reports and work products at the times indicated:

<u>Reports and Work Products:</u>	<u>Due Date or Frequency:</u>
Individual client progress reports regarding utilization and achievement of treatment goals	Every ninety (90) calendar days, starting the day the treatment plan is signed
Notification of significant events (i.e., positive drug screens, incarceration, hospitalization, emerging medical conditions, relocation out of Arlington County)	Within forty-eight (48) hours of event
Annual report on service utilization and achievement of program outcome measures (outlined below)	Thirty (30) calendar days after end of each fiscal year: July 30
Other reports as required by the County or State	Thirty (30) calendar days after end of fiscal year: July 30

Outcome Measures

The following outcome measures will be used to assess program impact and evaluate program performance.

<u>Outcome</u>	<u>Measure</u>
Reduction of Drug Use	65% of random drug screens must be negative for illicit substances and/or alcohol
Successful engagement in treatment	70% of clients must successfully complete at least one (1) treatment objective as reflected in annual review

F. Role of Arlington County Department of Human Services (DHS)

1. Assist Contractor in areas such as:
 - a. Orientation and consultation for Contractor staff regarding the services and programs offered by DHS and related County agencies.
 - b. Information and inclusion of Contractor staff in pertinent in-service training opportunities within DHS, to the extent possible.
 - c. Mental health crisis intervention services, psychiatric services, referrals to primary care services, employment/vocational services, and social and financial supportive services for clients, where appropriate and under eligibility guidelines of the relevant programs, and in accordance with the DHS intake procedures.
 - d. The DHS Behavioral Healthcare Division (BHD), Residential & Specialized Clinical Services Bureau will assign a Project Officer and other staff to provide the following:
 - i. Central point of contact for Arlington County clients in need of treatment services to conduct pre-screening evaluations and assessments;
 - ii. Client linkage with existing County BHD treatment services and other County services;
 - iii. Evaluation and prioritization of all referrals for admission to contract services in accordance with agreed upon admissions criteria/standards; and
 - iv. Coordination of client services between the County and Contractor.
2. The assigned Project Officer will be responsible for monitoring the Contractor(s) performance including:
 1. Determining acceptability of all reports, materials, and work products required;
 2. Reviewing pertinent information provided by the Contractor about each client approved for intake;
 3. Performing periodic review and assessment of client files to verify the nature and degree of intervention therapy, level of client monitoring, and completeness of client records;
 4. Attending client staff meetings or observe other project activities to ensure contract performance;
 5. Serving as the liaison between the Contractor(s) and the County for the purpose of routine communication and coordination; and

6. Reviewing and approving invoices and authorize payment for services rendered. The Project Officer will notify the Contractor in writing of any changes in the approved level of State and County funding.

EXHIBIT B

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement is hereby entered into between City of Alexandria, Virginia, Alexandria Community Service Board (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 Associate's 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 Associate's 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 obligation(s) of the Covered Entity'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
Penelope Donovan
2120 Washington Blvd., 3rd Floor
Arlington, Virginia 22206

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

City of Alexandria, Virginia, Alexandria Community Service Board
Attn: Susan Tatum
720 North Saint Asaph Street
Alexandria, Virginia 22314

- 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 attorneys' 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:

<u>Arlington County, Virginia</u>		<u>Business Associate</u>	
By: _____	<i>Marcy Foster</i>	By: _____	<i>Carol Layer</i>
(Signature)		(Signature)	
Name: _____	<i>MARCY FOSTER</i>	Name: _____	Carol Layer
Title: _____	County Privacy Officer	Title: _____	Director
Date: _____	<i>7/13/2020</i>	Date: _____	6-29-20