

**INTERGOVERNMENTAL AGREEMENT
(Yamhill County and Mid Valley Behavioral Care Network)**

THIS AGREEMENT ("Agreement") is made by and between Yamhill County, a political subdivision of the State of Oregon acting by and through its Board of Commissioners and its Health and Human Services Department ("County") and Mid-Valley Behavioral Care Network, an Oregon ORS 190 intergovernmental organization, located at 2965 Ryan DR SE, Salem, Oregon 97301 ("MVBCN").

RECITALS:

- A. County and MVBCN, together with Linn, Marion and Polk counties, are both signatories to that certain MVBCN Intergovernmental Agreement dated October 17, 2012 (the "MVBCN Intergovernmental Agreement");
- B. The MVBCN Intergovernmental Agreement (IGA) has been or will shortly be revised and amended and/or restated so that beginning January 1, 2015 County will no longer be a member county under the restated or amended MVBCN Intergovernmental Agreement; and
- C. County and MVBCN acknowledge and agree that after January 1, 2015 MVBCN will continue to hold and control certain of County's Oregon Health Plan (OHP) funds on behalf of County and that the following is a description of how MVBCN and County will reconcile their financial obligations with respect to these OHP funds and how MVBCN will ultimately insure the transfer of all of these OHP funds to Yamhill County; NOW THEREFORE,

In exchange for the promises and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, as set forth below, IT IS HEREBY AGREED BETWEEN THE PARTIES

Section 1. Effective Date. The Agreement shall be effective from the date fully executed by all parties through December 31, 2016, or until County has received from MVBCN all of the funds described herein, whichever is later. It is understood by both parties that no commitments have been or are made by either party beyond the termination of this Agreement.

Section 2. Covered Funds:

- A. **Pay for Performance Monies.** All 2013 pay for performance monies that are awarded to MVBCN by Yamhill Community Care Organization (YCCO) for the period of calendar year 2013 will be passed through to County at 100% of the award upon receipt of these funds prior to June 30, 2015.
- B. **2013-14 Ending Balances.** Promptly after the completion of the independent audit of MVBCN for FY 2013-14, MVBCN will calculate and disburse to County its share of the MVBCN FY 13-14 ending balances. The calculations and basis for these funds are detailed on the Excel workbook, attached hereto as Exhibit A and incorporated herein by

this reference, and will be consistent with the surplus disbursement methodology previously adopted by the four BCN member Health Department Directors and the BCN Executive Committee. This disbursement is anticipated to be completed around the end of January 2015.

- C. **County Directed Reconciliation.** The MVBCN adopted budget for FY 14-15 includes a line item titled "County-directed reconciliation". This budget line total includes \$641,088.00 that will be immediately disbursed to County by MVBCN upon County's request but in no event later than June 30, 2015.
- D. **Chemical Dependency Treatment Services.** Around the end of January 2016, MVBCN will calculate both the total revenue received from YCCO for Chemical Dependency (CD) treatment services (outpatient and residential) since inception on November 1, 2012, and the total MVBCN expenditures for these services, and then disburse any balance of such funds to County in a timely manner following review and approval by County of all reconciliation of applicable claims data. MVBCN will deny all CD provider claims for dates of service prior to 2015, received in 2015, if they are submitted more than 12 months following the date of service.
- E. **2014-15 Ending Balances.** Around the end of January 2016 MVBCN will disburse to County its share of MVBCN FY 14-15 ending balances. This share will be determined by the exact same method of calculation and workbook as attached in Exhibit A and the exact amount of disbursement will be based in part on the findings of the independent audit of MVBCN for FY 2014-15.
- F. **Administrative Funds.** As has been previously agreed upon by County and MVBCN, any administrative funds paid to MVBCN by YCCO that are in excess of the rate paid by Willamette Valley Community Health and not needed to pay for customary run out expenses will be rebated to County. This disbursement is anticipated to be completed around the end of January 2016.

Section 3. Other Funds. The parties acknowledge and agree that there are additional funds in the possession of MVBCN that still need a method of reconciliation, including but not limited to the Adult Mental Health Initiative (AMHI) funds, which will need to be addressed in a separate agreement between County and MVBCN. Notwithstanding the above, until such time as the method of reconciliation of all such remaining funds is agreed upon, any funds not already disbursed pursuant to this Agreement that are held at MVBCN after December 31, 2014 and that are already assigned to County will remain available to County at all times in 2015 shall be disbursed in a timely manner to County upon receipt of a written request, regardless of County's ongoing membership status in the MVBCN. Furthermore, County and MVBCN agree to complete any such outstanding reconciliation of remaining funds by no later than December 31, 2016.

Section 4. Inspection/Audit. MVBCN agrees that all financial records and other similar documents and records of MVBCN that pertain, or may pertain, to any or all of the funds covered under this Agreement shall be open for inspection by County or its agents, at any

reasonable time during regular business hours. MVBCN agrees to retain such records and documents for a period of at least seven years, or such longer period as may be prescribed for records and documents by the state archivist. The County, in its reasonable discretion, may request an independent audit of such financial records at any time. If the results of such audit reveal a discrepancy that is greater than five percent (5%) between the figures originally provided by MVBCN to the County and those figures contained in the audit, all audit related expenses shall be borne by MVBCN. Otherwise, all audit expenses shall be borne by the County.

Section 5. Requirements Imposed by Law. The requirements of ORS 279B.220 through 279B.240 and Article XI, Section 10, of the Oregon Constitution are incorporated into this Agreement by reference.

Section 6. Indemnification. MVBCN shall be responsible for any and all injury to any and all persons or property caused directly or indirectly by reason of any and all activities of MVBCN in the performance of this Agreement and further agrees to indemnify, hold harmless, save and defend County, its officers, agents and employees from and against any and all claims, suits, actions, damages, costs, losses, fees, expenses or judgments resulting from, arising out of or connected with any such injury to County caused by MVBCN acts or omissions pursuant to this Agreement. Subject to the limitations of the Oregon Tort Claims Act and Oregon Constitution, County shall be responsible for any and all injury to any and all persons or property caused directly or indirectly by reason of any and all activities of County in the performance of this Agreement and further, subject to the limitations of the Oregon Tort Claims Act and Oregon Constitution, agrees to indemnify, hold harmless, save and defend MVBCN, its officers, agents and employees from and against any and all claims, suits, actions, damages, costs, losses, fees, expenses or judgments resulting from, arising out of or connected with any such injury to MVBCN caused by County acts or omissions pursuant to this Agreement.

Section 7. Insurance. Both parties, at their own expense shall obtain the following insurance coverages and keep them in effect during the entire term of this Agreement (except with respect to Professional Liability Insurance, which shall be kept in effect for a period of the term of this Agreement plus two years):

- A. Workers' Compensation Insurance in compliance with statutory requirements;
- B. Commercial General Liability Insurance (including contractual liability and completed operations coverage, and coverage for liability resulting from hazardous substances), on an occurrence basis, with not less than \$1,000,000 per occurrence for bodily injury and property damage liability, with an annual aggregate limit of \$2,000,000;
- C. Professional Liability Insurance, including errors and omissions coverage, with a per occurrence and aggregate limit of not less than \$1,000,000, to protect against all loss suffered, including financial and consequential loss, caused by error, omission, or negligent acts related to provision of the Services;
- D. Commercial Automobile Liability Insurance, with a combined single limit, or the equivalent of not less than \$250,000 per occurrence, for bodily injury and property damage with

respect to vehicles, whether owned, hired, or non-owned, assigned to, or used by either party in connection with the Services;

The Commercial General Liability and Commercial Automobile Liability shall (i) name the the other party as additional insureds. Coverages must be primary and non-contributory with any other insurance and self-insurance.

If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, then the party shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Agreement, for a minimum of 24 months following the later of: (i) completion and acceptance of performance under this Agreement or, (ii) the expiration of all warranty periods provided under this Agreement. Notwithstanding the foregoing 24-month requirement, if "tail" coverage is maintained and if the maximum time period "tail" coverage reasonable available in the marketplace is less than the 24-month period described above, then the party obtaining the "tail" coverage may request and the other party may grant approval of the maximum "tail" coverage period reasonable available in the marketplace. If such approval is granted, the "tail" shall be maintained for the maximum time period that "tail" coverage is reasonable available in the marketplace.

The required insurance coverages shall be (i) with insurance companies admitted to do business in the state of Oregon and rated A or better by Best's Insurance Rating, and (ii) acceptable to both parties. At either party's request, certificates of insurance and applicable endorsements shall be furnished to the requesting party for each of the required insurance coverages. The certificates of insurance shall indicate (a) the types of insurance coverage, (b) the identity of all persons or entities covered, (c) the amounts of insurance coverage, and (d) the period of insurance coverage. Any required insurance coverage shall provide that it may not be canceled except after at least 30 days written notice.

Section 8. Confidentiality. Both parties acknowledge that they or their agents may, in the course of performance under this Agreement, be exposed to or acquire information that is the confidential information of the other party or either party's clients. Any and all (i) client information, (ii) information provided by either part and marked confidential, (iii) Protected Health Information or EPHI, or (iv) information identified as confidential in a separate writing, that becomes available to either party or their agents in the performance of this Agreement shall be deemed to be confidential information of the disclosing party ("Confidential Information"). Any reports or other documents or items, including software, that result from either party's use of the Confidential Information are also deemed Confidential Information. Both parties agree to hold Confidential Information in strict confidence, using at least the same degree of care that the party uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information for any purposes whatsoever, except as may be provided elsewhere under this Agreement. Upon termination of this Agreement or at either party's request, the non-requesting party will turn over to the requesting party all documents, papers and other matter in the non-requesting party's possession that embody Confidential Information.

Section 9. Settlement of Disputes. Differences between MVBCN and County will be resolved when possible at appropriate management levels, followed by consultation between boards, if necessary. If a dispute remains, said dispute shall be submitted to mediation by an independent mediator selected by mutual agreement of the parties. If mediation is not successful the dispute shall be submitted to binding arbitration pursuant to the then current rules of the Arbitration Service of Portland or its successor.

Section 10. MVBCN Financial Audit. If a financial audit of MVBCN concerning this Agreement is conducted by a certified public accountant, MVBCN shall furnish County a copy of the audit within ninety (90) days of completion of the audit.

Section 11. Subcontracts; Assignment. Neither party shall enter into any subcontracts for any of the obligations required under this Agreement without the other party's prior written consent. Except in the event of the dissolution or merger of MVBCN, this Agreement shall not be assigned by either party without the prior written consent of the other party. In the event of the dissolution or merger of MVBCN, the instrument of dissolution or merger shall provide for the mandatory assumption of all obligations owed by MVBCN to the County.

Section 12. Renewal. This Agreement may be renewed at the written mutual option of both parties.

Section 13. Waiver; Remedies. County and MVBCN acknowledge that any breach, violation, or default by either party of the provisions contained in this Agreement might result in damage to the other party. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

Section 14. Governing Law; Jurisdiction; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of law. Any claim, action, suit or proceeding, (collectively "Claim") between County and MVBCN that arises from or relates to this Agreement shall be resolved by binding arbitration pursuant to Section 9 hereof.

Section 15. Severability. The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

Section 16 Counterparts. This Agreement may be executed by facsimile and in counterparts, which taken together shall form one legal instrument.

Section 17. Attorney Fees and Costs. In the event an action, suit or proceeding, including appeal therefrom, is brought for failure to observe any of the terms of this Agreement, each party

shall be solely responsible for its own attorney's fees, expenses, costs and disbursements for said action, suit, proceeding or appeal.

Section 18. Entire Agreement. This Agreement is the entire agreement between the parties, and no statements, promises, or inducements made by either party or agent of either party that are not contained in this written Agreement shall be valid or binding. No alterations, changes, or additions to this Agreement shall be made except in a written document signed by both parties.

Section 19. Reserved

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

MVBCN

By: *Janet L. Carlson*
(signature)
Date: 1/7/15

JANET L. CARLSON
(printed name)

CHAIR
(title)

Approved as to form:
Wallace W. Lien 1-5-15
Wallace W. Lien Date
MVBCN Legal Counsel

YAMHILL COUNTY, OREGON

Allen Springer
ALLEN SPRINGER, Chair
Board of Commissioners
Date: 1-8-15

Silas Halloran-Steiner
SILAS HALLORAN-STEINER, Director
Department of Health & Human Services
Date: 1/9/15

FORM APPROVED BY:
Christian Boenisch
CHRISTIAN BOENISCH
County Counsel
Date: 1/8/15

Accepted by Yamhill County
Board of Commissioners on
1.8.2015 by Board Order
15-04

EXHIBIT A
(Excel Spreadsheet)

BO-15-04

FY 13 Board of Directors agreed with county directors to apply 50% revenue share / 50% utilization share to future division of BCN balances

FY 14-15 adopted budget applies that to distribution of \$5,214,265 (Old net working capital, funds in ending balance FY 12-13, budgeted but not expended in FY 13-14)

LINN	MARION	POLK	YAMHILL
\$1,846,661	\$2,153,077	\$573,439	\$641,088

Board agreed to conduct some distribution to Linn and Yamhill Counties early in 2015, based on concluded audit of FY 13-14

B.O. 15-04

/ 13-14 revenue from CCO and MHO contracts

	Total funds	Percent of total	
Linn	\$ 1,431,992.66	3.58%	
Marion	\$ 26,156,846.50	65.42%	
Polk	\$ 4,993,851.56	12.49%	
Yamhill	\$ <u>7,403,220.17</u>	18.51%	(YC includes August adjustment of FY 13-14 for ACA rate group correction)
TOTAL	\$ 39,985,910.90		

Utilization of Intensive Facility & Community Services funding FY 13-14

(includes Adult IP and alternatives, and New Solutions / MV-WRAP as authorized for payment by BCN)

	Total allowed	Total expended	Allowed minus Expend	Contribution to Allowed remaining	Average of Rev & Util shares
Linn	\$272,078.61	\$332,596.12	-\$60,517.51	-3.20%	0.189%
Marion	\$5,471,047.96	\$4,544,468.34	\$926,579.62	49.05%	57.232%
Polk	\$1,043,423.59	\$577,348.24	\$466,075.35	24.67%	18.580%
Yamhill	\$1,506,181.22	\$949,227.00	\$556,954.22	29.48%	23.999%
			<u>\$1,889,091.68</u>	<u>100.00%</u>	<u>100.000%</u>

B.O. 15-04

udgeted FY 14-15 Beginning Balances (13-14 ending balances)

Restricted reserve	\$ 250,000.00	A	
General reserve	\$ 1,750,000.00	A	
BCN net working capital	\$ 8,560,432.00	B	yellow highlight: subject to audit revision
Remaining 13-14 transform	\$ 1,041,018.00	C	
Chem dep fund	\$ 161,232.00	D	
MWVACR	\$ 2,674,501.00	E	
	<u>\$ 14,437,182.00</u>		(rounding error was not corrected in Budget Cmte document)

Specified designation of ending balance (13-14) funds

Remaining 13-14 transform	\$ 751,112.00	C	Marion County (if not disbursed prior to 6/30/14)
Remaining 13-14 transform	\$ 289,906.00	C	Linn County (if not disbursed prior to 6/30/14)
Chem dep fund	\$ 161,232.00	D	admin by BCN
MWVACR	\$ 2,674,501.00	E	to MWVACR per Benton and Marion contracts
AMHI one-time and RA balance	\$ 598,361.66	B	to four counties by separate method
YCCO CD balance	\$ 399,577.44	B	Yamhill County
YCCO admin rebate to YCHHS	\$ 116,635.40	B	Yamhill County (for FY 13-14)
Old NWC	\$ 1,846,661.23	A&B	Linn County
Old NWC	\$ 2,153,076.71	A&B	Marion County
Old NWC	\$ 573,439.22	A&B	Polk County
Old NWC	\$ 641,088.00	A&B	Yamhill County
	<u>\$ 10,205,590.67</u>		

Other use of ending balance (13-14) funds (this total plus audited difference from adopted budget amount for NWC, noted above)

Contracted services contingency	\$ 2,856,592.31	A&B	adopted budget this line	\$3,567,040	larger because it includes FY 14-15 operating funds
Contingency	\$ 300,000.00	A&B			
Building purchase	\$ 1,075,000.00	A&B			
	<u>\$ 4,231,592.31</u>				
Additional NWC	\$ -		audited difference from the budgeted amount for FY 14-15		
	<u>\$ 4,231,592.31</u>				

B.O.15-04

ILLUSTRATION OF POTENTIAL DESIGNATION OF FY 13-14 RELEVANT ENDING BALANCE

\$ 4,231,592.31

Linn	0.189%	\$ 7,991.77
Marion	57.232%	\$ 2,421,827.16
Polk	18.580%	\$ 786,250.09
Yamhill	23.999%	\$ 1,015,523.29

B.O. 15-04