

AGREEMENT FOR SCHOOL BASED HEALTH CENTER SERVICES  
Sunrise Family Clinic LLC

THIS AGREEMENT ("Agreement") is made the last date set forth adjacent to the signatures of the parties below by and between Yamhill County, a political subdivision of the State of Oregon acting by and through its Health and Human Services Department, ("County") and Sunrise Family Clinic LLC ("Provider"), an Oregon limited liability company, 320 SE Baker Street, McMinnville, OR 97128.

**RECITALS:**

- A. County receives funding from the State of Oregon for the operation of School Based Health Centers (SBHCs) in Yamhill County, including a clinic in McMinnville, Oregon. In providing these services, County desires the assistance of a qualified provider that is knowledgeable and experienced in the management and operation of SBHCs and that can deliver acute, chronic and preventive health services to school-aged children in accordance with Oregon Health Authority Standards for Certification for SBHCs.
- B. Provider is a qualified and licensed provider and has the capacity and the qualified providers to operate a SBHC and to provide the required services as provided in this Agreement.
- C. County and Provider desire to enter into the Agreement.

**AGREEMENT**

In exchange for the promises set forth below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**Section 1. Effective Date; Initial Term and Renewal.** This Agreement is effective for the initial term of November 1, 2019 through June 30, 2020, unless sooner terminated as provided in Section 9 below. 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. Services; Administrative Support; Facilities.** Provider shall assign the necessary staff to provide acute, chronic and preventive health services, including oral health services, to school aged children in accordance with Oregon Health Authority Standards for Certification for SBHCs (the "Services"). Provider shall provide Services out of facilities located at ~~615 NE 15<sup>th</sup> Street, McMinnville, OR 97128 (the "McMinnville Clinic")~~. County shall be providing mental health services to be integrated with the other services provided at the McMinnville Clinic by Provider.

The McMinnville Clinic building is owned by McMinnville School District and is currently being provided with no monthly rental charge. The McMinnville School District provides electricity, water, sewer and garbage service, on-site phone services, janitorial and facility maintenance services and internet connectivity.

*500 NE Baker St., McMinnville, OR 97128 (the McMinnville School Based Health Clinic or McMinnville Clinic.) McMinnville SBHC*  
*JRE CM*

**Section 3. Compensation; Monthly Payments.** Provider agrees to perform the Services described herein and comply with the terms and conditions of this Agreement. The maximum

amount due the Provider for the performance of Services is \$60,000 per 12-month period, unless this amount is modified in a writing signed by both parties. Payment will be paid in two equal payments; the initial payment upon the opening of the fully operational McMinnville SBHC Clinic and execution of this Agreement and the second after April 1, 2020 following a service review and approval by County. Provider shall also bill the insurance of the patients and shall retain all amounts paid by the insurance companies excluding mental health services provided by County. All patients will be entered and billed as Sunrise Family Clinic patients and such billings are in addition to the compensation described above excluding mental health services provided by County.

**Section 4. Expenditure of Funds.** Provider may expend the funds paid to Provider under this Agreement solely on the delivery of Services, subject to the following limitations (in addition to any other restrictions or limitations imposed by this Agreement):

A. Provider may not expend on the delivery of Services any funds paid to Provider under this Agreement in excess of the amount reasonable and necessary to provide quality delivery of the Services.

B. If this Agreement requires Provider to deliver more than one service, Provider may not expend funds paid to Provider under this Agreement for a particular service on the delivery of any other service.

C. Provider may expend funds paid to Provider under this Agreement only in accordance with federal law, 2 CFR Subtitle B, with guidance at 2 CFR Part 200 as those regulations are applicable to define allowable costs.

D. Provider shall establish such fiscal control and fund accounting procedures as are necessary to ensure proper expenditure of and accounting for the funds paid to Provider under this Agreement. In particular, but without limiting the generality of the foregoing, Provider shall (i) establish separate accounts for each type of service for which Provider is paid under this Agreement and (ii) document expenditure of funds paid to Provider under this Agreement for employee compensation in accordance with 2 CFR Subtitle B with guidance at 2 CFR Part 200 and, when required by County, utilize time/activity studies in accounting for expenditures of funds paid to Provider under this Agreement for employee compensation. Provider shall maintain accurate property records of non-expendable property, acquired with Federal Funds, in accordance with 2 CFR Subtitle B with guidance at 2 CFR Part 200.

**Section 5. Regulations and Duties; Safeguarding Patient Information.** Provider agrees to comply with all applicable local, state and federal regulations and all provisions of federal and state law relating to Provider's performance of Services under this Agreement. Further, Provider is responsible for all Protected Health Information and ensuring adequate systems are in place. Provider shall maintain the confidentiality of patient records as required by applicable state and federal law. Without limiting the generality of the preceding sentence, Provider shall comply with the following confidentiality laws, as applicable: ORS 433.045, 433.075, 433.008, 433.017, 433.092, 433.096, 433.098, 42 CFR Part 2 and any administrative rule adopted by OHA implementing the foregoing laws, and any written policies made available to County by OHA. Provider shall create and maintain written policies and procedures related to the disclosure of patient information and shall make such policies and procedures available to County and the OHA for review and inspection as reasonably requested.

**Section 6. Alternative Formats of Written Materials.** In connection with the delivery of Services, County shall make available to client, without charge, upon the client's reasonable request:

- A. All written materials related to the services provided to the patient in alternate formats.
- B. All written materials related to the services provided to the patient in the client's language.
- C. Oral interpretation services related to the services provided to the patient in the patient's language.
- D. Sign language interpretation services and telephone communications access services related to the services provided to the patient.

For purposes of the foregoing, "written materials" means materials created by County, in connection with the Service being provided to the requestor. The County may develop its own forms and materials and with such forms and materials the County shall be responsible for making them available to a County client, without charge to the County client in the prevalent non-English language(s) within the County service area. OHA shall be responsible for making its forms and materials available, without charge to the County client or County, in the prevalent non-English language(s) within the County service area.

**Section 7. Reporting.** Provider agrees to prepare and furnish reports and data required by County or the State of Oregon. Provider agrees to, and does hereby grant County the rights to reproduce, use and disclose for County purposes, all or any part of the reports, data, and technical information furnished to County under the Agreement.

**Section 8. Monitoring and Access.** Provider agrees that the following shall be open for inspection by County, OHA, the Secretary of State's office of the State of Oregon, the federal government and their duly authorized representatives at any reasonable time during business hours: a) Services provided under this Agreement by Provider; b) facilities used in conjunction with such Services; c) patient records; d) Provider's policies, procedures and performance data; e) financial records and other similar documents and records of Provider that pertain, or may pertain, to Services provided by Provider under this Agreement. Access shall be provided for purposes of making audits, examinations, excerpts, copies or transcriptions. Provider agrees to retain such records and documents for a period of seven years, or such longer period as may be prescribed for records and documents by the state archivist. In addition, Provider agrees to permit authorized representatives of County and OHA to perform site reviews of all services delivered by Provider hereunder. In the event of any such inspection the inspecting party comply with all applicable local, state and federal regulations and all provisions of federal and state law relating to the protection of Protected Health Information and ensure adequate systems are in place.

**Section 9. Termination: No Encumbrance or Expenditure After Notice of Termination.**

A. Either party may terminate the Agreement on thirty days written notice to the other party. Termination shall not excuse liabilities incurred prior to the termination date.

B. In addition, in the event County no longer receives funds adequate to enable it to continue this Agreement, it will provide written notice of termination of this Agreement to

Provider. Upon issuance of notice, this Agreement is terminated. However, any obligations existing at the time of termination will survive termination.

C. Provider shall not make expenditures, enter into agreements, or encumber funds in its possession, or to be transferred by County, after notice of termination or termination as set out above, without prior written approval from County.

**Section 10. Independent Contractor.** Provider is engaged under this Agreement as an independent contractor, and will be so deemed for purposes of the following:

A. Contractor is not an officer, employee, or agent of the County or the State of Oregon as those terms are used in ORS 30.265 or otherwise.

B. If Contractor is currently performing work for the County, State of Oregon or the federal government, Contractor by signature to this Agreement, represents and warrants that (i) Contractor has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder and that execution of this Agreement shall constitute a legal, valid and binding obligation of Contractor, enforceable in accordance with its terms, (ii) the making and performance by Contractor of this Agreement has been duly authorized by all necessary action of Contractor and does not violate any provision of applicable law, rule, regulation or order of any court, regulatory commission, board or other administrative agency or any provision of Contractor's charter or other organizational document, (iii) entering into this Agreement will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Contractor is a party or by which Contractor may be bound or affected, and (iv) no authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Contractor of this Agreement,

C. Contractor further represents and warrants that (i) it has the skill and knowledge possessed by well-informed members of its industry, trade or profession and it will apply that skill and knowledge with care and diligence to perform the Services in a professional manner and in accordance with standards prevalent in Contractor's industry trade or profession (ii) it shall at all times during the term of this Agreement be qualified professionally competent and duly licensed to perform the Services and (iii) the delivery of each Service will comply with the terms and conditions of this Agreement and meet the required standards for such Service.

D. Contractor's Services to be performed under this Agreement create no potential or actual conflict of interest as defined by ORS Chapter 244 and that no statutes, rules or regulations of the County, State of Oregon or federal agency for which Contractor currently performs work would prohibit Contractor's Services under this Agreement. If compensation under this Agreement is to be charged against federal funds, Contractor certifies that it is not currently employed by the federal government.

E. Contractor is responsible for all federal and State taxes applicable to compensation paid to Contractor under this Agreement and, unless Contractor is subject to backup withholding, County will not withhold from such compensation any amounts to cover Contractor's federal or State tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation paid to Contractor under this Agreement, except as a self-employed individual.

F. Contractor shall perform all Services as an independent contractor. County reserves the right (i) to determine and modify the delivery schedule for the Services and (ii) to evaluate the quality of the Services; however, County may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Services.

**Section 11. Delegation and Reports.** Provider shall not delegate the responsibility for providing Services under this Agreement to any other individual or agency without the written approval of County and shall provide County with periodic reports at the frequency and with the information prescribed to be reported by County.

**Section 12. 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 13. Hold Harmless.** Provider shall indemnify, defend and save harmless County, the State of Oregon and OHA, and their officers and employees from and against any and all claims, suits, actions, losses, damages, liabilities, legal or administrative proceedings, demands, fines, penalties, injuries, expenses or costs, including interest and attorney fees of any nature whatsoever resulting from, arising out of or relating to the operations of Provider, including but not limited to the activities of Provider or its officers, employees, subcontractors or agents under this Agreement.

Subject to Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act, County shall indemnify, defend and save harmless Provider, and its owner, officers, member and employees from and against any and all claims, suits, actions, losses, damages, liabilities, legal or administrative proceedings, demands, fines, penalties, injuries, expenses or costs, including interest and attorney fees of any nature whatsoever resulting from, arising out of or relating to the actions of County including but not limited to the actions of County, the State of Oregon and OHA or its officers, employees, subcontractors or agents under this Agreement.

**Section 14. Insurance.** Provider, at its expense, shall obtain the following insurance coverage 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 personal injury liability, products and completed operations coverage), on an occurrence basis, with not less than \$1,000,000 per occurrence for bodily injury, death and property damage liability, with an annual aggregate limit of \$2,000,000;
- C. Professional Liability Insurance, including medical malpractice coverage, covering Provider and any provider assigned by Provider to County pursuant to this Agreement, in the amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate, to protect against all loss suffered by County or third parties, including financial and consequential loss, caused by

error, omission, or negligent acts related to the performance of the Services under this Agreement;

D. Commercial Automobile Liability Insurance, with a combined single limit, or the equivalent of not less than \$1,000,000 per occurrence, for bodily injury and property damage with respect to Provider's vehicles, whether owned, hired, or non-owned, assigned to, or used by Provider in connection with the Services;

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 County. At County's request, Provider shall furnish County with certificates of insurance 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 to County.

The Commercial General Liability and Commercial Automobile Liability shall (i) name County, its directors, officers, and employees, as additional insureds, and (ii) include a cross-liability and severability of interest clause and a waiver of subrogation clause. In addition, in the event of unilateral cancellation or restriction by Provider's insurance company of any insurance coverage required herein, Provider shall immediately notify County orally of the cancellation or restriction and shall confirm the oral notification in writing within three days of notification by the insurance company to Provider.

**Section 15. Confidentiality.** Provider acknowledges that it or its agents may, in the course of their performance under this Agreement, be exposed to or acquire information that is the confidential information of County or County clients or patients. Any and all (i) County client or patient information, (ii) information provided by County and marked confidential, (iii) Protected Health Information or EPHI as described or defined in Exhibit A, or (iv) information identified as confidential in a separate writing, that becomes available to Provider or its agents in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items, including software, that result from Provider's use of the Confidential Information are also deemed Confidential Information. Provider agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Provider 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 or in conformance with Exhibit A. Provider agrees that, upon termination of this Agreement or at County's request, Provider will return to County all documents, papers and other matter in Provider's possession that embody Confidential Information.

County acknowledges that it or its agents may, during the term of this Agreement, be exposed to or acquire information that is the confidential information of Provider's patients. Any and all (i) patient information, (ii) information provided by Provider and marked confidential, (iii) Protected Health Information or EPHI as described or defined in Exhibit A, or (iv) information identified as confidential in a separate writing, that becomes available to County or its agents in shall be deemed to be confidential information of Provider ("Confidential Information"). Any reports or other documents or items, including software, that result from County's use of the

Confidential Information are also deemed Confidential Information. County agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Provider 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 required by law or as may be provided elsewhere under this Agreement or in conformance with Exhibit A. County agrees that, upon termination of this Agreement or at Provider's request, County will return to Provider all documents, papers and other matter in County's possession that embody Confidential Information. Notwithstanding anything to the contrary in this Agreement, County shall not be required to return/destroy any Confidential Information that is required to be maintained under the records retention schedule prescribed by the Oregon Secretary of State's Office, Archives Division or under the intergovernmental agreement between the County and the Oregon Health Authority for the financing of Public Health Services.

**Section 16. Compliance with Applicable Laws; Compliance with Policies; Advisory Committee.** Provider certifies, under penalty of perjury, that Provider is not in violation of any federal, state or local tax laws or any federal, state or local laws, codes or regulations applicable to the Services and that Provider shall remain in compliance with all such laws, codes and regulations during the entire term of this Agreement. Further, Contractor certifies compliance with the tax laws of the State of Oregon or a political subdivision of the state, including ORS 305.620 and ORS Chapters 316, 317 and 318. Provider shall comply with all state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the delivery of services hereunder. Without limiting the generality of the foregoing, Provider expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations; (b) all state laws governing operation of public health programs, including without limitation, all administrative rules adopted by the OHA related to public health programs; and (c) ORS 659A.400 to 659A.409, ORS 659A.145 and all regulations and administrative rules established pursuant to those laws in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the delivery of Services under this Agreement. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. All employers, including Provider, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. In addition, Provider shall comply, as if it were County thereunder, with the federal requirements set forth in Exhibit G to that certain 2019-2021 Intergovernmental Agreement for the Financing of Public Health Services between County and the OHA dated as of July 1, 2019, which Exhibit is incorporated herein by this reference. For purposes of this Agreement, all references in this Agreement to federal and state laws are references to federal and state laws as they may be amended from time to time. Provider also agrees to participate in and cooperate with the local SBHC Advisory Committee.

**Section 17. Settlement of Disputes.** Differences between Provider and County will be resolved when possible at appropriate management levels, followed by consultation between boards, if necessary.

**Section 18. Subcontracts; Assignment.** Provider shall not enter into any subcontracts for any of the Services required under this Agreement without County's prior written consent. Contractor shall not assign or transfer its interest in this Agreement, voluntarily or involuntarily,

whether by merger, consolidation, dissolution, operation of law, or in any other manner, without the prior written consent of County. No approval by County of any assignment or transfer of interest shall be deemed to create any obligation of County in addition to those set forth in this Agreement. Consent to subcontract shall not relieve obligations/duties under this Agreement. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties, their respective successors and permitted assigns.

**Section 19. Non-discrimination.** Provider agrees that no person shall, on the grounds of race, color, religion, national origin, sex, marital status, age, or other category protected by Oregon or federal law suffer discrimination in the performance of this Agreement when employed by Provider.

**Section 20. Waiver; Remedies.** County and Provider 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 21. 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 Provider that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Yamhill County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver of the State of Oregon of the jurisdiction of any court or of any form of defense to or immunity from any claim whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise. BY EXECUTION OF THIS AGREEMENT PROVIDER HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

**Section 22. 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 23. Counterparts.** This Agreement may be executed by facsimile and in counterparts, which taken together shall form one legal instrument.

**Section 24. 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 25. Entire Agreement; Amendments; Successors bound.** 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. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors and assigns.

**Section 26. Ownership.** Provider agrees to execute such further documents and instruments as County or OHA may reasonably request in order to make any grant of license or assignment of ownership that may be required by federal or state law.

**Section 27. Business Associate Clause – HIPAA restrictions.** Provider acknowledges that County is subject to the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996, (HIPAA), Pub. Law No. 104-191 and subject to the Federal Confidentiality of Alcohol and Drug Abuse Patient Records law and regulations, 42 USC §290dd-2 and 42 CFR Part 2 (collectively, “Part 2”). County and Contractor hereby agree to the respective obligations in the attached Exhibit A, “Business Associate/Qualified Service Organization Agreement” which is incorporated herein by this reference.

**Section 28. Grievance Procedures.** If Provider employs fifteen (15) or more employees to deliver the Services under this Agreement, Provider shall establish and comply with employee grievance procedures. In accordance with 45 CFR 84.7, the employee grievance procedures must provide for resolution of allegations of discrimination in accordance with applicable state and federal laws. The employee grievance procedures must also include “due process” standards, which, at a minimum, shall include:

- A. An established process and time frame for filing an employee grievance.
- B. An established hearing and appeal process.
- C. A requirement for maintaining adequate records and employee confidentiality.
- D. A description of the options available to employees for resolving disputes.

Provider shall ensure that its employees and governing board members are familiar with the civil rights compliance responsibilities that apply to Provider and are aware of the means by which employees may make use of the employee grievance procedures. Provider may satisfy these requirements for ensuring that employees are aware of the means for making use of the employee grievance procedures by including a section in the Provider employee manual that describes the Provider employee grievance procedures, by publishing other materials designed for this purpose, or by presenting information on the employee grievance procedures at periodic intervals in staff and board meetings.

**Section 29. Information Privacy/Security/Access.** If the Services performed under this Agreement requires Contractor to have access to or use of any OHA, County or third-party administrators, Performance Health Technology (PH Tech), computer systems or other OHA, County or third-party administrators Information Assets for which OHA, County or third-party administrators impose security requirements, and OHA, County or third-party administrators grant Contractor access to such OHA, County or third-party administrators Information Assets or Network and Information Systems, Contractor shall comply with OAR 943-014-0300 through 943-014-0320, as such rules may be revised from time to time. For purposes of this section,

"Information Asset" and "Network and Information System" have the meaning set forth in OAR 943-014-0305, as such rule may be revised from time to time.

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

SUNRISE FAMILY CLINIC, LLC

By: [Signature]  
(signature)  
Date: 1/31/2020

Jacqui Terrill Cooke, FNP-C, CNM  
(printed name)

Owner, Sunrise Family Clinic, LLC  
(title)

Tax ID No.: 46-3073593

YAMHILL COUNTY, OREGON

[Signature]  
CASEY KULLA, Chair  
Board of Commissioners  
Date: 2/6/2020

[Signature] Lindsey Manfrin  
~~SILAS HALLORAN-STEINER~~, Director  
Department of Health & Human Services  
Date: 2/2/20

FORM APPROVED BY:  
[Signature]  
CHRISTIAN BOENISCH  
County Counsel  
Date: 2/7/20

Accepted by Yamhill County  
Board of Commissioners on  
1/23/20 by Board Order  
# 20-29

**EXHIBIT A**  
**BUSINESS ASSOCIATE/QUALIFIED SERVICE ORGANIZATION AGREEMENT**

**RECITALS**

- A. The CONTRACTOR may use and disclose Protected Health Information and Electronic Protected Health Information ("EPHI") in the performance of its obligations under the Agreement; and
- B. County operates a drug and alcohol treatment program subject to the Federal Confidentiality of Alcohol and Drug Abuse Patient Records law and regulations, 42 USC §290dd-2 and 42 CFR Part 2 (collectively, "Part 2"); if CONTRACTOR is a Qualified Service Organization (QSO) under Part 2 it also must agree to certain mandatory provisions regarding the use and disclosure of substance abuse treatment information with respect to the performance of its obligations under the Agreement; and
- C. The Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and its implementing Privacy Rule and Security Rule, 45 CFR Parts 160 and 164, require that COUNTY, as a Covered Entity, obtain satisfactory assurances from its Business Associates, as that term is defined in the Privacy Rule and Security Rule, that they will comply with the Business Associate requirements set forth in 45 CFR 164.502(e) and 164.504(e) and as amended by the Health Information Technology for Economic and Clinical Health ("HITECH") Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 ("ARRA"); CONTRACTOR is a Business Associate of COUNTY and desires to provide such assurances with respect to the performance of its obligations under the Agreement pursuant to this Business Associate/Qualified Service Organization Agreement ("BAA"); and
- D. Both COUNTY and CONTRACTOR are committed to compliance with the standards set forth in Part 2, the Privacy Rule and Security Rule as amended by the HITECH Act, and as they may be amended further from time to time, in the performance of their obligations under the Agreement.

**NOW, THEREFORE**, in consideration of mutual and valuable consideration which the parties hereby acknowledge as received, the parties agree as follows:

**AGREEMENT.** The parties agree that the following terms and conditions shall apply to the performance of their obligations under the Agreement, effective upon execution of this BAA. Capitalized terms used, but not otherwise defined in this BAA, shall have the same meaning as those terms in Part 2, the Privacy Rule and Security Rule.

**1. SERVICES.** Pursuant to the Agreement, CONTRACTOR provides certain services for or on behalf of COUNTY, as described in the Agreement, which may involve the use and disclosure of Protected Health Information and EPHI. CONTRACTOR may make use of Protected Health Information and EPHI to perform those services if authorized in the Agreement and not otherwise limited or prohibited by this BAA, Part 2, the Privacy Rule, the Security Rule and other applicable federal or state laws or regulations. All other uses of Protected Health Information and EPHI are prohibited.

**2. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR.**

(a) CONTRACTOR agrees to not use or disclose Protected Health Information or EPHI other than as permitted or required by the Agreement (as amended by this BAA), and as permitted by Part 2, the Privacy Rule, the Security Rule or as required by Law. Notwithstanding any other language in this BAA, CONTRACTOR acknowledges and agrees that any patient information it receives from COUNTY that is

protected by Part 2 regulations is subject to protections that prohibit CONTRACTOR from disclosing such information to agents or subcontractors without the specific written consent of the subject individual.

(b) CONTRACTOR agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information and EPHI other than as provided for by the Agreement as amended by this BAA, and if necessary will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by the Part 2 regulations.

(c) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR of a use or disclosure of Protected Health Information or EPHI by CONTRACTOR in violation of the requirements of the Agreement, as amended by this BAA.

(d) CONTRACTOR agrees to report to COUNTY, as promptly as possible, any use or disclosure of the Protected Health Information or EPHI not provided for by the Agreement, as amended by this BAA, of which it becomes aware.

(e) CONTRACTOR agrees to ensure that any agent, including a contract hearing officer or other subcontractor, to whom it provides Protected Health Information or EPHI received from, or created or received by CONTRACTOR on behalf of COUNTY, agrees to the same restrictions and conditions that apply through the Agreement, as amended by this BAA, to CONTRACTOR with respect to such information.

(f) CONTRACTOR agrees to provide access, at the request of COUNTY, and in the time and manner designated by COUNTY, to Protected Health Information and EPHI in a Designated Record Set (the hearing file), to COUNTY or, as directed by COUNTY, to an Individual in order to meet the requirements under 45 CFR 164.524.

(g) CONTRACTOR agrees to make any amendment(s) to Protected Health Information and EPHI in a Designated Record Set that the COUNTY directs or agrees to pursuant to 45 CFR 164.526 at the request of COUNTY or an Individual, and in the time and manner designated by COUNTY.

(h) CONTRACTOR agrees to make internal practices, books, and records, including policies and procedures and any Protected Health Information or EPHI, relating to the use and disclosure of Protected Health Information and EPHI received from, or created or received by CONTRACTOR on behalf of COUNTY, available to COUNTY or to the Secretary, within the time and in the manner designated by COUNTY or the Secretary, for purposes of the Secretary determining COUNTY's compliance with Part 2, the Privacy Rule or Security Rule.

(i) CONTRACTOR agrees to refer requests for disclosures of Protected Health Information and EPHI to the COUNTY for response, except for requests related to conducting the contested case hearing. To the extent CONTRACTOR discloses Protected Health Information or EPHI for purposes not related to conducting the contested case hearing, CONTRACTOR agrees to document such disclosures to the extent such documentation is required for COUNTY to respond to a request by an Individual for an accounting of disclosures of Protected Health Information and EPHI in accordance with 45 CFR 164.528.

(j) CONTRACTOR agrees to provide to COUNTY or an Individual, in time and manner to be designated by COUNTY, information collected in accordance with Section 2(i) of this BAA, to permit COUNTY to respond to a request by an Individual for an accounting of disclosures of Protected Health Information and EPHI in accordance with 45 CFR 164.528.

(k) CONTRACTOR agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the EPHI that it creates, receives, maintains, or transmits on behalf of the COUNTY.

(l) In the event of Discovery of a Breach of Unsecured Protected Health Information, CONTRACTOR shall:

(i) Notify the COUNTY of such Breach. Notification shall include identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by CONTRACTOR to have been accessed, acquired or disclosed during such Breach and any other information as may be reasonably required by the COUNTY necessary for the COUNTY to meet its notification obligations;

(ii) Confer with the COUNTY as to the preparation and issuance of an appropriate notice to each individual whose Unsecured Protected Health Information has been, or is reasonably believed by CONTRACTOR to have been accessed, acquired or disclosed as a result of such Breach;

(iii) Where the Breach involves more than 500 individuals, confer with the COUNTY as to the preparation and issuance of an appropriate notice to prominent media outlets within the State or as appropriate, local jurisdictions; and,

(iv) Confer with the COUNTY as to the preparation and issuance of an appropriate notice to the Secretary of DHHS of Unsecured Protected Health Information that has been acquired or disclosed in a Breach. CONTRACTOR understands that if the Breach was with respect to 500 or more individuals, such notice to the Secretary must be provided immediately, and therefore, time is of the essence in the obligation to confer with the COUNTY. If the Breach was with respect to less than 500 individuals, a log may be maintained of any such Breach and the log shall be provided to the Secretary annually documenting such Breaches occurring during the year involved.

(v) Except as set forth in (vi) below, notifications required by this section are required to be made without unreasonable delay and in no case later than 60 calendar days after the Discovery of a Breach. Therefore, the notification of a Breach to the COUNTY shall be made as soon as possible and CONTRACTOR shall confer with the COUNTY as soon as practicable thereafter, but in no event, shall notification to the COUNTY be later than 30 calendar days after the Discovery of a Breach. Any notice shall be provided in the manner required by the HITECH Act, sec 13402(e) and (f), Public Law 111-5, 45 CFR 164.404 through 164.410 and as agreed upon by the COUNTY.

(vi) Any notification required by this section may be delayed by a law enforcement official in accordance with the HITECH Act, sec 13402(g), Public Law 111-5.

(vii) For purposes of this section, the terms "Unsecured Protected Health Information" and "Breach" shall have the meaning set forth in 45 CFR § 164.402. A Breach will be considered as "Discovered" in accordance with the HITECH Act, sec 13402(c), Public Law 111-5, 45 CFR 164.404(a)(2).

(m) CONTRACTOR shall comply with 45 C.F.R. 164.308, 164.310, 164.312 and 164.316 and all requirements of the HITECH Act, Public Law 111-5, that relate to security and that are made applicable to Covered Entities, as if CONTRACTOR were a Covered Entity.

(n) CONTRACTOR shall be liable to the COUNTY, and shall indemnify the COUNTY for any and all direct costs incurred by the COUNTY, including, but not limited to, costs of issuing any notices required

by HITECH or any other applicable law, as a result of CONTRACTOR's Breach of Unsecured Protected Health Information.

### **3. PERMITTED USES AND DISCLOSURES BY CONTRACTOR.**

#### **(a) General Use and Disclosure Provisions.**

(1) Except as otherwise limited or prohibited by this BAA, CONTRACTOR may use or disclose Protected Health Information and EPHI to perform functions, activities, or services for, or on behalf of, COUNTY as specified in the Agreement and this BAA, provided that such use or disclosure would not violate Part 2, the Privacy Rule or Security Rule if done by COUNTY or the minimum necessary policies and procedures of COUNTY.

(2) COUNTY has determined that disclosures to CONTRACTOR under the Agreement are necessary and appropriate for COUNTY's Treatment, Services, Payment and/or Health Care Operations under Part 2, the HIPAA Privacy Rule and Security Rule and Required By Law under Or Laws 1999, ch. 849 (HB 2525).

(3) All applicable federal and state confidentiality or privacy statutes or regulations, and related procedures, continue to apply to the uses and disclosures of information under this BAA, except to the extent preempted by Part 2 or the HIPAA Privacy Rule and Security Rule.

#### **(b) Specific Use and Disclosure Provisions.**

(1) Except as otherwise limited in this BAA, CONTRACTOR may use Protected Health Information and EPHI for the proper management and administration of the CONTRACTOR or to carry out the legal responsibilities of the CONTRACTOR.

(2) Except as otherwise limited in this BAA, CONTRACTOR may disclose Protected Health Information and EPHI for the proper management and administration of the CONTRACTOR, provided that disclosures are Required By Law, or CONTRACTOR obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the CONTRACTOR of any instances of which it is aware in which the confidentiality of the information has been breached.

(3) CONTRACTOR may use Protected Health Information and EPHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1).

(4) CONTRACTOR may not aggregate or compile COUNTY's Protected Health Information or EPHI with the Protected Health Information or EPHI of other Covered Entities unless the Agreement permits CONTRACTOR to perform Data Aggregation services. If the Agreement permits CONTRACTOR to provide Data Aggregation services, CONTRACTOR may use Protected Health Information and EPHI to provide the Data Aggregation services requested by COUNTY as permitted by 45 CFR 164.504(e)(2)(i)(B), subject to any limitations contained in this BAA. If Data Aggregation services are requested by COUNTY, CONTRACTOR is authorized to aggregate COUNTY's Protected Health Information and EPHI with Protected Health Information or EPHI of other Covered Entities that the CONTRACTOR has in its possession through its capacity as a CONTRACTOR to such other Covered Entities provided that the purpose of such aggregation is to provide COUNTY with data analysis relating to the Health Care Operations of COUNTY. Under no circumstances may CONTRACTOR disclose

Protected Health Information or EPHI of COUNTY to another Covered Entity absent the express authorization of COUNTY.

#### **4. OBLIGATIONS OF COUNTY.**

(a) COUNTY shall notify CONTRACTOR of any limitation(s) in its notice of privacy practices of COUNTY in accordance with 45 CFR 164.520, to the extent that such limitation may affect CONTRACTOR's use or disclosure of Protected Health Information and EPHI. COUNTY may satisfy this obligation by providing CONTRACTOR with COUNTY's most current Notice of Privacy Practices.

(b) COUNTY shall notify CONTRACTOR of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information or EPHI, to the extent that such changes may affect CONTRACTOR's use or disclosure of Protected Health Information and EPHI.

(c) COUNTY shall notify CONTRACTOR of any restriction to the use or disclosure of Protected Health Information or EPHI that COUNTY has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect CONTRACTOR's use or disclosure of Protected Health Information or EPHI.

#### **5. PERMISSIBLE REQUESTS BY COUNTY.**

(a) COUNTY shall not request CONTRACTOR to use or disclose Protected Health Information or EPHI in any manner that would not be permissible under Part 2, the Privacy Rule or Security Rule if done by COUNTY, except as permitted by Section 3(b) above.

(b) COUNTY may conduct a survey of CONTRACTOR with respect to CONTRACTOR's compliance with the terms of this BAA and applicable law for the establishment of policies and procedures for the safeguarding of any Protected Health Information and EPHI provided to CONTRACTOR by COUNTY. CONTRACTOR shall implement any recommendations of COUNTY resulting from such surveys as may be reasonably necessary to ensure compliance with the terms of this BAA and applicable law for the safeguarding of any Protected Health Information and EPHI provided to CONTRACTOR by COUNTY.

#### **6. TERM AND TERMINATION.**

(a) Effective Date; Term. This BAA shall be effective on the date on which all parties have executed it and all necessary approvals, if any, have been granted. This BAA shall terminate on the earlier of (i) the date of termination of the Agreement, or (ii) the date on which termination of the BAA is effective under Section 6(b).

(b) Termination for Cause. In addition to any other rights or remedies provided in this BAA, upon either the COUNTY's or CONTRACTOR's knowledge of a material breach by the other party of that party's obligations under this BAA, the party not in breach shall either:

(1) Notify the other party of the breach and specify a reasonable opportunity in the Notice of Breach to the party in breach to cure the breach or end the violation, and terminate the Agreement and this BAA if the party in breach does not cure the breach of the terms of this BAA or end the violation within the time specified;

(2) Immediately terminate the Agreement and this BAA if the party in breach has breached a material term of this BAA and cure is not possible in the reasonable judgment of the party not in breach; or

(3) If neither termination nor cure is feasible, the party not in breach shall report the violation to the Secretary.

(4) The rights and remedies provided in this BAA are in addition to any rights and remedies provided in the Agreement.

(c) Effect of Termination.

(1) Except as provided in paragraph (2) of this Section 6(c), upon termination of the Agreement and this BAA, for any reason, the party in breach shall, at the other party's option, return or destroy all Protected Health Information and EPHI received from the other party, or created or received by CONTRACTOR on behalf of COUNTY. This provision shall apply to Protected Health Information and EPHI that is in the possession of CONTRACTOR or agents of CONTRACTOR. CONTRACTOR shall retain no copies of the Protected Health Information or EPHI.

(2) In the event that CONTRACTOR determines that returning or destroying the Protected Health Information or EPHI is infeasible, CONTRACTOR shall provide to COUNTY notification of the conditions that make return or destruction infeasible. Upon COUNTY's written acknowledgement that return or destruction of Protected Health Information or EPHI is infeasible, CONTRACTOR shall extend the protections of this BAA to such Protected Health Information and EPHI and limit further uses and disclosures of such Protected Health Information and EPHI to those purposes that make the return or destruction infeasible, for so long as CONTRACTOR maintains such Protected Health Information or EPHI.

## 7. MISCELLANEOUS.

(a) Regulatory References. A reference in this BAA to a section in Part 2, the Privacy Rule, or Security Rule, or the HITECH Act means the section in effect as of the effective date of this BAA or as the Rules may be subsequently amended from time to time.

(b) Amendment; Waiver. The Parties agree to take such action as is necessary to amend the Agreement and this BAA from time to time as is necessary for COUNTY to comply with the requirements of Part 2, the Privacy Rule, Security Rule, HIPAA and the HITECH Act. No provision hereof shall be deemed waived unless in writing, duly signed by authorized representatives of the parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any other right or remedy under this BAA.

(c) Survival. The respective rights and obligations of CONTRACTOR under Section 6(c), this Section 7(c), and Section 7(e) of this BAA shall survive the termination of the Agreement and this BAA.

(d) Interpretation; Order of Precedence. Any ambiguity in this BAA or the Agreement shall be resolved to permit COUNTY to comply with Part 2, the Privacy Rule, Security Rule and the HITECH Act. The terms of this BAA amend and supplement the terms of the Agreement, and whenever possible, all terms and conditions in this BAA and the Agreement are to be harmonized. In the event of a conflict between the terms of this BAA and the terms of the Agreement, the terms of this BAA shall control; provided, however, that this BAA shall not supersede any other federal or state law or regulation governing the legal relationship of the parties, or the confidentiality of records or information, except to the extent that HIPAA preempts those laws or regulations. In the event of any conflict between the provisions of the Agreement (as amended by this BAA) and Part 2, the Privacy Rule or the Security Rule, the more stringent rule shall apply.

(e) No Third-Party Beneficiaries. COUNTY and CONTRACTOR are the only parties to this BAA and are the only parties entitled to enforce its terms. Nothing in this BAA gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this BAA.

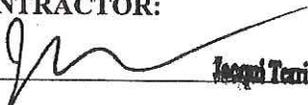
(f) Successors and Assigns. The provisions of this BAA and the Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns, if any.

(g) Except As Amended. Except as amended by this BAA, all terms and conditions of the Agreement shall remain in full force and effect.

**8. SIGNATURES.**

By signing this BAA, the parties certify that they have read and understood this BAA, that they agree to be bound by the terms of this BAA and the Agreement, as amended, and that they have the authority to sign this BAA.

**CONTRACTOR:**

By:  **Jacquie Terrell Cooke, FNP-C, CNM**  
Title: Owner, Sunrise Family Clinic, LLC  
Date: 1/31/2020

**COUNTY:**

By:   
Title: HHS Director  
Date: 2/2/20