CLACKAMAS COUNTY

OFFICE OF COUNTY COUNSEL
PUBLIC SERVICES BUILDING
2051 KAEN ROAD OREGON CITY, OR 97045

August 4, 2016

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Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement
with Multnomah County for a HIPPA Compliance Specialist

Purpose/Outcomes	Approve Intergovernmental Agreement between Clackamas County and Multnomah County for HIPAA privacy officer
Dollar Amount and Fiscal Impact	Services are to be provided on an as-needed basis at the hourly rate of $87.29 per hour
Funding Source	County general fund
Duration	July 1, 2016 through July 1, 2017
Previous Board Action	None
Strategic Plan Alignment	Ensure safe, healthy and secure communities Build public trust through good government
Contact Person	Stephen L. Madkour, County Counsel

BACKGROUND:

Clackamas County plans to engage the services of a HIPAA compliance expert employed by Multnomah County. The Multnomah County HIPAA Privacy Officer is an attorney in the Multnomah County Attorney's Office and is experienced and knowledgeable regarding all aspects of HIPAA compliance and has established a centralized HIPAA compliance program for Multnomah County.

Clackamas County desires to consult with the MC Privacy Officer to assist Clackamas County in establishing a robust centralized HIPAA compliance program in Clackamas County. The MC Privacy Officer will perform work under this contract in Clackamas County Offices onsite or remotely not to exceed 10 hours a week on an as-needed basis at an hourly rate of $87.29. HIPAA regulations and compliance are relatively esoteric areas of federal law and the IGA will allow Clackamas County the benefit from the services of a subject matter expert.

RECOMMENDATION:

County Counsel respectfully requests that the Board of County Commissioners authorize the County to enter into an IGA with Multnomah County for the services of a HIPAA compliance expert.

Respectfully submitted,

Stephen L. Madkour,
County Counsel

INTERGOVERNMENTAL AGREEMENT

This Agreement is entered into, by and between Clackamas County, a political subdivision of the State of Oregon, and Multnomah County, a political subdivision of the State of Oregon.

WHEREAS ORS 190.010 authorizes the parties to enter into this Agreement for the performance of any or all functions and activities that a party to the Agreement has authority to perform.

Now, therefore, the parties agree as follows:

1) The effective date is: July 1, 2016, or upon final signature, whichever is later.

   The expiration date is July 1, 2017; unless otherwise amended.

2) The parties agree to the terms and conditions set forth in Attachment A, which is incorporated herein, and describes the responsibilities of the parties, including compensation, if any.

3) Each party shall comply with all applicable federal, state and local laws; and rules and regulations on non-discrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition or handicap.

4) No party or its employees is entitled to participate in a pension plan, insurance, bonus, or similar benefits provided by any other party.

5) This Agreement may be terminated, with or without cause and at any time, by a party by providing 30 days written notice of intent to the other party(s).

6) Modifications to this Agreement are valid only if made in writing and signed by all parties.

7) Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, and the Oregon Constitution, each party agrees to hold harmless, defend, and indemnify each other, including its officers, agents, and employees, against all claims, demands, actions and suits (including all attorney fees and costs) arising from the indemnitor's performance of this Agreement where the loss or claim is attributable to the negligent acts or omissions of that party.

8) Each party shall give the other immediate written notice of any action or suit filed or any claim made against that party that may result in litigation in any way related to the work performed under this Agreement.

9) Each party agrees to maintain insurance levels or self-insurance in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.269 through 30.274.

10) Each party agrees to comply with all local, state and federal ordinances, statutes, laws and regulations that are applicable to the services provided under this Agreement.

11) This writing is intended both as the final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement.

WHEREAS, all the aforementioned is hereby agreed upon by the parties and executed by the duly authorized signatures below.

MULTNOMAH COUNTY:

_____ _____
County Chair or Designee Date

_____ _____
Printed Name Title

Reviewed:

_____
Jacqueline A. Weber
Deputy County Attorney

CLACKAMAS COUNTY:

_____ _____
Signature Date

_____ _____
Printed Name Title

Address:

Office of County Counsel
Clackamas County
2051 Kaen Road
Oregon City, OR 97045

ATTACHMENT "A"

1. **Purpose:** The Multnomah County Privacy Officer (MC Privacy Officer) is experienced and knowledgeable regarding all aspects of HIPAA compliance and has established a centralized HIPAA compliance program for Multnomah County. Clackamas County has assigned its County Counsel as the Privacy Officer for Clackamas County. Clackamas County desires to consult with the MC Privacy Officer to assist Clackamas County in establishing a robust centralized HIPAA compliance program in Clackamas County. The MC Privacy Officer will perform work under this contract in Clackamas County Offices onsite or remotely not to exceed 10 hours a week. Multnomah County agrees that Clackamas County may consult with the MC Privacy Officer for certain functions described below.

2. **Statement of Work:**

A. Multnomah County responsibilities:

Clackamas County may consult with the MC Privacy Officer on HIPAA compliance issues. Clackamas County shall use no more than .25 of the MC Privacy Officer's time. The MC Privacy Officer may be made available for consultation in person, by telephone and by email. The MC Privacy Officer may periodically or as needed be physically present at Clackamas County offices. The MC Privacy Officer may be contacted on other days in case of suspected HIPAA breaches. The Clackamas County Privacy Officer (County Counsel) shall be the primary contact for the MC Privacy Officer. In addition, the MC Privacy Officer will also work with a project team consisting of the Risk Manager, and a special projects manager with Clackamas County Health and Human Services. The primary duties to be performed by the MC Privacy Officer for Clackamas County when requested are:

(a) Review Clackamas County Departments to assess and determine correct status of covered components of Clackamas County's hybrid entity and develop a chart of covered components similar to chart developed for Multnomah County;

(b) Identify HIPAA privacy rule compliance issues Clackamas County needs to address in light of HITECH and new HIPAA Omnibus Rules of 2013;

(c) Develop a Work Plan for HIPAA privacy rule compliance issues Clackamas County needs to address;

(d) Review, revise and update Clackamas County HIPAA Privacy and Security rules (Security rules in consultation with the Clackamas County Security Officer);

(e) Develop written breach policy and procedures that align with current practice in Clackamas County and HIPAA regulations to meet Clackamas County organizational needs;

(f) Review and revise current Clackamas County HIPAA training material;

(g) Work with Clackamas County Privacy Officer to identify and define privacy officer performance requirements; and

(h) Assist Clackamas County to develop and implement a process for evaluating and assisting in responding to instances of suspected HIPAA breaches that occur during the period of this contract.

B. Clackamas County responsibilities:

Pay for consulting services as described in the Payment Terms. If needed, provide office space and use of a computer, software, phone and network capabilities for the MC Privacy Officer while performing duties for Clackamas County. Assist in performance evaluation of MC Privacy Officer if requested by Multnomah County. Clackamas County retains all final authority and responsibility for HIPAA compliance and breach response.

3. Payment Terms:

Clackamas County agrees to pay for the services of Multnomah County's Privacy Officer on an hourly basis at the hourly rate of $87.29. Multnomah County's Privacy Officer's salary and fringe benefits. Currently that annual sum is $181,556. Additionally, mileage for travel to Clackamas County will be reimbursed by Clackamas County. Both parties understand that Multnomah County may request that this Agreement be amended to increase or decrease the compensation amount annually if costs are higher or lower than anticipated at the agreement commencement. Multnomah County will invoice Clackamas County Office of County Counsel quarterly. Payments will be due 30 days after invoice.

Invoice Mailing Address:

Clackamas County Counsel
2051 Kaen Road
Oregon City, OR 97045

Health Insurance Portability and Accountability Act of 1996 (HIPAA)
Business Associate Agreement

A. General:

For purposes of the IGA and its Attachment A ("IGA"), Multnomah County ("County") is Clackamas County's ("Covered Entity") business associate and will comply with the obligations set forth below and under HIPAA. As described in the IGA, County creates, receives, maintains or transmits PHI on behalf of Covered Entity or to provide a service to Covered Entity.

B. Definitions:

Terms used, but not otherwise defined in this Section, will have the same meaning as those terms in 45 CFR 160.103, 164.103, 164.402 and 164.501. A reference to a regulation means the section as in effect or as amended, and for which compliance is required.

- *Breach:* as defined in 45 CFR 164.402 and includes the unauthorized acquisition, access, use, or disclosure of Protected Health Information (PHI) that compromises the security or privacy of such information.
- *Designated Record Set:* as defined in 45 CFR 164.501.
- *Individual:* as defined in 45 CFR 160.103 and includes a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- *Privacy Rule:* the standards for privacy at 45 CFR Part 160 and Part 164, subpart A and E.
- *Protected Health Information (PHI):* means any information created for or received from County under the IGA from which the identity of an Individual can reasonably be determined, and includes, but is not limited to, all of the information within the statutory meaning of "Protected Health Information" in 45 CFR 160.103.
- *Required by Law:* as defined in 45 CFR 164.103.
- *Secretary:* the Secretary of the U.S. Department of Health and Human Services (HHS) or designee.
- *Security Rule:* the Standards for Security of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subpart A and C.
- *Unsecured Protected Health Information:* PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined in 45 CFR 164.402.

C. County's Obligations:

1. County agrees to not use or disclose Protected Health Information (PHI) other than as permitted or required by the IGA or as Required or Permitted by Law. County further agrees to use or disclose PHI only on behalf of, or to provide services to, the Covered Entity in fulfilling County's obligations under the IGA, and to not make uses or disclosures that would violate the Privacy Rule if done by Covered Entity or violate the minimum necessary standard as described below.
2. When using, disclosing, or requesting PHI, County agrees to make reasonable efforts to limit the PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure or request, in accordance with 45 CFR 164.514(d), with the following exceptions:
   a) disclosures to or requests by a health care provider for treatment
   b) disclosures made to the Individual about his or her own PHI
   c) uses or disclosures authorized by the Individual
   d) disclosures made to the Secretary in accordance with the HIPAA Privacy Rule
   e) uses or disclosures that are Required by Law, and
   f) uses or disclosures that are required for compliance with the HIPAA Transaction Rule.
3. County is responsible for compliance with the applicable requirements of the HIPAA Privacy Rule and Security Rule to the same extent as Covered Entity.
4. County agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by the IGA.
5. County agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity as required by 45 CFR 164 Subpart C.
6. County shall promptly notify Covered Entity of a Breach of Unsecured PHI of which County (or County's employee, subcontractor, officer or agent) knows or should have known of through the exercise of reasonable diligence.
7. County agrees to mitigate, to the extent practicable and without unreasonable delay, any harmful effect that is

known to Covered Entity of a use or disclosure of PHI or Breach of Unsecured PHI by County in violation of the requirements of the IGA or HIPAA.

8. County agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by County on behalf of Covered Entity, agrees in writing to the same restrictions and conditions that apply through the IGA to County with respect to such information in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2).
9. County agrees to provide access to PHI about an Individual contained in a Designated Record Set within the reasonable time, manner, form and format specified in Individual's or Covered Entity's request as necessary to satisfy the Covered Entity's obligations under 45 CFR 164.524. If an Individual requests access to information directly from County, County agrees to forward the request to Covered Entity within 5 working days of receipt. Covered Entity will be responsible for any denials of requested PHI.
10. County agrees to make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 within the reasonable time and manner specified in Covered Entity's request. County shall not respond directly to requests from Individuals for amendments to their PHI in a Designated Record Set. County agrees to forward the request to Covered Entity within 5 working days of receipt.
11. County agrees to make internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created, maintained or received by County on behalf of Covered Entity available to the Secretary upon request of the Secretary, in a time and manner designated by the Secretary for purposes of the Secretary determining Covered Entity's compliance with HIPAA.
12. County agrees to document disclosures of PHI and information related to such disclosures as required for Covered Entity to respond to a request by an Individual for an accounting of disclosure of PHI in accordance with 45 CFR 164.528. County agrees to provide Covered Entity or an Individual information under this Section, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosure of PHI in accordance with 45 CFR 164.528.
13. County must forward to Covered Entity within 5 working days of receipt any request for restriction or confidential communications as described under 45 CFR 164.522 received from an Individual. County must process such request in the reasonable time and manner as directed by Covered Entity.
14. County may use and disclose PHI (a) for the proper management and administration of County, (b) to carry out the legal responsibilities of County, (c) to provide Data Aggregation services relating to the health care operations of the Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B) and required by the IGA, (d) to the extent and for purposes authorized by the Individual, (e) to report violations of law to appropriate Federal and State authorities consistent with 45 CFR 164.502(j)(I) or (f) as required by law.

D. Covered Entity's Obligations:

1. Covered Entity shall obtain any consent or authorization from Individuals as necessary or required under HIPAA, other federal or state law or its own policies prior to allowing County and other provider access to an Individual's PHI.
2. Covered Entity shall notify County of:
    (a) Its permissible uses and disclosures of PHI by providing a copy of its Notice of Privacy Practices upon request;
    (b) Any limitation(s) in its Notice of Privacy Practices to the extent that such limitation may affect County's use or disclosure of PHI;
    (c) Any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect County's use or disclosure of PHI; and
    (d) Any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect County's use or disclosure of PHI.
3. The Covered Entity shall not request that County use or disclose PHI in any manner that would not be permissible under HIPAA.

E. Termination: Upon termination of the IGA for any reason, County will extend the protections of the IGA to any PHI that County is required to retain under any provision of the IGA. The terms of the IGA shall remain in effect until all of the PHI provided by Covered Entity to County, or created or received by County on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.