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 LEGAL COUNSEL

For Recording Stamp Only

**DESCHUTES COUNTY SERVICES CONTRACT  
 CONTRACT NO. 2021-246**

This Contract (the "Contract") is made and entered into by and between Deschutes County, a political subdivision of the State of Oregon, acting by and through the Deschutes County Health Services Department, Behavioral Health Division, hereinafter referred to as "County," and St Charles Health System, Inc., an Oregon non-profit corporation, hereinafter referred to as "Contractor", each a "Party" and collectively referred to as "Parties".

This Contract supersedes and replaces Deschutes County Health Services Contract No. 2020-293, effective date July 1, 2020, which shall terminate upon signature and execution of this Contract No. 2021-246.

**Recitals**

WHEREAS, Contractor operates an acute psychiatric treatment facility (hereinafter referred to as "Sage View") and hold rooms at Contractor's locations for Psychiatric Emergency Services (hereinafter referred to as "PES") for individuals in need of behavioral health services, including indigent individuals residing in Crook, Deschutes and Jefferson Counties (collectively referred to as "Counties") who are served under this Contract; and

WHEREAS, County is authorized pursuant to ORS 430.670 to obtain, by contract, the services necessary to conduct and operate a community behavioral health and developmental disabilities program; and

WHEREAS, Contractor has obtained and shall continue to qualify for approval from the Oregon Health Authority, Health Systems Division ("OHA") for purposes of providing services under this Contract; and

WHEREAS, the Contractor is able to offer Acute Care Psychiatric Services (as described herein) at the Sage View facility and Psychiatric Emergency Services Unit; and;

WHEREAS, County is authorized pursuant to ORS 426.241 to obtain, by contract, the emergency psychiatric care necessary for indigent residents of Crook, Deschutes and Jefferson counties; now, therefore,

IT IS HEREBY AGREED by and between the Parties above mentioned, for and in consideration of the mutual promises hereinafter stated as follows:

1. Effective Date. This Contract is retroactively effective January 1, 2021 and, except as otherwise specifically provided herein, shall expire on December 31, 2021 unless terminated or renewed in accordance with its terms. The Parties agrees that time is of the essence in the performance of this Contract.
2. Contractor's Services. Contractor shall provide the services outlined in Exhibit 1 of this Contract (the "Services"). Maximum compensation shall not exceed **\$297,000** in accordance to the terms outlined in Exhibit 1.
3. Regulations and Duties. Contactor shall comply with all applicable provisions of the Financial Assistance Award #166040, including applicable Service Descriptions attached thereto, Agreement effective date January 1, 2021 between the OHA and Deschutes County, as the same may be amended, replaced and/or renewed from time to time, by a subsequent signed agreement between the Parties. Contractor agrees to comply with applicable rules and regulations of County, applicable provisions in the contract between County and the OHA, incorporated herein by reference, as of the effective date of such regulations, applicable provisions of the Administrative Rules and Procedures of the OHA, applicable Federal regulations and all provisions of Federal and State statutes, rules and regulations relating to Contractor's performance of services under this Contract. Any act or duty of County, imposed upon County by OHA, which, by the nature of this Contract, County determines to be within the scope of this Contract and is to be performed by Contractor, Contractor shall perform on behalf of County. No federal funds may be used to provide services in violation of 42 U.S.C. 14402.
4. Notice. Except as otherwise expressly provided in this Contract, any communications between the Parties hereto or notices to be given hereunder shall be given in writing, to Contractor or County at the address or number set forth below or to such other addresses or numbers as either Party may hereafter indicate in writing. Delivery may be by personal delivery, electronic mail, facsimile, or mailing the same, postage prepaid.

- a. Any communication or notice sent by facsimile shall be deemed delivered when the transmitting machine generates receipt of the transmission. To be effective against either Party, such facsimile transmission shall be confirmed by telephone notice to the County Administrator or SCHS Behavioral Health Director or designee, as applicable.
- b. Any communication or notice shall be deemed delivered five (5) days after mailing or upon actual receipt, whichever occurs first. Any notice under this Contract shall be mailed by first class postage or delivered as follows:

<u>To Contractor:</u>	<u>To County:</u>
Jenn Welander, CFO	Janice Garceau, Deputy Director
St. Charles Health System, Inc.	Deschutes County Health Services
2500 NE Neff Road	2577 NE Courtney Dr.
Bend, Oregon 97701	Bend, Oregon 97701
Fax No. 541-598-3475	Fax No. 541-322-7565
jrvelander@stcharleshealthcare.org	Janice.garceau@deschutes.org

<u>To County – Accounts Payable:</u>	<u>To County – for Notices &amp; Terminations:</u>
Accounts Payable	Grace Justice Evans, Contract Specialist
Deschutes County Health Services	Deschutes County Health Services
2577 NE Courtney Dr.	2577 NE Courtney Dr.
Bend, Oregon 97701	Bend, Oregon 97701
Fax No. 541-322-7565	Fax No. 541-322-7565
_HSAccountsPayable@deschutes.org	Grace.evans@deschutes.org

A copy of any notice, communication, or writing to Contractor under this Agreement shall also be sent to: “St. Charles Health System, Inc., Attn: Legal Department, 2500 NE Neff Road, Bend Oregon 97701.”

5. Access to Records. Upon reasonable inspection times, mutually agreed upon by the Parties, County and its authorized representatives shall have the right to direct access to all of Contractor’s books, documents, papers and records of Contractor that are directly related to this Contract, the financial assistance provided hereunder, or any service for the purpose of making audits, examinations, excerpts, copies and transcriptions. The foregoing access is subject to the Parties and requesting agencies strict compliance with applicable provisions of 42 CFR Part 2.
  - a. Contractor shall permit County and OHA to make site visits upon reasonable notice to monitor the delivery of services under this Contract.
  - b. **Retention of Records.** Contractor shall retain and keep accessible all books, documents, paper, and records and client records, that are directly related to this Contract, the financial assistance provided hereunder or any service, in accordance with OAR 166-150-0005 through 166-150-0215 (State Archivist). Unless OAR 166-150-0005 through 166-150-0215 requires a longer retention period, client records must be retained for a minimum of six (6) years from termination or expiration of this Contract. If there are unresolved audit or Contract Settlement questions at the end of the retention period, Contractor shall retain the records until the questions are resolved.
6. Confidentiality. In addition to the obligations imposed upon the Parties by Exhibit 3, The Parties shall maintain confidentiality of information obtained pursuant to this Contract as follows:
  - a. The Parties shall not use, release or disclose any information concerning any employee, individual, applicant for any purpose not directly connected with the administration of County’s or the Contractor’s responsibilities under this Contract except upon written consent of the other Party, and if applicable, the employee, Individual, applicant or person.
  - b. The Parties shall ensure that their respective agents, employees, officers and subcontractors with access to County or Contractor records understand and comply with this confidentiality provision.
  - c. The Parties shall treat all information as to personal facts and circumstances obtained on Medicaid eligible individuals as privileged communication, shall hold such information confidential, and shall not disclose such information without the written consent of the individual, his or her attorney, the responsible parent of a minor child, or the child’s guardian, except as required by other terms of this Contract.
  - d. Nothing prohibits the disclosure of information in summaries, statistical information, or other form that does not identify particular individuals.

- e. Personally identifiable health information about applicants and Medicaid recipients will be subject to the transaction, security and privacy provisions of the Health Insurance Portability and Accountability Act (“HIPAA”).
  - f. This Contract may be amended in a subsequent written agreement in the future to incorporate additional requirements related to compliance, as necessary per HIPAA.
  - g. The Parties further agree to notify the other Party when a Party comes into possession of information that represents a credible threat to the safety or security of the other Party or the other Party’s personnel.
  - h. Individually Identifiable Health Information about specific individuals is confidential. Individually Identifiable Health Information relating to specific individuals may be exchanged between County and OHA for purposes directly related to the provision of Services to Individuals which are funded in whole or in part under this Contract. The Parties shall maintain the confidentiality of records of Individuals as required by applicable state and federal law, including without limitation, ORS 179.495 to 179.507, 45 CFR Part 205, 42 CFR Part 2, any administrative rule adopted by the OHA, implementing the foregoing laws. Contractor shall create and maintain written policies and procedures related to the disclosure of an Individual’s information and shall make such policies and procedures available to County and the OHA for review and inspection as reasonably requested by County or the OHA.
7. Mediation. Differences between a Contractor and County, or between contractors, will be resolved in good faith when possible at appropriate management levels, followed by consultation between boards, if necessary. Where resolution of such disputes is not achieved after consultation with the respective Boards of Contractor and County, the Parties shall proceed with mediation in accordance with this Section 8 of the Contract. If the Parties cannot reach agreement they shall submit the matter to mediation. The Parties shall agree upon a single mediator who is experienced in the area involving the dispute. If the Parties are unable to agree on a mediator, each Party shall submit two (2) to three (3) names of people acceptable as mediator to the Presiding Judge of the Deschutes County Circuit Court, who shall select the mediator from the list provided.
8. Attorney Fees. In the event an action, suit or proceeding, including appeal there from, is brought for breach of any of the terms of this Contract, or for any controversy arising out of this Contract, each Party shall be responsible for its own attorney’s fees, expenses, costs and disbursements for said action, suit, proceeding or appeal.
9. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.
- a. Any claim, action, suit or proceeding (collectively, “Claim”) between County and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Deschutes County for the State of Oregon; provided, however, if a Claim shall be brought in federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.
  - b. EACH PARTY, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. The Parties agree that the UN Convention on International Sales of Goods shall not apply.
10. Financial Audit. If requested, Contractor, at its sole expense, shall provide County with a copy of a Financial Review or Financial Audit conducted by a Certified Public Accountant within ninety (90) days following the termination of this Contract. This audit shall comply with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled “Audits of States, Local Governments and Non-Profit Organizations.”
11. Recovery of Funds, Reductions in Funding and Withholding of Payments. Expenditures of Contractor may be charged to this Contract only if they: (1) are in payment for services performed under this Contract; (2) conform to applicable State and Federal regulations and statutes; (3) are in payment of an obligation incurred during the period of this Contract; and (4) when added to other compensation pursuant to this Contract are not in excess of 100% of the maximum amount detailed in Paragraph 2 and Exhibit 1 of this Contract.
- a. If Contractor fails to provide an acceptable audit performed by a certified public accountant for federal funds received under this Contract, or if federal authorities demand the repayment of federal funds received under this Contract, County may recover all federal funds paid under this Contract, unless a smaller amount is disallowed or demanded.
  - b. Should a final court of competent jurisdiction discover Contractor is committing or has committed “fraud and abuse” as those terms are defined in OAR 410-120-0000, either through an audit or other means, County may recover funds paid to Contractor under this Contract. If federal authorities demand the repayment of federal funds received under

this Contract and Contractor has been found willfully committing “fraud and abuse” as those terms are defined in OAR 410-120-0000, County may recover funds paid to Contractor under this Contract and any fines or penalties charged to County as a result of Contractor’s actions. If the State of Oregon, disallows or requests repayment for any funds paid to Contractor under this Contract due to Contractor willfully committing “fraud and abuse” as those terms are defined in OAR 410-120-0000, County may recover funds paid to Contractor under this Contract in addition to any fines or penalties charged to County as a result of Contractor’s actions. In the event that the court of competent jurisdiction determines that Contractor is solely responsible for the repayment of any funds paid to the Contractor, in addition to any fines or penalties charged to the County due to Contractor willfully committing “fraud and abuse”, Contractor agrees to make such payment within ten (10) days of notification by County.

- c. If federal or state authorities disallow or request repayment for any funds paid under this Contract due to Contractor’s acts or omissions, Contractor shall make payment to County of the amount disallowed or requested. In the event that federal or state authorities determines that County is responsible for the repayment of any funds owed to state or federal authorities by Contractor, Contractor agrees to make such payment within ten (10) days of notification by County or federal or state authority of said determination.
  - d. Notwithstanding any other payment provision of this Contract, should Contractor fail to submit required reports or documentation as outlined in this Contract, or fail to perform or document the performance of contracted services; County shall immediately withhold payments under this Contract.
  - e. In the event that a statutorily required license or insurance of Contractor is suspended or not extended, County’s obligation to provide reimbursement for Services rendered without the necessary license or insurance will cease on the date of expiration or suspension of license and/or insurance.
  - f. Any funds spent by Contractor for purposes not authorized by this Contract shall either be paid directly by the Contractor to the County or, if not so paid, at the discretion of County, shall be deducted from future payments from County to the Contractor. Payments by County in excess of authorized amounts that have not been repaid by the Contractor within thirty (30) days after the Contract’s expiration or after notification by the County, whichever date is earlier, shall be deducted from future payments from County to the Contractor.
  - g. Any funds awarded to the Contractor pursuant to a fee-for-service payment method under this Contract that are not obligated and/or spent within the term of this Contract shall be cancelled and revert to the County.
12. Retention of Revenue and Earned Interest. Fees and third-party reimbursements, including all amounts paid pursuant to Title XIX of the Social Security Act by the OHA, for services rendered by Contractor, and interest earned on such funds in the possession of Contractor, shall be retained by Contractor provided that it is expended for a behavioral health service which meets the standards of the OHA.
13. Termination. All or part of this Contract may be terminated immediately by mutual consent of both Parties, or by either Party at any time for convenience upon thirty (30) days’ notice in writing to the other Party. In the event that this agreement is terminated pursuant to this section 14, Contractor agrees that it will continue to operate or arrange for provision of an acute psychiatric treatment program within Contractor’s treatment area until at least December 30, 2025.

A Party may also terminate all or part of this Contract as specified below:

- a. With thirty (30) days written notice, if funding to the County from federal, state or other sources is not obtained or is not continued at levels sufficient to allow for purchase of the indicated quantity of services. The County will give more notice whenever possible.
- b. With sixty (60) days written notice, if federal or state regulations are modified or changed in such a way that services are no longer allowable for purchase under this Contract.
- c. Upon notice of denial, revocation, or non-renewal of any letter of approval, license, or certificate required by law or regulation to be held by the Contractor to provide a service under this Contract.
- d. With thirty (30) days written notice, if Contractor fails to provide services, or fails to meet any performance standard as specified by the County in this Contract (or subsequent modifications to this Contract) within the time specified herein, or any extensions thereof.
- e. Upon written notice, if a party has evidence that the other Party has endangered or is endangering the health and safety of Individuals, residents, staff, or the public.

f. Failure of a Party to comply with the provisions of this Contract and all applicable federal, state and local laws and rules which may be cause for termination of this Contract. The circumstances under which this Contract may be terminated by either Party under this paragraph may involve major or minor violations. Major violations include, but are not limited to:

1. Acts or omissions that jeopardize the health, safety, or security of Individuals.
2. Misuse of funds.
3. Intentional falsification of records.

14. Contract Monitoring. County shall monitor Contractor's delivery of services and promptly report to OHA when County identifies material deficiency in a Contractor's delivery of a service or in a Contractor's compliance with the Contract between Contractor and County. County shall promptly take all necessary action to remedy any identified deficiency on the part of the Contractor. In the event of a deficiency in Contractor's delivery of a service or in a Contractor's compliance with the Contract between the Contractor and County, nothing shall limit or qualify any right or authority OHA has under state or federal law to take action directly against the Contractor.

In the case a failure to perform jeopardizes the safety and security of a client or of clients from one of the Counties' (Deschutes, Crook and Jefferson) the Contractor and the County shall jointly conduct an investigation to determine whether an emergency exists and what corrective action will be necessary. Such an investigation shall be completed within five (5) working days from the date the County determines that such failure exists.

In those circumstances where a major violation is substantiated, continued performance may be suspended by the County immediately. In all cases involving a major violation, a written notice of intent to terminate this Contract shall be sent to OHA and Contractor who is found to be in violation.

Minor violations usually involve less than substantial compliance with the general or special conditions of this Contract. Repeated continued minor violations of the same nature that threaten adequacy of services may be treated like a major violation.

Prior to termination for major or minor violations, the Contractor shall be given a reasonable opportunity to refute the findings. If the problem is not corrected or remedied within thirty (30) days after County has given written notice to Contractor, or in the case the problem cannot be corrected or remedied within the thirty (30) day period the Contractor fails to commence and pursue corrective action with reasonable diligence and good faith, then County may terminate this Contract or initiate other remedial action.

Termination shall be without prejudice to any obligations or liabilities of either Party accrued prior to such termination.

15. Encumbrance or Expenditure after Notice of Termination. Contractor shall not make expenditures, enter into contracts, or encumber funds in its possession that belong to the County, after notice of termination or termination as set out above, without prior written approval from County. County will continue to be obligated to pay for authorized services to the date on which termination takes effect. After the date on which termination takes effect, County will have no further obligation to pay for services.

16. Independent Contractor. Contractor is engaged hereby as an independent contractor, and will be so deemed for purposes of the following:

a. Contractor shall be solely responsible for and shall have control over the means, methods, techniques, sequences and procedures of performing the work, and shall be solely responsible for the errors and omissions of its employees, subcontractors and agents. For goods and services to be provided under this Contract, Contractor agrees to:

1. perform the work in a good, workmanlike, and timely manner;
2. comply with all applicable legal requirements;
3. take all precautions necessary to protect the safety of all persons at or near Contractor's facilities including employees and Individuals enrolled or seeking services from Contractor and/or County;
4. take full responsibility for wages and entitlements of Contractor's employees assigned to or furnishing services at Contractor's facilities.

b. It is agreed by and between the Parties that Contractor is not carrying out a function on behalf of the County, OHA or State of Oregon, and County, OHA and State of Oregon do not have the right of direction or control of the manner in which Contractor delivers services under this Contract or exercise any control over the activities of Contractor.

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

- c. County is not, by virtue of this Contract, a partner or joint venture with Contractor in connection with activities carried on under this Contract, and shall have no obligation with respect to Contractor's debts or any other liabilities of each and every nature. Unless Contractor is a State of Oregon governmental agency, Contractor agrees that it is an independent contractor and not an agent of the State of Oregon, the Oregon Health Authority or County.
- d. The Contractor is an independent contractor for purposes of the Oregon Workers' Compensation law (ORS Chapter 656) and is solely liable for any Workers' Compensation coverage under this Contract.

17. Delegation, Subcontracts and Assignment. Contractor shall not delegate or subcontract any of the work required by this Contract or assign or transfer any of its interest in this Contract, without the prior written consent of County.

- a. Any subcontracts that the County may authorize, Contractor agrees to make all provisions of this Contract with the County applicable to any subcontractor performing work under this Contract. Contractors who perform the work without the assistance of labor or any employee, as determined under ORS Chapter 656 and rules adopted pursuant thereto, need not obtain Workers Compensation coverage.
- b. Any delegation, subcontract, assignment, or transfer without prior written consent of County shall constitute a material breach of this Contract.
- c. Any such assignment or transfer, if approved, is subject to such conditions and provisions as the County may deem necessary.
- d. No approval by the County of any assignment or transfer of interest shall be deemed to create any obligation of the County to increase rates of payment or maximum Contract consideration.
- e. Prior written approval shall not be required for the purchase by the Contractor of articles, supplies and services which are incidental to the provision of services under this Contract that are necessary for the performance of the work.
- f. Any subcontracts that the County may authorize shall contain all requirements of this Contract, and unless otherwise specified by the County, the Contractor shall be responsible for the performance of the subcontractor.

18. No Third Party Beneficiaries.

- a. County and Contractor are the only Parties to this Contract and are the only Parties entitled to enforce its terms.
- b. Nothing in this Contract gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Contract and expressly described as intended beneficiaries of this Contract.

19. Successors in Interest. The provisions of this Contract shall be binding upon and inure to the benefit of the Parties and their successors and approved assigns, if any.

20. Insurance. Contractor shall provide insurance in accordance with Exhibit 2 attached hereto and incorporated by reference herein. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to OHA and County. County shall not authorize contractors to begin work under the Contract until the insurance is in full force. Thereafter, County shall monitor continued compliance with insurance requirements on an annual or more frequent basis. County shall enforce Contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Contract as permitted by the Contract provisions, or pursuing legal action to enforce the insurance requirements. In no event shall County permit Contractor to work under this Contract when County is aware that Contractor is not in compliance with the insurance requirements.

21. Indemnity and Hold Harmless.

- a. To the fullest extent authorized by law Contractor shall defend, save, hold harmless and indemnify the County and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities costs and expenses of any nature resulting from or arising out of, or relating to the activities of Contractor or its officers, employees, contractors, or agents under this Contract, including without limitation any claims that the work, the

work product or any other tangible or intangible items delivered to County by Contractor that may be the subject of protection under any state or federal intellectual property law or doctrine, or the County's use thereof, infringes any patent, copyright, trade secret, trademark, trade dress, mask work utility design or other proprietary right of any third party.

- b. Contractor shall have control of the defense and settlement of any claim that is subject to subparagraph a of this paragraph; however neither contractor nor any attorney engaged by Contractor shall defend the claim in the name of Deschutes County or any department or agency thereof, nor purport to act as legal representative of the County or any of its departments or agencies without first receiving from the County's legal counsel, in a form and manner determined appropriate by the County's legal counsel, authority to act as legal counsel for the County, nor shall Contractor settle any claim on behalf of the Count without the approval of the County's legal counsel.
- c. To the extent permitted by Article XI, Section 10, of the Oregon Constitution and subject to the limits of the Oregon Tort Claims Act, ORS 30.260 through 30.300, County shall defend, save, hold harmless and indemnify Contractor and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities costs and expenses of any nature resulting from or arising out of, or relating to the activities of County or its officers, employees, contractors, or agents under this Contract.
- d. Contractors that are not units of local government as defined in ORS 190.003, shall indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of the officers, agents, employees or subcontractors. It is the specific intention of the Parties that the State of Oregon shall, in all instances, except for claims arising solely from the negligent or willful acts or omissions of the State of Oregon, be indemnified from and against any and all claims.

22. Constraints. Pursuant to the requirements of ORS 279B.220 though 279B.335 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract:

- a. Contractor shall:
  - 1. Make all undisputed payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in this Contract.
  - 2. Pay all applicable contributions or amounts due the Industrial Accident Fund from such contractor or subcontractor incurred in the performance of this Contract.
  - 3. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.
  - 4. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
  - 5. Be responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, County will not withhold from such compensation or payments any amount(s) 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 or payments paid to Contractor under this Contract, except as a self-employed individual.
- b. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper offices representing County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of this Contract.
- c. Contractor shall promptly, as due, make payment to any person or partnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury to the employees of Contractor, of all sums which Contractor agrees to pay for such services, and all monies and sums which Contractor collected or deducted from the wages of Contractor's employees pursuant to any law, contract or Contract for the purpose of providing or paying for such services.
- d. Contractor shall pay employees at least time and a half for all overtime worked in excess of forty (40) hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under the Fair Labor Standards Act of 1938 (29 U.S. C. 201, et seq.) from receiving overtime. Persons employed under this contract shall receive at least time and a half for work performed on the legal holidays specified

in ORS 279B.020(1)(b)(B) to (G) and for all time worked in excess of ten (10) hours in any one day or in excess of forty (40) hours in any one week, whichever is greater.

- e. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein, which would conflict with law, are deemed inoperative to that extent.
- f. Contractor shall abide by all mandatory standards and policies which relate to energy efficiency and which are contained in the State of Oregon energy conservation plan that was issued in compliance with the Energy Policy and Conservation Act (PL 94-165).
- g. Contractor shall comply with Federal rules and statutes pertaining to the Substance Abuse and Mental Health Services Administration (SAMHSA) and Social Security (formerly Title XX) Community Health Services Block Grant(s); including the Public Health Services Act, especially sections 1914 (b)(1-5), 1915 (c)(12), 1916 (b)(2) and Public Law 97-35.
- h. The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury that the individual is authorized to act on behalf of Contractor, the individual has authority and knowledge regarding Contractors' payment of taxes, and to the best of the individual's knowledge, Contractor is not in violation of any Oregon tax laws.

23. Renewal. This Contract may be renewed, subject to County's approval and the availability of funding.

24. Debt Limitation. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore.

25. Compliance with provisions, requirements of funding source and Federal and State laws, statutes, rules, regulations, executive orders and policies. **See Exhibit 4.**

26. County Code Provisions. Except as otherwise specifically provided, the provisions of Deschutes County Code, Section 2.37.150 are incorporated herein by reference. Such code section may be found at the following URL address: <http://weblink.deschutes.org/public/0/doc/78735/Page1.aspx>.

27. Waiver.

- a. A Party's delay in exercising, or failure to exercise any right, power, or privilege under this Contract shall not operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Contract preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.
- b. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

28. Entire Contract. This Contract constitutes the entire Contract between the parties on the subject matter hereof.

- a. All understandings and agreements between the Parties and representations by either Party concerning this Contract are contained in this Contract.
- b. No waiver, consent, modification or change in the terms of this Contract shall bind either Party unless in writing and signed by both Parties.
- c. Any written waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given.

29. Severability. If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Contract did not contain the particular term or provision held invalid.

30. Survival. The provisions of paragraphs 2 to 10, 12 to 15, 18 to 22 shall survive the termination or expiration of this Contract.

31. Representations and Warranties.

- a. The Parties represents and warrants to the other Party that:
  - 1. Each Party has the power and authority to enter into and perform this Contract;



- 2. This Contract, when executed and delivered, shall be a valid and binding obligation of each Party's enforceable in accordance with its terms;
- 3. Each Party has the skill and knowledge possessed by well-informed members of its industry, trade or profession and the Parties will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in Contractor's industry, trade or profession;
- 4. The Parties shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work;
- 5. Each Party's making and performance of this Contract do not and will not violate any provision of any applicable law, rule or regulation or order to any court, regulatory commission, board or other administrative agency.

- b. Warranties Cumulative. The warranties set forth in this paragraph are in addition to, and not in lieu of, any other warranties provided.
- c. Contractor agrees that it will continue to operate or arrange for provision of an acute psychiatric treatment program within Contractor's treatment area until at least December 30, 2025.

32. SB 675 (2015) Representation and Covenant.

- a. Contractor represents and warrants that Contractor has complied with the tax laws of this state, and where applicable, the laws of Deschutes County, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318.
- b. The Parties covenant to continue to comply with the tax laws of this state, and where applicable, the laws of Deschutes County, during the term of this Contract.
- c. Contractor acknowledges that failure by Contractor to comply with the tax laws of this state, and where applicable, the laws of Deschutes County, at any time before Contractor has executed the Contract or during the term of the Contract is and will be deemed a default for which Deschutes County may terminate the Contract and seek damages and/or other relief available under the terms of the Contract or under applicable law.

33. Intentionally Omitted.

34. Intentionally Omitted.

- 35. Nondiscrimination. Contractor must provide services to clients without regard to race, color, religion, national origin, sex, age, marital status, sexual orientation, or disability (as defined under the Americans with Disabilities Act). Contracted Services must reasonably accommodate the cultural, language and other special needs of clients including, but not limited to, limited English language proficiency.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be executed, either as individuals, or by their officers, thereunto duly authorized.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2021

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

\_\_\_\_\_  
ANTHONY DEBONE, Chair

\_\_\_\_\_  
PHIL CHANG, Vice Chair

\_\_\_\_\_  
PATTI ADAIR, Commissioner

ATTEST:

\_\_\_\_\_  
Recording Secretary

DATED this \_\_\_\_ day of \_\_\_\_\_, 2021

ST. CHARLES HEALTH SYSTEM, INC.

DocuSigned by:  
Matt Swafford 10/7/2021  
Signature  
Matt Swafford

\_\_\_\_\_  
Print

**EXHIBIT 1**  
**DESCHUTES COUNTY SERVICES CONTRACT**  
**Contract No. 2021-246**  
**PES & Sage View**  
**STATEMENT OF WORK AND PAYMENT TERMS**

**1. Principles and Considerations:**

- a. The goal of Acute Care Psychiatric Services is the stabilization, control, and amelioration of acute dysfunctional symptoms or behaviors that result in the earliest possible return of the individual to a less restrictive environment per OAR 309-032-0870 (2).
- b. Deschutes County Health Services shall assume fiduciary accountability to the Oregon Health Authority for the Contract funds paid for acute care behavioral health service needs of indigent Central Oregon residents.
- c. Each of the three (3) counties (Crook, Deschutes, and Jefferson, collectively the "Counties") shall have designated diversion funds to assist with temporary housing costs, transportation fees, and medication costs.
- d. Counties and Contractor shall meet and collaborate with regards to: sharing information, claims data reconciliation, developing performance metrics and establishing a forum for regular communication.
- e. Counties and Contractor agree to serve on the Regional Acute Care Council to ensure appropriate and effective care and treatment. The council shall meet to assess and collaboratively plan for improving care and treatment to patients, including patients into and out of the service, per OAR 309-032-0870 (12).

**2. Services:**

- a. Contractor shall provide Acute Care Psychiatric Services to individuals age eighteen (18) years and older, in Crook, Deschutes, and Jefferson County who, due to a mental disorder cannot resolve his/her problems in a less restrictive, community setting and, who require the level of protection and security available in an acute 24-hour setting and who are indigent. Indigent is defined as the following:
  - i. At the time of admission, individual has no third-party insurance and has no ability to pay as defined by federal guidelines; or
  - ii. At the time of admission, individual has exhausted their Medicare and/or Commercial insurance benefits for behavioral health; or
  - iii. During the course of care, individual has exhausted all ability to pay, as outlined in paragraph i. and ii. of this paragraph 2, for services under this Contract and is receiving involuntary treatment.
- b. Contractor shall comply with all applicable State and Federal laws and regulations and provisions as incorporated herein as if fully set forth in this place.

**3. Specific Services:** Specifically, Contractor shall:

- a. Contractor shall provide twenty-four (24) hours a day, three hundred and sixty-five (365) days a year services. Contractor shall notify County Designee immediately regarding any impediment that materially affects Contractor's ability to provide the Services.
- b. Contractor shall provide emergency medical care if needed to individuals served under this contract. Contractor shall promptly notify the Crisis Manager/Supervisor if such care requires a transfer from Contractor's facility.
- c. Contractor agrees to not charge Counties for transport costs between the Psychiatric Emergency Services unit at St. Charles Health System, Inc. and Sage View.
- d. Contractor shall collaborate with the Behavioral Health Director - to determine utilization outcomes under this Contract.
- e. Contractor shall permit Director's Designees on-site access to individuals, medical records, and Contractor staff providing care to individuals served under this Contract.
- f. Contractor shall comply with generally accepted practices and procedures for coordination of benefits and third-party liability recovery and assist the Director's Designee and any other state agencies with such efforts.
- g. Parties shall collaborate in the resolution of grievances under this contract, including timely response to a request for information regarding such matters.

- h. Contractor and Director's Designees shall maintain in good standing all licenses, permits, certifications and accreditations required by law and regulation at all times during the term of this Contract. Contractor shall require all agents, employees and all subcontractors have and maintain in good standing all licenses, permits, certifications and accreditations required by law and regulation and upon request, provide Director's Designee with written evidence of the existence and good standing of all aforementioned licenses, permits, certifications and accreditation. Contractor shall make every effort to notify the Director's Designee as soon as possible but not later than five (5) business days whenever action of any kind is initiated against Contractor such as: (a) the suspension, restriction or loss of the Contractor's or subcontractor's license, permit, certification or accreditation, or (b) the imposition of any sanctions against any of the foregoing under Medicaid or any other government program; and Contractor shall immediately notify Director's Designee if any such action is initiated against any subcontractor.
- i. Contractor shall track all admissions and inpatient stays that utilize funding under this Contract and collaborate with the Director's Designee on reconciliation for individuals whose inpatient stay was covered under this Contract.
- j. Contractor shall provide Utilization Data Performance Metrics quarterly as follows:
  - i. Discharge Planning:
  - ii. Acute Care Patient Harms within Department: <10 Events in calendar year that meet the definitions of acute care patient harm: ADE Hypoglycemia, ADE Opioids, CDIFF, Falls with Injury, CAUTI, CLABSI, VAE, MDRO, SSI, DVT/PE

#### 4. Payment for Services:

- a. Maximum Compensation. The Maximum compensation for services outlined in this Exhibit 1 shall not exceed **\$297,000** (Maximum Compensation stated is inclusive of data performance metric being met). In consideration of aligning the contract from fiscal year (July to June) to calendar year, payment schedule is detailed as follows:
  - Effective January 1, 2021 to June 30, 2021, maximum compensation shall not exceed \$132,000.
  - Effective July 1, 2021 to December 31, 2021, maximum compensation shall not exceed \$165,000.
- b. County shall pay a ten percent (10%) data performance metric on the total amount paid during the contract period, not to exceed **\$24,000** for the term of the Contract. Contractor shall provide quarterly data as specified in section 3 (k) and invoice County for data performance metric with final quarterly invoice.
- c. Contractor agrees that payments will be applied to cover charges associated with the admission of indigent individuals for Sage View and PES services, including but not limited to room rate, associated staff time and professional fees (including psychiatrist/MD), psychiatric medications, lab work and medical care.
- d. The Parties agree the maximum compensation may not cover all costs associated with Services provided. Funds provided in this Contract shall be used to help support room rate, personnel costs including associated staff time, professional fees, psychiatric medications, lab work, medical care, supplies and other expenses as applicable to Services outlined in this Contract and that Contractor shall provide a quarterly accounting reflecting the total amount of expenses (detailing which expenses) and the payments applied.
- e. Parties agree funds may only be used for the delivery of the service or services set out in this Contract unless written permission is granted to use the funds for other services in accordance with this Contract.
- f. Parties agree that County shall make quarterly payments upon receipt and approval of Contractor's invoice. Effective July 1, Contractor shall invoice County quarterly per calendar year (invoice due October 15 and January 15) include a count of the total number of indigent bed days per individual per quarter. Cumulative invoices shall not exceed the amount of **\$297,000** for the contract term. Contractor shall invoice County for quarterly data performance metric with final invoice in the amount not to exceed \$24,000.
- g. County may be required to modify the maximum compensation through amendment of this Contract. If this maximum compensation amount is decreased or increased by amendment of this Contract, the amendment shall be fully effective before Contractor performs work subject to the amendment.

- h. Notwithstanding any other payment provision of this Contract, should Contractor fail to submit required reports, itemized receipts or documentation as outlined in this Contract, or fail to perform or document the performance of contracted Services; County shall immediately withhold payments under this Contract or reject part or all of the Contractor's invoice for payment.
- i. In the event that a statutorily required license or insurance is suspended or not extended to Contractor, County's obligation to provide reimbursement for Contractor's Services rendered without the necessary license or insurance will cease on the date of expiration or suspension of license and/or insurance.

**EXHIBIT 2  
DESCHUTES COUNTY SERVICES CONTRACT  
Contract No. 2021-246  
INSURANCE REQUIREMENTS**

**Contractor shall at all times maintain in force at Contractor's expense, each insurance noted below. Insurance coverage must apply on a primary or non-contributory basis. All insurance policies, except Professional Liability, shall be written on an occurrence basis and be in effect for the term of this contract. Policies written on a "claims made" basis must be approved and authorized by Deschutes County.**

**Workers Compensation** insurance must be in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027 to provider workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2).

**Professional Liability** insurance with an occurrence combined single limit of not less than:

Per Occurrence limit	Annual Aggregate limit
<input type="checkbox"/> \$1,000,000	<input type="checkbox"/> \$2,000,000
<input type="checkbox"/> \$2,000,000	<input type="checkbox"/> \$3,000,000
<input checked="" type="checkbox"/> \$4,000,000	<input checked="" type="checkbox"/> \$4,000,000

Professional Liability insurance covers damages caused by error, omission, or any negligent acts related to services provided under this Contract. The policy must provide extended reporting period coverage, sometimes referred to as "tail coverage" for claims made within two years after this Contract is completed.

The amounts indicated above, and not less than \$1,000,000 as determined by OHA, unless OHA approves in writing are applicable to contractors who provide services under the following Service Elements: A&D 03, A&D 60, A&D 62, A&D 63, A&D 64, A&D 65, A&D 66, A&D 81, A&D 82, A&D 83, A&D 84, MHS 01, MHS 04, MHS 05, MHS 08, MHS 09, MHS 10, MHS 12, MHS 13, MHS 15, MHS 16, MHS 16A, MHS 20, MHS 24, MHS 25, MHS 26, MHS 26A, MHS30, MHS 34, MHS 35, MHS 35A, MHS 35B, MHS 36, MHS 37, MHS 38, MHS 39.

The amounts indicated above, and not less than \$2,000,000 as determined by OHA, unless OHA approves in writing are applicable to contractors who provide services under the following Service Elements: A&D 61, A&D 67, A&D 71, MHS 27, MHS 28, MHS 28A, MHS 31.

Required by County                       Not required by County (one box must be checked)

**Commercial General Liability** insurance with a combined single limit of not less than:

<u>Per Single Claimant and Incident</u>	<u>All Claimants Arising from Single Incident</u>
<input type="checkbox"/> \$1,000,000	<input type="checkbox"/> \$2,000,000
<input type="checkbox"/> \$2,000,000	<input type="checkbox"/> \$3,000,000
<input checked="" type="checkbox"/> \$4,000,000	<input checked="" type="checkbox"/> \$4,000,000

Commercial General Liability insurance includes covering bodily injury, death, and property damage in a form and with coverages satisfactory to OHA, and not less than \$1,000,000. This insurance shall include personal injury liability, products and completed operations. .

The insurance coverages provided for herein must be endorsed as primary and non-contributory to any insurance of County, its officers, employees or agents. Each such policy obtained by Contractor shall provide that the insurer shall defend any suit against the named insured and the additional insureds, their officers, agents, or employees, even if such suit is frivolous or fraudulent. Such insurance shall provide County with the right, but not the obligation, to engage its own attorney for the purpose of defending any legal action against County, its officers, agents, or employees, and that Contractor shall indemnify County for costs and expenses, including reasonable attorneys' fees, incurred or arising out of the defense of such action.

The amounts indicated above, determined by OHA, unless OHA approves in writing are applicable to contractors who provide services under the following Service Elements: A&D 03, A&D 60, A&D 61, A&D 62, A&D 63, A&D 64, A&D 65, A&D 66, A&D 67, A&D 71, A&D 80, A&D 81, A&D 82, A&D 83, A&D 84, MHS 01, MHS 04, MHS 05, MHS 06, MHS 08, MHS 09, MHS 10, MHS 12, MHS 13, MHS 15, MHS 16, MHS 16A, MHS 20, MHS 24, MHS 25, MHS 26, MHS 26A, MHS 27, MHS 28, MHS 28A, MHS 30, MHS 31, MHS 34, MHS 34A, MHS 35, MHS 35A, MHS 35B, MHS 36, MHS 37, MHS 38, MHS 39.

Required by County                       Not required by County (One box must be checked)

**Automobile Liability** insurance with a combined single limit of not less than:

Per Occurrence

- \$1,000,000  
 \$2,000,000  
 \$3,000,000

Automobile Liability insurance coverage for all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for “Commercial General Liability” and “Automobile Liability”).

The amount indicated above, and not less than \$1,000,000 as determined by OHA, unless OHA approves in writing are applicable to contractors who provide services under the following Service Elements: A&D 61, A&D 62, A&D 63, A&D 66, A&D 71, A&D 81, A&D 82, A&D 83, MHS 04, MHS 09, MHS 12, MHS 13, MHS 15, MHS 16, MHS 16A, MHS 20, , MHS 24, MHS 25, MHS 26, MHS 26A, MHS 30, MHS 34, MHS 34A, MHS 36, MHS 37, MHS 39.

The amount indicated above, and not less than \$2,000,000 as determined by OHA, unless OHA approves in writing are applicable to contractors who provide services under the following Service Elements: MHS 27, MHS 28, MHS 28A.

Required by County       Not required by County      (one box must be checked)

**Additional Insured.** The Commercial General Liability insurance and Automobile Liability insurance must include the Deschutes County, the State of Oregon, their officers, employees, volunteers and agents as Additional insureds but only with respect to Contractor’s activities to be performed under this Contract. Coverage must be primary and non-contributory with any other insurance and self-insurance.

**Notice of Cancellation or Change.** Contractor or Contractor’s insurer must provide written notice to County at least thirty (30) calendar days before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

**Certificate of Insurance Required.** Contractor shall furnish a current Certificate of Insurance to the County The certificate(s) or an attached endorsement must specify: i) all entities and Individuals who are endorsed on the policy as Additional Insured; and ii) for insurance on a “claims made” basis, the extended reporting period applicable to “tail” or continuous “claims made” coverage.

**Tail Coverage.** If any of the required insurance policies is on a “claims made” basis, such as professional liability insurance, Contractor 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 Contract, for a minimum of twenty-four (24) months following the later of : (i) Contractor’s completion and County ’s acceptance of all Services required under this Contract or, (ii) the expiration of all warranty periods provided under this Contract. Notwithstanding the foregoing twenty-four (24) month requirement, if Contractor elects to maintain “tail” coverage and if the maximum time period “tail” coverage reasonably available in the marketplace is less than the twenty-four (24) month period described above, then Contractor may request and OHA may grant approval of the maximum “tail” coverage period reasonably available in the marketplace. If OHA approval is granted, the Contractor shall maintain “tail” coverage for the maximum time period that “tail” coverage is reasonably available in the marketplace.

**Workers Compensation.** Worker’s Compensation Insurance to cover claims made under Worker’s Compensation, disability benefit or any other employee benefit laws, including statutory limits in any state of operation with coverage B Employer’s Liability coverage all at the statutory limits. In the absence of statutory limits the limits of said Employers liability coverage shall not be less than \$1,000,000 each accident, disease and each employee. This insurance must be endorsed with a waiver of subrogation endorsement, waiving the insured’s right of subrogation against County.

**Exhibit 3**  
**DESCHUTES COUNTY SERVICES CONTRACT**  
**Contract No. 2021-246**  
**CONFIDENTIALITY AGREEMENT**

**1. INTRODUCTION**

This Confidentiality (the "Agreement") is entered into as of January 1, 2021 by and between St Charles Health System, Inc., an Oregon non-profit corporation, ("Contractor") and Deschutes County, a political subdivision of the State of Oregon, acting by and through its Health Care Component, Deschutes County Health Services ("County"), collectively referred to as "Party" or "Parties".

**WHEREAS**, in connection with the performance of the Services, Contractor may receive from the County or otherwise have access to certain information that is required to be kept confidential in accordance with the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder, as may be amended from time to time (collectively, "HIPAA"); and

**WHEREAS**, as a part of the American Recovery and Reinvestment Act, the federal Health Information Technology for Economic and Clinical Health Act (the "HITECH Act") was signed into law, imposing certain privacy and security obligations in addition to the obligations created by the Privacy Standards and Security Standards; and

**WHEREAS**, the HITECH Act revises many of the requirements of the Privacy Standards and Security Standards concerning the confidentiality of Protected Health Information (PHI) and Electronic Protected Health Information (EPHI), including extending certain HIPAA and HITECH Act requirements; and

**WHEREAS**, the HITECH Act requires that certain of its provisions be included in contractor agreements, and that certain requirements of the Privacy Standards be imposed contractually upon both Parties;

Therefore, in consideration of the foregoing premises and the mutual covenants and conditions set forth below and in the agreement between Contractor and County for Contractor's provision of services, intending to be legally bound, agree as follows.

**2. DEFINITIONS**

- A. "*Disclosure*" means the release, transfer, provision of access to, or divulging in any other manner, of PHI, outside Contractor's organization, i.e., to anyone other than its employees who have a need to know or have access to the PHI.
- B. "*Electronic Protected Health Information*" or "*EPHI*" means protected health information (as defined below) that is transmitted, stored, or maintained by use of any electronic media. For purposes of this definition, "electronic media" includes, but is not limited to, memory devices in computers (hard drives); removable/transportable digital memory media (such as magnetic tape or disk, removable drive, optical disk, or digital memory card); the internet; the extranet; leased lines; dial-up lines; private networks; or e-mail.
- C. "*Health Care Component*" means a Deschutes County department, office or division, that regularly provides healthcare services or that regularly creates, accesses, uses or maintains PHI, and that Deschutes County has designated as a HIPAA-covered component of the County.
- D. "*Protected Health Information*" or "*PHI*" means information transmitted by or maintained in any form or medium, including demographic information collected from an individual, that (a) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual; (b) individually identifies the individual or, with respect to which, there is a reasonable basis for believing that the information can be used to identify the individual; and (c) is received by Contractor from or on behalf of County, or is created by Contractor, or is made accessible to Contractor by County.
- E. "*Services*" means the acute care and post-commitment care services provided at the Sage View facility and Psychiatric Emergency Services Unit and identified in the Personal Services Contract to which this Exhibit 3 is attached.

F. "Use" (whether capitalized or not and including the other forms of the word) means, with respect to PHI, the sharing, employment, application, utilization, transmission, examination, or analysis of such information to, from or within Contractor's organization.

3. **AGREEMENT.** Each Party shall:

- A. not use PHI except as necessary to provide the Services.
- B. not disclose PHI to any third party without the other Party's prior written consent.
- C. not use or disclose PHI except as required or allowed under state and federal by law.
- D. implement appropriate safeguards to prevent unauthorized use or disclosure of PHI.
- E. comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of EPHI other than as provided for by this Agreement.
- F. mitigate, as much as possible, any harmful effect of which it is aware of any use or disclosure of PHI in violation of this Agreement.
- G. promptly report to the other party any use or disclosure of PHI not permitted by this Agreement of which Contractor becomes aware.
- H. make its internal practices, books, and records (including the pertinent provisions of this Agreement) relating to the use and disclosure of PHI, available to the Secretary of Health and Human Services for the purposes of determining County's compliance with HIPAA.
- I. return, or destroy, any PHI of the other Party still in a Party's possession upon conclusion or termination of the Services. If the return or destruction of such PHI is not feasible, the obligations under this Agreement shall continue in effect for so long as the Party retains such information, and any further use or disclosure of such PHI shall be limited to those purposes that make the return or destruction of the PHI infeasible.
- J. ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of a Party agree to the same restrictions, conditions, and requirements that apply under state and federal law with respect to security and privacy of such information.
- K. make PHI available to the other Party as necessary to satisfy said Party's obligation with respect to individuals' requests for copies of their PHI, as well as make available PHI for amendments (and incorporate any amendments, if required) and accountings.
- L. make any amendment(s) to PHI in a designated record set as directed or agreed to by the other Party pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy a Party's obligations under 45 CFR 164.526.
- M. to the extent the Contractor is to carry out one or more of County's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the County in the performance of such obligation(s).
- N. If a Party (a) becomes legally compelled by law, process, or order of any court or governmental agency to disclose PHI, or (b) receives a request from the Secretary of Health and Human Services to inspect the Party's books and records relating to the use and disclosure of PHI, the Party, to the extent it is not legally prohibited from so doing, shall promptly notify the other Party and cooperate with the other Party in connection with any reasonable and appropriate action the Party deems necessary with respect to such PHI.
- O. If any part of a Party's performance of business functions involves creating, receiving, storing, maintaining, or transmitting EPHI:
  - i. implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that it creates, receives, stores, maintains, or transmits on behalf of County, in accordance with the requirements of 45 CFR Part 160 and Part 164, Subparts A and C; and
  - ii. report to the other Party any security incident relating to the EPHI that a Party maintains for the other Party.



#### **4. HIPAA DATA BREACH NOTIFICATION AND MITIGATION**

- A. Each Party agrees to implement reasonable systems for the discovery and prompt reporting of any “breach” of “unsecured PHI” as those terms are defined by 45 C.F.R. §164.402 (hereinafter a “HIPAA Breach”). The parties acknowledge and agree that 45 C.F.R. §164.404, as described below in this Section, governs the determination of the date of a HIPAA Breach. Each Party will, following the discovery of a HIPAA Breach, notify the other Party immediately and in no event later than seven business days after a Party discovers such HIPAA Breach, unless the discovering Party is prevented from doing so by 45 C.F.R. §164.412 concerning law enforcement investigations.
- B. For purposes of reporting a HIPAA Breach, the discovery of a HIPAA Breach shall occur as of the first day on which such HIPAA Breach is known to the a Party or, by exercising reasonable diligence, would have been known to the Party. Each Party will be considered to have had knowledge of a HIPAA Breach if the HIPAA Breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the HIPAA Breach) who is an employee, officer or other agent of the Party. No later than seven (7) business days following a HIPAA Breach, the Party shall provide the other Party with sufficient information to permit the other Party to comply with the HIPAA Breach notification requirements set forth at 45 C.F.R. §164.400, *et seq.*
- C. Specifically, if the following information is known to (or can be reasonably obtained by) a Party making a HIPAA Breach notification (the “Notifying Party”), the Notifying Party will provide the other Party with: (i) contact information for individuals who were or who may have been impacted by the HIPAA Breach; (ii) a brief description of the circumstances of the HIPAA Breach, including its date and the date of discovery; (iii) a description of the types of unsecured PHI involved in the HIPAA Breach; (iv) a brief description of what the Notifying Party has done or is doing to investigate the HIPAA Breach, mitigate harm to the individual impacted by the HIPAA Breach, and protect against future HIPAA Breaches; and (v) contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.. Following a HIPAA Breach, the Notifying Party will have a continuing duty to inform the other party of new information learned by the Notifying Party regarding the HIPAA Breach, including but not limited to the information described herein.
- D. Data Breach Notification and Mitigation Under Other Laws. In addition to the requirements above, each Party agrees to implement reasonable systems for the discovery and prompt reporting of any breach of individually identifiable information (including but not limited to PHI, and referred to hereinafter as “Individually Identifiable Information”) that, if misused, disclosed, lost or stolen, the Party believes would trigger an obligation under one or more State data breach notification laws (each a “State Breach”) to notify the individuals who are the subject of the information.
- E. Breach Indemnification. Each Party (the “Indemnifying Party”) shall indemnify, defend and hold the other Party harmless from and against any and all actual losses, liabilities, damages, costs and expenses (collectively, “Information Disclosure Claims”) arising directly from (i) the use or disclosure of Individually Identifiable Information (including PHI) in violation of the terms of this Agreement or applicable law, and (ii) any HIPAA Breach of unsecured PHI and/or any State Breach of Individually Identifiable Information. The Indemnifying Party will assume the defense of any Information Disclosure Claim; the other Party may participate, at its expense, in the defense of such Information Disclosure Claim. the Indemnifying Party shall not take any final action with respect to any Information Disclosure Claim without the prior written consent of the Other Party.

#### **5. OTHER PROVISIONS**

- A. A breach under this Agreement shall be deemed to be a material breach of the Agreement.
- B. A Party (the “Terminating Party”) may immediately terminate this Agreement and the Service Agreement if the Terminating Party determines that the other Party has breached a material term of this Agreement. Alternatively, the Terminating Party may: (i) provide the other Party with written notice of the alleged material breach; and (ii) afford the other Party thirty (30) days to cure such breach to the satisfaction of the Terminating Party. If the other Party fails to cure the breach within the 30-day cure period, then Terminating Party may terminate this Agreement and the Service Agreement immediately. Terminating Party shall have the right to report any breach to the Secretary of Health and Human Services as provided for under 45 C.F.R. §164.504. This Agreement will automatically terminate without any further action of the Parties upon the termination or expiration of the last Service Agreement in effect between the Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed, either as individuals, or by their officers, thereunto duly authorized.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2021

DESCHUTES COUNTY HEALTH SERVICES

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2021

ST. CHARLES HEALTH SYSTEM, INC.

DocuSigned by: *Matt Swafford* 10/7/2021

\_\_\_\_\_  
Signature

Matt Swafford

\_\_\_\_\_  
Print

**Exhibit 5  
DESCHUTES COUNTY SERVICES CONTRACT  
Contract No. 2021-246**

**REQUIRED PROVIDER CONTRACT PROVISIONS**

**Oregon Health Authority Exhibit I of OHA #166040 Intergovernmental Agreement**

- 1. Expenditure of Funds.** Contractor may expend the funds paid to Contractor under this Contract solely on the delivery of services as described in Exhibit 1 of this Contract (“Services”), subject to the following limitations (in addition to any other restrictions or limitations imposed by this Contract):
- a. Contractor may not expend on the delivery of Services any funds paid to Contractor under this Contract in excess of the amount reasonable and necessary to provide quality delivery of Services.
  - b. If this Contract requires Contractor to deliver more than one service, Contractor may not expend funds paid to Contractor under this Contract for a particular service on the delivery of any other service.
  - c. If this Contract requires Contractor to deliver Addiction Treatment, Recovery & Prevention and Problem Gambling Services, Contractor may not use the funds paid to Contractor under this Contract for such services:
    - (1) Provide inpatient hospital services;
    - (2) Make cash payments to intended recipients of health services;
    - (3) Purchase or improve land, to purchase, construct or permanently improve (other than minor remodeling) any building or other facility or to purchase major medical equipment;
    - (4) Satisfy any requirement for expenditure of non-federal funds as a condition for receipt of federal funds (whether the federal funds are received under this Contract or otherwise);
    - (5) Carry out any program prohibited by section 245(b) of the Health Omnibus Programs Extension Act of 1988 (codified at 42 U.S.C. 300ee(5)), which generally prohibits funds provided under this Contract from being used to provide Individuals with hypodermic needles or syringes so that such Individuals may use illegal drugs, unless the Surgeon General of the Public Health Service determines that a demonstration needle exchange program would be effective in reducing drug abuse.
  - f. **Reporting.**  
All Individuals receiving Services with funds provided under this Contract must enroll and maintain that Individual’s record maintained in the Measures and Outcome Tracking System (MOTS) as specified in OHA’s MOTS Reference Manual, located at: <http://www.oregon.gov/oha/hsd/amh-mots/Pages/index.aspx>, and the “Who Reports in MOTS Policy” as follows:

**Which Behavioral Health Providers are Required to Report in MOTS?**

The data collection system for the Health Systems Division (HSD) is the Measures and Outcomes Tracking System or MOTS. In general, behavioral health providers who are either licensed or have a letter of approval from the HSD (or the former Addictions & Mental Health Division [AMH]), and receive public funds to provide treatment services are required to report to MOTS. In addition to the general rule above, there are four basic ways to classify who is required to submit data to MOTS:

- (1) Providers with HSD contracts that deliver treatment services (this includes Community Mental Health Programs [CMHP], Local Mental Health Authorities [LMHA] and other types of community behavioral health providers); These programs should all have a license or letter of approval from the HSD or AMH;
- (2) Providers that are subcontractors (can be a subcontractor of a CMHP or other entity that holds a contract with HSD or OHA, such as a Mental Health Organization [MHO], or a Coordinated Care Organization [CCO]);
- (3) Providers that HSD does not contract with but are required to submit data to MOTS by State/Federal statute or rule; These include DUII providers and methadone maintenance providers;
- (4) Providers that contract with other governmental agencies (e.g., Oregon Youth Authority [OYA] or the Department of Corrections [DOC] to deliver mental health and/or substance abuse services).

Note: Primary care physicians that provide a single service on behalf of the CMHP are not required to report the MOTS status or service level data. If there are any questions, contact MOTS Support at [MOTS.Support@state.or.us](mailto:MOTS.Support@state.or.us).

**3. Alternative Formats of Written Materials.** In connection with the delivery of the Services, Contractor shall make available to Client, without charge, upon the Client's reasonable request:

- a. All written materials related to the services provided to the Client in alternate formats.
- b. All written materials related to the services provided to the Client in the Client's language.
- c. Oral interpretation services related to the services provided to the Client in the Client's language.
- d. Sign language interpretation services and telephone communications access services related to the services provided to the Client.

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

**4. Reporting Requirements.** Contractor shall prepare and furnish the following information to County and the Oregon Health Authority when a service is delivered under this Contract:

- a. Individual, service and financial information as specified in the applicable Service Description attached hereto and incorporated herein by this reference.
- b. All additional information and reports that County or the Oregon Health Authority reasonably requests, including, but not limited to, the information or disclosures described in Exhibit 4, Required Federal Terms and Conditions, Section 14, Disclosure.

**5. Compliance with Law.** Each Party shall comply with all state and local laws, regulations, executive orders and ordinances applicable to the Contract or to the delivery of services hereunder. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract:

- a. all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations;
- b. all state laws governing operation of community mental health programs, including without limitation, all administrative rules adopted by the Oregon Health Authority related to community mental health programs or related to client rights, OAR 943-005-0000 through 943-005-0070, prohibiting discrimination against Individuals with disabilities;
- c. all state laws requiring reporting of abuse of an Individual; and
- d. 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 Contract. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated. All employers, including Contractor, 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, Contractor shall comply, as if it were County thereunder, with the federal requirements set forth in Exhibit H "Required Federal Terms and Conditions," to the certain January 1, 2021 to December 31, 2021 Intergovernmental Agreement for the Financing of Community Mental Health, Addiction Treatment, Recovery & Prevention, and Problem Gambling Services between County and the Oregon Health Authority dated as of July 1, 2021, which Exhibit is incorporated herein by this reference. For purposes of this Contract, all references in this Contract to federal and state laws are references to federal and state laws as they may be amended from time to time.

6. Unless Contractor is a State of Oregon governmental agency, Contractor agrees that it is an independent contractor and not an agent of the State of Oregon, the Oregon Health Authority or County.
7. To the extent permitted by applicable law, Contractor shall defend (in the case of the state of Oregon and the Oregon Health Authority, subject to ORS Chapter 180), save and hold harmless the State of Oregon, the Oregon Health Authority, County, and their officers, employees, and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of or relating to the operations of the Contractor, including but not limited to the activities of Contractor or its officers, employees, subcontractors or agents under this Contract.
8. Contractor understands that Contractor may be prosecuted under applicable federal and state criminal and civil laws for submitting false claims, concealing material facts, misrepresentation, falsifying data system input, other acts of misrepresentation, or conspiracy to engage therein.
9. Contractor shall only conduct transactions that are authorized by the County for transactions with the Oregon Health Authority that involve County funds directly related to this Contract.
10. Contractor(s) that are not units of local government as defined in ORS 190.003 shall obtain, at Contractor's expense, and maintain in effect with respect to all occurrences taking place during the term of the Contract, insurance requirements as specified in Exhibit C of this Contract.
11. Contractor(s) that are not units of local government as defined in ORS 190.003, shall indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Provider or any of the officers, agents, employees or subcontractors of the contractor( "Claims"). It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by the Contractor from and against any and all Claims.
12. Contractor shall include sections 1 through 11, in substantially the form set forth above, in all permitted Contractor contracts under this Contract.

**Exhibit J**  
**DESCHUTES COUNTY SERVICES CONTRACT**  
**Contract No. 2021-246**  
**CATALOGUE OF FEDERAL DOMESTIC ASSISTANCE NUMBER LISTING**

If County purchases a Service, or portion thereof, from a subcontractor, the contract or agreement must be in writing, identify for subcontractor the amount of federal funds included in the contract or agreement, provide the CFDA number, and contain each of the provisions set forth in Oregon Health Authority Agreement with Deschutes County, Exhibit 5, "Required Provider Contract Provisions," in substantially the form set forth therein, in addition to any other provisions that must be included to comply with applicable law or that are necessary to implement service delivery in accordance with the applicable service descriptions and/or statement of work.

<b>Deschutes County</b>				
<b>Service Description #</b>	<b>Service Description Name</b>	<b>Vendor or Sub-recipient</b>	<b>All Funding Sources</b>	<b>CFDA #</b>
MHS 01	System Management and Coordination		N/A	
A&D 03	System Management and Coordination - Addictions Services		N/A	
A&D 60	Start-Up - Addictions Services		N/A	
A&D 61	Adult Addiction Treatment, Recovery & Prevention Residential Treatment Services		N/A	
A&D 62	Supported Capacity for Dependent Children Whose Parents are in Adult Addition Residential Treatment		N/A	
A&D 63	Peer Delivered Services		N/A	
A&D 64	Housing Assistance		N/A	
A&D 65	Intoxicated Driver Program Fund (IDPF)		N/A	
A&D 66	Community Behavioral and Addiction Treatment, Recovery & Prevention Services	Subrecipient	SAPT	93.959
A&D 67	Addiction Treatment, Recovery & Prevention Residential & Day Treatment Capacity		N/A	
A&D 71	Youth Addiction, Recovery & Prevention Residential Treatment Services		N/A	
A&D 80	Problem Gambling Prevention Services		N/A	
A&D 81	Problem Gambling Treatment Services		N/A	
A&D 82	Problem Gambling Residential Services		N/A	
A&D 83	Problem Gambling Respite Treatment Services		N/A	
A&D 84	Problem Gambling Client Finding Outreach Services		N/A	
MHS 04	Aid and Assist Client Services		N/A	

<b>Deschutes County</b>				
<b>Service Description #</b>	<b>Service Description Name</b>	<b>Vendor or Sub-recipient</b>	<b>All Funding Sources</b>	<b>CFDA #</b>
MHS 05	Assertive Community Treatment Services		N/A	
MHS 08	Crisis and Acute Transition Services (CATS)	Subrecipient	MHBG	93.958
MHS 09	Jail Diversion		N/A	
MHS 10	Mental Health Promotion and Prevention Services		N/A	
MHS 12	Rental Assistance Program Services		N/A	
MHS 13	School-Based Mental Health Services		N/A	
MHS 15	Young Adult Hub Programs (YAHP)		N/A	
MHS 16	Peer Delivered Services (PDS)		N/A	
MHS 16A	Veterans Peer Delivered Services		N/A	
MHS 20	Non-Residential Mental Health Services For Adults	Subrecipient	MHBG	93.958
MHS 22	Non-Residential Mental Health Services For Child and Youth		N/A	
MHS 24	Acute and Intermediate Psychiatric Inpatient Services		N/A	
MHS 25	Community MH Crisis Services for Adults and Children		N/A	
MHS 26	Non-Residential Mental Health Services for Youth & Young Adults In Transition	Subrecipient	MHBG	93.958
MHS 26A	Early Assessment and Support Alliance (EASA)		N/A	
MHS 27	Residential Mental Health Treatment Services for Youth and Young Adults In Transition		N/A	
MHS 28	Residential Treatment Services		N/A	
MHS 28A	Secure Residential Treatment Facility		N/A	
MHS 30	Monitoring, Security and Supervision Services for Individuals under the Jurisdiction of the Adult and Juvenile Panels of the Psychiatric Security Review Board		N/A	
MHS 31	Enhanced Care and Enhanced Care Outreach Services		N/A	
MHS 34	Adult Foster Care Services		N/A	

<b>Deschutes County</b>				
<b>Service Description #</b>	<b>Service Description Name</b>	<b>Vendor or Sub-recipient</b>	<b>All Funding Sources</b>	<b>CFDA #</b>
MHS 35	Older or Disabled Adult Mental Health Services		N/A	
MHS 35A	Gero-Specialist		N/A	
MHS 35B	APD Residential		N/A	
MHS 36	Pre-Admission Screening and Resident Review Services (PASRR)		N/A	
MHS 37	Start-Up - Community Mental Health		N/A	
MHS 38	Supported Employment Services		N/A	
MHS 39	Projects For Assistance In Transition From Homelessness Services (PATH)	Subrecipient	PATH	93.150