

STATE OF TEXAS

COUNTY OF MONTGOMERY

Interlocal Cooperation Agreement

(Regarding Housing of Inmates)

This Interlocal Cooperation Agreement (“Agreement”) is entered into effective the date of last execution herein (“Effective Date”), by and between Montgomery County, Texas, a political subdivision of the State of Texas (“County”) with the Montgomery County Sheriff as its authorized designee, and Waller County, Texas, a political subdivision of the State of Texas (“Contractor”) with the Waller County Sheriff as its authorized designee. County and Contractor may each hereafter be referred to as a “Party” or collectively as the “Parties.” This Agreement is entered into by the Parties under the Interlocal Cooperation Act, Texas Government Code Chapter 791.

Witnesseth

Whereas, under circumstances involving crowding, safety, emergency, disaster, operational or other applicable concerns, County may seek to provide for the housing and care of certain inmates of County outside the then available capacity/resources of County’s jail facility; and

Whereas, Contractor currently has excess capacity and the ability to provide housing and care for such inmates at the Waller County Jail (“Jail”); and

Whereas, the Parties desire to enter into this Agreement under which Contractor will provide detention services for inmates of County at the Jail as needed.

Now, therefore, in consideration of the mutual covenants and agreements stated herein, the Parties agree as follows:

Article I: Purpose

- 1.01 The purpose of this Agreement is to establish the terms and conditions under which Contractor will provide to County detention services for County inmates at the Jail.

Article II: Term

- 2.01 The initial term (“Initial Term”) of this Agreement shall commence on the Effective Date stated herein below and shall terminate on September 30, 2025. Thereafter, the Agreement shall renew automatically for consecutive one (1) year terms (each a “Renewal Term”) until and unless either County or Contractor provides the other Party with written notice of its desire to terminate the Agreement as further provided herein. Each Renewal Term shall be on the same terms and conditions except as provided

herein. All agreements between the Parties are set out in this Agreement, and oral agreements not contained in this Agreement will not be enforceable against either Party.

- 2.02 Non-appropriation: Notwithstanding Article II, Section 2.01 herein, this Agreement will terminate if sufficient funds are not appropriated by the Montgomery County Commissioners Court to meet the County's fiscal obligations herein during budget planning and adoption for any of the following fiscal years from the Effective Date herein, or if sufficient funds are not appropriated by the Waller County Commissioners Court to meet the Contractor's service obligations agreed hereto in any fiscal year. The parties understand that County's fiscal year is October 1 – September 30, and Contractor's fiscal year is January 1 – December 31. In such event, the terminating Party agrees to give the non-terminating Party thirty (30) calendar days' written notice before such termination, without incurring a breach hereto. This Agreement shall continue in force until the effective date of the termination.
- 2.03 The Parties agree that, notwithstanding any contrary language herein, either Party may terminate this Agreement at any time with or without cause by giving the other Party thirty (30) calendar days' written notice of its intention to terminate. This Agreement shall continue in force until the effective date of the termination.
- 2.04 In no event shall County be responsible or liable for any charges alleged to have been incurred hereunder beyond the effective date of the termination of this Agreement, provided that Contractor no longer has physical possession or custody of any of County's inmates on the effective date of the termination.
- 2.05 County's obligation to pay Contractor for services rendered through the effective date of the termination shall survive the termination of this Agreement.

Article III: Designated Representatives

- 3.01 County through its authorized designee hereby appoints Assistant Chief Eric Hensley, Montgomery County Jail Administrator, as its designated representative under this Agreement.
- 3.02 Contractor through its authorized designee hereby appoints Captain Dawn Miller, Waller County Jail Administrator, as its designated representative under this Agreement.
- 3.03 A Party may change its designated representative at any time by providing the other Parties with written notice of the change under Article X, Section 10.01 herein. A change to designated representative(s) only may also be provided via email to the other Party, if email addresses for other points of contact for each Party are available, provided that such change via email shall be acknowledged in writing by the recipient Party to be effective hereunder.

Article IV: Obligations

- 4.01 As and when requested by County, Contractor agrees to accept and provide for the secure custody, care, and safekeeping of inmates of County in accordance with state and local law, including the minimum standards promulgated by the Texas Commission on Jail Standards (“Jail Commission”), subject to Article IV, Section 4.06 herein. The Parties agree that an inmate of County shall be eligible for incarceration at the Jail under this Agreement provided that the incarceration of such inmate is in accordance with the standards under the Jail Commission approved custody assessment system in place at the Jail. Contractor understands and agrees that County shall have sole discretion as to the number of inmates of County to send to the Jail, including whether to send any inmates at all, and that County does not guarantee a minimum number of inmates to be housed in the Jail under this Agreement. County understands and agrees that Contractor shall have sole discretion as to the number of County’s inmates it accepts at the Jail. Furthermore, County understands and agrees that Contractor will house County’s inmates provided the Jail has available beds and the requisite staff, supplies, or other necessary resources to accommodate the additional inmates.
- 4.02 Contractor shall provide housing, care, meals, and routine medical services for such inmates on the same basis as it provides for its own inmates confined in the Jail, subject to the terms and conditions of this Agreement. Routine medical services provided to County’s inmates shall also be in accordance with Contractor’s Health Services Plan for Contractor’s inmates as required by Texas Administrative Code, Title 37, Part 9, Chapter 273, Rule 273.2.
- 4.03 Contractor agrees that it is not responsible for the transportation of inmates of County to and from the Jail, including but not limited to transportation of inmates to and from court proceedings and hearings; transportation of inmates to the Texas Department of Criminal Justice, Institutional Division, for confinement; and/or transportation of inmates to and from County for any purpose, including non-routine medical services not covered by this Agreement, as provided in Article IV, Section 4.04 herein. County agrees to provide Contractor with at least one (1) hour of notice prior to picking up an inmate for transportation, and will notify Contractor at the time of pickup if and when the inmate is to be returned to the Jail.
- 4.04 Contractor agrees to provide reasonable medical services to inmates of County only as follows:
- (a) Contractor shall provide routine medical services to inmates of County in the Jail, including on-site sick call (provided by on-site staff) and non-prescription, over-the-counter/non-legend and routine drugs and medical supplies; and
 - (b) Contractor shall provide non-routine medical services to inmates of County, which are necessitated by an emergency or by a life-threatening medical situation, including ambulance transportation or emergency flight if required. The non-routine medical services shall be at the cost of County.

If an inmate of County requires medical services other than those described in Article IV, Section 4.04(a) herein, including but not limited to emergency services, dental services, optical services, mental health services, and prescription drugs and treatments, Contractor agrees to contact County's designated representative to advise the designated representative of: (i) the identity of the County inmate; (ii) the type of the medical services and/or treatments Contractor has determined the County inmate requires; (iii) any services or treatments the County inmate has received at the Jail in connection with the illness or condition for which Contractor is contacting County's designated representative; and (iv) the arrangements which have been made to transport the County inmate back to Montgomery County to receive the medical services and/or treatments. In addition, should a County inmate be hospitalized for any reason at a non-Montgomery County facility, Contractor shall provide County with the information required in items (i) through (iv) herein as well as a contact name and telephone number for a representative at the medical facility treating the County inmate that is familiar with the County inmate's condition, if Contractor has such information. County shall provide an adequate number of guards to the off-site location to guard County's inmate. If Contractor provides guards for one of County's inmates at an off-site location, County will reimburse Contractor at the guard's standard hourly rate. County reserves the right to retake physical custody of applicable inmate(s) at any time to manage costs and utilization of services.

- (c) With the aim of mutual compliance with applicable state and federal laws, as regards the provision of aforementioned health related services, and information related thereto, under this Agreement, County and Contractor hereby execute and incorporate within this Agreement, a Health Insurance Portability and Accountability Act of 1996 (HIPAA) Business Associate Addendum, attached herewith as **Exhibit A**.

- 4.05 Contractor and County understand that the detention services to be provided under this Agreement include basic custodial care and supervision and do not include any special educational, vocational, or other programs.
- 4.06 County understands and agrees that Contractor, in its sole discretion, may refuse to accept physical custody of any County inmate for incarceration in the Jail. Contractor reserves the right for Contractor to review the background of inmates sought to be transferred to the Jail, and County agrees to cooperate with and provide information reasonably requested regarding any such inmate if, in the reasonable judgment of Contractor's designated representative, a particular inmate's behavior, medical, or psychological condition, or other circumstances of reasonable concern, makes the inmate unacceptable for incarceration in the Jail. County will only seek to transfer to the Jail inmates that i) are in good general health, ii) have stabilized mental health, and iii) have no history of serious disciplinary or behavioral problems.
- 4.07 Contractor further agrees that should a prisoner be injured while being housed by Contractor, that Contractor will, within ten (10) hours, notify County of said

injury, and within a reasonable time, provide County with copies of all incident reports relating to the injury.

- 4.08 County shall be responsible for the discharge of its inmates. County shall notify Contractor at least three (3) business days prior to the anticipated discharge date for inmates of County, unless such notice is not reasonably possible, in which case, County shall notify Contractor as soon as reasonably possible. County shall transport its inmates back to County's jail facilities for discharge or release. Contractor will not discharge or release County's inmates except in exceptional circumstances, and when written notice is provided to Contractor that an inmate must be released without being transported back to County.
- 4.09 County shall reimburse Contractor for any mutually agreed upon damages caused to Contractor's facilities by County's inmates.
- 4.10 Contractor shall not be liable to County for any claims, damages, or attorney's fees arising from or related to the intentional acts, negligence, wrongful acts, or omissions of Contractor's officials or employees. County shall not be liable to Contractor for any claims, damages, or attorney's fees arising from or related to the intentional acts, negligence, wrongful acts, or omissions of County's officials or employees. In no event shall either party be deemed to have waived any immunity, defense or liability cap available to it by law.
- 4.11 INDEMNIFICATION. NEITHER PARTY INDEMNIFIES THE OTHER. IN NO EVENT SHALL COUNTY OR CONTRACTOR BE DEEMED TO HAVE WAIVED ANY IMMUNITY, DEFENSE OR LIABILITY CAP AVAILABLE TO EITHER BY LAW.

Article V: Payment for Services

- 5.01 County agrees to pay Contractor a per diem rate for detention services under this Agreement in the amount of **Seventy-five dollars and no cents (\$75.00) for each inmate for each day that detention services are provided from the Effective Date**. The Parties agree that a portion of any day shall be computed as a full day under this Agreement and subject to the per diem rate only on the day of arrival of the inmate to the Jail. County shall not be responsible for any pro-rated per diem fees for any partial day that includes the day of departure of any inmate. Contractor may change the per diem rate for subsequent terms upon thirty (30) business days written notice to County.
- 5.02 County understands and acknowledges that only routine medical services, as described in Article IV, Section 4.04(a) herein, are included in the per diem rate for detention services provided under this Agreement, and that medical expenses for services that are required to be provided under Article IV, Section 4.04(b) herein shall be the responsibility of County. If a medical provider refuses to bill County directly for services provided under Article IV, Section 4.04(b), County shall

reimburse Contractor for such costs paid by Contractor, provided supportive documentation is received by County from Contractor verifying such bill.

- 5.03 Contractor agrees to issue a monthly invoice to County addressed to the Montgomery County Auditor at 501 North Thompson, Suite 205, Conroe, Texas, 77301, with a copy to County's designated representative. Such statement shall detail the amount of compensation due and expenses incurred that are the responsibility of County under this Agreement as well as the period of time for which the invoice applies. The invoice submitted by Contractor hereunder shall be paid in accordance with Texas Government Code Chapter 2251. If any amount set out in any invoice is disputed by County, the County agrees to notify Contractor in writing of the disputed amount, and the basis for the dispute, within fifteen (15) business days of receipt of such invoice. The Parties agree that only payment of the disputed amount may be retained by County until the disputed matter is resolved, and that payment of the undisputed balance must be paid in accordance with this Article V, Section 5.03.
- 5.04 No debt shall be incurred, or deemed to have been incurred, under this Agreement by either Party herein. Payments by County to Contractor for the detention service provided under this Agreement must be made from current revenues available to County. The payment of funds under any provision of the Agreement by County is contingent upon an appropriation by County to cover the provisions of the Agreement. In the event that County fails to appropriate sufficient funds to cover the services provided under this Agreement during budget planning and adoption for any of the following fiscal years from the Effective Date herein, County shall within thirty (30) calendar days notify Contractor in writing of such failure. Neither County, its elected officials, employees, agents, insurers, attorneys, nor any other individual acting on behalf of County may make any representation or warranty as to whether any appropriation will, from time to time, be made by the governing body of County. The failure of County to appropriate sufficient funds will not cause County to be in default under this Agreement, and Contractor's sole and exclusive remedy shall be to terminate this Agreement. County shall pay Contractor for any services rendered under this Agreement prior to the effective date of the termination.

Article VI: Records

- 6.01 County agrees to provide Contractor with copies of all inmate classifications and detention records applicable to each inmate that is to be detained at the Jail under this Agreement as well as any medical records or other relevant information in the possession of County for each such inmate, including information regarding any special medication, diet, or exercise regimen applicable to each such inmate.

- 6.02 Upon request, Contractor agrees to provide County with copies of any records or reports maintained by Contractor that are applicable to the particular inmate of County relating to that inmate's detention at the Jail under this Agreement.
- 6.03 The Parties agree that Contractor shall not be responsible for the computation or processing of any inmate's time of confinement, including, but not limited to, computation of good time awards/credits and discharge dates. In addition, Contractor shall not be responsible for paperwork arrangements for any inmate that is to be transferred to the Texas Department of Criminal Justice, Institutional Division. All of the foregoing recordkeeping and/or paperwork requirements shall continue to be the responsibility of County.
- 6.04 County agrees to comply with all of Contractor's booking procedures.

Article VII: Texas Law to Apply

- 7.01 This Agreement shall be construed under and in accordance with the laws of the State of Texas, and exclusive venue for any proceeding shall be in Montgomery County, Texas.

Article VIII: Legal Construction

- 8.01 If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalid, illegal, or unenforceable provision shall not affect any other provisions hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Article IX: Amendments

- 9.01 No amendment, modification, or alteration of the terms hereof shall be binding unless in writing, dated subsequent to the date of this Agreement, and duly authorized by the governing bodies of County and Contractor.

Article X: Notices

- 10.01 All notices to be given under this Agreement shall be in writing and shall either be personally served against a written receipt therefore or given by certified or registered mail, return receipt requested, postage prepaid, and addressed to the proper party at the address which appears below or at such other address as the Parties may designate in writing. All notices given by mail shall be deemed to have been given three (3) calendar days after the time of deposit in the United States mail and shall be effective from such date.

If to County: Montgomery County Judge
 501 North Thompson St., Suite 401
 Conroe, Texas 77301

With copy to: Assistant Chief Eric Hensley
Montgomery County Sheriff's Office
#1 Criminal Justice Drive
Conroe, Texas 77301

If to Contractor: Waller County Judge
425 FM 1488, Suite 106
Hempstead, TX 77445

With copy to: Captain Dawn Miller
Waller County Sheriff's Office
100 Sheriff R. Glenn Smith Drive
Hempstead, TX 77445

Article XI: Assignment

11.01 Neither Party may assign its rights, privileges, or obligations under this Agreement, in whole or in part, without the prior written consent of the other Party. Any attempt to assign without such approval shall be void.

Article XII: Compliance with Laws and Ordinances

12.01 The Parties hereby agree to comply with all federal, state, and local laws and ordinances applicable to the services to be performed under this Agreement.

Article XIII: Prior Agreements Superseded

13.01 This Agreement constitutes the sole and only agreement of the Parties hereto and supersedes all prior understandings or written or oral agreements between the Parties regarding the subject matter of the Agreement.

Article XIV: Multiple Counterparts

14.01 This Agreement may be executed in counterparts by the Parties hereto and each counterpart, when fully executed and delivered, shall constitute an original instrument and such separate counterparts shall constitute but one and the same instrument.

Article XV: Parties Bound

15.01 This Agreement shall be binding upon and inure only to the benefit of the Parties hereto and their respective successors and assigns where permitted by this Agreement. There are no third-party beneficiaries to this Agreement.

Article XVI: Independent Parties

- 16.01 Each Party has and retains the exclusive right of control over its employees and contractors assigned to perform services under this Agreement. Neither Party has the authority to bind or otherwise obligate the other Party orally, in writing, or otherwise. Each Party providing services to the other Party pursuant to this Agreement is providing services as an independent contractor. Nothing in this Agreement creates an employer-employee relationship between the employees of one Party and the other Party.

Article XVII: Force Majeure

- 17.01 Except for the obligation to pay for services rendered, each party may be relieved of any obligation to the extent that its ability to perform its obligation is prevented or impaired by any cause generally recognized under Texas law as force majeure.

Article XVIII: Insurance

- 18.01 Each Party will maintain property and general liability insurance, auto insurance, public officials and law enforcement liability insurance, workers compensation insurance and any other coverage as may be applicable to the performance of the Party herein, either via an authorized carrier(s) in Texas or via its self-insurance program. Any and all claims shall be filed by each Party hereto under its own policies and not the policies of the other Party. Nothing in this Agreement shall be deemed to create an employer/employee or principal/agent relationship between the Parties hereto and each Party shall be solely responsible for the payroll, equipment, provision of benefits and tax filing responsibilities of its own personnel.

Executed in multiple counterparts, each of which shall have the full force and effect of an original, this document is made effective on the date of last execution herein below stated (“Effective Date”).

WALLER COUNTY, TEXAS

MONTGOMERY COUNTY, TEXAS

Carbett “Trey” J. Duhon III, County Judge

Mark J. Keough, County Judge

John A. Amsler, Comm. Pct. 1

Robert C. Walker, Comm. Pct. 1

Walter E. Smith, Comm. Pct. 2

Charlie Riley, Comm. Pct. 2

Kendric D. Jones, Comm. Pct. 3

M. Ritchey Wheeler, Comm. Pct. 3

Justin Beckendorff, Comm. Pct. 4

Matt Gray, Comm. Pct. 4

ATTEST:

ATTEST:

Debbie Hollan, County Clerk

L. Brandon Steinmann, County Clerk

APPROVED:

APPROVED:

Dawn Miller, Jail Administrator

Eric Hensley, Jail Administrator

Date: _____

Date: _____

Attachment: ***Exhibit A***

Exhibit A

BUSINESS ASSOCIATE ADDENDUM

1. PREAMBLE

Montgomery County, Texas (“Covered Entity”) and Waller County, Texas (“Business Associate”) (jointly “the Parties”) wish to attach and incorporate the terms of this Business Associate Addendum (“Addendum”) within the Agreement regarding the underlying health services agreement that has been or will be executed between Covered Entity and Business Associate (“Agreement”), contemporaneously with this instrument, to comply with, to the full extent applicable, the requirements of: (i) the implementing regulations at 45 C.F.R Parts 160, 162, and 164 for the Administrative Simplification provisions of Title II, Subtitle F of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) (i.e., the HIPAA Privacy, Security, Electronic Transaction, Breach Notification, and Enforcement Rules (“the Implementing Regulations”)), (ii) the requirements of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (the “HITECH Act”) that are applicable to business associates, and (iii) the requirements of the final modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules as issued on January 25, 2013 and effective March 26, 2013 (75 Fed. Reg. 5566 (Jan. 25, 2013)) (“the Final Regulations”). The Implementing Regulations, the HITECH Act, and the Final Regulations, as amended from time to time, are collectively referred to in this Addendum as “the HIPAA Requirements”.

Covered Entity and Business Associate agree to incorporate into this Addendum, and deem incorporated herein, any regulations issued by the U.S. Department of Health and Human Services (“DHHS”) with respect to the HIPAA Requirements that relate to the obligations of business associates and that are required to be (or should be) reflected in a business associate agreement, whether such regulations are expressly stated or referenced herein or otherwise. Business Associate further recognizes and agrees that it is obligated by law to continuously meet the applicable provisions of the HIPAA Requirements, as amended, and that it has direct liability for any violations of said HIPAA Requirements. The Term of this Addendum is subject to the execution of the Agreement by both parties thereto, shall commence as of the effective date of the Agreement, and shall terminate on the date of termination of the Agreement or on the date Covered Entity terminates for cause as authorized in this Addendum, whichever is sooner. A violation of a term, or termination of this Addendum, pursuant to the terms herein, shall entitle Covered Entity to pursue any and all applicable remedies, and take all appropriate action to protect its/their interests, to the extent allowed by law, this Addendum and the Agreement.

2. DEFINITIONS

- a) “Breach” shall mean, as defined in 45 C.F.R. § 164.402, the acquisition, access, use or disclosure of Unsecured Protected Health Information in a manner not permitted by the HIPAA Requirements that compromises the security or privacy of that Protected Health Information.
- b) “Business Associate Subcontractor” shall mean, as defined in 45 C.F.R. § 160.103, any entity (including an agent) that creates, receives, maintains or transmits Protected Health Information on behalf of Business Associate.

- c) “Electronic PHI” shall mean, as defined in 45 C.F.R. § 160.103, Protected Health Information that is transmitted or maintained in any Electronic Media.
- d) “Limited Data Set” shall mean, as defined in 45 C.F.R. § 164.514(e), Protected Health Information that excludes the following direct identifiers of the individual or of relatives, employers, or household members of the individual:
 - i. Names;
 - ii. Postal address information, other than town or city, State, and zip code;
 - iii. Telephone numbers;
 - iv. Fax numbers;
 - v. Electronic mail addresses;
 - vi. Social security numbers;
 - vii. Medical record numbers;
 - viii. Health plan beneficiary numbers;
 - ix. Account numbers;
 - x. Certificate/license numbers;
 - xi. Vehicle identifiers and serial numbers, including license plate numbers;
 - xii. Device identifiers and serial numbers;
 - xiii. Web Universal Resource Locators (URLs);
 - xiv. Internet Protocol (IP) address numbers;
 - xv. Biometric identifiers, including finger and voice prints; and
 - xvi. Full face photographic images and any comparable images.
- e) “*Protected Health Information*” or “*PHI*” shall mean, as defined in 45 C.F.R. § 160.103, information created or received by a Health Care Provider, Health Plan, employer, or Health Care Clearinghouse, that: (i) relates to the past, present, or future physical or mental health or condition of an individual, provision of health care to the individual, or the past, present, or future payment for provision of health care to the individual; (ii) identifies the individual, or with respect to which there is a reasonable basis to believe the information can be used to identify the individual; and (iii) is transmitted or maintained in an electronic medium, or in any other form or medium. The use of the term “Protected Health Information” or “PHI” in this Addendum shall mean both Electronic PHI and non-Electronic PHI, unless another meaning is clearly specified.

- f) “*Security Incident*” shall mean, as defined in 45 C.F.R. § 164.304, the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system.
- g) “*Unsecured Protected Health Information*” shall mean, as defined in 45 C.F.R. § 164.402, Protected Health Information that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified by DHHS.
- h) All other capitalized terms used in this Addendum shall have the meanings set forth in the applicable definitions under the HIPAA Requirements.

3. GENERAL TERMS

- a) In the event of an inconsistency between the provisions of this Addendum and a mandatory term of the HIPAA Requirements (as these terms may be expressly amended from time to time by the DHHS or as a result of interpretations by DHHS, a court, or another regulatory agency with authority over the Parties), the interpretation of DHHS, such court or regulatory agency shall prevail. In the event of a conflict among the interpretations of these entities, the conflict shall be resolved in accordance with rules of precedence.
- b) Where provisions of this Addendum are different from those mandated by the HIPAA Requirements, but are nonetheless permitted by the HIPAA Requirements, the provisions of this Addendum shall control. Any ambiguity in this Addendum shall be interpreted to permit compliance with the HIPAA Requirements.
- c) Except as expressly provided in the HIPAA Requirements or this Addendum, this Addendum does not create any rights in third parties.

4. SPECIFIC REQUIREMENTS

- a) Flow-Down of Obligations to Business Associate Subcontractors. Business Associate agrees that as required by the HIPAA Requirements, Business Associate will enter into a written agreement with all Business Associate Subcontractors or agents that: (i) requires them to comply with the Privacy and Security Rule provisions of this Addendum in the same manner as required of Business Associate, and (ii) notifies such Business Associate Subcontractors that they will incur liability under the HIPAA Requirements for non-compliance with such provisions. Accordingly, Business Associate shall ensure that all Business Associate Subcontractors and agents agree in writing to the same privacy and security restrictions, conditions and requirements that apply to Business Associate with respect to PHI.
- b) Privacy of Protected Health Information
 - i. *Permitted Uses and Disclosures of PHI.* Business Associate agrees to create, receive, use, disclose, maintain or transmit PHI only in a manner that is consistent with this Addendum or the HIPAA Requirements and only in connection with providing the services to Covered Entity identified in the Agreement. Accordingly, in providing

services to or for the Covered Entity, Business Associate, for example, will be permitted to use and disclose PHI for “Treatment, Payment, and Health Care Operations,” as those terms are defined in the HIPAA Requirements. Business Associate further agrees that to the extent it is carrying out one or more of the Covered Entity’s obligations under the Privacy Rule (Subpart E of 45 C.F.R. Part 164), it shall comply with the requirements of the Privacy Rule that apply to the Covered Entity in the performance of such obligations.

- 1) Business Associate shall report to Covered Entity any use or disclosure of PHI that is not provided for in this Addendum, including reporting Breaches of Unsecured Protected Health Information as required by 45 C.F.R. § 164.410 and required by Section 4(e)(ii) below.
 - 2) Business Associate shall establish, implement and maintain appropriate safeguards, and comply with the Security Standards (Subpart C of 45 C.F.R. Part 164) with respect to Electronic PHI, as necessary to prevent any use or disclosure of PHI other than as provided for by this Addendum.
- ii. *Business Associate Obligations.* As permitted by the HIPAA Requirements, Business Associate also may use or disclose PHI received by the Business Associate in its capacity as a Business Associate to the Covered Entity for Business Associate’s own operations if:
- 1) the use relates to: (1) the proper management and administration of the Business Associate or to carry out legal responsibilities of the Business Associate, or (2) data aggregation services relating to the health care operations of the Covered Entity; or
 - 2) the disclosure of information received in such capacity will be made in connection with a function, responsibility, or services to be performed by the Business Associate, and such disclosure is required by law or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidential and the person agrees to notify the Business Associate of any breaches of confidentiality.
- iii. *Minimum Necessary Standard and Creation of Limited Data Set.* Business Associate’s use, disclosure, or request of PHI shall utilize a Limited Data Set if practicable. Otherwise, in performing the functions and activities as specified in the Agreement and this Addendum, Business Associate agrees to use, disclose, or request only the minimum necessary PHI to accomplish the intended purpose of the use, disclosure, or request.
- iv. *Access.* In accordance with 45 C.F.R. § 164.524 of the HIPAA Requirements, Business Associate will make available to the Covered Entity (or as directed by the Covered Entity, to those individuals who are the subject of the PHI (or their designees)), their PHI in the Designated Record Set. Business Associate shall make

such information available in an electronic format where directed by the Covered Entity.

- v. *Disclosure Accounting.* Business Associate shall make available the information necessary to provide an accounting of disclosures of PHI as provided for in 45 C.F.R. § 164.528 of the HIPAA Requirements by making such information available to the Covered Entity or, at the direction of the Covered Entity, making such information available directly to the individual.
- vi. *Amendment.* Business Associate shall make PHI in a Designated Record Set available for amendment and, as directed by the Covered Entity, incorporate any amendment to PHI in accordance with 45 C.F.R. § 164.526 of the HIPAA Requirements.
- vii. *Right to Request Restrictions on the Disclosure of PHI and Confidential Communications.* If an individual submits a Request for Restriction or Request for Confidential Communications to the Business Associate, Business Associate and Covered Entity agree that Business Associate, on behalf of Covered Entity, will evaluate and respond to these requests according to Covered Entity's procedures for such requests, including forwarding applicable requests to the Records Division of the MCSO (see further the underlying Agreement Sections 5.1 and 5.2).
- viii. *Return or Destruction of PHI.* Upon the termination or expiration of the Agreement or this Addendum, Business Associate agrees to return the PHI to Covered Entity, destroy the PHI (and retain no copies), or if Business Associate determines that return or destruction of the PHI is not feasible, (a) continue to extend the protections of this Addendum and of the HIPAA Requirements to the PHI, and (b) limit any further uses and disclosures of the PHI to the purpose making return or destruction infeasible.
- ix. *Availability of Books and Records.* Business Associate shall make available to Covered Entity, DHHS/applicable state or federal agency and/or its agents the Business Associate's internal practices, books, and records relating to the use and disclosure of PHI in connection with this Addendum, upon request.
- x. *Termination for Breach.*
 - 1) Business Associate agrees that Covered Entity shall have the right to terminate this Addendum or seek other remedies if Business Associate violates a material term of this Addendum.
 - 2) Covered Entity agrees that Business Associate shall have the right to terminate this Addendum or seek other remedies if Covered Entity violates a material term of this Addendum.

c) Information and Security Standards

- i. Business Associate will develop, document, implement, maintain, and use appropriate Administrative, Technical, and Physical Safeguards to preserve the Integrity,

Confidentiality, and Availability of, and to prevent non-permitted use or disclosure of, Electronic PHI created or received for or from the Covered Entity.

- ii. Business Associate agrees that with respect to Electronic PHI, these Safeguards, at a minimum, shall meet the requirements of the HIPAA Security Standards applicable to Business Associate.
- iii. More specifically, to comply with the HIPAA Security Standards for Electronic PHI, Business Associate agrees that it shall:
 - 1) Implement Administrative, Physical, and Technical Safeguards consistent with (and as required by) the HIPAA Security Standards that reasonably protect the Confidentiality, Integrity, and Availability of Electronic PHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity. Business Associate shall develop and implement policies and procedures that meet the documentation requirements as required by the HIPAA Requirements;
 - 2) As also provided for in Section 4(a) above, ensure that any Business Associate Subcontractor or agent agrees to implement reasonable and appropriate safeguards to protect the Electronic PHI;
 - 3) Report to Covered Entity any unauthorized access, use, disclosure, modification, or destruction of PHI (including Electronic PHI) not permitted by this Addendum, applicable law, or permitted by Covered Entity in writing (“Successful Security Incidents” or Breaches) of which Business Associate becomes aware. Business Associate shall report such Successful Security Incidents or Breaches to Covered Entity as specified in Section 4(e)(iii)(1);
 - 4) For Security Incidents that do not result in unauthorized access, use, disclosure, modification, or destruction of PHI (including, for purposes of example and not for purposes of limitation, pings on Business Associate’s firewall, port scans, attempts to log onto a system or enter a database with an invalid password or username, denial-of-service attacks that do not result in the system being taken off-line, or malware such as worms or viruses) (hereinafter “Unsuccessful Security Incidents”), aggregate the data and, upon the Covered Entity’s written request, report to the Covered Entity in accordance with the reporting requirements identified in Section 4(e)(iii)(2);
 - 5) Take all commercially reasonable steps to mitigate, to the extent practicable, any harmful effect that is known to Business Associate resulting from any unauthorized access, use, disclosure, modification, or destruction of PHI;
 - 6) Permit termination of this Addendum if the Covered Entity determines that Business Associate has violated a material term of this

Addendum with respect to Business Associate's security obligations and Business Associate is unable to cure the violation; and

- 7) Upon Covered Entity's request, provide Covered Entity with access to and copies of documentation regarding Business Associate's safeguards for PHI and Electronic PHI.

d) Compliance with HIPAA Transaction Standards

- i. *Application of HIPAA Transaction Standards.* Business Associate will conduct Standard Transactions consistent with 45 C.F.R. Part 162 for or on behalf of the Covered Entity to the extent such Standard Transactions are required in the course of Business Associate's performing services under the Agreement and this Addendum for the Covered Entity. As provided for in Section 4(a) above, Business Associate will require any Business Associate Subcontractor involved with the conduct of such Standard Transactions to comply with each applicable requirement of 45 C.F.R. Part 162. Further, Business Associate will not enter into, or permit its Subcontractors to enter into, any trading partner agreement in connection with the conduct of Standard Transactions for or on behalf of the Covered Entity that:
 - 1) Changes the definition, data condition, or use of a data element or segment in a Standard Transaction;
 - 2) Adds any data element or segment to the maximum defined data set;
 - 3) Uses any code or data element that is marked "not used" in the Standard Transaction's implementation specification or is not in the Standard Transaction's implementation specification; or
 - 4) Changes the meaning or intent of the Standard Transaction's implementation specification.
- ii. *Communications.* Business Associate, and Covered Entity recognize and agree that communications between the parties that are required to meet the HIPAA Standards for Electronic Transactions shall meet the Standards set by that regulation(s). Other communications, not requiring such Standards to be met, between Covered Entity and Business Associate, may not need to comply with the HIPAA Standards for Electronic Transactions and may therefore utilize such forms, tape formats, or electronic formats as the Parties may mutually approve. Covered Entity will include all information reasonably required by Business Associate to affect such data exchanges or notifications, and vice versa.

e) Notice and Reporting Obligations of Business Associate

- i. *Notice of Non-Compliance with the Addendum.* Business Associate will notify Covered Entity within 10 calendar days after discovery, any unauthorized access, use, disclosure, modification, or destruction of PHI (including any successful Security

Incident) that is not permitted by this Addendum, by applicable law, or permitted in writing by Covered Entity, whether such non-compliance is by (or at) Business Associate or by (or at) a Business Associate Subcontractor.

- ii. *Notice of Breach.* Business Associate will notify Covered Entity following discovery and without unreasonable delay but in no event later than 10 calendar days following discovery, any Breach of Unsecured Protected Health Information, whether such Breach is by Business Associate or by Business Associate Subcontractor.

- 1) As provided for in 45 C.F.R. § 164.402, Business Associate recognizes and agrees that any acquisition, access, use or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule (Subpart E of 45 C.F.R. Part 164) is presumed to be a Breach. As such, Business Associate shall (i) notify Covered Entity of any non-permitted acquisition, access, use or disclosure of PHI, and (ii) assist Covered Entity in performing (or at Covered Entity's direction, perform) a risk assessment to determine if there is a low probability that the PHI has been compromised.
 - 2) Business Associate shall cooperate with Covered Entity in meeting the Covered Entity's obligations under the HIPAA Requirements and any other security breach notification laws. Business Associate shall follow its notification to the Covered Entity with a report that meets the requirements outlined immediately below.

- iii. *Reporting Obligations.*

- 1) For Successful Security Incidents and Breaches, Business Associate – without unreasonable delay and in no event later than 30 calendar days after Business Associate learns of such non- permitted use or disclosure (whether at Business Associate or at Business Associate Subcontractor) – shall provide Covered Entity a report that will:
 - a. Identify (if known) each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been accessed, acquired, or disclosed;
 - b. Identify the nature of the non-permitted access, use, or disclosure including the date of the incident and the date of discovery;
 - c. Identify the PHI accessed, used, or disclosed (e.g., name; social security number; date of birth);
 - d. Identify what corrective action Business Associate (or Business Associate Subcontractor) took or will take to prevent further non-permitted accesses, uses, or disclosures;

- e. Identify what Business Associate (or Business Associate Subcontractor) did or will do to mitigate any deleterious effect of the non-permitted access, use, or disclosure; and
- f. Provide such other information, including a written report, as the Covered Entity may reasonably request.

2) For Unsuccessful Security Incidents, Business Associate shall provide Covered Entity, upon its written request, a report that: (i) identifies the categories of Unsuccessful Security Incidents as described in Section 4(c)(iii)(4); (ii) indicates whether Business Associate believes its (or its Business Associate Subcontractor's) current defensive security measures are adequate to address all Unsuccessful Security Incidents, given the scope and nature of such attempts; and (iii) if the security measures are not adequate, the measures Business Associate (or Business Associate Subcontractor) will implement to address the security inadequacies.

iv. *Termination.*

1) Covered Entity and Business Associate each will have the right to terminate this Addendum if the other party has engaged in a pattern of activity or practice that constitutes a material breach or violation of Business Associate's or the Covered Entity's respective obligations regarding PHI under this Addendum and, on notice of such material breach or violation from the Covered Entity or Business Associate, fails to take reasonable steps to cure the material breach or end the violation.

2) If Business Associate or the Covered Entity fail to cure the material breach or end the violation after the other party's notice, the Covered Entity or Business Associate (as applicable) may terminate this Addendum by providing Business Associate or the Covered Entity written notice of termination, stating the uncured material breach or violation that provides the basis for the termination and specifying the effective date of the termination. Such termination shall be effective 30 days from this termination notice and shall further entitle each respective party hereto all rights and remedies as are available to the party under the Agreement.

3) Outside of an early termination as stated above, this Addendum shall continue in full force and effect through the course of the Agreement and terms herein that are reasonably anticipated to survive expiration or termination in compliance with applicable laws, shall so survive.

v. *Continuing Privacy and Security Obligations.* Business Associate's and the Covered Entity's obligation to protect the privacy and security of the PHI it created, received, maintained, or transmitted in connection with services to be provided under the Agreement and this Addendum will be continuous and survive termination,

cancellation, expiration, or other conclusion of this Addendum or the Agreement. Business Associate's other obligations and rights, and the Covered Entity's obligations and rights upon termination, cancellation, expiration, or other conclusion of this Addendum, are those set forth in this Addendum and/or the Agreement.

AGREED TO:

Waller County, Texas

Montgomery County, Texas

Business Associate

Covered Entity

By: _____

By: _____

Name: **Carbett "Trey" J. Duhon III**
Title: **County Judge**

Name: **Mark J. Keough**
Title: **County Judge**