

Crook County Counsel's Office

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MEMO

TO: Crook County Court

FROM: County Counsel's Office

DATE: September 16, 2022

RE: District Medical Examiner Replacement
Our File No.: Health 119

It has come to my attention that the County's District Medical Examiner (DME), Dr. VanAmburg, is leaving her post effective October 1, 2022. If you remember, this is an unusual role for the County in that the State's Chief Medical Examiner, Dr. Sean Hurst, has appointment and supervisory responsibility over this position, but the DME is considered an employee of the County for tort claim purposes.

Fortunately, the State and our District Attorney have been working to find a replacement and have agreed to the appointment of Dr. Annie Onishi effective October 1. Enclosed is the appointment letter from Dr. Hurst and a new contract for Dr. Onishi. The contract is substantively the same as that for Dr. VanAmburg, with the compensation being raised from \$1,667/month to \$2,000/month. Also enclosed is the letter of appointment by Dr. Hurst.

Please let me know if you have any questions.

Please place this memo and the attached document(s) on the Wednesday, September 21, 2022 County Court Agenda as a DISCUSSION ITEM.



Oregon

Kate Brown, Governor

Oregon State Police Medical Examiner Division

13309 S.E. 84th Ave, Suite 100
Clackamas, OR 97015
(971) 673-8200
FAX (971) 673-8321

Forensic Pathologists:

Sean Hurst, M.D.
Chief Medical Examiner

Nicole Stanley, M.D.
Michele T. Stauffenberg, M.D.
Rebecca A. Millius, M.D.
Deputy State Medical Examiner

Veronica Vance, Ph.D.
Forensic Anthropologist

Kelsey L. Evans
Forensic Administrator

September 14, 2022

Dr. Anne Onishi
2275 NE Doctors Drive
Bend, OR 97701

Dear Dr. Anne Onishi,

This letter is intended to be the final appointment for you as the Crook County Medical Examiner, which has been approved by Kari Hathorn, Crook County District Attorney.

It is with a great deal of pleasure that I make this appointment. Be assured that the forensic pathologists at the Oregon State Medical Examiner's Office are continually available to provide whatever assistance we can to you and other personnel in your county so that the excellent quality of your program will be maintained.

I appreciate your willingness to assume this responsibility and I hope you will find it to be a satisfying experience.

Sincerely,

Dr. Sean Hurst, MD
Chief Medical Examiner

DISTRICT MEDICAL EXAMINER SERVICES CONTRACT

This District Medical Examiner Services Contract (Agreement) by and between and Annie Onishi, M.D. (Contractor) and Crook County, a political subdivision of the State of Oregon (County), authorizes Contractor to carry out and complete the services as described below in consideration of the mutual covenants set forth herein.

RECITALS

WHEREAS, ORS Chapter 146 requires each county to have a medical examiner for the purpose investigating and certifying the cause and manner of deaths requiring investigations;

WHEREAS, ORS Chapter 146 requires both the appointment by the State's Chief Medical Examiner and approval by the applicable county's board of commissioners;

WHEREAS, following approval by the Crook County District Attorney, on September 14, 2022, Oregon's Chief Medical Examiner, Dr. Sean Hurst, formally appointed Dr. Onishi as Crook County's District Medical Examiner;

WHEREAS, under ORS Chapter 146 all expenses, including personnel compensation and excepting one-half the cost of autopsies under ORS 146.075(4), shall be paid by the respective county; and

WHEREAS, County and Contractor wish to memorialize the respective obligations and benefits of the parties herein.

AGREEMENT

1. **PROJECT.** The services as described in paragraph 3 of this Agreement are to be provided by Contractor in connection with the requirements of ORS Chapter 146 as District Medical Examiner (DME).
2. **DURATION.** This Agreement shall be perpetual unless terminated according to the provisions of this Agreement.
3. **SCOPE OF SERVICES.** Contractor, as DME for Crook County, will investigate and certify the cause and manner of all human deaths in Crook County, Oregon as required pursuant to ORS Chapter 146, regulations promulgated thereunder, and the rules and regulations adopted by the State Medical Examiner Advisory Board (SMEAB) or as directed by the State's Chief Medical Examiner (CME) or any Deputy acting on behalf of the CME, including but not limited to the following:
 - 3.1. Serve as the administrator of the County's DME's office, and employ and compensate such other personnel as Contractor deems necessary;
 - 3.2. Establish qualifications for medical-legal death investigators (MDIs) and appoint, subject to

the approval of Crook County's District Attorney (the "DA"), sufficient MDIs to serve under the control and direction of Contractor and the DA;

- 3.3. Maintain copies, available for inspection as provided by ORS 146.035(5), of reports of death investigations, autopsy reports, laboratory analysis reports, and inventories of money or property of the deceased taken into custody during an investigation;
 - 3.4. Forward copies of reports of death investigations and autopsy reports to the Office of the CME as required by ORS 146.075(8);
 - 3.5. Maintain current records of all assistant district medical examiners and medical-legal death investigators appointed by Contractor as well as the name, address and director of each licensed funeral home within Crook County;
 - 3.6. Immediately notify, in writing, the Office of the CME, all appointments and resignations of medical examiners;
 - 3.7. Provide coverage around the clock, every day of the year and investigate and certify the cause and manner of all deaths listed under ORS 146.090;
 - 3.8. For those deaths where an MDI is required on scene as notified by Law Enforcement, to provide an MDI at the site within 60 to 90 minutes from the notification;
 - 3.9. Perform the investigation, certification, report, and training duties required under ORS 146.095;
 - 3.10. Immediately notify the DA of all deaths requiring investigation subject to the exceptions listed, pursuant to ORS 146.100;
 - 3.11. Provide a current on-call list to dispatch and otherwise cooperate with the DA and Sheriff's Office in the performance of duties required under ORS 146.103-125.
4. **FEE FOR SERVICES.** Contractor's fee for the services identified in this Agreement, including compensation of all MDIs and other personnel, shall be Two Thousand and no/100 Dollars (\$2,000.00) per month.
 5. **EXTRA SERVICES.** Contractor may also perform Extra Services (services not specified in the Scope of Services), provided Contractor and County have agreed in advance and in writing to the scope and fees for such Extra Services.
 6. **EXHIBITS.** The following documents which are attached to this Agreement are incorporated herein and by this reference made part hereof:

Exhibit A: Required Terms for All Public Contracts
Exhibit B: Independent Contractor Status
Exhibit C: Protected Information
Exhibit D: Business Associate Agreement

7. RELATIONSHIP OF THE PARTIES. The relationship between the parties is uncommon and dictated by statute.

7.1. OREGON CHIEF MEDICAL EXAMINER. The State’s CME has ultimate authority over Contractor’s means and manner in performance of its duties required pursuant to ORS Chapter 146, including the authority to discharge Contractor notwithstanding this Agreement.

7.2. “OFFICER” STATUS FOR TORT CLAIMS. Notwithstanding any other provision of this Agreement, pursuant to ORS 146.088, Contractor and any assistant district medical examiner (ADME) or MDI working under Contractor’s supervision and control are deemed to be officers or agents of Crook County for purposes of ORS 30.260 to 30.300 while acting in their official roles under this Agreement. County agrees to defend and hold harmless Contractor in accordance with ORS 30.260 through 30.300 against any and all lawsuits and liabilities that arise from the services provided by Contractor pursuant to this Agreement. County shall indemnify, defend, and hold Contractor harmless from all loss, liability, costs, or expenses including the cost of claim settlement and attorney fees incurred for any claim asserted against Contractor arising out of this Agreement or relating to services provided pursuant to the Agreement. Coverage by County of any liability arising out of Contractor’s performance of their responsibilities pursuant to ORS Chapter 146 and this Agreement shall be primary.

7.3. INDEPENDENT CONTRACTOR FOR OTHER PURPOSES. For purposes relating to federal and state income tax liability, tax withholding, social security, medical taxes, unemployment and workers compensation coverage, it is agreed that Contractor, in carrying out the services to be provided under the Agreement, is acting as an “independent contractor” and is not an “employee” of County, and as such accepts full responsibility for such taxes or other obligations associated with the payment for services under this Agreement. Contractor will not receive any benefits normally accruing to County employees unless required by applicable law. Contractor must provide County with a fully completed W-9 form upon execution of the Agreement. Furthermore, Contractor is free to contract with other parties, on other matters, for the duration of this Agreement. Contractor shall comply with ORS 656.017 for all non-public employees performing direct services required by this Agreement who work in the State of Oregon. If Contractor hires employees to perform services required by this Agreement, he or she will provide the County with certification of Worker’s Compensation Insurance. Contractor certifies it is a “Contractor” under ORS 670.600 and relevant law as it pertains to this contract and as further described in incorporated Exhibit B.

8. CERTIFICATIONS AND WARRANTIES OF CONTRACTOR.

8.1. COMPLIANCE. Contractor shall comply with all applicable provisions of ORS 146, regulations and guidelines promulgated thereunder by the SMEAB, and the direction the CME or a Deputy State Medical Examiner, and the DA. Contractor shall be entitled to rely

on such information or directions. Contractor is hereby given notice that County will be relying on the accuracy, competency, and completeness of Contractor's services in utilizing the results of such services. Contractor warrants that the recommendations, guidance and performance of Contractor shall be in accordance with the requirements of this Agreement.

8.2. COUNTY PRIORITIES. Contractor shall comply promptly with any requests by the DA and the CME or a Deputy of the CME relating to the emphasis or relative emphasis to be placed on various aspects of the work or to such other matters pertaining to said work. All such requests shall be in compliance with ORS Chapter 146 and the direction provided by the CME or a Deputy of the CME.

8.3. OWNERSHIP AND USE OF DOCUMENTS. All documents, or other material submitted to County by Contractor shall become the sole and exclusive property of County. All material prepared by Contractor under this Agreement may be subject to Oregon's Public Records laws.

8.4. TAX COMPLIANCE CERTIFICATION. Contractor hereby certifies, under penalty of perjury, as provided in ORS 305.385(6), that to the best of Contractor's knowledge, Contractor is not in violation of any of the tax laws described in ORS 305.380(4).

8.5. CONFORMANCE WITH OREGON PUBLIC CONTRACTING LAWS. Contractor shall fully comply with Oregon law for public contracts, as more fully set forth in the Exhibits.

8.6. TRAINING. Contractor and any personnel will stay current with training provided by Oregon State Police Medical Examiners Division.

9. TERMINATION.

- 9.1.** Either party may terminate this Agreement after giving ninety (90) days' prior written notice to the other of intent to terminate without cause. The parties shall deal with each other in good faith during the ninety-day period after notice of intent to terminate without cause has been given.
- 9.2.** With reasonable cause, either party may terminate this Agreement effective immediately after giving written notice of termination for cause. Reasonable cause shall include material violation of this Agreement or any act exposing the other party to liability to others for personal injury or property damage.
- 9.3.** Upon notification from the Chief Medical Examiner that Contractor has been discharged under ORS 146.065. Termination under this provision may be immediate.
- 9.4.** Notwithstanding any other provision of this Agreement, County shall not be obligated for Contractor's performance hereunder or by any provision of this Agreement during any of County's future fiscal years unless and until the Crook County Court appropriates funds for this Agreement in County's budget for such future fiscal year. In the event that funds are not

appropriated for this Agreement, then this Agreement shall terminate as of June 30 of the last fiscal year for which funds were appropriated.

10. GENERAL PROVISIONS.

- 10.1. ENTIRE AGREEMENT.** This Agreement signed by both parties is the final and entire agreement and supersedes all prior and contemporaneous oral or written communications between the parties, their agents, and representatives
- 10.2. AMENDMENTS.** The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever, without prior written approval of County. No modification of this Agreement shall bind either party unless reduced to writing and subscribed by both parties.
- 10.3. ASSIGNMENT/SUBCONTRACT.** Contractor shall not assign, sell, transfer, this agreement, in whole or in part, without the prior written approval of County and the CME. No such written approval shall relieve Contractor of any obligations of this Agreement, and any transferee or subcontractor shall be considered the agent of Contractor. Contractor shall remain liable as between the original parties to this Agreement as if no such assignment had occurred.
- 10.4. SUB-AGREEMENTS.** If this project is funded in whole or in part with grant funds received by County, Contractor, as a sub-recipient of those funds, shall fully comply with all applicable terms, conditions, and requirements of the Grant Agreement, including but not limited to procurement regulations, property and equipment management and records, indemnity, and insurance provisions.
- 10.5. SUCCESSORS IN INTEREST.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties to this Agreement and their respective successors and assigns.
- 10.6. NO AUTHORITY TO BIND CROOK COUNTY.** Contractor has no authority to enter into contracts on behalf of County outside of the authority granted to Contractor under ORS Chapter 146. This Agreement does not create a partnership between the parties.
- 10.7. HOW NOTICES SHALL BE GIVEN.** Any notice given in connection with this Agreement must be in writing and be delivered either by hand to the party or by certified mail, return receipt requested, to the party at the party's address as stated below or to Crook County at 300 NE 3rd Street, Prineville, OR 97754, attention "Legal Department."
- 10.8. GOVERNING LAW AND VENUE.** Any dispute under this Agreement shall be governed by Oregon law, with venue in Crook County, Oregon.
- 10.9. SEVERABILITY.** If any provision of this Agreement is declared by a court 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 the Agreement did not contain the particular provision held to be invalid.

- 10.10. ACCESS TO RECORDS.** County and its duly authorized representatives shall have access to books, documents, papers, and records of Contractor which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts.
- 10.11. CONFIDENTIALITY.** During the course of performance of work under this Agreement, Contractor may receive information regarding organizations and County's business practices, employees, clients, etc. Contractor agrees to maintain the confidentiality of such information and to safeguard such information against loss, theft or other inadvertent disclosure
- 10.12. FEDERAL EMPLOYMENT STATUS.** In the event payment made pursuant to this Agreement is to be charged against federal funds, Contractor hereby certifies that it is not currently employed by the Federal Government and the amount charged does not exceed Contractor's normal charge for the type of services provided.
- 10.13. COMPLIANCE WITH ALL GOVERNMENT REGULATIONS.** Contractor shall comply with all Federal, State and local laws, codes, regulations and ordinances applicable to the work performed under this Agreement. Failure to comply with such requirements shall constitute a breach of contract and shall be grounds for termination of this Agreement.
- 10.14. FORCE MAJEURE.** Neither party to this Agreement shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control.
- 10.15. ATTORNEY FEES.** In the event an action, lawsuit, or proceeding, including appeal therefrom, is brought for failure to observe any of the terms of this Agreement, each party shall bear its own attorney fees, expenses, costs, and disbursements for said action, lawsuit, proceeding, or appeal.
- 10.16. WAIVER.** The failure of either party at any time or from time to time to enforce any of the terms of this Agreement shall not be construed to be a waiver of such term or of such party's right to thereafter enforce each and every provision of the Agreement.
- 10.17. NONDISCRIMINATION.** No person shall be subjected to discrimination in the receipt of the benefits of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, marital status, age, or national origin. Any violation of this provision shall be considered a material violation of this Agreement and shall be grounds for cancellation, termination, or suspension in whole or in part by County.
- 10.18. COUNTERPARTS.** This Agreement may be executed in one or more counterparts, including electronically transmitted counterparts, which when taken together shall constitute one in the same instrument. Electronic transmittals of the signed document shall be binding as though they were an original of such signed document.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective the date last signed below or October 1, 2022, whichever is later.

For Contractor

Annie Onishi, MD

By: _____
Signature

Printed Name

Date: _____

Address: _____

Email: _____

Phone: _____

For Crook County

CROOK COUNTY COURT

Seth Crawford, County Judge

Date: _____

Jerry Brummer, County Commissioner

Date: _____

Brian Barney, County Commissioner

Date: _____

EXHIBIT A

REQUIRED TERMS FOR ALL PUBLIC CONTRACTS

1. PAYMENTS AND DEBTS:

- 1.1. Contractor shall promptly, as due, make payment to:
 - 1.1.1. Any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums that Contractor agrees to pay for the services and all moneys and sums that Contractor collected or deducted from the wages of employees under any law, contract, or agreement for the purpose of providing or paying for the services;
 - 1.1.2. All persons supplying to Contractor labor or material for the performance of the work provided for in the Agreement;
 - 1.1.3. All contributions or amounts due the Industrial Accident Fund from Contractor or subcontractor incurred in the performance of this Agreement; and
 - 1.1.4. The Department of Revenue all sums withheld from employees under ORS 316.167.
- 1.2. Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished under this Agreement.

2. EMPLOYEES:

- 2.1. Contractor and subcontractors shall either be employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- 2.2. Contractor shall comply with the prohibition on wage discrimination of ORS 652.220; failure to do so is a material element of the contract and a breach that entitles County to terminate this Agreement for cause.
- 2.3. For all work under this Agreement, Contractor may not employ an employee for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or when the public policy absolutely requires otherwise, and in such cases, Contractor shall pay the employee at least time-and-a-half pay for:
 - (a) All overtime in excess of eight hours in any one day or 40 hours in any one week if the work week is five consecutive days, Monday through Friday; or all overtime in excess of 10 hours in any one day or 40 hours in any one week if the work week is four consecutive days, Monday through Friday; and
 - (b) All work the employee performs on Saturday and on any legal holiday specified in ORS 279B.020;
- 2.3.1. If this Agreement is for services, Contractor shall pay employees at least time-and-a-half pay for work the employees perform under this Agreement on the legal holidays specified in a collective bargaining agreement or in 279B.020 (1)(b)(B) to (G) and for all time the employees work in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater;
- 2.3.2. If this Agreement is for personal services, as described in ORS 279A.055, Contractor shall pay its employees who work under this Agreement at least time-and-a-half for all overtime the employees work in excess of 40 hours in any one week, unless said employees are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime;
- 2.3.3. If this Agreement is for services at a county fair, or for another event that Crook County Fair Board authorizes, Contractor shall pay employees who work under this Agreement at least time-and-a-half for work in excess of 10 hours in any one day or 40 hours in any one week.
- 2.4. Contractor may not prohibit any of Contractor's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.
- 2.5. Contractor shall give notice in writing to employees who work under this Agreement, either at the time of hire or before work begins on the Agreement, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that Contractor may require the employees to work.

3. OTHER PROVISIONS:

- 3.1. By executing this Agreement, Contractor represents and warrants that it has complied with the tax laws of this state or a political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318; Contractor further covenants to continue with said compliance during the term of this Agreement. Noncompliance with this provision is a default for which County may terminate the Agreement, in whole or part, and seek damages under the terms of this Agreement or applicable law.
- 3.2. If this Agreement involves lawn and landscape maintenance, Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

EXHIBIT B

INDEPENDENT CONTRACTOR STATUS

Contractor states and represents that contractor is an Independent Contractor as that term is defined in Oregon Revised Statute 670.600 and more specifically represents, states and agrees that in providing the services and scope of work specified in this Agreement:

1. Contractor provides services for remuneration; and
2. Contractor is free from direction and control over the means and manner of providing the services and scope of work subject only to the right of County to specify the desired results; and
3. Contractor is customarily engaged in an independently established business; and
4. Contractor is licensed within the state of Oregon to provide any services for which a license is required under ORS Chapter 671 or 701 and is responsible for obtaining other licenses or certificates necessary to provide the service or scope of work; and
5. Contractor complies with at least three of the following requirements:
 - (a) A business location is maintained that is separate from the business or work location of County; or is in a portion of the Contractor's residence and that portion is used primarily for the business.
 - (b) The Contractor bears the risk of loss related to the provision of services or scope of work such as entering into a fixed price contract, defective work is required to be corrected, the services provided are warranted or indemnification agreements, liability insurance and performance bonds and errors and omissions insurance are provided.
 - (c) Contracted services for two or more different persons or entities within a twelve month period have been obtained, or routinely engaged in business advertising, solicitation, or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
 - (d) Significant investment in the business has been made such as purchasing tools or equipment, paying for premises or facilities where services are provided, paying for licenses, certificates or specialized training.
 - (e) Possesses authority to hire other persons to assist in providing their services and has the authority to fire those persons.
6. Contractor will immediately inform County in the event that it fails to conduct its services in one or more particulars as represented in 1 through 5 above.

EXHIBIT C

PROTECTED INFORMATION

If Contractor obtains any personal information as defined in ORS 646A.602(11) related to this Agreement or concerning any County employee, Contractor agrees to provide appropriate safeguards to protect the security of this information. Contractor shall have provided appropriate safeguards by meeting or exceeding the requirements stated in ORS 646A.622. Furthermore:

1. **“Protected Information”** shall be defined as *data or information* that has been designated as private or confidential by law or by the County. Protected Information includes, but is not limited to, employment records, medical records, personal financial records (or other personally identifiable information), trade secrets, and classified government information. To the extent there is any uncertainty as to whether any data constitutes Protected Information, the data in question shall be treated as Protected Information until a determination is made by the County or proper legal authority.
2. **Data Confidentiality.** Contractor shall implement appropriate measures designed to ensure the confidentiality and security of Protected Information, protect against any anticipated hazards or threats to the integrity or security of such information, protect against unauthorized access or disclosure of information, and prevent any other action of unauthorized disclosure that could result in substantial harm to the County or an individual identified with the data or information in Contractor’s custody or access.

To the extent that Contractor may have access to County protected health information (as the same is defined in the privacy regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and the implementing regulations known and referred to as Privacy Rule, Security Rule, Enforcement Rule and Breach Notification Rule, referred to herein collectively as “HIPAA”), Contractor agrees to protect such information in compliance with HIPAA and represents that it has the processes, systems and training to assure compliance with the same.

3. **Data and Network Security.** Contractor agrees at all times to maintain commercially reasonable network security that, at a minimum, includes: network firewall provisioning, intrusion detection/prevention and periodic third party penetration testing. Likewise Contractor agrees to maintain network security that at a minimum conforms to current standards set forth and maintained by the National Institute of Standards and Technology, including those at: <http://checklists.nist.gov/repository>. Contractor agrees to protect and maintain the security of data with protection security measures that include maintaining secure environments that are patched and up to date with all appropriate security updates as designated by a relevant authority.
4. **Security Breach.** In the unlikely event of a security breach or issue, Contractor will notify the appropriate County contact no later than one hour after they are aware of the breach. Contractor will be responsible for all remedial action necessary to correct the breach; provided however, that Contractor will not undertake litigation on behalf of the County without prior written consent.
5. **Data Storage and Backup.** Contractor agrees that any and all County data will be stored, processed, and maintained solely on designated servers and that no County data at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium, unless that storage medium is in use as part of the Contractor's designated backup and recovery processes. All servers, storage, backups, and network paths utilized in the delivery of the service shall be contained within the states, districts, and territories of the United States unless specifically agreed to in writing by a County officer with designated data, security, or signature authority. An appropriate officer with the necessary authority can be identified by the County Information Security Officer for any general or specific case.

Contractor agrees to store all County backup data stored as part of its backup and recovery processes in encrypted form, using no less than AES 256.

6. **Data Re-Use.** Contractor agrees that any and all data exchanged shall be used expressly and solely for the purposes enumerated in the Agreement. Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. Contractor further agrees that no County data of any kind shall be revealed, transmitted, exchanged or otherwise passed to other Contractor or interested parties except on a case-by-case basis as specifically agreed to in writing by a County officer with designated data, security, or signature authority.
7. **PCI Compliance.** Contractor agrees to comply with PCI DSS (Payment Card Industry Data Security Standard). As evidence of compliance, Contractor shall provide upon request a current attestation of compliance signed by a PCI QSA (Qualified Security Assessor).
8. **End of Agreement Data Handling.** Contractor agrees that upon termination of this Agreement it shall erase, destroy, and render unreadable all County data in its entirety in a manner that prevents its physical reconstruction through the use of commonly available file restoration utilities, and certify in writing that these actions have been completed within 30 days of the termination of this Agreement or within 7 days of the request of an agent of County whichever shall come first.
9. **Mandatory Disclosure of Protected Information.** If Contractor becomes compelled by law or regulation (including securities' laws) to disclose any Protected Information, Contractor will provide County with prompt written notice so that County may seek an appropriate protective order or other remedy. If a remedy acceptable to County is not obtained by the date that Contractor must comply with the request, Contractor will furnish only that portion of the Protected Information that it is legally required to furnish, and the Contractor shall require any recipient of the Protected Information to exercise commercially reasonable efforts to keep the Protected Information confidential.
10. **Remedies for Disclosure of Confidential Information.** Contractor and County acknowledge that unauthorized disclosure or use of the Protected Information may irreparably damage County in such a way that adequate compensation could not be obtained from damages in an action at law. Accordingly, the actual or threatened unauthorized disclosure or use of any Protected Information shall give County the right to seek injunctive relief restraining such unauthorized disclosure or use, in addition to any other remedy otherwise available (including reasonable attorneys' fees). Contractor hereby waives the posting of a bond with respect to any action for injunctive relief. Contractor further grants County the right, but not the obligation, to enforce these provisions in Contractor's name against any of Contractor's employees, officers, board members, owners, representatives, agents, contractors, and subcontractors violating the above provisions.
11. **Non-Disclosure.** Contractor is permitted to disclose Confidential Information to its employees, authorized subcontractors, agents, consultants and auditors on a need-to-know basis only, provided that all such subcontractors, agents, consultants and auditors have written confidentiality obligations to both Contractor and County.
12. **Criminal Background Check.** County shall perform criminal background checks on all talent assigned to this project before a person is allowed to work on any of the County's Criminal Justice Information System (CJIS) protected data, software systems or facilities.
13. **Survival.** The confidentiality obligations shall survive termination of any agreement with Contractor for a period of ten (10) years or for so long as the information remains confidential, whichever is longer and will inure to the benefit of County.

EXHIBIT D

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BA Agreement”) between County of Crook (County) and Contractor is adopted to ensure that Contractor will appropriately safeguard protected health information (“PHI”) that is created, received, maintained, or transmitted on behalf of County in compliance with the applicable provisions of Public Law 104-191 of August 21, 1996, known as the Health Insurance Portability and Accountability Act of 1996, Subtitle F – Administrative Simplification, Sections 261, *et seq.*, as amended (“HIPAA”), and with Public Law 111-5 of February 17, 2009, known as the American Recovery and Reinvestment Act of 2009, Title XII, Subtitle D – Privacy, Sections 13400, *et seq.*, the Health Information Technology and Clinical Health Act, as amended (the “HITECH Act”).

A. General Provisions

1. **Meaning of Terms.** The terms used in this BA Agreement shall have the same meaning as those terms defined in HIPAA.
2. **Regulatory References.** Any reference in this BA Agreement to a regulatory section means the section currently in effect or as amended.
3. **Interpretation.** Any ambiguity in this BA Agreement shall be interpreted to permit compliance with HIPAA.

B. Obligations of Business Associate

Contractor agrees that it will:

1. Not use or further disclose PHI other than as permitted or required by this BA Agreement or as required by law;
2. Use appropriate safeguards and comply, where applicable, with Subpart C of 45 CFR Part 164 to prevent use or disclosure of PHI other than as provided for by this BA Agreement;
3. Report to County any use or disclosure of PHI not provided for by this BA Agreement of which it becomes aware, including any security incident (as defined in 45 CFR 164.304) and any breaches of unsecured PHI as required by 45 CFR §164.410. Breaches of unsecured PHI shall be reported to County without unreasonable delay but in no case later than 60 days after discovery of the breach;
4. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Contractor agree to the same restrictions, conditions, and requirements that apply to Contractor with respect to such information;
5. Make available PHI in a designated record set to County as necessary to satisfy County’s obligation under 45 CFR 164.524 in no more than 30 days of a request;
6. Make any amendment(s) to PHI in a designated record set as directed by County, or take other measures necessary to satisfy County’s obligations under 45 CFR §164.526 in no more than 30 days of a request;
7. Maintain and make available information required to provide an accounting of disclosures to County or an individual who has a right to an accounting within 60 days and as necessary to satisfy County’s obligations under 45 CFR §164.528;
8. To the extent that Contractor is to carry out any of County’s obligations under Subpart E of 45 CFR Part 164, Contractor shall comply with the requirements of Subpart E of 45 CFR Part 164 that apply to County when it carries out that obligation;

9. Make its internal practices, books, and records available to the Secretary of the Department of Health and Human Services for purposes of determining compliance with the HIPAA rules;
10. County shall notify Contractor of any restriction on the use or disclosure of PHI that County has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Contractor's use or disclosure of PHI; and
11. If County is subject to the Red Flags Rule (found at 16 CFR §681.1 *et seq.*), Contractor agrees to assist County in complying with its Red Flags Rule obligations by: (a) implementing policies and procedures to detect relevant Red Flags (as defined under 16 C.F.R. §681.2); (b) taking all steps necessary to comply with the policies and procedures of County's Identity Theft Prevention Program; (c) ensuring that any agent or third party who performs services on its behalf in connection with covered accounts of County agrees to implement reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft; and (d) alerting County of any red flag incident (as defined by the Red Flag Rules) of which it becomes aware, the steps it has taken to mitigate any potential harm that may have occurred, and provide a report to County of any threat of identity theft as a result of the incident.
12. If Contractor is part of a larger organization, Contractor will implement policies and procedures to protect PHI from unauthorized access by the larger organization.

C. Permitted Uses and Disclosures by Business Associate

The specific uses and disclosures of PHI that may be made by Contractor on behalf of County are limited to:

1. The review of patient care information in the course of Contractor conducting risk and compliance assessment activities, or providing County with a Control Activity Gap Analysis, or the review of PHI and other information necessary to assist County in developing its HIPAA compliance program; and
2. Other uses or disclosures of PHI as permitted by the HIPAA rules as necessary to perform the services set forth in the Agreement.
3. Uses or disclosures of protected health information as required by law.

D. Termination

1. County may terminate this Agreement if County determines that Contractor has violated a material term of the BA Agreement.
2. If either party knows of a pattern of activity or practice of the other party that constitutes a material breach or violation of the other party's obligations under this BA Agreement, that party shall take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are unsuccessful, terminate the Agreement, if feasible.
3. Upon termination of this Agreement for any reason, Contractor shall return to County or destroy all PHI received from County, or created, maintained, or received by Contractor on behalf of County that Contractor still maintains in any form. Contractor shall retain no copies of the PHI. If return or destruction is infeasible, the protections of this BA Agreement will extend to such PHI.
4. The obligations under section D are perpetual and shall survive termination of this Agreement.