

Approved 12/7/20 AM  
Affirm 12/14/20



Meeting Date:  
Agenda Item No:

**Kitsap County Board of Commissioners**

**Office/Department:** Commissioners  
**Staff Contact:** Eric Baker  
**Agenda Item Title:** KC-546-20 - KPHD CARES Relief Funding PSC

**Recommended Action:** approve KC-546-20 - KPHD CARES Relief Funding PSC

**Summary:** The COVID-19 pandemic continues to impact Kitsap County and resources are necessary to provide the public health response. The Kitsap Public Health District (KPHD) is providing up to \$850,000 or their CARES funding through December 30, 2020 to fund Emergency Operations Command, Emergency Management and other County staff to assist KPHD in their response to this pandemic.

**Attachments:**  
 1. Contract Review Sheet  
 2. Contract

**Fiscal Impact for this Specific Action**

<b>Expenditure required for this specific action:</b>	\$850,000
<b>Related Revenue for this specific action:</b>	\$850,000
<b>Cost Savings for this specific action:</b>	\$0
<b>Net Fiscal Impact:</b>	\$850,000
<b>Source of Funds:</b>	KPHD/ COVID Relief

**Fiscal Impact for Total Project**

<b>Project Costs:</b>	\$0
<b>Project Costs Savings:</b>	\$0
<b>Project Related Revenue:</b>	\$850,000
<b>Project Net Total:</b>	\$850,000

**Fiscal Impact (DAS) Review**

**Office/Departmental Review & Coordination**

<b>Office/Department</b>	<b>Elected Official/Department Director</b>
Commissioners	

**Contract Information**

<b>Contract Number</b>	<b>Date Original Contract or Amendment Approved</b>	<b>Amount of Original Contract Amendment</b>	<b>Total Amount of Amended Contract</b>
KC-546-20	pending		



**Kitsap County**  
**CONTRACT REVIEW SHEET**  
(Chapter 3.56 KCC)

**A. CONTRACT INFORMATION**

1. Contractor Kitsap Public Health District  
2. Purpose Contract with the Kitsap Public Health District for CARES relief funding  
3. Contract Amount 850,000 Disburse  Receive   
4. Contract Term 12/1/2020 – 12/30/2020  
5. Contract Administrator Eric Baker Phone 360-340-3914

Approved: \_\_\_\_\_ Date \_\_\_\_\_  
Department Director

**B. AUDITOR – ACCOUNTING INFORMATION**

1. Contract Control Number KC-546-20  
2. Fund Name KPHD/ COVID Relief  
3. Payment from-Revenue to CC/Account Nbr 1651  
4. Encumbered By Dave Schureman Date 12/4/20

**C. AUDITOR'S ACCOUNTING – GRANTS REVIEW**

*Signature required only if contract is grant funded*

1.  Approved  Not Approved  
Reviewer Dave Schureman Date 12/4/20  
2. Comments:

**D. ADMINISTRATIVE SERVICES DEPARTMENT – RISK MANAGER REVIEW**

1.  Approved  Not Approved  
Reviewer Timothy M. Perez Date 12/7/2020  
2. Comments:

**E. ADMINISTRATIVE SERVICES DEPARTMENT – BUDGET MANAGER REVIEW**

*Signature required only if contract is for \$50,000 or more, OR it will be signed by board of commissioners (regardless of dollar amount)*

1.  Approved  Not Approved  
Reviewer Aimée Campbell Date 12/04/2020  
2. Comments:

**F. PERSONNEL DEPARTMENT – PERSONNEL DIRECTOR REVIEW**

*Signature required only if union or employment contract*

1.  Approved  Not Approved  
Reviewer \_\_\_\_\_ Date \_\_\_\_\_  
2. Comments:

**G. PROSECUTING ATTORNEY**

1.  Approved as to Form  Not Approved as to Form  
Reviewer Susan Rogers Date 12/4/2020  
2. Comments:

**H. CERTIFICATION BY CONTRACT ADMINISTRATOR: THIS CONTRACT IS READY FOR CONSIDERATION BY THE AUTHORIZED CONTRACT SIGNER.**

*(For contract signing authority, see KCC 3.56.075)*

Date Approved by Authorized Contract Signer: \_\_\_\_\_  
RETURN SIGNED ORIGINALS TO:

Date \_\_\_\_\_  
Alex Jarrett @ MS- 4

**PROFESSIONAL SERVICES AGREEMENT**  
**Between**  
**KITSAP PUBLIC HEALTH DISTRICT**  
**And**  
**KITSAP COUNTY**

This Professional Services Agreement (“Agreement”) is made and entered into between the Kitsap Public Health District, a Health District organized pursuant to chapter 70.46 Revised Code of Washington and Section 9.52 Kitsap County Code, hereinafter referred to as “District,” and Kitsap County hereinafter referred to as “Subrecipient.”

WHEREAS, on February 29, 2020, the Governor of Washington State executed a proclamation of emergency relating to the COVID-19 outbreak;

WHEREAS, on March 8, 2020, the Director of the Kitsap County Department of Emergency Management issued a proclamation of emergency in response to the cases of COVID-19 identified in Kitsap County, which was adopted by resolution of the Kitsap County Board of Commissioners on March 9, 2020; and

WHEREAS, the District and Subrecipient in response to the pandemic are working cooperatively in providing services under the Emergency Operations Center (EOC) pursuant to mission number 20-0265.

The parties mutually agree as follows:

1. **Period of Performance:** The period of performance of this Agreement shall begin March 1, 2020 and be completed no later than December 30, 2020, unless terminated sooner or extended as provided for herein.
2. **Purpose:** The District desires to allocate portions of the CARES Funds to the Subrecipient consistent with the Reimbursement requirements for costs incurred in response to the COVID-19 public health emergency. The District agrees to provide the Subrecipient a total sum not to exceed \$850,000.00 on a reimbursement basis upon certification by the Subrecipient that the requests meets reimbursements requirements, if and to the extent Subrecipient’s requests are for costs incurred in response to the COVID-19 public health emergency during the reimbursement period of March 1, 2020 – December 30, 2020.
3. **Qualifications/Eligibility:** Subrecipient shall have the qualifications necessary to successfully complete the objectives of this Agreement. The Subrecipient hereby affirms that he/she is eligible to work in the United States as set forth in the Immigration Reform and Control Act (IRCA).
4. **Statement of Work and Budget:** Subrecipient shall furnish the necessary personnel, equipment material, and / or services and otherwise do all things necessary for or incidental to the performance of the work set forth in **ATTACHMENT A**, attached hereto and incorporated herein. **ATTACHMENT A** contains the Scope of Work and Budget.
5. **Compensation:** This Agreement is funded by federal funds. The District agrees to pay Subrecipient up to \$850,000 in federal funds during the Agreement. The District shall reimburse Subrecipient for travel as applicable at the federally approved rate. Compensation will be based on invoices submitted by Subrecipient itemizing a detailed description of services performed per the agreed upon Scopes of Work and Budgets set forth respectively in **ATTACHMENTS A**.

Subrecipient shall submit a Monthly Expenditure Report and Request for Reimbursement (Form A-19) invoice voucher, hereto attached and herein incorporated as **ATTACHMENT B**, to the District for payment.

6. **Performance Requirements and Notices:** The assigned District staff shall monitor the performance of this Agreement, approve billings submitted by Subrecipient, and determine the acceptability of any reports provided by Subrecipient. District staff shall provide and facilitate assistance and guidance to Subrecipient as necessary.

The District reserves the right to conduct periodic performance and billing reviews after the execution of this Agreement in order to evaluate unspent/unclaimed funds. The District reserves for itself the authority to reallocate funding pending the outcome of such a review.

Subrecipient shall send programmatic communications, such as reports, via the communication method established by the District. Formal notices pursuant to this Agreement shall be sent to the staff responsible for project coordination as follows:

If to the District:  
Kitsap Public Health District Attn:  
Keith Grellner  
345 6<sup>th</sup> Street, Suite 300  
Bremerton, WA 98337  
(360) 728-2284  
[keith.grellner@kitsappublichealth.org](mailto:keith.grellner@kitsappublichealth.org)

If to the Subrecipient:  
Kitsap County  
Attn: Karen Goon  
614 Division Street, MS-4  
Port Orchard, WA 98366  
360-337-7080  
[kgoon@co.kitsap.wa.us](mailto:kgoon@co.kitsap.wa.us)

7. **Special Billing Requirements:** Billings to the District shall be submitted no more frequently than every 30 days. Billings shall be sent to:

Kitsap Public Health  
District Melissa Laird  
345 6<sup>th</sup> Street, Suite 300  
Bremerton, WA 98337  
(360) 728-2283

Authorized and allowable program expenditures will be reimbursed upon receipt and approval of the monthly A-19 must be provided to the District by the 20<sup>th</sup> of each month in order to receive reimbursement for the previous month. If the District does not receive the A-19 by the 20<sup>th</sup> of the month with the required deliverables, the District may withhold approval and payment at its discretion.

The District will pay Subrecipient all allowable costs incurred as evidenced by proper invoice of Subrecipient submitted to the District on a timely basis, insofar as those allowable and allocable costs do not exceed the amount appropriated or otherwise available for such purposes as stated herein or in subsequent amendments.

Backup documentation will be provided to the District with invoice. Backup documentation can include, but is not limited to: receipts, invoices, billing records, work orders, positive time and attendance records (timesheets), travel vouchers and accounting expense reports. Failure to provide the required information may result in nonpayment of invoices or termination of this Agreement.

This is a subrecipient contract. All expenditures incurred, and reimbursements made for performance under this Agreement will be based on actual allowable costs. Costs can include direct labor, direct material, and other direct costs specific to the performance of activities or achievement of deliverables under this Agreement. Unexpended funds in each fiscal year may not be carried forward into the new budget period unless otherwise approved by the District.

For information in determining allowable costs, indirect rates and pass through agency requirements, such as fiscal monitoring of Subrecipients, please reference the document titled "Uniform

Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards:" (2 Code of Federal Regulation CFR 200).

Email submission of invoices, electronic reports, and deliverables is encouraged. However, original hardcopy of the A-19 is required and shall be mailed to the District. Upon expiration of the Agreement, any claim for payment not already made shall be submitted to the District within 20 days after the expiration date.

8. **Ineligible Costs:** Non-allowable costs include, without limitation, the following: a) expenses for the state share of Medicaid; b) damages covered by insurance; c) payroll or benefits expenses for employees whose work duties are not substantially dedicated to mitigating or responding to the COVID-19 public health emergency; d) expenses that have been or will be reimbursed under any federal program, such as the reimbursement by the federal government pursuant to the CARES Act of contributions by states to state unemployment funds; e) reimbursement to donors for

donated items or services; f) workforce bonuses other than hazard pay or overtime; g) severance pay; and h) legal settlements.

9. **Independent Capacity:** Subrecipient and its employees or agents who are engaged in the performance of this Agreement shall continue to be employees or agents of Subrecipient and shall not be considered to be employees or agents of the District for any purpose.
10. **Rights in Data:** Unless otherwise provided, data which originates from this Agreement shall be "works for hire" as defined by the U.S. Copyright act of 1976 and shall be owned by the District. Data shall include, but not limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights. The District maintains all rights to the license to publish, translate, reproduce, modify, deliver, dispose of the data, and to authorize others to do so.
11. **Indemnification:**

Each party agrees to defend and indemnify the other party and its elected and appointed officials, officers, employees and agents against all claims, losses, damages, suits and expenses, including reasonable attorneys' fees and costs, to the extent they arise out of, or result from, the negligence or willful misconduct of the indemnitor or its elected or appointed officials, officers, employees, and agents in the performance of this contract. The indemnitor's duty to defend and indemnify extends to claims by the elected or appointed officials, officers, employees, or agents of the indemnitor or of any contractor or subcontractor of indemnitor. The indemnitor waives its immunity under Title 51 (Industrial Insurance) of the Revised Code of Washington solely for the purposes of this provision and acknowledges that this waiver was mutually negotiated. The provisions of this section shall survive the expiration or termination of this Agreement.
12. **Safeguarding of Information and Privacy:** The use or disclosure by any party of any information concerning a client obtained in providing service under this Agreement shall be subject to Chapter 42.56 RCW and Chapter 70.02 RCW, as well as 45 CFR Parts 160 and 164 and any other applicable federal and state statutes and regulations. Personal information collected, used or acquired in connection with this Agreement shall be used solely for the purposes of this Agreement. Subrecipient agrees not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as provided by law.

Subrecipient agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to personal information. Any unauthorized access or use of confidential information must be reported to the District Privacy Officer at (360) 728-2232. The notification must be made in the most expedient time possible (usually within 24 hours of discovery) and without unreasonable delay, consistent with the legitimate needs of law enforcement, or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

The District reserves the right to monitor, audit, or investigate the use of personal information collected, used, or acquired by Subrecipient through this Agreement. The monitoring, auditing, or investigating may include but is not limited to "salting" by the District. Salting is the act of placing a record containing unique but false information in a database that can be used later to identify inappropriate disclosure of data contained in the database.

Subrecipient shall certify the return or destruction of all personal information upon expiration of the Agreement.

13. **Records Retention and Inspection:** The parties to this Agreement shall each maintain books, records, documents, and other evidence which sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the services described herein. These records shall be subject to the inspection, review or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six years after expiration and the Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period.

Records and other documents, in any medium, furnished by one party to this Agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available this material to any third parties without first giving notice to the furnishing party and giving that party a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

14. **Required Reports:** Subrecipient will submit required reports using required forms according to procedures issued by the District.

Subrecipient will be obligated to submit required reports after the close of the contract period, during the transfer of obligations to another contractor, or upon termination of the contract for any reason.

Subrecipient will include all requirements listed above in all approved subcontracts.

Due dates outside the Budget Period are for reporting only. Subrecipient may not bill for work done outside the Budget Period.

15. **Statutory and Regulatory Compliance:** Subrecipient shall comply with all applicable federal, state, and local laws, regulations, guidelines, and standards in the performance of this Agreement.

16. **Compliance with State and Federal Confidentiality Laws:** Subrecipient shall not use protected health information created or shared under this Agreement in any manner that would constitute a violation of RCW 70.02, RCW 42.56, the Health Information Portability and Accountability Act, commonly known as HIPAA, or any regulations enacted pursuant to its provisions. An excerpt of certifications and assurances is herein attached as ATTACHMENT C.

17. **Certification Regarding Suspension and Debarment:** Subrecipient, by completing and returning to the District the "Debarment, Suspension, Ineligibility or Voluntary Exclusion Certification Form," and completing, signing and returning to the District the "Certification Regarding Debarment, Suspension, Ineligibility or Voluntary Exclusion for Lower Tier Covered Transactions" form, (to be supplied to lower tier participants; see ATTACHMENT D), certifies that it is not debarred, suspended, or proposed for debarment by any federal agency.

18. **Federal Funding Restrictions and Limitations:** Please see ATTACHMENT A for restrictions

and limitations.

19. **Suspension of Performance and Resumption of Performance:** In the event contract funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion, the District may give notice to Subrecipient to suspend performance as an alternative to termination. The District may elect to give written notice to Subrecipient to suspend performance when the District determines that there is a reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow performance to be resumed prior to the end date of this Agreement. Notice may occur by facsimile or email to Subrecipient's representative. Subrecipient shall suspend performance on the date stated in the written notice to suspend. During the period of suspension of performance, each party may inform the other of any conditions that may reasonably affect the potential for resumption of performance.

When the District determines that the funding insufficiency is resolved, the District may give Subrecipient written notice to resume performance and a proposed date to resume performance. Upon receipt of written notice to resume performance, Subrecipient will give written notice to the District as to whether it can resume performance, and if so, the date upon which it agrees to resume performance. If Subrecipient gives notice to the District that it cannot resume performance, the parties agree that the Agreement will be terminated retroactive to the original date of termination. If the date Subrecipient gives notice it can resume performance is not acceptable to the District, the parties agree to discuss an alternative acceptable date. If an alternative date is not acceptable to the District, the parties agree that the Agreement will be terminated retroactive to the original date of termination.

20. **Non-Discrimination:** Subrecipient shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin, creed, marital status, age, Vietnam era or disabled veteran status, sexual preference, or the presence of any sensory mental or physical handicap.
21. **Waiver:** A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under his Agreement unless stated to be such in writing, signed by an authorized representative of the party and attached to the original Agreement.
22. **Assignment:** The work to be provided under this Agreement and any claim arising thereunder, is not assignable or delegable by either party in whole or in part without the express prior written consent of the District, which consent shall not be unreasonably withheld.
23. **Amendments and Changes in Work:** This Agreement may be modified only by a written amendment executed by authorized representatives of both parties.

In the event of any errors or omissions by Subrecipient in the performance for any work required under this Agreement, Subrecipient will make all necessary corrections without additional compensation. All work submitted by Subrecipient will be certified by Subrecipient and checked by Subrecipient for errors and omissions. Subrecipient will continue to be responsible for the accuracy of work even after the work is accepted by the District.

24. **Termination:** This Agreement may be terminated by either party upon giving at least 30 days advance written notice to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.



25. **Termination for Cause:** If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 15 working days. If the failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved part to the other.
26. **Termination for Funding:** If funding for the Agreement or matter is withdrawn, reduced or limited in any way after the Agreement is signed or becomes effective, the Parties may summarily terminate the Agreement notwithstanding any other termination provision in the Agreement. Termination under his provision will be effective upon the date specified in the written notice of termination. No costs incurred after the effective date of the termination will be paid.
27. **Choice of Law:** This Agreement is entered into pursuant to and under the authority granted by the laws of the State of Washington and applicable federal laws, both as to its interpretation and performance. The provisions of this Agreement shall be construed to conform to those laws. Any action at law, suit in equity, or judicial proceeding arising out of this Agreement shall be instituted and maintained only in any of the courts of competent jurisdiction in Kitsap County, Washington.
28. **Dispute Resolution:** In the event that a dispute or conflict arises under the Agreement that the Parties are unable to resolve with good faith efforts, they shall allow the dispute to be decided by a Dispute Panel in the following manner: A Mediator shall be mutually appointed by both parties, and  
  
each party shall appoint an additional member to the Dispute Panel. The Dispute Panel shall review the facts, contract terms and applicable statutes and rules and make a determination of the dispute. The determination of the Dispute Panel shall be final and binding on the Parties hereto. The Parties shall equally share the costs, if any, for the services of the Dispute Panel.
29. **Severability:** If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.
30. **Survival:** Those provisions of the Agreement that by their sense and purpose should survive expiration or termination of the Agreement shall so survive. Those provisions include, but are not necessarily limited to, the following: Indemnification, Termination, Disputes, Confidentiality, Choice of Law, Waiver, Records Inspection and Retention, and Severability.
31. **Subcontracting:** In no event shall the existence of the subcontract operate to release or reduce the liability of Subrecipient to the Department for any breach in the performance of Subrecipient's duties. This clause does not include contracts of employment between Subrecipient and personnel assigned to work under this Agreement.

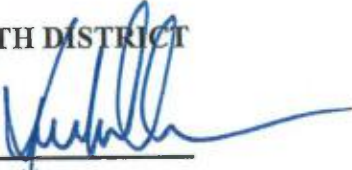
Subrecipient is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Agreement are carried forward to any subcontracts. Subrecipient agrees not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the District or as provided by law.

If at any time during the progress of the work, the District determines in its sole judgment that any contractor is incompetent, the District shall notify Subrecipient, and Subrecipient shall take immediate steps to terminate its Subrecipient's involvement in the work. The rejection or approval by the District of any Subrecipient or the termination of a Subrecipient shall not relieve Subrecipient of any of its responsibilities under the Agreement, nor be the basis for additional charges to the District.

32. **Entire Agreement:** This Agreement constitutes the entire agreement between the parties regarding its subject matter. Any oral or written representations not expressly incorporated in this Agreement are specifically excluded.

DATED this \_\_\_ day of 12/4/2020, 2020.

**KITSAP PUBLIC HEALTH DISTRICT**

By: Keith Grellner   
Keith Grellner, Administrator

BOARD OF COUNTY COMMISSIONERS  
KITSAP COUNTY, WASHINGTON



*Charlotte Garrido*

CHARLOTTE GARRIDO, Chair

*Robert Gelder*

ROBERT GELDER, Commissioner

*Dana Daniels*

*E. E. Wolfe*

EDWARD E. WOLFE, Commissioner

Funding Source
Federal Contract/Grant: DOH Con Con CLH18248 (KPHD 1749) CFDA# 21.019 BARS Revenue Code: 333.21.01

## ATTACHMENT A

### SCOPE OF WORK AND COMPENSATION

As the COVID-19 continues to spike in our area, Kitsap County must remain active supporting the Kitsap Public Health District's pandemic response efforts through the Emergency Operations Command (EOC), other agencies and organizations.

#### Scope

All activities shall be consistent with the requirements with Kitsap Public Health District's contract with the Washington State Department of Health regarding use of funding through the Coronavirus Aid, Relief and Economic Security (CARES) Act.).

Kitsap County and its partners will conduct the following activities through December 30, 2020:

1. Operating a virtual EOC with staffing from County, City, special District and hired Extra Help personnel;
2. Providing media and public information on a variety of activities, including a "Give Thanks, Not COVID" campaign through a Joint Information Center (JIC);
3. Facilitating Non-Congregate Sheltering including Quarantine and Isolation (Q&I) capability for the County's residents and homeless populations, considering social distancing requirements;
4. Providing Personal Protective Equipment (PPE) and other critical consumable commodities to first responders, schools and other sectors based on the States Tiered System through a temporary Staging Area; and
5. Operating several community-based testing centers in Bremerton, Poulsbo and elsewhere in the County;
6. Facilitating the Weather Shelters, Outbreak Response, CTBS, Community Based Vaccination and Rehab Units inventory of supplies, trailers and field operations.

#### Expenses

##### A. Staffing

Staffing support will be provided for the Emergency Operations Command (EOC) through dedicated staff, Kitsap County personnel and other required assistance. This staff will provide emergency unit leadership, general support, project management, procurement and administrative/clerical assistance.

##### B. Equipment and Supplies and Other Expenses

Materials necessary to achieve the scope may include, but not limited to, PPE, testing equipment, vaccine supplies, software and other support equipment.

##### C. Contracting

Contracted operations through outside agencies such a health, emergency and human services organizations may be necessary for assistance with non-congregate shelters, community-based testing, vaccine distribution and other efforts.

## **Compensation**

Compensation for staffing, equipment and contracting services shall not exceed \$850,000 through December 30, 2020.



## ATTACHMENT C HIPAA BUSINESS ASSOCIATE AGREEMENT

This Agreement (“Agreement”) is entered into by and between the Kitsap Public Health District (“Covered Entity”) and Kitsap County (“Business Associate”).

### Section I: Purpose

Performance of the Underlying Agreement may require Business Associate to use or disclose protected health information that is subject to provisions of the Health Insurance Portability and Accountability Act of 1996, set forth in 45 C.F.R. Parts 160 and 164 (commonly known as the “HIPAA Rules”).

The purpose of this Agreement is to set forth the obligations of the Parties with regard to the way in which protected health information is created, used, disclosed, maintained, provided or received on behalf of Covered entity by the Business Associate.

### Section II. Definitions

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Health Information, and Use.

#### Specific Definitions:

1. Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to this Agreement shall mean Kitsap County.
2. Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” in 45 CFR 160.103, and in reference to the party in this Agreement shall mean the Kitsap Public Health District.
3. HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and 164.

### Section III. Obligations and Activities of Business Associate

Business Associate agrees to:

1. Not use or disclose protected health information other than as permitted or required by the Agreement or as required by law.
2. Use appropriate safeguards, and comply with Subpart C of 45 CFR, Part 164 with respect to protected electronic health information and to prevent use or disclosure of protected health information other than as provided for by this Agreement.
3. Report to Covered Entity any use or disclosure of protected health information not provided for by this Agreement of which it becomes aware, including breaches of unsecured protected health information as required by 45 CFR 164.410, and any security incident of which it becomes aware.

Business Associate agrees to promptly notify covered entity following the discovery of a Breach of unsecured PHI. A Breach is considered "discovered" as of the first day on which the Breach is known, or reasonably should have been known, to Business Associate or any employee, officer or agent of Business Associate, other than the individual committing the Breach. Any notice of a Security Incident or Breach of Unsecured PHI shall include the identification of each Individual whose PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Security Incident or Breach as well as any other relevant information regarding the Security Incident or Breach.

4. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information.
5. Business Associate agrees to mitigate, to the extent possible, any harmful resulting from use or disclosure of PHI by Business Associate or its agents or subcontractors, in violation of the requirements of this Agreement.

6. Maintain and make available protected health information in a designated record set to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524.

If an Individual makes a request for access to the protected health information directly to Business Associate, business associate shall notify covered entity within three (3) business days of such request and shall cooperate with the Covered Entity to send the response to the Individual.

7. Make any amendment(s) to protected health information in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526.

If an Individual makes a request for amendment to the protected health information directly to Business Associate, Business Associate shall notify Covered Entity within three (3) business days of such request and shall cooperate with the Covered Entity to send the response to the Individual.

8. Maintain and make available the information required to provide to provide an accounting of disclosures to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528.

If an Individual makes a request for accounting of disclosures directly to Business Associate, Business Associate shall notify Covered Entity within three (3) business days of such request and shall cooperate with the Covered Entity to send the response to the Individual.

9. To the extent the Business Associate is to carry out one or more of Covered Entity's obligations(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s); and
10. Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

#### **Section IV. Permitted Uses and Disclosures by Business Associate**



1. Business Associate may only use or disclose protected health information as necessary to perform the services as outlined in the underlying agreement.
2. Business Associate is not authorized to use protected health information to de-identify the information in accordance with 45 CFR 164.514(a)-(c).
3. Business Associate may use or disclose protected health information as required by law.
4. Business Associate agrees to make uses and disclosures and requests for protected health information consistent with Covered Entity's minimum necessary policies and procedures.

Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity except for the specific used and disclosures set forth below:

- a) Business Associate may disclose protected health information for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- b) Business Associate may provide data aggregation services relating to the health care operations of the Covered Entity.

## **Section V. Termination**

1. Term. The Agreement shall terminate on June 30, 2021 or on the date Covered Entity terminates for cause, whichever is sooner.
2. Termination for Cause. Business Associate authorizes termination of the Agreement if Covered Entity determines Business Associate has violated a material term of the Agreement and has not cured the breach or ended the violation within the time specified by Covered Entity.
3. Obligations of Business Associate Upon Termination. Upon termination of this Agreement for any reason Business Associate shall return or destroy all protected health information received from Covered Entity, or created or received by Business Associate on behalf of Covered entity. This provision shall apply to protected health information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the protected health information.

In the event that Business Associate determines that returning or destroying the protected health information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of protected health information is infeasible, Business Associate shall extend the protections of this Agreement to such protected health information and limit further uses and disclosures of such protected health information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such protected health information.

4. The obligations of Business Associate under this section shall survive the termination of this Agreement.

#### **Section VI. Miscellaneous**

1. A reference in this agreement to a section in the HIPAA Rules means the section as in effect or amended.
2. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the HIPAA Rules and any other applicable law.
3. Any ambiguity in this Agreement shall be resolved to permit compliance with the HIPAA Rules.

## ATTACHMENT D

### CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

#### *Lower Tier Covered Transactions 48 CFR 9.4*

- A. Contractor, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:
- i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
  - ii. Have not within a three-year period preceding this Contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
  - iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of federal Executive Order 12549; and
  - iv. Have not within a three-year period preceding the signing of this Contract had one or more public transactions (Federal, State, or local) terminated for cause of default.
- B. Where the Contractor is unable to certify to any of the statements in this Contract, the Contractor shall attach an explanation to this Contract.
- C. The Contractor agrees by signing this Contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by COMMERCE.
- D. The Contractor further agrees by signing this Contract that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

#### **LOWER TIER COVERED TRANSACTIONS**

- i. The lower tier Contractor certifies, by signing this Contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
  - ii. Where the lower tier Contractor is unable to certify to any of the statements in this Contract, such contractor shall attach an explanation to this Contract.
- E. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded**, as used in this section, have the meanings set out in the Definitions and Coverage sections

of the rules implementing Executive Order 12549. You may contact COMMERCE for assistance in obtaining a copy of these regulations.

This Certification is executed by the person(s) signing below who warrant they have authority to execute this Certification.

CONTRACTOR: Kitsap County  
Signature: Karen Goon  
Name: Karen Goon  
Title: County Administrator  
Date: 12/2/20