

FACILITY IMPROVEMENT COLLABORATION AGREEMENT

This agreement concerning improvements to the facility located at 1500 State Street, Bellingham, Washington (the “Agreement”) is made and entered into between Whatcom County, Washington (the “County”) and Unity Care Northwest (“Unity Care”) (each a “Party” and collectively the “Parties”), effective the data of last signature below (the “Effective Date”).

RECITALS

WHEREAS, the County and Unity Care desire to coordinate their provision of services, to include health care and related services provided by Unity Care, at 1500 State Street, Bellingham, Washington, a facility owned by Whatcom County (the “Facility”);

WHEREAS, to provide coordinated services, the County and Unity Care desire to work in close collaboration for the improvement and shared use of the Facility;

WHEREAS, Whatcom County has agreed to lease certain space within the Facility to Unity Care at a rate of \$1.00 per year for a ten-year lease term;

WHEREAS, Unity Care submitted an application for Congressional Directed Spending (“CDS”) capital improvement funding in support of this collaborative endeavor, which application was favorably endorsed and led to a CDS award of capital funding from the Health Resources and Services Administration (“HRSA”) (the “CDS Award”);

WHEREAS, the Parties acknowledge that CDS Award funding from HRSA is subject to certain terms and conditions impacting the improvement work and the improved Facility; and

WHEREAS, the Parties are entering into this Agreement to facilitate compliance with the CDS Award terms and conditions, throughout the term of Unity Care’s occupancy of the Facility.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained and intending to be legally bound hereby, the County and Unity Care agree as follows:

1. Compliance with HRSA Requirements.

1.1 Notice of Award and Related Guidance. The Parties agree to comply with: (i) the terms and conditions set forth in the attached CDS Award notice of award (“NOA”) (**Appendix A**), (ii) HRSA guidance set forth in the Funding Opportunity Announcement (**Appendix B**), and (iii) other HRSA CDS Program guidance promulgated to interpret and implement the terms and conditions of the NOA. HRSA CDS Program guidance is currently available at: <https://www.hrsa.gov/grants/manage-your-grant/training/community-project-funding-congressionally-directed>.

1.2 Scope of Compliance. Certain HRSA requirements are set forth in further detail below to facilitate cooperation and compliance by the Parties. The Parties agree to cooperate in good faith regarding with all HRSA requirements, as agreed in Paragraph 1.1, regardless of whether such requirements are set forth in greater detail below.

2. Construction Contracting, Coordination and Contributions.

2.1 Scope of Facility Improvement Project. The Parties acknowledge that the full cost of improvement of the Facility is expected to be approximately [insert], and that no less than \$2 million of that cost is attributable to the work by [insert] (“Construction Contractor”) on the space to be leased by Unity Care.

2.2 Contract Funding and Execution. The County agrees to cooperate in good faith with Unity Care to make Unity Care a signatory to, or express third-party beneficiary of, the contract with Construction Contractor for improvement of the Facility (the “Construction Contract”). In return, Unity Care agrees to contribute an amount up to the \$2 million reflected in **Appendix A** to the project effort, subject to compliance with the requirements described in Section 1 (Compliance with HRSA Requirements).

2.2.1 Payment of Costs for Unity Care Space. The Parties further agree that Unity Care shall be responsible for directly paying Construction Contractor up to the \$2 million of costs attributable to the Facility space to be leased by Unity Care. The terms and conditions of Unity Care’s obligation to pay the Construction Contractor, including the identification of qualifying expenses and invoicing provisions, shall be further detailed in an amendment to this Agreement or a separate agreement between the Parties and/or the Construction Contractor.

2.2.2 Unavailability of CDS Award Funding. In the event that all or part of the CDS Award is unavailable to fund the Facility improvements pursuant to the terms of this Agreement, Unity Care shall be responsible for reimbursing the County for all Facility improvement expenses incurred in reliance upon CDS Award availability. The reimbursement requirements of this provision shall not exceed \$2 million. Notwithstanding the foregoing, Unity Care shall not be responsible for any such reimbursement if the CDS Award is unavailable due to the County terminating this Agreement or failing to comply with its obligations (including, but not limited to, recognition of the federal interest created by the funding and use of compliant procurement procedures) under this Agreement.

2.3 Health Care Space. The County agrees to incorporate Unity Care’s preferred design features into the health care space to be leased by Unity Care. Unity Care understands and agrees that the design of the health care space must and will be consistent, both for purposes of functionality and overall aesthetics, with design features and styles for the remainder of the Facility. The Parties will collaborate in good faith regarding such design considerations.

2.4 Construction Contract Participation Limited to Health Care Space. The Parties acknowledge that, although the Construction Contract is a single contract, Unity Care’s financial contribution is proportionally limited to amounts needed for improvement of the health care space to be leased by Unity Care. Unity Care shall have no financial obligation with respect to

work or cost not attributable to the health care space. Except as may otherwise be provided for in this Agreement, the County hereby agrees to indemnify and hold harmless Unity Care from any and all claims by the Construction Contractor or third parties pertaining to Construction Contract work for space other than the health care space.

2.5 Compliance with Federal Procurement Standards and Environmental Review Requirements. The County acknowledges that Unity Care's expenditure of CDS Award funds is subject to compliance with (i) the environmental review requirements referenced in **Appendix A** and (ii) the federal procurement standards set forth within 45 C.F.R. Part 75. The County hereby affirms that it is familiar with such requirements as a recipient of federal funds for other projects and that its project design, management, and contracting processes are compliant with federal environmental review and procurement requirements. The County agrees to indemnify Unity Care for any costs disallowed by HRSA for failure to comply with such requirements. The County agrees to cooperate in good faith with Unity Care to provide HRSA all information that it requires on such matters to verify compliance and further project accomplishment. Unity Care agrees to cooperate in good faith with the County to expeditiously submit information to HRSA and coordinate with HRSA to avoid unnecessary project delays. Unity Care agrees to indemnify the County for any costs disallowed by HRSA resulting from Unity Care's failure to comply with any grant requirements imposed upon Unity Care as the CDS Award recipient.

3. Federal Interest. The County hereby acknowledges that the use of CDS Award funding for improvements to the Facility will create a federal interest in the Facility. The County agrees that, if required by HRSA, it will file a notice of federal interest ("NOFI") with respect to the Facility.

4. Lease Agreement and Order of Precedence. The Parties will cooperate in good faith to ensure that the lease terms between the County and Unity Care are consistent with HRSA requirements for improvements to leased property with CDS Award funds. The Parties hereby agree that the terms set forth in this Agreement shall supersede any inconsistent terms (if any) in the lease agreement.

5. Term. This Agreement shall begin on the Effective Date and continue until the end of Unity Care's occupancy of the facility under the above-described lease between the County and Unity Care, unless sooner terminated in accordance with Section 6 (Termination) below.

6. Termination. Either Party may terminate this Agreement by providing 30 days' written notice to the other Party through the signatory listed below (or such signatory's successor, if applicable). The effect of such termination and continuing obligations shall be as follows:

6.1 If Terminated by the County. Except as otherwise provided in this Agreement, if the County terminates this Agreement after any CDS Award funding has been used to pay amounts due on the Construction Contract or related expenses, the County will promptly reimburse Unity Care such amounts. If the County terminates this Agreement after a federal interest has been created in the Facility or underlying land, the County shall promptly cooperate in good faith with Unity Care and HRSA to seek release of the federal interest. The County shall be responsible

for, and shall pay to HRSA (through Unity Care or otherwise), such amount as is required by federal regulations to obtain release of the federal interest.

6.2 If Terminated by Unity Care. If Unity Care terminates this Agreement after any federal interest has been created in the Facility or underlying land, Unity Care shall promptly cooperate in good faith with the County and HRSA to seek release of the federal interest. Unity Care shall be responsible for, and shall pay to HRSA, such amount as is required by federal regulations to obtain release of the federal interest.

6.3 If Expires Naturally at the End of Unity Care's Occupancy. Upon the natural expiration of this Agreement upon Unity Care's end of occupancy of the Facility after the ten-year lease term, Unity Care shall have no obligation with respect to any federal interest in the property. The Parties will cooperate in good faith with HRSA regarding administration any remaining federal interest that may exist in the Facility, to include transfer of primary responsibility for management of any remaining federal interest to the County.

6.4 Effect of Early Termination on Lease. Termination of this Agreement by either Party prior to the expiration of the above-described lease between the County and Unity Care will have no effect on the lease agreement. However, in the event that this Agreement is terminated prior to its natural expiration and such termination frustrates the economic purpose of the lease, the Parties agree to confer in good faith regarding mutually acceptable revisions to the lease or its separate termination.

7. **Ongoing Cooperation and Information Sharing.** The Parties agree to cooperate in good faith regarding any obligations to the federal government pertaining to the Facility throughout the term of the Agreement. Such cooperation shall include reasonable and prompt sharing of information related to the CDS Award, the Construction Contract, and the Facility.

8. **Governing Law.** This Agreement is entered into in the State of Washington and shall be interpreted, enforced, and governed by Washington law. To the extent that the rights and obligations set forth herein pertain to requirements applicable to CDS Award funds, they shall be construed in a manner consistent with federal regulations, Department of Health and Human Services' ("HHS") policy guidance, and HHS Departmental Appeals Board precedent on such matters.

9. **Entire Agreement.** This Agreement sets forth the Parties' complete and final agreement. This Agreement may not be altered or amended except by a written instrument executed by both Parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

Whatcom County, Washington

By: _____

Title: _____

Unity Care Northwest

By: _____

Title: _____

Date: _____

Date: _____