

Thurston Mason Behavioral Health Organization INTERLOCAL AGREEMENT

THIS AGREEMENT, made and entered into this 15 day of September, 2015 by and between **Thurston County**, a political subdivision of the State of Washington, and **Mason County**, a political subdivision of the State of Washington hereinafter collectively referred to as the '**Counties or County**,' under the authority of the Interlocal Cooperation Act, chapter 39.34 RCW, for purposes hereinafter stated.

WHEREAS, RCW 71.24.015 encourages county authorities (as defined in RCW 71.24.025 (3) effective April 1, 2016) to enter into joint operating agreements with other county authorities to form Behavioral Health Organizations; and

WHEREAS, chapters 71.05 and 71.24 RCW allow counties and other entities to establish Behavioral Health Organizations to integrate planning, administration, and service delivery duties assigned to the Counties; and

WHEREAS, the Counties have a mutual interest in forming a Behavioral Health Organization to plan, coordinate and administer mental health and substance use disorder services;

NOW, therefore, in consideration of the mutual promises and covenants contained herein, the Counties agree as follows:

ESTABLISHMENT AND ORGANIZATION OF THE BEHAVIORAL HEALTH ORGANIZATION:

1. PURPOSE

The purpose of this Agreement is to establish a Behavioral Health Organization to carry out the responsibilities of a Behavioral Health Organization as defined in RCW 71.24.300. The Thurston Mason Behavioral Health Organization ("TMBHO") established by the terms of this Agreement is the successor to and is intended to replace the Thurston Mason Regional Support Network, created by Interlocal Agreement between Thurston County and Mason County dated October 21, 1980.

This Agreement between the Counties shall continue uninterrupted, **PROVIDED**, however, the Counties agree that each party shall be responsible for prior obligations and liabilities arising out of the operation of programs funded under RCW Chapter 71.24 prior to the effective date of this Agreement, and to defend, indemnify and hold harmless each other participating County from any such prior liability.

2. DURATION OF AGREEMENT

- a. This Agreement shall commence upon final approval of the Counties and shall be in force until such time it is terminated by the participating Counties.
- b. Any actions taken by the Counties pursuant to this Agreement on or after October 1, 2015, are hereby ratified by the Counties and subject to this Agreement.

3. ORGANIZATION

- a. **Governing Board:** TMBHO shall have a Governing Board of three members. One member shall represent Mason County; two members shall represent Thurston County. The Board of County Commissioners for Mason County shall appoint the member for Mason County. The Board of County Commissioners for Thurston County shall appoint the two members for Thurston County. Governing Board members shall serve at the pleasure of the appointing authorities. The respective appointing authorities shall also appoint one alternate member for each County. Alternate members shall have the same authority to attend, participate in, and vote at any meeting of the Governing Board as that County authority's member when the regularly appointed member is absent from the meeting. Each person so appointed shall commence service upon written notification to TMBHO of the name of the appointed member and alternate member.
 - I. Except as otherwise provided herein, a simple majority vote by a quorum of the members of the Governing Board shall be required for the Governing Board to take action or exercise any of its powers.
 - II. Any decision that would solely or disproportionately affect services in Mason County must receive an affirmative vote by the sitting/appointed Mason County Board member.
- b. The TMBHO Governing Board shall provide oversight of the functions of the TMBHO Administrator and the TMBHO Administrative Service Organization operations.
- c. The powers of the Governing Board shall be those necessary to transact the business of the TMBHO, including, but not limited to:
 - i. Subject to section 3.f herein, hiring, evaluating and terminating the TMBHO Administrator.
 - ii. Reviewing, modifying, approving, and adopting policy and procedures developed and presented by the TMBHO Administrator or the Governing Board;
 - iii. Reviewing, modifying, approving, and adopting TMBHO budgets and contracts developed and presented by the TMBHO Administrator;
 - iv. Reviewing, modifying, approving and adopting service delivery plans and operating plans developed and presented by the TMBHO Administrator;
 - vi. Adopting TMBHO bylaws and approving amendments, alterations or repeals of the TMBHO bylaws. Any such bylaws shall be consistent with this Agreement and shall be binding on each County; and
 - vii. Taking any necessary or proper steps to exercise the powers of the Governing Board.
- d. **Administrator:** Subject to Section 3.f herein, the TMBHO Administrator will be responsible for ensuring compliance with all applicable statutes, rules, regulations, policies, bylaws and contract provisions.

- e. **Advisory Board:** There is hereby created a TMBHO Advisory Board consisting of a minimum of nine members. Each County, acting through its Board of County Commissioners, shall appoint two members to the Advisory Board. The remaining Advisory Board members shall be selected by the Governing Board and shall have at minimum:
 - i. one law enforcement member appointed by a County,
 - ii. one member for Tribal representation,
 - iii. a minimum of 51% of the Advisory Board membership are persons, parents or legal guardians of person, with lived experience and/or self-identified as a person in recovery from a behavioral health disorder,
 - iv. residents of the appointing Counties only.

The composition of the Advisory Board shall be broadly representative of the demographic character of the Counties and the persons served therein. The Advisory Board will meet monthly if there is business to be conducted and may rotate the location of these meetings as approved by the Governing Board. Each County authority shall seek local input in selecting its representatives to the Advisory Board. Members of the Advisory Board shall serve at the pleasure of the County Commissioners. Appointments to the Advisory Board shall be for three-year terms that may be repeated with Board of County Commissioner approval. No employees, managers or other decision makers of subcontractors who have the authority to make policy or fiscal decisions on behalf of the subcontractor shall be on the Advisory Board.

- f. **Administrative Services Organization Entity:** The Governing Board shall, at minimum, contract with Thurston County to function as the Administrative Service Organization in the first year of operation. As the Administrative Service Organization for the TMBHO, Thurston County is responsible for maintaining mental health and substance use disorder services and functions of a BHO as required by chapters 70.96, 70.96A, 71.05, 71.24 RCW and applicable WACs including, but not limited to, the following duties:
 - i. Management Information System;
 - ii. Care Management System;
 - iii. Quality Management System;
 - iv. Provider Service Network Management;
 - v. Consumer Service;
 - vi. Financial Management;
 - vii. Service Coordination in both Counties; and
 - viii. Grievance System.
- g. **TMBHO Funds:** TMBHO funds shall be deposited with the Thurston County Treasurer who shall be the custodian of such funds. The Thurston County Treasurer may make payments from such funds upon audit by the Thurston County Auditor as provided for in RCW 71.24.100. The Thurston County Treasurer shall establish a

special fund to be designated "Operating Fund of Thurston Mason BHO." Interest on investment of TMBHO funds shall accrue for the benefit of said operating fund.

- h. **Attorney:** TMBHO may retain the services of an attorney when deemed necessary and approved by the Governing Board.
- i. **Applicable Standards:** All services provided under the auspices of this Agreement shall be in accordance with all applicable laws, rules and regulations, including, but not limited to:
 - a. RCW 39.34: Interlocal Cooperation Act
 - b. RCW 71.05: Mental Illness
 - c. RCW 71.24: Community Mental Health Services Act
 - d. RCW 71.34: Mental Health Services for Minors
 - e. RCW 70.96: Alcoholism
 - f. RCW 70.96A: Treatment for Alcoholism, Intoxication and Drug Addiction

4. CONFLICT OF INTEREST

The Governing Board and the BHO Advisory Board shall be free from conflicts of interest and from any appearance of conflicts of interest of personal, professional and fiduciary interests relating to the TMBHO and the consumers it serves. Members, or their immediate family will have no commitment, investment, obligation, or substantive involvement (financial or otherwise), in any agency contracting with, submitting any proposals to, or is expected to submit any proposals to the BHO. A former Board member may submit proposals to the BHO only following a minimum of one full calendar year after the date of their official departure from either Board.

5. INSURANCE, RISK MANAGEMENT, AND INDEMNIFICATION

- a. **Risk reserves:** TMBHO will maintain Risk Reserve Funds as required by the Regional Support Network Medicaid (Pre-paid Inpatient Health Plan) and Non-Medicaid contract with the State of Washington, Department of Social and Health Services. If at any time, the balance of said Risk Reserve Fund goes below that which is required by the DSHS Medicaid and Non-Medicaid contract, the TMBHO shall immediately give notice to each party to this Agreement and shall give monthly notices of the current balance of said Risk Reserve Fund each month thereafter until the balance of said fund meets the TMBHO contacted requirements. Risk Reserve Funds shall only be used as allowed in contract.
- b. TMBHO agrees to defend, indemnify, and hold harmless each of the Counties to this Agreement against any and all claims arising out of the acts or omissions of the TMBHO staff members.

TMBHO additionally agrees to defend, indemnify, and hold harmless each of the Counties to this Agreement against any and all claims brought by TMBHO staff members as a result of their employment, including but not limited to claims for wrongful termination and for violation of employee rights.

- c. **Claims based on acts of subcontractors:** This paragraph shall not be construed to create any rights whatsoever in any person or entity not a party to this Agreement. The

sole purpose of this paragraph is to allocate contribution among the Counties to this Agreement, in the event of claims brought against TMBHO as a result of the acts or omissions of TMBHO's subcontractors. It is the intent of the Counties to this Agreement that TMBHO is not liable for the acts or omissions of TMBHO's independent contractors. The TMBHO Governing Board shall include in all subcontracts provisions requiring subcontractors to defend, indemnify, and hold harmless TMBHO against any and all claims attributed to the acts or omissions of said subcontractors.

The TMBHO Governing Board shall also require all subcontractors to maintain policies of general and professional liability insurance with limits of not less than \$2,000,000 per occurrence, and \$5,000,000 in the aggregate and each such policy shall name the TMBHO, Thurston County, Mason County and the State of Washington as additional insureds.

- d. **TMBHO Liability Policies** As an additional level of protection, TMBHO shall, with TMBHO funds, purchase policies of liability insurance as follows to cover against the risk of subcontractor liability:

Governing Board Member's Errors and Omission Insurance: TMBHO shall purchase and maintain a Governing Board members' Errors and Omission Insurance policy with limits of liability of not less than \$1,000,000, combined single limit.

Commercial General Liability Insurance: TMBHO shall purchase and maintain a Commercial General Liability policy using Insurance Services Office "Commercial General Liability" policy form CG 00 01, with an edition date prior to 2004, or the exact equivalent. Coverage for an additional insured shall not be limited to its vicarious liability. Defense costs must be paid in addition to limits. Limits shall be no less than \$5,000,000 per occurrence for all covered. Thurston County, Mason County and the State of Washington shall be included as additional named insureds on such policy and such policy shall include each County's and/or the State's officials, employees, agents, and volunteers when they are performing an official function for TMBHO as authorized by the TMBHO Governing Board or Administrator. Coverage shall include contractual liability and employer's liability.

Workers' Compensation: TMBHO shall purchase and maintain a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident for all covered losses.

Business Auto Coverage: TMBHO shall purchase and maintain an ISO Business Auto policy utilizing Coverage form CA 00 01 including owned, non-owned and hired autos, or the exact equivalent. Limits shall be no less than \$1,000,000 per accident, combined single limit. If TMBHO owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If TMBHO or TMBHO's employees will use personal autos in any way with the work of TMBHO, TMBHO shall obtain evidence of personal auto liability coverage for each such person.

Excess or Umbrella Liability Insurance (Over Primary): If used to meet limit

requirements, any excess or umbrella liability policy shall provide coverage at least as broad as specified for the underlying coverages. Such policy or policies shall include as insureds those covered by the underlying policies, including additional insureds. Coverage shall be "pay on behalf", with defense costs payable in addition to policy limits. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to the Counties for injury to employees of TMBHO, subcontractors or others involved in the Work. The scope of coverage provided is subject to approval of County following receipt of proof of insurance as required herein.

e. Additional Insurance Stipulations:

- 1) TMBHO agrees to endorse third party liability coverage required herein to include as additional insureds the Counties, their officials, employees and agents, and the State of Washington using ISO endorsement CG 20 10 with an edition date prior to 2004. [If this is a construction contract, ISO endorsement 20 37 also is required.] TMBHO also agrees to require all contractors, subcontractors, and anyone else involved in this agreement on behalf of the TMBHO (hereinafter "indemnifying parties") to comply with these provisions.
- 2) TMBHO agrees to waive rights of recovery against the Counties, their officials, employees and agents, and the State of Washington regardless of the applicability of any insurance proceeds, and to require all indemnifying parties to do likewise.
- 3) All insurance coverage maintained or procured by TMBHO or required of others by TMBHO pursuant to this agreement shall be endorsed to delete the subrogation condition as to the Counties, their officials, employees and agents, and the State of Washington or must specifically allow the named insured to waive subrogation prior to a loss.
- 4) All coverage types and limits required are subject to approval, modification and additional requirements by the Counties. TMBHO shall not make any reductions in scope or limits of coverage that may affect the Counties' protection without the Counties' prior written consent.
- 5) Proof of compliance with these insurance requirements, consisting of endorsements and certificates of insurance shall be delivered to the Counties prior to the execution of this Agreement. If such proof of insurance is not delivered as required, or if such insurance is canceled at any time and no replacement coverage is provided, the Counties have the right, but not the duty, to obtain any insurance it deems necessary to protect their interests. Any premium so paid by the Counties shall be charged to and promptly paid by TMBHO or deducted from sums due TMBHO.
- 6) It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by TMBHO or indemnifying party, is intended to apply first and on a primary non-contributing basis in relation to any other insurance or self-insurance available to the Counties.
- 7) TMBHO agrees not to self-insure or to use any self-insured retentions on any portion of the insurance required herein and further agrees that it will not allow any indemnifying party to self-insure its obligations to Counties. If TMBHO's existing coverage includes a self-insured retention, the self-insured retention must be declared to the Counties. The Counties may review options with the TMBHO, which may include reduction or elimination of the self-insured retention,

substitution of other coverage, or other solutions.

- 8) TMBHO will renew the required coverage annually as long as the Counties, or their employees or agents face an exposure from operations of any type pursuant to this agreement. This obligation applies whether or not the agreement is canceled or terminated for any reason. Termination of this obligation is not effective until the Counties execute a written statement to that effect.
 - 9) The limits of insurance as described above shall be considered as minimum requirements. Should any coverage carried by the TMBHO or a subcontractor of any tier maintain insurance with limits of liability that exceed the required limits or coverage that is broader than as outlined above, those higher limits and broader coverage shall be deemed to apply for the benefit of any person or organization included as an additional insured and those limits shall become the required minimum limits of insurance in all Paragraphs and Sections of this Agreement.
- e. **Hold Harmless:** Each party to this Agreement agrees to defend, indemnify and hold harmless the other party to this Agreement, its officers, agents, and employees for any claim, action, including but not limited to actions for misappropriation of funds, and provision of services, judgment, or lien for injury to persons or property damage caused by, resulting from or arising out of the sole negligence of the indemnifying party, its officers, agents or employees.

6. PROPERTY OF TMBHO

- a. **Disposal of Assets Upon Termination:** Assets acquired on or after April 1, 2016, shall be the property of TMBHO, unless otherwise specified by the Governing Board at the time of acquisition of such asset. In the event of termination of this Agreement, all assets of TMBHO, after payment of all claims, obligations, and expenses of TMBHO, shall be distributed to Thurston County and Mason County proportionate to their respective populations.

The Governing Board shall distribute the assets to Thurston County and Mason County within six months after the disposition of the last pending claim by TMBHO.

- b. **Contingent Liabilities:** Upon termination, the Governing Board shall complete and dissolve the business affairs of TMBHO. If liabilities of TMBHO at the time of termination exceed assets, each party shall pay its share of any additional amounts necessary for final disposition of all claims, as determined according to the contribution and indemnification principles established in this Agreement and after determining the appropriate share of third Counties, if any, including but not limited to, contractors of TMBHO and the State.

7. LOCAL ACCESS TO SERVICES

TMBHO shall assure an integrated system of care for persons in need of publically funded behavioral health care services. TMBHO shall assure local access and a sufficient network of outpatient community behavioral health services. The TMBHO shall have at least one licensed mental health center and one licensed chemical dependency service agency within each County and shall ensure adequate funding for personnel to provide seven day a week/ 24 hours per day crisis response in each County.

8. NONDISCRIMINATION

TMBHO, its assignees, delegates or subcontractors shall not discriminate against any person in the performance of any of its obligations hereunder on the basis of race, color, creed, ethnicity, religion, national origin, age, sex, marital status, veteran status, sexual orientation or the presence of any disability. Implementation of this provision shall be consistent with RCW 49.60.400.

9. FINANCING AND BUDGET

TMBHO shall be financed from State, Federal and local funds legally available for the provision of behavioral health services. The Governing Board shall establish and maintain such funds and accounts as may be required by good accounting practices and the State Budget Accounting Reporting System.

10. WITHDRAWAL

Any party hereto shall have the right to withdraw from this Agreement at any time, **PROVIDED** that the remaining County to this Agreement shall have received written notification of the other party's intention to withdraw at least 120 days prior to the proposed effective date of such withdrawal; and **PROVIDED FURTHER**, that such notification is received at least 120 days prior to the expiration of the current fiscal year period.

11. TERMINATION OF THE AGREEMENT

This Agreement may be terminated at any time by the unanimous written consent of all of the Counties. Upon termination, this Agreement and the TMBHO shall continue for the purpose of disposing of all claims, distribution of assets, and all other functions necessary to complete responsibilities of the TMBHO.

12. AMENDMENTS

This Agreement may be amended at any time by the written approval of the Counties.

13. PROHIBITION AGAINST ASSIGNMENT

The obligations and duties of the Counties under this Agreement shall not be assigned, delegated, or subcontracted to any other person, firm or entity without the prior express written consent of the Counties.

14. CHOICE OF LAW, JURISDICTION AND VENUE

- a. This Contract has been and shall be construed as having been made and delivered within the State of Washington, and it is agreed by each party hereto that this Contract shall be governed by the laws of the State of Washington, both as to its interpretation and performance.

- b. Any action at law, suit in equity, or judicial proceeding arising out of this Contract shall be instituted and maintained only in any of the courts of competent jurisdiction in Thurston County.

15. SEVERABILITY

- a. If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.
- b. If any provision of this Contract is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

16. COUNTERPARTS

This Agreement may be signed in counterpart or duplicate copies, and any signed counterpart or duplicate copy shall be equivalent to a signed original for all purposes. This Agreement shall be effective upon its execution by the two named Counties.

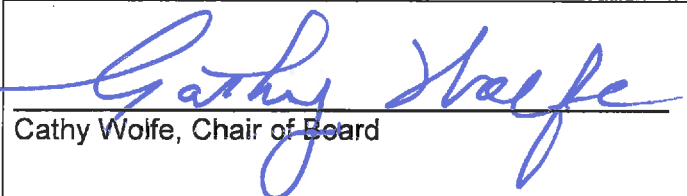

17. FILING OF AGREEMENT

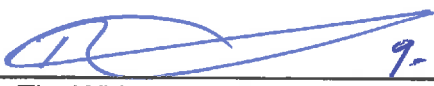
A copy of this Agreement shall be filed with the County Auditor of Thurston County or, alternatively, listed by subject on a public agency's web site or other electronically retrievable public source, as required by RCW 39.34.040.

18. ENTIRE AGREEMENT:

The Counties agree that this Agreement is the complete expression of its terms and conditions. Any oral or written representations or understandings not incorporated in this Agreement are specifically excluded.

IN WITNESS WHEREOF, the Counties have executed this Agreement by authorized officials thereof on the _____ day of _____, 2015

Thurston County Board of Commissioners	Mason County Board of Commissioners
 Cathy Wolfe, Chair of Board Date: _____	 Randy Neatherlin, Chair of Board Date <u>9-15-15</u>

<p>Sandra Romero, Commissioner</p> <p>Date: _____</p>	<p><i>Absent</i> Tim Sheldon, Commissioner</p> <p>Date: <u>9-15-15</u></p>
<p>Bud Blake, Commissioner</p> <p>Date: <u><i>Bud Blake</i></u></p>	<p>Terri Jeffreys, Commissioner</p> <p>Date: <u><i>Terri Jeffreys</i> 9-15-15</u></p>
<p>Approved as to form: Jon Tunheim, Prosecuting Attorney</p> <hr/> <p>By: Scott Cushing Deputy Prosecuting Attorney</p>	<p>Approved as to form:</p> <p> <u>9-15-15</u></p> <p>By: Tim Whitehead, Chief Deputy Prosecuting Attorney</p>