

## **AGREEMENT FOR BEHAVIORAL HEALTH SERVICES**

**THIS AGREEMENT FOR BEHAVIORAL HEALTH SERVICES** is made and entered into this \_\_\_\_ day of \_\_\_\_, 2019 by and between **GUILFORD COUNTY** (hereinafter referred to as the “County”) and **THE MOSES H. CONE MEMORIAL HOSPITAL OPERATING CORPORATION d/b/a CONE HEALTH** hereinafter referred to as “Cone Health.” The County and Cone Health shall be collectively referred to as “the Parties.”

### **WITNESSETH**

**WHEREAS:** the Parties have a mutual interest in improving behavioral health services and in integrating physical health and behavioral health and substance abuse care for Guilford County citizens regardless of their ability to pay; and

**WHEREAS:** the Parties desire to support a community based facility (the “Facility”) to house behavioral health crisis operations for Guilford County citizens as more fully described in this Agreement;

**THEREFORE,** in consideration of mutual commitments and subject to the conditions contained herein, the Parties hereby agree to the following:

**I. County Obligations.** For the term of this Agreement, the County agrees to:

- A. Secure, construct and maintain, and lease to Cone Health, the Facility for One Dollar (\$1.00) per year, pursuant to a lease agreement (coterminous with this Agreement, except as otherwise specifically provided therein) that is satisfactory in form and substance to each of the Parties (the “Lease Agreement”). The County shall be responsible for construction of the Facility, to be located at 931 Third Street, Greensboro, NC 27405, and compliance with all applicable legal requirements relating to the structural Facility itself. When completed, the Facility will contain a 16-bed facility based crisis service for adults (“Crisis Stabilization Center”), a Behavioral Health Urgent Care (“BHUC”) for all ages, a peer living room to be staffed by community partners (“Peer Center”), and an outpatient clinic for all ages (“Outpatient Clinic”), pharmacy services, and laboratory services. The County will update Cone Health on the construction process and consult with Cone Health on building design, fixtures and up fit. Cone Health will be the operator of the Facility.
- B. Provide the following services to operations at no cost, to be reflected in the Lease Agreement:
  - i. Adequate building maintenance staff
  - ii. Any cost of any structural work needed for the Facility building, parking lots, signage and maintenance of the grounds
  - iii. Two sworn security officers 24/7, to serve the Facility and the adjacent Child/Adolescent Behavioral Health Facility.
  - iv. Transportation services for individuals within the involuntary commitment process (“IVC”).

- C. Cover and the cost of initial basic facility equipment, such as cabinetry and furniture for the Facility. Cone Health shall furnish and install at its expense any replacements of such equipment over time as reasonably needed.
- D. Participate in any Oversight Board meetings or such other official planning and maintenance meetings that may be required, as determined by the Parties. The Oversight Board's scope and duties are defined in Exhibit B.
- E. Designate senior-level executives as members of any official planning and maintenance committee(s) as required.
- F. Enter into a HIPAA Business Associate Agreement with Cone Health should County perform any function or activity on behalf of Cone Health involving the use of disclosure of individually identifiable health information of Cone Health's patients, pursuant to 45 C.F.R. § 160.103.
- G. Provide and service a security and access control system for the Facility to be administered by Cone Health. Cone Health may change systems at its expense.
- H. Provide the necessary wiring and upfit of the Facility to support the phone and IT systems to be funded and administered by Cone Health.
- I. Provide payment in the amount of Three Million Eight Hundred Thousand Dollars a (\$3,800,000) per 12 month period to Cone Health for the specific services detailed in Exhibit A hereto, commencing, on a monthly basis as of the month in which the Facility is first open for patients (the "Services Payment"). The Services Payment shall be increased on a calendar year basis in an amount equal to the lesser of (i) 3.54% or (ii) the latest available calculation of the most recent year to year change in The National Health Expenditure Accounts (NHEA), as made available by the Centers for Medicare and Medicaid ("CMS"). Such funding will be guaranteed for the first twelve (12) months of this Agreement.
- J. Maintain property, casualty and liability insurance on the Facility, with Cone Health as a named insured, at commercially appropriate levels.

**II. Obligations of Cone Health.** For the term of this Agreement, Cone Health agrees to:

- A. Operate the Facility consistent with the Initial Plan of Operation attached hereto as Exhibit B. Cone Health will have sole and exclusive responsibility for medical and treatment services and decisions.
- B. Implement and abide by Cone Health's policies, procedures and protocols at the Facility, which Cone Health represents are appropriate patient care protocols. Cone Health will have sole and exclusive responsibility for medical and treatment services and decisions.
- C. Designate a contact person for communication and coordination with the County to maintain an interchange of information between the County and Cone Health.
- D. Secure all necessary medical and other health-related licenses and certifications to operate the Facility, including maintaining the designation for custody and treatment of individuals

under petitions for involuntary commitment in the State of North Carolina, and provide the behavioral health, medical, and pharmaceutical services as identified in the Initial Plan of Operation.

- E. Hire, train, compensate, and supervise all clinical staff of the Facility.
- F. Cover the costs of utilities, gas, electric, water, and sewer services for the Facility.
- G. Install and administer any and all telephone, computer, network or other information technology ("IT Resources) as Cone Health deems necessary and appropriate for operation of the Facility. All IT Resources, including any data or records generated through the services provided by Cone Health at the Facility will be under the control of and owned by Cone Health. The parties agree and acknowledge that, for purposes of the NC Public Records Law, records created or received by Cone Health in connection with the operation of the Facility are not "public records."
- H. Provide the County with basic patient demographic data as needed for local, state, or federal public health reports, subject to compliance with HIPAA and similar privacy statutes.
- I. Obtain sufficient medical and liability insurance with limits of at least \$2 million per incident/\$4 million aggregate for the operation of the Facility, including any off-site provision of care; such coverage may be provided through programs of self-insurance and provide proof thereof to the County prior to operation of the Facility.
- J. Fully comply with all applicable HIPAA requirements.
- K. Fully comply with all applicable Federal, State and local laws regarding the proper operation of a medical facility including, but not limited to, medical practice standards of care, disposal of medical waste, drug and pharmaceutical management and use protocols, and medical referrals.
- L. Participate in such Oversight Committee meetings and events as required, and designate such senior-level executives as members of the Committee as required.
- M. Bill for, collect and receive all revenues generated by the Facility, including health insurance, Medicare, Medicaid and any other authorized third-party payer, and all accounts receivable generated by such billings shall belong to Cone Health.

### **III. Term and Termination.**

- A. It is the desire of the Parties that, during the term of this Agreement, it be an ongoing contract, continuing from year to year (crossing the County's fiscal years) without the necessity of re-execution, subject to continued appropriation by the Guilford County Board of Commissioners or other funding source, pursuant to N.C.G.S. Chapter §153A-13. Accordingly, unless earlier terminated as provided in this Article III, the initial term of this Agreement is for five (5) years beginning as of the first day that the Facility is open for patients. Thereafter, this Agreement will renew for an additional (5) five year term, unless

either the County or Cone Health provides written notice of nonrenewal at least 60 days prior to the end of the initial term.

- B. Either Party may terminate this Agreement, at any time and for any reason, upon One Hundred and Twenty (120) days prior written notice to the other Party; provided that each Party shall fully comply with their obligations hereunder, including, without limitation, any County funding requirements, during such 120 day period.

#### IV. **Miscellaneous:**

- A. Neither Party shall discriminate according to age, sex, race, religion, national origin or handicap, in compliance with the Title VI and Section 504 of the Civil Rights Act.
- B. Unless specifically hired by County, the staff members of Cone Health are not in any way employees of the County and thus are not entitled to any employee benefits from the County, including Workers' Compensation.
- C. The Parties agree that Cone Health may operate the Facility under a 'doing business as' name.
- D. If Cone Health should undergo merger, acquisition, bankruptcy or any change in its ownership or its name for any reason, Cone Health must immediately notify the County in writing of these changes and provide the County with legal documentation supporting the change, such as an Assumption Agreement, Bill of Sale, Articles of Incorporation, Articles of Amendment, sales contract, merger documents, etc. Further, Cone Health will submit the name and address of the assuming Cone Health's registered agent for service of process and/or all notices required under this Agreement. This Agreement may not be assumed or otherwise transferred to another party by Cone Health without the express written consent of the County, which said consent will be evidenced by acceptance memo or letter from the County Manager, or designee, to Cone Health.
- E. If any provision of this Agreement is held unenforceable, then such provision will be modified to reflect the Parties' intention. All remaining provisions of this Agreement shall remain in full force and effect.
- F. All services shall be provided in a competent, workmanlike and professional manner.
- K. The Parties shall cooperate on community outreach and efforts to educate and promote the availability of the Facility to the target patient base and referral sources initially and periodically throughout the term of this Agreement.
- G. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- H. Modifications or changes in this Agreement may only be made via written contract amendment executed by the Parties at least thirty (30) days prior to the end of the County's fiscal year.

- I. It is the desire of the Parties that, during the term of this Agreement, it be an ongoing contract, continuing from year to year (crossing the County's fiscal years) without the necessity of re-execution, subject to continued appropriation by the Guilford County Board of Commissioners or other funding source, pursuant to N.C.G.S. Chapter §153A-13.
- J. This Agreement, including the Exhibits attached hereto, represents the entire agreement between the Parties and its terms may not be modified except by a written Amendment subscribed to by the Parties as set out herein.
- K. This Agreement shall be construed and governed by North Carolina law and any disputes shall be filed in a North Carolina court of competent jurisdiction.
- L. To the extent permitted by the North Carolina law and without waiving sovereign immunity, the Parties agree to each be solely responsible for their own acts or omissions in the performance of each of their individual duties hereunder, and shall be financially and legally responsible for all liabilities, costs, damages, expenses and attorney fees resulting from, or attributable to any and all of their individual acts or omissions to the extent allowable by law.
- M. If it shall be determined or asserted that this Agreement is a contract between Cone Health and a subcontractor within the meaning of Section 1861(v)(1)(I) of the Social Security Act or any rules, regulation, or judicial or administrative interpretations or decisions promulgated or made pursuant to that Section, then the Parties hereby agree that: (i) until the expiration of four (4) years after the furnishing of any service pursuant to this Agreement, each shall make available, upon written request of the Secretary of the Department of Health and Human Services (the "Secretary"), or upon written request of the Comptroller General, or any of their duly authorized representatives, this Agreement and any books, documents, and records that are necessary to certify the nature and extent of the costs incurred by either Party with respect to this Agreement and the services provided pursuant to it, and (ii) if either Party carries out any of the duties of this Agreement through a subcontract with a value or cost of \$10,000 or more over a twelve (12) month period with a related organization, that subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of any services pursuant to the subcontract, the related organization shall make available, upon written request of the Secretary, or upon request of the Comptroller General, or any of their duly authorized representatives, the subcontract, and any books, documents, and records of such organization as are necessary to verify the nature and extent of the costs incurred with respect to the subcontract and the services provided pursuant to it.
- N. Cone Health shall operate as an independent contractor for all purposes. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between the County and either the Cone Health or any employee or agent of Cone Health. The Parties agree to each be solely responsible for their own acts or omissions in the performance of each of their individual duties hereunder, and shall be financially and legally responsible for all liabilities, costs, damages, expenses and attorney fees resulting from, or attributable to any and all of their individual acts or omissions to the extent allowable by law.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be signed by their respective administrative officers.

GUILFORD COUNTY

By \_\_\_\_\_  
Chairman, Board of Commissioners  
\_\_\_\_\_  
Date

THE MOSES H. CONE MEMORIAL HOSPITAL OPERATING CORPORATION d/b/a  
CONE HEALTH

By: \_\_\_\_\_  
\_\_\_\_\_  
Date



**EXHIBIT A**  
**Initial Plan of Operation**

Operating Responsibilities:

Through a collaborative effort, Cone Health and the County hereby acknowledge and agree to provide the following services and/or funding as set forth in the Agreement for behavioral health care services of which this Initial Plan of Operation is a part.

Behavioral Health Services Provided:

The Facility, through medical staff hired and managed by Cone Health, and, where appropriate, third party subcontractors, shall provide the following health care services to the Facility's patients as determined from time to time by Cone Health, in consultation with the Oversight Board:

Cone Health will staff and provide:

- Crisis Stabilization Center for adults
- Behavioral Health Urgent Care (BHUC) (all ages)
- Peer Center staffed through community partners
- Outpatient services (all ages)
- Pharmacy, most likely offsite with a courier service with Pyxis onsite
- Laboratory, most likely offsite with a courier service
- Food services
- Environmental services (housekeeping)
- Minor maintenance such as stopped up toilets, lightbulb replacement, etc.
- Medical services
- Involuntary commitment services
- Such other health care services which are deemed by Cone Health and its staff to be medically necessary and consistent with the applicable medical standard of care in the community and which are approved by Cone Health, in consultation with the Oversight Board.



**Anticipated Hours of Operation:**

Crisis Stabilization Center and BHUC: 24 hours/day 7 days/week

Outpatient Services: 8:00\_ a.m. to 5:00 p.m.

**Staffing:**

Cone Health will ensure that the staffing compliment maintained at the Facility is consistent with the industry standard of care, and at no time will it be less than that required to manage patient care in a safe, efficient, and cost-effective manner.

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1 Cone Health reserves the right to modify the scope of services offered to the Facility's patients consistent with the applicable standard of care, any and all applicable laws and/or regulations, and/or the Facility physicians' professional training and judgment as physicians practicing in the behavioral health field in the state of North Carolina. Services that require specialized medical training will not be provided until and unless the Facility contracts with separate medical specialists licensed and training in such medical specialty.

## **EXHIBIT B**

### **Oversight Board**

- The Parties will establish an Oversight Board that is not involved in operations, but rather is responsible for general oversight and evaluation of success/performance metrics. The Board shall be structured as follows:
  - a seven member Board, with three representatives appointed by Cone Health and three appointed by the County
    - Cone Health – The Cone members shall be the Behavioral Health Service Line Leader, the Behavioral Health Medical Director, and one other representative appointed by Cone Health CEO
    - County – The County members shall be the Human Services Director, the Public Health Director, and a County Commissioner or designee
    - Mental Health Community Representative appointed jointly by the rest of the Board
    - The representative appointed by the Cone Health CEO, the County Commissioner or designee, and the Mental Health Community Representative will serve a three year term, with no term limit
  - The Oversight Board shall have a chair, vice chair, and secretary. The chair shall rotate on a three year cycle, with the vice chair being from the other organization.
  - The Behavioral Health Service Line Leader and the Human Services Director will also serve as staff to the Board.
  - The Board shall meet at least quarterly, of which one of the meetings shall serve as the annual meeting. Initially, the Board will likely meet more frequently.
  - A quorum shall require at least two Cone Health members and two County members.
  - The Board shall provide a formal written report to Cone Health and the County every six months.
  - The Board shall have the opportunity to review and give input on the annual budget but shall not have decision rights relative to the operating budget.
  - The Board shall establish measures of success and performance metrics at its initial meetings.