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MEMORANDUM

TO: HONORABLE MAYOR, HIAWATHA CITY COUNCIL

FROM: MIKE NESSLAGE, FIRE CHIEF

SUBJECT: BUSINESS ASSOCIATE AGREEMENT WITH MERCY AND UNITY POINT

DATE: 3/2/2018

In July of 2017 City Council gave approval for the Mayor to sign a Business Associate Agreement (BAA) with Mercy Hospital, pending final review by the City Attorney. That review developed several concerns, which have been clarified and resolved. After discussion, we have decided to return to you to re-approve the business associate agreement with Mercy, and also to renew/reapprove a similar document previously signed with Unity Point in 2016.

The documents center around the sharing of patient protected health information (PIN) as a part of our Community Paramedicine Program. Hiawatha Fire Department has been participating in a pilot Community Paramedicine program with Area Ambulance, St. Luke's and Mercy Hospitals. As a part of this program, paramedics make home visits to residents who are dismissed from the hospital with disease or illness that present a high risk of re-admission. When a high risk patient is dismissed, the hospital contacts us and provides the health information about that patient. The community paramedics schedule a visit with the patient. During the visit, they review all their medications, history, etc. with them. If they are having trouble with something…getting their meds picked up, transportation to appointments, etc. the paramedic helps make those connections. The paramedics act as patient advocates. As you well know, not every patient has a family to follow up, or is truthful with their family. We help fill that gap. In addition, this provides us with an additional opportunity to discuss general life safety concerns with the patient and family, for example, fall prevention, smoke and CO detectors, and fire safety.

During review, a concern arose about the need for additional insurance. ICAP (our liability insurance provider) suggested that we may (emphasis on may) need an additional insurance policy to cover HIPAA concerns. The cost of that policy was between $3,500 and $7,000. There were several key points to this. First, ICAP could not tell us why we needed this policy now; The Fire Department has been concerned with HIPAA since the service began in 2005, we handle patient PIN routinely. The scope of practice of the paramedics has not changed, and we have the same level of concern for protecting patients PIN. Secondly, ICAP could not tell us specifically what would and would not be covered, even with the insurance. Why would we need insurance now? The following is an excerpt from communications Ms. Kudrna had with ICAP.

> *"…was the fact that your ambulance department wouldn't be doing anything any differently than they're doing now…We discussed the fact that fines are excluded in the ICAP coverage document. Whether any breach would fall under this exclusion could not be determined until the time of the actual loss. What I can tell you is that if it's a covered loss by policy definition/language and the City was negligent, your ICAP coverage certificate will respond to defend you."*

We could not get a clear answer as to why we would spend the additional money for extra insurance. Ms. Downs, Ms. Kudrna, Mr. Parmenter, Ms. Kornegor, and I worked on this for some time. Once the information was collected we met with Mr. Olson and Mr. Dodson on January 19th and reviewed the information. After follow-up, that group came to the consensus that there was no clear need to purchase the additional insurance, and to move forward with approving the documentation. I am attaching a sample of the communications that we received from ICAP. We are requesting you approve the documents and give approval to sign.

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT ("Agreement") is entered into by and between Mercycare Service Corporation and/or Mercy Medical Center, Cedar Rapids, Iowa (the "Covered Entity"), and City of Hiawatha Fire and Rescue (the "Business Associate").

RECITALS

A. Covered Entity is a health care provider subject to the Health Insurance Portability and Accountability Act of 1996, the HITECH Act, and regulations promulgated thereunder ("HIPAA").

B. Business Associate, through the provision of certain services for or on behalf of the Covered Entity pursuant to a certain agreement entered into with Covered Entity on June 1, 2017 (the "Effective Date") for the provision by Business Associate of community paramedic visit services for Covered Entity (the "Underlying Agreement"), is a "business associate" of the Covered Entity as that term is defined in 45 C.F.R. § 160.103, and is subject to the Security Rule and certain provisions of the Privacy Rule.

C. Covered Entity is required by HIPAA to obtain satisfactory assurances that Business Associate will appropriately safeguard all Protected Health Information and Electronic Protected Health Information disclosed by, or created or received by Business Associate on behalf of, Covered Entity.

NOW, THEREFORE, in consideration of entering into the Underlying Agreement and the mutual promises and agreements below and in order to comply with all legal requirements, the parties agree as follows:

I. DEFINITIONS

1.1 **"Agreement"** has the meaning set forth in the preamble.

1.2 **"ARRA Breach"** has the same meaning as the term "Breach" in Section 13400(1) of the HITECH Act (i.e. 42 USCA 17921) and 45 CFR 164.402.

1.3 **"Business Associate"** has the meaning set forth in the preamble.

1.4 **"Covered Entity"** has the meaning set forth in the preamble.

1.5 **"Data Aggregation"** means the combining of PHI created or received under this Agreement with the PHI Business Associate receives or creates in its arrangement with another covered entity under the Privacy Rule to permit data analysis that relate to the Health Care Operations of the covered entities.

1.6 **"Designated Record Set"** means a group of records maintained by or for the Covered Entity that is: (i) the medical records and billing records about Individuals; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for the Covered Entity

to make decisions about Individuals. As used herein the term "record" means any item, collection, or grouping of information that includes PHI and is maintained, collected, used or disseminated by or for the Covered Entity.

1.7 **"Document Demand"** has the meaning set forth in Section 3.12.

1.8 **"Effective Date"** has the meaning set forth in the preamble.

1.9 **"Electronic PHI"** means information that comes within paragraphs 1(i) or 1(ii) of the definition of "protected health information," as defined in 45 C.F.R. § 160.103, limited to the information created, received, maintained or transmitted by Business Associate on behalf of Covered Entity.

1.10 **"HIPAA"** has the meaning set forth in the Recitals.

1.11 **"HITECH Act"** means Title XIII and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Public Law No. 111-5 and all regulations promulgated thereunder.

1.12 **"Individual"** means the person who is the subject of the PHI and includes a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

1.13 **"PHI"** means Protected Health Information that is provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity.

1.14 **"Privacy Rule"** means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.

1.15 **"Protected Health Information"** means any information, whether transmitted or maintained in electronic, written, oral, or any other form or medium, that relates to the past, present, or future physical or mental health or condition of an Individual; the provision of health care to an Individual; or the past, present or future payment for the provision of health care to an Individual; and (i) identifies the Individual, or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the Individual.

1.16 **"Required by Law"** has the same meaning as the term "'required by law" in 45 C.F.R. § 164.103.

1.17 **"Secretary"** means the Secretary of the U.S. Department of Health and Human Services or his or her designee.

1.18 **"Security Incident"** has the same meaning as the term "security incident" in 45 C.F.R. § 164.304.

1.19 **"Security Rule"** means the Security Standards and Implementation Specifications at 45 C.F.R. part 160 and part 164, subpart C.

1.20 "Underlying Agreement" has the meaning set forth in the Recitals.

1.21 "Unsecured Protected Health Information" or **"Unsecured PHI"** means PHI that is not secured through the use of a technology or methodology that the Secretary specifies in guidance renders PHI unusable, unreadable, or indecipherable to unauthorized Individuals, such as the guidance set forth in 74 Fed. Reg. 19006 (April 27, 2009) and updated in 74 Fed. Reg. 42740 (August 24, 2009).

1.22 Remaining Terms. Capitalized terms used, but not otherwise defined, in this Agreement have the meaning ascribed to them in HIPAA, the Privacy Rule, the Security Rule or the HITECH Act.

II. PERMITTED USES AND DISCLOSURES OF PHI

2.1 Underlying Agreement Uses and Disclosures. Business Associate may use or disclose PHI for purposes of performing its obligations and functions under the Underlying Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

2.2 Other Permitted Uses. If necessary, Business Associate may use PHI: (i) for the proper management and administration of the Business Associate; (ii) to carry out the legal responsibilities of the Business Associate; and (iii) for the provision of Data Aggregation services relating to the Health Care Operations of Covered Entity.

2.3 Other Permitted Disclosures. If necessary, Business Associate may disclose PHI for the purposes described in Section 2.2 above if: (i) the disclosure is Required by Law; or (ii) Business Associate obtains reasonable written assurance from the person or entity to whom it discloses the PHI that the PHI will remain confidential and will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person or entity, and the person or entity notifies Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.

III. OBLIGATIONS OF BUSINESS ASSOCIATE

3.1 Compliance with Privacy Rule. Business Associate shall comply with all applicable provisions of the Privacy Rule in carrying out its obligations under the Underlying Agreement and this Agreement. Further, to the extent Business Associate is to carry out any of Covered Entity's obligations under subpart E of 45 CFR 164, Business Associate agrees to comply with the requirements of such subpart that apply to Covered Entity in the performance of such obligations.

3.2 Prohibition on Unauthorized Use or Disclosure. Business Associate shall not use or disclose PHI except as permitted by this Agreement or as Required by Law.

3.3 Minimum Necessary.

(a) Business Associate shall limit its use and disclosure of PHI under this Agreement to the "minimum necessary," as set forth in guidance that the Secretary will issue regarding what constitutes "minimum necessary" under the Privacy Rule. Until the issuance of such guidance, Business Associate shall limit its use and disclosure of PHI, to the extent practicable, to the Limited Data Set (as that term is defined in 45 C.F.R. § 164.514(e)(2)), or, if needed, to the minimum necessary to accomplish the Business Associate's intended purpose. Business Associate may in good faith determine what constitutes the minimum necessary to accomplish the intended purpose of any disclosure of PHI.

(b) Paragraph (a) above does not apply to: (1) disclosures to or requests by a health care provider for treatment; (2) uses or disclosures made to the Individual; (3) disclosures made pursuant to an authorization as set forth in 45 C.F.R. § 164.508; (4) disclosures made to the Secretary under 45 C.F.R. part 160, subpart C; (5) uses or disclosures that are Required by Law as described in 45 C.F.R. § 164.512(a); and (6) uses or disclosures that are required for compliance with applicable requirements of the Privacy Rule.

3.4 Safeguarding PHI; Security Regulations. Business Associate shall use appropriate administrative, physical, and technical safeguards and comply with the Security Rule with respect to Electronic PHI to prevent the use or disclosure of PHI other than as provided for by this Agreement.

3.5 Mitigation. Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Security Incident or a use or disclosure of PHI by Business Associate in violation of this Agreement.

3.6 Reporting. In the event that Business Associate becomes aware of a use or disclosure of PHI by Business Associate that is not permitted under this Agreement, Business Associate shall report such use or disclosure to the Covered Entity promptly in writing and in any event, within 5 days of becoming aware of the use or disclosure. Business Associate agrees to report to Covered Entity in writing any Security Incident of which it becomes aware, except that, for purposes of this reporting requirement the term "Security Incident" does not include inconsequential incidents that occur on a frequent basis such as scans or "pings" that are not allowed past Business Associate's firewall. Notwithstanding this Section 3.6, the Business Associate's reporting obligations regarding any ARRA Breach are set forth in Article IV.

3.7 Subcontractors. Business Associate shall ensure that all subcontractors or agents of Business Associate that create, receive, maintain or transmit PHI on behalf of the

Business Associate agree in writing to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. Business Associate shall ensure that all agents, including subcontractors, to whom it provides Electronic PHI, agree in writing to implement reasonable and appropriate safeguards to protect such Electronic PHI.

3.8 Access.

(a) Within twenty (20) days of a request from Covered Entity, Business Associate shall furnish the PHI contained in a Designated Record Set that will enable the Covered Entity to respond to an Individual's request for inspection or copies of PHI about the Individual pursuant to 45 CFR § 164.524.

(b) In the event an Individual requests access to PHI directly from Business Associate, Business Associate shall forward such request to the Covered Entity immediately and take no direct immediate action on any such request. If the Covered Entity determines that an Individual is to be granted access to PHI, then Business Associate shall cooperate with the Covered Entity to provide to any Individual, at the Covered Entity's direction, any PHI requested by such Individual.

3.9 Amendment.

(a) If the Covered Entity requests that Business Associate amend any Individual's PHI or a record regarding an Individual contained in a Designated Record Set, then Business Associate shall provide the relevant PHI to the Covered Entity for amendment and incorporate any such amendments in the PHI as required by 45 C.F.R. §164.526.

(b) In the event an Individual requests directly to Business Associate that PHI be amended, Business Associate shall forward such request to the Covered Entity within ten (10) days of Business Associate's receipt of such request and shall take no direct immediate action on the request.

3.10 Records Availability. Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI available to the Secretary for purposes of determining compliance with the Privacy Rule and the Security Rule.

3.11 Accounting of Disclosures.

(a) If the Covered Entity requests that Business Associate furnish an accounting of disclosures of PHI made by Business Associate regarding an Individual during the six (6) years prior to the date on which the accounting was requested, then Business Associate shall, within fifteen (15) days of such request, make available to the Covered Entity such information as is in Business Associate's possession and is required for the Covered Entity to make the accounting required by 45 C.F.R. §164.528 and future regulations to be promulgated regarding accounting of disclosures.

(b) In the event an Individual requests an accounting of disclosures directly from Business Associate, Business Associate shall within ten (10) days forward such request to the Covered Entity and shall take no direct action on the request.

3.12 Demands for Production of PHI.

(a) **Receipt by Business Associate**. If Business Associate receives a subpoena, civil or administrative demand, or any other demand for production of PHI (a "Document Demand"), Business Associate shall provide a copy of such Document Demand to Covered Entity within five (5) days of receipt. To the extent the PHI that is the subject of the Document Demand is in the possession of Business Associate, and a response is warranted according to the standards contained in 45 C.F.R. § 164.512(e), Business Associate shall timely respond to the Document Demand.

(b) **Receipt by Covered Entity**. If Covered Entity receives a Document Demand, Business Associate shall provide to Covered Entity any PHI responsive to such Document Demand and assist and cooperate with Covered Entity in responding to such Document Demand in a timely manner and in accordance with the standards under 45 C.F.R. § 164.512(e).

3.13 Request for Restrictions on Disclosure of PHI. As required by Section 13405 of the HITECH Act and 45 CFR 164.522 (except as otherwise required by law), Business Associate shall comply with any request of an Individual for the Business Associate to restrict the disclosure of PHI of the Individual when the disclosure is to a health plan for purposes of carrying out payment or health care operations (and is not for purposes of carrying out treatment), and the PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full.

3.14 Remuneration for PHI.

(a) Except as explicitly permitted in the Underlying Agreement and also set forth in paragraph (b) below, Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual unless the Individual provided to the Covered Entity a valid authorization in accordance with 45 C.F.R. § 164.508 that specifically authorizes the Business Associate to exchange the PHI for remuneration.

(b) Paragraph (a) above does not apply if the purpose of the exchange is: (1) for public health purposes pursuant to 45 CFR § 164.512(b) or § 164.514(e); (2) for research purposes pursuant to 45 CFR § 164.512(i) or § 164.514(e), where the only remuneration received by the Covered Entity or Business Associate is a reasonable cost-based fee to cover the cost to prepare and transmit the protected health information for such purposes; (3) for treatment and payment purposes pursuant to 45 CFR § 164.506(a); (4) for the sale, transfer, merger, or consolidation of all or part of the Covered Entity and for related due diligence as described in the HIPAA definition of health care operations and pursuant to 45 CFR § 164.506(a); (5) To or by a Business Associate for activities that the Business Associate undertakes on behalf of a Covered Entity (or on behalf of a Business Associate in the case of a subcontractor), pursuant to 45 CFR §§ 164.502(e) and

164.504(e), and the only remuneration provided is by the Covered Entity to the Business Associate (or by the Business Associate to the subcontractor, if applicable), for the performance of such activities; (6) to an Individual, when the Individual requests access to his or her PHI pursuant to 45 CFR § 164.524 or when the Individual requests an accounting of disclosures pursuant to 45 CFR § 164.528; (7) for disclosures Required By Law; and (8) for any other purpose permitted by HIPAA where the only remuneration received by the Covered Entity or Business Associate is a reasonable, cost-based fee to cover the cost to prepare and transmit the PHI for such purpose or a fee expressly permitted by law.

3.15 Marketing Restrictions. Business Associate shall ensure that any Marketing communications it makes on behalf of Covered Entity are in compliance with the rules governing marketing set forth in 45 C.F.R. 164.508(a)(3), including but not limited to the requirements that Business Associate must obtain an authorization from an Individual prior to making any marketing communication to such Individual.

3.16 Fundraising Limitations. Business Associate shall ensure that any fundraising communications Business Associate makes on behalf of the Covered Entity are in compliance with the rules governing fundraising communications set forth in 45 C.F.R. 164.514(f), including but not limited to the requirement that Business Associate must provide, with each fundraising communication made to an Individual, a clear and conspicuous opportunity for the recipient of the communication to elect not to receive any further fundraising communications. Business Associate shall ensure that all Individuals electing not to receive any further fundraising communications do not receive any further fundraising communications.

IV. ARRA BREACH NOTIFICATION.

4.1 Risk Assessment by Business Associate. If Business Associate becomes aware of a potential ARRA Breach, Business Associate shall complete a risk assessment of the potential ARRA Breach to determine whether the potential ARRA Breach is an ARRA Breach. Such risk assessment shall include at least all the factors identified in 45 CFR 164.402(2), as amended by the final rule published in the Federal Register on January 25, 2013 at 78 Fed. Reg. 5566.

4.2 Notification to Covered Entity. If, after completing such risk assessment, Business Associate concludes that there was an ARRA Breach, Business Associate shall notify the Covered Entity of the ARRA Breach as soon as reasonably possible, and in all cases within five (5) business days of the first day on which any employee, officer or agent of Business Associate either knows or by exercising reasonable diligence would have known that an ARRA Breach occurred. The notification to Covered Entity shall include, if known, the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used or disclosed during such ARRA Breach. The notification shall also include: (a) a brief description of what happened, including the date of the ARRA Breach and the date of the discovery of the ARRA Breach, if known; (b) a description of the types of Unsecured PHI that were involved in the ARRA Breach (such as whether the full name, social security number, date of birth, home address, account number, diagnosis disability code or other types of information were involved); (c) recommended steps that Individuals should take to

protect themselves from potential harm resulting from the ARRA Breach; and (d) a brief description of what the Business Associate is doing to investigate the ARRA Breach, to mitigate harm to Individuals, and to protect against any further ARRA Breaches. Business Associate shall maintain evidence to demonstrate that any required risk assessment was completed and notification to the Covered Entity under this paragraph was made unless the Business Associate determines that a delayed notice (as described in Section 4.3) applies.

4.3 Delayed Notification to Covered Entity. Notwithstanding Section 4.2 above, if a law enforcement official states in writing to Business Associate that the notification to Covered Entity required under Section 4.2 would impede a criminal investigation or cause damage to national security, then Business Associate may delay the notification for any period of time set forth in the written statement of the law enforcement official. If the law enforcement official provides an oral statement, then Business Associate shall document the statement in writing, including the name of the law enforcement official making the statement, and may delay the notification required under Section 4.2 for no longer than thirty (30) days from the date of the oral statement, unless the law enforcement official provides a written statement during that time that specifies a different time period. Business Associate shall be obligated to maintain evidence to demonstrate the reason for the delayed notification and that the required notification under this paragraph was made

4.4 Notification to Individuals, the Secretary and/or the Media. In the event of an ARRA Breach caused by Business Associate, its agents and/or subcontractors, Business Associate shall provide assistance to Covered Entity in making all ARRA Breach notifications. To the extent Covered Entity incurs expenses and costs to comply with its notification obligations with respect to an ARRA Breach by Business Associate, its agents and/or subcontractors, in addition to any other remedies that may be available to Covered Entity under this Agreement or any applicable law, Business Associate shall reimburse Covered Entity for all costs and expenses (including attorneys' fees) incurred by Covered Entity related to providing the notifications required under 45 C.F.R. §§ 164.404, 406 and 408. Notwithstanding the foregoing, if the parties agree that Business Associate will, on behalf of Covered Entity, and within the applicable time frames required by law under 45 C.F.R. §§ 164.404, 406 and 408, prepare and send out any and all required ARRA Breach notifications to Individuals, the Secretary and/or to the media, Business Associate shall prepare and send such ARRA Breach notifications at Business Associate's sole expense and in compliance with the requirements of 45 C.F.R. 164.404, 406 and 408, as applicable. However, any ARRA Breach notifications Business Associate would prepare and send on behalf of Covered Entity shall be subject to Covered Entity's review and pre-approval before the notifications are sent. Additionally, in the event of an ARRA Breach, Business Associate agrees to pay for the credit monitoring fees for affected individuals for a period of at least two (2) years of credit monitoring.

V. TERM AND TERMINATION

5.1 Term. This Agreement is effective upon the effective date of the Underlying Agreement, and except for the rights and obligations set forth in this Agreement specifically surviving termination, shall terminate the later of the date the Underlying Agreement terminates or when all PHI is returned to Covered Entity or, with prior permission of Covered Entity, destroyed.

5.2 Termination for Cause. Notwithstanding any provision in this Agreement, Covered Entity may terminate this Agreement and the Underlying Agreement if Covered Entity determines, in its sole discretion, Business Associate has breached any provision of this Agreement or otherwise violated HIPAA, the Privacy Rule, the Security Rule or the HITECH Act. Covered Entity shall provide written notice to Business Associate with an opportunity for Business Associate to cure the breach or end the violation within ten (10) business days of such written notice, unless cure is not possible. If Business Associate fails to cure the breach or end the violation within the specified time period, or if cure is not possible, this Agreement and the Underlying Agreement shall automatically and immediately terminate, unless termination is infeasible.

5.3 Termination after Repeated Violations. Notwithstanding any provision in the Agreement, Covered Entity may terminate the Underlying Agreement and this Agreement if Covered Entity determines, in its sole discretion, that Business Associate has repeatedly breached any provision of this Agreement or otherwise violated HIPAA, the Privacy Rule, the Security Rule or the HITECH Act, irrespective of whether, or how promptly, Business Associate may remedy such violation after being notified of the same.

5.4 Obligations Upon Termination. Business Associate's obligations to protect the privacy and security of PHI shall be continuous and shall survive termination, cancellation, expiration or other conclusion of this Agreement or the Underlying Agreement. Upon termination of this Agreement, Business Associate will forward to Covered Entity, or to Covered Entity's designee, the records necessary for continued administration of Covered Entity as directed by Covered Entity. After the forwarding of said records, whatever PHI remains with Business Associate will be subject to the following:

(a) Except as provided in paragraph (b) of this Section 5.4, upon termination, cancellation, expiration or other conclusion of this Agreement, for any reason, Business Associate shall return or, if Covered Entity gives written permission, destroy, PHI in whatever form or medium and retain no copies of such PHI. Business Associate will complete such return or destruction as soon as possible, but in no event later than sixty (60) days from the date of the termination of this Agreement. Within ten (10) days of the return or destruction of all PHI by Business Associate, Business Associate shall provide written certification to Covered Entity that the return or destruction of PHI has been completed.

(b) In the event that Business Associate determines that returning or destroying the PHI 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 PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

VI. INDEMNIFICATION; INSURANCE

6.1 Indemnification by Business Associate. Business Associate will indemnify

and hold harmless Covered Entity, and any affiliate, officer, director, employee or agent of Covered Entity from and against any claim, cause of action, liability, damage, cost or expense, including attorneys' fees and court or proceeding costs, arising out of or in connection with any use or disclosure of PHI that violates or is not permitted by this Agreement, HIPAA, the Privacy Rule, the Security Rule or the HITECH Act, or other breach of this Agreement by Business Associate or any subcontractor or agent of Business Associate.

6.2 Right to Tender or Undertake Defense. If Covered Entity is named as a party in any judicial, administrative or other proceeding arising out of or in connection with any non-permitted or violating use or disclosure of PHI or other breach of this Agreement by Business Associate or any subcontractor or agent of Business Associate, Covered Entity shall have the option at any time either to: (i) tender its defense to Business Associate, in which case Business Associate will provide qualified attorneys, consultants, and other appropriate professionals to represent Covered Entity's interests at Business Associate's expense; or (ii) undertake its own defense, choosing the attorneys, consultants, and other appropriate professionals to represent its interests, in which case Business Associate will be responsible for and pay the reasonable fees and expenses of such attorneys, consultants, and other professionals.

6.3 Right to Control Resolution. Covered Entity has the sole right and discretion to settle, compromise or otherwise resolve any and all claims, causes of actions, liabilities or damages against it, notwithstanding that Covered Entity may have tendered its defense to Business Associate. Any such resolution will not relieve Business Associate of its obligation to indemnify Covered Entity under this Agreement.

6.4 Insurance. Upon request, Business Associate shall obtain and maintain insurance coverage against improper uses and disclosures of PHI by Business Associate, naming Covered Entity as an additional named insured. Upon request, Business Associate shall provide a certificate evidencing such insurance coverage.

6.5 Conflicts. With respect to any breaches or violations of this Agreement, the provisions in this Section 6 supersede any inconsistent terms contained in the Underlying Agreement.

VII. GENERAL PROVISIONS

7.1 Effect. The terms and provisions of this Agreement supersede any other conflicting or inconsistent terms and provisions in any agreements between the parties, including all exhibits or other attachments thereto and all documents incorporated therein by reference.

7.2 Amendment. Business Associate and the Covered Entity agree to amend this Agreement to the extent necessary to allow either party to comply with HIPAA, the Privacy Rule, the Security Rule, or the HITECH Act. All such amendments shall be made in a writing signed by both parties.

7.3 No Third Party Beneficiaries. This Agreement is intended for the benefit of Business Associate and Covered Entity only. Nothing express or implied is intended to confer or create, nor be interpreted to confer or create, any rights, remedies, obligations or liabilities to or

for any third-party beneficiary, including without limitation Individuals who are the subject of PHI.

7.4 Severability. In the event that any provision of this Agreement violates any applicable statute, ordinance, or rule of law in any jurisdiction that governs this Agreement, such provision shall be ineffective to the extent of such violation without invalidating any other provision of this Agreement.

7.5 No Waiver. No provision of this Agreement may be waived except by an agreement in writing signed by the waiving party. A waiver of any term or provision shall not be construed as a waiver of any other term or provision.

7.6 Assignment. This Agreement may not be assigned by either party without the prior written consent of the other party; provided, however, that the parties shall cooperate to assign this Agreement as appropriate if the Underlying Agreement is assigned.

7.7 Relationship of the Parties. Business Associate and Covered Entity are independent contractors and all acts performed by Business Associate are performed solely in its capacity as an independent contractor.

7.8 Counterparts; Facsimile Signature. This Agreement may be executed by facsimile and/or in counterparts, each of which shall be an original and all of which together shall constitute one and the same binding instrument.

7.9 Notification

(a) **Business Associate**. To the extent notice is required to be provided by Covered Entity to Business Associate under any provision in this Agreement, notice shall be provided to:

Mike Nesslage, Fire Chief
City of Hiawatha Fire and Rescue
101 Emmons Street
Hiawatha, Iowa 52233
319-393-4180

(b) **Covered Entity**. To the extent notice is required to be provided by Business Associate to Covered Entity under any provision in this Agreement, notice shall be provided to:

Privacy Officer
Mercy Medical Center
701 10th Street SE
Cedar Rapids, Iowa 52403-1292
319-398-6846

7.10 Compliance with State Law. Iowa law shall govern with respect to interpretation and enforcement of this Agreement.

7.11 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with HIPAA, the Privacy Rule, the Security Rule, and the HITECH Act.

INTENDING TO BE LEGALLY BOUND, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

BUSINESS ASSOCIATE

City of Hiawatha Fire and Rescue

By:_____

Print Name: Bill Bennett

Title: Mayor

Date:_____

COVERED ENTITY

Mercy Medical Center, Cedar Rapids, Iowa

By:_____

Print Name: Timothy Quinn, M.D.

Title: EVP & CCO

Date:_____

PROVISION OF SERVICES AGREEMENT

THIS AGREEMENT is entered into on this 1st day of June, 2017 by and between Mercy Medical Center, Cedar Rapids, Iowa, an Iowa non-profit corporation ("Mercy"), and City of Hiawatha Fire and Rescue with its principal place of business at 101 Emmons Street, Hiawatha, Iowa 52233 ("Service Provider").

WHEREAS, Mercy owns and operates a medical center for the purpose of providing quality, efficient and accessible health care, to residents of eastern Iowa, including medically underserved communities; and

WHEREAS, in furtherance of its mission, Mercy desires to contract with Service Provider for the provision of services, as defined in this Agreement, and Service Provider desires to contract for the provision of such services.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and agreements set forth herein, the parties agree as follows:

ARTICLE I
STATUS OF PARTIES

The parties to this Agreement are independent contractors. None of the provisions of this Agreement are intended to create or shall be construed to create, an employment relationship, agency, partnership, joint venture, corporation or any other relationship between the parties other than that of independent parties, contracting hereunder solely for the purpose of implementing the provisions of this Agreement. Accordingly, none of the parties hereto, nor any of their respective employees or agents, is, or by reason of the provisions hereof, shall be, deemed to be the agent, employee or representative of any other party. Mercy and Service Provider maintain separate and independent management and each has full, complete, absolute and sole authority and responsibility regarding their own separate organizations and operations.

ARTICLE II
SERVICE PROVIDER'S DUTIES

Section 2.1 Provision of Services. Service Provider shall provide services ("Services") upon request by Mercy. A description of Services is set forth in Exhibit A attached hereto and by this reference incorporated herein.

Section 2.2 Qualifications of Service Provider. Service Provider represents and warrants that they are qualified by virtue of education and experience to provide Services hereunder. Service Provider consents to undergo a criminal background check, including but not limited to a dependent adult abuse background check, and Medicare program exclusion check upon request of Mercy.

Section 2.3 Insurance. Service Provider shall maintain general liability insurance in an amount acceptable to Mercy to insure Service Provider against any claim or claims for damages arising by reason of property damage, personal injury or death occasioned directly or indirectly in connection with any services provided by Service Provider under this Agreement. Service Provider shall provide Mercy with a certificate of insurance for the foregoing policy upon execution of this Agreement and shall immediately notify Mercy in the event of any change to or cancellation of said policy. The provisions of this section 2.3 shall survive termination of this Agreement.

Section 2.4 Compensation for Services. Service Provider shall submit a bill to Mercy on a monthly basis for compensation of services. Such charges shall be based upon the fee schedule set forth in Exhibit A. Receipt of payment from Mercy shall be considered payment in full for Services.

ARTICLE III
HIPAA RESPONSIBILITIES

Section 3.1 Use and Disclosure of Protected Health Information by Service Provider. In fulfillment of Service Provider's obligations under this Agreement, Service Provider will regularly use and/or disclose Protected Health Information that is subject to the Standards for Privacy of Individually Identifiable Health Information promulgated under the Health Insurance Portability and Accountability Act of 1996 (the "Privacy Regulation"). Accordingly, Service Provider agrees to execute Mercy's Business Associate Agreement in conjunction with this Agreement.

ARTICLE IV
EFFECTIVE DATE, TERM & TERMINATION

Section 4.1 Effective date. The Effective Date of this Agreement shall be June 1, 2017.

Section 4.2 Term. This Agreement shall commence on the Effective Date of this Agreement and shall continue in full force and effect for one (1) year (the "initial term"). This Agreement may be extended for additional one (1) year terms upon the mutual prior written agreement of the parties.

Section 4.3 Termination. (a) This Agreement may be terminated at any time for any reason upon the mutual agreement of the parties.

(b) Either party may terminate this Agreement for any reason by giving the other party at least thirty (30) days prior written notice of the terminating party's intention to terminate the Agreement.

(c) Either party may immediately terminate this Agreement by written notice to the other party and may regard the other party as in default of this Agreement if the other party becomes insolvent, makes a general assignment for the benefit of

creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, or becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign, or has wound up or liquidated, voluntarily or otherwise. In the event that any of the above events occur, the insolvent party shall immediately notify the other party of its occurrence.

(d) Mercy may immediately terminate this Agreement in the event Mercy determines that Service Provider has breached a material term of this Agreement as provided under the HIPAA Privacy Regulations at 45 CFR §164.504(3)(2)(iii).

Section 4.4 Effects of termination. Upon termination of this Agreement, neither party shall have any further obligation hereunder except for obligations accruing prior to the date of termination and obligations, promises or covenants contained herein which are expressly made to extend beyond the term of this Agreement.

ARTICLE V
NOTICES

All notices required or permitted to be given under this Agreement shall be in writing and shall be sent certified mail, return receipt requested. All notices shall be deemed to have been given as of the date of the postmark by the Post Office. Postmark by meter machine shall not be recognized as due notice. All notices shall be addressed to the other party at the following addresses or at such other address as a party may from time to time designate by notice hereunder:

Timothy L. Charles, President & CEO
Mercy Medical Center
701 10th Street SE
Cedar Rapids, Iowa 52403

Mike Nesslage, Fire Chief
City of Hiawatha Fire and Rescue
101 Emmons Street
Hiawatha, Iowa 52233

With a copy to:
General Counsel
Mercy Medical Center
701 10th Street SE
Cedar Rapids, Iowa 52403

ARTICLE VI
ACCESS TO RECORDS REQUIRED BY HHS

If and to the extent required by Section 1395x(v)(1) of Title 42 of the United States Code, until the expiration of four years after the termination of this Agreement, the parties shall make available, upon written request to the Secretary of the United States Department of Health and Human Services, or upon request to the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of this Agreement and such books, documents and records of the

parties as are necessary to certify the nature and extent of the costs of the services provided by the parties under this Agreement. The parties agree that, in the event they carry out any of their duties under this Agreement through a subcontract with a value or cost of $10,000 or more over a 12-month period with a related organization, such contract shall contain a clause to the effect that, until the expiration of four years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary of the United States Department of Health and Human Services, or upon request to the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of such subcontract and such books, documents and records of the parties as are necessary to certify the nature and extent of such costs. The parties' obligations hereunder shall extend beyond the term of this Agreement.

ARTICLE VII
CONFIDENTIALITY

The parties agree to keep confidential and not use or disclose to others, except as expressly consented to by the other party or required by law, any secrets or confidential technology, proprietary information, customer lists, marketing analysis and strategies or trade secrets of the other party, or any matter or information ascertained through the provision of services hereunder, the use or disclosure of which might reasonably be construed to be contrary to the best interest of the other party. Each party's obligations under this Article VII shall extend beyond the term of this Agreement.

ARTICLE VIII
NONDISCRIMINATION

Neither party shall discriminate or permit discrimination against any employee, applicant or patient on the grounds of age, race, color, religion, sex, handicap or national origin as prohibited by state or federal law.

ARTICLE IX
MEDICAID QUI TAM REQUIREMENTS

Section 9.1 Compliance Program Requirements. Service Provider agrees to comply with portions of Mercy's compliance program that address the False Claims Act, administrative and state law remedies for false claims, Mercy's policies and procedures for detecting and preventing fraud, waste and abuse, and the rights of employees to be protected as whistleblowers in relation thereto. Mercy's Corporate Compliance Program, policies and procedures can be found at http://www.mercycare.org/about/organizational-integrity/

Section 9.2 Employee Background Checks Requirements. Service Provider agrees to perform background checks on all employees, contractors and agents who will provide Services on Mercy's campus or will otherwise be present on Mercy's campus and Service Provider certifies that neither it, nor its employees, contractors and agents are

disbarred, suspended, ineligible for, or excluded from, participation in Medicare or Medicaid programs.

ARTICLE X
MISCELLANEOUS

The following provisions shall extend beyond the term of this Agreement:

Section 10.1 Iowa Law Applies. This Agreement shall be construed, and all of the rights, powers, and liabilities of the parties hereunder shall be determined, in accordance with the laws of the State of Iowa.

Section 10.2 Amendments to Law. The parties recognize that this Agreement at all times is to be subject to applicable state, local, and federal law and that the Agreement shall be subject to amendments in such laws and regulations and to new legislation.

Section 10.3 Law Supersedes Agreement. Any provisions of law that invalidate, or otherwise are inconsistent with, the terms of this Agreement or that would cause one or both of the parties to be in violation of law, shall be deemed to have superseded the terms of this Agreement.

Section 10.4 Illegality. Notwithstanding any other provision of this Agreement, if any federal, state or local government or agency passes, issues, interprets, or promulgates any law, rule, regulation, standard or interpretation at any time while this Agreement is in effect which prohibits, restricts, limits or in any way materially adversely changes or affects any party's rights or obligations hereunder, the party so affected may give the other party notice of intent to amend this Agreement to the satisfaction of the noticing party, to compensate for such prohibition, restriction, limitation or change. If the parties do not or cannot mutually agree to amend this Agreement in writing, then either party may elect to terminate this Agreement pursuant to section 4.3(b) above without further liability to the other.

Section 10.5 Severability. If any provision or clause of this Agreement or application thereof to any person or circumstances is held invalid or unlawful, such invalidity or unlawfulness shall not affect any other provision or clause of this Agreement or application thereof which can be given effect without the invalid or unlawful provision, clause or application.

Section 10.6 Assignment. All rights and obligations under this Agreement shall be personal to each party and shall not be assigned or otherwise disposed of by either party without prior written approval of the other party. Subject to the foregoing limitation upon assignment, the rights and obligations under this Agreement shall inure to the benefit of and be binding upon the parties hereto and upon their heirs, executors, administrators, successors and assigns.

Section 10.7 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations or liabilities whatsoever.

Section 10.8 No Construction Against Drafting Party. The parties acknowledge that each of them and their counsel have had an opportunity to review this Agreement and that this Agreement will not be construed against Mercy merely because Mercy has prepared it.

Section 10.9 Entire Agreement. This Agreement and all Exhibits attached hereto and incorporated herein contain the entire understanding between the parties. This Agreement shall supersede all prior agreements, writings and discussions between the parties regarding provision of Services.

Section 10.10 Amendments. No changes, modifications, or alterations of any of the terms and provisions contained in this Agreement and such Exhibits shall be effective unless changed, modified or altered in writing and signed by both parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first below written.

MERCY:

_____ _____

Timothy Quinn, M.D., EVP & CCO
Mercy Medical Center, Cedar Rapids, Iowa

Date

SERVICE PROVIDER:

_____ _____

Bill Bennett, Mayor

Date

EXHIBIT A
SERVICES AND FEES

1. SERVICES. Service Provider agrees to provide community paramedic visits to patients ("Services") for Mercy to work under the direction of Mercy upon Mercy's request as mutually agreed. Community paramedic visits involve Service Provider implementing post-discharge health assessments for individuals with high risk discharge needs under the direction of Mercy. Notification of the patient shall be conducted by Mercy. Service Provider will attempt to make a home visit within 48 hours of discharge and will notify the Mercy care coordination team of visit status and outcomes.

2. FEES. Mercy shall pay Service Provider for Services as follows: $95.00 per completed patient visit to be paid on a monthly basis following receipt of documentation from Service Provider for Services provided during the previous month. Mercy agrees to pay Service Provider within 30 days of receipt of bill for Services.

DRAFT

RESOLUTION NO. 18-
City Council

RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF A BUSINESS ASSOCIATE AGREEMENT BETWEEN THE HIAWATHA FIRE DEPARTMENT AND MERCY MEDICAL CENTER

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HIAWATHA, IOWA, that the Mayor is hereby authorized to sign the Business Associate Agreement and related documents between the Hiawatha Fire Department and Mercy Medical Center for the purpose of ensuring HIPAA compliance in providing community paramedicine services (see attached agreement Exhibit A).

AYES:
NAYS:
ABSENT:

PASSED AND APPROVED this 7th day of March, 2018.

_____
Bill Bennett, Mayor

ATTEST:

_____
Kelly Kornegor, City Clerk