

**AGREEMENT
BETWEEN DURHAM COUNTY
AND ALLIANCE HEALTH**

THIS AGREEMENT is made and entered into this **1st day of July, 2020**, by and between the **COUNTY OF DURHAM** (hereinafter referred to as the “**County**”) and the **ALLIANCE HEALTH**, a Local Management Entity and Managed Care Organization existing under N.C.G.S. Chapter 122C (hereinafter referred to as the “**Alliance**”).

WITNESSETH:

WHEREAS, Since July 1, 2012, Alliance has managed the provision of high quality, cost-effective mental health, intellectual/ developmental disabilities, and substance abuse (“MH/I-DD/SA”) services to consumers in the Durham and Wake County catchment areas; and

WHEREAS, the County and Alliance desire to enter into this Agreement to set forth the parties’ rights and obligations to manage publicly-funded MH/I-DD/SA services provided to residents of Durham County, funding and other matters related to the provision of mental health services.

NOW THEREFORE, for and in consideration of mutual covenants herein and the mutual benefits to result therefrom, the parties hereby agree as follows:

1. **TERM.** This Agreement will take effect on the 1st day of July, 2020 and shall continue through and until June 30, 2021.
2. **SERVICES.** In consideration of the annual allocation and other good and valuable consideration agreed to herein, Alliance shall manage the provision of high quality, cost-effective MH/I-DD/SA services to consumers in Durham County. Alliance shall adhere to the requirements of Chapter 122C of the North Carolina General Statutes, the N.C. State Plan for Medical Assistance as updated, (DMA), the Division of Mental Health, Developmental Disabilities and Substance Abuse Services’ (DMH/DD/SAS) State Plan as updated, Alliance’s contract with DMA to operate the Medicaid Waiver as updated, Alliance’s contract with DMH/DD/SAS as updated, and any other applicable local, state, or federal laws, rules and regulations. Alliance shall adhere to the terms and conditions of this Agreement and effect such by-laws, resolutions, policies, procedures, and actions as are reasonably required to carry out the terms and conditions of this Agreement.

Alliance will provide disaggregated reports by age, gender, race and ethnicity on utilization and outcomes resulting from the use of Annual Allocation provided by the County on a quarterly basis. The data will be incorporated into the County’s performance measures quarterly reporting system.

3. **ANNUAL ALLOCATION.** Pursuant to N.C.G.S. 122C-115, the County agrees to allocate and pay to Alliance **Six Million Three Hundred Thirty Six Thousand Seven Hundred and Fifty One Dollars (\$6,336,751.00) referred to as the Annual Allocation.** Alliance may use up to Sixty Two Thousand Seven Hundred and Forty Dollars (\$62,740.00) of the Annual Allocation actually expended for services, or 1% of service dollars, during the current year to cover administrative costs associated with administering the obligations set forth herein. The remainder of the funding shall be used exclusively for the provision of mental health, intellectual/developmental disability and substance abuse services to eligible Durham residents served by Alliance. The County shall pay to Alliance through a wire transfer an amount equal to one-quarter the Annual Allocation beginning on July 2, 2020, and quarterly thereafter. Alliance will recognize funding as income in the year received and any unspent funding from the current year will be held and recognized as income in the current year.

Any Annual Allocation funds left unspent at the end of the fiscal year shall be applied to the next year's annual allocation. Durham County funds held by Alliance on June 30, shall be held by Alliance in a restricted fund balance for the purchase of services for Durham County residents in future fiscal years, unless otherwise agreed to in writing by the County Manager.

4. CRISIS CENTER. Alliance agrees to continue to manage the provision of crisis and outpatient services that are currently offered at the Crisis Center located at 309 Crutchfield Street. The County has entered into a separate lease agreement with Alliance for the Crutchfield property effective July 1, 2019 through June 30, 2023. Alliance shall contract to provide psychiatric walk-in clinic services that serves adults seeking immediate access to psychiatric clinical services as well as walk-in crisis assistance available for emergency situations 24 hours a day to assess clients experiencing a behavioral health crisis and triage clients for hospitalization, crisis stabilization, residential medical/social detoxification, and residential psychiatric medication stabilization, and outpatient referrals. The service continuum offered at the facility may change at the discretion of Alliance based on the needs of the community.

6. RESPONSIBILITIES OF PARTIES. Neither party agrees to indemnify or hold harmless the other party. However, to the extent permitted by law, each party agrees to be responsible for its own acts or omissions and any and all claims, liabilities, injuries, suits, and demands and expenses of all kinds which may result from or arise out of any alleged malfeasance or neglect caused or alleged to have been caused by that party, its employees, subcontractors, or representatives, in the performance or omission of any act of responsibility of that party under this Agreement. In the event that a claim is made against both parties it is the intent of both parties to cooperate in the defense of said claim. However, either party shall have the right to take any and all actions they believe necessary to protect their interest, including, without limitation, the right to enforce the obligations of this Agreement against the other party and the right to recover damages caused by the other party arising out of the performance or nonperformance of this Agreement. This provision shall survive the termination of this Agreement.

7. INSURANCE. Alliance shall procure and maintain for the duration of the contract the following insurance coverage from an insurance company(s) possessing a rating of A-VI or higher from the A.M. Best Company or an equivalent rating service. All of the policies required of Alliance shall contain a waiver of subrogation provision to waive all rights of recovery under subrogation or otherwise against the County. Alliance shall advise the County of any cancellation, non-renewal, or material change in any policy within ten (10) days of notification of such action and provide updated certificates of insurance evidencing renewals within fifteen (15) days of expiration. All of the policies required of Alliance shall be primary and Alliance agrees that any insurance or self-funded liability programs maintained by the County shall be non-contributing with respect to the Alliance's insurance.

7.1 Commercial General Liability

Shall be a limit of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. Coverage must be in a form providing coverage not less than the standard Insurance Services Office Form CG 00 01 and include products and completed operations, property damage, bodily injury, and personal & advertising injury. The products-completed operations coverage shall be provided for a minimum of one year following final acceptance of the work.

7.2 Commercial Automobile Liability

Shall be a limit of not less than \$1,000,000 per occurrence for any (Code 1) vehicle, or if ALLIANCE has no owned autos, hired, (Code 8) and non-owned autos (Code 9).

7.3 Worker's Compensation and Employers Liability

Shall be at North Carolina statutory limits. Alliance shall satisfy all compulsory requirements relating to workers compensation in any jurisdiction in which benefits may be claimed. Employers Liability shall be a limit of not less than \$1,000,000 per accident for bodily injury or disease.

7.4 "All Risk" Property (ALLIANCE'S Property)

Replacement cost coverage under an "All Risk" policy for any of ALLIANCE's real or personal property used or situated on County property.

Insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. ALLIANCE, upon request, shall furnish COUNTY with complete copies of insurance policies required. By requiring insurance herein, the COUNTY does not represent that coverage and limits will necessarily be adequate to protect ALLIANCE, and such coverage and limits shall not be deemed as a limitation on ALLIANCE's liability under the indemnities granted to the COUNTY in this Contract. Any umbrella or excess liability coverage must be at least as broad as the primary coverage and contain all coverage provisions that are required of the primary coverage.

The failure of the COUNTY at any time to enforce the insurance provisions, to demand such certificates of insurance, or to identify a deficiency shall not constitute a waiver of those provisions, nor reduce the obligations of ALLIANCE to maintain such insurance or to meet its obligations under the indemnification provisions.

ALLIANCE shall provide the COUNTY a valid certificate of insurance, in advance of the performance of any work, exhibiting coverage as required by the COUNTY. Providing and maintaining adequate insurance coverage is a material obligation of ALLIANCE. ALLIANCE shall require its subcontractors to maintain insurance coverage required herein or cover the subcontractors' under Alliance's policies. The Certificate of Insurance shall be provided on the industry standard form (ACORD 25).

Notwithstanding the foregoing, nothing contained in this section shall be deemed to constitute a waiver of the governmental immunity of the County, which immunity is hereby reserved to the County.

8. WAIVER. The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a future waiver of the term or deprive that party of its right thereafter to insist upon strict adherence to that term or any other term of this Agreement. Any waiver must be in writing, and no waiver of any breach of any provision of this Agreement shall constitute a waiver of any other breach of such provision or of any other provision thereof.
9. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement among the Parties as of the date hereof with respect to the subject matter hereof and cannot be amended or terminated orally.

10. NO THIRD PARTY BENEFICIARIES. This Agreement is not intended for the benefit of any third party. The rights and obligations contained herein belong exclusively to the parties hereto, and shall not confer any rights or remedies upon any person or entity other than the parties hereto.
11. SEVERABILITY. The Parties agree that if any provision of this Agreement, or portion thereof, shall be adjudged by any court of competent jurisdiction to be invalid or unenforceable for any reason, such determination shall be confined to the operation of the provision at issue and shall not affect or invalidate any other provision of this Agreement, and such court shall be empowered to substitute, to the extent enforceable, a provision similar thereto or other provisions so as to provide to the fullest extent permitted by applicable law the benefits intended by such provisions.
12. PARAGRAPH HEADINGS. Paragraph headings contained in this Agreement are included for convenience only and do not define, limit, or describe the scope of intent of this Agreement or in any way affect this Agreement.
13. APPLICABLE LAW. This Contract shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this Contract shall be brought in the General Court of Justice in the County of Durham and the State of North Carolina.
14. EXECUTION. The Parties agree to execute all documents, instruments, or further assurances as may be necessary or required to effectuate and complete all transactions contemplated by this Agreement.
15. SURVIVAL. Survival of the representations, warranties, and indemnifications made by any party to this Agreement shall survive the establishment of the new Area Authority. The representations, warranties, and indemnifications hereunder shall not be affected or diminished by any investigation at any time by or on behalf of the part for whose benefit the warranties and representations were made. For purposes of this paragraph, the contract shall be construed as a continuing contract so as to bind future boards to the extent permitted by law.
16. ASSIGNMENT. This Agreement shall not be assigned, in whole or in part, without the prior written consent of the Parties.
17. NOTICE. Any and all notices, designations, consents, offers, acceptances, or any other communications provided for herein shall be given in writing by registered or certified mail, return receipt requested, to the respective Parties at the addresses listed below, unless each party has notified the others of a different address by means of the notification formalities described in this paragraph.

If to Alliance Health:

Attention: Robert Robinson, CEO
5200 West Paramount Parkway Suite 200
Morrisville, North Carolina 27560

If to Durham County:

Attention: Wendell Davis, County Manager
200 East Main Street
2nd floor
Durham, North Carolina 27701

16. COMPLIANCE WITH LAWS. Alliance represents that it is in compliance with all Federal, State, and local laws, regulations or orders, as amended or supplemented. The implementation of this Contract shall be carried out in strict compliance with all Federal, State, and local laws.

17. AUDIT RIGHTS. For all Services being provided hereunder, County shall have the right to inspect, examine, and make copies of any and all books, accounts, invoices, records and other writings relating to the performance of the Services identified in this contract. Audits shall take place at times and locations mutually agreed upon by both parties. Notwithstanding the foregoing, Alliance must make the materials to be audited available within two (2) weeks of the request for them.
18. COUNTY NOT RESPONSIBLE FOR EXPENSES. County shall not be liable to Alliance for any expenses paid or incurred by Alliance, unless otherwise agreed in writing.
19. EQUIPMENT. Alliance shall supply, at its sole expense, all equipment, tools, materials, and/or supplies required to provide Services hereunder, unless otherwise agreed in writing.
20. EXISTENCE. Alliance warrants that it is a local unit of government duly organized, validly existing, and in good standing under the laws of the State of North Carolina and is duly qualified to do business in the State of North Carolina and has full power and authority to enter into and fulfill all the terms and conditions of this contract.
21. AUTHORITY. By execution hereof, the person signing for Alliance below certifies that he/she has read this contract and that he/she is duly authorized to execute this contract on behalf of the Alliance.

[Remainder of page left Blank, Signatures to follow]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be signed on the day and year first above written, in their respective names by their proper officials by authority duly given by their respective governing bodies.

ATTEST

COUNTY OF DURHAM

BY: _____
Wendell Davis, County Manager

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Susan Tezai, Durham County CFO

ALLIANCE HEALTH

BY: _____
Robert Robinson, CEO