

February 17, 2015

Clarke County Board Of Supervisors  
Regular Meeting  
Main Meeting Room

1:00 p.m.

At a regular meeting of the Board of Supervisors of Clarke County, Virginia, held in the Berryville Clarke County Government Center, 101 Chalmers Court, 2<sup>nd</sup> Floor, Berryville, Virginia conducted on Tuesday, February 17, 2015.

Board Members Present

Barbara Byrd; J. Michael Hobert; Bev McKay; John Staelin; David Weiss

Board Members Absent

None

Staff Present

David Ash; Frank Davis; Tom Judge; Brandon Stidham; Lora B. Walburn

Others Present

Tony Roper; Keith Dalton; Terry Catlett; Gem Bingol; Val Van Meter and other citizens.

1) Call to Order

Chairman Weiss called the afternoon session to order at 1:02 p.m.

Bev McKay joined the meeting at 1:03 p.m.

2) Adoption of Agenda

- Add Closed Session pursuant to §2.2-3711-A3 Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body.
- Add Miscellaneous:

- Barns of Rose Hill Visitor Center Sign
- Tick Disease Program

**Supervisor Byrd moved to adopt the agenda as modified. The motion carried by the following vote:**

Barbara J. Byrd	- Aye
J. Michael Hobert	- Aye
Beverly B. McKay	- Aye
John R. Staelin	- Aye
David S. Weiss	- Aye

3) Citizens Comment Period

No citizens attending the afternoon session addressed the Board.

4) VDOT

Ed Carter was unable to attend the monthly meeting due to the weather event. He provided the following update via email:

Maintenance:

- Performed pothole repair on both hard surfaced and non-hard surfaced roads;
- Conducted Boom-axe operations along Rt. 7;
- Performed large article trash and tree removal on various routes;
- Mobilized and responded to weather events.
- We will continue with the pothole repair and Boom-axe operations;
- Shoulder repair is planned for Rt. 608 and Main St. in the Town of Berryville.
- Contractors are being scheduled in March for remaining trash pickup, weather permitting.

Other Issues:

- All Good Music Festival in West Virginia: VDOT is making formal contact with event sponsors and West Virginia officials outlining our requirements for traffic control.
- Bridge replacement over Rt. 601: Department of Homeland Security is replacing deck on bridge they maintain across Rt. 601 beginning in May of 2015. The clearance on Rt. 601 will be reduced from 14'2" to 13'0". Appropriate signage will be in place.

- Virginia State Police concerns over traffic pattern at intersection of Rt. 624/626: Traffic Engineering has reviewed and made recommendations. Report has been sent to County Administrator for review.

5) Approval of Minutes

Vice Chairman McKay requested a correction on Book 22 Page 134: Add strike through to Clerk of the Circuit Court.

**Supervisor Staelin moved to approve the minutes for January 20, 2015 as modified. The motion carried by the following vote:**

Barbara J. Byrd	- Aye
J. Michael Hobert	- Aye
Beverly B. McKay	- Aye
John R. Staelin	- Aye
David S. Weiss	- Aye

6) Consent Agenda

Valley Regional Enterprises Agreement – Fee for Service

Supervisor Staelin confirmed with staff that this was a standard contract.

Supervisor Hobert put forth that he had asked Mike Legge, Purchasing Manager, to contact David Ash with corrections about the contract. He stated that Valley Regional Enterprises is not a non-stock corporation and he was confused by language used purporting to be a service agreement between Premier Accounts Receivable Management, which is a “doing business as” enterprise and is not a legal entity and is a division of Valley Health System. He stated that Valley Health System does not show up anywhere else as a party but Valley Regional Enterprises shows up as a party but it is in fact a stock corporation if it is a corporation in Virginia and should be corrected.

Supervisor Hobert commented that he found nothing in the agreement about soft billing and he did not know whether that was intentional or desirable.

David Ash responded that there was no specific reference to the term soft billing in this contract as it is important that the County retain immediate control over what is or is not billed.

Chairman Weiss remarked that County’s policy states that the County Administrator has the authority to decide what is in the best interest of County citizens.

David Ash added that County attorney Bob Mitchell had reviewed the agreement.

Supervisor Staelin confirmed with staff that other communities using the standard contract also have soft billing.

**Supervisor Hobert moved to adopt the agreement subject to the County Administrator confirming with Mike Legge and counsel that the actual identity is correct and no reference to soft billing is needed. The motion carried by the following vote:**

Barbara J. Byrd	- Aye
J. Michael Hobert	- Aye
Beverly B. McKay	- Aye
John R. Staelin	- Aye
David S. Weiss	- Aye

**SERVICE AGREEMENT between  
Premier Accounts Receivable Management  
Division of Valley Health System and  
County of Clarke**

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**BILLING AND COLLECTION SERVICE**

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THIS AGREEMENT is made and entered into this March 1, 2015, by and between **Valley Regional Enterprises**, a Virginia stock corporation, d/b/a "Premier Accounts Receivable Management" (hereinafter referred to as "**Agent**") and the **County of Clarke** (hereinafter referred to as "**Company**"). **Agent** and **Company** are sometimes referred to in this Agreement as a "party" and collectively as the "parties".

FOR AND IN CONSIDERATION OF the mutual promises, covenants, and agreements hereinafter set forth, **Agent** and **Company**, with the intent to be legally bound, agree as follows:

**I. RESPONSIBILITIES OF AGENT:**

**Agent** shall provide a monthly billing and collections service for ambulance transportation services provided by the **Company** as follows:

- A.** All claims shall be filed with third party payers within seven (7) business days, or as soon as practicable after all required information is received by **Agent** from the **Company**.
- B.** The following monthly reports shall be provided to **Company**:
  1. Aged Accounts Receivable Report, including Days Outstanding
  2. Financial Summary
  3. Revenue by Payer
  4. Payments received
  5. Any other reasonable and available documentation outside of standard system reports that may be requested by **Company** during the course of the contract period.
- C.** Agent shall provide training to staff on proper documentation that must be secured for the billing process. Refer to Section VI for initial training cost. Ongoing training will be provided when the billing service experiences software or reimbursement regulation changes at no cost to the company.
- D.** A mailbox at P.O. Box 1910, Winchester, Virginia, for Company shall be maintained by Agent for all correspondence received, if requested by Company.

- E. Agent shall maintain telephone lines for billing inquires and shall provide sufficient personnel to answer billing inquiries from patients during normal business hours.
- F. Agent shall provide Company with administrative expertise and shall keep Company informed as to changing regulations within the insurance industry related to this billing and collection service.
- G. The Agent will perform billing services in accordance with reasonable commercial practices and applicable law, including Medicare rules and procedures governing the billing of ambulance transportation services.

**II. RESPONSIBILITIES OF COMPANY:**

Company shall be required to do the following as a part of this Agreement:

- A. Adopt and maintain such documentation, licenses, certifications, policies and procedures as are necessary to become and remain qualified for Medicare, Medicaid, and other payer reimbursement. A list of required documents may be found in Addendum B.
- B. Agree to the refund policy which states that the Company will issue payable checks for refund within twenty (20) business days of receiving the request from Agent and provide Agent with copies of refund checks within seven (7) business days of issue.
- C. Company shall bear the sole financial responsibility for any adjustments, modifications, write offs, write downs, or other changes, relating to claims which Company has supplied to Agent for processing under this Agreement.
- D. Company and its employees shall adhere at all times to all applicable laws, regulations, manuals, and interpretations when providing billing and reimbursement information to Agent.

**III. REPRESENTATIONS OF COMPANY:**

**Company** represents and warrants as follows:

- A. **Company** and its employees or contractors are fully certified, licensed and authorized to perform the medical or other services which will give rise to the billing, collections, and payment procedures contemplated under this Agreement.
- B. **Company** and its employees or contractors have not been convicted of any health care related crimes in the past and there are no pending investigations, inquiries, litigations, indictments, administrative or licensing reviews or procedures of any kind whatsoever regarding their fitness or ability to render the medical services for which the bills will be processed under this Agreement.
- C. **Company** and its employees or contractors have not in the past knowingly submitted any false claims or knowingly participated in the submission of false claims with respect to medical services.
- D. All bills or requests for payments provided by **Company** to **Agent** will be due and owing to **Company** and **Company** has not assigned and will not assign benefits or its rights to payment of any such bills to any third party.
- E. **Company** has complied with all of the laws, rules and regulations of the Medicare and Medicaid programs, and other governmental health care programs when filing claims with such programs, and that there is no basis for any claim or request for overpayment, recoupment, or reimbursement by any federal or state agency or other provider reimbursement entities relating to Medicare or Medicaid claims.
- F. **Company** has not been subject to audit relating to fraudulent Medicare or Medicaid procedures or practices. Neither **Company**, nor persons and entities providing professional services on behalf of **Company** have knowingly or willingly engaged in any activities that are prohibited under federal and/or state laws or regulations, including with limitation federal Fraud and Abuse statutes, or the Civil Monetary Penalty statute.

**IV. PROGRAM RECORDS:**

- A. **Agent** shall maintain all billing records electronically for all billed services for four (4) years after the service date. **Company** shall have full access to billing records during such 4-year period.

- B. Duplicate Documents. During the term of the Agreement, **Company** will provide **Agent** with copies of documents and other information relating to the services provided by **Company**. **Agent** will assume no responsibility under this Agreement to maintain such records for use by **Company**, and **Company** will be responsible for maintaining **Company's** own original documents, or legible copies thereof, in order to meet **Company's** own record-keeping requirements.
  - C. Upon termination of the Agreement, **Agent** shall retain patient billing records for a period of up to one (1) year and provide continuing collection services for all billed accounts pursuant to Section V. Term and Termination, Section (E) below. Upon completion of this one (1) year period, **Company** shall retain the billing records for a sufficient time to satisfy all applicable state and federal requirements and in accordance with **Company's** Record Retention policy, a copy of which shall be provided to **Agent** upon execution of this Agreement. However, **Company** shall provide full access to **Agent** for all billing records up to four (4) years from service date.
  - D. Both **Agent** and **Company** recognize the contents of such records shall be and remain confidential and that neither party shall release the contents of said records, except as required for billing or upon authorization of the person to whom the records pertain or as ordered by a court or appropriate governmental authority. If **Agent** receives a request for additional information from **Company**, it will provide the information to **Company** within three (3) business days.
  - E. During the period of this Agreement, **Agent** shall provide appropriate safekeeping for all files and records in a locked, secure area away from public access.
  - F. For purposes of this Section IV, whenever **Company** has access to any billing records or patient files, **Agent** shall provide **Company**, or authorized designee, access to such records or files during normal business hours of **Agent**, after reasonable advance notice to **Agent**.
  - G. Federally Mandated Recordkeeping and Disclosure. To the extent Section 1861 of the Social Security Act, as amended (42 U.S.C. Section 1395x(v)(1)), is applicable to this Agreement, until the expiration of four (4) years after the furnishing of services pursuant to this Agreement, **Agent** shall make available, upon written request of the Secretary of Health and Human Services or the Comptroller General of the United States, or any of their duly authorized representatives, this Agreement, any books, documents and records of **Agent** that are necessary to verify the nature and extent of costs incurred by **Company** under this Agreement. If **Agent** carries out any of the duties of this Agreement through a subcontract with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period, any such subcontract must contain a clause similar to that set forth in the preceding sentence.
  - H. Right to inspect. Each party shall have the right of reasonable inspection of records of the other party pertaining to this Agreement. Further, either party shall have the right, at its expense, to engage a third party for the purpose of conducting an audit of the payments to, from, or on behalf of either party to the other, such audit to be conducted on reasonable notice to the other party. Each party agrees to cooperate reasonably in any such inspection and audit.
  - I. Government Actions. Neither **Company** nor **Agent** shall take any action or fail to take any action which such party knows will cause any governmental authority having jurisdiction over the operation of **Company** to institute any proceeding for the suspension, rescission, or revocation of any necessary license, permit certification, or approval. **Agent** shall not take any action or fail to take action which **Agent** knows will adversely affect **Company's** right to accept and obtain payments under Medicare, Medicaid, or any other public or private third party medical payment programs.
- V. **TERM AND TERMINATION:**
- A. This Agreement shall be an initial term of one (1) year commencing on March 1, 2015 and ending on January 31, 2016. This Agreement may be renewed by mutual agreement of the parties after a joint meeting between **Agent** and **Company** at least sixty (60) days prior to the expiration date of the Agreement.
  - B. Except as otherwise provided for in this Agreement, if any party shall default in the performance of any of its material obligations hereunder and such default shall continue and not be corrected within thirty (30) days after receipt of written notice of such default from the non-defaulting party, in such event the

non-defaulting party may at its option terminate this Agreement by delivery of written notice before the effective date of termination.

- C. The parties may terminate this Agreement before its expiration by mutual agreement, in writing.
- D. Either party may terminate this Agreement for any reason or for no reason by giving the other party thirty (30) days prior written notice.
- E. Any termination of this Agreement shall not affect either party's obligations under this Agreement with respect to services provided or events occurring prior to the termination date. Notwithstanding anything in this Agreement to the contrary, upon the effective date of termination of this Agreement, for a period of one hundred twenty (120) days, **Agent** shall continue to perform the services defined in Section I for all of **Company's** accounts receivable related to services rendered to patients by **Company** prior to the effective date of termination. Payment for such services shall be pursuant to Section VI(A) below. The parties may negotiate for additional transitional services beyond the scope of Section I and beyond the time frame of 120 days if so desired. All applicable terms and conditions of the Agreement will be in force and effect until such time as these activities undertaken by **Agent** on behalf of **Company** have ceased.

#### VI. COMPENSATION:

- A. As compensation for services rendered, **Company** agrees to pay **Agent** a fee of seven percent (7%) of net collections. "Net Collections" is defined as the total payments collected for a one-month period minus refunds during same period. The compensation paid to **Agent** under this Section VI (A) shall under no circumstances be refundable to **Company**. **Agent** shall invoice **Company** on a monthly basis. Additional special services requested by **Company** not outlined in this Agreement shall be handled on an individual case-by-case arrangement and billed separately.

Special services requested: Initial on-site ambulance transportation documentation training provided. Cost will be \$800 for maximum of 4 hours of onsite training, payable upon invoicing from **Agent**. Training will include presentation developed by Page, Wolfberg, & Wirth –National EMS Law Firm, handouts, and question/answer session.

- B. Payment for services provided by the **Agent** shall be made by **Company** in full no later than twenty (20) business days following receipt of the invoice.

#### VII. JURISDICTION AND VENUE:

This Agreement shall be governed by and shall be construed in accordance with the laws of the Commonwealth of Virginia. The venue for any legal proceedings involving the interpretation or performance of this Agreement, or in any way pertaining to this Agreement, shall be the Circuit Court of Frederick County, Virginia, or the United States District Court for the Western District of Virginia, Harrisonburg Division.

#### VIII. FURTHER ASSURANCES:

Each party hereto shall execute and deliver all letters, applications, certificates, endorsements, assignments, and other documents as reasonably requested by any other party hereto in order to effect or carry out the provisions of this Agreement and shall cooperate to the fullest extent possible to accomplish and carry out the intent of the parties as expressed herein.

#### IX. INTEGRATION:

This Agreement constitutes the entire Agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written, of the parties with respect to the subject matter hereof.

#### X. WAIVER:

No waiver of any provision of this Agreement, nor consent to any departure there from, shall be effective unless the same shall be in writing and signed by all of the parties hereto and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

**XI. NO THIRD PARTY BENEFICIARIES:**

Nothing herein expressed or implied is intended or shall be construed to confer upon or to give any person, other than the parties hereto, any rights or remedies under or by reason of this Agreement.

**XII. COUNTERPARTS:**

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument.

**XIII. SEVERABILITY:**

Should any provision of this Agreement be declared or found to be illegal, unenforceable or void, both parties shall be relieved of all obligations arising under that provision. If the remainder of this Agreement is capable of substantial performance, the remainder of the Agreement shall remain in full force and effect.

**XIV. ETHICS AND COMPLIANCE:**

- A. Excluded Provider. Each party represents and warrants to the other party that the party and its employees or contractors are not now listed by a federal agency as excluded, debarred, suspended, or otherwise ineligible to participate in federal programs, including Medicare and Medicaid, and is and are not now listed, nor has any current reason to believe that during the term of this Agreement will be so listed, on the HHS-OIG Cumulative Sanctions Report or the General Services Administration List of Parties Excluded from Federal Procurement, and Non-Procurement Programs. The parties agree that a party may terminate this Agreement, upon notice to the other party, in the event that the other party is listed on the HHS-OIG Cumulative Sanctions Report or the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs.
- B. HIPAA. Pursuant to this Agreement, **Agent** will be providing services for **Company** that involve the use and disclosure of PHI ("PHI"). PHI, as defined by the Health Insurance Portability and Accountability Act ("HIPAA"), is individually identifiable health information, created by a health provider or health plan that identifies the individual and contains information concerning his/her past, present, or future condition or treatment. **Company** and **Agent** agree to protect the privacy and confidentiality of such PHI as required by privacy rules promulgated under HIPAA. The parties further agree to execute any additional agreements that may be required to assure their continuing compliance under HIPAA, including, but not limited to, the Business Associate Addendum, attached hereto as Addendum B.
- C. Compliance with Law. The parties agree that the compensation provided in this Agreement is commercially reasonable and consistent with fair market value for the billing and collection services rendered by **Agent**. The terms and conditions of this Agreement were negotiated at arm's length and no portion of this Agreement is directly or indirectly based upon the volume or value of referrals between the parties or their affiliates. No payment or benefit hereunder is conditioned upon, nor is the purpose of any such payment or benefit hereunder to affect or induce either party to this Agreement or any of their owners or affiliates to refer any patient to the other party for any goods or services, including but not limited to goods or services reimbursable under Medicare, Medicaid or any other state or federal health care program.
- D. Change in Law. Notwithstanding anything to the contrary contained in this Agreement, in the event that any Medicare and/or Medicaid law, rule, regulation, or payment policy, or any other applicable law or regulation, or any interpretation thereof, at any time, is modified, implemented, threatened to be implemented, or determined to prohibit, restrict, or in any way materially change the terms of this Agreement, or by virtue of the existence of this Agreement has or will have a material adverse affect on either party, the **Company** and **Agent** agree to negotiate in good faith to amend this Agreement in a manner consistent with such change and the intent of the parties. If for any reason any term or condition of this Agreement is found to be invalid or contrary to government laws, rules,



regulations, or orders, **Company** and **Agent** agree to immediately and in good faith modify such term or condition to comply with such government law, rule, regulation, or order.

**XV. INTENTIONALLY DELETED**

**XVI. MISCELLANEOUS:**

- A. Company shall be solely responsible for establishing the rates to be charged for ambulance transports.
- B. Insurance. Each of the parties will, at its own expense, maintain a policy or policies of professional liability and comprehensive general liability insurance with respect to the respective activities of each.
- C. The billing services to be supplied by Agent shall be based solely on information supplied by and actions requested by Company. Agent and Company acknowledge and agree that Agent is not responsible for the collection of information by Company and that Agent's actions are taken in sole reliance upon the information provided by Company.
- D. Assignment of this Agreement by Company shall not be made in whole, or in part, without prior written consent of Agent. Agent shall be permitted to assign this Agreement to an affiliate or subsidiary of Agent without consent.
- E. This Agreement may be modified only by written agreement signed by both parties. There shall be no oral modification of any part of this Agreement (including this specific paragraph) which shall bind either party.
- F. Each provision of this Agreement shall be considered severable, and if for any reason any provision or provisions hereof are determined to be invalid, such invalidity shall not impair the operation of, or affect, those portions of this Agreement which are valid, and this Agreement shall remain in full force and effect and shall be construed and enforced in all respects as if such invalid or unenforceable provision or provisions have been omitted.
- G. Both parties certify that all activities related to the contract will be performed in compliance with the Fair Debt Collection Practices Act and all similar state or federal statutes or regulations.
- H. Arbitration. The parties shall, in good faith, attempt to resolve any controversy, dispute or disagreement arising out of or relating to any provision of this Agreement, or the breach thereof, including but not limited to issues concerning termination of this Agreement, by negotiation between the parties. If any such controversy, dispute or agreement cannot be resolved through negotiation, the dispute will be submitted to binding arbitration. Arbitration may be demanded by either party by written notice to the other and must be held within thirty (30) days of the date that arbitration is demanded. The parties shall mutually agree upon an arbitrator. If they cannot agree upon an arbitrator within fifteen (15) days of either party requesting arbitration, they shall refer the dispute to the American Health Lawyers Association Dispute Resolution Service (or if it is not then in existence, to the American Arbitration Association) for appointment of an arbitrator. The arbitration will be conducted in Winchester, Virginia. Any cost of the arbitration other than the parties' own attorneys, consultants, expert witnesses and similar fees, including any fee charged by the arbitrator, shall be shared equally by the parties. The arbitration process itself, and any other information or disclosures revealed by either party to the arbitrator or to the other party during the arbitration process shall be confidential. The arbitration process shall be conducted in accordance with the American Health Lawyers Association Alternative Dispute Resolution Service Rules of Procedure for Arbitration (or applicable rules of the American Arbitration Association), except as otherwise provided in this Agreement or as mutually agreed upon by the parties. The award or decision rendered by the arbitrator shall be final, binding and conclusive, and judgment may be entered upon such award by any court of competent jurisdiction. The arbitration provisions of this Agreement shall not prevent either party from obtaining injunctive relief from a court of competent jurisdiction to enforce the obligations of the other party hereunder for which such party may require provisional relief pending a decision on the merits by the arbitrator.
- I. Independent Contractor. Both parties to this Agreement are independent contractors. Nothing in this Agreement shall be construed as creating any partnership, joint venture, or agency

relationship, and the parties shall have independent control over their own policies, management, assets, and provision of services.

- J. Notices. Any notice to be given under this Agreement shall be given in writing and shall be deemed to have been properly given if delivered by hand, deposited for delivery with recognized overnight courier, or if sent by certified or registered mail, postage prepaid, addressed to the other party at the address set forth below or at any other address, notice of which shall have been given in accordance with this Section:

**If to Agent:**

Valley Health System 220 Campus Blvd, Suite 210 Winchester, VA 22601  
Attention: President, Valley Regional Enterprises  
VHS Vice President, Ambulatory & Wellness Services

**If to Company:**

County of Clarke **101 Chalmers Court Berryville, VA 22611**  
Attention: David Ash

**IN WITNESS WHEREOF**, the parties have executed this Agreement by signature of their duly authorized representative as of the day and year first above written.

**COMPANY:**

County of Clarke

By: \_\_\_\_\_  
David Ash, Clarke County Administrator

**AGENT:**

Valley Regional Enterprises, Inc. d/b/a Premier Accounts Receivable Management

By: \_\_\_\_\_  
Chris Rucker, President, Valley Regional Enterprises VHS Vice President, Ambulatory & Wellness Services

**ADDENDUM A**

**COPIES OF THE FOLLOWING ARE NEEDED FROM COMPANY:**

- Business license provided annually
- Liability insurance
- Tax I.D. number
- Ambulance license
- Payer Contracts
- Vehicle Registration(s)

**ADDENDUM B**

**BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (this "BAA") is entered into on this March 1, 2015 (the "Effective Date") by and between County of Clarke, (the "Covered Entity"), and **Valley Regional Enterprises**, a Virginia nonstock corporation, d/b/a "Premier Accounts Receivable Management" (the "Business Associate").

**RECITALS:**

WHEREAS, the Covered Entity and Business Associate are parties to a primary agreement (the "Primary Agreement") whereby Business Associate provides certain items and/or services (the "Designated Functions"); and

WHEREAS, the Parties desire to enter into this BAA to comply with the Standards for Privacy of Individually Identifiable Health Information ("Privacy Standards"), the Security Standards promulgated by the Secretary of the U.S. Department of Health and Human Services ("HHS") under the Administrative Simplification Provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and other applicable legal requirements relating to Protected Health Information (as defined below).

NOW, THEREFORE, the parties hereby agree as follows:

## 1. DEFINITIONS:

- 1.1 *Protected Health Information* shall have the meaning as set forth in 45 C.F.R. § 164.501, as may be amended from time to time. In such regulation, *Protected Health Information* is defined as individually identifiable health information including, without limitation, all information, data, documentation, and materials, including without limitation, demographic, medical and financial information, 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 that identifies the individual or with respect to which there is reasonable basis to believe the information can be used to identify the individual.
- 1.2 *Data Aggregation* shall have the meaning as set forth in 45 C.F.R. § 164.501, as amended from time to time.
- 1.3 *Privacy Officer* shall mean the Privacy Officer as defined and set forth under 45 C.F.R. § 164.530(a)(1), as amended from time to time.
- 1.4 *Administrative Safeguards, Physical Safeguards, Security Incident, and Technical Safeguards* shall each have the meanings as set forth in 45 C.F.R. § 164.304, as amended from time to time.
- 1.5 *Breach and Unsecured Protected Health Information* shall each have the meanings as set forth in 45 C.F.R. § 164.402, as amended from time to time.

## 2. PROTECTED HEALTH INFORMATION

- 2.1 Permitted Uses and Disclosures of Protected Health Information. Business Associate may (i) use and disclose Protected Health Information as necessary to perform the Designated Functions under the Primary Agreement, subject to the restrictions below, (ii) use and disclose Protected Health Information as required by law and as specifically permitted herein, (iii) use Protected Health Information for Business Associate's proper management and administrative services or to carry out its legal responsibilities, subject to the terms of this BAA and the policies and procedures of the Covered Entity, (iv) disclose Protected Health Information for Business Associate's proper management and administrative services or to carry out its legal responsibilities, provided that the disclosures are required by law or Business Associate obtains reasonable assurances from the recipient that the Protected Health Information will remain confidential and used or further disclosed only as required by law or for the purposes that it was disclosed to the recipient and the recipient reports to Business Associate any instances of which Recipient is aware of a Breach; and (v) use Protected Health Information to provide Data Aggregation services as requested by Covered Entity for its health care operations. Business Associate will immediately notify Covered Entity in the event that Business Associate receives an order, subpoena, warrant or similar judicial process directing disclosure of Protected Health Information. In addition, with regard to its use and/or disclosure of Protected Health Information, Business Associate agrees to do the following:
  - a. use and/or disclose the Protected Health Information only as permitted or required by this BAA or as otherwise required by law;

- b. not to use or disclose Protected Health Information in any manner which would constitute a violation of the Privacy Standards if such use or disclosure had been undertaken by Covered Entity;
- c. report to the designated Privacy Officer of the Covered Entity, in writing, any Security Incident, any use and/or disclosure of the Protected Health Information that is not permitted or required by this BAA, or any Breach of Unsecured Protected Health Information of which Business Associate becomes aware, and provide notice to Covered Entity as required in Section 3 and/or Section 5.4 below, as applicable;
- d. use appropriate safeguards, including but not limited to the Security Standards required under Section 2.3 below, to maintain the security of and prevent use or disclosure of the Protected Health Information, except use or disclosure specifically permitted pursuant to this BAA;
- e. ensure that any employees of Business Associate to whom Business Associate provides the Protected Health Information received from, or created or received by Business Associate on behalf of the Covered Entity, comply with the same restrictions and conditions that apply to Business Associate;
- f. use appropriate safeguards to use and disclose only the minimum Protected Health Information necessary to perform or fulfill a specific function required or permitted hereunder;
- g. comply with the requirements of Section 2.2 below with respect to any subcontractors that create, receive, maintain or transmit Protected Health Information on behalf of Business Associate;
- h. make available Protected Health Information in accordance with 45 C.F.R. § 164.524, or any similar provision, as amended and in effect from time to time;
- i. make available Protected Health Information for amendment and incorporate any amendments into the Protected Health Information maintained by Business Associate, its agents or employees in accordance with 45 C.F.R. § 164.526, or any similar provision, as amended and in effect from time to time;
- j. make available the Protected Health Information required to provide an accounting of any disclosures in accordance with 45 C.F.R. § 164.528, or any similar provision, as amended and in effect from time to time;
- k. to the extent that the Primary Agreement requires Business Associate to carry out any obligations of Covered Entity under 45 CFR Part 164, Subpart E, Business Associate shall comply with the requirements of Subpart E that would apply to the Covered Entity in the performance of the obligation(s);
- l. make available to the Covered Entity and to the Secretary of the United States Department of Health and Human Services (“DHHS”) the internal practices, books and records of Business Associate relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate, its agents and employees on behalf of the Covered Entity, and notify Covered Entity within five (5) days of receipt of any such request by the Secretary of DHHS; and
- m. comply with all further legal requirements affecting use and disclosure of the Protected Health Information, including, without limitation, any applicable requirements of 45 C.F.R. § 164.504, et seq. establishing procedures for mitigating, to the greatest extent possible, any deleterious effects from any improper use and/or disclosure of Protected Health Information.

To the extent that this Section 2.1 provides for Business Associate to make information and/or materials available, Business Associate agrees that such information and/or materials shall be made available as soon as possible following a request by Covered Entity.

- 2.2 Subcontractors. Business Associate may contract with subcontractors to create, receive, maintain or transmit Protected Health Information on behalf of Business Associate provided that such subcontractors agree to appropriately safeguard the Protected Health Information and to comply with the same restrictions, conditions and requirements that apply to Business Associate (including

but not limited to the requirements of Section 2.1 above) by entering into a contract or other arrangement with Business Associate that complies with 45 CFR § 164.314(a)(2). Further, Business Associate shall ensure that such subcontractors shall report to Business Associate any Security Incident, any use and/or disclosure of the Protected Health Information that is not permitted or required by this BAA, or any Breach of Unsecured Protected Health Information of which the subcontractor becomes aware.

- 2.3 Security Standards. Business Associate agrees to implement Administrative Safeguards, Physical Safeguards and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Health Information that Business Associate creates, receives, maintains, or transmits on behalf of the Covered Entity as required by 45 C.F.R. Part 164, Subpart C, including without limitation any electronic Protected Health Information.
- 2.4 Treatment of Protected Health Information following Termination. Upon termination of this BAA, Business Associate shall (i) upon request of Covered Entity, destroy such portion of or all Protected Health Information received from, or created or received by Business Associate as requested by Covered Entity, (ii) upon request of Covered Entity, require all subcontractors and agents to destroy such portion of or all Protected Health Information as requested by Covered Entity, (iii) return all remaining Protected Health Information received from, or created or received by Business Associate in any form and retain no copies of such information, and (iv) require all subcontractors and agents to return all remaining Protected Health Information. Notwithstanding the foregoing, in the event that Covered Entity determines that the return or destruction of all or a portion of the Protected Health Information is not feasible, Business Associate agrees to retain the Protected Health Information and to extend any and all protections, limitations and restrictions contained in this BAA to Business Associate's use or disclosure of any Protected Health Information retained after the termination of this BAA, and to limit any further uses or disclosures to the purposes that make the return or destruction of the Protected Health Information infeasible.

### **3. NOTIFICATION OF DISCOVERY OF BREACH**

- 3.1 In the event Business Associate discovers any Breach of Unsecured Protected Health Information that is not permitted by the terms of this BAA, Business Associate shall notify and report such Breach in writing to Covered Entity as soon as possible following discovery of such Breach, but in all events within five (5) business days after discovery. Business Associate shall provide Covered Entity with all information available to Business Associate relating to the Breach in order to allow Covered Entity to assess potential notifications to the individual(s) whose Unsecured Protected Health Information has been, or is reasonably believed by Covered Entity to have been accessed, acquired, used or disclosed as a result of such Breach and to facilitate provision of such notifications where Covered Entity determines that such notifications are appropriate or required.
- 3.2 In the event that Covered Entity determines that notification of the Breach must be given to individuals or government authorities, Business Associate will either, as determined by Covered Entity, provide such notifications on behalf of Covered Entity in a form directed or approved in writing by Covered Entity, or reimburse Covered Entity on demand for any and all costs and expenses incurred by Covered Entity in connection with preparing such notifications. Notwithstanding any provision in this BAA to the contrary, Business Associate will not provide any notice to third parties (including, without limitation, patients or governmental authorities) of any Breach unless the form of such notice has been approved in writing by Covered Entity, provided, however, this provision shall not be interpreted to prohibit Business Associate from notifying its legal counsel or its insurers of any Compromise, and this provision shall not be interpreted to prohibit Business Associate from providing any notifications which Business Associate is expressly required by law to provide.

3.3 For purposes of this BAA, any acquisition, access, use or disclosure of Protected Health Information that is not permitted or required by this BAA shall be deemed a Breach of Unsecured Protected Health Information and reportable to Covered Entity unless: (i) the Protected Health Information is unusable, unreadable or indecipherable to unauthorized persons through a technology or methodology specified by the Secretary of DHHS; or (ii) Business Associate conducts a risk assessment and determines that there is a low probability that the Protected Health Information has not been compromised. In the case of the latter, Business Associate shall document its assessment of the following factors: (i) the nature and extent of the Protected Health Information involved, including the types of identifiers and the likelihood of re-identification; (ii) the unauthorized person who used the Protected Health Information or to whom the disclosure was made; (iii) whether the Protected Health Information was actually acquired or view; and (iv) the extent to which the risk to the Protected Health Information has been mitigated. For such risk assessments, Business Associate shall maintain the documentation for a period of at least six (6) years, and shall make the documentation available to Covered Entity upon request.

#### **4. TERM AND TERMINATION**

4.1 Term. This BAA shall become effective on the Effective Date and shall continue in effect until all obligations of the Parties have been met, unless terminated as provided in this Section 4. In addition, certain provisions and requirements of this BAA shall survive its expiration or other termination in accordance with Section 5.4 herein. Termination of this BAA shall automatically terminate the Primary Agreement unless otherwise agreed in writing by Covered Entity at the time of termination of this BAA. Subject to Section 5.4, this BAA will automatically terminate without any further action of the Parties upon the termination or expiration of the Primary Agreement.

4.2 Termination by the Covered Entity. In the event that the Covered Entity determines that Business Associate has breached a term of this BAA, the Covered Entity may (i) require Business Associate to use its best efforts to cure such breach to the satisfaction of Covered Entity as soon as possible, (ii) attempt to cure the breach through such means as determined by Covered Entity, and/or (ii) terminate this BAA at any time upon notice to Business Associate, without providing further opportunity to Business Associate to cure such breach and/or to continue efforts to cure. In the event Covered Entity undertakes any efforts to cure a breach by Business Associate, Business Associate shall cooperate with such efforts. In the event of the termination, Business Associate agrees to use its best efforts to assist Covered Entity to achieve an orderly transfer of the Designated Functions.

#### **5. MISCELLANEOUS**

5.1 Covered Entity. For purposes of this Addendum, the term Covered Entity shall include all entities covered by the joint notice of privacy practices of the Covered Entity. Notwithstanding the foregoing, Business Associate acknowledges and agrees that nothing herein shall be interpreted to subject any Covered Entity to liability in connection with the Primary Agreement other than such Covered Entity which is listed as a party to the Primary Agreement.

5.2 Limitation of Liability. The parties acknowledge and agree that Business Associate's liability to Covered Entity in connection with any claim by a third party, including, without limitation, any liability of Business Associate for contribution, shall be limited to the amount of liability to which Business Associate would be subject in a direct action by such third party under federal and/or Virginia law with consideration given to all mitigating factors, including, but not limited to, charitable immunity and the liability limit established for health care providers (as the term is defined in Section 8.01-581.1 of the Code of Virginia, 1950, as amended) under the Virginia Medical Malpractice Act or its successor.

5.3 Notices. Any notices to be given hereunder to a party shall be in writing and shall be deemed given if delivered personally, forwarded via U.S. Mail (certified with return receipt requested) or by recognized national overnight courier express carrier, and if to Covered Entity, shall be forwarded to the following address, or such other address of which Covered Entity may give notice:

If to Covered Entity, to: County of Clarke  
**101 Chalmers Court Berryville, VA 22611**  
Attention: David Ash

If to Business Associate, to: Valley Health System Attention: Privacy Officer  
220 Campus Blvd, Suite 420 Winchester, Virginia 22601

5.4 Survival. The respective rights and obligations of Business Associate and Covered Entity under the provisions of Section 2, 3, 4.2 and 5.2 shall survive termination of this BAA indefinitely.

5.5 General Provisions. This BAA and the Primary Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, notwithstanding Virginia's conflict of law doctrine. This BAA may be executed in counterparts, each of which will be considered an original. The parties hereto agree that facsimile signatures or electronically scanned signatures shall be as effective as if originals. Nothing expressed or limited in this BAA is intended to confer, nor shall anything herein confer, upon any person other than the Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever. This BAA may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events. Notwithstanding any provision herein to the contrary, Business Associate shall comply with all laws, regulations and requirements applicable to business associates (as such term is defined pursuant to 45 C.F.R. Section 160.103) and all terms, conditions and obligations of business associates (as such term is defined pursuant to 45 C.F.R. Section 160.103) now or hereafter imposed by law or regulation shall be deemed to have been incorporated into this BAA as though set forth in full herein. In the event of any new legislation or amendments, upon request of Covered Entity, Business Associate agrees to execute amendments to this BAA as reasonably requested by Covered Entity to reflect compliance with such laws. In the event of any conflict or inconsistency between this BAA and the terms of the Primary Agreement, the terms of this BAA shall govern. The Parties acknowledge and agree that the violation of Section 2 or 3 of this BAA by Business Associate would cause irreparable harm to Covered Entity and that Covered Entity's damages would be difficult to ascertain. Accordingly, in addition to any other remedies available, Covered Entity shall be entitled to injunctive relief and/or specific performance to enforce the provisions of Section 2 or 3.

WITNESS the following signatures effective as of the date first set forth above.

COVERED ENTITY:

By: \_\_\_\_\_  
Name: David Ash  
Title: Clarke County Administrator

BUSINESS ASSOCIATE:

By: \_\_\_\_\_  
Name: Chris Rucker  
Title: President Valley Regional Enterprises VHS Vice President, Ambulatory & Wellness Services

7) Personnel Committee Items

Expiration of Term for appointments expiring through April 2015

02/09/2015 Summary: The Personnel Committee recommends the following appointments:

- English Koontz: Warren-Clarke County Microenterprise Assistance Program Management Team to serve a two-year term expiring December 30, 2016
- Anne Caldwell: Board of Zoning Appeals recommends seeking the Circuit Court's action to reappoint to serve a five-year term expiring February 15, 2020
- Doug Kruhm: Clarke County Historic Preservation Commission at recommendation of the Planning Commission to serve a one-year term expiring April 30, 2016
- Maral Kalbian: Clarke County Library Advisory Council to serve a four-year term expiring April 15, 2019

02/17/2015 Action: **Supervisor Staelin moved to approve the first three recommendations of the Personnel Committee. The motion carried as follows:**

Barbara J. Byrd	- Aye
J. Michael Hobert	- Aye
Beverly B. McKay	- Aye
John R. Staelin	- Aye
David S. Weiss	- Aye

**Supervisor Staelin moved to approve the recommendation of the Personnel Committee to appoint Maral Kalbian to the Clarke County Library Advisory Council. The motion carried as follows:**

Barbara J. Byrd	- Aye
J. Michael Hobert	- Aye
Beverly B. McKay	- Aye
John R. Staelin	- Aye
David S. Weiss	- Aye

Personnel Policy Review

Chairman Weiss noted that the Board had been trying to create a unified personnel policy. He remarked that at a previous meeting he had suggested that the Board work as a committee of the whole; but at the February 9 Personnel Committee meeting and talking with the County Administrator, it was decided that constitutional officers should



be included in the review from the beginning of the process. The Personnel Committee should review the draft with David Ash and constitutional officers.

Supervisor Hobert opined that this direction was different from the memo received that invited Board members to comment, come to the meeting and email notice email.

David Ash clarified that Board members were included in the distribution but it was not the intent of the memorandum to send invitations to all the Board members.

Chairman Weiss interjected that the memorandum invited constitutional officers.

David Ash concurred and apologized to Board members for any misconception.

Chairman Weiss restated that the Personnel Committee, working in conjunction with the County Administrator and constitutional officers, would perform policy review at a smaller level and create the draft that would then be reviewed by the full Board.

Supervisor Staelin commented that when he read one of the drafts it mentioned the Constitutional Officers but he felt the document was unclear on the approvals they would make.

David Ash clarified that the new draft provides “should any constitutional officer agree to participate in the program that anywhere that Board of Supervisors is mentioned it would be synonymous with constitutional officer.”

Supervisor Byrd asked if the Personnel Committee would be changing the current draft.

David Ash responded that he did anticipate changes but could not provide specifics.

Supervisor Byrd asked that the Board be provided any changes.

Supervisor Staelin requested clarification on the persons designated to perform the review.

Chairman Weiss responded that it would be the Personnel Committee, the County Administrator, with invitations to constitutional officers.

David Ash added that for comments he had added the Planning Director, Parks and Recreation Director, Maintenance Director, and Joint Administrative Services Director.

Chairman Weiss informed the Board that the Committee’s goal was to have a good working copy of the draft ready by April.

8) Board of Supervisors Work Session and FY2016 Budget Work Session February 9, 2015

A. USGS Update by Mark Bennett

02/09/2015 Summary: Mark Bennett provided a PowerPoint presentation on the status of the USGS Cooperative Project.

B. FY2016 Budget Work Session with Tom Judge

02/09/2015 Summary: Tom Judge briefed the Board on the Finance Committee recommendations and actions to date.

02/17/2015 Summary / Action: Tom Judge appeared before the Board to provide an update on the FY2016 budget process.

- The following modifications to the FY 16 budget were agreed to by the Finance Committee at their February 11 meeting, or researched at Finance Committee request subsequent to the February meeting:

1. Real Property Tax Collection. Revise to \$14,208,241.

2. Personnel Requests:

- a. Add \$7K PT Sheriff salaries and \$536 FICA for increased court security.
- b. Add \$21,238 PT salary and FICA to Social Services for data entry.
- c. Add \$23,683 PT Salary and FICA to Social Services for transportation of clients.
- d. Add \$15,295 Federal Revenue associated with PT Social Services positions.

3. Minor Capital requests.

- a. Add grant for EMS to Capital Budget \$89,530 expenditure, \$85,267 revenue, for turnout gear and equipment. Reduce \$25K minor capital to \$2K in Fire/EMS operating budget.
- b. Add \$5K donations, and \$5K expenditure for Parks donation purchases.

4. New Organization requests:

- a. FISH: Add donation of \$1K.
- b. Barns of Rose Hill: Add donation of \$5K in addition to \$4K Arts grant [\$2K state, \$2K count]

5. Superintendent's budget request in with modified debt service.

6. Add CSA Pay-as-you-go @ \$157K.

7. Other:

- a. Reduce Health Department Sanitarian supplements \$-10K.

- b. Reduce Blue Ridge VFD request by \$-40K to level funding.
- c. Add \$40K to personnel contingency for Pay and Classification plan implementation; add designation for same to pay-as-you-go.
- d. Move \$70K County Attorney personnel costs to professional services.

#### *Virginia Department of Health [VDH] Request*

Supervisor Staelin queried members of the Finance Committee regarding the reduction in VDH supplements.

Chairman Weiss responded that the personnel the County was supplementing were no longer with the agency and it did not want the supplement perceived as an established fact. He advised that if VDH felt the supplement was needed and would benefit the County the Finance Committee was prepared to revisit.

Supervisor Hobert brought forth the substantial increase in the VDH funding request from \$205,000 to \$228,594. He stated that removing the \$10K supplement was one way the Finance Committee could quickly reduce cost. He said that the Finance Committee also briefly discussed further reductions.

Supervisor Staelin commented that staff must ensure that VDH is supporting County regulations.

David Ash supplied that, as requested by the Finance Committee, he had made contact with VDH and alerted them that its request was not automatically granted and to advise them not to make personnel decisions incorporating supplements that were in the past paid by the County until such a time as this Board and a VDH representative met to further discuss. He advised that the VDH staffer covering Clarke was working out of the Winchester Office; and, at this time, VDH does not have full-time replacements for Clarke's two vacant staff positions.

Tom Judge advised that the Finance Committee has completed review of line items through VDH with further to go including review of the General Fund, Joint Administrative Services, Schools, etc.

#### *State Salary Increases for Schools and Compensation Board Employees*

Chairman Weiss asked Tom Judge to brief the Board on School salary increases under consideration by the General Assembly.

Highlights of Mr. Judge's review include:

- Senate and House included a 1.5% salary increase for primarily for instructional personnel. The increase does not include all school employees.

- The amount is based on the Commonwealth's share of what it claims is the established/standard teachers' salary.
- The House and Senate effectively agreed on the increase with some differences including the effective date.
- Similarly, on the government side, certain Compensation Board employees have been included as getting an increase.
- In light of recent raises, it is undetermined whether the County can accept the funding without providing further salary increases.
- More should be known by the end of February.

#### *Cyber Attack on Anthem*

Tom Judge updated the Board on the Anthem cyber-attack. Highlights include:

- Virginia state employees affected and Local Choice is a "sister" of the State health care program.
- The State automatically enrolled all Anthem clients in the identity protection program.
- Employees can go to Anthem website and enroll in identity protection at no cost for two years.
- Anthem stated that it would notify every one affected but the County has not yet received notification.
- The FBI is involved and further information will be forthcoming once it reports.

#### *Localities Joining State Health Plan*

Supervisor Hobert requested as status update.

Highlights of Mr. Judge's review include:

- Status of the proposed bill is unknown.
- The advantages/disadvantages of joining are unknown.
- Expansion of the insurance pool may help the state.

### 9) Finance Items

#### 1. FY 15 Budget Adjustments for Salary increases

02/17/2015 Action: Approve Finance Committee recommendation "Be it resolved that the attached budget adjustments be made to reflect the mid-year salary increase which took effect in December".

Following review by Tom Judge, **Supervisor Hobert moved to approve "Be it resolved that the attached budget adjustments be made to reflect the mid-year salary increase which took effect in December". The motion carried as follows:**

Barbara J. Byrd	- Aye
J. Michael Hobert	- Aye
Beverly B. McKay	- Aye
John R. Staelin	- Aye
David S. Weiss	- Aye

2. FY 16 Capital Budget.

02/09/2015 Summary: The Finance Committee made the following adjustments to the proposed FY 16 Capital Budget:

- a. Split vehicle repeaters \$72K FY 16 and \$72K FY 17.
- b. Move both Parks planning projects to FY 17.
- c. Move Park to Town utility upgrades to FY 18.
- d. Move solid waste convenience center to FY 17.

3. Acceptance of Bills and Claims

02/09/2015 Summary: The Board should consider acceptance of the January Bills and Claims.

**02/17/2015 Action: Supervisor Hobert moved to accept the January bills and claims. The motion carried by the following vote:**

Barbara J. Byrd	- Aye
J. Michael Hobert	- Aye
Beverly B. McKay	- Aye
John R. Staelin	- Aye
David S. Weiss	- Aye

4. Standing Reports

Capital Projects Status, Reconciliation of Appropriations, General Fund Balance, Conservation Easement Fund, Expenditure Summary.

10) Joint Administrative Services Board Update

Highlights of Tom Judge's update include:

- At its January meeting, the Board adopted the Joint Administrative Services FY2016 budget request. Highlights:
  - Existing software service fees reduced.
  - Part-time salaries increased. Assistance needed in payroll processing.
  - Implement general ledger, purchasing, accounting in May.
  - Payroll implementation October 2015.

#### 11) Government Projects Update

David Ash provided the monthly project update. Highlights include:

- Sheriff's Office Renovation
  - Complete with the exception of exterior work that must wait until spring.
- Park Property
  - Old Parks Office house: fire companies will use the facility for training purposes over the course of the next month.
  - Site cleanup and debris removal will be additional expenses.
- 101 Chalmers Court – BCCGC HVAC Retrofit Project
  - Counsel has received the documents needed to proceed.

#### 12) Miscellaneous Items

##### Barns of Rose Hill Visitor Center Sign

John Staelin distributed a draft letter of support. Highlights of review include:

- Joint Economic Development Committee might wish to review the actual wording for the signs.
- The visitor center has not yet been named.
- Installation and first-year cost for seven [7] signs is approximately \$4,000.
- Anticipate annual cost of \$2,000 but the Board of Supervisors is not committing to that at this time.
- Anticipate using economic development funds.
- The Finance Committee is reviewing the annual fee that the Barns has requested. This is a separate request.

**Vice Chairman McKay moved to send a letter to Marie Henderson, Virginia Tourism Corporation, in regard to the cost of signs for a visitor center at the Barns of Rose Hill. The motion carried by the following vote:**

Barbara J. Byrd	-	Aye
J. Michael Hobert	-	Aye
Beverly B. McKay	-	Aye
John R. Staelin	-	Aye
David S. Weiss	-	Aye

Ms. Marie Henderson  
Virginia Tourism Corporation  
901 East Byrd Street  
Richmond, VA 23219

Dear Ms. Henderson,

I am writing with the full support of my fellow Board Members to encourage you to approve the Visitor Center application submitted by the Barns of Rose Hill.

Tourism is a major focus in Clarke County's Economic Development Strategic Plan. Having a Visitor's Center in the Barns facility near the center of Berryville would undoubtedly further the County's efforts to meet its tourism goals.

The Barns of Rose Hill has our full support on this issue as evidenced by the fact that my Board has agreed to pay for the installation cost of the signs directing visitors to the Center.

Sincerely,  
David Weiss, Chair

#### Tick Disease Awareness and Education Program

Supervisor Byrd informed the Board that Brenda Klepper, George Orhstrom, II, and she would be meeting next month to develop a program to educate the public on tick diseases. The group has lined up speakers and done research on handouts and materials. She listed the three main tick diseases:

- Limes Disease
- Rocky Mountain Spotted Fever
- Lone Star Tick

#### School Board Use of Main Meeting Room

David Ash informed the Board that Town Manager Keith Dalton, School Superintendent Chuck Bishop and he had discussed and agreed to the use of the Main Meeting Room at the Berryville Clarke County Government Center for Clarke County School Board meetings starting in February.

### Tribute to John Sours

Chairman Weiss provided a tribute to the late John Sours, who passed away February 6. He stated that Mr. Sours was a fine man that provided good service to the County when a member of the Clarke County Board of Supervisors representing the Berryville District, as a member of the Planning Commission, and while performing the duties of the County's Director of Economic Development. He extended the Board's condolences to the Sours family.

### All Good Music Festival

Supervisor Byrd announced that she attended a meeting last week with David Ash, Brandon Stidham, Frank Davis, Sheriff Roper, a Virginia State Police representative and six VDOT department heads. She stated that group reviewed festival issues over its 18-year history and determined that VDOT will be the lead agency.

Supervisor Byrd said that she believed it might be a good idea to have a letter from the chair about the County's feelings and concerns about the festival. She added that they had not communicated with the County. She said that Brandon Stidham has attempted to contact and gotten no response. Supervisor Byrd told the Board that Sheriff Roper met with the Jefferson County Sheriff twice; and to her knowledge, no one from West Virginia has checked with VDOT or Virginia State Police. She said that she has heard stories that Clarke County is fine with the festival.

David Ash provided:

- Update provided in VDOT's monthly report to the Board.
- VDOT is making formal contact with the event sponsor.
- There is an issue before the Jefferson County Commissioners as to whether or not it will comment on the issuance of an alcoholic beverage control commission permit for the event.
- An interested citizen is encouraging interested parties to comment on the alcoholic beverage control commission permit.
- VDOT, believing it has authority, has taken the lead. It is asking for support from the County, Sheriff and State Police.
- VDOT is negotiating with its counterparts in West Virginia.



- A March 2 hearing is scheduled for Bob Aitcheson’s request for injunctive relief on the Board of Zoning Appeals decision.
- All Good Festival promoters have announced the music line up and tickets go on sale starting Friday.

Supervisor Byrd put forth that the Board might want to take action in March in the form of a letter showing its concern for the cost and inconvenience.

Chairman Weiss recapped that VDOT had the lead and the Jefferson County Commissioners have already stated that its BZA is responsible for the decision to grant the festival permit. He opined that the Board should let the process work out with VDOT.

Supervisor Staelin expressed support for writing a letter of opposition to the alcoholic beverage control commission. He put forth that Jefferson County might take notice if informed of Clarke’s efforts to close its roads to festival traffic rerouting the traffic back into West Virginia. He expressed concern about traffic stacking, citizen access to their homes, and emergency vehicle access.

Supervisor Byrd stated that West Virginia is currently planning to close two major entries on Route 340. She opined that several strong letters might be a good approach.

Vice Chairman McKay expressed his opinion that he did not believe there was much Clarke could do to alter the situation. He agreed with Chairman Weiss that Clarke should defer to VDOT.

Supervisor Hobert opined that the strategy of being aggressive is a better strategy. However, for as many people as Supervisor Byrd has heard say that Clarke thinks it’s okay, there are ten times more that think this is just a repeat of Clarke County’s resistance to anything. He continued that whether or not in the end it will be a bad thing there were many people that automatically say, “Well that’s typical Clarke County, and you can’t do anything in Clarke County.”

Supervisor Byrd put forth that there are thousands of attendees at Watermelon Parkfest, which has good track record. She reminded that the All Good Festival does not have a good track record particularly in the area of drug enforcement.

Supervisor Hobert said that he understood and he believed that Supervisor Byrd had done a very good job of getting VDOT out front on the issue. He stated that the issue was the roads.

Vice Chairman McKay opined that the only issue is the roads with the festival in Jefferson County; and, if our citizens and emergency vehicles cannot travel on the roads in Clarke, it is a huge problem.

David Ash added that blocking the road would only occur if the festival were allowed to stack traffic on Clarke Roads. VDOT has stated that it cannot limit traffic for the sake of limiting traffic. VDOT indicates that for as long as traffic is moving it is okay but when it stops, VDOT then has an enforceable interest.

**Supervisor Hobert moved to acknowledge that the Chair has the ability to work with Supervisor Byrd, David Ash, and VDOT and, if appropriate, write a letter expressing the Boards' concerns. The motion carried by the following vote:**

Barbara J. Byrd	-	Aye
J. Michael Hobert	-	Aye
Beverly B. McKay	-	Aye
John R. Staelin	-	Aye
David S. Weiss	-	Aye

Chairman Weiss concluded stating that the Board should stay within the limits of what it can control, which is the access and safety of its residents. He assured that he would continue to work with Supervisory Byrd and David Ash and keep the Board informed.

#### Update on Shenanodah Farms Sanitary District

Supervisor Hobert asked for an update on the Shenandoah Farms Sanitary District.

David Ash responded that he was uncertain if what he had was public information but offered to meet with Supervisor Hobert after the meeting. He did confirm that something was submitted to the Court and he believed the judge set May 2 for the hearing. He did note that subsequent to that action a number of issues were raised.

#### 13) Summary of Required Action

<u>Item</u>	<u>Description</u>	<u>Responsibility</u>
1.	Request to VDOT to explain the criteria used for treating and plowing secondary roads and the order in which it is done.	David Ash
2.	Correct and process approved minutes.	Lora B. Walburn
3.	Follow up with language used in the Valley Regional	David Ash

<u>Item</u>	<u>Description</u>	<u>Responsibility</u>
	Enterprises Service Agreement.	
4.	Follow up with visitor center sign letter of support.	David Ash
5.	Follow up with VDH and invite it to address the Finance Committee.	David Ash
6.	Update Appointments database and send letters of appointment.	Lora B. Walburn
7.	Follow up on standing re Business Park covenants and potential violations.	Brandon Stidham

#### 14) Board Member Committee Status Reports

##### Supervisor Barbara Byrd:

- Humane Foundation: hope to bring in a new member; decided not to have a gala; persons donating to the Shelter have been very generous.
- NWRADC: operational fees decreased \$26,453 for FY2016; Juvenile Jail operations fees down FY2016 from \$39,000 to \$31,000 based on usage.

##### Supervisor J. Michael Hobert:

- Parks and Recreation: missed the meeting to attend a Budget Finance Committee meeting.

##### Vice Chairman Bev McKay:

- NSVRC: did not meet in January; meets February 19.
- Career and Technical Education Advisory Committee: last meeting canceled.

##### Supervisor John Staelin:

- CCSA: meets tomorrow.
- EDAC: BORH visitor center discussed under Miscellaneous.
- Joint EDAC and Tourism: Director Economic Development and Tourism: will distribute copies of resumes collected to date this week to the selection committee.
- PC: Business Park zoning review in progress.

### *Business Park Complaints*

Supervisor Hobert informed the Board that people in the community had mentioned to him some concern about the enforcement of the landscaping requirements at the Business Park, as well as fencing that has become dilapidated.

Supervisor Staelin responded that he saw many enforcement issues in his travels.

Supervisor Byrd reminded that at one time the County had a Code Enforcement Officer.

Supervisor Hobert opined that the Business Park was different because it was owned by the County.

Supervisor Staelin remarked that while he did not disagree that there were enforcement issues the County did not own the Business Park.

Supervisor Hobert opined that the County still had responsibilities.

Supervisor Staelin said there needed to be discussion with Brandon Stidham about code enforcement for the County.

Supervisor Hobert countered that the issue of violation and what needs to be done came before enforcement.

Supervisor Staelin commented that the Business Park did not look as good as it did when first put in; and during the economic downturn, business avoided costs. He opined it was time to get back to the rules. County not as vigilant – other places throughout the county need attention.

In response to Supervisor Byrd's query, Supervisor Staelin confirmed that landscaping requirements were part of the Business Park regulations. He reminded that during the economic downturn the County cut back on staff including the Code Enforcement position and opined that the County had not been as vigilant.

Chairman Weiss asked Mr. Stidham if he was aware of the concerns in the Business Park.

Brandon Stidham responded that this was the first time he had heard of concerns in the Business Park. He stated that he did not know whether it was a violation of restrictive covenants and/or a violation that falls under the Town's Code. He continued that as far as enforcement in the County, his department would have more time to deal with complaints but it was important to remember that his

department acted on a complaint basis unless it was a matter associated with an active project such as sediment control issues.

Supervisor Staelin requested clarification that review of the Business Park Covenants would be a function of Economic Development.

Brandon Stidham confirmed. He remarked that he would also want to check with the County attorney to ensure the County even had a role enforcing the Business Park Covenants since it no longer owns lots.

Supervisor Hobert opined that he believed it was a policy question as much as a legal question and he thought the Board could say it thought it had a responsibility to ensure property values do not diminish. He continued that he was not trying to suggest that the County go out to the Business Park and jump on property owners but he did not think the County could just throw up its hands and say it is not ours any more. He opined that the County created the Park and it had an obligation to those people that have purchased lots in the Park to do what is right and to enforce the covenants if they are worthy of being enforced. Supervisor Hobert stated that he could provide Mr. Stidham a complaint but he did not think that it should be necessary.

Brandon Stidham questioned whether his office was responsible for enforcing the covenants and his previous question was whether the County still had standing to enforce the covenants if it does not own lots.

Supervisor Hobert suggested that Mr. Stidham begin by reading the covenants and determining whether the County specifically had the power to enforce or whether it was left to anyone in the Business Park. He opined that he thought the answer was yes.

Chairman Weiss remarked that the Board wanted the Business Park to look attractive, to retain value and to meet the requirements; however, it should first be determined what the requirements are and who is responsible.

Supervisor Staelin added that the covenants were standard and reviewed by Bob Mitchell, the County's attorney.

Chairman Weiss stated a course of action could be determined after the County received clarification.

Chairman David Weiss:

- CEA: Going well – Supervisor Hobert will take over next week.
- EMS Commission: Making headway; getting good feedback from volunteer services.

- SPC: Going well; working toward a good mission statement.

15) Closed Session

At 2:45pm, **Vice Chairman McKay** moved to convene into Closed Session pursuant to for- **Discussion and Review pursuant to §2.2-3711-A3 Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body. The motion carried as follows:**

Barbara J. Byrd	- Aye
J. Michael Hobert	- Aye
Beverly B. McKay	- Aye
John R. Staelin	- Aye
David S. Weiss	- Aye

At 3:02 pm, the members of the Board of Supervisors being assembled within the designated meeting place, with open doors and in the presence of members of the public and/or the media desiring to attend, **Supervisor Byrd** moved to reconvene in open session. The motion carried as follows:

Barbara J. Byrd	- Aye
J. Michael Hobert	- Aye
Beverly B. McKay	- Aye
John R. Staelin	- Aye
David S. Weiss	- Aye

**Supervisor Byrd** further moved to execute the following Certification of Closed Session:

**CERTIFICATION OF CLOSED SESSION**

WHEREAS, the Board of Supervisors of the County of Clarke, Virginia, has convened a closed meeting on the date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3700 of the Code of Virginia requires a certification by the Board of Supervisors of the County of Clarke, Virginia that such closed meeting was conducted in conformity with Virginia law.

NOW, THEREFORE BE IT RESOLVED, that the Board of Supervisors of the County of Clarke, Virginia, hereby certifies that, to the best of each members knowledge, (i) only

public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which the certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board of Supervisors of the County of Clarke, Virginia.

**The motion was approved by the following roll-call vote:**

Barbara J. Byrd	- Aye
J. Michael Hobert	- Aye
Beverly B. McKay	- Aye
John R. Staelin	- Aye
David S. Weiss	- Aye

No action was taken on matters discussed in Closed Session.

16) Adjournment

There being no further business to be brought before the Board at 3:02 pm Chairman Weiss adjourned the Board of Supervisors meeting.

Next Regular Meeting Date

The next regular meeting of the Board of Supervisors is set for Tuesday, March 17, 2015 at 1:00 p.m. in the Berryville Clarke County Government Center, Main Meeting Room, 101 Chalmers Court, Berryville, Virginia.

ATTEST: February 17, 2015

\_\_\_\_\_  
David S. Weiss, Chair

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David L. Ash, County Administrator

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Minutes Recorded and Transcribed by:  
Lora B. Walburn, Deputy Clerk, Board of Supervisors