

**SUMTER COUNTY BOARD OF COMMISSIONERS
EXECUTIVE SUMMARY**

SUBJECT: Mutual Settlement Agreement and Release with LifeStream Behavior Center, Inc.
REQUESTED ACTION: Approve the Agreement

Work Session (Report Only) **DATE OF MEETING:** 12/11/2012
 Regular Meeting Special Meeting

CONTRACT: N/A Vendor/Entity: LifeStream Behavior Center, Inc.
Effective Date: _____ Termination Date: _____
Managing Division / Dept: County Administration

BUDGET IMPACT: \$1.07 per citizen (\$84,725 for the remainder of the FY 11/12 contract year and \$107,252 for the FY 12/13 contract year)
 Annual **FUNDING SOURCE:** General Fund
 Capital **EXPENDITURE ACCOUNT:** _____
 N/A

HISTORY/FACTS/ISSUES:

The attached mutual settlement agreement and release resolves the dispute in the interpretation of state statute and the Attorney General Opinion related to Baker Act and Non-Baker Act local match requirements for services provided by LifeStream via their contract with the State of Florida.

The attached spreadsheet also demonstrates the methodology to arrive at the permanently set rate of \$1.07 per citizen.

The benefits of this approach and agreement are as follows:

1. The agreement establishes the basis of documentation for payments to LifeStream
 2. The agreement resolves the local match requirements for Sumter County
 3. The agreement establishes a fixed variable (population) for which payments/budgeting for LifeStream is accomplished
 4. The agreement eliminates the liability risk to LifeStream and Sumter County resulting from an outside party determining the local match requirements
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MUTUAL SETTLEMENT AGREEMENT AND RELEASE

COME NOW, SUMTER COUNTY, FLORIDA, a political subdivision of the State of Florida, (hereinafter referred to as "SUMTER"), and LIFESTREAM BEHAVIORAL CENTER, INC., a Florida Corporation (hereinafter referred to as "LIFESTREAM") for the purpose of entering into this Mutual Settlement Agreement and Release. In furtherance of same, SUMTER and LIFESTREAM (collectively referred to from time to time in this Mutual Settlement Agreement and Release as the "Parties") in an effort to resolve all outstanding disputes between them, as set forth herein, enter into this, their Mutual Settlement Agreement and Release (hereinafter referred to as the "Agreement") and state as follows:

WHEREAS, the Parties have been engaged in a dispute regarding issues involving the determination of SUMTER's "local participation" for the provision of Substance Abuse and Mental Health Services provided by LIFESTREAM to citizens of Sumter County, Florida, pursuant to its contract with the State of Florida, from July 1, 2011 through June 30, 2012, in accordance with Florida Statute §394.76, which include, but are not necessarily limited to Baker Act and Non—Baker Act services (hereinafter referred to as the "Services"); and

WHEREAS, LIFESTREAM has submitted invoices to SUMTER for the payment of what LIFESTREAM purports is SUMTER's statutorily mandated "local participation", as defined by Florida Statute §394.76; however, SUMTER, is not able to confirm the accuracy of the local participation requested without being provided with source documentation which discloses all sources of "local matching funds" received by LIFESTREAM, as that term is defined by Florida Statute §394.67, and as further detailed in Attorney General Opinion 2011-23; and

WHEREAS, SUMTER has previously paid, and LIFESTREAM has accepted, payments

constituting its statutorily required local participation based upon a per citizen formula which took SUMTER's population into consideration; and

WHEREAS, the Parties agree that calculating SUMTER's "local participation" utilizing a per citizen formula satisfies the 25% local participation obligation imposed on SUMTER by Florida law, provides a more reliable method of determining SUMTER's level of "local participation" moving forward, and furthermore, and will eliminate the necessity of providing source documents or other data which disclose all sources or amounts of "local matching funds"; and

WHEREAS, the Parties acknowledge that this Agreement is intended to amicably resolve the aforementioned disputed issues and avoid the cost and expense associated with uncertain litigation; and

WHEREAS, the Parties desire to resolve this dispute as set forth herein;

NOW, THEREFORE, in consideration of the mutual premises contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. SUMTER and LIFESTREAM hereby acknowledge and agree that the above recitals or WHEREAS clauses are fully incorporated into this Agreement, *in haec verba*.

2. SUMTER and LIFESTREAM, hereby mutually Release (as defined below), acquit and discharge each other, as well as their successors, assigns, parents, subsidiaries, affiliates, and related and interrelated firms, companies and corporations (if applicable), as well as all officers, directors, attorneys acting on their behalf and all employees of said entities, and all underwriters at risk for the same from any and all claims or causes of action which they may have against each other related to the Services as defined above (*i.e.*, Substance Abuse and Mental Health Services provided by LIFESTREAM to citizens of Sumter County, Florida, pursuant to its contract with the State of Florida, from July 1, 2011 through June 30, 2012, in

accordance with Florida Statute §394.76, which include, but are not necessarily limited to Baker Act and Non—Baker Act services) at the time of the execution of this Agreement. “Release” shall mean the relinquishment, concession or giving up of any and all claims, demands, causes of action, actions, rights, liabilities, liens, contract obligations, damages, attorney fees, interest, costs, torts, suits, debts, sums of money, accountings, reckonings, bills, covenants, controversies, agreements, promises, variances, trespasses, warranty claims and indemnity rights, whatsoever, at law or in equity, or otherwise, whether direct or indirect, known or unknown, which the releasing party now owns or holds, against the persons and entities they are releasing or any of them, in any capacity, which are based upon any facts, acts, omissions, conduct, expressed or implied, warranties (express or implied), guarantees, representations, contracts, agreements, claims, events, causes, indemnity agreements, or matters of any kind occurring or existing at any time on or before the date of this release, including but not limited to all claims that pertain to and/or arise from the transactions and/or events, allegations, claims, and circumstances related to the Services, and this Release shall be a complete bar to all claims or suits for expenses or damages of any nature resulting from the same.

3. Each Party jointly represents and warrants that they have full right, power, and authority to enter into this Agreement, and that they now own or have the right to Release each and all of the released entities and claims that they purport to release, and that they have not transferred any interest in any of their released claims to any third party and further, the Parties affirm:

- (a) that this Release is fairly and knowingly made;
- (b) that the PARTIES SPECIFICALLY ALLOCATE THE RISK OF ANY MISTAKES BY ANY PARTY IN ENTERING INTO THIS AGREEMENT TO THE PARTY OR PARTIES WHO LATER CLAIM THEY WERE MISTAKEN.

4. It is fully understood and agreed that the payment or acceptance by each Party

hereto of the consideration described in this Agreement is not an admission or acknowledgment of liability or fault in reference to any matter by any of the Parties, but rather, this Mutual Settlement Agreement and Release is intended to be an amicable resolution to disputed and uncertain claims. Furthermore, each Party stipulates and agrees that each Party will bear its own attorney's fees and costs associated with the above-referenced dispute.

5. Each Party hereby declares that the terms of this Agreement have been completely read and are fully understood and voluntarily accepted for the purpose of making a full and final compromise, adjustment and settlement of any and all claims, disputed or otherwise, on account of the claims, injuries, and damages abovementioned, and for the express purpose of precluding forever any further or additional claims arising out of the issues related to the dispute(s) referenced herein.

6. Each Party further agrees and stipulates that all issues related to the dispute referenced herein have been resolved by the Parties by virtue of this Agreement.

7. As consideration for this Agreement, SUMTER will pay to LIFESTREAM the total, lump-sum amount of Eighty-four Thousand, Seven Hundred Fifty-Two Dollars and no cents (\$84,752.00), within twenty (20) days of the effective date of this Agreement, in full and final satisfaction of any and all claims which LIFESTREAM may have for any and all damages associated with work performed or outstanding invoices related to the Services (*i.e.*, the Substance Abuse and Mental Health Services provided by LIFESTREAM to citizens of Sumter County, Florida, pursuant to its contract with the State of Florida, from July 1, 2011 through June 30, 2012, in accordance with Florida Statute §394.76, which include, but are not necessarily limited to Baker Act and Non—Baker Act services), including, but not necessarily limited to any claims which could have been brought by LIFESTREAM pursuant to Florida's Prompt Pay Act. Each Party specifically abandons any claims for attorneys' fees concerning the above referenced dispute. Nothing contained in this Agreement shall be construed as a limitation upon either of the Parties to enforce the terms of this Agreement, or in any way limit remedies available for the breach of this Agreement.

8. The payment referenced in paragraph seven (7) above is based upon payment to LIFESTREAM of a fixed-rate of \$1.07 per SUMTER citizen multiplied by 100,198 (which reflects the current amount of SUMTER's citizens). For purposes of this Agreement, the Parties agree that the Bureau of Economics & Business Research at the University of Florida ("BEBR") was utilized in determining SUMTER's population. It is further acknowledged and agreed by the Parties that during all times that LIFESTREAM is the State of Florida's contract vendor for the provision of the Services to SUMTER, SUMTER's local participation will continue to be based upon the fixed rate of \$1.07 per citizen as determined by the BEBR.

9. The paragraphs, title, or captions contained herein are designated for convenience only and shall in no way define, limit or extend the scope of this Agreement.

10. Each Party acknowledges that it as had an opportunity to review, modify, and approve the language of this Agreement with advice of counsel of their choice. This Agreement shall not be construed more strongly against any party to the Agreement, regardless of who may be deemed to have prepared it.

11. This Agreement may be executed in a number of identical counterparts. If so executed, each of such counterpart is to be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one agreement. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

12. Each Party agrees to cooperate fully and to execute any supplementary documents and to take any additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement and which are not inconsistent with its terms.

13. This Agreement, and the rights, duties, and obligations of the Parties to this Agreement shall be governed, performed, interpreted, construed, and enforced in accordance with laws of the State of Florida. In any action brought to enforce the terms of this Agreement, the prevailing party shall be entitled to an award of the costs and reasonable attorney fees

incurred at the trial or appellate levels. The Parties further agree that venue for any action brought to enforce the terms of this Agreement shall lie exclusively in the courts of Sumter County, Florida.

14. This Agreement shall become binding when it has been executed by each of the Parties.

15. Each of the Parties acknowledges to each another that no promise, inducement, or agreement not contained herein has been expressed or made to them in connection with this Agreement.

16. This Agreement contains the entire agreement between the Parties with regard to the matters set forth herein, and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each. This Agreement cannot be altered, amended, modified or otherwise changed in any respect except by an instrument in writing duly executed by authorized representatives of each of the Parties hereto.

17. Each of the Parties hereto agrees that the rules of construction, to the effect that any ambiguities are to be resolved against the drafting party, shall not be employed in the interpretation of this Agreement. This Agreement is a result of negotiation between the Parties, and, if it is determined that an ambiguity is contained herein, then such ambiguity shall not be construed against any Party as the preparer hereof.

18. Each Party hereby acknowledges and agrees that the failure of any of the Parties, in their individual or corporate capacities, to insist upon strict compliance with each and every term, covenant, or condition hereof shall not constitute a waiver of any such term, covenant, or condition, nor shall it constitute a waiver of any of the Parties rights and privileges under this Agreement, including the right or rights of the Parties to subsequently insist on full and complete

performance of the Agreement, and may not act or serve to create an estoppel against any of the Parties in any manner whatsoever. The rights and remedies provided herein may be pursued at the sole discretion of any of the Parties, in their individual or corporate capacities.

19. (a). The Parties agree that they will not, directly or indirectly, in any capacity or manner, make, express, transmit speak, write, verbalize or otherwise communicate in any way (or cause, further, assist, solicit, encourage, support or participate in any of the foregoing), any remark, comment, message, information, declaration, communication or other statement of any kind, whether verbal, in writing, electronically transferred or otherwise, that might reasonably be construed to be derogatory or critical of, or negative toward, the other Party or any of its directors, officers, Affiliates, subsidiaries, employees, agents or representatives.

(b). Notwithstanding the foregoing, nothing in this Agreement shall prohibit either Party from making any statement or disclosure required under the state public records laws or other applicable laws.

20. Each Party acknowledges and agrees that the effective date of this Agreement shall be the ___ day of December, 2012.

THE SIGNATORIES TO THIS AGREEMENT ACKNOWLEDGE THAT THEY HAVE READ THE FOREGOING AGREEMENT, FULLY UNDERSTAND ITS TERMS AND CONDITIONS, AND AGREE TO BE BOUND BY ALL OF ITS TERMS AND CONDITIONS.

SIGNATURES CONTAINED ON FOLLOWING PAGE

ATTEST:

GLORIA HAYWARD,
CLERK OF COURT

SUMTER COUNTY BOARD OF
COUNTY COMMISSIONERS

DOUG GILPIN, Chairman

Approved as to form for the reliance of
Sumter County, Florida only:

George G. Angeliadis, Esq.
The Hogan Law Firm
FBN: 0080081
Sumter County Attorney

LIFESTREAM BEHAVIORAL CENTER,
INC.

Witness: _____

By: _____

Its: _____

Witness: _____

STATE OF FLORIDA
COUNTY OF SUMTER

The foregoing Mutual Settlement Agreement and Release was acknowledged before me
this ___ day of December, 2012, by _____, who is personally known to
me or has produced _____ as identification and did/did
not take an oath. _____ executed the foregoing instrument, and
acknowledged the same to be his free and voluntary act and deed, for the uses and purposes
therein mentioned.

(Seal)

Notary Public
My Commission Expires:

LifeStream

	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012*	2012-2013
July-June Payments	\$ 7,500	\$ 9,000	\$ 18,000	\$ 25,000	\$ 50,000	\$ 55,000	\$ 60,500	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 90,000	\$ 107,252	\$ 107,252
Population	53,345	56,932	61,348	63,001	66,416	74,052	82,599	89,771	93,024	95,326	93,420	96,615	100,198	100,198
Cost per citizen	\$ 0.1406	\$ 0.1581	\$ 0.2934	\$ 0.3968	\$ 0.7528	\$ 0.7427	\$ 0.7325	\$ 1.1139	\$ 1.0750	\$ 1.0490	\$ 1.0704	\$ 0.9315	\$ 1.0704	\$ 1.0704

Thru 2010-2011 Fiscal Year
 Average 12 yr. Cost per Citizen \$ 0.7047
 Median 12 yr. Cost per Citizen \$ 0.7478

*Sumter County paid \$22,500 in Fiscal Year 2011-12, leaving a balance of \$84,752.

Average 5 yr. Cost per Citizen \$ 1.0480
 Median 5 yr. Cost per Citizen \$ 1.0704