

## **FUNDING AGREEMENT #533-F1711**

**THIS AGREEMENT** made and entered by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and New Morning Youth & Family Services, Inc., a California nonprofit public benefit corporation qualified as a tax exempt organization under Title 26 Code of Federal Regulations Section 1.501 (c)(3) commonly referred to as Section 501 (c)(3) of the Internal Revenue Code of 1986, whose principal place of business is 6765 Green Valley Road, CA 95667, (hereinafter referred to as "Grantee");

### **RECITALS**

**WHEREAS**, County wishes to encourage the support of recidivism and crime reduction activities or services for the communities of El Dorado County: and

**WHEREAS**, the Board of Supervisors accepted funding from the California Board of State and Community Corrections as part of the Community Recidivism Reduction Grant as specified in Penal Code section 1233.10: and

**WHEREAS**, County has appropriated funding to Community Based Organizations for the purpose of supporting recidivism and crime reduction activities or services for the communities of El Dorado County the Board of Supervisors awarded the Request for Proposal No. 16-990-069 to New Morning Youth & Family Services, Inc. on October 25, 2016 via Board Item No. 16-0988: and

**WHEREAS**, the funding provided herein will serve a public purpose and provide a valuable public benefit in that it will promote a reduction of crime and recidivism within communities of the County of El Dorado; and

**WHEREAS**, the parties agree the funding will be in conformity with all applicable federal, state and local laws and use of the funding shall be in conformity with the Community Recidivism Reduction Grant as specified in Penal Code section 1233.10;

**NOW, THEREFORE**, the parties do hereby agree as follows:

## ARTICLE I

### Description of Project/Program/Event

Grantee shall complete the following Activities and Deliverables. It is understood that funding provided by County is not intended to fully fund the Project. Grantee is responsible for securing other sources of funding necessary to fully fund and deliver the Program.

**Activity:** Grantee agrees to furnish personnel, equipment, and activities or services to the communities of El Dorado County that are designed to enable persons, to whom the activities or services are provided, to refrain from engaging in crime, reconnect with their family members, and contribute to their communities through Intensive Outpatient Services funded through the Board of State and Community Corrections Recidivism Reduction Fund.

**Deliverable(s):** Grantee will provide Parent Project classes to parents of youth who have engaged in criminal activity or are at high-risk of engaging in criminal activity.

Grantee will provide Parent Project classes to help parents develop limit setting, handle misbehavior, defiance and temper, provide positive reinforcement, redirect challenging behaviors; decrease aggression and annoying behaviors; and increase their child's thinking, social skills and motivation. Each class will range from two to three hours in length, with the typical course lasting ten to twelve weeks depending on the needs and dynamics of the individual group. Outcome tracking will include the following but is not limited to:

- (a) Arrests while in the program.
- (b) Achenbach Child Behavior Checklist
  - (i) Reporting showing all intervals of assessments
- (c) Client satisfaction questionnaire
- (d) Reporting by Services
  - (i) Number of individuals served under the agreement by services provided
  - (ii) Referral source for each individual
  - (iii) Number pending referrals
  - (iv) Number of Parent Project slots available

All Grantee activities and services provided pursuant to this Agreement 533-F1711, shall be in accordance with the Community Recidivism Reduction Grant as specified in Penal Code section 1233.10.

## ARTICLE II

**Term:** This Agreement shall become effective when fully executed by the parties hereto and shall cover the period of August 1, 2016 through June 30, 2018 to coincide with the grant period of the Community Recidivism Reduction Grant as specified in Penal Code section 1233.10.

### ARTICLE III

**Payment and Use of Funds:** County agrees to pay Grantee in three equal installments of \$5,000.00 each in accordance with the following schedule:

- Installment 1: Within thirty (30) days of execution of this Agreement
- Installment 2: On or about January 31, 2018
- Installment 3: On or about June 30, 2018

Any awarded funds unspent after June 30, 2018 shall be returned to El Dorado County. Any funds that have not been expended by the end of the grant period shall be returned to the State.

For the purposes of this Agreement, Grantee shall submit documentation to the Probation Department that must contain details as to the nature of the expenditure and show that it is an approved cost and falls within approved grant budget. Documentation may be in the form of: sales receipts, invoices, payroll reports etc. documents may be submitted either electronically, by email or mailing hard copies. Expense documentation may be submitted as they occur.

No less than quarterly, Grantee shall provide a financial report reconciling expenses to awarded funds.

**Budget Line Items:** \$15,000 Grand Total Budget

- (a) \$12,147 Salaries & Benefits
- (b) \$1,433 Service & Supplies
- (c) \$1,420 Professional Services

Budget Modifications may be submitted to Gary Romanko, Deputy Chief Probation Officer, Probation Department, or successor and are subject to approval by Doreen Aultz, Chief Fiscal Officer, Probation Department, or successor. An approval letter will be sent for any approved budget modifications and must be obtained before the corresponding expenses are incurred.

Funding shall be used solely for the purpose described in ARTICLE I. Grantee expressly agrees that any funds paid by County under this Agreement shall not be used, directly or indirectly, for any other purposes.

The total amount of this Agreement shall not exceed \$15,000.00.

If Grantee fails to timely deliver or satisfactorily complete the deliverables and reports required by this Agreement, County at its sole discretion may delay the payment for the period of time of the delay, cease all payment until such time as the required deliverables or reports are received, or proceed as set forth in ARTICLE XIII Default, Termination, and Cancellation.

**ARTICLE IV**

**Data Collection and Reporting:** Grantee is required to report to the El Dorado County Probation Department on the types of activities or services provided and the number of the individuals served by the grant funds. The Probation Department will be responsible for reporting this data to the Board of Supervisors and the BSCC.

- (a) **Quarterly Progress Reports:** As part of the grant administration and program evaluation process, Grantee must submit quarterly progress reports to the Probation Department. The reports are due within 15 days following the end of each three-month period (quarterly) during the grant period.
- (b) **Final Reports:** In addition, Grantee will be required to submit a final report which summarizes the goals and objectives of the project, activities or services provided, target population and number of program participants served during the grant period. Included in the final report, Grantee will provide a detail of expenditures supported by grant funds.

<b>Reporting Period</b>	<b>Report Due Dates</b>
August through September 2016	October 15, 2016
October through December 2016	January 15, 2017
January through March 2017	April 15, 2017
April through June 2017	July 15, 2017
July through September 2017	October 15, 2017
Final FY 2016-2017 Program Report	October 15, 2017
October through December 2017	January 15, 2018
January through March 2018	April 15, 2018
April through June 2018	July 15, 2018
Final FY 2017-2018 Program Report	July 15, 2018

County will provide Grantee with suitable reporting format. Grantee will be required to participate in submitting all other reports and data as required by the Community Recidivism Reduction Grant.

Grantee shall maintain records, books, documents, and other evidence sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Agreement, including any matching costs and expenses, all of which will be deemed to constitute "records" for purposes of this section. Such records shall clearly reflect the cost and scope of the activities or services provided.

Grantee's facility or office or such part thereof as may be engaged in the performance of this Agreement and its records shall be subject at all reasonable times to inspection, audit and reproduction by County, the state or any of its duly authorized representatives, including the Comptroller General of the United States.

The provisions of this Article IV shall survive termination of this Agreement.

#### **ARTICLE V**

**HIPAA Compliance:** As a condition of Grantee performing activities or services for the County of El Dorado, Grantee shall execute that Business Associate Agreement which is attached hereto as Exhibit "A", which is incorporated herein for all intents and purposes.

#### **ARTICLE VIII**

**Taxes:** Grantee certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Grantee to County. Grantee agrees that it shall not default on any obligations to County during the term of this Agreement.

#### **ARTICLE IX**

**Changes to Agreement:** This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

#### **ARTICLE X**

**Assignment and Delegation:** Grantee is engaged by County for its unique qualifications and skills as well as those of its personnel. Grantee shall not subcontract, delegate or assign activities or services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

#### **ARTICLE XI**

**Fiscal Considerations:** The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, El Dorado County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and

procurement laws and regulations and may not expend funds for products, equipment, activities or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the activities or services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department for which activities or services were contracted to be performed, pursuant to this paragraph in the sole discretion of the County, this Agreement may be deemed to be canceled in its entirety subject to payment for activities or services performed prior to cancellation.

## **ARTICLE XII**

**Audit by California State Auditor:** Grantee acknowledges that if total compensation under this agreement is greater than \$10,000, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code §8546.7. In order to facilitate these potential examinations and audits, Grantee shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the contract, all books, records and documentation necessary to demonstrate performance under the Agreement.

### **ARTICLE XIII**

#### **Default, Termination, and Cancellation:**

- A. **Default:** Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date on which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.

- B. **Bankruptcy:** This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Grantee.
- C. **Ceasing Performance:** County may terminate this Agreement in the event Grantee ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.

### **ARTICLE XIV**

**Notice to Parties:** All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be addressed as follows:

COUNTY OF EL DORADO  
Probation Department  
3974 Durock Road, Suite 205  
Shingle Springs, CA 95682  
ATTN: Chief Probation Officer

or to such other location as the County directs.

with a carbon copy to

COUNTY OF EL DORADO  
Chief Administrative Office  
Procurement and Contracts Division  
330 Fair Lane  
Placerville, CA 95667  
ATTN: Purchasing Agent

Notices to Grantee shall be addressed as follows:

NEW MORNING YOUTH & FAMILY SERVICES, INC.  
6765 Green Valley Road  
Placerville, CA 95667  
Attn: Executive Director

or to such other location as the Grantee directs.

#### **ARTICLE XV**

**Change of Address:** In the event of a change in address for Grantee's principal place of business, Grantee's Agent for Service of Process, or Notices to Grantee, Grantee shall notify County in writing pursuant to the provisions contained in this Agreement under the Article titled "Notice to Parties". Said notice shall become part of this Agreement upon acknowledgment in writing by the County Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

#### **ARTICLE XVI**

**Indemnity:** The Grantee shall defend, indemnify, and hold the County harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the Grantee's activities or services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, the Grantee, sub Grantee(s) and employee(s) of any of these, except for the sole, or active negligence of the County, its officers and employees, or as expressly prescribed by statute. This duty of Grantee to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

## ARTICLE XVII

**Insurance:** Grantee shall provide proof of a policy of insurance satisfactory to the County of El Dorado Risk Manager and documentation evidencing that Grantee maintains insurance that meets the following requirements:

- A. Full Worker's Compensation and Employer's Liability Insurance covering all employees of Grantee as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000.00 aggregate limit.
- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the Grantee in the performance of the Agreement.
- D. In the event Grantee is a licensed professional or professional consultant, and is performing professional services under this Agreement, professional liability is required with a limit of liability of not less than \$1,000,000.00 per occurrence.
- E. Grantee shall furnish a certificate of insurance satisfactory to the County of El Dorado Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- G. Grantee agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Grantee agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Grantee agrees that no work or services shall be performed prior to the giving of such approval. In the event the Grantee fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
  1. The insurer will not cancel the insured's coverage without prior written notice to County, and;

2. The County of El Dorado, its officers, officials, employees and volunteers are included as additional insured on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. The Grantee's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be in excess of the Grantee's insurance and shall not contribute with it.
  - J. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and volunteers; or the Grantee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
  - K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
  - L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
  - M. Grantee's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
  - N. In the event Grantee cannot provide an occurrence policy, Grantee shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
  - O. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for protection of the County.

### **ARTICLE XVIII**

**Interest of Public Official:** No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Grantee under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

### **ARTICLE XIX**

**Interest of Grantee:** Grantee covenants that Grantee presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Grantee further covenants that in the performance of this Agreement no person having any such interest shall be employed by Grantee.

### **ARTICLE XX**

**Conflict of Interest:** The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to conflict of interest of public officers and employees. Grantee attests that it has no current business or financial relationship with any County employee(s) that would constitute a conflict of interest with provision of services under this contract and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. County represents that it is unaware of any financial or economic interest of any public officer or employee of Grantee relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately terminate this Agreement by giving written notice as detailed in the Article in the Agreement titled, "Default, Termination and Cancellation".

### **ARTICLE XXI**

#### **Nondiscrimination:**

- A. County may require Grantee's services on projects involving funding from various state and/or federal agencies, and as a consequence, Grantee shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: Grantee and its employees and representatives shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, or sex; Grantee shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act

(Government Code, Sections 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 7285.0 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations incorporated into this Agreement by reference and made a part hereof as if set forth in full; and Title VI of the Civil Rights Act of 1964, as amended. Grantee and its employees and representatives shall give written notice of their obligations under this clause as required by law.

- B. Where applicable, Grantee shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.
- C. Grantee's signature shall provide any certifications necessary under the federal laws, the laws of the State of California, including but not limited to Government Code Section 12990 and Title 2, California Code of Regulations, Section 8103.

#### **ARTICLE XXII**

**County Business License:** It is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Code Section 5.08.070.

#### **ARTICLE XXIII**

**Professional License Requirement:** Grantee represents that all persons performing activities or services are appropriately licensed or certified to perform activities or services that are required to support the client's goals. All employees providing activities or services shall keep and maintain the appropriate licenses or certifications in good standing while performing activities or services hereunder.

#### **ARTICLE XXIV**

**Administrator:** The County Officer or employee with responsibility for administering this Agreement is Gary Romanko, Deputy Chief Probation Officer, Probation Department, or successor.

#### **ARTICLE XXV**

**Partial Invalidity:** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

**ARTICLE XXVI**

**Venue:** Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

**ARTICLE XXVII**

**No Third Party Beneficiaries:** Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this agreement.

**ARTICLE XXVIII**

**No Joint Venture:** This Agreement shall not create a joint venture, partnership or any other relationship of association between the County and Grantee.

**ARTICLE XXIX**

**No Grant of Agency:** Except as the parties may specify in writing, neither party shall have authority, express or implied, to act on behalf of the other party in any capacity whatsoever as an agent. Neither party shall have any authority, express or implied, pursuant to this Agreement, to bind the other party to any obligation whatsoever.

**ARTICLE XXX**

**Compliance with Laws, Rules and Regulations:** Grantee shall, at all times while this Agreement is in effect, comply with all applicable laws, ordinances, statutes, rules, and regulations governing its conduct.

**ARTICLE XXXI**

**Authorized Signatures:** The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

**ARTICLE XXXII**

**Entire Agreement:** This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

**IN WITNESS WHEREOF,** the parties hereto have executed this Agreement on the dates indicated below.

(DDP)

New Morning (Community Recidivism Reduction)

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FA #533-F1711

**Requesting Contract Administrator Concurrence:**

By: \_\_\_\_\_  
Gary Romanko  
Deputy Chief Probation Officer  
Probation Department

Dated: \_\_\_\_\_

-- COUNTY OF EL DORADO --

Dated: \_\_\_\_\_

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

Don Ashton, MPA  
Chief Administrative Officer  
"County"

Dated: \_\_\_\_\_

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

Chair  
Board of Supervisors  
"County"

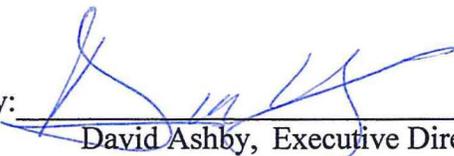
ATTEST:  
James S. Mitrisin  
Clerk of the Board of Supervisors

By: \_\_\_\_\_  
Deputy Clerk

Dated: \_\_\_\_\_

-- GRANTEE --

NEW MORNING YOUTH & FAMILY SERVICES, INC.  
A CALIFORNIA CORPORATION

By:   
David Ashby, Executive Director  
"Grantee"

Dated: 8-28-17

By:   
Corporate Secretary

Dated: 8-28-17

**Exhibit "A"**  
**B. HIPAA Business Associate Agreement**

This Business Associate Agreement is made part of the base contract ("Underlying Agreement") to which it is attached, as of the date of commencement of the term of the Underlying Agreement (the "Effective Date").

**RECITALS**

**WHEREAS**, County and Grantee (hereinafter referred to as Business Associate ("BA")) entered into the Underlying Agreement pursuant to which BA provides services to County, and in conjunction with the provision of such services, certain Protected Health Information ("PHI") and Electronic Protected Health Information ("EPHI") may be disclosed to BA for the purposes of carrying out its obligations under the Underlying Agreement; and

**WHEREAS**, the County and BA intend to protect the privacy and provide for the security of PHI and EPHI disclosed to BA pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act, Pub. L. No. 104-191 of 1996 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the "HITECH" Act), and regulation promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws as may be amended from time to time; and

**WHEREAS**, County is a Covered Entity, as defined in the Privacy Rule and Security Rule, including but not limited to 45 CFR Section 160.103 ; and

**WHEREAS**, BA, when a recipient of PHI from County, is a Business Associate as defined in the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to 42 USC Section 17938 and 45 CFR Section 160.103; and

**WHEREAS**, "Individual" shall have the same meaning as the term "individual" in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.202(g);

**WHEREAS**, "Breach" shall have the meaning given to such term under the HITECH Act under 42 USC Section 17921; and

**WHEREAS**, "Unsecured PHI" shall have the meaning to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to 42 USC Section 17932(h).

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. Definitions. Unless otherwise provided in this Business Associate Agreement, capitalized terms shall have the same meanings as set forth in the Privacy Rule, as may be amended from time to time.
  
2. Scope of Use and Disclosure by BA of County Disclosed PHI
  - A. BA shall not disclose PHI except for the purposes of performing BA's obligations under the Underlying Agreement. Further, BA shall not use PHI in any manner that would constitute a violation of the minimum necessary policies and procedures of the County, Privacy Rule, Security Rule, or the HITECH Act.
  
  - B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Business Associate Agreement or required by law, BA may:
    - (1) use the PHI in its possession for its proper management and administration and to fulfill any legal obligations.
    - (2) disclose the PHI in its possession to a third party for the purpose of BA's proper management and administration or to fulfill any legal responsibilities of BA, or as required by law
    - (3) disclose PHI as necessary for BA's operations only if:
      - (a) prior to making a disclosure to a third party, BA will obtain written assurances from such third party including:
        - (i) to hold such PHI in confidence and use or further disclose it only for the purpose of which BA disclosed it to the third party, or as required by law; and,
        - (ii) the third party will immediately notify BA of any breaches of confidentiality of PHI to extent it has obtained knowledge of such breach.
    - (4) aggregate the PHI and/or aggregate the PHI with that of other data for the purpose of providing County with data analyses related to the Underlying Agreement, or any other purpose, financial or otherwise, as requested by County.
    - (5) not disclose PHI disclosed to BA by County not authorized by the Underlying Agreement or this Business Associate Agreement without patient authorization or de-identification of the PHI as authorized in writing by County.
    - (6) de-identify any and all PHI of County received by BA under this Business Associate Agreement provided that the de-identification conforms to the requirements of the Privacy Rule, 45 CFR and

does not preclude timely payment and/or claims processing and receipt.

- C. BA agrees that it will neither use nor disclose PHI it receives from County, or from another business associate of County, except as permitted or required by this Business Associate Agreement, or as required by law, or as otherwise permitted by law.

3. Obligations of BA. In connection with its use of PHI disclosed by County to BA, BA agrees to:

- A. Implement appropriate administrative, technical, and physical safeguards as are necessary to prevent use or disclosure of PHI other than as permitted by the Agreement that reasonably and appropriately protects the confidentiality, integrity, and availability of the PHI in accordance with 45 CFR 164.308,164.310,164.312, and 164.504(e)(2). BA shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule.
- B. Report to County within 24 hours of any suspected or actual breach of security, intrusion, or unauthorized use or disclosure of PHI of which BA becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. BA shall take prompt corrective action to cure any such deficiencies and any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
- C. Report to County in writing of any access, use or disclosure of PHI not permitted by the Underlying Agreement and this Business Associate Agreement, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than five (5) days. To the extent the Breach is solely a result of BA's failure to implement reasonable and appropriate safeguards as required by law, and not due in whole or part to the acts or omissions of the County, BA may be required to reimburse the County for notifications required under 45 CFR 164.404 and CFR 164.406.

- D. BA shall not use or disclose PHI for fundraising or marketing purposes. BA shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates. BA shall not directly or indirectly receive remuneration in exchange of PHI, except with the prior written consent of the County and as permitted by the HITECH Act, 42 USC Section 17935(d)(2); however, this prohibition shall not affect payment by County to BA for services provided pursuant to the Agreement.
4. PHI Access, Amendment and Disclosure Accounting. BA agrees to:
- A. Provide access, at the request of County, within five (5) days, to PHI in a Designated Record Set, to the County, or to an Individual as directed by the County. If BA maintains an Electronic Health Record, BA shall provide such information in electronic format to enable County to fulfill its obligations under the HITECH Act, including, but not limited to, 42 USC Section 17935(e).
- B. Within ten (10) days of receipt of a request from County, incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in BA's possession constitutes a Designated Record Set.
- C. To assist the County in meeting its disclosure accounting under HIPAA:
- (1) BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or sub Grantees for at least six (6) years prior to the request. However, accounting of disclosure from Electronic Health Record for treatment, payment, or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an electronic health record and is subject to this requirement. At the minimum, the information collected shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if know, the address of the entity or person; (iii) a brief description of PHI disclosed and; (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure.
- (2) Within in 30 days of notice by the County, BA agrees to provide to County information collected in accordance with this section to permit the County to respond to a request by an Individual for an accounting of disclosures of PHI.

D. Make available to the County, or to the Secretary of Health and Human Services (the “Secretary”) , BA’s internal practices, books and records relating to the use of and disclosure of PHI for purposes of determining BA’s compliance with the Privacy Rule, subject to any applicable legal restrictions. BA shall provide County a copy of any PHI that BA provides to the Secretary concurrently with providing such information to the Secretary.

5. Obligations of County.

A. County agrees that it will promptly notify BA in writing of any restrictions on the use and disclosure of PHI agreed to by County that may affect BA’s ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.

B. County agrees that it will promptly notify BA in writing of any changes in, or revocation of, permission by any Individual to use or disclose PHI, if such changes or revocation may affect BA’s ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.

C. County agrees that it will promptly notify BA in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect BA’s use of disclosure of PHI.

D. County shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by County, except as may be expressly permitted by the Privacy Rule.

E. County will obtain any authorizations necessary for the use or disclosure of PHI, so that BA can perform its obligations under this Business Associate Agreement and/or the Underlying Agreement.

6. Term and Termination.

A. Term. This Business Associate Agreement shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement, as provided therein when all PHI provided by the County to BA, or created or received by BA on behalf of the County, is destroyed or returned to the County, or, or if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

B. Termination for Cause. Upon the County's knowledge of a material breach by the BA, the County shall either:

- (1) Provide an opportunity for the BA to cure the breach or end the violation and terminate this Agreement if the BA does not cure the breach or end the violation within the time specified by the County.
- (2) Immediately terminate this Agreement if the BA has breached a material term of this Agreement and cure is not possible; or
- (3) If neither termination nor cures are feasible, the County shall report the violation to the Secretary.

C. Effect of Termination.

(1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, the BA shall, at the option of County, return or destroy all PHI that BA or its agents or sub Grantees still maintain in any form, and shall retain no copies of such PHI.

(2) In the event that the County determines that returning or destroying the PHI is infeasible, BA shall provide to the County notification of the conditions that make return or destruction infeasible, and . BA shall extend the protections of this Agreement to such PHI to those purposes that make the return or destruction infeasible, for so long as the BA maintains such PHI. If County elects destruction of the PHI, BA shall certify in writing to County that such PHI has been destroyed.

7. Indemnity

- A. BA shall indemnify and hold harmless all Agencies, Districts, Special Districts and Departments of the County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (collectively "County") from any liability whatsoever, based or asserted upon any services of BA, its officers, employees, sub Grantees, agents or representatives arising out of or in any way relating to BA's performance under this Business Associate Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever including fines, penalties or any other costs and resulting from any reason whatsoever to the extent arising from the performance of BA, its officers, agents, employees, sub Grantees, agents or representatives under this Business Associate Agreement. BA shall defend, at its sole expense, all costs and fees including but not limited to attorney fees, cost of investigation, defense and settlements or awards against the County in any claim or action based upon such alleged acts or omissions.
- B. With respect to any action or claim subject to indemnification herein by BA, BA shall, at its sole cost, have the right to use counsel of its choice, subject to the approval of County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes BA's indemnification of County as set forth herein. BA's obligation to defend, indemnify and hold harmless County shall be subject to County having given BA written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at BA's expense, for the defense or settlement thereof. BA's obligation hereunder shall be satisfied when BA has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.
- C. The specified insurance limits required in the Underlying Agreement of this Business Associate Agreement shall in no way limit or circumscribe BA's obligations to indemnify and hold harmless the County herein from third party claims arising from the issues of this Business Associate Agreement.
- D. In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil

Code Section 2782. Such interpretation shall not relieve the BA from indemnifying the County to the fullest extent allowed by law.

- E. In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Business Associate Agreement, this indemnification shall only apply to the subject issues included within this Business Associate Agreement.
- 8. Amendment The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for County to comply with the Privacy Rule, 45 CFR, and HIPAA generally.
- 9. Survival The respective rights and obligations of this Business Associate Agreement shall survive the termination or expiration of this Business Associate Agreement.
- 10. Regulatory References A reference in this Business Associate Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- 11. Conflicts Any ambiguity in this Business Associate Agreement and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, 45 CFR, and HIPAA generally.