

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into effective as of May 8, 2018 (“Effective Date”) by and between the COUNTY OF EL DORADO, a political subdivision of the State of California (“County”) and Baron & Budd, P.C., Greene, Ketchum, Farrell, Bailey & Tweel, LLP, Hill Peterson Carper Bee & Deitzler PLLC, Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor, PA, McHugh Fuller Law Group, Powell & Majestro, PLLC (“Counsel”) with reference to the following facts:

RECITALS

- A. County is in need of legal services to assist the County in connection with Opioid Litigation (“Action”).
- B. It is necessary that County contract for these specialized legal services.
- C. Counsel possesses the specialized legal skills and expertise necessary to represent the County in connection with the Action.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants listed below to be performed by the respective parties, it is agreed as follows:

SECTION 1: ENGAGEMENT OF COUNSEL

1.1 Engagement of Counsel/Scope of Services. Counsel shall provide those legal services necessary to litigate, pursue, and resolve all claims and remedies against certain Opioid Manufacturers and Distributors responsible for the opioid epidemic in El Dorado County, including but not limited to claims for public nuisance (“the Case”). Counsel is being retained by the Office of County Counsel to perform legal services for the County. The County is the client of Counsel, who shall work directly with the Office of County Counsel in the provision of legal services to appropriate County officers and employees as authorized and directed by the Office of County Counsel. In performing these services, Burton Leblanc and/or John Fiske (“Counsel’s Representative”) shall personally conduct or shall oversee and direct the rendering of professional services, assisted by other attorneys and paralegals employed by Counsel as Counsel deems necessary or appropriate, with concurrence of County Counsel or his designee (hereinafter referred to as the “County’s Representative”).

1.2 Counsel’s Performance. Counsel shall, in a professional manner and in accordance with the highest fiduciary standards, furnish all labor, technical, administrative, professional and other personnel necessary to provide the services required under this Agreement to the satisfaction of County.

1.2.1 Independent Contractor. Counsel is, for all purposes of this Agreement, an independent contractor, and neither Counsel nor Counsel’s employees shall be deemed to be employees of County. Counsel shall perform its obligations under this Agreement according to

Counsel's own means and methods of work which shall be in the exclusive charge and under the control of Counsel, and which shall not be subject to control or supervision by County except as to the results of the work. Neither Counsel nor Counsel's employees shall be entitled to any benefits to which County employees are entitled, including without limitation, overtime, retirement benefits, workers' compensation benefits and injury leave.

1.2.2 Counsel's Subcontractors. Counsel shall not engage the services of any subcontractor to perform any of Counsel's duties hereunder without the prior written consent of County's Representative; provided, however, that this provision shall not require County's approval of contracts of employment between Counsel and its employees, or of parties named by Counsel in its proposal, as submitted to the County, to perform work under this Agreement. As used herein, the term "subcontractor" means an independent contractor who furnishes supplies or services to Counsel pertaining to this Agreement other than standard commercial supplies, office space and clerical and other non-professional services. Unless approved in writing by County's Representative, retention by Counsel of any subcontractor shall be at Counsel's sole cost and expense, and County shall have no obligation to pay Counsel's subcontractors; to support any such person's or entity's claim against the Counsel or other parties; or to defend Counsel against any such claim. Counsel shall indemnify and hold County harmless from all claims whatsoever arising out of the demands of Counsel's subcontractors or suppliers arising out of Counsel's performance of this Agreement. Use by Counsel of a subcontractor pursuant to this provision shall not relieve Counsel of any of its duties hereunder. "Subcontractor" as used in this paragraph does not include or mean Expert Consultants or Witnesses, as described in Paragraph 2.4, below.

1.2.3 Reviews of Counsel's Performance. The County's Representative and other County Personnel, as appropriate, will meet periodically with the Counsel to review Counsel's performance.

1.2.4 No Guarantee. Counsel cannot guarantee any particular outcome or result in the Case, which is expected to be contested and disputed by Defendants.

SECTION 2: COMPENSATION

2.1 Counsels' Fee. Subject to the provisions of Section 2.3, "Billing Guidelines," below, County shall pay a contingency fee to Counsel as described in paragraph 2.2, below:

2.2 Contingency Fee.

In consideration, County agrees to pay eighteen percent (18%) of the total recovery (gross) in favor of County as an attorney fee whether the claim is resolved by compromise, settlement, or trial and verdict (and appeal). The gross recovery shall be calculated on the amount obtained before the deduction of costs and expenses. Total fees and expenses shall not exceed fifty percent (50%) of the gross recovery. County grants the Firm an interest in a fee based on the gross recovery. If a court awards attorneys' fees, the Firm shall receive the "greater of" the gross recovery-based contingent fee or the attorneys' fees awarded. **There is no fee if there is no recovery.**

2.3 Reasonable Fee.

County acknowledges this fee is reasonable given the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly, the likelihood this employment will preclude other employment by the Firm, the fee customarily charged in the locality for similar legal services, the anticipated (contingent) litigation expenses and the anticipated results obtained, the experience, reputation, and ability of the lawyer or lawyers performing the services and the fact that the fee is contingent upon a successful recovery.

2.4 Litigation Expenses

BARON & BUDD, PC and/or the other law firms, hereinafter referred to as "Counsel," shall advance all necessary litigation expenses necessary to prosecute these claims. All such litigation expenses, including Expert Witness and Expert Consultant fees, the reasonable internal costs of electronically stored information (ESI) and electronic discovery generally or the direct costs incurred from any outside contractor for those services, will be deducted from any recovery after the contingent fee is calculated. **There is no reimbursement of litigation expenses if there is no recovery.** Litigation Expenses will be reimbursed in accordance with Exhibit A.

2.5 In-Kind or Equitable Relief.

The Firm intends to present a damage model designed to abate the public health and safety crisis. This damage model may take the form of money damages and/or equitable remedies (e.g., an abatement fund). The purpose of the lawsuit is to seek reimbursement of the costs incurred in the past fighting the opioid epidemic and/or recover the funds necessary to abate the health and safety crisis caused by the unlawful conduct of the wholesale distributors and manufacturers of opioids. County agrees to compensate the Firm, contingent upon prevailing, by paying 18% of any settlement/resolution/judgment, in favor of County, whether it takes the form of monetary damages or equitable relief. For instance, if the remedy is in the form of monetary damages, County agrees to pay 18% of the gross amount to Firm as compensation and then reimburse the reasonable litigation expenses. If the remedy is in the form of equitable relief (e.g., abatement fund), County agrees to pay 18% of the gross value of the equitable relief to the Firm as compensation and then reimburse the reasonable litigation expenses. To be clear, the Firm shall not be paid nor receive reimbursement from public funds unless required by law. However, any judgment arising from successful prosecution of the case, or any consideration arising from a settlement of the matter, whether monetary or equitable, shall not be considered public funds for purposes of calculating the contingent fee unless required by law. Under no circumstances shall County be obligated to pay any attorneys fee or any litigation expenses except from moneys expended by defendant(s) pursuant to the resolution of the County's claims. If the defendant(s) expend their own resources to abate the public health and safety crisis in exchange for a release of liability, then the Firm will be paid the designated contingent fee from the resources expended by the defendant(s). County acknowledges this is a necessary condition required by the Firm to dedicate their time and invest their resources on a

contingent basis to this enormous project. If the defendant(s) negotiate a release of liability, then the Firm should be compensated based upon the consideration offered to induce the dismissal of the lawsuit.

2.6 Division of Fees Among Counsel.

The division of fees, expenses and labor between the Counsel will be decided by private agreement between the law firms and subject to approval by County. Any division of fees will be governed by the California Rules of Professional Conduct including: (1) the division of fees is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation of County in writing; (2) County is advised of the share that each lawyer is to receive and does not object to the participation of all the lawyers involved; and (3) the total fee is reasonable.

2.7 No Increase in Fees. Counsel shall not increase its fees during the term of this engagement.

SECTION 3: TERMINATION OR SUSPENSION OF AGREEMENT

3.1 Termination of Agreement By County. County, on written notice, may immediately suspend, postpone, abandon, or terminate this Agreement at any time and for any reason, including convenience, and such action shall in no event be deemed to be a breach of contract. Upon termination by County, Counsel will have the right to assert a lien, only on the recovery from the Action, for its pro-rata share of fees and costs earned up to the date of termination. Should the County decide that it is not in the County's best interests to pursue the Action, and should the County terminate this Agreement, pursuant to this section, the County will not incur fees or costs

3.2 Termination of Agreement By Counsel. Counsel, on thirty days' prior written notice to County, may terminate this Agreement.

3.3 Disposition of Material and Records Upon Termination. On the effective date of any termination, Counsel shall immediately cease to perform any services under this Agreement. Counsel shall assemble all material that has been prepared, developed, furnished, or obtained under the terms of this Agreement, in electronic, magnetic, paper or any other form, that may be in its possession or custody, and shall transmit the same to County as soon as possible, and no later than the fifteenth day following the receipt of the above written notice of termination, together with a description of the cost of the Services performed to the date of termination.

SECTION 4: ADMINISTRATION

This Agreement shall be administered on behalf of County by the County Council, or County's Representative, and on behalf of Counsel by Counsel's Representative. Both County and Counsel warrant that County's Representative and Counsel's Representative have full

authority to act for their respective parties hereunder.

4.1 County Retains Decision Making Authority.

County retains complete control of all decisions in the Action. County in no way assigns its prosecutorial discretion to Counsel and retains all of its inherent powers related to prosecutorial discretion, judgment, control and decision making related to the Action. This authority and controls include but are not limited to:

- (a) Decisions regarding settlement of the Action are reserved exclusively to the discretion of the County's Board of Supervisors, as communicated directly to Counsel by the County Administrator or the Office of County Counsel.
- (b) Any of the Defendants that are the subject of the Action may contact County Counsel directly, without first having to confer with or get permission to do so from Counsel;
- (c) The County's Board of Supervisors through County Counsel will retain complete control over the course and conduct of the Action;
- (d) County Counsel retains veto power over any decisions made or proposed to be made by Counsel;
- (e) A member of the County Counsel's office having expressly delegated or designated supervisory authority may and shall be personally involved in overseeing the Action and participating in all significant legal decisions; and
- (f) Counsel shall provide all significant written court briefing and other submittals to the County Counsel's Office for review reasonably in advance of the filing or delivery deadline to allow for meaningful review and editing.

SECTION 5: INSURANCE

Counsel represents and warrants that it has obtained all professional liability and any other insurance required to practice law in the State of California under applicable provisions of the Business and Professions Code.

SECTION 6: CONFLICTS OF INTEREST

6.1 General.

(A) Prior to executing this Agreement, Counsel shall perform a detailed conflict of interest check and, on or before thirty (30) days following the effective date of this Agreement, shall report the results to County.

(B) During the course of this Agreement, Counsel shall not represent any other client (1) in a matter adverse to the County where such matter is substantially related to any work under this Agreement that Counsel is performing or has performed for the County, or (2) in any matter,

whether or not related to Counsel's work under this Agreement, that will involve the filing of any lawsuit against the County (collectively items (B)(1) and (B)(2) are hereinafter referred to as, "an impermissible conflict of interest"), unless Counsel provides notice to County of the impermissible conflict of interest and obtains County's informed written consent to such conflict.

When there is a disagreement between the parties to this Agreement as to whether or not Counsel has, or may in the foreseeable future have, an impermissible conflict of interest, County's determination shall be final and dispositive of the issue. Accordingly, Counsel may be directly adverse to the County in a matter, without any additional consent, unless the matter constitutes an impermissible conflict of interest under this, or subsequent, engagements between County and Counsel. Where County determines that Counsel's representation, or intended representation, of any client constitutes an impermissible conflict of interest, then, unless County waives such conflict, Counsel shall, within five days of delivery of notice by County to Counsel, withdraw from the representation of the client as to the matter that gave rise to the impermissible conflict of interest, or, unless waived by County in writing, upon thirty days prior written notice to County, withdraw from representation of County, or both.

(C) Counsel shall not have any material financial interest, including, without limitation, interests in other Actions or contracts, and shall not acquire any such interest, direct or indirect, which would undermine Counsel's ability to be impartial or otherwise conflict with the performance of the services Counsel is required to perform under this Agreement. Counsel shall not employ or retain any person having any such material financial interest to perform any duties under this Agreement. Counsel shall not hire County's employees to perform any portion of the work or services provided for herein, including secretarial, clerical and similar incidental services, except upon the written approval of County.

SECTION 7: CHANGES

County may, at any time, by written order, make changes within the general scope of this Agreement; provided, that any material revision of such scope is subject to Counsel's prior consent. If any such change causes an increase or decrease in the compensation due to Counsel, Counsel may submit a written request for such adjustment to County within thirty (30) days following the date Counsel receives notification of a change. County's Representative may not authorize any change which adjusts the total price of this Agreement; such authorization and agreement may only be effected through a formal amendment of this Agreement.

SECTION 8: REPORTS, RECORDS AND OTHER PRINTED OR WRITTEN MATERIALS

8.1 Reports, Records and Other Printed or Electronic Documentation. All reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties produced under this Agreement, whether in printed or "electronic" format, shall be the property of County. No such materials or properties produced in whole or in part under this Agreement shall be subject to private use, copyright or patent right without the express written consent of the County. Counsel shall submit reports to County in the form specified by County's Representative, or as may be specified elsewhere in this Agreement.

County shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared by Counsel under this Agreement.

8.2 Audit and Inspection of Records. County shall have the right to audit and inspect those books, records and documents of Counsel, and other data in the possession of Counsel, which pertain directly to Counsel's performance of its duties pursuant to this Agreement. Upon prior written request therefore from County, Counsel shall make such records available at County's offices, during regular business hours, for inspection, audit or reproduction, until the expiration of seven years from the date of final payment to Counsel under this Agreement, or, if this Agreement is terminated pursuant to the provisions of Section 4.1, above, then such records shall be made available for County's inspection for (i) seven years from the date of such termination, or (ii) until any litigation, appeal or claim submitted to mediation or arbitration arising out of such termination shall have been finally adjudicated or settled, whichever is longer.

8.3 Confidential Records and Findings. Any reports, studies, information, data, statistics, forms, designs, plans, procedures or systems of a confidential nature, or any form of knowledge of a confidential nature given to or prepared or assembled by Counsel under this Agreement, shall be kept strictly confidential, except as to shared, multiple clients in the same or similar litigation, shall be subject to all applicable privileges which may be held by the Office of County Counsel and/or its clients, and shall not be revealed or made available to any individual or organization without the prior written approval of the Office of County Counsel, except as to shared, multiple clients in the same or similar litigation.

SECTION 9: COMPLIANCE WITH LAWS AND POLICIES

Counsel shall become and remain informed of all applicable federal, State and local laws, ordinances, rules and regulations that may in any manner affect Counsel's performance of its services hereunder. Counsel shall comply with such laws and regulations during its performance of this Agreement, including, without limitation, the County and federal policies and procedures set forth in this Article 9. By inclusion of the laws and policies set forth in this Article 9 in its subcontracts, Counsel shall cause any subcontractor retained by Counsel to perform services hereunder to also comply with such laws and policies.

SECTION 10: DISPUTES

Except as may be otherwise provided in this Agreement, any dispute concerning a question of fact arising hereunder shall be decided by the County's Representative who shall furnish such decision to the Counsel in writing. The decision of the County's Representative shall be final and conclusive unless it is subsequently determined by a court of competent jurisdiction to have been erroneous. Counsel shall proceed diligently with the performance of this Agreement pending any decision by County's Representative on a dispute.

SECTION 11: GENERAL PROVISIONS

11.1 Assignment. Neither Counsel nor County shall have the right to assign their respective rights or obligations under this Agreement without the prior written consent of the other party.

11.2 Authority. Counsel represents and warrants that it has full power and authority to execute and fully perform its obligations under this Agreement pursuant to its governing instruments, without the need for any further action, and that the person(s) executing this Agreement on behalf of Counsel are the duly designated agents of Counsel and are authorized to do so.

11.3 Contingency. This Agreement shall bind the County only following its approval by County Counsel and County's Board of Supervisors.

11.4 Entire Agreement. This Agreement, together with all exhibits attached hereto and other agreements expressly referred to herein, constitutes the entire agreement between the parties with respect to the subject matter contained herein. All prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, including any proposals from Counsel and requests for proposals from County, are superseded.

11.5 Exhibits. All exhibits referred to herein are attached hereto and incorporated herein by reference. In the event of any conflict or inconsistency between the terms of this Agreement and the terms of any exhibit attached hereto, the terms of this Agreement shall govern.

11.6 Further Assurances. The parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the parties.

11.7 Governing Law. This Agreement shall be governed, interpreted, construed and enforced in accordance with the laws of the State of California.

11.8 Headings. The captions and Section headings used in this Agreement are inserted for convenience of reference only and are not intended to define, limit or affect the construction or interpretation of any term or provision hereof.

11.9 Modification, Waiver. Except as otherwise provided in Section 7, "Changes," above, no modification, waiver, amendment or discharge of this Agreement shall be valid unless the same is in writing and signed by both parties.

11.10 Notices and Contract Administrator. For the purpose of administering this Agreement, the County's Contract Administrator shall be its County Counsel, Michael Ciccozzi or successor (the "County's Representative"). Notice to either party shall be in writing and either personally delivered or sent by certified mail, postage prepaid, return receipt requested, addressed to the party to be notified at the address specified herein. Any such notice shall be deemed received on the date of personal delivery to the party (or such party's authorized representative)

or three business days after deposit in the U.S. Mail, as the case may be.

County's Representative and Address for Notice:

Michael Ciccozzi
County Counsel
330 Fair Lane
Placerville, CA 95667

Counsel's Representative and Address for Notice:

John Fiske
603 S. Coast Hwy, Suite G
Solana Beach, CA 92075

Either party may change its address for notice by delivering written notice to the other party as provided herein.

11.11 Severability. If any court of competent jurisdiction holds any term, provision, covenant or condition of this Agreement to be invalid, void or otherwise unenforceable, to any extent, the remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

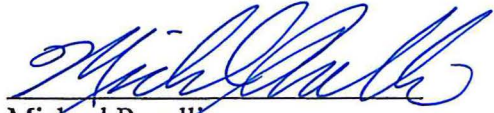
11.12 Waiver. The waiver by one party of the performance of any term, provision, covenant or condition shall not invalidate this Agreement, nor shall it be considered as a waiver by such party of any other term, provision, covenant or condition. Delay by any party in pursuing any remedy or in insisting upon full performance for any breach or failure of any term, provision, covenant or condition shall not prevent such party from later pursuing remedies or insisting upon full performance for the same or any similar breach or failure.

11.13 Business Associate Agreement. Counsel agrees to comply with the terms of the County's HIPAA Business Associate Agreement, attached hereto as Exhibit B.

[Signatures on Following Page]

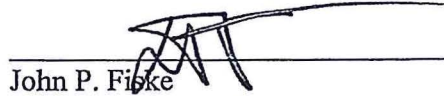
This Agreement shall be effective as of the date of its approval by County.

FOR COUNTY OF EL DORADO:



Michael Ranalli
Chair, Board of Supervisors

FOR COUNSEL:



John P. Fiske
Baron & Budd, P.C.

ATTEST:

James S. Mitrison
Clerk of the Board of Supervisors

By: 
Deputy Clerk

EXHIBIT "A"
COUNTY OF EL DORADO
OUTSIDE COUNSEL BILLING GUIDELINES

A. Reimbursement of Allowable Expenses.

The County shall reimburse Counsel for actual, necessary, and reasonable out-of-pocket expenses in accordance with the guidelines set forth below. An itemized breakdown of actual expenses must be provided. All expenses must be claimed for reimbursement at cost and must not include mark-ups by the firm. Allowable routine expenses incurred should be paid directly by the law firm and then claimed for reimbursement. All expenses submitted for reimbursement must be fully described. We will not accept any "miscellaneous" expense items. We may require supporting documentation for any expenses. In addition to the provisions included below, Counsel's travel-related expenses shall comply with the terms of the County's Policy D-1 regarding Travel, to the extent applicable, a copy of which shall be provided to Counsel. The following guidelines should be followed with regard to specific expense items:

1. Photocopies

In-house photocopying and associated services or tasks are to be charged at actual cost.

2. Local/Long Distance Vehicle Travel

The County will pay for travel time at the agreed hourly rate only for the actual time that services are performed for County during the travel.

The miles associated with round trip vehicle travel between the County Administration Center (CAC) and the Counsel's work-site will be reimbursed at the current IRS mileage reimbursement rates. The County will not provide reimbursement for any travel, taxi, or rental vehicle during any stay in El Dorado County (County), unless it is specifically related to providing services to the County (e.g., taxi fares for transportation between the airport and the CAC, or taxi fares to another location to meet with others in the performance of services for the County).

3. Air Travel/Vehicle Travel

All air travel will be reimbursed at economy or coach class fares. The actual receipt from the airline ticket shall be made available with claims for reimbursement. Air travel arrangements should be made as early as possible to avoid higher fares.

4. Hotels

If the provision of services to the County requires Counsel to stay overnight in El Dorado County, Counsel will be reimbursed for actual room charges, plus taxes, for hotel accommodations in El Dorado County not to exceed the rate established by the U.S. Government

General Services Administration (GSA) for El Dorado County. Proof of actual room charges must be submitted for reimbursement.

5. Meals

County will not provide reimbursement for the expense of food or drink incurred in connection with the services provided under this Agreement.

6. Telephone

Long distance telephone charges directly related to the services provided to the County will be accepted for reimbursement. The statement must indicate the date of the telephone call, the telephone number called, the total cost, and the nature of the call.

7. Facsimile Charges

Facsimile charges, with the exception of actually incurred long distance telephone charges, are considered part of normal overhead and will not be accepted for reimbursement.

8. Messenger/Courier/Delivery/Express/Overnight Mail Services

The use of expedited delivery services is discouraged and will be reimbursed only if its use is determined to be absolutely necessary.

9. Computer-Assisted Research

We will not pay for computer-assisted research. We consider charges for expenses associated with the use of Westlaw, Lexis, Dialog, Information/America and other computer research databases, and Internet access charges to be similar to the purchase and maintenance of the firm's law library. Therefore these charges will not be accepted for reimbursement.

10. Database/Data Entry/Document Imaging Charges

Prior approval must be obtained from the County Representative before incurring any charges for the preparation, maintenance, data entry, imaging, programming and document input (included imaging charges) of file material to a database or document management system. If approved, we will pay for the cost of these tasks at an agreed upon clerical rate. We will only pay paralegal or attorney rates for the actual professional time spent determining the documents to be entered, how documents are categorized or summarizing documents, as appropriate.

11. Additional Non-reimbursable Expenses

The County will not reimburse the following costs as these expenses are considered part of normal overhead:

- compensation;
- a) Clerical or secretarial salaries or overtime
 - b) Word processing charges;
 - c) Office supplies;
 - d) Postage;
 - e) Entertainment or personal expenses;
 - f) Commuting expense to or from work for firm
- personnel;
- or
- g) Heating, air conditioning, utility charges;
 - h) In-house conference room charges.

EXHIBIT "B"
COUNTY OF EL DORADO
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 Contractor (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, 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 subcontractors 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 known, 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 subcontractors 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, subcontractors, 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, subcontractors, 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.