

AGREEMENT #6250

DISASTER CASE MANAGEMENT- CALDOR FIRE

THIS AGREEMENT is made by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and The Salvation Army, a California corporation, located at 30850 Hawthorne Blvd., Rancho Palos Verdes, CA 90275("Contractor") (collectively, "the parties") .

WHEREAS County desires to secure the services of Contractor and Contractor represents that Contractor possesses the requisite qualifications, experience, and expertise to provide same to County;

WHEREAS the Contractor represents to County that the information initialed applies to Contractor:

- Type of Entity: Individual
- Sole Proprietorship
- Corporation, nonprofit for profit
organized under the laws of the State of CA
- Partnership
organized under the laws of the State of

Employer Identification Number, if none, provide Social Security Number: 94-1156347;

WHEREAS, County has determined that the provision of such services provided by Contractor are in the public's best interest and that there are specialty skills, qualifications, and equipment not expressly identified in County classifications involved in the performance of the work in accordance with El Dorado County Ordinance Code, Chapter 3.13.030(b), El Dorado County Charter, Section 210(b)(6), and/or Government Code Section 31000;

NOW THEREFORE, the parties hereto agree as follows:

1. Scope of Services. Contractor shall provide the services as described in Exhibit A, attached hereto and made a part hereof as though set forth in full.
2. No Partnership. Each party represents that does not intend to create a partnership and the Parties agree that nothing in this agreement shall be construed to create a partnership between the Parties.
3. Independent Contractor Status. The parties intend that an independent contractor relationship will be created by this contract. Contractor is, and shall be at all times, deemed independent and

shall be wholly responsible for the manner in which it performs services required by the terms of this Agreement. Contractor exclusively assumes responsibility for acts of its employees, agents, affiliates, and subcontractors, if any are authorized herein, as they relate to the services or work to be performed under this Agreement during the course and scope of their employment by Contractor. Those persons will be entirely and exclusively under the direction, supervision, and control of Contractor.

County may designate the tasks to be performed and the results to be accomplished under this Agreement, provide information concerning the work or services, approve or disapprove the final work product and/or services provided, and set deadlines for the completion of the work or services, but County will not control or direct the manner, means, methods, or sequence in which Contractor performs the work or services for accomplishing the results.

Contractor, including any subcontractor or employees of Contractor, shall not receive, nor be eligible for, any benefits County provides for its employees, including, but not limited to, vacation pay, paid holidays, life insurance, health insurance, social security, disability insurance, pension, or 457 plans. Contractor shall not receive, nor be eligible for, workers' compensation, including medical and indemnity payments. County is not responsible for withholding, and shall not withhold, Federal Income Contribution Act amounts or taxes of any kind from any payments which it owes Contractor. Contractor shall not be subject to the work schedules or vacation periods that apply to County employees.

Contractor shall be solely responsible for paying its employees, and for withholding Federal Income Contribution Act amounts and other taxes, workers' compensation, unemployment compensation, medical insurance, life insurance, or any other benefit that Contractor provides for its employees.

Contractor acknowledges that it has no authority to bind the County or incur any obligations on behalf of the County with regard to any matter, and shall not make any agreements or representations on the County's behalf.

4. Term of Contract. The term of this contract shall become effective upon final execution by all parties hereto and shall expire one (1) year from the date thereof, however, at the discretion of the Contract Administrator, and subject to availability of funding, contract may be renewed up to a maximum of one (1) additional one-year period following annual review and determination by County that there is additional need for Disaster Case Management services related to the Caldor Fire

County may allow this Agreement to expire upon the completion of the first full year of the Agreement. Renewal is subject to approval by The Board of Supervisors and written Notice from the Contract Administrator pursuant to the Paragraph titled "Notices."

5. Default, Termination and Cancellation.

- A. Termination by Default: If either party becomes aware of an event of default, that party shall give written notice of said default to the party in default that shall state the following:
 1. The alleged default and the applicable Agreement provision.

2. That the party in default has ten (10) days upon receiving the notice to cure the default (Time to Cure).

If the party in default does not cure the default within ten (10) days of the Time to Cure, then such party shall be in default and the party giving notice may terminate the Agreement by issuing a Notice of Termination. The party giving notice may extend the Time to Cure at their discretion. 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 in which the extension of Time to Cure expires.

If County terminates this Agreement, in whole or in part, for default:

1. County reserves the right to procure the goods or services, or both, similar to those terminated, from other sources and Contractor shall be liable to County for any excess costs for those goods or services. County may deduct from any payment due, or that may thereafter become due to Contractor, the excess costs to procure from an alternate source.
2. County shall pay Contractor the sum due to Contractor under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Contractor under this Agreement and the balance, if any, shall be paid to Contractor upon demand.
3. County may require Contractor to transfer title and deliver to County any completed work under the Agreement.

The following shall be events of default under this Agreement:

1. Failure by either party to perform in a timely and satisfactory manner any or all of its obligations under this Agreement.
2. A representation or warranty made by Contractor in this Agreement proves to have been false or misleading in any respect.
3. Contractor fails to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, unless County agrees, in writing, to an extension of the time to perform before that time period expires.
4. A violation of Paragraph 14, "Conflict of Interest."

B. Bankruptcy: County may terminate this Agreement immediately in the case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.

C. Ceasing Performance: County may terminate this Agreement immediately in the event Contractor ceases to operate as a business or otherwise becomes unable to substantially perform any term or condition of this Agreement.

D. Termination or Cancellation without Cause: County may terminate this Agreement, in whole or in part, for convenience upon thirty (30) calendar days' written Notice of Termination. If such termination is effected, County will pay for satisfactory services rendered before the effective date of

termination, as set forth in the Notice of Termination provided to Contractor, and for any other services that County agrees, in writing, to be necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the Agreement. Upon receipt of a Notice of Termination, Contractor shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the Notice directs otherwise.

6. Compensation and Payment. County agrees to pay Contractor: (*check only one*)

- Contractor's rate of _____ per hour, not to exceed a total compensation of _____ for the term of this Agreement; or
- According to Contractor's hourly rate and/or fee schedule described in Exhibit _____, attached hereto and made a part hereof as though set forth in full; or
- On a reimbursement basis, for eligible costs as described in Exhibit A, attached hereto and made a part hereof as though set forth in full. That Exhibit shall also prescribe the manner in which Contractor must submit invoices for such reimbursement, including the schedule for same.

7. Indemnification and Legal Compliance.

- a. Contractor hereby waives all claims against County for any injury or damage to any person or property from any cause whatsoever (other than County's or its agent's, contractor's, or employee's gross negligence or willful misconduct) which arises out of or in connection with the matters covered by this Agreement.
- b. Contractor shall hold County harmless from and defend County against any and all claims, actions, suits, fines, penalties, judgments, liabilities or costs of any kind, including attorney's fees and other litigation expenses, for any injury or damage to any person or property whatsoever arising out of or in connection with Contractor's acts or omissions in its performance of or failure to perform Contractor's obligations under this Agreement to the maximum extent allowable under the law, except to the extent that it arises from the gross negligence or willful misconduct of County.
- c. The provisions of this Article shall survive the expiration or termination of this Agreement with respect to any claims or liability occurring prior to such expiration or termination.
- d. Contractor agrees to and represents and warrants to County that it will abide by any and all laws, regulations, or other legal requirements applicable to its performing the services described herein to County.

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8. Insurance.

- a. Contractor shall obtain and maintain throughout the term of this Agreement policies of insurance as required by law and described more particularly below:

Commercial General Liability insurance; said policy shall be written with limits no less than \$1,000,000 per occurrence and \$1,000,000 general aggregate, and said policy shall endorse County as additional insured.

Automobile Liability insurance; said policy shall be written with a combined single limit no less than \$1,000,000, and said policy endorse County as additional insured.

Worker's Compensation insurance shall be written with limits in conformity with the laws of the state in which services are performed.

Professional Liability insurance; said policy shall be written with limits no less than \$1,000,000 per claim.

- b. All policies must

i. be from qualified insurance carriers who are A.M. Best Company rated no less than "Secure Rating" of A- or better, and "Financial Size Category";

ii. be primary and noncontributory as to coverage which requires additional insured endorsement as described above;

iii. contain a waiver of subrogation rights by the insurer;

iv. be on an occurrence form, with the exception of Workers' Compensation.

- c. Upon the execution of this Agreement, Contractor shall furnish to County all certificates of insurance and additional insured endorsements evidencing the required coverage on execution of this Agreement. Contractor shall maintain the following coverage with no less than the limits of liability specified throughout the term of this Agreement.

- d. The certificates of insurance shall provide that there can be no cancellation or reduction of coverage with at least 30 days' prior written notice to County. If such notice of cancellation is given, Contractor shall be required to obtain the same coverage prior to expiration of any other coverage and shall provide County with written proof of having obtained such coverage.

9. Additional Provisions. Contractor acknowledges that this Agreement is is not subject to the provisions of one or more Agreements for funding, attached hereto as Exhibit(s) N/A and made a part hereof as though set forth in full, which Contractor represents that

Contractor has read, and Contractor agrees to comply with such provisions. Initials _____/_____.

10. Reports and Auditing. Contractor, when requested, shall provide written reports to County with respect to the services rendered hereunder; and Contractor agrees that any documents prepared for County within the scope services shall be the sole and exclusive property of County. Contractor agrees to make available all records necessary to verify Contractor's compliance with this Agreement, including, but not limited to schedules, wage records, payment records, receipts, and financial statements, upon reasonable written notice, or as required by law.
 - a. Contractor shall provide a copy of any Audit to County within thirty (30) days of completion of said audit.
 - b. Audits and compliance monitoring by any representative of the Federal government, State government, or County may include the review of any and all terms related to this Agreement. Audits or monitoring by the County may be performed by way of annual Contract Monitoring Surveys. Contractors receiving a Contract Monitoring Survey shall, within sixty (60) days of receipt, complete and return the survey along with all documentation, details, and supporting materials required by the survey or otherwise necessary for the County to verify compliance with the terms and conditions of the Agreement. Failure to return the survey within the specified time period may result in the withholding of payment from the Contractor until such time as compliance with the terms of the Agreement can be verified. Verifying compliance may necessitate additional on-site reviews should information submitted by the Contractor be deemed insufficient or inaccurate.
 - c. All files, records, documents, sites, and personnel are subject to review by representatives from County, State or Federal government.
 - d. Upon notification of an exception or finding of non-compliance, the Contractor shall submit evidence of Corrective Action within thirty (30) days, or as otherwise specified in the notice of required corrective action provided by the County. Continued non-compliance beyond due date for submission of Corrective Action may lead to termination of this Agreement in accordance with Paragraph 5, "Default, Termination, and Cancellation."
 - e. Failure by County to notify or require Corrective Action does not constitute acceptance of the practice of waiver of the County's right to enforce.
11. Confidentiality. Contractor agrees to abide by any requests for confidentiality that County should make, provided that the requests are specific and directed to particular services or documents, including correspondence and emails. Contractor understands that any proprietary information provided by County to Contractor shall be treated as confidential unless County otherwise releases Contractor from confidentiality, and Contractor will not publish the same to any third-party without the express consent of County.

Contractor shall maintain the confidentiality and privileged nature of all records, including billing records, together with any knowledge therein acquired, in accordance with all applicable state and federal laws and regulations, as they may now exist or may hereafter be

amended or changed. Contractor, and all Contractor's staff, employees, and representatives, shall not use or disclose, directly or indirectly at any time, any said confidential information, other than to County's Contract Administrator for the purpose of, and in the performance of, this Agreement. This confidentiality provision shall survive after the expiration or earlier termination of this Agreement.

12. Subcontracting and Assignment. Contractor may not subcontract or assign any right or obligation this Agreement to any third party without the prior express written consent of County.
13. No Third Party Beneficiary. This Agreement is made solely for the benefit of the Parties, including their respective successors and assigns subject to the terms of this Agreement, and no other person or entity may have or acquire any right by virtue of this Agreement.
14. Conflict of Interest. Contractor shall timely disclose to County any relationship with any third-party creating a potential conflict of interest, including other employment relationships, contracts, family and business associations by which Contractor benefits, directly or indirectly, or has an interest, financial or otherwise. Contractor represents that there is no actual conflict of interest between the Contractor's engagements, employments, familial or contractual relationships with third-parties and County.
15. Nondiscrimination:
 - a. County may require Consultant's services on projects involving funding from various state and/or federal agencies, and as a consequence, Consultant shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: Consultant 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, mental disability, medical condition, genetic information, military or veteran status, marital status, age, gender, gender identity, gender expression, sexual orientation, or sex; Consultant 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 11000 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Subchapter 5 of Chapter 5 of Division 4.1 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. Consultant and its employees and representatives shall give written notice of their obligations under this clause as required by law.
 - b. Where applicable, Consultant shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.

- c. Consultant's signature executing this Agreement shall provide any certifications necessary under the federal laws, the laws of the State of California, including but not limited to Government Code Sections 12990 and Title 2, California Code of Regulations, Section 11102.
 - d. Consultant shall comply with Exhibit B, "Vendor Assurance of Compliance with the County of El Dorado Health and Human Services Agency Nondiscrimination in State and Federally Assisted Programs," attached hereto, incorporated by reference herein, and thus made a part hereof. Consultant shall acknowledge compliance by signing and returning Exhibit B upon request by County.
16. Force Majeure: Neither party will be liable for any delay, failure to perform, or omission under this Agreement that is due to any cause that it is beyond its control, not due to its own negligence, and cannot be overcome by the exercise of due diligence. In that event, the affected party will:
- a. Promptly give written notice to the other of the fact that it is unable to so perform and the cause(s) that is beyond its control; and
 - b. Once the cause(s) has ceased, provide written notice to the other party and immediately resume its performance under this Agreement.

For purposes of this Article, "cause that is beyond its control" includes labor disturbances, riots, fires, earthquakes, floods, storms, lightning, epidemics, war, disorders, hostilities, expropriation or confiscation of properties, failure of and delays by carriers, interference by civil or military authorities, whether legal or de facto, and whether purporting to act under some constitution, decree, or law, or otherwise, or acts of God.

17. Waiver: No failure on the part of the parties to exercise any rights under this Agreement, and no course of dealing with respect to any right hereunder, shall operate as a waiver of that right, nor shall any single or partial exercise of any right preclude the exercise of any other right. The remedies herein provided are cumulative and are not exclusive of any other remedies provided by law.
18. Administrator: The County Officer or employee with responsibility for administering this Agreement is Daniel Del Monte, Chief Assistant Director, Health and Human Services or successor.
19. Governing Law: 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.
20. 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 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 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 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 services performed prior to cancellation.

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

- 22. Entire Agreement. This Agreement constitutes the entire understanding between the parties hereto and supersedes all previous agreements, promises, representations, understanding and negotiations, whether written or oral, including without limitation any previous version of this or any other document, signed or unsigned, including correspondence and emails. Any revisions to this Agreement shall be in writing and executed and dated by both parties hereto.

- 23. Severability. If any provision herein shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

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24. Notices. Written notice by either party to the other shall be effective three business days after mailing by registered mail to:

If to County:
COUNTY OF EL DORADO
Health and Human Services Agency
3057 Briw Road, Suite B
Placerville, CA 95667
ATTN: Contracts Unit
hhsa-contracts@edcgov.us

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

If to Contractor:

Divisional Commander
The Salvation Army
Del Oro Division
3755 N Freeway Blvd
Sacramento, CA 95834

Requesting Contract Administrator Concurrence:

By: _____
Daniel Del Monte
Chief Assistant Director
Health and Human Services or successor.

Dated: _____

Requesting Department Head Concurrence:

By: _____
Daniel Del Monte
Chief Assistant Director, for Don Semon, Director
Health and Human Services or successor.

Dated: _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date last below written:

-- CONTRACTOR --

THE SALVATION ARMY
a California corporation

By: _____
Col. Kelly Pontzler

Its: _____

Dated: _____

Attest: _____

Its: _____

Dated: _____

-- COUNTY OF EL DORADO --

Dated: _____

By: _____

Chair
Board of Supervisors
"County"

ATTEST:
Kim Dawson
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

Dated: _____

EXHIBIT A

COUNTY OF EL DORADO
DISASTER CASE MANAGEMENT- CALDOR FIRE

1) Scope of Services: Contractor agrees to furnish the personnel and equipment necessary to provide:

Disaster Case Management (DCM) for the purpose of assisting approximately 49 households displaced by the Caldor Fire. In collaboration with County staff, the DCM program shall provide support, referrals, and assistance for survivors of the Caldor Fire under broad supervision. The equivalent of two full time (FTE) Disaster Case Managers shall work directly with clients coordinating services for those who are Caldor fire survivors in the implementation and success of their case plan performing services including but not limited to the following:

- a. Carries a caseload of individuals impacted by the Caldor Fire;
- b. Determines the specific needs of those seeking assistance;
- c. Assesses the level of need through home/phone/video visits in areas such as short term housing, long term housing, replacement of belongings, and mental health services;
- d. Develops an individualized Disaster Recovery Plan with each client, monitors and follows-up regularly to re-assess client status;
- e. Provides case management services for clients and assists clients in navigating requirements for rebuilding and/or accessing services;
- f. Updates and maintains client files and records, records and documents services provided in the Disaster Case Management Database system, "Unite Us";
- g. Participates in team meetings through in-person /phone/video visits to review client progress, concerns, and recommendations;
- h. Recognizes cultural and linguistic differences of client populations; provides service delivery to appropriate public, private or community services or resources, and provides language interpretation services and reasonable accommodations as needed;
- i. Supports the relationship between El Dorado County and the constituent population by demonstrating courteous and cooperative behavior when interfacing with clients, visitors, and other employees; and
- j. Adheres to the standards of the Privacy Act of 1974, {U.S.C. § 552A} as amended; maintains and enforces all aspects of confidentiality of client information. Contractor shall execute that Business Associate Agreement which is attached hereto as Attachment 1 and incorporated by reference herein.

EXHIBIT A

2) Compensation for Services:

For the purposes of this Agreement, the billing rate shall be as described in the table below.

DISASTER CASE MANAGEMENT		
Description	Monthly Cost	Annual Cost
Case managers (2 FTE) salaries	\$10,661.85	\$127,942.15
Office Equipment		\$3,018.
Office Supplies	\$500.	\$6,000
Mileage	\$250	\$3,000
Total Cost	\$11,411.85	\$139,960.15

A. **Invoices:** It is a requirement of this Agreement that Contractor shall submit an original invoice, similar in content and format with the following sample available at: https://www.edcgov.us/Government/hhsa/Pages/hhsa_Contractor_resources.aspx. Itemized invoices shall follow the format specified by County and shall reference this Agreement number on their faces and on any enclosures or backup documentation. Copies of documentation attached to invoices shall reflect Contractor’s charges for the specific services billed on those invoices.

Invoices shall be sent as follows, or as otherwise directed in writing by County:

Email (preferred method):	U.S. Mail:
<p>BHinvoice@edcgov.us</p> <p>Please include in the subject line: “Contract #, Service Month, Description / Program”</p>	<p>County of El Dorado Health and Human Services Agency Attn: Finance Unit 3057 Briw Road, Suite B Placerville, CA 95667-5321</p>

or to such other location as County directs.

For services provided herein, including any deliverables that may be identified herein, Contractor shall submit invoices for services fifteen (15) days following the end of a “service month.” For billing purposes, a “service month” shall be defined as a calendar month during which Contractor provides services in accordance with “Scope of Services.” For all satisfactory services provided herein, County agrees to pay Contractor monthly in arrears and within forty-five (45) days following the County’s receipt and approval of itemized invoice(s) identifying services rendered. County may withhold or delay any payment if Contractor fails to comply with any provision of this Agreement.

Maximum Obligation: The maximum annual obligation for services and deliverables provided under this Agreement shall not exceed \$139,960.15: In the event that the term of this Agreement #6250 is extended in accordance with the paragraph titled “Term of Contract,” the maximum obligation shall be \$279,920.30.

EXHIBIT A

In the event that Contractor fails to deliver the services, documents or other deliverables required herein, County at its sole option may delay the monthly payment for the period of time of the delay, cease all payments until such time as the deliverables are received, or proceed as set forth herein in Paragraph 4 of the Agreement, "Term of Contract." In no event shall County be obligated to pay Contractor for any amount above the Maximum Obligation of this Agreement.

~~ End of Exhibit A ~~

Exhibit A- Attachment 1 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.

EXHIBIT B
“VENDOR ASSURANCE OF COMPLIANCE WITH
THE COUNTY OF EL DORADO HEALTH AND HUMAN SERVICES AGENCY
NONDISCRIMINATION IN STATE
AND FEDERALLY ASSISTED PROGRAMS”

NAME OF VENDOR/RECIPIENT: The Salvation Army

HEREBY AGREES THAT it will comply with Title VI and VII of the Civil Rights Act of 1964 as amended; Section 504 of the Rehabilitation Act of 1973 as amended; the Age Discrimination Act of 1975 as amended; the Food Stamp Act of 1977, as amended and in particular section 272.6; Title II of the Americans with Disabilities Act of 1990; California Civil Code Section 51 et seq., as amended; California Government Code section 11135-11139.5, as amended; California Government Code section 12940 (c), (h) (1), (i), and (j); California Government Code section 4450; Title 22, California Code of Regulations section 98000 – 98413; Title 24 of the California Code of Regulations, Section 3105A(e); the Dymally-Alatorre Bilingual Services Act (California Government Code Section 7290-7299.8); Section 1808 of the Removal of Barriers to Interethnic Adoption Act of 1996; and other applicable federal and state laws, as well as their implementing regulations [including 45 Code of Federal Regulations (CFR) Parts 80, 84, and 91, 7 CFR Part 15, and 28 CFR Part 42], by ensuring that employment practices and the administration of public assistance and social services programs are nondiscriminatory, to the effect that no person shall because of ethnic group identification, age, sex, color, disability, medical condition, national origin, race, ancestry, marital status, religion, religious creed or political belief be excluded from participation in or be denied the benefits of, or be otherwise subject to discrimination under any program or activity receiving federal or state financial assistance; and HEREBY GIVE ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all federal and state assistance; and THE VENDOR/RECIPIENT HEREBY GIVES ASSURANCE THAT administrative methods/procedures which have the effect of subjecting individuals to discrimination or defeating the objectives of the California Department of Social Services (CDSS) Manual of Policies and Procedures (MPP) Chapter 21, will be prohibited.

BY ACCEPTING THIS ASSURANCE, the vendor/recipient agrees to compile data, maintain records and submit reports as required, to permit effective enforcement of the aforementioned laws, rules and regulations and permit authorized CDSS and/or federal government personnel, during normal working hours, to review such records, books and accounts as needed to ascertain compliance. If there are any violations of this assurance, CDSS shall have the right to invoke fiscal sanctions or other legal remedies in accordance with Welfare and Institutions Code section 10605, or Government Code section 11135-11139.5, or any other laws, or the issue may be referred to the appropriate federal agency for further compliance action and enforcement of this assurance.

THIS ASSURANCE is binding on the vendor/recipient directly or through contract, license, or other provider services, as long as it receives federal or state assistance.

Date

Signature

Address of vendor/recipient

(08/13/01)