

AGREEMENT FOR SERVICES 029-162-P-R2011
Animal Services Activities – City of South Lake Tahoe

THIS AGREEMENT made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as COUNTY) and City of South Lake Tahoe, an incorporated city in the State of California (hereinafter referred to as CITY);

RECITALS

WHEREAS, CITY has a need for a service provider to supply animal control services at and within the boundaries of the CITY for the purpose of enforcing State laws, and COUNTY and CITY animal control ordinances, along with animal sheltering services; and

WHEREAS, COUNTY through its Health Services Department (HSD), Public Health Division, Animal Services Program provides animal control services within the COUNTY; maintains a COUNTY Animal Shelter located at 1120 Shakori Drive, South Lake Tahoe, CA 96150; and has provided animal control and sheltering services to the City of South Lake Tahoe for several years; and

WHEREAS, CITY feels it is in the best interest of the community to continue receiving said services from COUNTY; and

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable Federal, State and local laws; and

NOW, THEREFORE, COUNTY and CITY mutually agree as follows:

Article I. SCOPE OF SERVICES

Section 1.01 COUNTY agrees to:

- (a) Provide animal control services at and within the boundaries of the CITY for the purpose of enforcing State laws, COUNTY and CITY Animal Control Ordinances, and for the purpose of maintaining a COUNTY Animal Shelter at Shakori Drive in South Lake Tahoe.
- (b) Provide full field services response to citizen complaints eight (8) hours per day seven (7) days a week (8 a.m. to 5 p.m.), excluding COUNTY holidays (as defined in Exhibit A – County Holiday Schedule, attached hereto and incorporated by reference herein) including:

- (i) Rabies quarantine investigations;
 - (ii) Humane investigations;
 - (iii) Vicious animal complaints; and
 - (iv) Field services including but not limited to:
 - 1) Stray animal impound;
 - 2) Removal of dead animals from CITY roadways; and
 - 3) Enforcement of all State, COUNTY and CITY codes dealing with animals.
- (c) Maintain an animal shelter with general shelter services available to the public as noted in Section 1.01(c)(i); however, COUNTY retains the right to modify said availability in its sole discretion due to unforeseen events (i.e., events of nature/extreme weather, major animal services activity requiring all staff participation; change in staffing levels; emergency/disaster response, etc):
- (i) Hours open to the public:
 - 1) Monday through Saturday - 9:30 a.m. to 12:00 p.m. / 1:00 p.m. to 4:30 p.m.
 - 2) Sundays and COUNTY Holidays – closed.
- (d) Provide stand-by services on COUNTY holidays and outside work hours as defined in Section 1.01(b) to respond to emergency calls relating to:
- (i) Sick and injured animals;
 - (ii) Unconfined aggressive animals posing a threat to public safety;
 - (iii) Loose livestock on CITY roadways;
 - (iv) Mutual aid response involving law enforcement or fire related activities; and
- (e) Collect fees and penalties as determined by CITY, along with a reasonable surcharge as determined by COUNTY as set forth herein. A copy of the most recent County Board of Supervisors resolution establishing animal services fees is provided as Exhibit B for convenience only, with the understanding that this resolution may be modified at any time at the discretion of the County Board of Supervisors.
- (i) The rates charged for the animal control services herein shall be the greater of the rate set by the City Manager or the COUNTY's rates, in accordance with the CITY's Ordinances. In the event the City Manager approves a CITY surcharge on the County's rates, CITY shall provide COUNTY with written notice of the imposed surcharge and reference to the resolution or ordinance authorizing said surcharge. CITY requests that COUNTY apply the collected fees and surcharges to each quarterly invoice as defined in Section 3.02 and Section 3.03.
 - (ii) COUNTY further agrees to provide an accounting of fee collection, identifying CITY surcharge amounts pursuant to Section 1.02, and apply said surcharges to the overall invoices submitted to CITY quarterly.

Section 1.02 COUNTY will include a reasonable surcharge on the rates imposed on CITY residents, which raise animal control fees above those approved by the COUNTY Board of Supervisors for services as defined in Article III; such surcharge in an amount determined by the CITY Council action. CITY requests that said surcharges be held by COUNTY and applied to each quarterly invoice as defined in Section 3.02 and Section 3.03.

Article II. TERM

This Agreement shall become effective upon final execution by both parties hereto and shall cover the period of July 1, 2011 to June 30, 2014 unless earlier terminated pursuant to the provisions under Article VIII herein.

Article III. COMPENSATION FOR SERVICES

Section 3.01 Determination of Annual Compensation: The Annual Compensation to be paid by CITY shall be calculated based on CITY's full share of the net cost of operations associated with services provided by COUNTY to CITY, as defined in Exhibit C – Compensation for Services Methodology. CITY shall be notified of preliminary, estimated annual compensation on or before the first day (July 1st) of each fiscal year of this Agreement, for purposes of CITY establishing the CITY budget. COUNTY shall submit quarterly invoices based on that preliminary annual amount pending reconciliation of actual net cost of operations as determined pursuant to Section 3.01(a) through Section 3.01(d)

- (a) On an annual basis, COUNTY shall review actual workload indicators utilized in the compensation methodology and actual net cost of operations through the third quarter of each fiscal year and, considering this data and other pertinent information, shall project estimated net cost of operations through the end of the fiscal year. This updated fiscal year end projection shall be submitted to CITY by May 30th for consideration.
- (b) Upon mutual consent of both parties, the invoice for the final quarter (April – June) of the fiscal year may be adjusted based on the projection submitted to CITY pursuant to Section 3.01(a).
- (c) Written notice of the final annual compensation applicable to the prior COUNTY fiscal year, based on the methodology in Exhibit C (but using actual workload and net cost data for the completed year) shall be submitted to CITY by August 30th of each year, commencing with August 31, 2012. This notice will establish the Final Annual Compensation amount due from CITY.
- (d) If the compensation amount paid by the CITY for the fiscal year period exceeds the Final Annual Compensation Amount, pursuant to Section 3.01(c), the COUNTY shall either credit or refund the difference to the CITY, in the CITY's sole discretion, within thirty (30) days of receipt of written notice of Final Annual Compensation amount. If the Final Annual Compensation Amount exceeds the preliminary compensation amount paid by the CITY for

for the fiscal year period, the CITY shall pay the difference within thirty (30) days of receipt of the written notice pursuant to Section 3.01(c).

Section 3.02 Collection of Surcharges for Services: COUNTY agrees to collect and account for CITY's fees and COUNTY's surcharges(s), as defined in Section 1.02, imposed on CITY residents which raise total animal service fees for CITY residents above those adopted by the CITY. COUNTY will retain any such surcharge amounts collected and reduce amounts due from CITY under this contract by equivalent amount(s).

Section 3.03 Payment: For services provided herein, CITY agrees to pay COUNTY within thirty (30) days of receipt of each quarterly invoice from COUNTY. Each invoice shall represent twenty-five percent (25%) of CITY's preliminary annual compensation amount as reflected in the written notice provided to CITY by July 1st until such time as agreed-upon reconciliation occurs pursuant to Section 3.01.

Article IV. HIPAA

If during the course of an investigation into an animal bite pursuant to Title 17 California Code of Regulations Section 2606 or similar situation, COUNTY receives any individually identifiable health information (Protected Health Information or PHI), COUNTY shall maintain the security and confidentiality of such PHI required by applicable laws and regulations, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the regulations promulgated thereunder.

Article V. CHANGES TO AGREEMENT

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

Article VI. ASSIGNMENT AND DELEGATION

COUNTY is engaged by CITY for its unique qualifications and skills as well as those of its personnel. COUNTY will not subcontract, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written notice to CITY.

Article VII. INDEPENDENT CONTRACTOR/LIABILITY

COUNTY is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. COUNTY exclusively assumes responsibility for acts of its employees, associates, and subcontractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

COUNTY shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. CITY shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to COUNTY or its employees.

Article VIII. DEFAULT, TERMINATION, AND CANCELLATION

Section 8.01 Termination or Cancellation without Cause

Either party may terminate this Agreement in whole or in part upon ninety (90) calendar days written notice prior to its effect. If such prior termination is effected, CITY will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination and for such other services, which the parties hereto may agree to in writing as necessary for contract resolution. In no event, however, shall CITY be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, COUNTY 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.

Article IX. NOTICE TO PARTIES

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

COUNTY OF EL DORADO
HEALTH SERVICES DEPARTMENT
931 SPRING STREET
PLACERVILLE, CA 95667
ATTN: DANIEL NIELSON, MPA, ACTING DIRECTOR

or to such other location as the COUNTY directs.

Notices to CITY shall be addressed as follows:

CITY OF SOUTH LAKE TAHOE
1901 AIRPORT ROAD
SOUTH LAKE TAHOE, CA 96150
ATTN: CITY MANAGER

or to such other location as the CITY directs.

Article X. INDEMNITY

CITY shall indemnify, defend and hold harmless COUNTY, its officers, agents, employees and representatives from and against any and all claims, losses, liabilities or damages, demands and actions including payment of reasonable attorney's fees, arising out of or resulting from the performance of this Agreement, caused in whole or in part by any negligent or willful act or omission of CITY, its officers, agents, employees, subcontractors, or anyone directly or indirectly employed by any of them regardless of whether caused in part by a party indemnified hereunder.

COUNTY shall indemnify, defend and hold harmless CITY, its officers, agents, employees and representatives from and against any and all claims, losses, liabilities or damages, demands and actions including payment of reasonable attorney's fees, arising out of or resulting from the performance of this Agreement, caused in whole or in part by any negligent or willful act or omission of COUNTY, its officers, agents, employees, subcontractors, or anyone directly or indirectly employed by any of them regardless of whether caused in part by a party indemnified hereunder.

Article XI. INSURANCE

COUNTY is self-insured. The CITY accepts COUNTY's self-insurance program as adequate for the purposes of this Agreement.

Article XII. CONFLICT OF INTEREST

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

Article XIII. ADMINISTRATOR

The County Officer or employee with responsibility for administering this Agreement is Henry Brzezinski, Chief Animal Control Officer, or successor.

Article XIV. AUTHORIZED SIGNATURES

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

Article XV. PARTIAL INVALIDITY

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


Article XVI. VENUE

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

Article XVII. ENTIRE AGREEMENT

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

REQUESTING DEPARTMENT HEAD CONCURRENCE:

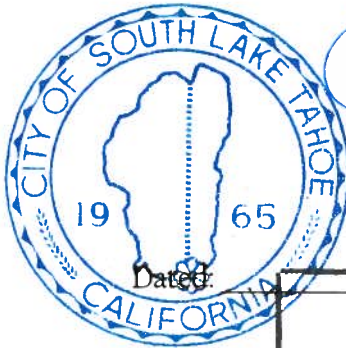
By:  Dated: 9-19-2011
Daniel Nielson, MPA, Acting Director
Health Services Department

//
//
//
//
//
//
//
//
//
//
//

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

-- CITY --

CITY OF SOUTH LAKE TAHOE



ATTEST:

Susan Alessi
Susan Alessi, City Clerk

By: *Hal Cole*
Hal Cole, Mayor
CITY

APPROVED AS TO FORM
[Signature]
City Attorney

-- COUNTY OF EL DORADO --

By: _____
Raymond J. Nutting, Chair
Board of Supervisors
COUNTY

Dated: _____


Attest: Suzanne Allen de Sanchez
Clerk of the Board of Supervisors

Deputy

Date

EXHIBIT A

EDCNET County HOME Search EDCNET



Cameron Park Golf Course

Departments Employee Resources Email/Phone Directory Forms Get Mail

2011 County Holidays 2011 Schedule



New Year's Day

County Holiday observed Friday, December 31, 2010 in lieu of Saturday, January 1, 2011



Floating Holiday - County Offices Open *

Columbus Day

Monday, October 10, 2011



Martin Luther King, Jr. Day

Monday, January 17, 2011



Veteran's Day

Friday, November 11, 2011



Floating Holiday *

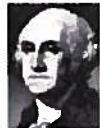
Lincoln's Birthday

Saturday, February 12, 2011



Thanksgiving Day

Thursday, November 24, 2011



Washington's Birthday

Observed as President's Day
Monday, February 21, 2011



Day after Thanksgiving

Friday, November 25, 2011



Memorial Day

Monday, May 30, 2011



Christmas Eve Day

County Holiday observed Friday, December 23, 2011
in lieu of Saturday, December 24, 2011



Independence Day

Monday, July 4, 2011



Christmas Day

County Holiday observed Mon, December 26, 2011
in lieu of Sunday, December 25, 2011



Labor Day

Monday, September 5, 2011



New Years Day 2011

County Holiday observed Monday, January 2, 2012
in lieu of Sunday, January 1, 2011

* Please Note: Lincoln's Birthday, Saturday, February 12, 2011 and Columbus Day, Monday, October 10, 2011 are Floating Holidays to be taken at a time agreeable to both the employee and the appointing authority.

[Home](#) | [Announcements](#) | [Calendar](#) | [Directory](#) | [Forms](#) | [Get Mail](#) | [Search](#) |
[Comments, Concerns or Questions](#)

Intranet hosted by Information Technologies, El Dorado County, Placerville, California

EXHIBIT B



RESOLUTION NO. 025-2011

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO

WHEREAS, the County of El Dorado Board of Supervisors is authorized to adopt new fees, fee levels and charges, pursuant to Government Code § 54985; and

WHEREAS, the County of El Dorado has reviewed and analyzed the current Animal Services fee structure established via Resolution 126-2005; and

WHEREAS, the County, having completed said analysis which included a review of Animal Services operations (personnel, indirect and overhead, supervision and equipment costs) and benchmarking against prevailing fees charged in surrounding counties, found that the County is not recovering an appropriate portion of full costs from the public for these services; and

WHEREAS, the County has determined that on occasion, extenuating circumstances may require that certain of the fees outlined hereto be waived, discounted, or deferred and that the County Chief Animal Control Officer shall be empowered to take such action when it is deemed to be in the best interest of the animal;

NOW, THEREFORE, BE IT RESOLVED that effective April 1, 2011, Board Resolution No. 126-2005 is hereby replaced by this Resolution, and the following fees, fee levels, and charges shall be implemented.

DESCRIPTION	AMOUNT
Adoptions:	
Dog	\$120
Cat	\$80
Other Small Animals	\$15
Small Livestock	\$40
Large Livestock (Highest Bid Over Minimum Threshold Amount Set by Chief ACO)	Highest bid
Hold for Adoption Dog – one day hold (not applied toward adoption fee)	\$44
Hold for Adoption Cat – one day hold (not applied toward adoption fee)	\$35
Dog Licensing:	
Dog License – Altered / 1 year	\$20
Dog License – Altered / 3 year	\$50
Dog License – Unaltered / 1 year	\$100
Dog License – Unaltered / 3 year	\$150
Veterinarian License Sale Rebate (1 or 3 year license)	(\$5)
Duplicate License	\$18
Delinquent License Penalty (30 days past due / added to cost of license)	\$20

EXHIBIT B

Additional penalties for dogs-at-large without valid license:	
Expired License (after 30 days – added to cost of license)	\$20
Never Licensed (added to cost of license)	\$100
Potentially Dangerous Dogs (PDD) / Vicious Dogs (VD):	
PDD/VD License with Investigation – 1 st year (single dog)	\$700
PDD/VD License with Investigation – 1 st year per additional dog(s) involved in the same Incident / Investigation and Annual Renewals	\$200
PDD/VD Replacement Dog License	\$20
PDD/VD Collar (enables PDD/VD identification, per Ordinance)	\$25
Kennel Licensing:	
Non-commercial Kennel License	\$305
Commercial Kennel License	\$355
Kennel Re-inspection(s) required within permit year due to violations (fee applicable to each re-inspection)	\$205
County Established Impound Fees:	
Small Animal Impound – 1 st (same household, per animal)	\$75
Small Animal Impound – 2 nd (same household, per animal)	\$200
Small Animal Impound – 3 rd or more (same household, per animal)	\$350
Small Animal Field Release	\$50
Large Animal Impound – 1 st (same household, per animal)	\$175
Large Animal Impound – 2 nd (same household, per animal)	\$300
Large Animal Impound – 3 rd or more (same household, per animal)	\$450
Large Animal Field Release (plus add'l officer(s) charged at hourly rate x actual time incurred)	\$150
Board & Care (fee/per day):	
Dogs	\$27
Cats	\$18
All other small animals	\$9
Large Animal / Livestock	Per Contract
Owner Release of Animal (no fee for strays)	\$60
Miscellaneous:	
Microchip (Owner Request)	\$25
Animal Products (e.g., cat carriers)	At Cost
Quarantine Initiation / Administration Fee (If quarantined at shelter other charges also apply)	\$75
Fluorescent Rabies Antibody (small animal)	\$160
Fluorescent Rabies Antibody (large animal)	Varies due to size / weight
Veterinary Care	As charged
Euthanasia (owner release – animal unadoptable)	\$60
Dead Animal Pick Up	Hourly Rate (below) x incurred time
Vaccination Administration (plus vaccine cost)	\$10

EXHIBIT B

Resolution No. 025-2011

Page 3 of 3

Public Records Requests	Hourly rate times actual time incurred
Kennel Attendant Hourly Rate (adjust annually based on adopted budget)	\$90
Animal Control Officer Hourly Rate (adjust annually based on adopted budget)	\$100

PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held the 28th day of February, 2011, by the following vote of said Board:

Ayes: Sweeney, Knight, Briggs, Santiago

Noes: Notting

Absent: None

Attest:

Suzanne Allen de Sanchez

Clerk of the Board of Supervisors

By:

Marcie MacFarland
Deputy Clerk

Ray J. Nutting
Chair, Board of Supervisors
Raymond J. Nutting

I CERTIFY THAT:

THE FOREGOING INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE.

Attest: Suzanne Allen de Sanchez, Clerk of the Board of Supervisors of the County of El Dorado, State of California.

By: _____ Date: _____
Deputy Clerk

COMPENSATION FOR SERVICES METHODOLOGY
City of South Lake Tahoe

1) Calculation of Share of Services Provided to CITY (based on workload). For purposes of this Agreement, the share of services provided to CITY will be calculated based upon two primary workload indicators: 1) animal impounds, and 2) complaints, also referred to as calls for service, as recorded in the Chameleon database (or any replacement database that may be implemented by COUNTY Animal Services during the term of this Agreement).

Impounds and complaints are attributed to CITY or COUNTY, as applicable, based on the location of the animal owner's residence; however, if an animal owner cannot be identified, the impound or complaint is attributed to either the CITY or COUNTY based on the activity/incident location (i.e., where the Animal Services staff pick up an animal or respond to a complaint/call). CITY will be deemed to include all areas within the CITY limits/boundaries and COUNTY will be deemed to include all unincorporated areas of the COUNTY in the Tahoe basin.

CITY's percentage share of workload, and associated services, will be calculated based on the latest complete fiscal year activities by dividing the combined total number of animal impounds and complaints attributed to CITY by the combined total number of animal impounds and complaints for the entire South Lake Tahoe basin (CITY and unincorporated COUNTY areas). The following sample table demonstrates this calculation using actual data for the period July 1, 2009 through June 30, 2010:

Type of Service	City of South Lake Tahoe	Unincorporated Area of SLT	Total
Animals Impounded July 09 - June 10	332	376	708
Complaints July 09 - June 10	2,196	1,174	3,370
Total:	2,528	1,550	4,078
Percentage:	61.9912%	38.0088%	100%

2) Calculation of Net Cost of Operations and Share Attributable to CITY.

By July 1st of each year, COUNTY will develop a preliminary annual budget (expenditures and revenues), addressing animal services operations for the entire South Lake Tahoe basin for the new fiscal year period (July 1st through June 30th). The total expenditure budget, minus the total revenue budget (excluding anticipated revenue from CITY under this Agreement, and General Fund support provided by COUNTY), establishes the total net cost of operations to be shared by CITY and COUNTY. The total net cost of operations, multiplied by the CITY's percentage share of services (based on workload data for the most recent complete year, using the methodology above), produces the CITY's full share of the cost of operations.

EXHIBIT C to AGREEMENT 029-162-P-R2011

The following table demonstrates calculation of the CITY's full share of the net cost of operations for COUNTY FY 2010-11:

Budgeted Expenditures	\$784,877
Less Revenue (sources other than CITY or COUNTY funds)	<u>(141,621)</u>
Net Cost of Operations	\$643,256
Multiplied by CITY's share for workload as calculated for FY 2009-10 (above)	<u>61.9912%</u>
Full Cost of Operations attributable to CITY	\$398,762

Development of the preliminary and final annual compensation amount applicable to each fiscal year will be pursuant to Article III of the Agreement.

Exhibit A to Agreement 029-162-P-R2011 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 and procedures and documentation requirements of the HIPAA Security Rule.
 - B. Report to County within 24 hours of any suspected or actual breach of security, intrusion, or unauthorized use or disclosure of PHI of which BA becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. BA shall take prompt corrective action to cure any such deficiencies and any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
 - C. Report to County in writing of any access, use or disclosure of PHI not permitted by the Underlying Agreement and this Business Associate Agreement, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than five (5) days. To the extent the Breach is solely a result of BA's failure to implement reasonable and appropriate safeguards as required by law, and not due in whole or part to the acts or omissions of the County, BA may be required to reimburse the County for notifications required under 45 CFR 164.404 and CFR 164.406.
 - D. BA shall not use or disclose PHI for fundraising or marketing purposes. BA shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates. BA shall not directly or indirectly receive remuneration in exchange of PHI, except with the prior written consent of the County and as permitted by the HITECH Act, 42 USC Section 17935(d)(2); however, this prohibition shall not affect payment by County to BA for services provided pursuant to the Agreement.
4. PHI Access, Amendment and Disclosure Accounting. BA agrees to:
 - A. Provide access, at the request of County, within five (5) days, to PHI in a Designated Record Set, to the County, or to an Individual as directed by the County. If BA maintains an Electronic Health Record, BA shall provide such information in electronic format to enable County to fulfill its obligations under the HITECH Act, including, but not limited to, 42 USC Section 17935(e).

- B. Within ten (10) days of receipt of a request from County, incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in BA's possession constitutes a Designated Record Set.
 - C. To assist the County in meeting its disclosure accounting under HIPAA:
 - (1) BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or 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 know, the address of the entity or person; (iii) a brief description of PHI disclosed and; (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure.
 - (2) Within in 30 days of notice by the County, BA agrees to provide to County information collected in accordance with this section to permit the County to respond to a request by an Individual for an accounting of disclosures of PHI.
 - D. Make available to the County, or to the Secretary of Health and Human Services (the "Secretary") , BA's internal practices, books and records relating to the use of and disclosure of PHI for purposes of determining BA's compliance with the Privacy Rule, subject to any applicable legal restrictions. BA shall provide County a copy of any PHI that BA provides to the Secretary concurrently with providing such information to the Secretary.
5. Obligations of County.
- A. County agrees that it will promptly notify BA in writing of any restrictions on the use and disclosure of PHI agreed to by County that may affect BA's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
 - B. County agrees that it will promptly notify BA in writing of any changes in, or revocation of, permission by any Individual to use or disclose PHI, if such changes or revocation may affect BA's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
 - C. County agrees that it will promptly notify BA in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect BA's use of disclosure of PHI.

- D. County shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by County, except as may be expressly permitted by the Privacy Rule.
- E. County will obtain any authorizations necessary for the use or disclosure of PHI, so that BA can perform its obligations under this Business Associate Agreement and/or the Underlying Agreement.

6. Term and Termination.

- A. Term. This Business Associate Agreement shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement, as provided therein when all PHI provided by the County to BA, or created or received by BA on behalf of the County, is destroyed or returned to the County, or, or if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- B. Termination for Cause. Upon the County's knowledge of a material breach by the BA, the County shall either:
 - (1) Provide an opportunity for the BA to cure the breach or end the violation and terminate this Agreement if the BA does not cure the breach or end the violation within the time specified by the County.
 - (2) Immediately terminate this Agreement if the BA has breached a material term of this Agreement and cure is not possible; or
 - (3) If neither termination nor cures are feasible, the County shall report the violation to the Secretary.
- C. Effect of Termination.
 - (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, the BA shall, at the option of County, return or destroy all PHI that BA or its agents or 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.