

**Wendy Barillas, Marriage & Family Therapy,
A Professional Corporation
Psychotherapy Clinical Mental Health Services**

AGREEMENT FOR SERVICES #8197

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 Wendy Barillas, Marriage & Family Therapy, a Professional Corporation duly qualified to conduct business in the State of California, whose principal place of business is 3516 19th Avenue, Sacramento, California 95820 (hereinafter referred to as "Contractor").

R E C I T A L S

WHEREAS, County has determined that it is necessary to obtain a contractor to assist its District Attorney's Office with providing psychotherapy clinician mental health services to child abuse victims and their families on an as-needed basis;

WHEREAS, Contractor has represented to County that it is specially trained, experienced, is an expert, and competent to perform the special services described in ARTICLE I Scope of Work; that it is an independent and bona fide business operation, advertises and holds itself as such, is in possession of a valid business license, and is customarily engaged in an independently established business that provides similar services to others; and County relies upon those representations;

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

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, County and Contractor mutually agree as follows:

ARTICLE I

Scope of Work: Contractor is engaged in the business of doing the services and tasks required under this Agreement, including those services and tasks that are reasonably necessary for the completion of the work identified in the Scope of Work.

Contractor agrees to furnish, at Contractor's own cost and expense, all personnel, equipment, tools, materials, and services necessary to perform the services and tasks required under this Agreement and those services and tasks that are reasonably necessary for the completion of the work identified in the Scope of Work.

County and Contractor have entered into an Operational Agreement, attached hereto as Exhibit A, marked "Operational Agreement," incorporated herein and made by reference a part hereof, which provides for psychotherapy clinicians to serve child abuse victims and their families at the Fausel House Child Advocacy Center in Placerville, California.

Contractor shall perform the services listed below on an as-needed basis:

- Accept referrals from El Dorado County District Attorney (EDCDA) and/or the Child Advocacy Center (CAC) program for trauma-informed mental health services for child victims of abuse or neglect, as well as their family members and non-offending caregivers.
- Provide mental health services to clients referred by EDCDA and/or the CAC regardless of ability to pay.
- Mental health services for clients referred to Contractor may be completed via telehealth or in-person at the Fausel House CAC.
- Communicate with EDCDA Victim Witness (VW) program staff and CAC staff regarding mental health progress, services provided, and any other needs specified by children and/or their families.

Specifically:

1. Contact EDCDA VW Program Manager for programmatic and grant compliance.
2. Provide Psychotherapy Clinicians to work specifically with child abuse victims and their families (secondary victims) by providing trauma informed mental health services.
3. Ensure all psychotherapy clinicians associated with this Agreement and working with referred clients from the EDCDA and/or CAC meet the level of "Associate" or higher in their level of training and expertise. Contractor agrees to not use "Trainees" for the purpose of this program and contract.
4. Contact victims and/or their families within twenty-four (24) hours of receiving a referral.

5. Begin therapy services based on needs/risk assessment, but not to exceed five (5) business days from the date of contact with the victim and/or the family.
6. Provide flexible therapy hours, including telehealth, late afternoons, evenings, and weekends, in order to ensure children and families have the most convenient access to therapy unhindered by work and school hours.
7. Enter all appointments scheduled at the Fausel House CAC into the shared calendar to give notice to EDCDA employees and partners of the use of the building as soon as possible after the appointments are scheduled.
8. Provide family therapy options allowing therapists to conduct separate sessions for both children and their caregivers using the different areas available at the Fausel House CAC building, specifically the interview room and main lobby.
9. Provide specific promotional materials, business cards, and referral information to EDCDA for distribution to families during the referral process and/or initial contacts with the Fausel House CAC, as needed.
10. Prevent any access to the second or third floor of the Fausel House CAC building to any clients or family members.
11. Prevent access to the third-floor investigations area of the Fausel House CAC building.
12. Respect and adhere to the safety guidelines created and distributed by EDCDA, including but not limited to alarm information for the building, cleaning protocols, and Personal Protective Equipment (PPE) guidelines.
13. Engage in training with EDCDA, as appropriate.
14. Attend monthly case review meetings with the Fausel House CAC multidisciplinary team, as well as CAC Steering Committee meetings when appropriate.
15. Prepare a consent/release of information form for families referred by EDCDA and/or the Fausel House CAC to ensure information can be shared when agreed to with the multidisciplinary team during monthly case reviews.
16. Share appropriate information regarding child abuse victims and their families with EDCDA, when prior written authorization has been obtained from the victim and/or family.

17. Collect and submit to EDCDA VW Program Manager the quarterly statistical data and aid in the preparation of the bi-annual narrative reports as required by California Office of Emergency Services (CalOES) and the Office of Victim Performance Platform (OVCPMT) and/or any other internal reporting. Contractor must provide the following data as part of the report preparation activities: intake, mental health needs assessment for child victims and/or their families, psychotherapy, and or cultural-centered therapy including bilingual Spanish sessions, crisis intervention, group counseling, treatment plans, meetings with parents and caregivers, training, and outreach.
18. Collect and submit statistical data on a quarterly basis as to clients seen and specific services provided to CAC clients referred to Contractor, to the CAC Coordinator for internal CAC statistical and case tracking.
19. Respect confidentiality when conducting therapy sessions.
20. Respect confidentiality of sensitive information obtained by EDCDA and other multidisciplinary team case reviews as outlined in the Fausel House CAC Interagency Protocol.
21. Reschedule preexisting therapy appointments as necessary when urgent forensic interview, law enforcement, or prosecution needs take precedence to building access.
22. Adhere to all mental health provider requirements as outlined in the Fausel House CAC Interagency Protocol and its associated Memorandum of Understanding (MOU) and in accordance with National Children's Alliance (NCA) mental health standards.

Deliverables shall be submitted via electronic file and Contractor shall produce the file using Microsoft Office (MS) 365 applications (specifically, MS Word, MS PowerPoint, and MS Excel). Signed reports shall be submitted in Adobe portable document format (PDF). All deliverables shall be submitted in the language, format and design that are compatible with and completely transferable to County's computer, and that are acceptable to County's Contract Administrator. Newer versions of software may be used and other types of software used for analytical purposes may be authorized if approved in advance of the submittal by County's Contract Administrator. Contractor shall submit all deliverables to County's Contract Administrator in accordance with completion time schedules identified in the individual Work Orders issued pursuant to this Agreement. Failure to submit the required deliverables in the format required may be grounds for termination of the Agreement, as provided in ARTICLE XIII, Default, Termination, and Cancellation, herein.

Contractor shall perform the services and tasks required under this Agreement in a safe, professional, skillful, and workmanlike manner. Contractor is responsible for ensuring that

its employees, as well as any subcontractor if applicable, perform the services and tasks required under this Agreement accordingly.

Contractor acknowledges that the work performed must meet the approval of County, and therefore County reserves the right to monitor the work to ensure its satisfactory completion.

ARTICLE II

Term: This Agreement shall become effective upon final execution by both parties and shall cover the period of January 1, 2024, through December 31, 2024.

ARTICLE III

Compensation for Services: For services provided herein, including any deliverables that may be identified herein, County agrees to pay Contractor upon the satisfactory completion and County's acceptance of work, in arrears. Payment shall be made within forty-five (45) days following County's receipt and approval of itemized invoices identifying the services rendered.

For the purposes hereof, the billing rate for mental health services, also referred to as "clinical" services, shall not exceed \$100 per hour. The billing rate for other mental health associated services, including but not limited to, monthly collaborative meetings and MDI reviews, also referred to as "non-clinical" services, shall not exceed \$75 per hour. Billing for total clinical and non-clinical services shall not exceed \$156,000.

County will also reimburse up to \$3,000 for grant program related training costs, including but not limited to, registration fees, hotel cost, airfare, parking, mileage and meal reimbursement. Notwithstanding any other provision of this Agreement to the contrary, payments to Contractor for travel, lodging, per diem, and mileage expenses, if applicable, for Contractor's claims for reimbursement shall not exceed the rates to be paid to County employees under the current Board of Supervisor's Travel Policy in effect at the time the expenses are incurred, without markup. Any work requiring overnight stay must be approved in advance by County's Contract Administrator or designee. There shall be no markups allowed on mileage expenses for Contractor. Contractor is responsible for canceling hotel rooms before the cancellation period ends and should record the cancellation number in case of disputes. Contractor shall not be reimbursed for "no-show" hotel charges unless there are unavoidable reasons for not cancelling the room and County's Contract Administrator or designee has determined that the reasons are valid.

County will also reimburse up to \$60 per phone and per month for the cell phone stipend and data allowance for up to two clinicians. The cell phone stipend and data allowance is to ensure the swift facilitation of victim support while in the field. Requests for reimbursement shall be made monthly and shall be itemized on the monthly invoice. No back-up shall be required for the reimbursement of the cell phone stipend or data allowance.

The total amount of this Agreement shall not exceed \$160,440, inclusive of all costs, taxes, and expenses.

Funding is contingent upon grant award.

Itemized invoices shall follow the format specified by County and shall reference this Agreement number and the service period on their faces. Copies of documentation attached to invoices shall reflect Contractor's charges for the specific services billed on those invoices.

Invoices shall be mailed to County at the following address:

County of El Dorado
District Attorney's Office
778 Pacific Street
Placerville, California 95667

Attn.: Lisette Suder
Assistant District Attorney

or to such other location as County directs.

In the event that Contractor fails to deliver, in the format specified, the deliverables required by this Agreement, County at its sole option may delay the payment for the period of time of the delay, cease all payments until such time as the required deliverables are received, or proceed as set forth below in ARTICLE XIII, Default, Termination, and Cancellation, herein.

ARTICLE IV

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.

ARTICLE V

Ownership of Data: Upon completion or earlier termination of all services under this Agreement, ownership and title to all reports, documents, plans, maps, specifications, estimates, compilations, photographs, videos, and any and all other materials or data produced or obtained as part of this Agreement will automatically be vested in County without restriction or limitation on their use, and no further agreement will be necessary to transfer ownership to County. Copies may be made for Contractor's records, but shall not be furnished to others without prior written authorization from County's Contract Administrator. Such deliverables shall be deemed works made for hire and all rights in copyright therein shall be retained by County. Contractor shall furnish County all necessary copies of data, including data stored in electronic format, needed to complete the review and approval process of the services and deliverables provided under this Agreement.

ARTICLE VI

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 VII

Contractor to County: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further understood that this Agreement does not create an exclusive relationship between County and Contractor, and Contractor may perform similar work or services for others. However, Contractor shall not enter into any agreement with any other party, or provide any information in any manner to any other party, that would conflict with Contractor's responsibilities or hinder Contractor's performance of services hereunder, unless County's Contract Administrator, in writing, authorizes that agreement or sharing of information.

ARTICLE VIII

Confidentiality: 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 District Attorney's Office 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.

ARTICLE IX

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

ARTICLE X

Independent Contractor: 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 understands and agrees that Contractor lacks the authority to bind County or incur any obligations on behalf of County.

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.

ARTICLE XI

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, 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 County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

ARTICLE XII

Audit by California State Auditor: Contractor acknowledges that if total compensation under this Agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code § 8546.7. In order to facilitate these potential examinations and audits, Contractor shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the Agreement, all books, records, and documentation necessary to demonstrate performance under the Agreement.

ARTICLE XIII

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 ARTICLE XX, 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.

ARTICLE XIV

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

To County:

County of El Dorado
District Attorney's Office
778 Pacific Street
Placerville, California 95667

Attn.: Vern Pierson
District Attorney

With a copy to:

County of El Dorado
Chief Administrative Office
330 Fair Lane
Placerville, California 95667

Attn.: Michele Weimer
Procurement and Contracts Manager

or to such other location as County directs.

Notices to Contractor shall be addressed as follows:

Wendy Barillas, Marriage & Family Therapy, A Professional Corporation
3516 19th Avenue
Sacramento, California 95820

Attn.: Wendy Barillas

or to such other location as Contractor directs.

ARTICLE XV

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

ARTICLE XVI

Indemnity: To the fullest extent permitted by law, Contractor shall defend at its own expense, indemnify, and hold the County harmless, its officers, employees, agents, and volunteers, against and from any and all liability, claims, suits, losses, damages, or expenses of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the acts or omissions of Contractor or its officers, agents, or employees in rendering the services, operations, or performance hereunder, except for liability, claims, suits, losses, damages or expenses arising from the sole negligence or willful acts of the County, its officers and employees, or as expressly prescribed by statute. This duty of Contractor to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

The insurance obligations of Contractor are separate, independent obligations under the Agreement, and the provisions of this defense and indemnity are not intended to modify nor should they be construed as modifying or in any way limiting the insurance obligations set forth in the Agreement.

Nothing herein shall be construed to seek indemnity in excess of that permitted by Civil Code section 2782, et seq. In the event any portion of this Article is found invalid, the Parties agree that this Article shall survive and be interpreted consistent with the provisions of Civil Code section 2782, et seq.

ARTICLE XVII

Insurance: Contractor shall provide proof of a policy of insurance satisfactory to County's Risk Management Division and documentation evidencing that Contractor maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Contractor as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000 aggregate limit. County, including, without limitation, its officers, officials, employees, and volunteers shall be named as an additional insured on ISO form CG 2010 1185, or its equivalent.
- C. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by Contractor in performance of the Agreement.
- D. In the event Contractor is a licensed professional or professional Contractor and is performing professional services under this Agreement, Professional Liability Insurance is required with a limit of liability of not less than \$1,000,000.
- E. Contractor shall furnish a certificate of insurance satisfactory to County's Risk Management Division as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to County's Risk Management Division or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- G. Contractor agrees that the insurance required herein shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Contractor agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event Contractor fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
 - 1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to County; and

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

ARTICLE XVIII

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:

1. 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.
2. 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.

ARTICLE XIX

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.

ARTICLE XX

Conflict of Interest: The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and the Political Reform Act of 1974 (Section 87100 et seq.), relating to conflict of interest of public officers and employees. Individuals who are working for Contractor and performing work for County and who are considered to be Contractor within the meaning of Title 2, California Code of Regulations, Section 18700.3, as it now reads or may thereafter be amended, are required to file a statement of economic interest in accordance with County's Conflict of Interest Code. County's Contract Administrator shall at the time this Agreement is executed make an initial determination whether or not the individuals who will provide services or perform work pursuant to this Agreement are Contractors within the meaning of the Political Reform Act and County's Conflict of Interest Code. Statements of economic interests are public records subject to disclosure under the California Public Records Act.

Contractor covenants that during the term of this Agreement neither it, or any officer or employee of Contractor, has or shall acquire any interest, directly or indirectly, in any of the following:

1. Any other contract connected with, or directly affected by, the services to be performed by this Agreement.
2. Any other entities connected with, or directly affected by, the services to be performed by this Agreement.
3. Any officer or employee of County that are involved in this Agreement.

If Contractor becomes aware of a conflict of interest related to this Agreement, Contractor shall promptly notify County of the existence of that conflict, and County may, in its sole discretion, immediately terminate this Agreement by giving written notice of termination specified in ARTICLE XIII, Default, Termination, or Cancellation.

Pursuant to Government Code section 84308 (SB 1439, the Levine Act), Contractor shall complete and sign the attached Exhibit B, marked "California Levine Act Statement," incorporated herein and made by reference a part hereof, regarding campaign contributions by Contractor, if any, to any officer of County.

ARTICLE XXI

Nondiscrimination:

- A. County may require Contractor's services on projects involving funding from various state and/or federal agencies, and as a consequence, Contractor shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: Contractor 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; Contractor 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. Contractor and its employees and representatives shall give written notice of their obligations under this clause as required by law.
- B. Where applicable, Contractor shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.
- C. Contractor'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.

ARTICLE XXI

Compliance with Federal, State, and County Requirements: As a requirement of County's use of Cal OES grant funds, County is required to comply with certain contracting requirements and to extend those requirements to all third party contracts. Contractor shall comply with all applicable provisions of federal, state, and local agency regulations, including those required by the Cal OES grant funding requirements, regulations, and related executive orders regarding the use, expenditure, control, reporting, allowable costs, and management of such funds.

Failure of Contractor to comply with any federal, state, or local agency provision may be the basis for withholding payments for charges made by Contractor and for such other remedies as may be appropriate including termination of this Agreement. Contractor shall further comply with any flow-down or third-party contracting provisions which may be required under the federal, state, or local agency regulations and which may apply to Contractor's subcontracts, if any, associated with this Agreement.

ARTICLE XXII

Drug Free Workplace Act of 1990: The State of California requires that every person or organization subawarded a grant or contract shall certify it will provide a drug-free workplace.

ARTICLE XXIII

California Environmental Quality Act (CEQA): The California Environmental Quality Act (CEQA) (Public Resources Code, Section 21000 et seq.) requires all Cal OES funded projects to certify compliance with CEQA. Projects receiving funding must coordinate with County planning agency to ensure that the project is compliant with CEQA requirements.

ARTICLE XXIV

Lobbying: Cal OES grant funds, grant property, or grant funded positions shall not be used for any lobbying activities, including, but not limited to, being paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee or any agency, a Member of the Legislature or Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any state or federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, or cooperative agreement.

ARTICLE XXV

Debarment and Suspension: Cal OES-funded projects must certify that Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of federal benefits by a state or federal court, or voluntarily excluded from covered transactions by any federal department or agency.

ARTICLE XXVI

California Residency (Form 590): If Contractor is a California resident, Contractor must file a State of California Form 590, certifying its California residency or, in the case of a limited liability company or corporation, certifying that it has a permanent place of business in California. Contractor will be required to submit a Form 590 prior to execution of this Agreement, or County shall withhold seven (7) percent of each payment made to Contractor during the term of this Agreement. This requirement applies to any agreement/contract exceeding \$1,500.

ARTICLE XXVII

County Payee Data Record Form: All independent contractors or corporations providing services to County who do not have a Department of the Treasury Internal Revenue Service Form W-9 (Form W-9) on file with County must file a County Payee Data Record Form with County.

ARTICLE XXVIII

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

warrants and represents that it shall comply with all of the requirements of County's Business License Ordinance, where applicable, prior to beginning work under this Agreement and at all times during the term of this Agreement.

ARTICLE XXIX

Licenses: Contractor hereby represents and warrants that Contractor and any of its subcontractors employed under this Agreement has all the applicable licenses, permits, and certifications that are legally required for Contractor and its subcontractors to practice its profession or provide the services or work contemplated under this Agreement in the State of California. Contractor and its subcontractors shall obtain or maintain said applicable licenses, permits, or certificates in good standing throughout the term of this Agreement.

ARTICLE XXX

California Forum and 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.

ARTICLE XXXI

Contract Administrator: The County Officer or employee with responsibility for administering this Agreement is Vern Pierson, District Attorney, District Attorney's Office, or successor.

ARTICLE XXXII

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 the obligations set forth herein.

ARTICLE XXXIII

Electronic Signatures: Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement, are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic Signature means any electronic visual symbol or signature attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures, pursuant to the California Uniform Electronic Transactions Act (Cal. Civ. Code §§ 1633.1 to 1633.17) as amended from time to time.

ARTICLE XXXIV

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

ARTICLE XXXV

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

ARTICLE XXXVI

Mandated Reporter Requirements: Contractor acknowledges and agrees to comply with mandated reporter requirements pursuant to the provisions of Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the California Penal Code, also known as "The Child Abuse and Neglect Reporting Act." and the Welfare and Institutions Code Section 15630 et seq., related to elder and dependent adults, as applicable.

ARTICLE XXXVII

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

ARTICLE XXXVIII

Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

ARTICLE XXXIX

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

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

-- COUNTY OF EL DORADO --

By: _____

Dated: _____

Board of Supervisors
"County"

Attest:
Kim Dawson
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

Dated: _____

**-- WENDY BARILLAS, MARRIAGE & FAMILY THERAPY,
A PROFESSIONAL CORPORATION --**

By: _____
Wendy Barillas, LMFT #133716
Chief Executive Officer
"Contractor"

Dated: _____

Wendy Barillas, Marriage & Family Therapy, A Professional Corporation

Exhibit A

OPERATIONAL AGREEMENT

This Operational Agreement stands as evidence that the El Dorado County District Attorney (hereinafter referred to as “EDCDA”) and Wendy Barillas, Marriage & Family Therapy, A Professional Corporation, (hereinafter referred to as “Contractor”) intend to work together towards the mutual goal of providing maximum available assistance for child abuse victims, child witnesses of abuse, and their non-offending family members. Each party agrees to participate in this collaboration by coordinating/providing the following services for the period of January 1, 2024, through December 31, 2024.

EDCDA will closely coordinate the following services with Contractor:

- EDCDA staff will be readily available to Contractor through in-person and telephone contact with the Child Advocacy Center (CAC) Coordinator-Interviewer, the Assistant District Attorney overseeing the EDCDA Victim Witness Program, and EDCDA Victim Witness (EDCDA VW) Program Manager and Specialists.
- The CAC Coordinator will schedule CAC interviews for victims of suspected child abuse cases and for child witnesses of abuse and/or violence. In the course of said coordination, the CAC Coordinator shall advise Contractor of the date and time of the interview, as well as provide a brief case background, so an appropriate psychotherapy clinician can be assigned to the case and observe the interview, whenever clients desire mental health services.
- EDCDA VW Program staff will provide referrals to the Contractor for families experiencing child abuse and/or neglect with victim information and Multi-Disciplinary Interview (MDI) status, if applicable. VW Program staff will continue to maintain contact with families and follow-up on the ongoing needs of the family and therapy progress.

Contractor will closely coordinate the following services within the scope of this agreement:

- Accept referrals from EDCDA and/or the CAC program for trauma-informed mental health services for child victims of abuse or neglect, as well as their family members and non-offending caregivers.
- Provide mental health services to clients referred by EDCDA and/or the CAC regardless of ability to pay.
- Mental health services for clients referred to Contractor, may be completed via telehealth or in-person at the Fausel House CAC.
- Communicate with EDCDA VW program staff and CAC staff regarding mental health progress, services provided, and any other needs specified by children and/or their families.

Specifically:

EDCDA, including its association with the CAC, agrees to the following:

1. To enforce the laws regarding child abuse cases in order to protect the victim(s) and to prevent future criminal acts through vigorous early intervention for both children and their family members.
2. To work directly with Contractor.
3. To initiate needs assessments related to intake and referrals for victims of child abuse, children who are witnesses to abuse, and non-offending family members.
4. To notify Contractor of and refer children who are victims of child abuse or neglect, or witness to violence, and their family members in need of mental health services who come to the attention of EDCDA VW Unit, and/or the Fausel House CAC via email to the Contractor.
5. To engage in collaborative trainings with Contractor.
6. To notify Contractor of Multidisciplinary Team (MDT) meetings, case reviews, CAC Steering Committee meetings, and to invite them to participate in the same.
7. To provide access to the Fausel House CAC building at 772 Pacific Street, Placerville, California 95667, via key fobs to participating psychotherapy providers. This shall be limited to the first floor waiting area, restroom, and therapy rooms, and a desk on the second floor for office administration related activities. This shall not include any access to the third floor.
8. To provide background checks and access to Livescan services associated for participating psychotherapy providers through Contractor.

9. To provide a desktop or similar computer at the desk on the second floor of the CAC which allows psychotherapy providers to enter notes and information regarding clients seen at the CAC.
10. To provide cellular phones to psychotherapy providers (limited to two [2] per grant budget requirements).
11. To create and distribute safety guidelines to Contractor, including but not limited to: alarm information for the building, cleaning protocols, and Personal Protective Equipment (PPE) guidelines.
12. To provide the technology to allow Contractor to turn off all recording equipment in the interview room of the Fausel House CAC to ensure confidentiality during therapy appointments.
13. To provide supplies as needed for therapy services at the Fausel House CAC.
14. To communicate directly with California Office of Emergency Services (CalOES) regarding all grant related reporting and any issues which may arise. This includes periodically assessing/reassessing the success of grant programs and deliverables as required by CalOES and EDCDA administration.
15. To manage a shared calendar/schedule regarding the use of the Fausel House CAC building, ie., when forensic interviews, meetings, and therapy appointments with Contractor are taking place. In the event Contractor's activities occur during regular business hours, EDCDA employees agree to not access the first floor to ensure privacy and confidentiality for Contractor's clients. In the event a forensic interview or case interview is urgent and needs to take priority over prior scheduled Contractor appointments, EDCDA agrees to communicate as soon as possible to Contractor and psychotherapy providers regarding the urgent need to reschedule a therapy appointment.

Contractor agrees to:

1. Contact EDCDA VW Program Manager for programmatic and grant compliance.
2. Provide Psychotherapy Clinicians to work specifically with child abuse victims and their families (secondary victims) by providing trauma informed mental health services.
3. Ensure all psychotherapy clinicians associated with this Agreement and working with referred clients from the EDCDA and/or CAC meet the level of "Associate" or higher in their level of training and expertise. Contractor agrees to not use "Trainees" for the purpose of this program and contract.

4. Contact victims and/or their families within twenty-four (24) hours of receiving a referral.
5. Begin therapy services based on needs/risk assessment, but not to exceed five (5) business days from the date of contact with the victim and/or the family.
6. Provide flexible therapy hours, including telehealth, late afternoons, evenings, and weekends, in order to ensure children and families have the most convenient access to therapy unhindered by work and school hours.
7. Enter all appointments scheduled at the Fausel House CAC into the shared calendar to give notice to EDCDA employees and partners of the use of the building as soon as possible after the appointments are scheduled.
8. Provide family therapy options allowing therapists to conduct separate sessions for both children and their caregivers using the different areas available at the Fausel House CAC building, specifically the interview room and main lobby.
9. Provide specific promotional materials, business cards, and referral information to EDCDA for distribution to families during the referral process and/or initial contacts with the Fausel House CAC, as needed.
10. Prevent any access to the second or third floor of the Fausel House CAC building to any clients or family members.
11. Prevent access to the third-floor investigations area of the Fausel House CAC building.
12. Respect and adhere to the safety guidelines created and distributed by EDCDA, including but not limited to alarm information for the building, cleaning protocols, and PPE guidelines.
13. Engage in training with EDCDA, as appropriate.
14. Attend monthly case review meetings with the Fausel House CAC multidisciplinary team, as well as CAC Steering Committee meetings when appropriate.
15. Prepare a consent/release of information form for families referred by EDCDA and/or the Fausel House CAC to ensure information can be shared when agreed to with the multidisciplinary team during monthly case reviews.
16. Share appropriate information regarding child abuse victims and their families with EDCDA, when prior written authorization has been obtained from the victim and/or family.
17. Collect and submit to EDCDA VW Program Manager the quarterly statistical data and aid in the preparation of the bi-annual narrative reports as required by CalOES and the Office of Victim Performance Platform (OVCPMT) and/or any other internal reporting. Contractor must provide the following data as part of the report preparation activities: intake, mental health needs

assessment for child victims and/or their families, psychotherapy, and or cultural-centered therapy including bilingual Spanish sessions, crisis intervention, group counseling, treatment plans, meetings with parents and caregivers, training, and outreach.

18. Collect and submit statistical data on a quarterly basis as to clients seen and specific services provided to CAC clients referred to Contractor, to the CAC Coordinator for internal CAC statistical and case tracking.
19. Respect confidentiality when conducting therapy sessions.
20. Respect confidentiality of sensitive information obtained by EDCDA and other multidisciplinary team case reviews as outlined in the Fausel House CAC Interagency Protocol.
21. Reschedule preexisting therapy appointments as necessary when urgent forensic interview, law enforcement, or prosecution needs take precedence to building access.
22. Adhere to all mental health provider requirements as outlined in the Fausel House CAC Interagency Protocol and its associated Memorandum of Understanding (MOU) and in accordance with National Children's Alliance (NCA) mental health standards.

The primary contacts for the Operational Agreement are as follows:

County of El Dorado
District Attorney's Office
778 Pacific Street
Placerville, California 95667
Attn.: Vernon R. Pierson
District Attorney

Wendy Barillas, Marriage & Family Therapy, A Professional Corporation
3516 19th Avenue
Sacramento, California 95820
Business number: 916-799-8119

EDCDA and Contractor may enter into a contractual agreement identifying the total amount of grant funds to be transferred, the process for transferring the grant funds, detailing what the grant funds may be used for, and providing specific information concerning all non-fiscal resources shared between the agencies.

We, the undersigned, as authorized representatives of EDCDA and Contractor, do hereby approve this document.

Vernon R. Pierson
District Attorney
"EDCDA"

Date

Wendy Barillas, LMFT #133716
Chief Executive Officer
"Contractor"

Date

**Wendy Barillas, Marriage & Family Therapy,
A Professional Corporation**

Exhibit B

California Levine Act Statement

California Levine Act Statement

California Government Code section 84308, commonly referred to as the "Levine Act," prohibits any officer of El Dorado County from participating in any action related to a contract if he or she receives any political contributions totaling more than two hundred and fifty dollars (\$250) within the previous twelve (12) months, and for twelve (12) months following the date a final decision concerning the contract has been made, from the person or company awarded the contract. The Levine Act also requires disclose of such contribution by a party to be awarded a specific contract. An officer of El Dorado County includes the Board of Supervisors, and any elected official (collectively "Officer"). It is the Contractor's responsibility to confirm the appropriate "officer" and name the individual(s) in their disclosure.

Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to an Officer of the County of El Dorado in the twelve months preceding the date of the submission of your proposals or the anticipated date of any Officer action related to this contract?

_____ YES _____ NO

If yes, please identify the person(s) by name:

Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contribution of more than \$250 to an Officer of the County of El Dorado in the twelve months following any Officer action related to this contract?

_____ YES _____ NO

If yes, please identify the person(s) by name:

Answering YES to either of the two questions above does not preclude the County of El Dorado from awarding a contract to your firm or any taking any subsequent action related to the contract. It does, however, preclude the identified Officer(s) from participating in any actions related to this contract.

Date
Wendy Barillas, LMFT

Signature of authorized individual
Wendy Barillas

Type or write name of company

Type or write name of authorized individual

Wendy Barillas, Marriage & Family Therapy, A Professional Corporation

Exhibit C

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 subconsultants 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 subconsultants 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, subconsultants, 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, subconsultants, 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.

- A. 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.
 - B. 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.
 - C. 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.
 - D. 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.