

FUNDING AGREEMENT #6593
**Pass through funding of California Department of Public Health
Grant #17-10315 Funding**

THIS FUNDING AGREEMENT is 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 Marshall Medical Center, a California Corporation, operating under the laws of the State of California as a non-profit general acute care hospital, whose principal place of business is 1100 Marshall Way, Placerville, CA 95667, (hereinafter referred to as "Subrecipient").

RECITALS

WHEREAS, County's Health and Human Services Agency, Public Health Division, has been allocated funding, Immunization Local Assistance Funding #17-10315 (Grant), from the California Department of Public Health (CDPH) through the Health and Safety Code, Section 120325-120380 of the Health & Safety Code, which requires immunizations against childhood diseases prior to school admittance and Federal Grant number 5NH23IP000717-05-00.; and

WHEREAS, the purpose of the Grant funding is to assist local health departments in preventing and controlling vaccine-preventable diseases in the local health jurisdiction; and

WHEREAS, County, as the primary recipient of the Grant allocation has identified needs that fall within the scope and purpose of the Grant, and has submitted a budget and workplan to sub award funds to a community partner for the purposes of partnering to assist County in preventing and controlling vaccine-preventable diseases in the local health jurisdiction; and

WHEREAS, Marshall Medical Center (MMC) is a community partner, identified in the budget and workplan submitted to CDPH, that currently provides community services serving El Dorado County; and

WHEREAS, the grant funding provided herein will provide a valuable public service that will support Subrecipient's efforts to detect, report, and control vaccine-preventable diseases thereby increasing its capabilities in order to overcome geographic barriers to obtaining immunizations, a common factor impacting the underserved, including in rural populations in El Dorado County; and

WHEREAS, County has determined that the provision of such services provided by Subrecipient are in the public's best interest and that due to the limited timeframes, temporary or occasional nature, or schedule for the project or scope of work, the ongoing aggregate of work to be performed is not sufficient to warrant the addition of permanent staff in accordance with El Dorado County Ordinance Code, Chapter 3.13.030(c), El Dorado County Charter, Section 210(C)(6), and/or Government Code Section 31000;

WHEREAS, the parties agree the funding will be in conformity with all applicable federal, state and local laws and use of the funding shall be in conformity with the applicant's stated purpose.

WHEREAS, Subrecipient has represented to County that it is specially trained, experienced, expert and competent to perform the special services required described in ARTICLE I Use of Funds; that it is an independent and bona fide business operations, 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; and

NOW, THEREFORE, County and Subrecipient mutually agree as follows:

ARTICLE I

Use of Funds and Payment:

Use of Funds: Subrecipient agrees to furnish personnel, equipment, supplies, travel and other materials, as needed to (1) Provide access to immunizations for vaccines recommended by the Advisory Committee on Immunization Practices (ACIP), <https://www.cdc.gov/vaccines/hcp/acip-recs/index.html>, to protect the local population; (2) Assist in detecting, reporting, and controlling vaccine-preventable diseases in its service area; and, (3) Continue Vaccine For Children (VFC) Provider status, including vaccine management, storage and handling requirements and data submission to the state vaccine registry, CAIR.

Payment: County agrees to reimburse funds expended prior to the termination date, or as may be extended, up to a maximum amount of \$350,000 to Subrecipient following final execution of this Agreement and within forty-five (45) days of receipt and approval of a Statement of Funds to include an original invoice(s) on Subrecipient's letterhead referencing this Agreement #6593 and CDPH Grant Agreement No. 17-10315.

A. Invoices / Remittance shall be addressed as indicated in the table below or to such other location as County or Subrecipient may direct per the Article titled “Notice to Parties.”

Mail invoices to:	Mail remittance to:
Health and Human Services Agency Attn: Fiscal Unit 3057 Briw Road, Suite B Placerville, CA 95667 Or email to (preferred method): PHinvoice@edcgov.us	Marshall Medical Center Attn: Accounts Payable 1100 Marshall Way Placerville, CA 95667

Subrecipient shall keep and maintain all necessary records sufficient to properly and accurately reflect all costs claimed to have been incurred in order for County to properly audit all expenditures. County shall have access, at all reasonable times, to the records for the purpose of inspection, audit, and copying.

Funding shall not be used for political advocacy of any kind and shall not be used for individual person or business promotion or advertisement. Any person or business name mentioned in County-funded materials must be a sponsor or direct participant in the event of promotional effort. Any listing of service or product providers or co-sponsors must be inclusive. Any advertising space or time purchased by a person or business must be clearly and separately identified as paid advertising.

ARTICLE II

Term: This Agreement shall become effective when fully executed by the parties hereto and shall expire on June 30, 2023, unless terminated earlier pursuant to the provisions contained herein this Agreement under Article titled, “Termination of Agreement,” or Article titled, “Fiscal Considerations.”

Based on availability of subsequent funding awards or extended term date of CDPH Grant Agreement No. 17-10315, Subrecipient may earn up to one (1) extension of one (1) year with the same terms/conditions contemplated in Article I – Use of Funds and Payment, or as amended, not to exceed the end date of the June 30, 2024.

To earn each extension, Subrecipient must meet the minimum requirements of this Agreement during the previous term. Following review and approval of performance, the Contract Administrator shall submit an annual request to the HHSA Director justifying the one-year extension. Upon approval by HHSA Director, vendor will be notified of the extension in writing, in accordance with Article titled “Notice to Parties.”

Initial term dates	Upon full execution	06/30/2023
1 year extension dates	07/01/2023	06/30/2024

ARTICLE III

Funding Credit: Subrecipient agrees to credit the County for the grant on all printed or internet materials generated for the Project during the grant cycle by using the County seal, unless otherwise requested or agreed upon with the County. Electronic versions of print and web-ready County seal will be provided upon request. If there are no printed materials, credit to the County is to be announced by Subrecipient verbally at the event or program.

ARTICLE IV

Federal Funding Notification: An award/subaward or contract associated with a covered transaction may not be made to a subrecipient or contractor who has been identified as suspended or debarred from receiving federal funds. Additionally, counties must annually verify that the subrecipient and/or contractor remains in good standing with the federal government throughout the life of the agreement/contract.

Pursuant to 2 CFR 180.300(a), counties are required to fulfill their above-mentioned verification responsibilities using the federal System for Award Management (SAM). The federal SAM is an official website of the federal government through which counties can perform queries to identify if a subrecipient or contractor is listed on the federal SAM excluded list and thus suspended or debarred from receiving federal funds.

- A. System for Award Management: Subrecipient is required to obtain and maintain an active registration in the System for Award Management (SAM.gov). Noncompliance with this requirement shall result in corrective action, up to and including termination pursuant to the provisions contained herein this Agreement under the Article(s) titled “Fiscal Considerations” or “Default, Termination, and Cancellation.”
- 1) The Subrecipient must register and maintain an "Active" status within SAM at <https://sam.gov/content/home>.
 - 2) If County cannot access or verify "Active" status, the Subrecipient must immediately update the information as required.
- B. Catalog of Federal Domestic Assistance: Pursuant to the Office of Management and Budget (OMB) Uniform Grants Guidance, all recipients and sub-recipients of federal funds must be provided the Catalog of Federal Domestic Assistance (CFDA) number at the time the contract is awarded. The following are CFDA numbers, award specific information, and program titles for programs administered by the County on behalf of California Department of Public Health that may apply to this contract:

Federal Funding Information			
Subrecipient:	Marshall Medical Center		UEI #: VKNLXBM379N5
Award Term:	April 12, 2022- June 30, 2023 or as extended up to 06/30/2024		EIN #:
Total Federal Funds Obligated: Up to \$350,000			
Federal Award Information			
CFDA Number	Federal Award ID Number (FAIN)	Federal Award Date	Program Title
93.539	5 NH231P000717-05-00	02/24/2017	Immunization Cooperative Agreements
93.268	6 NH23IP000717-05-02	06/25/2018	Immunization Cooperative Agreements
Project Description:	Preventing and controlling vaccine-preventable diseases in the local health jurisdiction.		
Awarding Agency:	California Department of Public Health		
Pass-through Entity	County of El Dorado, Health and Human Services Agency		
Indirect Cost Rate or de minimus	Indirect Cost Rate: _____		De minimus <input checked="" type="checkbox"/>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Award is for Research and development.	

ARTICLE V

Lobbying Certification: The Subrecipient, by signing this Agreement, hereby certifies to the best of his or her knowledge and belief, that:

- A. No federally appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Subrecipient shall complete and submit Standard Form SF-LLL, OMB Number 0348-0046 "Disclosure of Lobbying Activities" in accordance with its instructions. A copy of Form SF-LLL can be downloaded and completed at <https://www.grants.gov/web/grants/forms/post-award-reporting-forms.html>.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. This certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

ARTICLE VI

Audits, Compliance, and Monitoring:

- A. Subrecipient shall provide a copy of any Audit to County within thirty (30) days of completion of said audit.
- B. Audits and compliance monitoring by any representative of the Federal government, State government, or County may include the review of any and all terms related to this Agreement. Audits or monitoring by the County may be performed by way of annual Contract Monitoring Surveys. Subrecipients receiving a Contract Monitoring Survey shall, within sixty (60) days of receipt, complete and return the survey along with all documentation, details, and supporting materials required by the survey or otherwise necessary for the County to verify compliance with the terms and conditions of the Agreement. Failure to return the survey within the specified time period may result in the withholding of payment from the Subrecipient until such time as compliance with the terms of the Agreement can be verified. Verifying compliance may necessitate additional on-site reviews should information submitted by the Subrecipient be deemed insufficient or inaccurate.
- C. All files, records, documents, sites, and personnel are subject to review by representatives from County, State or Federal government.
- D. Upon notification of an exception or finding of non-compliance, the Subrecipient shall submit evidence of Corrective Action within thirty (30) days, or as otherwise specified in the notice of required corrective action provided by the County. Continued non-compliance beyond due date for submission of Corrective Action may lead to termination of this Agreement in accordance with the Article titled "Default, Termination, and Cancellation."
- E. Failure by County to notify or require Corrective Action does not constitute acceptance of the practice of waiver of the County's right to enforce.

ARTICLE VII

Nondiscrimination:

- A. County may require Subrecipient's services on projects involving funding from various state and/or federal agencies, and as a consequence, Subrecipient shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: Subrecipient and its employees and representatives shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, or sex; Subrecipient shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code, Sections 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 7285.0 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations incorporated into this Agreement by reference and made a part hereof as if set forth in full; and Title VI of the Civil Rights Act of 1964, as amended, the California Family Rights Act (Government Code Section 12945.2), the Unruh Civil Rights Act (California Civil Code, Division I, Part 2, Section 51, et seq), the Ralph Civil Rights Act (California Civil Code, Division I, Part 2, Section 51.7), the California Trafficking Victims Protection Act (California Civil Code, Division I, Part 2, Section 52.5), the Disabled Persons Act (California Civil Code, Division I, Part 2.5), and as applicable, Section 11135 et. seq., of the California Government Code, prohibiting discrimination in all state-funded programs. Subrecipient and its employees and representatives shall give written notice of their obligations under this clause as required by law.
- B. Where applicable, Subrecipient shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.
- C. Subrecipient's signature shall provide any certifications necessary under the federal laws, the laws of the State of California, including but not limited to Government Code Section 12990 and Title 2, California Code of Regulations, Section 11102.
- D. **Assurance of Compliance:** Subrecipient shall comply with Exhibit A, "Vendor Assurance of Compliance with the County of El Dorado Health and Human Services Agency Nondiscrimination in State and Federally Assisted Programs," attached hereto, incorporated by reference herein, and thus made a part hereof. Subrecipient shall acknowledge compliance by signing and returning Exhibit A upon request by County.

ARTICLE VIII

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

ARTICLE IX

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

ARTICLE X

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

ARTICLE XI

Executive Order N-6-22 – Russia Sanctions: On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, if this Agreement is funded by state funds and County determines Subrecipient is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. The County shall provide Subrecipient advance written notice of such termination, allowing Subrecipient at least thirty (30) calendar days to provide a written response. Termination shall be at the sole discretion of the County.

ARTICLE XII

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 XIII

Subrecipient 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 Subrecipient, and Subrecipient may perform similar work or services for others. However, Subrecipient 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 Subrecipient's responsibilities or hinder Subrecipient's performance of services hereunder, unless County's Contract Administrator, in writing, authorizes that agreement or sharing of information.

ARTICLE XIV

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

ARTICLE XV

HIPAA Compliance: As a condition of Subrecipient performing services for the County of El Dorado, Subrecipient shall execute that Business Associate Agreement which is attached hereto as Exhibit B and incorporated by reference herein.

ARTICLE XVI

Assignment and Delegation: Subrecipient is engaged by County for its unique qualifications and skills as well as those of its personnel. Subrecipient 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.

In the event Subrecipient receives written consent to subcontract services under this Agreement, Subrecipient is required to ensure subcontractor remains in compliance with the terms and conditions of this Agreement. In addition, Subrecipient is required to monitor subcontractor's compliance with said terms and conditions, and provide written evidence of monitoring to County upon request.

ARTICLE XVII

Independent Contractor: The parties intend that an independent contractor relationship will be created by this contract. Subrecipient 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. Subrecipient 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 Subrecipient. Those persons will be entirely and exclusively under the direction, supervision, and control of Subrecipient.

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 Subrecipient performs the work or services for accomplishing the results.

Subrecipient, including any subcontractor or employees of Subrecipient, 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. Subrecipient 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 Subrecipient. Subrecipient shall not be subject to the work schedules or vacation periods that apply to County employees.

Subrecipient 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 Subrecipient provides for its employees.

Subrecipient 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 XVIII

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, El Dorado County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

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

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

ARTICLE XIX

Audit by California State Auditor: Subrecipient 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, Subrecipient shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the contract, all books, records and documentation necessary to demonstrate performance under the Agreement.

ARTICLE XX

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:

3. County reserves the right to procure the goods or services, or both, similar to those terminated, from other sources and Subrecipient 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 Subrecipient, the excess costs to procure from an alternate source.
4. County shall pay Subrecipient the sum due to Subrecipient 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 Subrecipient under this Agreement and the balance, if any, shall be paid to Subrecipient upon demand.
5. County may require Subrecipient to transfer title and deliver to County any completed work under the Agreement.

The following shall be events of default under this Agreement:

6. Failure by either party to perform in a timely and satisfactory manner any or all of its obligations under this Agreement.
7. A representation or warranty made by Subrecipient in this Agreement proves to have been false or misleading in any respect.
8. Subrecipient 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.
9. A violation of the Article titled "Conflict of Interest."

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

C. Ceasing Performance: County may terminate this Agreement immediately in the event Subrecipient 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 Subrecipient, 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, Subrecipient 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 XXI

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 and Human Services Agency
3057 Briw Road, Suite B
Placerville, CA 95667
ATTN: Contracts Unit
HHSA-Contracts@edcgov.us

with a carbon copy to:

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

or to such other location as the County directs.

Notices to Subrecipient shall be addressed as follows:

MARSHALL MEDICAL CENTER
1100 Marshall Way
Placerville, CA 95667
ATTN: Contracts Department

or to such other location as the Subrecipient directs.

ARTICLE XXII

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

ARTICLE XXIII

Indemnity: To the fullest extent permitted by law, Subrecipient 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 Subrecipient 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 Subrecipient to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

(DDP)

ARTICLE XXIV

Litigation:

- A. County, promptly after receiving notice thereof, shall notify the Subrecipient in writing of the commencement of any claim, suit, or action against the County or State of California or its officers or employees for which the Subrecipient must provide indemnification under this Agreement. The failure of the County to give such notice, information, authorization, or assistance shall not relieve the Subrecipient of its indemnification obligations.
- B. Subrecipient, promptly after receiving notice thereof, shall immediately notify the County in writing of any claim or action against it which affects, or may affect, this Agreement, the terms and conditions hereunder, or the County or State of California, and shall take such action with respect to said claim or action which is consistent with the terms of this Agreement and the interest of the County and State.

ARTICLE XXV

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

- A. Full Worker's Compensation and Employer's Liability Insurance covering all employees of Subrecipient as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000.00 aggregate limit.
- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the Subrecipient in the performance of the Agreement.
- D. In the event Subrecipient is a licensed professional or professional consultant, and is performing professional services under this Agreement, professional liability is required with a limit of liability of not less than \$1,000,000.00 per occurrence.
- E. Subrecipient shall furnish a certificate of insurance satisfactory to the County of El Dorado Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- G. Subrecipient agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Subrecipient 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 Subrecipient agrees that no work or services shall be performed prior to the giving of such approval. In the event the Subrecipient fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

- H. The certificate of insurance must include the following provisions stating that:
- 1) The insurer will not cancel the insured's coverage without prior written notice to County, and;
 - 2) The County of El Dorado, its officers, officials, employees and volunteers are included as additional insured on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. The Subrecipient's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be in excess of the Subrecipient's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and volunteers; or the Subrecipient shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Subrecipient's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N. In the event Subrecipient cannot provide an occurrence policy, Subrecipient shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for protection of the County.

ARTICLE XXVI

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; and
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 XXVII

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 XXVIII

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. Subrecipient 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 Subrecipient 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 titled “Default, Termination and Cancellation.”

ARTICLE XXIX

California Residency (Form 590): If Subrecipient is a California resident, Subrecipients must file a State of California Form 590, certifying its California residency or, in the case of a corporation, certifying that it has a permanent place of business in California. The Subrecipient will be required to submit a Form 590 prior to execution of an Agreement or County shall withhold seven (7) percent of each payment made to the Subrecipient during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

ARTICLE XXX

County Payee Data Record Form: All independent Subrecipients 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 XXXI

County 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. Subrecipient 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 XXXII

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

ARTICLE XXXIII

Administrator: The County Officer or employee with responsibility for administering this Agreement is Heather Orchard, Public Health Nurse Supervisor, Health and Human Services Agency, or successor.

ARTICLE XXXIV

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 XXXV

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 XXXVI

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 XXXVII

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 XXXVIII

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 XXXIX

Special Terms and Conditions: Subrecipient, by signing this Agreement, becomes a sub recipient of funds via the Immunization Local Assistance Funding #17-10315 from the California Department of Public Health (CDPH) through the Health and Safety Code, Section 120325-120380 of the Health & Safety Code. As such, Subrecipient agrees to adhere to all applicable terms and conditions, available at https://www.edcgov.us/Government/hhsa/Pages/hhsa_contractor_resources.aspx, including but not limited to those provisions contained herein below:

The use of headings or titles throughout this article is for convenience only and shall not be used to interpret or to govern the meaning of any specific term or condition. The terms "contract", "Contractor" and "Subcontractor" shall also mean, "agreement", "grant", "grant agreement", "Subrecipient" and "Subgrantee" respectively. The terms "California Department of Public Health" and "CDPH" shall have the same meaning and refer to the California State agency.

This article contains provisions that require strict adherence to various contracting laws and policies. Some provisions herein are conditional and only apply if specified conditions exist (i.e., agreement total exceeds a certain amount, agreement is federally funded, etc.). The provisions herein apply to this Agreement unless the provisions are removed by reference on the face of this Agreement, the provisions are superseded by an alternate provision appearing elsewhere in this Agreement, or the applicable conditions do not exist.

ARTICLE XL

Counterparts: This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

ARTICLE XLI

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 Contract Administrator Concurrence:

By: _____
Heather Orchard
Public Health Nurse Supervisor
Health and Human Services Agency

Dated: _____

Requesting Department Head Concurrence:

By: _____
Daniel Del Monte
Interim Director
Health and Human Services Agency

Dated: _____

By: _____
Evelyn Schaeffer
Director
Health and Human Services Agency

Dated: _____

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

-- COUNTY OF EL DORADO --

Dated: _____

By: _____

Chair
Board of Supervisors
"County"

ATTEST:
Kim Dawson
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

Dated: _____

-- SUBRECIPIENT --

MAARSHALL MEDICAL CENTER
a California Corporation

By: _____
Siri Nelson
President / CEO
"Subrecipient"

Dated: _____

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

NAME OF VENDOR/RECIPIENT: MARSHALL MEDICAL CENTER

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

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

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

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

Date

Signature

Address of vendor/recipient

CR50-Vendor Assurance of Compliance

Exhibit B

HIPAA Business Associate Agreement

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

RECITALS

WHEREAS, County and 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:

- I. **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.

II. 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:
 - (1) 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,
 - (2) The third party will immediately notify BA of any breaches of confidentiality of PHI to the 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.

III. 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 Title 45 of the Code of Federal Regulations, Part 160 and Part 164, Subparts A and C (the "HIPAA Privacy Rule" and the "HIPAA Security Rule") in effect or as may be amended including but not limited to 45 CFR 164.308, 164.310, 164.312, and 164.504(e)(2) . BA shall comply with the policies, procedures, and documentation requirements of the HIPAA Security Rule.

B. Report to County within 24 hours of any suspected or actual breach of security, intrusion, or unauthorized use or disclosure of PHI of which BA becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. BA shall take prompt corrective action to cure any such deficiencies and any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

C. Report to County in writing of any access, use, or disclosure of PHI not permitted by the Underlying Agreement and this Business Associate Agreement, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than five (5) days. To the extent the Breach is solely a result of BA's failure to implement reasonable and appropriate safeguards as required by law, and not due in whole or part to the acts or omissions of the County, BA may be required to reimburse the County for notifications required under 45 CFR 164.404 and CFR 164.406.

D. BA shall not use or disclose PHI for fundraising or marketing purposes. BA shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates. BA shall not directly or indirectly receive remuneration in exchange of PHI, except with the prior written consent of the County and as permitted by the HITECH Act, 42 USC Section 17935(d)(2); however, this prohibition shall not affect payment by County to BA for services provided pursuant to the Agreement.

IV. PHI Access, Amendment, and Disclosure Accounting. BA agrees to:

A. Provide access, at the request of County, within five (5) days, to PHI in a Designated Record Set, to the County, or to an Individual as directed by the County. If BA maintains an Electronic Health Record, BA shall provide such information in electronic format to enable County to fulfill its obligations under the HITECH Act, including, but not limited to, 42 USC Section 17935(e).

B. Within ten (10) days of receipt of a request from County, incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in BA's possession constitutes a Designated Record Set.

C. To assist the County in meeting its disclosure accounting under HIPAA:

1. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosure from Electronic Health Record for treatment, payment, or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an electronic health record and is subject to this requirement. At the minimum, the information collected shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of PHI disclosed and; (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure.

2. Within in 30 days of notice by the County, BA agrees to provide to County information collected in accordance with this section to permit the County to respond to a request by an Individual for an accounting of disclosures of PHI.

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

VII. 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.

VIII. 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.

- IX. Survival. The respective rights and obligations of this Business Associate Agreement shall survive the termination or expiration of this Business Associate Agreement.
- X. 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.
- XI. 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.

Approval and Signatures

By: _____ Dated: _____
Siri Nelson, President / CEO
"BA Representative"

By: _____ Dated: _____
Heather Orchard, Public Health Nurse Supervisor
"HHSA Representative"