

# ORIGINAL

## MEMORANDUM OF UNDERSTANDING #3900

Between

County of El Dorado Health and Human Services Agency

and

County of El Dorado Probation Department

### Transitional Housing Placement Services for AB 109 offenders

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**THIS MEMORANDUM OF UNDERSTANDING (MOU)** is made and entered into by and between the County of El Dorado Health and Human Services Agency (hereinafter referred to as “HHS”) and County of El Dorado Probation Department (hereinafter referred to as “Probation” and/or “Grantee”);

#### RECITALS

**WHEREAS**, June 27, 2018, the Governor approved Senate Bill (SB) 850 which established the California Homeless Coordinating and Financing Council (HCFC), to administer several State-funded grant programs, including the Homeless Emergency Aid Program (HEAP); and

**WHEREAS**, on December 4, 2018 the Board of Supervisors approved the HEAP Grant application (Board Item No. 18-1762), and authorized the Director of Health and Human Services Agency to administer any agreement relating to said award; and

**WHEREAS**, the HEAP grant program requires that a unit of local government, or a nonprofit organization with previous experience administering federal Department of Housing and Urban Development (HUD) Continuum of Care (CoC) funds, be designated by the CoC to administer program funds; and

**WHEREAS**, the El Dorado County Opportunity Knocks Continuum of Care (CoC) identified and approved the County of El Dorado Health and Human Services Agency (HHS) as the Administrative Entity (AE) for purposes of administering HEAP grant funding; and

**WHEREAS**, the County agreed to designate HHS as the AE authorized to accept and administer HEAP funding on behalf of the CoC; and

**WHEREAS**, one of the State-funding requirements for use of the HEAP funding is to impact homelessness; and

**WHEREAS**, Health and Human Services Agency and Probation are departments of the County of El Dorado and are overseen by the County Board of Supervisors; and

**WHEREAS**, in 2011, California voters passed Assembly Bill 109 (AB 109), known as "Public Safety Realignment." The effect of this bill was to divert people convicted of certain classes of less serious felonies from the Department of Corrections (state prison) to local county jails. The Probation Department is often assigned to provide assistance to AB 109 offenders realigned to El Dorado County's jurisdiction, including those who have been identified as homeless and/or in danger of becoming homeless. Probation staff are responsible for the case management and oversight of AB109 clientele that are on Probation, and have expertise in case management of AB109 clientele.

**WHEREAS**, The County of El Dorado Probation Department was identified by the CoC as a key provider that could meet this requirement while providing placement services for clients known as AB 109 offenders who are also homeless; and

**WHEREAS**, HHSA and Probation have set a target of supporting placement into and retention of permanent housing for six (6) households by June 30, 2021; and

**WHEREAS**, it is the intent of the parties hereto that such services be in conformity with all applicable Federal, State (all references to "State" in this Agreement shall mean the State of California unless otherwise specified), and local laws, and in compliance with the applicant's stated purpose.

**NOW, THEREFORE**, HHSA and Probation mutually agree as follows:

#### **ARTICLE I**

**Payment and Use of funds:** Utilizing the HEAP grant funds, upon receipt of Grantee's request for quarterly distribution, HHSA shall advance to Grantee, via Journal entry submission to the Auditor, quarterly payments in the amount of \$25,000 as noted herein below:

Payment schedule:	
July 1, 2019	\$25,000
October 1, 2019	\$25,000
January 1, 2020	\$25,000
April 1, 2020	\$25,000
July 1, 2020	\$25,000
October 1, 2020	\$25,000
January 1, 2021	\$25,000
April 1, 2021	\$25,000
<b>TOTAL MAXIMUM OBLIGATION:</b>	<b>\$200,000</b>

Each request for distribution shall reference Agreement number 3900.

Requests for distribution shall be sent as follows, or as otherwise directed in writing by HHSA:

<p style="text-align: center;"><b><i>Please Send Request for Distribution to:</i></b></p> <p style="text-align: center;">County of El Dorado Health and Human Services Agency Attn: Finance Unit 3057 Briw Road, Suite B Placerville, CA 95667-5321</p>
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- A. Expenditure of funds is limited to the provision of transitional housing and case management services for Probation clients. Access to this program by the AB 109 offender is meant to assist and impact the children and/or members of the client’s household as well.

The amount to be paid by HHSA to Probation for the cost of services shall be supported by reports, as defined in the section titled “Reporting.”

- B. Probation agrees that the work shall not commence, nor are any costs to be paid or obligated with HEAP funds, prior to execution of this Agreement, or prior to HHSA's receipt of HEAP funds, whichever date is later. Probation agrees that the work shall be completed and all funds expended by June 30, 2021.

- C. If Probation subcontracts any services under this MOU, Probation must contractually obligate no less than 50 percent of HEAP funds by January 1, 2020. One hundred percent of HEAP funds shall be expended by June 30, 2021. Any funds not expended by June 30, 2021 shall be returned to the California Business, Consumer Services and Housing Agency and revert to the State General Fund. "Obligate" means that Probation, has placed orders, awarded contracts, received services, or entered similar transactions that require payment from the grant amount. In the case of an award made to a general purpose local government that subcontracts with private nonprofit organizations via letters of awards and Service Provider Agreements, the Subcontractors are required to obligate the funds by the same statutory deadlines. "Expended" means all HEAP funds obligated under contract or subcontract have been fully paid and receipted, and no invoices remain outstanding.

- D. Probation and any Subcontractors agree that the Scope of Work will be provided for the full term of this Agreement.

- E. Scope of Work: Probation shall perform the following:

- 1. Focus on a target population of AB 109 offenders realigned to El Dorado County’s jurisdiction who have been identified as homeless and/or in danger of becoming homeless. A homeless individual is one who lacks permanent housing, and may live on the streets or in a place not meant for human habitation (e.g. abandoned facility; vehicle, etc.) This definition would also include an individual whose primary residence during the night is a supervised public or private facility (e.g., shelters) that provides temporary living accommodations.
- 2. Identify no fewer than six (6) AB 109 offenders who are or will be on probation who are homeless or at risk of homelessness to receive housing services. Homeless individuals must

participate in the CoC Coordinated Entry process prior to being placed in the Probation project if they are currently homeless. If the individual is not currently homeless but at risk of homelessness, documentation must be provided as to the risk factors for purposes of reporting to the State of California. Priority for the project will be given to currently homeless AB 109 offenders where reasonable.

3. Rent two homes during each year of funding, utilizing the rooms and space to immediately house the identified AB 109 offender identified as homeless or at risk of homelessness upon release from prison and/or jail.
4. Ensure the participants are given a choice regarding if they would choose the housing option or not, what services they would choose to access, and the location of the services
5. Ensure that clients receiving this short-term housing will receive supportive case management and assistance, building capacity to help secure and sustain permanent housing. Supportive services that meet the individual needs of the participant will be identified during intake and during project participation through progressive case management. Participants will be provided services internally and/or referred to external resources and community partners, as applicable. Supportive services may include:
  - a. Assistance with exploring various permanent housing options based upon their unique needs, preferences, and financial resources,
  - b. Assistance with successful acquisition of permanent housing, Probation will seek to recruit landlords to help provide housing opportunities, where available,
  - c. Assistance with client seeking and obtaining rental insurance,
  - d. Assistance addressing potential barriers to landlord participation specific to the stigma associated with the target population will be addressed by offering landlords the ability to contact probation department any time of night or day in the event that they have an issue with the client,
  - e. Additional supports to ensure barriers to landlord participation will include the ability pay up to triple the amount required for move-in/deposit costs, or to utilize funds for repairs to damaged units in the case of any rental housing damages. Rental and move-in assistance will be offered and will include deposit and utility assistance,
  - f. Behavioral health assessment, cognitive behavioral therapy,
  - g. Substance abuse counseling, relapse prevention and recovery services,
  - h. Life skills, and
  - i. Vocational training, job placement assistance, GED resources, and eligibility for general assistance.

F. Reporting:

1. Quarterly reports required: The Grantee shall submit a quarterly report including, but not limited to, the following information:
  - a. The unduplicated number of persons who are Homeless or at imminent risk of homelessness, referred and served each quarter,
  - b. Demographic information for persons served,
  - c. Situational information about persons served, for example:
    - chronically homeless,
    - homeless veteran,
    - unaccompanied homeless youth (HCFC considers “homeless youth” to mean an unaccompanied homeless individual who is not older than 24, for purposes of HEAP. Homeless individuals not older than 24 who are parents are included in this definition),
    - homeless persons in families with children.

- d. The number of unsheltered homeless persons becoming sheltered.
  - e. The number of homeless persons entering permanent housing.
  - f. Progress towards meeting the goal of housing homeless clients.
  - g. Feedback received from persons served on their satisfaction with the services provided.
2. Quarterly reports due within thirty (30) calendar days after quarter's end, except final quarter:
- a. October 30, 2019,
  - b. January 30, 2020,
  - c. April 30, 2020,
  - d. July 30, 2020,
  - e. October 30, 2020,
  - f. January 30, 2021,
  - g. April 30, 2021,
  - h. July 30, 2021

**B. Final Statement of Funds Report:** By May 30, 2021, Probation shall provide a statement, in reasonable detail, regarding the amount received and expended in accordance with Article I "Payment and Use of Funds." Any funds that have not, or will not have been used for the purpose stated herein by June 30, 2021, shall be returned to HHSA by July 30, 2021. Grantee shall keep and maintain all necessary records sufficient to properly and accurately reflect all costs claimed to have been incurred for the Project 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.

Reports shall be sent as follows, or as otherwise directed in writing by HHSA:

***Please Send Reports to:***

County of El Dorado  
 Health and Human Services Agency  
 Attn: Contract Administrator  
 2900 Fairlane Court  
 Placerville, CA 95667-5321

**ARTICLE II**

**Term:** This MOU shall become effective upon final execution by both parties hereto and shall cover the funding term of July 1, 2019 through June 30, 2021. However, in the case of an extension to the source funding agreement term, the term of this MOU may be extended to match the term of the funding agreement upon mutual written agreement between the parties, unless terminated earlier pursuant to the provisions contained herein this MOU under the Article titled, "Termination" or the Article titled "Fiscal Considerations."

**ARTICLE III**

**Drug-Free Workplace Certification**

Certification of Compliance: By signing this Agreement, Grantee, and its subcontractors, hereby

certify, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Government Code 8350 et seq.) and have or will provide a drug-free workplace by taking the following actions:

- A. Publish a statement notifying employees and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by Government Code section 8355(a)(1).
- B. Establish a Drug-Free Awareness Program, as required by Government Code section 8355(a)(2) to inform employees, contractors, or subcontractors about all of the following:
  1. The dangers of drug abuse in the workplace;
  2. Grantee's policy of maintaining a drug-free workplace;
  3. Any available counseling, rehabilitation, and employee assistance program; and,
  4. Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.
- C. Provide, as required by Government Code section 8355(a)(3), that every employee and/or subcontractor who works under this Agreement:
  1. Will receive a copy of Grantee's drug-free policy statement, and
  2. Will agree to abide by terms of Grantee's condition of employment or subcontract.

#### **ARTICLE IV**

##### **Record Retention and Inspection:**

- A. Grantee shall retain all records and documents related to services provided to clients through this Agreement for a period of no less than five (5) years from the termination of this Agreement.
  1. If any litigation, claim, negotiation audit, monitoring, inspection or other action has commenced before the expiration of the required retention period, all records must be retained until completion of the action and resolution of all issues which arise from it.
- B. All records and supporting documents shall be subject to review, audit, copying, and monitoring by representatives of HHSA or representatives the State of California, with prior written authorization by HHSA.
- C. The Grantee agrees to permit HHSA or its designee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees who might reasonably have information related to such records and inspecting and copying such books, records, accounts, and other materials that may be relevant to a matter under investigation for the purpose of determining compliance with the Chapter 5 of Part 1 of Division 31 of the Health and Safety Code and all other applicable requirements established under SB 850, HEAP program guidance document published on the website, [https://www.besh.ca.gov/hcfc/aid\\_program.html](https://www.besh.ca.gov/hcfc/aid_program.html).
- D. Grantee will take reasonable and prudent steps to safeguard confidential client information held in these records, to ensure protection of Personally Identifiable Information consistent with the terms identified herein.
  1. Grantee shall inspect any work performed hereunder to ensure that that work is being and has been performed in accordance with the applicable Federal, State, and/or local requirements, and this Agreement.
  2. HHSA and State reserve the right to inspect any work performed hereunder to ensure that the work is being and has been performed in accordance with the applicable Federal, State, and/or local requirements, and this Agreement

3. Financial Audit - HHSA and State reserve the right to perform or cause to be performed a financial audit. At HHSA or State request, the Grantee shall provide, at its own expense, a financial audit prepared by a certified public accountant.
4. If a financial audit is required by HHSA or State, the audit shall be performed by an independent certified public accountant.
5. The Grantee shall notify HHSA or State of the auditor's name and address immediately after the selection has been made. The contact for the audit shall allow access by HHSA or State to the independent auditor's working papers.
6. The Grantee is responsible for the completion of audits and all costs of preparing audits.
7. If there are audit findings the Grantee must submit a detailed response acceptable to HHSA for each audit finding within 90 days from the date of the audit finding report.

## **ARTICLE V**

### **Conflict of Interest**

Grantee is subject to State and Federal conflict of interest laws. Failure to comply with these laws, including business and financial disclosure provisions, will result in the contract being declared void. Other legal action may also be taken. Applicable statutes include, but are not limited to, Government Code section 1090 and Public Contract Code, sections 10410 and 10411, for State conflict of interest requirements.

- A. Current State Employees: No State officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest, and which is sponsored or funded by any State agency, unless the employment, activity, or enterprise is required as a condition of regular State employment. No State officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.
- B. Former State Employees: For the two-year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency. For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving State service.
- C. Employees of the Grantee: Employees of the Grantee shall comply with all applicable provisions of law pertaining to conflicts of interest, including but not limited to any applicable conflict of interest provisions of the California Political Reform Act, Government Code section 87100 et seq.

## **ARTICLE VI**

**Changes to MOU:** This MOU 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

**Fiscal Considerations:** The parties to this MOU recognize and acknowledge that County is a political subdivision of the State of California. As such, the County of El Dorado 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 shall 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 MOU to the contrary, either Party shall give notice of cancellation of this MOU 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 that does not provide funding for this MOU. Upon the effective date of such notice, this MOU 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 MOU may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

## ARTICLE VIII

**Nondiscrimination:** In completing the Project, employing personnel, or in any other respect of this Agreement, Grantee and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex (gender), sexual orientation, gender identity, gender expression, race, color, ancestry, religion, creed, national origin (including language use restriction), pregnancy, physical disability (including HIV and AIDS), mental disability, medical condition (cancer/genetic characteristics), age (over 40), genetic information, marital status, military and veteran status, and denial of medical and family care leave or pregnancy disability leave. Grantees, Contractors and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Grantee, Contractor or subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Grantee, Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

## ARTICLE IX

- **Compliance with Laws, Rules, and Regulations:** Grantee shall, at all times while this Agreement is in effect, comply with all applicable laws, ordinances, statutes, rules, and regulations governing its conduct. Probation shall comply with California landlord-tenant



law (Civil Code Section 1940, et seq.) and/or the Transitional Housing Misconduct Act (Health and Safety Code Section 50580, et seq.). Probation staff will work with property managers and housing agencies to access resources and materials that will help to confirm proper compliance with state and federal fair housing laws.

HEAP funds shall not be used for costs associated with activities in violation of any law or for any activities not consistent with the intent of the Program and the eligible uses identified in Health and Safety Code Section 50214.

#### **ARTICLE X**

**Mandated Reporter Requirements:** Grantee 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 XI**

**HIPAA Compliance:** As a condition of Grantee performing services for HHSA, Both parties agree to fully comply with all terms and conditions of HHSA's Business Associate Agreement, attached hereto as Exhibit A (incorporated herein and made reference a part hereof).

Relevant Data regarding Homelessness from selected reports will be shared by HHSA with the Continuum of Care Homeless Management Information System (HMIS). For clients deemed "at risk of homelessness," and not currently homeless, no data will be entered into HMIS. Privacy Practices are in place within the CoC, per SB 850 and HUD Federal requirements to make disclosures of protected health information in a manner that fully complies with the HIPAA privacy and security rules.

#### **ARTICLE XII**

**Termination:** Either party may terminate this MOU upon thirty (30) calendar day's written notice to the other party.

#### **ARTICLE XIII**

**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 HHSA shall be addressed as follows:

County of El Dorado  
Health and Human Services Agency  
3057 Briw Road, Suite B  
Placerville, CA 95667  
ATTN: Fiscal Unit

Notices to Probation shall be addressed as follows:

County of El Dorado, Probation Department  
3974 Durock Road, Suite 205  
Shingle Springs, CA 95682  
ATTN: Chief Probation Officer

#### **ARTICLE XIV**

**Change of Address:** In the event of a change in address for HHSA’s principal place of business, HHSA shall notify Probation in writing pursuant to the provisions contained in this MOU under the Article titled “Notice to Parties.” Said notice shall become part of this MOU upon acknowledgment in writing by the HHSA Contract Administrator, and no further amendment of the MOU shall be necessary provided that such change of address does not conflict with any other provisions of this MOU.

In the event of a change in address for Probation’s principal place of business, Probation shall notify HHSA in writing pursuant to the provisions contained in this MOU under the Article titled “Notice to Parties.” Said notice shall become part of this MOU upon acknowledgment in writing by the Probation’s Contract Administrator, and no further amendment of the MOU shall be necessary provided that such change of address does not conflict with any other provisions of this MOU.

#### **ARTICLE XV**

**Administrator:** The Health and Human Services Agency employee with responsibility for administering this MOU is Daniel Del Monte, MPA, Deputy Director, Community Services Division, or successor.

The Probation employee with responsibility for administering this MOU is Gary Romanko, Deputy Chief Probation Officer, or successor.

#### **ARTICLE XVI**

**Authorized Signatures:** The parties to this MOU represent that the undersigned individuals executing this MOU 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 XVII**

**Additional terms pursuant to HEAP grant:** Probation shall comply with all applicable conditions of the HEAP Grant #18-HEAP-00036, available at <https://www.edcgov.us/hhsaforcontractors>, and the applicable State requirements governing the use of HEAP funds. Failure to comply with these conditions may result in termination of this Agreement, pursuant to the Article in the Agreement titled, “Default, Termination, and Cancellation.” Specifically, Probation must comply with:

- A. This Agreement between HHSA and Probation shall require Probation and its Subcontractors, if any, to:

1. Ensure that all terms of this Agreement shall be included in each subcontract participating in services provided under this Agreement #3900
- B. Inspections
1. HHSA, and/or State shall inspect any work performed hereunder to ensure that the work is being and has been performed in accordance with the applicable Federal, State and/or local requirements, and this Agreement.
  2. HHSA shall require that all work that is determined based on such inspections not to confirm to the applicable requirements be corrected and to withhold payments to the Grantee until it is corrected.
- C. Litigation:
1. If any provision of the Agreement, or an underlying obligation, is held invalid by a court of competent jurisdiction, such invalidity, at the sole discretion of the State shall not affect any other provision of this Agreement and the remainder of this Agreement shall remain in full force and effect. Therefore, the provisions of this Agreement are and shall be deemed severable.
  2. The Grantee shall notify HHSA immediately of any claim or action undertaken by or against it, which affects or may affect this Agreement, County, or State, and shall take such action with respect to the claim or action as is consistent with the terms of this Agreement and the interests of the County and State.
- D. Interest earned on Grant funds:  
All proceeds from any interest bearing account established by the Grantee for the deposit of HEAP must be used for HEAP-eligible activities.
- E. Homeless Management Information System:  
If applicable, The Grantee agrees to provide Business, Consumer Services and Housing Agency (BCSH) access to Homeless Management Information System (“HMIS”) data collected and entered into the Grantee’s HMIS, upon request, and to participate in any statewide data initiative as directed by BCSH including but not limited to, a statewide data integration environment.
- F. Any housing-related activities funded with HEAP funds, including but not limited to, emergency shelter, rapid-rehousing, rental assistance, transitional housing and permanent supportive housing must be in compliance or otherwise aligned with the Core Components of Housing First, pursuant to Welfare and Institutions Code Section 8255(b).
- G. For any Contract Agreement in excess of \$100,000, the Grantee acknowledges in accordance with Public Contract Code 7110, that:
1. The Grantee recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
  2. The Grantee, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

**ARTICLE XVIII**

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

**HEALTH AND HUMAN SERVICES AGENCY**

By:   
\_\_\_\_\_  
Donald Semon,  
Director  
Health and Human Services Agency

Dated: 6-26-19

**PROBATION**

By:   
\_\_\_\_\_  
Brian Richart  
Chief Probation Officer  
Probation

Dated: 6/21/19

cm

## **Exhibit A**

### **HIPAA Business Associate Agreement**

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

#### **RECITALS**

**WHEREAS**, County and Contractor (hereinafter referred to as Business Associate (“BA”) entered into the Underlying Agreement pursuant to which BA provides services to County, and in conjunction with the provision of such services, certain Protected Health Information (“PHI”) and Electronic Protected Health Information (“EPHI”) may be disclosed to BA for the purposes of carrying out its obligations under the Underlying Agreement; and

**WHEREAS**, the County and BA intend to protect the privacy and provide for the security of PHI and EPHI disclosed to BA pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act, Pub. L. No. 104-191 of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the “HITECH” Act), and regulation promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws as may be amended from time to time; and

**WHEREAS**, County is a Covered Entity, as defined in the Privacy Rule and Security Rule, including but not limited to 45 CFR Section 160.103 ; and

**WHEREAS**, BA, when a recipient of PHI from County, is a Business Associate as defined in the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to 42 USC Section 17938 and 45 CFR Section 160.103; and

**WHEREAS**, “Individual” shall have the same meaning as the term “individual” in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.202(g);

**WHEREAS**, “Breach” shall have the meaning given to such term under the HITECH Act under 42 USC Section 17921; and

**WHEREAS**, “Unsecured PHI” shall have the meaning to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to 42 USC Section 17932(h).

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. Definitions. Unless otherwise provided in this Business Associate Agreement, capitalized terms shall have the same meanings as set forth in the Privacy Rule, as may be amended from time to time.

2. Scope of Use and Disclosure by BA of County Disclosed PHI

- A. BA shall not disclose PHI except for the purposes of performing BA's obligations under the Underlying Agreement. Further, BA shall not use PHI in any manner that would constitute a violation of the minimum necessary policies and procedures of the County, Privacy Rule, Security Rule, or the HITECH Act.
- B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Business Associate Agreement or required by law, BA may:
  - (1) Use the PHI in its possession for its proper management and administration and to fulfill any legal obligations.
  - (2) disclose the PHI in its possession to a third party for the purpose of BA's proper management and administration or to fulfill any legal responsibilities of BA, or as required by law
  - (3) Disclose PHI as necessary for BA's operations only if:
    - (a) Prior to making a disclosure to a third party, BA will obtain written assurances from such third party including:
      - (i) To hold such PHI in confidence and use or further disclose it only for the purpose of which BA disclosed it to the third party, or as required by law; and,
      - (ii) The third party will immediately notify BA of any breaches of confidentiality of PHI to extent it has obtained knowledge of such breach.
  - (4) Aggregate the PHI and/or aggregate the PHI with that of other data for the purpose of providing County with data analyses related to the Underlying Agreement, or any other purpose, financial or otherwise, as requested by County.
  - (5) Not disclose PHI disclosed to BA by County not authorized by the Underlying Agreement or this Business Associate Agreement without patient authorization or de-identification of the PHI as authorized in writing by County.
  - (6) De-identify any and all PHI of County received by BA under this Business Associate Agreement provided that the de-identification conforms to the requirements of the Privacy Rule, 45 CFR and does not preclude timely payment and/or claims processing and receipt.
- C. BA agrees that it will neither use nor disclose PHI it receives from County, or from another business associate of County, except as permitted or required by this Business Associate Agreement, or as required by law, or as otherwise permitted by law.

3. Obligations of BA. In connection with its use of PHI disclosed by County to BA, BA agrees to:

- A. Implement appropriate administrative, technical, and physical safeguards as are necessary to prevent use or disclosure of PHI other than as permitted by the Agreement that reasonably and appropriately protects the confidentiality, integrity, and availability of the PHI in accordance with 45 CFR 164.308,164.310,164.312, and 164.504(e)(2). BA shall comply with the policies, procedures, and documentation requirements of the HIPAA Security Rule.

- B. Report to County within 24 hours of any suspected or actual breach of security, intrusion, or unauthorized use or disclosure of PHI of which BA becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. BA shall take prompt corrective action to cure any such deficiencies and any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
  - C. Report to County in writing of any access, use, or disclosure of PHI not permitted by the Underlying Agreement and this Business Associate Agreement, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than five (5) days. To the extent the Breach is solely a result of BA's failure to implement reasonable and appropriate safeguards as required by law, and not due in whole or part to the acts or omissions of the County, BA may be required to reimburse the County for notifications required under 45 CFR 164.404 and CFR 164.406.
  - D. BA shall not use or disclose PHI for fundraising or marketing purposes. BA shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates. BA shall not directly or indirectly receive remuneration in exchange of PHI, except with the prior written consent of the County and as permitted by the HITECH Act, 42 USC Section 17935(d)(2); however, this prohibition shall not affect payment by County to BA for services provided pursuant to the Agreement.
4. PHI Access, Amendment, and Disclosure Accounting. BA agrees to:
- A. Provide access, at the request of County, within five (5) days, to PHI in a Designated Record Set, to the County, or to an Individual as directed by the County. If BA maintains an Electronic Health Record, BA shall provide such information in electronic format to enable County to fulfill its obligations under the HITECH Act, including, but not limited to, 42 USC Section 17935(e).
  - B. Within ten (10) days of receipt of a request from County, incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in BA's possession constitutes a Designated Record Set.
  - C. To assist the County in meeting its disclosure accounting under HIPAA:
    - (1) BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosure from Electronic Health Record for treatment, payment, or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an electronic health record and is subject to this requirement. At the minimum, the information collected shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of PHI disclosed and; (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy

of the individual's authorization, or a copy of the written request for disclosure.

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

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

5. Obligations of County.

A. County agrees that it will promptly notify BA in writing of any restrictions on the use and disclosure of PHI agreed to by County that may affect BA's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.

B. County agrees that it will promptly notify BA in writing of any changes in, or revocation of, permission by any Individual to use or disclose PHI, if such changes or revocation may affect BA's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.

C. County agrees that it will promptly notify BA in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect BA's use of disclosure of PHI.

D. County shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by County, except as may be expressly permitted by the Privacy Rule.

E. County will obtain any authorizations necessary for the use or disclosure of PHI, so that BA can perform its obligations under this Business Associate Agreement and/or the Underlying Agreement.

6. Term and Termination.

A. Term. This Business Associate Agreement shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement, as provided therein when all PHI provided by the County to BA, or created or received by BA on behalf of the County, is destroyed or returned to the County, or, or if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

B. Termination for Cause. Upon the County's knowledge of a material breach by the BA, the County shall either:

(1) Provide an opportunity for the BA to cure the breach or end the violation and terminate this Agreement if the BA does not cure the breach or end the violation within the time specified by the County.

(2) Immediately terminate this Agreement if the BA has breached a material term of this Agreement and cure is not possible; or

(3) If neither termination nor cures are feasible, the County shall report the violation to the Secretary.



- C. Effect of Termination.
- (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, the BA shall, at the option of County, return or destroy all PHI that BA or its agents or subcontractors still maintain in any form, and shall retain no copies of such PHI.
  - (2) In the event that the County determines that returning or destroying the PHI is infeasible, BA shall provide to the County notification of the conditions that make return or destruction infeasible, and BA shall extend the protections of this Agreement to such PHI to those purposes that make the return or destruction infeasible, for so long as the BA maintains such PHI. If County elects destruction of the PHI, BA shall certify in writing to County that such PHI has been destroyed.

7. Indemnity

- A. BA shall indemnify and hold harmless all Agencies, Districts, Special Districts and Departments of the County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (collectively "County") from any liability whatsoever, based or asserted upon any services of BA, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to BA's performance under this Business Associate Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever including fines, penalties or any other costs and resulting from any reason whatsoever to the extent arising from the performance of BA, its officers, agents, employees, subcontractors, agents or representatives under this Business Associate Agreement. BA shall defend, at its sole expense, all costs and fees including but not limited to attorney fees, cost of investigation, defense and settlements or awards against the County in any claim or action based upon such alleged acts or omissions.
- B. With respect to any action or claim subject to indemnification herein by BA, BA shall, at its sole cost, have the right to use counsel of its choice, subject to the approval of County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes BA's indemnification of County as set forth herein. BA's obligation to defend, indemnify and hold harmless County shall be subject to County having given BA written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at BA's expense, for the defense or settlement thereof. BA's obligation hereunder shall be satisfied when BA has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.
- C. The specified insurance limits required in the Underlying Agreement of this Business Associate Agreement shall in no way limit or circumscribe BA's obligations to indemnify and hold harmless the County herein from third party claims arising from the issues of this Business Associate Agreement.

- D. In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code Section 2782. Such interpretation shall not relieve the BA from indemnifying the County to the fullest extent allowed by law.
  - E. In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Business Associate Agreement, this indemnification shall only apply to the subject issues included within this Business Associate Agreement.
8. Amendment. The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for County to comply with the Privacy Rule, 45 CFR, and HIPAA generally.
  9. Survival. The respective rights and obligations of this Business Associate Agreement shall survive the termination or expiration of this Business Associate Agreement.
  10. Regulatory References. A reference in this Business Associate Agreement to a section in the Privacy Rule means the section as in effect or as amended.
  11. Conflicts. Any ambiguity in this Business Associate Agreement and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, 45 CFR, and HIPAA generally.