

MEMORANDUM OF UNDERSTANDING
Between
COUNTY OF SANTA BARBARA
And
CAL POLY CORPORATION, SAN LUIS OBISPO

This Memorandum of Understanding (MOU) is entered into by and between the County of Santa Barbara, a governmental subdivision of the State of California, through its Public Health Department (County), and Board of Trustees of the California State University through its campus Cal Poly Corporation, San Luis Obispo (Contractor), individually referred to as Party or collectively as Parties. This MOU shall set forth the terms in which County and Contractor intend to work together to promote and study cardiovascular health among pregnant women and infants in the County of Santa Barbara.

Background

The National Institute of Health (NIH) has funded the Cal Poly Corporation through its Cal Poly Center for Health Research to promote and study cardiovascular health among pregnant women and infants. This is a seven-year research project involving more than 500 participants in California and Rhode Island enrolled in programs with evidence-based home health visitation services, such as the nonprofit Healthy Families of America and Nurse Family Partnership.

The grant is part of the NIH Early Intervention to Promote Cardiovascular Health of Mothers and Children (ENRICH) program to promote heart health and address health disparities in low-income pregnant and postpartum people and their infants living in low-resource communities.

The research will entail program development, implementation and evaluation of a new program designed to promote cardiac health in women and children. In collaboration with local home visiting partners, the program seeks to reduce such heart disease risk factors as obesity, sedentary lifestyles, smoking, poor diets, high blood pressure, and high glucose.

Cal Poly faculty, students, and staff from diverse disciplines are collaborating with counterparts at Brown University, a private research institution in Providence, Rhode Island, and other centers and home visiting programs to develop and evaluate the effectiveness of the heart health program relative to usual home visiting control group. The research team expects to develop and implement strategies around healthy eating, activity, obesity prevention, and other cardiovascular health behaviors.

The objective of this research is to facilitate the prevention and treatment of cardiovascular health among pregnant and postpartum people and children.

Scope of Work

The Research project ("Project") entitled "ENRICH" as described in Attachment A, as attached hereto and incorporated herein by reference, shall be performed on a reasonable efforts basis.

TERMS AND CONDITIONS:

1. TERM

The term of this MOU shall become effective upon execution and terminate June 1, 2030 unless earlier terminated or extended in writing executed by both County and Contractor.

2. COMPENSATION

No funding is associated with this MOU.

3. INDEPENDENT CONTRACTOR

It is mutually understood and agreed that each Party (including any and all of its officers, agents, and employees), under this MOU is an independent contractor as to the other Party. Furthermore, neither Party shall have no right to control, supervise, or direct the manner or method by which the other Party shall perform its work or function under this MOU. Each Party understands and acknowledges that it shall not be entitled to any of the benefits of the other Party employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. Each Party shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits.

4. MUTUAL HOLD HARMLESS

Contractor shall defend, indemnify and hold harmless the County, its officials, officers, employees and agents from and against any and all liability, loss, expense, attorney's fees, or claims for injury or damages arising out of Contractor's performance of this MOU but only in proportion to and to the extent such liability, loss, expense, attorney's fees or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of Contractor, its officers, agents or employees.

The County shall defend, indemnify and hold harmless Contractor, its officers, employees and agents from and against any and all liability, loss, expense, attorney's fees, or claims for injury or damages arising out of County's performance of this MOU, but only in proportion to and to the extent such liability, loss, expense, attorney's fees or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the County, its officers, agents or employees.

5. INSURANCE

Each party shall be responsible for its own actions or omissions and those of its employees. Each party shall be individually responsible for providing insurance coverage in accordance with its existing employee and volunteer policies and practices. Each party shall maintain its own equipment in safe and operational condition.

6. ALTERATION OF TERMS

The body of this MOU fully expresses all understandings of the parties concerning all matters covered and shall constitute the total MOU. No addition to, or alteration of, the terms of this MOU whether by written or verbal understanding of the parties, their officers, agents, or employees shall be valid unless made in the form of written amendment to this MOU which is formally approved and executed by all Parties and by no other means. Each Party waives their future right to claim,

contest or assert that this MOU was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

7. NOTICES

All notices, claims, correspondence, reports and/or statements authorized or required by this MOU shall be addressed as follows:

County: Santa Barbara County
Kelley Barragan
Director – Maternal Child & Adolescent Health Program
Health Agency
County of Santa Barbara
345 Camino Del Remedio #316
Santa Barbara, CA 93110
Email: kbarragan@sbcphd.org
300 N. San Antonio Road, Building 1
Santa Barbara, CA 93110
Phone: 805-681-5476

Contractor:
Name: Darya Veach
Title: Director, Sponsored Programs
Email: sponprog@calpoly.edu
Phone: 805-756-1123

Any notice or consent required or permitted to be given under this MOU shall be given to the respective parties in writing, by personal delivery, or with postage prepaid by first class mail, registered or certified mail, express courier service, or email, as above, or at such other address or to such other person that the parties may from time to time designate in accordance with this Notices section. If sent by first class mail, notices and consents under this section shall be deemed to be received five (5) days following their deposit in the U.S. mail. This Notices section shall not be construed as meaning that either party agrees to service of process except as required by applicable law.

8. DISPUTE RESOLUTION

Any dispute resolution action arising out of this MOU shall be resolved in accordance with the laws of the State of California.

9. APPLICABLE LAW AND FORUM

This MOU shall be construed and interpreted according to California law. Any litigation regarding this MOU or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

10. TERMINATION

1. Termination without cause.
 - i. This MOU may be terminated by either Party without cause upon thirty (30) days

- written notice.
2. Termination with cause.
 - i. This MOU may be terminated immediately by either Party if the terms of this MOU are violated in any manner.
 3. Other grounds for termination.
 - i. In the event that any other MOU or Agreement, as being related to or necessary for the performance of this MOU, terminates or expires, this MOU may be terminated upon the effective date of the termination of that MOU, even if such termination shall occur with less than thirty (30) days written notice.

11. PUBLICITY

Contractor will not use the name or logo, or any variation thereof, of County, or its employees or subcontractor of County, in any publicity, advertising, news releases, or promotional materials without prior written approval by County. County shall not use the name or logo, or any variation thereof, of Contractor, nor any of its employees, or other persons or entities affiliated with the project, in any publicity, advertising, news release, or promotional materials without the prior written approval of the authorized representative of Contractor. The foregoing shall not apply to Contractor's on-campus or internal County newsletters and reports.

12. NON-DISCLOSURE

Protected Health Information obtained in the course of providing services under this MOU shall be confidential and Contractor shall comply and ensure Contractor's representatives and staff comply with state and federal requirements regarding confidentiality of patient information (including but not limited to Civil Code Section 56 et seq., the Confidentiality of Medical Information Act, Title 45, Code of Federal Regulations, section 205.50 for Medi-Cal eligible patients, and the Health Insurance Portability and Accountability Act ("HIPAA") and its implementing privacy and security regulations at 45 CFR Parts 160 and 164). Contractor shall comply and ensure representatives and staff comply with all applicable patients' rights regulations and statutes. This provision shall survive the termination, expiration or cancellation of this MOU.

Attached to this MOU as Attachment B and incorporated by reference, is a Business Associate MOU as required by the HIPAA.

13. NO DELEGATION OR ASSIGNMENT

County and Contractor shall not delegate, transfer or assign its duties or rights under this MOU, either in whole or in part, directly or indirectly, by acquisition, asset sale, merger, change of control, operation of law or otherwise, without the prior written consent of the other party and any prohibited delegation or assignment shall render the contract in breach. Upon consent to any delegation, transfer or assignment, the parties will enter into an amendment to reflect the transfer and successor to Contractor or County.

14. SIGNATURE AUTHORITY

Each Party has the full power and authority to enter into and perform this MOU, and the person signing this MOU on behalf of each party has been properly authorized and empowered to enter into this MOU. This MOU may be executed electronically, and an electronic copy or other facsimile

of this MOU shall be treated as an original.

15. NO THIRD PARTIES

There are no third-party intended beneficiaries of this MOU.

16. NO WAIVER OF DEFAULT

No delay or omission of either Party to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this MOU may be exercised from time to time and as often as may be deemed expedient.

17. DEBARMENT AND SUSPENSION

Each Party certifies to the other Party that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or county government contracts. Contractor certifies that it shall not contract with a subcontractor to aid in the performance of this MOU that is so debarred or suspended.

18. TAXES

Each Party shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work under this MOU and shall make any and all payroll deductions required by law. Neither Party will be responsible for paying any taxes on the other Party's behalf. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

19. CONFLICT OF INTEREST

Each Party covenants that it presently has no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the performance of services required to be performed under this MOU. Each Party further covenants that in the performance of this MOU, no person having any such interest shall be employed by the Party. Each Party must promptly disclose to the other Party, in writing, any potential conflict of interest. Each Party retains the right to waive a conflict of interest disclosed if it determines it to be immaterial, and such waiver is only effective if provided in writing.

20. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

Each Party shall be the owner of the following items incidental to this MOU upon production, whether or not completed: all data collected, all documents of any type whatsoever, all photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials, and any material necessary for the practical use of such items, from the time of collection and/or production whether or not performance under this MOU is completed or terminated prior to completion. Neither Party shall release any of such items to other parties except after prior written approval.

21. COUNTY PROPERTY AND INFORMATION

All of each Party's property, documents, and information provided use in connection with the services shall remain that Party's property. Neither Party shall not disseminate any of the other Party's property, documents, or information without prior written consent.

22. NONDISCRIMINATION

Each Party hereby agrees that COUNTY's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this MOU and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and each Party agrees to comply with said ordinance.

23. NONEXCLUSIVE MOU

Each Party understands that this is not an exclusive MOU and that each Party shall have the right to negotiate with and enter into contracts with others providing the same or similar services.

24. SECTION HEADINGS

The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

25. SEVERABILITY

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this MOU shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

26. REMEDIES NOT EXCLUSIVE

No remedy herein conferred upon or reserved is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

27. SUCCESSORS AND ASSIGNS

All representations, covenants and warranties set forth in this MOU, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

28. COMPLIANCE WITH LAW

Each Party shall, at its sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this MOU.

29. EXECUTION OF COUNTERPARTS

This MOU may be executed in any number of counterparts and each of such counterparts shall for

all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

30. SURVIVAL

All provisions of this MOU which by their nature are intended to survive the termination or expiration of this MOU shall survive such termination or expiration.

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IN WITNESS WHEREOF, the parties hereto have executed this MOU on the date of the last signature below.

COUNTY OF SANTA BARBARA

ATTEST:

Mona Miyasato
County Executive Officer
Clerk of the Board

COUNTY OF SANTA BARBARA:

Steve Lavagnino

By: _____
Deputy Clerk

By: _____
Chair, Board of Supervisors

Date: _____

RECOMMENDED FOR APPROVAL:

Mouhanad Hammami, Director
Public Health Department

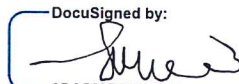
By: 
4F9DA0211228448
Department Head

APPROVED AS TO FORM:

Rachel Van Mullem
County Counsel

APPROVED AS TO FORM:


Greg Milligan, ARM
Risk Manager

By: 
2DC569DD45994B4...
Deputy County Counsel

By: 
05F555F00269466...
Risk Management

IN WITNESS WHEREOF, the parties hereto have executed this MOU on the date of the last signature above written.

Cal Poly Corporation, San Luis Obispo
Darya Veach, Director, Sponsored Programs

Signature: 
Darya Veach (May 21, 2024 21:13 PDT)

Date: 5/21/2024

ATTACHMENT A
ENRICH
National Institute of Health (NIH) Study

As used in this Attachment A, terms such as we/us/our/ours refer to Contractor and not the County.

The goal of ENRICH is to determine the effectiveness of combining pre- and postnatal lifestyle interventions with established and sustained evidence-based home visiting programs, Healthy Families of America and Nurse Family Partnership, to reduce cardiovascular disease risk factors in Hispanic and non-Hispanic birthing persons and children. During the initial 2-year phase, we will work with our home visiting partners in the development of a high-impact heart health program. During the subsequent 5-year phase, we will conduct a Hybrid Type 1 effectiveness-implementation trial in which we recruit 550 perinatal women (275 in CA and 275 in RI) who are randomized to receive a usual home visiting program or usual home visiting with heart health content integrated into the curriculum.

ENRICH is important for public health for many reasons:

- The program has outstanding potential for reducing cardiovascular disease risk factors and interrupting the intergenerational transmission of obesity and cardiovascular disease risk factors in socially disadvantaged, Hispanic and non-Hispanic populations at high risk of cardiovascular disease morbidity and mortality.
- Our model of enhancing home visiting is very likely to have a sustained impact because it is part of an established home visiting infrastructure that has been in place for several years, ensuring sustainability of the implementation context.
- The approach has great potential to reduce the healthcare sector and societal health costs associated with cardiovascular disease.

Overall Procedures

1. Cal Poly representatives or Public Health staff will provide clients with program brochures related to the ENRICH program.
2. If a Public Health client requests more information regarding ENRICH, Cal Poly or Public Health staff will provide the client a “Permission to Contact” form for voluntary client signature. Signed forms will be provided to Cal Poly representatives who will contact the client to provide more detailed information about the program. Forms may be completed using paper and pencil method or electronically.
3. If a Public Health client opts to enroll in the Cal Poly ENRICH, Cal Poly representatives will conduct study-related activities in accordance with institutionally approved protocols, including screening, consenting, and assessment activities. Public Health staff will integrate brief intervention modules into home visiting activities, as feasible.
4. For clients who have provided informed consent and volunteered to participate in ENRICH, Public Health may provide information about the client’s attendance or contact information changes or other information to Cal Poly ENRICH staff in accordance with institutionally approved protocols.
5. When feasible, home visitors will attend training sessions describing the ENRICH heart health curriculum and provide the curriculum to their clients, as they deem appropriate.
6. Cal Poly will answer client questions related to ENRICH and refer clients to Public Health staff

if a client's questions are related to Public Health matters and care.

Cal Poly representatives will abide by the following procedures:

1. Coordinate with home visiting personnel regarding scheduled visits by Cal Poly personnel to clinics for training, recruitment, or other purposes.
2. Inform Public Health of a client's participation in the study.
3. Provide home visitors with access to the ENRICH curriculum to deliver to their clients who have enrolled in the ENRICH intervention.
4. Provide home visitors with opportunities to attend training sessions describing the ENRICH heart health curriculum.
5. For clients who have provided informed consent and volunteered to participate in ENRICH, Cal Poly may provide a limited scope of information about the client's measures to Public Health staff in accordance with institutionally approved protocols.
6. Maintain strict confidentiality of all participant records and ensure all HIPAA requirements are met throughout research study procedures.
7. Complete the free County HIPAA Initial and annual Refresher trainings in addition to any of the Contractor's required privacy and security trainings.

Public Health representatives will abide by the following procedures:

1. Offer (and not require) evidence-based home visiting clients the opportunity to participate in ENRICH.
2. Public Health may provide information about a client (e.g., contact information changes, attendance, or other information) to Cal Poly ENRICH staff in accordance with institutionally approved protocols and written client consent.
3. When feasible, attend home visitor training sessions describing the ENRICH heart health curriculum and provide curriculum to consenting clients.

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Attachment B
HIPAA Business Associate Exhibit

I. Recitals.

A. This MOU has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act (“HIPAA”) and its implementing privacy and security regulations at 45 CFR Parts 160 and 164 (“the HIPAA regulations”).

B. The County of Santa Barbara (“County”) wishes to, or may, disclose to Cal Poly Corporation, San Luis Obispo (“Business Associate”) certain information pursuant to the terms of this MOU, some of which may constitute Protected Health Information (“PHI”) pursuant to HIPAA regulations.

C. “Protected Health Information” or “PHI” means any information, whether oral or recorded in any form or medium that relates to the past, present, or future physical or mental condition of an individual, the provision of health or dental care to an individual, or the past, present, or future payment for the provision of health or dental care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI shall have the meaning given to such term under HIPAA and HIPAA regulations, as the same may be amended from time to time.

D. “Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI, or confidential data that is essential to the ongoing operation of the Business Associate’s organization and intended for internal use; or interference with system operations in an information system.

E. As set forth in this MOU, Cal Poly Corporation, San Luis Obispo. (“Contractor”) is the Business Associate of County that provides services, arranges, performs or assists in the performance of functions or activities on behalf of County and creates, receives, maintains, transmits, uses or discloses PHI.

F. County and Business Associate desire to protect the privacy and provide for the security of PHI created, received, maintained, transmitted, used or disclosed pursuant to this MOU, in compliance with HIPAA and HIPAA regulations.

G. The purpose of this Exhibit is to satisfy certain standards and requirements of HIPAA and the HIPAA regulations, and other applicable laws.

H. The terms used in this Exhibit, but not otherwise defined, shall have the same meanings as those terms are defined in the HIPAA regulations.

In exchanging information pursuant to this MOU, the parties agree as follows:

II. Permitted Uses and Disclosures of PHI by Business Associate.

A. ***Permitted Uses and Disclosures.*** Except as otherwise indicated in this Exhibit, Business Associate may use or disclose PHI only to perform functions, activities or services specified in this MOU, for, or on behalf of County, provided that such use or disclosure would not violate the HIPAA regulations, if done by County.

B. ***Specific Use and Disclosure Provisions.*** Except as otherwise indicated in this Exhibit, Business Associate may:

1) ***Use and Disclose for Management and Administration.*** Use and disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are required by law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.

III. Responsibilities of Business Associate.

Business Associate agrees:

A. ***Nondisclosure.*** Not to use or disclose Protected Health Information (PHI) other than as permitted or required by this MOU or as required by law.

B. ***Safeguards.*** To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI, including electronic PHI, that it creates, receives, maintains, uses or transmits on behalf of County; and to prevent use or disclosure of PHI other than as provided for by this MOU. Business Associate shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities, and which incorporates the requirements of section C, Security, below. Business Associate will provide County with its current and updated policies.

C. ***Security.*** The Business Associate shall take any and all steps necessary to ensure the continuous security of all computerized data systems containing County PHI. These steps shall include, at a minimum:

1) Complying with all of the data system security precautions listed in the Business Associate Data Security Standards set forth in Attachment 1 to this Exhibit;

2) Security Officer. If an incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notification shall be provided by calling the County ITSD Help Desk. Business Associate shall take:

i. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and

ii. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.

3) **Investigation of Breach.** To immediately investigate such security incident, breach, or unauthorized use or disclosure of PHI or confidential data. *Within twenty-four (24) hours of the discovery*, to notify the County:

i. What data elements were involved, and the extent of the data involved in the breach;

ii. A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data;

iii. A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized;

iv. A description of the probable causes of the improper use or disclosure; and

v. Whether Civil Code sections 1798.29 or 1798.82 or any other federal or state laws requiring individual notifications of breaches are triggered.

4) **Written Report.** To provide a written report of the investigation to the County under HIPAA within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall include, but not be limited to, the information specified above, as well as a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure.

5) **Notification of Individuals.** To notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and to pay any costs of such notifications, as well as any costs associated with the breach. The County shall approve the time, manner and content of any such notifications.

6) **County Contact Information.** To direct communications to the above referenced County staff, Business Associate shall initiate contact as indicated herein. County reserves the right to make changes to the contact information below by giving written notice to the Business Associate. Said changes shall not require an amendment to this Exhibit or the MOU to which it is incorporated.

County of Santa Barbara
Administration
Attn: HIPAA Compliance Officer
Pasi Puentes
300 N. San Antonio Road, Building 1
Santa Barbara, CA 93110
Email: PPuentes@sbcphd.org
Phone: 805-681-5397

D. ***Employee Training and Discipline.*** To train and use reasonable measures to ensure compliance with the requirements of this Exhibit by employees who assist in the performance of functions or activities on behalf of County under this MOU and use or disclose PHI; and discipline such employees who intentionally violate any provisions of this Exhibit, including by termination of employment. In complying with the provisions of this section K, Business Associate shall observe the following requirements:

1) Business Associate shall provide information privacy and security training, at least annually, at its own expense, to all its employees who assist in the performance of functions or activities on behalf of County under this MOU and use or disclose PHI.

2) Business Associate shall require each employee who receives information privacy and security training to sign a certification, indicating the employee's name and the date on which the training was completed.

3) Business Associate shall retain each employee's written certifications for County inspection for a period of six (6) years following contract termination.

IV. Obligations of County.

County agrees to:

A. ***Notice of Privacy Practices.*** Provide Business Associate with applicable and relevant Notice(s) of Privacy Practices that County HIPAA-covered healthcare components produce in accordance with 45 CFR 164.520, as well as any changes to such notice(s).

B. ***Permission by Individuals for Use and Disclosure of PHI.*** Provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures.

C. ***Notification of Restrictions.*** Notify the Business Associate of any restriction to the use or disclosure of PHI that County has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.

D. ***Requests Conflicting with HIPAA Rules.*** Not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA regulations if done by County.

V. Audits, Inspection and Enforcement.

From time to time, County may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this MOU and this Exhibit. Business Associate shall promptly remedy any violation of any provision of this Exhibit and shall certify the same to the County Privacy Officer or the County Chief Information Security Officer in writing. The fact that County inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Exhibit, nor does County's:

A. Failure to detect or

B. Detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices constitute acceptance of such practice or a waiver of County's enforcement rights under this MOU and this Exhibit.

VI. Termination.

A. ***Termination for Cause.*** Upon County's knowledge of a material breach of this Exhibit by Business Associate, County shall:

1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this MOU if Business Associate does not cure the breach or end the violation within the time specified by County;

2) Immediately terminate this MOU if Business Associate has breached a material term of this Exhibit and cure is not possible; or

3) If neither cure nor termination is feasible, report the violation to the Secretary of the U.S. Department of Health and Human Services.

B. ***Judicial or Administrative Proceedings.*** Business Associate will notify County if it is named as a defendant in a criminal proceeding for a violation of HIPAA. County may terminate this MOU if Business Associate is found guilty of a criminal violation of HIPAA. County may terminate this MOU if a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate is a party or has been joined.

C. ***Effect of Termination.*** Upon termination or expiration of this MOU for any reason, Business Associate shall promptly return or destroy all PHI received from County (or created or received by Business Associate on behalf of County) that Business Associate still maintains in any form, and shall retain no copies of such PHI or, if return or destruction is not feasible, shall continue to extend the protections of this Exhibit to such information, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

VII. Miscellaneous Provisions.

A. ***Disclaimer.*** County makes no warranty or representation that compliance by Business Associate with this Exhibit, HIPAA or the HIPAA regulations will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

B. ***Amendment.*** The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Exhibit may

be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon County's request, Business Associate agrees to promptly enter into negotiations with County concerning an amendment to this Exhibit embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA regulations or other applicable laws. County may terminate this MOU upon thirty (30) days written notice in the event:

1) Business Associate does not promptly enter into negotiations to amend this Exhibit when requested by County pursuant to this Section or

2) Business Associate does not enter into an amendment providing assurances regarding the safeguarding and security of PHI that County, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.

C. ***Assistance in Litigation or Administrative Proceedings.*** Business Associate shall make itself and any subcontractors, employees, or agents assisting Business Associate in the performance of its obligations under this MOU, available to County at no cost to County to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against County, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inactions or actions by the Business Associate, except where Business Associate or its subcontractor, employee, or agent is a named adverse party.

D. ***No Third-Party Beneficiaries.*** Nothing express or implied in the terms and conditions of this Exhibit is intended to confer, nor shall anything herein confer, upon any person other than County or Business Associate and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.

E. ***Interpretation.*** The terms and conditions in this Exhibit shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA regulations and applicable state laws. The parties agree that any ambiguity in the terms and conditions of this Exhibit shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.

F. ***Regulatory References.*** A reference in the terms and conditions of this Exhibit to a section in the HIPAA regulations means the section as in effect or as amended.

G. ***Survival.*** The respective rights and obligations of Business Associate under Section VII. C of this Exhibit shall survive the termination or expiration of this MOU.

H. ***No Waiver of Obligations.*** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

Attachment 1
Business Associate Data Security Standards

I. General Security Controls.

A. **Confidentiality Statement.** All persons that will be working with County PHI must sign a confidentiality statement. The statement must include at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to County PHI. The statement must be renewed annually. The Business Associate shall retain each person's written confidentiality statement for County inspection for a period of six (6) years following contract termination.

B. **Background Check.** Before a member of the Business Associate's workforce may access County PHI, Business Associate must conduct a thorough background check of that worker and evaluate the results to assure that there is no indication that the worker may present a risk for theft of confidential data. The Business Associate shall retain each workforce member's background check documentation for a period of three (3) years following contract termination.

C. **Workstation/Laptop Encryption.** All workstations and laptops that process and/or store County PHI must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher. The encryption solution must be full disk unless approved by the County Information Security Office.

D. **Server Security.** Servers containing unencrypted County PHI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.

E. **Minimum Necessary.** Only the minimum necessary amount of County PHI required to perform necessary business functions may be copied, downloaded, or exported.

F. **Removable Media Devices.** All electronic files that contain County PHI data must be encrypted when stored on any removable media or portable device using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher.

G. **Antivirus Software.** All workstations, laptops and other systems that process and/or store County PHI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.

H. **Patch Management.** All workstations, laptops and other systems that process and/or store County PHI must have security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within thirty (30) days of vendor release.

I. **User IDs and Password Controls.** All users must be issued a unique user name for accessing County PHI. Username must be promptly disabled, deleted, or the password changed

upon the transfer or termination of an employee with knowledge of the password. Passwords are not to be shared. Must be at least eight characters. Must be a non-dictionary word. Must not be stored in readable format on the computer. Must be changed every sixty (60) days. Must be changed if revealed or compromised. Must be composed of characters from at least three of the following four groups from the standard keyboard:

- Upper case letters (A-Z)
- Lower case letters (a-z)
- Arabic numerals (0-9)
- Non-alphanumeric characters (punctuation symbols)

J. ***Data Sanitization.*** All County PHI must be sanitized using NIST Special Publication 800-88 standard methods for data sanitization when the County PSCI is no longer needed.

II. System Security Controls.

A. ***System Timeout.*** The system must provide an automatic timeout, requiring re-authentication of the user session after no more than twenty (20) minutes of inactivity.

B. ***Warning Banners.*** All systems containing County PHI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only. User must be directed to log off the system if they do not agree with these requirements.

C. ***System Logging.*** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for County PHI, or which alters County PHI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If County PHI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least six (6) years after occurrence.

D. ***Access Controls.*** The system must use role based access controls for all user authentications, enforcing the principle of least privilege.

E. ***Transmission Encryption.*** All data transmissions of County PHI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher. Encryption can be end to end at the network level, or the data files containing County PHI can be encrypted. This requirement pertains to any type of County PHI in motion such as website access, file transfer, and E-Mail.

F. ***Intrusion Detection.*** All systems involved in accessing, holding, transporting, and protecting County PHI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

III. Audit Controls.

A. ***System Security Review.*** All systems processing and/or storing County PHI must have at least an annual system risk assessment/security review which provides assurance that

administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews shall include vulnerability scanning tools.

B. **Log Reviews.** All systems processing and/or storing County PHI must have a routine procedure in place to review system logs for unauthorized access.

C. **Change Control.** All systems processing and/or storing County PHI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

IV. **Business Continuity / Disaster Recovery Controls.**

A. **Disaster Recovery.** Business Associate must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic County PHI in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this MOU for more than twenty-four (24) hours.

B. **Data Backup Plan.** Business Associate must have established documented procedures to back-up County PHI to maintain retrievable exact copies of County PHI. The plan must include a regular schedule for making back-ups, storing back-ups offsite, an inventory of back-up media, and the amount of time to restore County PHI should it be lost. At a minimum, the schedule must be a weekly full back-up and monthly offsite storage of County data.

V. **Paper Document Controls.**

A. **Supervision of Data.** County PHI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. County PHI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.

B. **Escorting Visitors.** Visitors to areas where County PHI is contained shall be escorted and County Protected Health Information shall be kept out of sight while visitors are in the area.

C. **Confidential Destruction.** County PHI must be disposed of through confidential means, using NIST Special Publication 800-88 standard methods for data sanitization when the County PSCI is no longer needed.

D. **Removal of Data.** County PHI must not be removed from the premises of the Business Associate except with express written permission of County.

E. **Faxing.** Faxes containing County PHI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending.

F. ***Mailing.*** County PHI shall only be mailed using secure methods. Large volume mailings of County Protected Health Information shall be by a secure, bonded courier with signature required on receipt. Disks and other transportable media sent through the mail must be encrypted with a County approved solution, such as a solution using a vendor product specified on the CSSI.