



County of Santa Barbara

BOARD OF SUPERVISORS

Minute Order

April 19, 2022

Present: 4 - Supervisor Williams, Supervisor Hart, Supervisor Hartmann, and Supervisor Lavagnino
Absent 1 - Supervisor Nelson

BEHAVIORAL WELLNESS DEPARTMENT

File Reference No. 22-00315

RE: Consider recommendations regarding a Behavioral Wellness service agreement with Resource Development Associates, Inc. for Fiscal Year (FY) 2021-2023, as follows:

a) Approve, ratify, and authorize the Chair to execute an Agreement for Services of Independent Contractor with Resource Development Associates, Inc. (not a local vendor), to provide consultation, data analysis, and grant evaluation services for the period of May 20, 2020 through May 15, 2023, for a total Maximum Contract Amount not to exceed \$300,000.00, inclusive of \$200,000.00 under Purchase Orders CN23714, CN24419, and all amendments thereto (CN23714 CO1, CO412, CO668, CO862), but which otherwise cancels, nullifies, and supersedes Purchase Orders CN23714, CN24419, and all amendments thereto;

b) Delegate to the Director of the Department of Behavioral Wellness or designee the authority to suspend, delay, or interrupt the services under the Agreement for convenience and make immaterial changes to the Agreement per Sections 20 and 26 of the Agreement, respectively, without altering the Maximum Contract Amount and without requiring the Board's approval of an amendment of the Agreement, subject to the Board's ability to rescind this delegated authority at any time; and

c) Determine that the above actions are government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment and is therefore not a project under the California Environmental Quality Act (CEQA) pursuant to section 15378(b)(4) of the CEQA Guidelines.

A motion was made by Supervisor Hart, seconded by Supervisor Lavagnino, that this matter be acted on as follows:

a) **Approved, ratified and authorized; Chair to execute;**

b) **Delegated; and**

c) **Approved.**

The motion carried by the following vote:

Ayes: 4 - Supervisor Williams, Supervisor Hart, Supervisor Hartmann, and Supervisor Lavagnino



County of Santa Barbara BOARD OF SUPERVISORS

Minute Order

April 19, 2022

Absent: 1 - Supervisor Nelson



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Behavioral Wellness
Department No.: 043
For Agenda Of: April 19, 2022
Placement: Administrative
Estimated Time: N/A
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Antonette Navarro, LMFT, Director
Director(s) Behavioral Wellness, (805) 681-5220
Contact Info: Chris Ribeiro, Chief Financial Officer
Department of Behavioral Wellness (805) 681-5220
SUBJECT: Behavioral Wellness – Resource Development Associates, Inc. Service Agreement
FY 2021 - 2023

DS
AN

County Counsel Concurrence:

As to form: Yes

Auditor-Controller Concurrence:

As to form: Yes

Other Concurrence: Risk Management

As to form: Yes

Recommended Actions:

That the Board of Supervisors:

- A. Approve, ratify, and authorize the Chair to execute an Agreement for Services of Independent Contractor with **Resource Development Associates, Inc.** (not a local vendor), to provide consultation, data analysis, and grant evaluation services for the period of May 20, 2020 through May 15, 2023, for total Maximum Contract Amount not to exceed **\$300,000**, inclusive of \$200,000 under Purchase Orders CN23714, CN24419, and all amendments thereto (CN23714 CO1, CO412, CO668, CO862), but which otherwise cancels, nullifies, and supersedes Purchase Orders CN23714, CN24419, and all amendments thereto;
- B. Delegate to the Director of the Department of Behavioral Wellness or designee the authority to suspend, delay, or interrupt the services under the Agreement for convenience and make immaterial changes to the Agreement per Sections 20 and 26 of the Agreement, respectively, without altering the Maximum Contract Amount and without requiring the Board’s approval of an amendment of the Agreement, subject to the Board’s ability to rescind this delegated authority at any time; and
- C. Determine that the above actions are government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment and is therefore not a project under the

California Environmental Quality Act (CEQA) pursuant to section 15378(b)(4) of the CEQA Guidelines.

Summary Text:

The above-referenced item is on the agenda to request approval of an Agreement for Services of Independent Contractor with Resource Development Associates, Inc. (RDA) for the provision of consultation, data analysis, and grant evaluation services. The Department of Behavioral Wellness (BWell) currently contracts with RDA under a Purchase Order (No. CN24419). BWell is requesting to enter into this agreement for a total contract maximum not to exceed \$300,000, inclusive of \$200,000 under Purchase Orders CN23714, CN24419, and all amendments thereto (CN23714 CO1, CO412, CO668, CO862), but which otherwise cancels, nullifies, and supersedes Purchase Orders CN23714, CN24419, and all amendments thereto. Approval of the recommended actions will allow RDA to continue providing consultation, data analysis, and grant evaluation services to the County.

Background:

California voters approved Proposition (Prop) 47 in November 2014 with the goal of lowering incarceration rates across the State by reclassifying certain classes of low-level, non-violent felonies as misdemeanors for individuals who do not have prior convictions for serious offenses. Due to the expected decrease in the State's prison population, the Legislative Analyst's Office estimated annual State correctional savings following implementation of the legislation to be between \$150-200 million. Prop 47 requires these savings to be placed in the Safe Neighborhoods and Schools Fund and mandates the Board of State and Community Corrections (BSCC) to allocate 65% of the Fund for mental health and substance use disorder (SUD) treatment that is aimed at reducing recidivism, 25% for crime prevention and to support programs in schools, and 10% for trauma recovery services for crime victims.

Through the BSCC's Cohort II grant process, Santa Barbara County in collaboration with stakeholders would develop and implement the Crisis Intervention, Diversion and Support (CIDS) Program. The Public Defender's Office is the lead grantee, with program partners including the Behavioral Wellness Department, Sheriff's Office, District Attorney's Office, and local community-based organizations (Good Samaritan Shelter, Family Service Agency). CIDS leverages the promise of Prop 47 by diverting individuals with a history of serious mental illness (SMI) and/or SUD from the criminal justice system to trauma-informed crisis stabilization and comprehensive mental health and SUD wraparound services. The program aims to reduce criminal justice involvement and help ensure adults with SMI/SUD who come into contact with law enforcement are adequately supported.

On February 4, 2020 the Board of Supervisors authorized the Public Defender to execute the multi-year grant agreement with the BSCC accepting \$5,988,511 for the County of Santa Barbara to provide crisis intervention, diversion and support to individuals at three main points of entry: field law enforcement contact (arrest), jail booking, and prior to arraignment for the forty-five month period of August 15, 2019 or upon State approval, whichever is later, through May 15, 2023.

The Public Defender's Office has partnered with a highly experienced research team from Resource Development Associates, Inc. (RDA), that will (1) provide a formative evaluation that will guide our understanding and refinement of the CIDS program, and (2) implement a quasi-experimental mixed methods research design to measure the effects of CIDS on key outcomes. RDA has extensive experience evaluating similar programs concerning mental health, the justice system, and housing.

Behavioral Wellness (BWell) entered into a Purchase Order Agreement (No. CN23714) with RDA in May 2020. To continue the evaluation work needed, BWell and RDA entered into a new Purchase Order Agreement (No. CN24419) in December 2020. BWell now seeks to replace the existing Purchase Order with an Agreement for Services of Independent Contractor to cover the remainder of the grant funding period. Approval of the recommended actions will allow RDA to continue providing consultation, data analysis, and grant evaluation services to the County for the remainder of the BSCC grant funding period.

Performance Outcomes

To assess the implementation and impact of the CIDS program, RDA conducts a mixed-method process and outcome evaluation. To report on the process and outcome measures, RDA gathers qualitative and quantitative data from a range of CIDS program partners and stakeholders. This data provides a comprehensive understanding of how the program is implemented and supports the preliminary and final evaluation reports. Quantitative data findings, triangulated with qualitative data, are analyzed and presented in the Two-Year Preliminary Evaluation Report to assess CIDS progress towards its goals and objectives over the first two years, and in the Final Local Evaluation Report to assess the program's impact over the 36-month grant period.

The Two-Year Preliminary Evaluation Report was submitted to BSCC in August 2021. The Final Local Evaluation Report is due to the BSCC by May 15, 2023.

Fiscal and Facilities Impacts:

Budgeted: Yes

Fiscal Analysis:

<u>Funding Sources</u>	<u>Total FY 19-21</u>		<u>Total FY 21-23</u>		<u>Total FY 19-23</u>	
General Fund						
State	\$	161,844	\$	138,156	\$	300,000
Federal						
Fees						
Other:						
Total	\$	161,844	\$	138,156	\$	300,000

Narrative: The above-referenced contract is State funded by Board of State and Community Corrections (BSCC) through a competitive grant.

Key Contract Risks:

RDA's performance as the provider of data analysis and grant evaluation services plays an integral role in the presentation and reporting of project outcome data. Grantees that are unable to demonstrate that they are making sufficient progress toward project goals and objectives, and that funds are being spent down in accordance with the Grant Award Agreement and Proposition 47 Project Work Plan, could be subject to the withholding of funds.

Grantees and subcontractors (e.g. RDA) are required to maintain adequate fiscal and project books, records, documents, and other evidence pertinent to the subcontractor's work on the project in accordance with generally accepted accounting principles. Adequate supporting documentation shall be maintained in such detail so as to permit tracing transactions from the invoices, to the accounting records, to the supporting documentation. These records shall be maintained for a minimum of three (3) years after the acceptance of the final grant project audit under the Grant Agreement, and shall be subject to examination

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and/or audit by the BSCC or designees, state government auditors or designees, or by federal government auditors or designees.

Special Instructions:

Please email one (1) complete executed contract and one (1) minute order to bethle@sbcbswell.org and bwelcontractsstaff@sbcbswell.org.

Attachments:

Attachment A: Resource Development Associates FY 21-23 Board Contract

Attachment B: Resource Development Associates CN23714

Attachment C: Resource Development Associates CN23714 CO1

Attachment D: Resource Development Associates CN24419

Attachment E: Resource Development Associates CN24419 CO1 (CO412)

Attachment F: Resource Development Associates CN24419 CO2 (CO668)

Attachment G: Resource Development Associates CN24419 CO3 (CO862)

Authored by:

B. Le

**AGREEMENT
FOR SERVICES OF INDEPENDENT CONTRACTOR**

THIS AGREEMENT (hereafter Agreement) is made by and between the County of Santa Barbara (hereafter County or Department), a political subdivision of the State of California, and **Resource Development Associates, Inc.** (hereafter Contractor) with an address at 330 Franklin Street, Suite 400, Oakland, CA 94607 wherein Contractor agrees to provide and County agrees to accept the services specified herein.

WHEREAS, Contractor represents that it is specially trained, skilled, experienced, and competent to perform the special services required by County, and County desires to retain the services of Contractor pursuant to the terms, covenants, and conditions herein set forth;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. DESIGNATED REPRESENTATIVE.

Director at phone number 805-681-5220 is the representative of County and will administer this Agreement for and on behalf of County. Patricia Bennett at phone number (510) 488-4345 is the authorized representative for Contractor. Changes in designated representatives shall be made only after advance written notice to the other party.

2. NOTICES.

Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by personal delivery or facsimile, or with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

To County: Director
 County of Santa Barbara
 Department of Behavioral Wellness
 300 N. San Antonio Road
 Santa Barbara, CA 93110
 Fax: 805-681-5262

To Contractor: Patricia Bennett, Ph.D., CEO
 Resource Development Associates, Inc.
 330 Franklin Street, Suite 400
 Oakland, CA 94607
 Phone: (510) 488-4345
 Fax: (510) 735-9064

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.

3. SCOPE OF SERVICES.

Contractor agrees to provide services to County in accordance with EXHIBIT A(s) attached hereto and incorporated herein by reference.

4. TERM.

Contractor shall commence performance on May 20, 2020 and end performance upon completion, but no later than May 15, 2023 unless otherwise directed by County or unless earlier terminated.

5. COMPENSATION OF CONTRACTOR.

In full consideration for Contractor's services, Contractor shall be paid for performance under this Agreement in accordance with the terms of EXHIBIT B(s) attached hereto and incorporated herein by reference.

6. INDEPENDENT CONTRACTOR.

It is mutually understood and agreed that Contractor (including any and all of its officers, agents, and employees), shall perform all of its services under this Agreement as an independent Contractor as to County and not as an officer, agent, servant, employee, joint venturer, partner, or associate of County. Furthermore, County shall have no right to control, supervise, or direct the manner or method by which Contractor shall perform its work and function. However, County shall retain the right to administer this Agreement so as to verify that Contractor is performing its obligations in accordance with the terms and conditions hereof. Contractor understands and acknowledges that it shall not be entitled to any of the benefits of a County employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. Contractor shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, Contractor shall be solely responsible and save County harmless from all matters relating to payment of Contractor's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, Contractor may be providing services to others unrelated to the County or to this Agreement.

7. STANDARD OF PERFORMANCE.

Contractor represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, Contractor shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which Contractor is engaged. All products of whatsoever nature, which Contractor delivers to County pursuant to this Agreement, shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in Contractor's profession. Contractor shall correct or revise any errors or omissions, at County's request without additional compensation. Permits and/or licenses shall be obtained and maintained by Contractor without additional compensation.

8. DEBARMENT AND SUSPENSION.

Contractor certifies to County 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, including but not limited to exclusion from participation from federal health care programs under Sections 1128 or 1128A of the Social Security Act. Contractor certifies that it shall not contract with a subcontractor that is so debarred or suspended.

9. TAXES.

Contractor shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work under this Agreement and shall make any and all payroll deductions required by law. County shall not be responsible for paying any taxes on Contractor's behalf, and should County be required to do so by state, federal, or local taxing agencies, Contractor agrees to promptly reimburse County for the full value of such paid taxes plus interest and penalty, if any. 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.

10. CONFLICT OF INTEREST.

Contractor covenants that Contractor 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 Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by Contractor. Contractor must promptly disclose to the County, in writing, any potential conflict of interest. County retains the right to waive a conflict of interest disclosed by Contractor if County determines it to be immaterial, and such waiver is only effective if provided by County to Contractor in writing. Contractor acknowledges that state laws on conflict of interest apply to this Agreement including, but not limited to, the Political Reform Act of 1974 (Gov. Code, § 81000 et seq.), Public Contract Code Section 10365.5, and Government Code Section 1090.

11. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY.

County shall be the owner of the following items incidental to this Agreement 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 Agreement is completed or terminated prior to completion. Contractor shall not release any of such items to other parties except after prior written approval of County. Contractor shall be the legal owner and Custodian of Records for all County client files generated pursuant to this Agreement, and shall comply with all Federal and State confidentiality laws, including Welfare and Institutions Code (WIC) § 5328; 42 United States Code (U.S.C). § 290dd-2; and 45 Code of Federal Regulations (C.F.R.), Parts 160 – 164 setting forth the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Contractor shall inform all of its officers, employees, and agents of the confidentiality provision of said laws. Contractor further agrees to provide County with copies of all County client file documents resulting from this Agreement without requiring any further written release of information. Within

HIPAA guidelines, County shall have the unrestricted authority to publish, disclose, distribute, and/or otherwise use in whole or in part, any reports, data, documents or other materials prepared under this Agreement.

Unless otherwise specified in Exhibit A(s), Contractor hereby assigns to County all copyright, patent, and other intellectual property and proprietary rights to all data, documents, reports, photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials prepared or provided by Contractor pursuant to this Agreement (collectively referred to as "Copyrightable Works and Inventions"). County shall have the unrestricted authority to copy, adapt, perform, display, publish, disclose, distribute, create derivative works from, and otherwise use in whole or in part, any Copyrightable Works and Inventions. Contractor agrees to take such actions and execute and deliver such documents as may be needed to validate, protect and confirm the rights and assignments provided hereunder. Contractor warrants that any Copyrightable Works and Inventions and other items provided under this Agreement will not infringe upon any intellectual property or proprietary rights of any third party. Contractor at its own expense shall defend, indemnify, and hold harmless County against any claim that any Copyrightable Works or Inventions or other items provided by Contractor hereunder infringe upon intellectual or other proprietary rights of a third party, and Contractor shall pay any damages, costs, settlement amounts, and fees (including attorneys' fees) that may be incurred by County in connection with any such claims. This Ownership of Documents and Intellectual Property provision shall survive expiration or termination of this Agreement.

12. NO PUBLICITY OR ENDORSEMENT.

Contractor shall not use County's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. Contractor shall not use County's name or logo in any manner that would give the appearance that the County is endorsing Contractor. Contractor shall not in any way contract on behalf of or in the name of County. Contractor shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the County or its projects, without obtaining the prior written approval of County.

13. COUNTY PROPERTY AND INFORMATION.

All of County's property, documents, and information provided for Contractor's use in connection with the services shall remain County's property, and Contractor shall return any such items whenever requested by County and whenever required according to the Termination section of this Agreement. Contractor may use such items only in connection with providing the services. Contractor shall not disseminate any County property, documents, or information without County's prior written consent.

14. RECORDS, AUDIT, AND REVIEW.

- A. Contractor shall keep such books, records, supporting documentation, and other evidence pursuant to this Agreement as would be kept by a reasonably prudent practitioner of Contractor's profession and shall maintain such records for at least four (4) years following the termination of this Agreement; the closeout of the California Board of State and Community Corrections (BSCC) Proposition 47 Grant Program; or if any litigation, claim, negotiation, audit, or other action involving the records has been started, the records must be retained until the completion of the action and resolution

of all issues which arise from it, whichever is later. All accounting records shall be kept in accordance with generally accepted accounting principles. Contractor agrees that COUNTY, the BSCC, the California Department of General Services, the California Department of Finance, the California State Auditor, federal government auditors, and their designees shall have the right to inspect, examine, monitor, copy, excerpt, transcribe, and audit all such books, records, supporting documentation, and other evidence pursuant to this Agreement at any time during Contractor's regular business hours or upon reasonable notice, and Contractor agrees to allow interviews of any employees who might reasonably have information related to such records and other evidence. Contractor agrees to provide suitable facilities for inspection, examining, monitoring, copying, excerpting, transcribing, and auditing of records and other evidence related to this Agreement. Contractor shall participate in any audits and reviews, whether by COUNTY, the State, or the federal government, at no charge to COUNTY.

- B. If federal, state or COUNTY audit exceptions are made relating to this Agreement, Contractor shall reimburse all costs incurred by federal, state, and/or COUNTY governments associated with defending against the audit exceptions or performing any audits or follow-up audits, including but not limited to: audit fees, court costs, attorneys' fees based upon a reasonable hourly amount for attorneys in the community, travel costs, penalty assessments and all other costs of whatever nature. Immediately upon notification from COUNTY, Contractor shall reimburse the amount of the audit exceptions and any other related costs directly to COUNTY as specified by COUNTY in the notification.

15. INDEMNIFICATION AND INSURANCE.

Contractor agrees to the indemnification and insurance provisions as set forth in EXHIBIT C attached hereto and incorporated herein by reference.

16. NONDISCRIMINATION.

County hereby notifies Contractor that County's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and Contractor agrees to comply with said ordinance. Contractor shall also comply with the nondiscrimination provisions set forth in Exhibit A to this Agreement.

17. NONEXCLUSIVE AGREEMENT.

Contractor understands that this is not an exclusive Agreement and that County shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by Contractor as the County desires.

18. NON-ASSIGNMENT.

Contractor shall not assign, transfer or subcontract this Agreement or any of its rights or obligations under this Agreement without the prior written consent of County and any attempt to so assign, subcontract or transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

19. TERMINATION.

A. By County. County may, by written notice to Contractor, terminate this Agreement in whole or in part at any time, whether for County's convenience, for nonappropriation of funds, or because of the failure of Contractor to fulfill the obligations herein.

1. **For Convenience.** County may terminate this Agreement in whole or in part upon thirty (30) days written notice. During the thirty (30) day period, Contractor shall, as directed by County, wind down and cease its services as quickly and efficiently as reasonably possible, without performing unnecessary services or activities and by minimizing negative effects on County from such winding down and cessation of services.

2. **For Nonappropriation of Funds.**

i. The parties acknowledge and agree that this Agreement is dependent upon the availability of County, State, and/or federal funding. If funding to make payments in accordance with the provisions of this Agreement is not forthcoming from the County, State and/or federal governments for the Agreement, or is not allocated or allotted to County by the County, State and/or federal governments for this Agreement for periodic payment in the current or any future fiscal period, then the obligations of County to make payments after the effective date of such non-allocation or non-funding, as provided in the notice, will cease and terminate.

ii. As permitted by applicable State and Federal laws regarding funding sources, if funding to make payments in accordance with the provisions of this Agreement is delayed or is reduced from the County, State, and/or federal governments for the Agreement, or is not allocated or allotted in full to County by the County, State, and/or federal governments for this Agreement for periodic payment in the current or any future fiscal period, then the obligations of County to make payments will be delayed or be reduced accordingly or County shall have the right to terminate the Agreement. If such funding is reduced, County in its sole discretion shall determine which aspects of the Agreement shall proceed and which Services shall be performed. In these situations, County will pay Contractor for Services and Deliverables and certain of its costs. Any obligation to pay by County will not extend beyond the end of County's then-current funding period.

iii. Contractor expressly agrees that no penalty or damages shall be applied to, or shall accrue to, County in the event that the necessary funding to pay under the terms of this Agreement is not available, not allocated, not allotted, delayed or reduced.

3. **For Cause.** Should Contractor default in the performance of this Agreement or materially breach any of its provisions, County may, at County's sole option, terminate or suspend this Agreement in whole or in part by written notice. Upon receipt of notice, Contractor shall immediately discontinue all services affected (unless the notice directs otherwise) and notify County as to the status of its

performance. The date of termination shall be the date the notice is received by Contractor, unless the notice directs otherwise.

- B. By Contractor.** Should County fail to pay Contractor all or any part of the payment set forth in EXHIBIT B(s), Contractor may, at Contractor's option terminate this Agreement if such failure is not remedied by County within thirty (30) days of written notice to County of such late payment.
- C. Upon Termination.** Contractor shall deliver to County all data, estimates, graphs, summaries, reports, and all other property, records, documents or papers as may have been accumulated or produced by Contractor in performing this Agreement, whether completed or in process, except such items as County may, by written permission, permit Contractor to retain. Notwithstanding any other payment provision of this Agreement, County shall pay Contractor for satisfactory services performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall Contractor be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. Contractor shall furnish to County such financial information as in the judgment of County is necessary to determine the reasonable value of the services rendered by Contractor. In the event of a dispute as to the reasonable value of the services rendered by Contractor, the decision of County shall be final. The foregoing is cumulative and shall not affect any right or remedy which County may have in law or equity.

20. SUSPENSION FOR CONVENIENCE.

The Director of the Department of Behavioral Wellness or designee may, without cause, order Contractor in writing to suspend, delay, or interrupt the services under this Agreement in whole or in part for up to 120 days. County shall incur no liability for suspension under this provision and suspension shall not constitute a breach of this Agreement.

21. 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.

22. 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 Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

23. REMEDIES NOT EXCLUSIVE.

No remedy herein conferred upon or reserved to County 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.

24. TIME IS OF THE ESSENCE.

Time is of the essence in this Agreement and each covenant and term is a condition herein.

25. NO WAIVER OF DEFAULT.

No delay or omission of County 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 Agreement to County shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of County.

26. ENTIRE AGREEMENT AND AMENDMENT.

In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel. Requests for changes to the terms and conditions of this agreement after April 1 of the Fiscal Year for which the change would be applicable shall not be considered. All requests for changes shall be in writing. Changes shall be made by an amendment pursuant to this section. Any amendments or modifications that do not materially change the terms of this Agreement (such as changes to the Designated Representative or Contractor's address for purposes of Notice) may be approved by the Director of the Department of Behavioral Wellness or designee. Except as otherwise provided in this Agreement, the Board of Supervisors of the County of Santa Barbara must approve all other amendments and modifications.

27. SUCCESSORS AND ASSIGNS.

All representations, covenants and warranties set forth in this Agreement, 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.

Contractor shall, at its sole cost and expense, comply with all County, State and Federal ordinances; statutes; regulations; orders including, but not limited to, court orders; guides; guidance; bulletins; information notices; and letters including, but not limited to, those issued by the BSCC now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of Contractor in any action or proceeding against Contractor, whether County is a party thereto or not, that Contractor has violated any such ordinance, statute, regulation, order, guide, guidance, bulletin, information notice, and/or letter shall be conclusive of that fact as between Contractor and County.

29. CALIFORNIA LAW AND JURISDICTION.

This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement 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.

30. EXECUTION OF COUNTERPARTS.

This Agreement 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.

31. AUTHORITY.

All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Contractor hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which Contractor is obligated, which breach would have a material effect hereon.

32. SURVIVAL.

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

33. PRECEDENCE.

In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

34. COMPLIANCE WITH HIPAA.

Contractor is expected to adhere to Health Insurance Portability and Accountability Act (HIPAA) regulations and to develop and maintain comprehensive patient confidentiality policies and procedures, provide annual training of all staff regarding those policies and procedures, and demonstrate reasonable effort to secure written and/or electronic data. The parties should anticipate that this Agreement will be modified as necessary for full compliance with HIPAA.

35. COURT APPEARANCES.

Upon request, Contractor shall cooperate with County in making available necessary witnesses for court hearings and trials, including Contractor's staff that have provided treatment to a client referred by County who is the subject of a court proceeding. County shall issue subpoenas for the required witnesses upon request of Contractor.

36. PRIOR AGREEMENTS.

Upon execution of this Agreement by County, this Agreement supersedes all prior agreements between County and Contractor related to the scope of work contained in this Agreement.


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SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE

Agreement for Services of Independent Contractor between the **County of Santa Barbara** and **Resource Development Associates, Inc.**

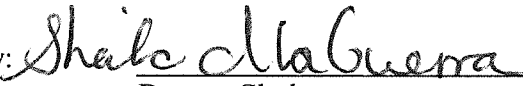
IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by COUNTY.

COUNTY OF SANTA BARBARA:

By: 
JOAN HARTMANN, CHAIR
BOARD OF SUPERVISORS
Date: 4-19-22

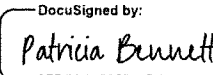
ATTEST:

MONA MIYASATO
COUNTY EXECUTIVE OFFICER
CLERK OF THE BOARD

By: 
Deputy Clerk
Date: 4-19-22

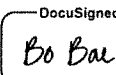
CONTRACTOR:

Resource Development Associates, Inc.

By: 
Authorized Representative
Name: Patricia Bennett
Title: Secretary
Date: 4/7/2022

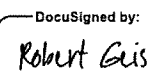
APPROVED AS TO FORM:

RACHEL VAN MULLEM
COUNTY COUNSEL

By: 
Deputy County Counsel

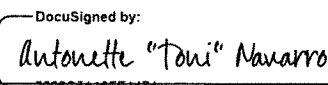
APPROVED AS TO ACCOUNTING FORM:

BETSY M. SCHAFFER, CPA
AUDITOR-CONTROLLER

By: 
Deputy

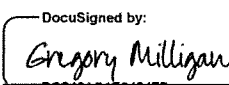
RECOMMENDED FOR APPROVAL:

ANTONETTE NAVARRO, LMFT
DIRECTOR
DEPARTMENT OF BEHAVIORAL
WELLNESS

By: 
Director

APPROVED AS TO INSURANCE FORM:

GREG MILLIGAN, ARM
RISK MANAGER

By: 
Risk Manager

THIS AGREEMENT INCLUDES THE FOLLOWING EXHIBITS:

EXHIBIT A – STATEMENT OF WORK

EXHIBIT B – FINANCIAL PROVISIONS

EXHIBIT B Financial Provisions

EXHIBIT B-1 Schedule of Rates and Contract Maximum

EXHIBIT C – STANDARD INDEMNIFICATION AND INSURANCE PROVISIONS

EXHIBIT D – HIPAA BUSINESS ASSOCIATE AGREEMENT (BAA)

EXHIBIT A
STATEMENT OF WORK

- I. PERFORMANCE.** Resource Development Associates, Inc. (RDA or Contractor) shall provide data collection, grant evaluation, and consulting services to Santa Barbara County for the California Board of State and Community Corrections (BSCC) Prop 47 Grant. Contractor shall:
- A.** Have the background, training, work experience, accreditation, licenses, and supervision necessary for the performance of services in a manner of, and according to the standards observed by a practitioner of the same profession and in keeping with all pertinent Federal, State, and County laws; and
 - B.** Warrant that said accreditation and licensing information furnished to County is complete and accurate, and agrees to notify County promptly of any changes in this information.
 - C.** Be responsible for providing data analysis and oversee the evaluation approach. The Evaluation approach will consist of the following deliverables:
 - D. Phase 1: Evaluation Planning. Contractor will:**
 - i.** Work with Crisis Recovery Engagement Diversion and Outreach (CREDO47) Program partners to develop a comprehensive Local Evaluation Plan that will serve as a roadmap for subsequent project activities. The Local Evaluation Plan must be submitted to the BSCC by December 31, 2019.
 - ii.** Hold a project kickoff call with the Department of Behavioral Wellness (Behavioral Wellness) and partner agencies to discuss the administrative, fiscal, and technical aspects of this project.
 - iii.** Hold kickoff work session with Behavioral Wellness and project partners to discuss the evaluation priorities, activities, and timeline for the project in order to develop an evaluation plan; identify potential data sources and indicators; and develop the communication protocols and pathways to support project success as well as identify and troubleshoot any barriers or challenges as they arise. Contractor will work with Behavioral Wellness to develop a theory of change and logic model for the evaluation.
 - iv.** Work with the various CREDO47 Program partner agencies to understand their existing data sharing practices and policies. Contractor will work with partners to establish data sharing agreements among all distinct entities.
 - v.** Submit study protocols, consent forms, and primary data collection instruments to an Institutional Review Board for approval to prepare for subsequent data collection activities. Contractor will employ procedures to safeguard respondent rights implementing strict security procedures at all stages of every project covering collection, management, storage, distribution, and dissemination of

data. In full compliance with all Health Insurance Portability and Accountability Act (HIPAA) regulations, identifying information will not be included in any deliverables or resulting evaluation products.

E. Phase 2: Two Year Preliminary Evaluation. Contractor will:

- i. Gather administrative data from sources that may include, but are not limited to Behavioral Wellness electronic health records (EHR), the Housing and Community Development's Homeless Management Information System, and justice partners' case management systems.
- ii. Work with CREDO47 partners to support the development of data collection tools to support program implementation and the measurement of key process and outcome measures for evaluation. Individual-level data collected from these sources will be used to calculate both process and outcome measures.
- iii. Conduct interviews and/or focus groups with CREDO47 Program administrators including staff from Behavioral Wellness, Office of the Public Defender, District Attorney's Office, Sheriff's Office, Probation Department, Good Samaritan Shelter, and other providers who implement or assist with implementation of each of the CREDO47 Program components.
- iv. To the extent possible due to social distancing and program implementation, conduct focus groups with CREDO47 Program participants to collect information about their experiences with accessing and receiving CREDO47 services and supports, as well as what they feel works well and what could be improved. Contractor will adapt data collection efforts to meet the needs of participants, including, but not limited to Spanish translation and offering focus groups in multiple locations across the County.
- v. Utilize Microsoft Excel and Stata to describe the number of participants served, demographics, program participation, and outcomes.
- vi. Work with Behavioral Wellness and project partners to develop an analytic plan that concretely describes the analytic methods that will be utilized to measure CREDO47 Program outcomes.
- vii. Analyze information to understand what services were provided through the CREDO47 Program, what services participants were connected to, how well services were provided, and the program's impacts. Qualitative data will be analyzed to identify the strengths and challenges of the program implementation. Contractor will also triangulate quantitative and qualitative data findings, making connections between qualitative themes and the results of the quantitative data analysis, to produce a holistic and comprehensive understanding of CREDO47 Program outcomes, quality, and areas for improvement.
- viii. Present data analysis findings and work session results to the Local Advisory Committee (LAC) to seek their feedback and interpretation.
- ix. Produce a Two-Year Preliminary Report to support both BSCC funding

requirements and program-specific continuous quality improvement. The report will assess CREDO47 progress towards its goals and objectives and help identify whether the evaluation methodology described in the Local Evaluation Plan sufficiently measures program impact. The Two-Year Preliminary Report must be submitted to the BSCC by August 15, 2021.

- x. Submit all draft reports to Behavioral Wellness for review and feedback before submitting a final report to BSCC and LAC. In addition, Contractor will create accessible “highlight” reports for public audiences, which can be translated into Spanish.
- xi. Convene the project team and representatives from partner agencies to review and discuss the results of the quantitative and qualitative analyses. In these meetings, stakeholders will identify how they can use findings to inform program design and implementation. The work session will also include a review of the logic model to ensure it still reflects how the project is expected to function and its intended results.

F. Phase 3: Final Evaluation. Contractor will:

- i. Incorporate the same data collection, analysis, and reporting activities conducted in Phase 2, refined based on Phase 2 learnings. This phase will begin with an opportunity to revise evaluation activities based on the Preliminary Evaluation Report’s findings and any resulting programmatic changes. The Final Evaluation will focus on project effectiveness and outcomes to measure whether the CREDO47 Program met its goals and objectives, and which project components supported or hindered project success.
- ii. Provide Final Local Evaluation Report that meets BSCC evaluation requirements while also providing useful and actionable information to County partners so that lessons learned over the course of the Prop 47 grant can inform longer-term programs design and service delivery systems. The Final Local Evaluation Report must be submitted to the BSCC by May 15, 2023.

G. Phase 4: Project Management and Stakeholder Evaluation. Contractor will:

- i. Provide continuous project management coordination and support as well as staying in ongoing communication with the CREDO47 project management team and key cross-system stakeholders.
- ii. Work closely with Santa Barbara County to ensure that the project’s progress is closely monitored and that its activities continue to meet the needs of the County and the community it serves.
- iii. Serve as the main coordinator of all project activities and ensure that all project activities are progressing as planned.
- iv. Lead monthly evaluation check-in calls with Behavioral Wellness to share progress updates, highlight any challenges that may be arising, collaboratively

troubleshoot those challenges, and determine next steps. Contractor will coordinate with project leadership to set up a standing date and time for these calls, develop and circulate a draft agenda in advance of each call, and take and share detailed minutes.

- v. Provide quarterly written status reports describing the project’s progress to Behavioral Wellness and the LAC, according to the schedule below. These status reports will summarize the activities that have been completed during the past quarter, any challenges experienced in carrying out activities, and planned activities for the next quarter.

Progress Report Periods	Due no later than:
August 15, 2019 to December 31, 2019	February 15, 2020
January 1, 2020 to March 31, 2020	May 15, 2020
April 1, 2020 to June 30, 2020	August 15, 2020
July 1, 2020 to September 30, 2020	November 15, 2020
October 1, 2020 to December 31, 2020	February 15, 2021
January 1, 2021 to March 31, 2021	May 15, 2021
April 1, 2021 to June 30, 2021	August 15, 2021
July 1, 2021 to September 30, 2021	November 15, 2021
October 1, 2021 to December 31, 2021	February 15, 2022
January 1, 2022 to March 31, 2022	May 15, 2022
April 1, 2022 to June 30, 2022	August 15, 2022
July 1, 2022 to August 15, 2022	September 30, 2022
October 1, 2022 to December 31, 2022	February 15, 2023

- vi. Maintain frequent communications with Behavioral Wellness to support strong collaboration, agreement, and technical assistance amongst all entities regarding the project’s objectives, activities, and evaluation discoveries. Contractors Project Manager will serve as the main point-of-contact for all communications, and will coordinate all project management duties and activities with the Contractor’s evaluation team members.

II. COMPLIANCE WITH GRANT AGREEMENT. This Agreement is a subcontract of the Grant Agreement between the County and BSCC (Agreement Number BSCC 506-19). Contractor shall comply with all requirements of this Grant Agreement including, but not limited to:

- A. In addition to reports required under this Agreement, upon County's request, Contractor shall make additional reports or submit additional data as required by County concerning Contractor's activities as they affect the services hereunder. County will be specific as to the nature of information requested and allow a reasonable period of time for Contractor to respond.
- B. For the purposes of personnel and payroll records, Contractor shall provide time and effort reports to County for all individuals reimbursed under the grant, whether they are employed full-time or part-time, as required for subcontractors of the Grant Agreement.
- C. Contractor agrees to protect records adequately from fire or other damage. When records are stored away from the contractor's principal office, a written index of the location of records stored must be on hand and ready access must be assured.
- D. **Audit.** Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement.
- E. **Non-Discrimination Clause.** During the performance of this Agreement, Contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article. Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. 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. (See Cal. Code Regs., tit. 2, §11105.) Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

- F. Contractor shall comply with the eligibility requirements stated in the Cohort 2 Proposition 47 RFP and described in Appendix B of the Grant Agreement.
- G. **Books and Records.** Contractor shall maintain adequate fiscal and project books, records, documents, and other evidence pertinent to the subcontractor's work on the project in accordance with generally accepted accounting principles. Adequate supporting documentation shall be maintained in such detail so as to permit tracing transactions from the invoices, to the accounting records, to the supporting documentation. These records shall be maintained for a minimum of three (3) years after the acceptance of the final grant project audit under the Grant Agreement, and shall be subject to examination and/or audit by the BSCC or designees, state government auditors or designees, or by federal government auditors or designees.
 - a. **Access to Books and Records.** Contractor shall make such books, records, supporting documentations, and other evidence available to the BSCC or designee, the State Controller's Office, the Department of General Services, the Department of Finance, California State Auditor, and their designated representatives during the course of the project and for a minimum of three (3) years after acceptance of the final grant project audit. The Subcontractor shall provide suitable facilities for access, monitoring, inspection, and copying of books and records related to the grant-funded project.
- H. **Project Access.** Contractor shall ensure that the BSCC, or any authorized representative, will have suitable access to project activities, sites, staff and documents at all reasonable times during the grant period. Access to program records will be made available by contractor for a period of three (3) years following the end of the project period.
- I. In the event of any inconsistency between Grant Agreement BSCC 506-19 and this Agreement, the language of this Grant Agreement will prevail.

EXHIBIT B
PAYMENT ARRANGEMENTS

(With attached Exhibit B-1, Schedule of Rates)

This Agreement provides for reimbursement for services up to the Maximum Contract Amount, reflected in Section 1 below and Exhibit B-1.

1. **CONTRACT MAXIMUM VALUE.** For services to be rendered and/or reimbursement of costs under this Agreement, Contractor shall be paid at the rate specified in the Schedule of Rates (Exhibit B-1), with a maximum contract value not to exceed **\$300,000**, inclusive of \$200,000 under Purchase Orders CN23714, CN24419, and all amendments thereto (CN23714 CO1, CO412, CO668, CO862). This Agreement otherwise cancels, nullifies, and supersedes these Purchase Orders and amendments thereto.

2. **PAYMENT.** Payment for services and/or reimbursement of costs shall be made upon Contractor's satisfactory performance, based upon the scope of methodology contained in Exhibit A as determined by County. Payment for services shall be based upon the rates as set forth in Exhibit B-1. Invoices submitted for payment that are based upon Exhibit B-1 must contain sufficient detail and provide supporting documentation to enable an audit of the charges.

3. **PROPER INVOICE.** Contractor shall submit to Santa Barbara County Department of Behavioral Wellness an invoice or certified claim on the County Treasury for the services performed over the period specified Behavioral Wellness shall evaluate the quality of the service performed, and if found to be satisfactory, shall initiate payment processing.
 - A. Contractor's invoices for reimbursement shall include the following:
 1. Contract number assigned by County; and
 2. Services performed or detailed statement of purchases with receipts, the rate and authorization form, if applicable.
 - B. Contractor's invoices for reimbursement shall be submitted to:

Santa Barbara County Department of Behavioral Wellness
ATTN: Accounts Payable
429 North San Antonio Road
Santa Barbara, CA 93110
ap@sbcbswell.org

5. **CORRECTION OF WORK.** County's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of County's right to require Contractor to correct such work or billings or seek any other legal remedy.

**EXHIBIT B-1
SCHEDULE OF RATES**

Position	Hourly Rate
CEO/Managing Director	\$250
Justice Practice Director	\$225
IT Director	\$200
IT Staff	\$175
Project Manger	\$200
Research Associate	\$125
Senior Program Manager	\$200
Senior Program Associate	\$175
Program Associate	\$150
Project Support Assistant	\$110
TOTAL CONTRACT MAXIMUM VALUE FY 19-20:	\$ 51,606
TOTAL CONTRACT MAXIMUM VALUE FY 20-21:	\$110,238
TOTAL CONTRACT MAXIMUM VALUE FY 21-22:	\$ 54,150
TOTAL CONTRACT MAXIMUM VALUE FY 22-23:	\$ 84,006
TOTAL CONTRACT MAXIMUM NOT TO EXCEED FY19-23:	\$300,000

EXHIBIT C

Indemnification and Insurance Requirements

(For Professional Contracts version 2022 03 02)

INDEMNIFICATION

CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by COUNTY on account of any claim except where such indemnification is prohibited by law. CONTRACTOR'S indemnification obligation applies to COUNTY'S active as well as passive negligence but does not apply to COUNTY'S sole negligence or willful misconduct.

NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

CONTRACTOR shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

INSURANCE

CONTRACTOR shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONTRACTOR, its agents, representatives, employees or subcontractors.

A. **Minimum Scope of Insurance Coverage**
shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if CONTRACTOR has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. *(Not required if CONTRACTOR provides written verification that it has no employees)*
4. **Professional Liability:** (Errors and Omissions) Insurance appropriate to the

CONTRACTOR'S profession, with limit no less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate.

If the CONTRACTOR maintains broader coverage and/or higher limits than the minimums shown above, the COUNTY requires and shall be entitled to the broader coverage and/or the higher limits maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the COUNTY.

B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – COUNTY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONTRACTOR'S insurance at least as broad as ISO Form ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).
2. **Primary Coverage** – For any claims related to this contract, the CONTRACTOR'S insurance coverage shall be primary insurance primary coverage at least as broad as ISO CG 20 01 04 13 as respects the COUNTY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees, or volunteers shall be excess of the CONTRACTOR'S insurance and shall not contribute with it.
3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the COUNTY.
4. **Waiver of Subrogation Rights** – CONTRACTOR hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the COUNTY by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.
5. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the COUNTY. The COUNTY may require the CONTRACTOR to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
6. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
7. **Verification of Coverage** – CONTRACTOR shall furnish the COUNTY with proof of insurance, original certificates and amendatory endorsements as required by this

Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR'S obligation to provide them. The CONTRACTOR shall furnish evidence of renewal of coverage throughout the term of the Agreement. The COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

8. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by COUNTY as a material breach of contract.
9. **Subcontractors** – CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and CONTRACTOR shall ensure that COUNTY is an additional insured on insurance required from subcontractors.
10. **Claims Made Policies** – If any of the required policies provide coverage on a claims-made basis:
 - i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
 - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
 - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the CONTRACTOR must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.
11. **Special Risks or Circumstances** – COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of COUNTY.

EXHIBIT D
HIPAA BUSINESS ASSOCIATE AGREEMENT (BAA)

This Business Associate Agreement (“BAA”) supplements and is made a part of the Agreement between COUNTY (referred to herein as “Covered Entity”) and CONTRACTOR (referred to herein as “Business Associate”).

RECITALS

Covered Entity wishes to disclose certain information to Business Associate pursuant to the terms of the Agreement, some of which may constitute Protected Health Information (“PHI”) (defined below).

Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“HITECH Act”), and 45 CFR Parts 160 and 164, Subpart C (the “Security Rule”), Subpart D (the “Data Breach Notification Rule”) and Subpart E (the “Privacy Rule”) (collectively, the “HIPAA Regulations”).

As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require Covered Entity to enter into a contract containing specific requirements with Business Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations (C.F.R.) and contained in this BAA.

In consideration of the mutual promises below and the exchange of information pursuant to this BAA, the parties agree as follows:

1. Definitions.

- a. **Breach** shall have the meaning given to such term under the HITECH Act [42 U.S.C. Section 17921].
- b. **Business Associate** shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.
- c. **Covered Entity** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.
- d. **Data Aggregation** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- e. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- f. **Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.
- g. **Electronic Health Record** shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.
- h. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- i. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.

- j. **Protected Health Information or PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) 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, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].
 - k. **Protected Information** shall mean PHI provided by Covered Entity to Business Associate or created or received by Business Associate on Covered Entity's behalf.
 - l. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
 - m. **Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h).
2. **Obligations of Business Associate.**
- a. **Permitted Uses.** Business Associate shall not use Protected Information except for the purpose of performing Business Associate's obligations under the Agreement and as permitted under the Agreement and this BAA. Further, Business Associate shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by Covered Entity. However, Business Associate may use Protected Information (i) for the proper management and administration of Business Associate, (ii) to carry out the legal responsibilities of Business Associate, or (iii) for Data Aggregation purposes for the Health Care Operations of Covered Entity [45 C.F.R. Sections 164.504(e)(2)(ii)(A) and 164.504(e)(4)(i)].
 - b. **Permitted Disclosures.** Business Associate shall not disclose Protected Information except for the purpose of performing Business Associate's obligations under the Agreement and as permitted under the Agreement and this BAA. Business Associate shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by Covered Entity. However, Business Associate may disclose Protected Information (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate; (iii) as required by law; or (iv) for Data Aggregation purposes for the Health Care Operations of Covered Entity. If Business Associate discloses Protected Information to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this BAA and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify Business Associate of any breaches of confidentiality of the Protected Information, to the extent the third party has obtained knowledge of such breach [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)].
 - c. **Prohibited Uses and Disclosures.** Business Associate shall not use or disclose Protected Information for fundraising or marketing purposes. Business Associate shall not disclose Protected Information 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 [42 U.S.C. Section 17935(a)]. Business Associate shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of Covered Entity and as permitted by the HITECH Act, 42 U.S.C. section 17935(d)(2); however, this prohibition shall not affect payment by Covered Entity to Business

Associate for services provided pursuant to the Agreement. Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Agreement, the BAA, or the HIPAA Regulations.

- d. **Appropriate Safeguards.** Business Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Agreement or this BAA, including, but not limited to, administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, in accordance with 45 C.F.R. Sections 164.308, 164.310, and 164.312. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. Business Associate shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. Section 164.316 [42 U.S.C. Section 17931].
- e. **Reporting of Improper Access, Use or Disclosure.** Business Associate shall report to Covered Entity in writing of any access, use or disclosure of Protected Information not permitted by the Agreement and this BAA, and any Breach of Unsecured PHI, as required by the Data Breach Notification Rule, of which it becomes aware without unreasonable delay and in no case later than five (5) business days after discovery [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)].
- f. **Business Associate's Subcontractors and Agents.** Business Associate shall ensure that any agents and subcontractors to whom it provides Protected Information, agree in writing to the same restrictions and conditions that apply to Business Associate with respect to such PHI and implement the safeguards required by paragraph (c) above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. Business Associate shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).
- g. **Access to Protected Information.** To the extent that the Covered Entity keeps a designated record set then Business Associate shall make Protected Information maintained by Business Associate or its agents or subcontractors in Designated Record Sets available to Covered Entity for inspection and copying within five (5) days of a request by Covered Entity to enable Covered Entity to fulfill its obligations under state law [Health and Safety Code Section 123110] and the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e).
- h. **Amendment of PHI for Business Associate who is Required to Maintain a Record Set.** If Business Associate is required to maintain a designated record set on behalf of the Covered Entity the Business Associate shall within ten (10) days of receipt of a request from Covered Entity for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Business Associate or its agents or subcontractors shall make such Protected Information available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If any individual requests an amendment of Protected Information directly from Business Associate or its agents or subcontractors, Business Associate must notify Covered Entity in writing within five (5) days of the request. Any approval or denial of amendment of Protected Information maintained by Business Associate or its agents or

subcontractors shall be the responsibility of Covered Entity [45 C.F.R. Section 164.504(e)(2)(ii)(F)].

- i. **Accounting Rights.** Within ten (10) days of notice by Covered Entity of a request for an accounting of disclosures of Protected Information, Business Associate and its agents or subcontractors shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935(c), as determined by Covered Entity. Business Associate agrees to implement a process that allows for an accounting to be collected and maintained by Business Associate and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an 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 Business Associate maintains an electronic health record and is subject to this requirement. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information 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. In the event that the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, Business Associate shall within five (5) days of a request forward it to Covered Entity in writing. It shall be Covered Entity's responsibility to prepare and deliver any such accounting requested. Business Associate shall not disclose any Protected Information except as set forth in Sections 2.b. of this BAA [45 C.F.R. Sections 164.504(e)(2)(ii)(G) and 165.528]. The provisions of this subparagraph shall survive the termination of this Agreement.
- j. **Governmental Access to Records.** Business Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to Covered Entity and to the Secretary of the U.S. Department of Health and Human Services (Secretary) for purposes of determining Business Associate's compliance with the Privacy Rule [45 C.F.R. Section 164.504(e)(2)(ii)(H)]. Business Associate shall provide to Covered Entity a copy of any Protected Information that Business Associate provides to the Secretary concurrently with providing such Protected Information to the Secretary.
- k. **Minimum Necessary.** Business Associate (and its agents or subcontractors) shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use, or disclosure [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)(3)]. Business Associate understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."
- l. **Data Ownership.** Business Associate acknowledges that Business Associate has no ownership rights with respect to the Protected Information.
- m. **Business Associate's Insurance.** Business Associate represents and warrants that it purchases commercial insurance to cover its exposure for any claims, damages or losses arising as a result of a breach of the terms of this BAA.
- n. **Notification of Possible Breach.** During the term of the Agreement, Business Associate shall notify Covered Entity within twenty-four (24) hours of any suspected or actual breach of security, or any access, use or disclosure of Protected Information not permitted by the Agreement or this BAA or unauthorized use or disclosure of PHI of which Business Associate becomes aware and/or

any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Business Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)]

- o. **Breach Pattern or Practice by Covered Entity.** Pursuant to 42 U.S.C. Section 17934(b), if the Business Associate knows of a pattern of activity or practice of the Covered Entity that constitutes a material breach or violation of the Covered Entity's obligations under the Agreement or this BAA or other arrangement, the Business Associate must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the Business Associate must terminate the Agreement or other arrangement if feasible, or if termination is not feasible, report the problem to the Secretary. Business Associate shall provide written notice to Covered Entity of any pattern of activity or practice of the Covered Entity that Business Associate believes constitutes a material breach or violation of the Covered Entity's obligations under the Agreement or this BAA or other arrangement within five (5) days of discovery and shall meet with Covered Entity to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.
- p. **Audits, Inspection and Enforcement.** Within ten (10) days of a written request by Covered Entity, Business Associate and its agents or subcontractors shall allow Covered Entity to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this BAA for the purpose of determining whether Business Associate has complied with this BAA; provided, however, that (i) Business Associate and Covered Entity shall mutually agree in advance upon the scope, timing and location of such an inspection, (ii) Covered Entity shall protect the confidentiality of all confidential and proprietary information of Business Associate to which Covered Entity has access during the course of such inspection; and (iii) Covered Entity shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Business Associate. The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Business Associate of its responsibility to comply with this BAA, nor does Covered Entity's (i) failure to detect or (ii) 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 Covered Entity's enforcement rights under the Agreement or this BAA, Business Associate shall notify Covered Entity within ten (10) days of learning that Business Associate has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights.
- q. **Compliance with HIPAA Workforce Training.** As set forth in section 164.530 of 45 CFR Business Associate is expected to adhere to the Health Insurance Portability and Accountability Act (HIPAA) regulations to the extent necessary to comply with Covered Entity's legal obligations and to develop and maintain comprehensive consumer confidentiality policies and procedures, provide annual training of all affected staff regarding those policies and procedures including Security and Privacy safeguards, and demonstrate reasonable effort to secure written and/or electronic data to document the provision of such training and agrees to make available to the Covered Entity upon request. The parties should anticipate that this agreement will be modified as necessary for full compliance with HIPAA.

3. Termination.

- a. **Material Breach.** A breach by Business Associate of any provision of this BAA, as determined by Covered Entity, shall constitute a material breach of the Agreement and shall provide grounds

for immediate termination of the Agreement, any provision in the Agreement to the contrary notwithstanding [45 C.F.R. Section 164.504(e)(2)(iii)].

- b. **Judicial or Administrative Proceedings.** Covered Entity may terminate the Agreement, effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.
- c. **Effect of Termination.** Upon termination of the Agreement for any reason, Business Associate shall, at the option of Covered Entity, return or destroy all Protected Information that Business Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by Covered Entity, Business Associate shall continue to extend the protections of Section 2 of this BAA to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 C.F.R. Section 164.504(e)(ii)(2)(I)]. If Covered Entity elects destruction of the PHI, Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed.

4. Indemnification.

If Business Associate fails to adhere to any of the privacy, confidentiality, and/or data security provisions set forth in this BAA or if there is a Breach of PHI in Business Associate's possession and, as a result, PHI or any other confidential information is unlawfully accessed, used or disclosed, Business Associate agrees to reimburse Covered Entity for any and all costs, direct or indirect, incurred by Covered Entity associated with any Breach notification obligations. Business Associate also agrees to pay for any and all fines and/or administrative penalties imposed for such unauthorized access, use or disclosure of confidential information or for delayed reporting if it fails to notify the Covered Entity of the Breach as required by this BAA.

5. Disclaimer.

Covered Entity makes no warranty or representation that compliance by Business Associate with this BAA, HIPAA, the HITECH Act, or the HIPAA Regulations will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

6. Certification.

To the extent that Covered Entity determines that such examination is necessary to comply with Covered Entity's legal obligations pursuant to HIPAA relating to certification of its security practices, Covered Entity or its authorized agents or contractors, may, at Covered Entity's expense, examine Business Associate's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to Covered Entity the extent to which Business Associate's security safeguards comply with HIPAA, the HITECH Act, the HIPAA Regulations or this BAA.

7. Amendment to Comply with Law.

The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Agreement or this BAA 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 HITECH Act, the Privacy Rule, the Security Rule and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that Covered Entity must receive satisfactory written assurance from Business Associate that Business Associate will adequately safeguard all Protected Information. Upon the request of either party, the other party

agrees to promptly enter into negotiations concerning the terms of an amendment to this BAA embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule or other applicable laws. Covered Entity may terminate the Agreement upon thirty (30) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend the Agreement or this BAA when requested by Covered Entity pursuant to this Section or (ii) Business Associate does not enter into an amendment to the Agreement or this BAA providing assurances regarding the safeguarding of PHI that Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

8. Assistance in Litigation of Administrative Proceedings.

Business Associate shall make itself, and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under the Agreement or this BAA, available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers or employees based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where Business Associate or its subcontractor, employee or agent is named adverse party.

9. No Third-Party Beneficiaries.

Nothing express or implied in the Agreement or this BAA is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

10. Effect on Agreement.

Except as specifically required to implement the purposes of this BAA, or to the extent inconsistent with this BAA, all other terms of the Agreement shall remain in force and effect.

11. Entire Agreement of the Parties.

This BAA supersedes any and all prior and contemporaneous business associate agreements between the parties and constitutes the final and entire agreement between the parties hereto with respect to the subject matter hereof. Covered Entity and Business Associate acknowledge that no representations, inducements, promises, or agreements, oral or otherwise, with respect to the subject matter hereof, have been made by either party, or by anyone acting on behalf of either party, which are not embodied herein. No other agreement, statement or promise, with respect to the subject matter hereof, not contained in this BAA shall be valid or binding.

12. Interpretation.

The provisions of this BAA shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provision in this BAA. This BAA and the Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule. The parties agree that any ambiguity in this BAA shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.