RESOLUTION - ACTION REQUESTED 2014-577

MEETING: November 12, 2014

TO: The Board of Supervisors

FROM: Charles Mosher, Health Officer

RE: Business Associate Agreement with John C. Fremont Healthcare District

RECOMMENDATION AND JUSTIFICATION:
Approve a Business Associate Agreement with John C. Fremont Healthcare District and Mariposa County to Allow Transfer of Protected Patient Information to Mariposa County Health Department Consistent with Current Law, and Authorize the Board of Supervisors Chair to Sign the Agreement.

This agreement is needed by John C. Fremont Healthcare District per their legal counsel.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Do not approve the Business Associate Agreement. There will be no Business Associate Agreement in place regarding the transferring of patient information between the John C. Fremont Healthcare District and the Mariposa County Health Department.

FINANCIAL IMPACT:
No Financial impact.

ATTACHMENTS:
BAA Mariposa County Health Department   (DOCX)

CAO RECOMMENDATION
Requested Action Recommended
RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Merlin Jones, District II Supervisor
SECONDER: Lee Stetson, District I Supervisor
AYES: Stetson, Jones, Bibby, Cann, Carrier
JOHN C. FREMONT HEALTHCARE DISTRICT

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("BAA") is entered into by and between John C. Fremont Healthcare District ("District") and Mariposa County. This BAA is effective as of January 1, 2014 (the "BAA Effective Date") and the BAA shall remain in effect for as long as BA continues to provide services to the District or continues to have access to the District’s protected health information. However, the BAA may be amended from time to time to include any updates as required by law.

RECITALS

A. District wishes to disclose certain information to Mariposa County Health Department, hereinafter ("BA"), some of which may constitute Protected Health Information ("PHI").

B. District and BA intend to protect the privacy and provide for the security of PHI disclosed to BA in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), and Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

C. As part of the HIPAA Regulations, the Privacy Rule and the Security Rule require the District to enter into a contract containing specific requirements with BA 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.

NOW, THEREFORE, in consideration of the mutual promises and covenants below and the exchange of information pursuant to this BAA, the parties agree as follows:

I. DEFINITIONS.

a. "Breach" shall have the meaning given to such term under the HITECH Act, located in 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 and in this BAA, shall mean Mariposa County Health Department.

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, and in this BAA, shall mean the District.

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.


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 also includes Electronic Protected Health Information.

k. “Security Rule” shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.

l. “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).

II. OBLIGATIONS OF BUSINESS ASSOCIATE.

a. Permitted Uses. BA shall not use Protected Information except for the purpose of performing BA’s obligations and as permitted or required under the BAA or as required by law. Further, BA 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 District.

b. Permitted Disclosures. BA shall not disclose Protected Information except for the purpose of performing BA’s obligations and as permitted under the BAA, or as required by law. BA 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 CE. If BA discloses Protected Information to a third party, BA 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 BA of any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach.

c. Permitted Uses and Disclosures. BA shall not use or disclose Protected Information for fundraising or marketing purposes. BA 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). BA shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of the District and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2).
d. **Appropriate Safeguards.** BA shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the BAA, or as required by law, 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. BA 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.

e. **Reporting of Improper Access, Use, or Disclosure.** BA shall report to the District in writing of any access, use, or disclosure of Protected Information not permitted by the BAA, including breaches of unsecured protected health information as required at 45 C.F.R. 164.410, and any security incident of which it becomes aware, without unreasonable delay and in no case later than 10 calendar days after discovery.

f. **Business Associate’s Agents.** BA shall ensure that any agents, including subcontractors, to whom it provides Protected Information, agree in writing to the same restrictions and conditions that apply to BA with respect to such PHI and implement the safeguards required by paragraph c above with respect to Electronic PHI in accordance with 45 C.F.R. Sections 164.504 and 164.308/. BA shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation with 45 C.F.R. Section 164. Additionally, in accordance with 45 C.F.R. Sections 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, BA shall ensure that any subcontractors that create, receive, maintain or transmit PHI on behalf of the BA agree to the same restrictions, conditions, and requirements that apply to the BA with respect to such information.

g. **Access to Protected Information.** BA shall make Protected Information maintained by BA or its agents or subcontractors in Designated Record Sets available to the District for inspection and copying within ten (10) days of a request by the District to enable the District to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C. F. R Section 164.524. If BA maintains an Electronic Health Record, BA shall provide such information in electronic format to enable the District to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e).

h. **Amendment of PHI.** Within ten (10) days of receipt of a request from the District for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, BA or its agents or subcontractors shall make such Protected Information available to the District for amendment and incorporate any such amendment to enable the District 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 BA or its agents or subcontractors, BA must notify the District in writing within five (5) days of the request.

i. **Accounting Rights.** Promptly, and no later than ten (10) days after any disclosure of Protected Information for which District is required to account to an individual, BA and its agents or subcontractors shall make available to District the information required to provide an accounting of disclosures to
enable District 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 the District. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of 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 BA 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 of 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 BA or its agents or subcontractors, BA shall within five (5) days of a request forward it to District in writing. BA shall not disclose any Protected Information except as set forth in Section II.b. of this BAA. The provisions of this subparagraph shall survive the termination of this agreement.

j. **Governmental Access to Records.** BA shall make its internal practices, books, and records relating to the use and disclosure of Protected Information available to District and to the Secretary of the U.S. Department of Health and Human Services (the “Secretary”) for purposes of determining BA’s compliance with the Privacy Rule. BA shall provide to the District a copy of any Protected Information that BA provides to the Secretary concurrently with providing such Protected Information to the Secretary.

k. **Minimum Necessary.** BA, its agents, and subcontractors shall request, use, and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use, or disclosure. BA 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.** BA acknowledges that BA has no ownership rights with respect to the Protected Information.

m. **Notification of Breach.** During the term of the BAA, BA shall notify the District within twenty-four (24) hours of any suspected or actual breach of security, intrusion, or unauthorized use or disclosure of PHI of which BA becomes aware and/or any actual or suspected use of disclosure of data in violation of any applicable federal or state laws or regulations. BA 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.

n. **Insurance.** During the term of this BAA, BA shall obtain insurance covering liability for improper use or disclosure of PHI in an amount no less than one million dollars ($1,000,000). BA shall maintain on file with District a certificate of insurance showing that the aforesaid policy or policies are in effect in the
required amounts and naming District and its officers, employees, and agents as additional insureds.

o. **Breach Pattern or Practice by Covered Entity.** Pursuant to 42 U.S.C. Section 17934(b), if the BA knows of a pattern of activity or practice of the District that constitutes a material breach or violation of the District’s obligations under the BAA or other arrangement, the BA must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the BA must terminate the BAA. BA shall provide written notice to the District of any pattern of activity or practice of the District that BA believes constitutes a material breach or violation of the District’s obligations under the BAA or other arrangement within five (5) days of discovery and shall meet with the District 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 the District, BA and its agents or subcontractors shall allow the District to conduct a reasonable inspection of the facilities, systems, books, records, BAA, policies and procedures relating to the use or disclosure of Protected Information pursuant to this BAA for the purpose of determining whether BA has complied with this BAA; provided, however, that (i) BA and the District shall mutually agree in advance upon the scope, timing and location of such an inspection, (ii) the District shall protect the confidentiality of all confidential and proprietary information of BA to which the District has access during the course of such inspection; and (iii) the District shall execute a nondisclosure BAA, upon terms mutually agreed upon by the parties, if requested by BA. The fact that the District inspects, or fails to inspect, or has the right to inspect, BA’s facilities, systems, books, records, agreements, policies and procedures does not relieve BA of its responsibility to comply with this BAA, nor does the District’s (i) failure to detect or (ii) detection, but failure to notify BA or require BA’s remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of the District’s enforcement rights under the BAA. BA shall notify the District within ten (10) days of learning that BA has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights.

III. **TERMINATION.**

a. **Material Breach.** A breach by BA of any provision of this BAA, as determined by the District, shall constitute a material breach of the BAA and shall provide grounds for immediate termination of the services provided by the BA and access to any of the District’s information.

b. **Judicial or Administrative Proceedings.** The District may terminate the services provided by the BA and access to any of the District’s information, effective immediately, if (i) BA 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 BA 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 BA has been joined.

c. **Effect of Termination.** Upon termination of the services provided by the BA and access to any of the District’s information for any reason, BA shall, at the option of the District, return or destroy all Protected Information that BA 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 the District, BA 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. If the District elects destruction of the PHI, BA shall certify in writing to the District that such PHI has been destroyed.

IV. INDEMNIFICATION.
BA agrees to indemnify, hold harmless, and defend, or in the sole discretion of the District pay for the defense of, District and its respective employees, directors, officers, subcontractors, agents, or other members of its workforce (each of the foregoing hereinafter referred to as “Indemnified Party”) against all actual and direct losses, liabilities, lost profits, fines, penalties, costs, or expenses (including reasonable attorney fees) suffered by the Indemnified Party, and all claims and liability of third parties arising from or in connection with any breach of this BAA or from any acts or omissions related or unrelated to this BAA by BA or its employees, directors, officers, subcontractors, agents, or other members of its workforce. BA’s obligation to indemnify any Indemnified Party shall survive the expiration or termination of this BAA.

V. DISCLAIMER.
The District makes no warranty or representation that compliance by BA with this BAA, HIPAA, the HITECH Act, or the HIPAA Regulations will be adequate or satisfactory for BA’s own purposes. BA is solely responsible for all decisions made by BA regarding the safeguarding of PHI.

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

VII. AMENDMENT.
a. Amendment to Comply with Laws. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the 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 the District must receive satisfactory written assurance from BA that BA 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. District may terminate the services provided by the BA and access to any of the District’s information upon thirty (30) days written notice in the event (i) BA does not promptly enter into negotiations to amend
notice in the event (i) BA does not promptly enter into negotiations to amend the BAA when requested by District pursuant to this Section or (ii) BA does not enter into an amendment to the BAA providing assurances regarding the safeguarding of PHI that the District, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

b. Any reference herein to a federal regulatory section within the Code of Federal Regulations or other applicable law shall be a reference to such section as it may be subsequently updated, amended, or modified.

VIII. ASSISTANCE IN LITIGATION OR ADMINISTRATIVE PROCEEDINGS.
BA shall make itself, and any subcontractors, employees or agents assisting BA in the performance of its obligations under the BAA, available to the District, at no cost to the District, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against District, 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 BA or its subcontractor, employee or agent is a named adverse party.

IX. NO THIRD-PARTY BENEFICIARIES.
Nothing express or implied in the BAA is intended to confer, nor shall anything herein confer, upon any person other than District, BA, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

X. INTERPRETATION.
This BAA 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.

IN WITNESS WHEREOF, the parties hereto have duly executed this BAA as of the BAA Effective Date.

JOHN C. FREMONT HEALTHCARE DISTRICT

By: Alan MacPhee, CEO
Print Name: Alan G. MacPhee
Title: Chief Executive Officer
Date: February 18, 2014

MARIPOSA COUNTY

By: Kevin Cann
Print Name: Kevin Cann
Title: Board Chair
Date: Nov. 12, 2014

APPROVED AS TO FORM:

STEVEN W. DAHLEM
COUNTY COUNSEL