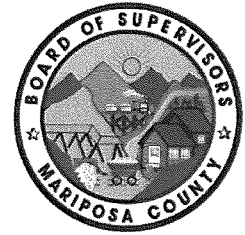


MARIPOSA COUNTY

HHS/Behavioral Health & Recovery Services · (209) 966-2000



RESOLUTION - ACTION REQUESTED 2021-409

MEETING: July 13, 2021

TO: The Board of Supervisors

FROM: Shannon Gadd, Health and Human Services Agency Director

RE: Second Amendment - Agreement with Central Star Behavioral Health for Inpatient Services

RECOMMENDATION AND JUSTIFICATION:

Approve Second Amendment to an Agreement with Central Star Behavioral Health, Inc. to Extend the Term of the Agreement through the End of June 30, 2022; and Authorize the Board of Supervisors Chair to Sign the Amendment.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

On January 8, 2019, the Board of Supervisors approved the Agreement to utilize inpatient services at the CRU through Resolution No. 2019-11. After nine months of operation, the actual costs to operate the facility have been \$518.18 per day versus the initial estimated cost rate of \$371.02 per day. Due to an initial underestimate of costs, the first nine months of this agreement resulted in a significant budget shortfall of \$391,288 for the facility shared by the six counties. The Mariposa County share of the increased costs is \$45,529. This has the potential to negatively impact cash flow for the CRU and requires the requested amendment.

On November 10, 2020, the Board of Supervisors approved the First Amendment to the Agreement through Resolution No. 2020-659 requesting that the rate be adjusted to reflect actual costs of \$518.18 per day.

On December 5, 2017 by Resolution 2017-809, the Behavioral Health Unit of HHSA received Board approval to participate in the utilization of one or more beds in a 16-bed regional Crisis Residential Unit (CRU) under construction in Merced through a California Health Facilities Financing Authority (CHFFA) Grant. This Agreement sets forth the terms and conditions under which services at the 16-bed regional Crisis Residential Unit (CRU) in Merced will be provided.

Central Star Behavioral Health (CSBH), Inc was selected to operate the Merced CRU and provide services on behalf of the Multi-County Consortium. CSBH will ensure scope of work for required services and compliance of laws are fulfilled.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

If this amendment is not approved, Behavioral Health crisis response workers may

have greater difficulty in placing clients who require emergency psychiatric hospitalization. In addition, Mariposa County Behavioral Health will not be in compliance with cost sharing with the other participating counties.

FINANCIAL IMPACT:

This contract will be paid from the Behavioral Health 001-0402 budget unit using Realignment funds. There is no impact to the County General Fund.

ATTACHMENTS:

22-Central Star CRU Amend 02 - June 20 2021 (PDF)

CS - 1st Amendment 2021 Wsignatures (PDF)

CSBH - CRU Agmt. 2019 - Wsignatures (PDF)

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]

MOVER: Wayne Forsythe, District IV Supervisor

SECONDER: Tom Sweeney, District II Supervisors

AYES: Rosemarie Smallcombe, Tom Sweeney, Marshall Long, Wayne Forsythe

EXCUSED: Miles Menetrey

**SECOND AMENDMENT
TO
CONTRACT NO. 2018169
BETWEEN
MARIPOSA COUNTY
AND
CENTRAL STAR BEHAVIORAL HEALTH, INC.**

THIS Amendment to Contract No2018169, is executed by and between the County of Mariposa, a political subdivision of the State of California, (hereinafter called "COUNTY"), and Central Start Behavioral Health, Inc., (hereinafter called "CONTRACTOR").

This Amendment is hereby annexed to and made a part of the printed part of the Agreement to which it is attached, or modifies the existing Agreement between the parties. In each instance in which the provisions of this Amendment shall contradict or be inconsistent with the provisions of the printed portion of the original Agreement and any previous amendments, the provision of this Amendment shall prevail and govern and the contradicted or inconsistent provisions shall be deemed amended accordingly. Both parties agree that there is new and adequate consideration for this Amendment.

This Amendment shall be deemed to have been duly approved when executed by both parties to the original Agreement. Once duly approved, this Amendment shall become effective as of the date signed by the Chairman of the Mariposa County Board of Supervisors.

MODIFICATIONS:

- a). Section 2, entitled "**TERM**", is amended to read add as follows:

The term of this Agreement shall commence on the first (1st) day of June, 2021, and continue until the thirtieth (30th) day of June, 2022, unless sooner terminated in accordance with the sections entitled "TERMINATION FOR CONVENIENCE" or "TERMINATION FOR CAUSE", as set forth elsewhere in this Agreement.

- b). Section 12, entitled "**INSURANCE**", is amended to read as follows:

- A. Prior to the commencement of work, and as a precondition to this contract, CONTRACTOR shall purchase and maintain the following types of insurance for the stated minimum limits indicated during the term of this Agreement. CONTRACTOR shall provide a certificate of insurance and endorsements on each policy as required in this section. Each certificate of insurance shall specify if CONTRACTOR has an SIR, and if so, CONTRACTOR shall be required to provide the entire policy of insurance with which it has a SIR and/or deductible. All deductibles and self-insured retentions shall be fully disclosed in the Certificates of Insurance and are subject to the express written permission of the COUNTY Risk Manager.

1. Commercial General Liability: \$2,000,000 per occurrence and \$4,000,000 annual aggregate covering products and completed operations, bodily injury, personal injury and property damage. The COUNTY and its officers, employees and agents shall be endorsed to above policy as additional insured, using ISO form CG2026 or an alternate form that is at least as broad as form CG2026, as to any liability arising from the performance of this Agreement.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage, or alternatively split limits of \$500,000 per person and \$1,000,000 per accident for bodily injury with \$250,000 per accident for property damage.
3. Workers Compensation: Statutory coverage, if and as required according to the California Labor Code, including Employers' Liability limits of \$1,000,000 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the County.
4. Professional Liability (Errors and Omissions): \$2,000,000 limit per occurrence and \$5,000,000 annual aggregate limit covering CONTRACTOR's wrongful acts, errors and omissions. Any aggregate limit for professional liability must be separate and in addition to any CGL aggregate limit. Claims – made coverage requires CONTRACTOR to maintain a minimum of three (3) years extended reporting period or tail coverage.
5. Technology Professional Liability Errors and Omissions Insurance appropriate to the CONTRACTOR's profession and work hereunder, with limits not less than \$2,000,000 per occurrence. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the CONTRACTOR in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, copyright, trademark, invasion of privacy violations, information theft, release of private information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

The Policy shall include, or be endorsed to include, property damage liability coverage for damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the Agency in the care, custody, or control of the CONTRACTOR. If not covered under the CONTRACTOR's liability policy, such "property" coverage of the Agency may be

endorsed onto the CONTRACTOR's Cyber Liability Policy as covered property as follows:

Cyber Liability coverage not less than \$2,000,000 per occurrence, and sufficient to cover, the full replacement value of damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the Agency that will be in the care, custody, or control of CONTRACTOR.

B. INSURANCE CONDITIONS

1. Insurance is to be primary and non-contributory with any insurance of the COUNTY and placed with admitted insurers rated by A.M. Best Co. as A: VII or higher. Lower rated, or approved but not admitted insurers, or any other requirement changes (such as limits) are subject to the prior approval of the COUNTY Risk Manager.
 2. Each of the above required policies shall be endorsed to provide the COUNTY with thirty (30) days prior written notice of cancellation. The COUNTY is not liable for the payment of premiums or assessments on the policy. No cancellation provisions in the insurance policy shall be construed in derogation of the continuing duty of CONTRACTOR to furnish insurance during the term of this Agreement.
 3. 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.
 4. If the CONTRACTOR uses Sub-CONTRACTORS or others to perform work under this contract, such Sub-CONTRACTOR or other persons shall be Named Insured or Additionally Insured to the CONTRACTOR's required insurance coverage, or required by the CONTRACTOR to comply with equivalent insurance and conditions of this Section.
- c) Exhibit A is revised and replaced in its entirety.
- d) Exhibit E is revised and replaced in its entirety.

e) Exhibit R, "Section entitled "Rate" is amended as follows:

For the term June 1, 2018 through June 30, 2020, the rate is as follows:

MEDI-CAL REVENUE:	Rate
3000 Adult Crisis Residential (Mode 05/SFC 40-49)	\$371.02

For the term July 1, 2020 through June 30, 2022, the rate is as follows:

MEDI-CAL REVENUE:	Rate
3000 Adult Crisis Residential (Mode 05/SFC 40-49)	\$518.18

The Agreement, as hereby amended, is ratified and continued. All provisions, terms, covenants, conditions and promises contained in the Agreement not amended herein shall remain in full force and effect. This Amendment is effective retroactive to May 31, 2021. The parties shall treat the Agreement as if it had been in full force and effect continuously since May 31, 2021, without there having been any interruption of the Agreement whatsoever.



Except as herein modified, all terms and conditions in said Agreement, as amended by the first amendment, dated November 10, 2020, as heretofore approved remain unchanged and in full force and effect.

COUNTY OF MARIPOSA
BOARD OF SUPERVISORS

CENTRAL STAR BEHAVIORAL
HEALTH, INC.

By 


Marshall Long, Chair

By 


Kent Dunlap
Chief Executive Officer



07/14/2021

Date

07/14/2021

Date



APPROVED AS TO LEGAL FORM
MARIPOSA COUNTY COUNSEL

By 


~~Deputy~~
07/14/2021

Date

Countersigned:

Rene LaRoche, Clerk of the Board
Mariposa County

Exhibit A – Mental Health Services Additional Terms and Conditions

1. CONFIDENTIALITY

CONTRACTOR and its employees, agents, or subcontractors shall comply with applicable laws and regulations, including but not limited to California Welfare & Institutions (W&I) Code Section 5328; 42 C.F.R. Part 2 and 45 C.F.R. Parts 160 and 164, and to the HITECH Act in 42 C.F.R., Chapter 156, regarding the confidentiality of patient information. CONTRACTOR shall not use identifying information for any purpose other than carrying out the CONTRACTOR's obligation under this contract.

CONTRACTOR shall not disclose, except as otherwise specifically permitted by the contract or authorized by the client/patient, any such identifying information to anyone other than the COUNTY without prior written authorization from the COUNTY or in accordance with State and Federal laws.

For the purposes of the above paragraphs, identifying information will include, but not be limited to: name, identifying number, symbol, or other identifying particular assigned the individual.

The CONTRACTOR agrees to comply with the provisions of Public Law 104-191 known as The Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the HIPAA Business Associate addendum attached to this Agreement and incorporated by this reference as if fully set forth herein. Any conflict between the terms and conditions of this Agreement and the Business Associate Addendum incorporated are to be read so that the more legally stringent terms and obligation(s) of the CONTRACTOR shall control and be given effect.

COUNTY shall annually monitor CONTRACTOR for compliance and adherence to CONTRACTOR's policies and procedures by requesting CONTRACTOR to attest to the completion of training of its staff and providers with annual copies of any policies and procedures.

2. COMPLIANCE AND ETHICS

CONTRACTOR agrees to establish ethical standards for all staff employed by CONTRACTOR. These standards shall include compliance with state and federal regulations for safeguarding client information. CONTRACTOR agrees to orientate and train staff to enforce established ethical standards.

CONTRACTOR agrees to establish written policies and procedures that ensure organizational and individual compliance.

If CONTRACTOR is unable to establish policies and procedures relating to ethics and compliance, CONTRACTOR will notify COUNTY in writing that it intends to abide by the Mariposa County Behavioral Health and Recovery Services' Compliance and

Integrated Ethics Plan (CIEP).

COUNTY shall annually monitor CONTRACTOR for compliance and adherence to its policies and procedures by requesting CONTRACTOR to attest to the completion of training of its staff and providers with annual copies of any policies and procedures.

3. CULTURAL COMPETENCY

“Cultural Competence” means a set of congruent practice skills, behaviors, attitudes and policies in a system, agency or among those persons providing services that enables that system, agency, or those persons providing services to work effectively in a cross-cultural situations. CONTRACTOR shall have a written policy and procedure that ensure organizational and individual compliance by its staff and providers.

COUNTY shall annually monitor CONTRACTOR for compliance and adherence to its policies and procedures by requesting CONTRACTOR to attest to the completion of training of its staff and providers with annual copies of any policies and procedures.

4. EXCLUDED INDIVIDUALS AND ENTITIES

Employees of CONTRACTOR who, because of convictions or because of current or past failures to comply with state and federal program requirements, become designated as ineligible persons or are identified for exclusion from involvement in state and federal programs, shall be removed from responsibility or participation in or involvement with all aspects of this federally funded program, until such time as the person or entity is no longer identified on the exclusion lists.

CONTRACTOR shall be responsible to perform ongoing exclusion reviews of current employees to ensure that CONTRACTOR does not hire or contract with any individual or entity under sanction or exclusion by the state and federal government. As an outcome of ongoing exclusion reviews, CONTRACTOR agrees to provide to COUNTY written certification under penalty of perjury that no current employee, subcontractor, entity or agent is excluded from participation of Medicaid or Medi-Cal programs per 42 CFR 455.436 and W&I Code Section 14043.61. Detailed reporting shall be made available to COUNTY upon demand. Failure to comply shall lead to contract termination.

CONTRACTOR shall be responsible to ensure and attest to that all providers or any person with a 5 percent or more direct or indirect ownership in the provider under this Agreement have undergone a criminal background check per 42 CFR 455.434 and other applicable State requirements based on the category of the provider.

The COUNTY shall not reimburse for past, present or future services rendered by individuals that were under employment by CONTRACTOR and have been excluded from federal and state participation.

5. MONITORING

COUNTY will monitor ongoing program compliance through facility visits, consumer record review and financial record review. COUNTY Contract Monitors will visit facilities announced or unannounced.

6. NOTIFICATION OF UNUSUAL OCCURRENCE

CONTRACTOR shall notify COUNTY Compliance Officer and appropriate state agency of any unusual occurrences or physical incidents (i.e., abuse, injury and death) that may affect COUNTY's clients within five (5) days of occurrence and, at the request of COUNTY and appropriate state agency, provide a copy of all investigation reports concerning incidents, as well as the appropriate disposition and corrective action taken to resolve the incident.

7. STANDARDS OF PRACTICE

Standards of practice of CONTRACTOR shall be determined by the professional standards of CONTRACTOR's trade or field of expertise and all applicable provisions of law and other rules and regulations of any and all governmental authorities relating to provision of services as defined in this Agreement.

8. COMPENSATION AND LIABILITY FOR DAMAGES UPON TERMINATION

Neither party shall be relieved of liability to the other for damages sustained by either party by virtue of any breach of this Agreement, regardless of whether this Agreement was terminated for cause or for convenience. COUNTY may withhold any payments not yet made to CONTRACTOR for purpose of setoff until such time as the exact amount of damages due to COUNTY from CONTRACTOR is determined and established in writing, signed by both parties.

9. STAFFING, TRAINING AND SUPERVISION

CONTRACTOR shall train and maintain appropriate supervision of all persons providing services under this Agreement with particular emphasis on the supervision of para-professionals, interns, students, and clinical volunteers in accordance with CONTRACTOR's clinical supervision policy.

CONTRACTOR shall be responsible for the training of all appropriate staff on applicable State manuals and/or training materials and State and COUNTY policies and procedures as well as on any other matters that COUNTY may reasonably require.

10. QUALITY MANAGEMENT/UTILIZATION REVIEW

CONTRACTOR shall be in full compliance with COUNTY's Quality Management Plan. COUNTY shall have access to, and conduct audits and reviews of, records, policies and procedures incident reports, and related activities it deems necessary to support COUNTY's Quality Management functions.

CONTRACTOR and COUNTY, to the extent feasible, shall include their respective Quality Management staff in each other's Quality Management activities. Such activities shall include, but not be limited to, Quality Improvement Councils, chart audits, program compliance reviews, and Medi-Cal certifications.

COUNTY's Quality Assurance Plan: The COUNTY or its agent will evaluate CONTRACTOR's performance under this Agreement on not less than an annual basis. Such evaluation will include assessing CONTRACTOR's compliance with all contract terms and performance standards. CONTRACTOR deficiencies which COUNTY determines are severe or continuing and that may place performance of the Agreement in jeopardy if not corrected may be reported to the Managed Care/Quality Improvement Unit. The report will include improvement/corrective action measures taken by the COUNTY and CONTRACTOR. If improvement does not occur consistent with the corrective action measures, COUNTY may terminate this Agreement or impose other penalties as specified in this Agreement.

11. PATIENT RIGHTS AND PROBLEM RESOLUTION PROCESS

CONTRACTOR shall comply with all relevant rules, regulations, statutes, and COUNTY policies and procedures related to individuals' rights to a complaint process and timely compliant resolution.

CONTRACTOR shall comply with the Mental Health Plans (MHPs) Medi-Cal beneficiary and/or Mental Health Services Act problem resolution process. This does not preclude CONTRACTOR's commitment to resolve problems or complaints by Medi-Cal beneficiaries at the informal level as simply and quickly as possible. Nothing in this Agreement shall prevent Medi-Cal beneficiaries from utilizing the MHPs and other rights and processes regarding complaints and grievances, which are guaranteed by statute.

Provision of this Agreement shall not be construed to replace or conflict with the duties of COUNTY's Patients' Rights Advocate as described in Section 5520 of the W & I Code.

12. CREDENTIALING

If CONTRACTOR is performing Medi-Cal billable services under this Agreement, CONTRACTOR must follow COUNTY's credentialing and re-credentialing process for CONTRACTORS applicable staff and subcontractors.

This process is required to be completed prior to reimbursement for Medi-Cal eligible services. The CONTRACTOR is responsible to notify the COUNTY of all treating providers, applicable administration, and subcontracted providers performing under this Agreement and assisting in the credentialing process as needed. Once initial credentialing is completed, a re-credentialing process will occur no less than every three (3) years.

13. INSPECTION

Each CONTRACTOR/Consultant shall comply with the requirement that the subcontractor make all of its premises, physical facilities, equipment, books, records, documents, contracts, computers, or other electronic systems pertaining to Medi-Cal enrollees, Medi-Cal-related activities, services and activities furnished under the terms of the subcontract, or determinations of amounts payable available at any time for inspection, examination or copying by the Department, CMS, HHS Inspector General, the United States Comptroller General, their designees, and other authorized federal and state agencies. (42 C.F.R. §438.3(h).) This audit right will exist for 10 years from the final date of the contract period or from the date of completion of any audit, whichever is later. (42 C.F.R. § 438.230(c)(3)(iii).)

The Department, CMS, or the HHS Inspector General may inspect, evaluate, and audit the subcontractor at any time if there is a reasonable possibility of fraud or similar risk, then. (42 C.F.R. § 438.230(c)(3)(iv).)

14. COMPLIANCE

The CONTRACTOR, and its subcontractors to the extent that the subcontractors are delegated responsibility by the CONTRACTOR for coverage of services and payment of claims under this Agreement, shall implement and maintain arrangements or procedures that are designed to detect and prevent fraud, waste, and abuse per 42 CFR §438.608.

If CONTRACTOR is unable to establish policies and procedures relating to compliance, CONTRACTOR will notify COUNTY in writing that it intends to abide by the Mariposa County Behavioral Health and Recovery Services' Compliance Plan.

15. WHISTLEBLOWERS

CONTRACTOR shall have policy and/or procedures to receive and investigate information from whistleblowers relating to the integrity of the CONTRACTOR or network providers receiving Federal funds under 42 CFR, Part 438.

16. CHILD ABUSE REPORTING

CONTRACTOR shall establish a procedure acceptable to the COUNTY to ensure that all employees, volunteers, consultants, sub-contractors or agents performing service

under this contract report child abuse or neglect to a county welfare department as defined in California Penal Code, Section 11165.9.

17. ADULT ABUSE REPORTING

CONTRACTOR shall establish a procedure acceptable to the COUNTY to ensure that all employees, volunteers, consultants, sub-contractors or agents performing service under this contract report adult abuse or neglect to a county welfare department as defined in California Penal Code, Section 11165.9.

Exhibit E – HIPAA Business Associate Addendum

This Health Insurance Portability Accountability Act (hereafter referred to as “HIPAA”) Business Associate Addendum supplements and is made a part of the parties underlying Agreement by and between the COUNTY and the CONTRACTOR (referred to hereafter as “Business Associate”).

I. Recitals – STANDARD RISK

1. This Contract (Agreement) has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act (“HIPAA”) and its implementing privacy and security regulations at 45 CFR Parts 160 and 164 (“the HIPAA regulations.”).
2. The County of Mariposa (“COUNTY”) wishes to disclose to Business Associate certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information (“PHI”).
3. “Protected Health Information” or “PHI” means any information, whether oral or recorded in any form or medium that relates to the past, present, or future physical or mental condition of an individual, the provision of health and dental care to an individual, or the past, present, or future payment for the provision of health and dental care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI shall have the meaning given to such term under HIPAA and HIPAA regulations, as the same may be amended from time to time.
4. “Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI, or confidential data that is essential to the ongoing operation of the Business Associate’s organization and intended for internal use; or interference with system operations in an information system.
5. As set forth in this Agreement, “CONTRACTOR,” here and after, is the Business Associate of COUNTY that provides services, arranges, performs or assists in the performance of functions or activities on behalf of COUNTY and creates, receives, maintains, transmits, uses or discloses PHI.
6. COUNTY and Business Associate desire to protect the privacy and provide for the security of PHI created, received, maintained, transmitted, used or disclosed pursuant to this Agreement, in compliance with HIPAA and HIPAA regulations and other applicable laws.
7. The purpose of the Addendum is to satisfy certain standards and requirements of HIPAA and the HIPAA regulations.

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

II. In exchanging information pursuant to this Agreement, the parties agree as follows:

1. Permitted Uses and Disclosures of PHI by Business Associate

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

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

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

2) **Provision of Data Aggregation Services.** Use PHI to provide data aggregation services to COUNTY. Data aggregation means the combining of PHI created or received by the Business Associate on behalf of COUNTY with PHI received by the Business Associate in its capacity as the Business Associate of another covered entity, to permit data analyses that relate to the health care operations of COUNTY.

2. Responsibilities of Business Associate

Business Associate agrees:

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

B. **Safeguards.** To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI, including electronic PHI, that it creates, receives, maintains, uses or transmits on behalf of COUNTY; and to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate shall develop and maintain

a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities, and which incorporates the requirements of section C, Security, below. Business Associate will provide COUNTY with its current and updated policies.

C. **Security.** To take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI, and provide data security procedures for the use of COUNTY at the end of the contract period. These steps shall include, at a minimum:

- 1) Complying with all of the data system security precautions listed in this Agreement or in an Exhibit incorporated into this Agreement; and
- 2) Complying with the safeguard provisions in the COUNTY Information Security Policies or requirements set forth in State or Federal guidelines applicable. In case of a conflict between any of the security standards contained in any of these enumerated sources of security standards, the most stringent shall apply. The most stringent means that safeguard which provides the highest level of protection to PHI from unauthorized disclosure. Further, Business Associate must comply with changes to these standards that occur after the effective date of this Agreement.

Business Associate shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this section and for communicating on security matters with COUNTY.

D. **Mitigation of Harmful Effects.** To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or its subcontractors in violation of the requirements of this Addendum.

E. **Business Associate's Agents.** To ensure that any agents, including subcontractors, to whom Business Associate provides PHI received from or created or received by Business Associate on behalf of COUNTY, agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI, including implementation of reasonable and appropriate administrative, physical, and technical safeguards to protect such PHI; and to incorporate, when applicable, the relevant provisions of this Addendum into each subcontract or subaward to such agents or subcontractors.

F. **Availability of Information to COUNTY and Individuals.** To provide access as COUNTY may require, and in the time and manner designated by COUNTY (upon reasonable notice and during Business Associate's normal business hours) to PHI in a Designated Record Set, to COUNTY (or, as directed by COUNTY), to an Individual, in accordance with 45 CFR Section §164.524. Designated Record Set

means the group of records maintained for COUNTY that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for COUNTY health plans; or those records used to make decisions about individuals on behalf of COUNTY. Business Associate shall use the forms and processes developed by COUNTY for this purpose and shall respond to requests for access to records transmitted by COUNTY within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.

- G. **Amendment of PHI.** To make any amendment(s) to PHI that COUNTY directs or agrees to pursuant to 45 CFR Section §164.526, in the time and manner designated by COUNTY.
- H. **Internal Practices.** To make Business Associate's internal practices, books and records relating to the use and disclosure of PHI received from COUNTY, or created or received by Business Associate on behalf of COUNTY, available to COUNTY or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by COUNTY or by the Secretary, for purposes of determining COUNTY compliance with the HIPAA regulations.
- I. **Documentation of Disclosures.** To document and make available to COUNTY or (at the direction of COUNTY to an Individual such disclosures of PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of PHI, in accordance with 45 CFR §164.528.
- J. **Notification of Breach.** During the term of this Agreement:

- 1) **Discovery of Breach.** To notify COUNTY **immediately by telephone call plus email or fax** upon the discovery of breach of security of PHI in computerized form if the PHI was, or is reasonably believed to have been, acquired by an unauthorized person, or **within 24 hours by email or fax** of any suspected security incident, intrusion or unauthorized use or disclosure of PHI in violation of this Agreement and this Addendum, or potential loss of confidential data affecting this Agreement. Notification shall be provided to the COUNTY Compliance Manager. If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notification shall be provided using the "Privacy Incident Reporting Form" located at the following web address:

<http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/DHCSBusinessAssociatesOnly.aspx>

Business Associate shall take:

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

- ii. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
- 2) **Investigation of Breach.** To immediately investigate such security incident, breach, or unauthorized use or disclosure of PHI or confidential data. Within 24 hours of the discovery, to notify the COUNTY Compliance Manager of:
- i. What data elements were involved and the extent of the data involved in the breach,
 - ii. A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data,
 - iii. A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized, and
 - iv. A description of the probable causes of the improper use or disclosure;
- 3) **Written Report.** To provide a written report of the investigation to the COUNTY Compliance Manager within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall include, but not be limited to, the information specified above, as well as a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure.
- 4) **Notification of Individuals.** To notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and to pay any costs of such notifications, as well as any costs associated with the breach. The COUNTY Compliance Manager shall approve the time, manner and content of any such notifications.
- 5) **COUNTY Contact Information.** To direct communications to the above referenced COUNTY staff, the CONTRACTOR shall initiate contact as indicated herein COUNTY reserves the right to make changes to the contact information below by giving written notice to the CONTRACTOR. Said changes shall not require an amendment to this Agreement or Addendum.

COUNTY
Compliance Manager P.O. Box 99 Mariposa, CA 95338 (209) 966-2000

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

- 1) Business Associate shall provide information privacy and security training, at least annually, at its own expense, to all its employees who assist in the performance of functions or activities on behalf of COUNTY under this Agreement and use or disclose PHI.
- 2) Business Associate shall require each employee who receives information privacy and security training to sign a certification, indicating the employee's name and the date on which the training was completed.
- 3) Business Associate shall retain each employee's written certifications for COUNTY inspection for a period of three years following contract termination.

3. Obligations of County

COUNTY agrees to:

- A. **Notice of Privacy Practices.** Provide Business Associate with the Notice of Privacy Practices that COUNTY produces in accordance with 45 CFR §164.520, as well as any changes to such notice.
- B. **Permission by Individuals for Use and Disclosure of PHI.** Provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures.
- C. **Notification of Restrictions.** Notify the Business Associate of any restriction to the use or disclosure of PHI that COUNTY has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.
- D. **Notification of Patient Confidential Communications.** Notify the Business Associate of any patient (or patient's representative) preferences (or changes to) regarding method of or how to communicate with the patient.
- E. **Requests Conflicting with HIPAA Rules.** Not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA regulations if done by COUNTY.

4. Audits, Inspection and Enforcement

From time to time, COUNTY may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement and this Addendum. Business Associate shall promptly remedy any violation of any provision of this Addendum and shall certify the same to the COUNTY Compliance Manager in writing. The fact that COUNTY inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Addendum, nor does COUNTY:

- A. Failure to detect; or
- B. Detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices constitute acceptance of such practice or a waiver of COUNTY enforcement rights under this Agreement and this Addendum.

5. Termination

- A. **Termination for Cause.** Upon COUNTY knowledge of a material breach of this Addendum by Business Associate, COUNTY shall:
 - 1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by COUNTY;
 - 2) Immediately terminate this Agreement if Business Associate has breached a material term of this Addendum and cure is not possible; or
 - 3) If neither cure nor termination is feasible, report the violation to the Secretary of the U.S. Department of Health and Human Services.
- B. **Judicial or Administrative Proceedings.** Business Associate will notify COUNTY if it is named as a defendant in a criminal proceeding for a violation of HIPAA. COUNTY may terminate this Agreement if Business Associate is found guilty of a criminal violation of HIPAA. COUNTY may terminate this Agreement if a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate is a party or has been joined.
- C. **Effect of Termination.** Upon termination or expiration of this Agreement for any reason, Business Associate shall return or destroy all PHI received from COUNTY (or created or received by Business Associate on behalf of COUNTY that Business Associate still maintains in any form, and shall retain no copies of such PHI or, if return or destruction is not feasible, shall continue to extend the protections of this

Addendum to such information, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

6. Miscellaneous Provisions

- A. **Disclaimer.** COUNTY makes no warranty or representation that compliance by Business Associate with this Addendum, HIPAA or the HIPAA regulations will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- B. **Amendment.** The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon COUNTY request, Business Associate agrees to promptly enter into negotiations with COUNTY concerning an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA regulations or other applicable laws. COUNTY may terminate this Agreement upon thirty (30) days written notice in the event:
- 1) Business Associate does not promptly enter into negotiations to amend this Addendum when requested by COUNTY pursuant to this Section, or
 - 2) Business Associate does not enter into an amendment providing assurances regarding the safeguarding of PHI that COUNTY in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.
- C. **Assistance in Litigation or Administrative Proceedings.** Business Associate shall make itself and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this Agreement, available to COUNTY at no cost to COUNTY to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against COUNTY, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inactions or actions by the Business Associate, except where Business Associate or its subcontractor, employee or agent is a named adverse party.

- D. **No Third-Party Beneficiaries.** Nothing express or implied in the terms and conditions of this Addendum is intended to confer, nor shall anything herein confer, upon any person other than COUNTY or Business Associate and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- E. **Interpretation.** The terms and conditions in this Addendum shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA regulations and applicable state laws. The parties agree that any ambiguity in the terms and conditions of this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.
- F. **Regulatory References.** A reference in the terms and conditions of this Addendum to a section in the HIPAA regulations means the section as in effect or as amended.
- G. **Survival.** The respective rights and obligations of Business Associate under Section 6.C of this Addendum shall survive the termination or expiration of this Agreement.
- H. **No Waiver of Obligations.** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

7. Business Associate Data Security Requirements

A. Personnel Controls

- 1) **Employee Training.** All workforce members who assist in the performance of functions or activities on behalf of County, or access or disclose County PHI or PI must complete information privacy and security training, at least annually, at Business Associate's expense. Each workforce member who receives information privacy and security training must sign a certification, indicating the member's name and the date on which the training was completed. These certifications must be retained for a period of six (6) years following contract termination.
- 2) **Employee Discipline.** Appropriate sanctions must be applied against workforce members who fail to comply with privacy policies and procedures or any provisions of these requirements, including termination of employment where appropriate.
- 3) **Confidentiality Statement.** All persons that will be working with County PHI or PI must sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement

Policies. The statement must be signed by the workforce member prior to access to COUNTY PHI or PI. The statement must be renewed annually. The CONTRACTOR shall retain each person's written confidentiality statement for COUNTY inspection for a period of six (6) years following contract termination.

- 4) **Background Check.** Before a member of the workforce may access COUNTY PHI or PI, a thorough background check of that worker must be conducted, with evaluation of the results to assure that there is no indication that the worker may present a risk to the security or integrity of confidential data or a risk for theft or misuse of confidential data. The CONTRACTOR shall retain each workforce member's background check documentation for a period of three (3) years following contract termination.

B. **Technical Security Controls**

- 1) **Workstation/Laptop encryption.** All workstations and laptops that process and/or store COUNTY PHI or PI must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as Advanced Encryption Standard (AES). The encryption solution must be full disk unless approved by the COUNTY Information Security Office.
- 2) **Server Security.** Servers containing unencrypted COUNTY PHI or PI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.
- 3) **Minimum Necessary.** Only the minimum necessary amount of COUNTY PHI or PI required to perform necessary business functions may be copied, downloaded, or exported.
- 4) **Removable media devices.** All electronic files that contain COUNTY PHI or PI data must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, smartphones, backup tapes etc.). Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES.
- 5) **Antivirus software.** All workstations, laptops and other systems that process and/or store COUNTY PHI or PI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.
- 6) **Patch Management.** All workstations, laptops and other systems that process and/or store COUNTY PHI or PI must have critical security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within 30 days of vendor release.

- 7) **User IDs and Password Controls.** All users must be issued a unique username for accessing COUNTY PHI or PI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password, at maximum within 24 hours. Passwords are not to be shared. Passwords must be at least eight characters and must be a non-dictionary word. Passwords must not be stored in readable format on the computer. Passwords must be changed every 90 days, preferably every 60 days. Passwords must be changed if revealed or compromised. Passwords must be composed of characters from at least three of the following four groups from the standard keyboard:
- i. Upper case letters (A-Z)
 - ii. Lower case letters (a-z)
 - iii. Arabic numerals (0-9)
 - iv. Non-alphanumeric characters (punctuation symbols)
- 8) **Data Destruction.** When no longer needed, all COUNTY PHI or PI must be cleared, purged, or destroyed consistent with NIST Special Publication 800-88, Guidelines for Media Sanitization such that the PHI or PI cannot be retrieved.
- 9) **System Timeout.** The system providing access to COUNTY PHI or PI must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.
- 10) **Warning Banners.** All systems providing access to COUNTY PHI or PI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.
- 11) **System Logging.** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for COUNTY PHI or PI, or which alters COUNTY PHI or PI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If COUNTY PHI or PI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.
- 12) **Access Controls.** The system providing access to COUNTY PHI or PI must use role based access controls for all user authentications, enforcing the principle of least privilege.
- 13) **Transmission encryption.** All data transmissions of COUNTY PHI or PI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing PHI can be

encrypted. This requirement pertains to any type of PHI or PI in motion such as website access, file transfer, and E-Mail.

- 14) **Intrusion Detection.** All systems involved in accessing, holding, transporting, and protecting COUNTY PHI or PI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

C. **Audit Controls**

- 1) **System Security Review.** All systems processing and/or storing COUNTY PHI or PI must have at least an annual system risk assessment/security review which provides assurance that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews should include vulnerability scanning tools.
- 2) **Log Reviews.** All systems processing and/or storing COUNTY PHI or PI must have a routine procedure in place to review system logs for unauthorized access.
- 3) **Change Control.** All systems processing and/or storing COUNTY PHI or PI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

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

- 1) **Emergency Mode Operation Plan.** CONTRACTOR must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic COUNTY PHI or PI in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this Agreement for more than 24 hours.
- 2) **Data Backup Plan.** CONTRACTOR must have established documented procedures to backup COUNTY PHI to maintain retrievable exact copies of COUNTY PHI or PI. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and an estimate of the amount of time needed to restore COUNTY PHI or PI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of COUNTY data.

E. **Paper Document Controls**

- 1) **Supervision of Data.** COUNTY PHI or PI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. COUNTY PHI or PI in paper

form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.

- 2) **Escorting Visitors.** Visitors to areas where COUNTY PHI or PI is contained shall be escorted and COUNTY PHI or PI shall be kept out of sight while visitors are in the area.
- 3) **Confidential Destruction.** COUNTY PHI or PI must be disposed of through confidential means, such as cross cut shredding and pulverizing.
- 4) **Removal of Data.** COUNTY PHI or PI must not be removed from the premises of the CONTRACTOR except with express written permission of COUNTY.
- 5) **Faxing.** Faxes containing COUNTY PHI or PI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending the fax.
- 6) **Mailing.** Mailings of COUNTY PHI or PI shall be sealed and secured from damage or inappropriate viewing of PHI or PI to the extent possible. Mailings which include 500 or more individually identifiable records of COUNTY PHI or PI in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission of COUNTY to use another method is obtained.