

**MEMORANDUM OF UNDERSTANDING
BETWEEN
MERCED COUNTY
AND
THE CITY OF MERCED**

THIS MEMORANDUM OF UNDERSTANDING (MOU) by and between the County of Merced ,on behalf of the Behavioral Health and Recovery Services Department (BHRS) (hereinafter referred to as County), and The City of Merced (hereinafter referred to as City).

The purpose of the MOU is to develop a collaborative relationship between both parties to reduce the number of youth using cannabis, to create stronger peer groups oriented around healthy behaviors, pro-social engagement, decision-making, and to clarify the roles and responsibilities of the BHRS Alcohol and other Drug (AOD) Counselor (hereinafter referred to as Counselor).

WHEREAS, the City desires the expansion of services and education that will offer additional supports needed for youth suffering from drug and alcohol addiction; and

WHEREAS, County has a qualified, specially trained, experienced, and competent Alcohol and Drug Counselor to perform assessment and counseling for youth engaged in the program; and

WHEREAS, the parties desire to set forth herein the terms and conditions under which special services shall be furnished;

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

1. SCOPE OF SERVICES

The parties shall provide either referrals for services or assessment, counseling services and training in accordance with the terms and conditions stated herein, and any specifically referenced attachments hereto.

The following exhibits are specifically incorporated by reference, attached hereto, and made a part hereof, except when in conflict with this MOU or modified herein:

- Exhibit B - Budget
- Exhibit C - Scope of Work
- Exhibit E - HIPAA Business Associate Addendum

2. TERM

The term of this MOU shall commence on October 1, 2021 and continue through June 30, 2024, unless terminated in accordance with Section 5, "TERMINATION FOR CONVENIENCE", or Section 6, "CONDITION SUBSEQUENT/NON-APPROPRIATION OF FUNDING" as specified elsewhere in this MOU.

3. COMPENSATION

City agrees to pay County a Total Contract Price of Three Hundred Fifty-Five Thousand Ninety-Four Dollars and No Cents (\$355,094.00) as defined in Exhibit B, for County's services to be provided herein, as are more specifically set forth under Section 1, "SCOPE OF SERVICES".

Any and/or all payments made under this MOU shall be paid by check, payable to the order of the County and be mailed or delivered to County at:

Name:	Behavioral Health and Recovery Services
Attn:	Fiscal
Address:	P.O. Box 2087
City/State/Zip:	Merced, CA 95344

County may request that City mail the check to County, to such other address as County may from time to time designate to City. Such request must be made in writing in accordance with the procedures as outlined under Section 4, "NOTICES".

4. TERMS OF PAYMENT

Payment shall be for services required to be provided herein and as set forth under Section 1, "SCOPE OF SERVICES." Payment shall be made in the following manner:

County shall submit monthly-itemized invoices, or alternate documentation as deemed appropriate in advance by City, for services it has provided and for the amount owed under this MOU. Invoices shall be forwarded to the City at the City address indicated under Section 4, "NOTICES" of this MOU.

By invoice or approved alternate documentation, County may:

- A. Detail by task the service performed by County.
- B. Detail the (number of hours or units) attributed to each task.
- C. Show the cumulative cost for all tasks performed to date.
- D. Provide any additional information deemed appropriate by County to notify

City of the need for payment.

The fee due hereunder shall be paid to County within thirty (30) days following receipt of the invoice.

5. NOTICES

All notices, requests, demands or other communications under this MOU shall be in writing. Notice shall be sufficiently given for all purposes as follows:

- A. Personal Delivery. When personally delivered to the recipient, notice is effective upon delivery.
- B. First Class Mail. When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three mail delivery days after deposit in a United States Postal Service office or mailbox.
- C. Certified Mail. When mailed by certified mail, return receipt requested, notice is effective upon receipt, if delivery is confirmed by a return receipt.
- D. Overnight Delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

Any correctly addressed notice that is refused, unclaimed or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messengers or overnight delivery service.

Information for notice to the parties to this MOU at the time of endorsement of this MOU is as follows:

County of Merced
Director, Behavioral Health
and Recovery Services
P.O. Box 2087
Merced, CA 95344
(209) 381-6813

City of Merced
City Manager
Stephanie Dietz
678 W. 18th Street
Merced, CA 95340
(209) 388-8670

Any party may change its address by giving the other party notice of the change in any manner permitted by this MOU.

6. TERMINATION FOR CONVENIENCE

Either party shall have the right at any time to terminate this MOU by giving the other party thirty (30) days written notice. Upon effective date of termination,

County shall have no further obligation to provide an Alcohol and Drug Counselor.

7. CONDITION SUBSEQUENT/NON-APPROPRIATION OF FUNDING

The services provided to City, pursuant to this MOU, are based on City's continued receipt of local, state and/or federal funding for this purpose. In the event that funding is terminated, in whole or in part, for any reason, this MOU and all obligations of the County arising from this MOU shall be immediately discharged. City agrees to inform County no later than ten (10) calendar days after receiving notification that funding will be terminated and the final date for which funding will be available.

8. MODIFICATION OF THE MOU

Notwithstanding any of the provisions of this MOU, the parties may agree to amend this MOU. No alteration or variation of the terms of this MOU shall be valid unless made in writing and signed by the parties hereto. No oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

9. LICENSES AND CERTIFICATIONS

County shall ensure that the assigned Alcohol and Drug Counselor receive proper training and maintain appropriate and necessary licenses, certifications, and/or credentials required by the laws of the United States, the State of California, County of Merced and all other appropriate governmental agencies.

10. INSURANCE

The Parties shall maintain, at their own expense, Commercial General Liability (CGL) insurance, Professional Liability insurance, Cyber Liability Insurance, Automobile Liability insurance, and Workers Compensation insurance in such forms and amounts sufficient to cover claims arising from the duties and responsibilities under this MOU.

Each Party shall provide the other certificates of insurance upon request. Each Party and its officers, employees and agents shall be endorsed to the other's CGL 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 MOU.

11. GOVERNMENTAL IMMUNITY

City and County are governmental entities with immunities from claims for personal and property damages when acting within the scope of their authority

and purpose. Each party specifically retains these immunities in regard to claims by third parties.

12. RECORDS, INFORMATION AND REPORTS

City and County shall maintain full and accurate records with respect to all matters covered under this MOU. To the extent allowed for necessary continued treatment and in accord with Confidentiality and HIPAA limitations, the City may have limited access to County patient/client records at proper times for audit and compliance purposes until the expiration of ten (10) years after the furnishing of services to such records, the last date of service, or termination of MOU, or for minors, until one (1) years after the age of 18 but no less than ten (10) years from the final date of services and the right to examine and audit the same and to make transcripts therefrom, and to inspect all data, documents, proceedings, and activities pertaining to this MOU.

To the extent permitted by law within the confidentiality provision of this contract and when possible with permission of the patient, the parties may request periodic reports from the other to facilitate their respective areas of treatment and care.

13. OWNERSHIP OF DOCUMENTS

All materials and information provided to County shall become part of the County file and shall remain in the possession of County. All materials and information provided to City shall become part of the City's file and shall remain in the possession of City.

Any publication of information derived from work performed or data obtained in connection with services rendered under this MOU must first be approved by County and City.

Upon completion of the services authorized hereunder treatment records shall be maintained by County. City may request copies of Medical Records for its files and internal use only where there is a Release of Protected Health Information on file allowing such.

14. CONFIDENTIALITY

County, City and their 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. County and City shall not use identifying information for any purpose other than carrying out the County and City's obligation under this MOU.

County and City shall not disclose, except as otherwise specifically permitted by the MOU 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 County and City agree 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 MOU and incorporated by this reference as if fully set forth herein. Any conflict between the terms and conditions of this MOU and the Business Associate Addendum incorporated are to be read so that the more legally stringent.

Each party shall be responsible for the confidentiality of their own documents, files, and charts. Any documentation retained or stored by City in the physical facilities shall be secured prior to the times scheduled for use by the assigned Alcohol and Drug Counselor. County shall retain confidential information at their own facilities unless request is made for secured storage, which will be locked by and accessible only to County personnel.

15. STANDARDS OF PRACTICE

Standards of practice of County shall be determined by the professional standards of County'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 MOU.

16. APPLICABLE LAW; VENUE

City and County agree that this MOU and all documents issued or executed pursuant to this MOU as well as the rights and obligations of the parties hereunder are subject to and governed by the laws of the State of California in all respects as to interpretation, construction, operation, effect and performance. No interpretation of any provision of this MOU shall be binding upon County or City unless agreed in writing by County and City and their respective counsel.

Notwithstanding any other provisions of this MOU, any dispute concerning any question of fact or law arising under this MOU, or any litigation or arbitration arising out of this MOU, shall be tried in Merced County, unless the parties agree otherwise or are otherwise required by law.

The City and County shall adhere to Title XIX of the Social Security Act and conform to all applicable Federal and State statutes and regulations.

17. DUPLICATE COUNTERPARTS

This MOU may be executed in duplicate counterparts, each of which shall be deemed a duplicate original. The MOU shall be deemed executed when approved by the County's Board of Supervisors.

18. COVID REQUIREMENTS

The parties at their sole expense shall follow all State and local laws, rules, regulations, guidelines, and orders related to the COVID-19 pandemic in the performance of its work under this MOU. This shall include, but not be limited to, creating a COVID-19 worksite-specific prevention plan prior to conducting City's business/activity. City is encouraged to frequently reference www.covid19.ca.gov for information on State requirements for operation of specified businesses/activities.

Signature page as follows

COUNTY OF MERCED

CITY OF MERCED

By _____
Daron McDaniel,
Chair, Board of Supervisors

By _____
Stephanie Dietz
City Manager

Date

Date

APPROVED AS TO LEGAL FORM
MERCED COUNTY COUNSEL

MERCED COUNTY
BEHAVIORAL HEALTH AND
RECOVERY SERVICES

By _____
Charles L. Bruce
Deputy

By _____
Genevieve G. Valentine, LMFT
Director

Date

Date

APPROVED AS TO FORM:

Kimberly Madsen 10/12/21
Date

Deputy City Attorney

Exhibit B- Budget

Fiscal Year 2021-2022

Alcohol & Drug Counselor (1 FTE)	\$103,982
Finger Printing	\$121
Smart Phone & 12 Months of Service	\$1,172
Laptop & 12 Months of Service	\$3,312
MiFi & 12 Months of Service	\$781
Tablet & 12 Months of Service	\$1,172
Computer w/1 monitor & Year of Support	\$3,412
Desk	\$500
Chair	\$500
Office Supplies	\$300
Training Materials & Supplies	\$5,000
Annual Training Sessions (Staff Time)	\$1,018
Fiscal Year 2021-2022	\$121,270

Fiscal Years 2022-2023 & 2023-2024

Alcohol & Drug Counselor (1 FTE)	\$103,982
12 Months of Service - Smart Phone	\$972
12 Months of Service - Laptop	\$2,112
12 Months of Service - MiFi	\$696
12 Months of Service - Tablet	\$720
Year of Support - Computer w/1 monitor	\$2,112
Office Supplies	\$300
Training Materials & Supplies	\$5,000
Annual Training Sessions (Staff Time)	\$1,018
Fiscal Year 2022-2023	\$116,912
Fiscal Year 2023-2024	\$116,912
Total	\$355,094

Exhibit C-Scope of Work

County will assign one (1) full-time equivalent (1.0 FTE) AOD Counselor, to perform direct services Monday through Friday. The Counselor will be responsible for completing initial American Society of Addiction Medicine (ASAM) screenings and full ASAM assessments, if determined necessary for further Substance Use Disorders (SUD) services.

County, through its Recovery Assistance for Teens (RAFT) program, will provide non-residential alcohol/drug treatment and recovery services to adolescents (ages 12-18).

The Counselor's responsibilities are as follows:

- Screening;
- Providing brief interventions related to cannabis use to identified youth;
- Linking to treatment services, where the need is indicated; and
- Completing outreach and engagement to individuals, and partnering agencies as needed, to coordinate care.

Counselor's Services will include, but are not limited to, the following:

1. Referral services include referral to assessment, treatment, interim services, and other appropriate support services.
2. Completion of brief ASAM screen: A time limited, structured behavioral intervention using substance use disorder brief intervention techniques, such as evidence-based motivational interviewing techniques, and referral to treatment services when indicated.
3. Completion of ASAM assessment and linkage to the needed level of care for substance use treatment.
4. Individual counseling, group counseling, case management, crisis and collateral services at designated intervals, determined to be appropriate by Counselor.
5. Activities to support educational programs, training projects, and/or other professional development programs for staff, directed toward improving the professional and knowledge expertise related to working with the target population of the staff involved in the project.
6. The City shall participate in meetings with County, at least quarterly, to monitor the program's implementation and success.

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 City (referred to hereafter as “Business Associate”).

I. Recitals – STANDARD RISK

1. This Contract (MOU) has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act (“HIPAA”) and its implementing privacy and security regulations at 45 CFR Parts 160 and 164 (“the HIPAA regulations:”).
2. The County of Merced (“County”) wishes to disclose to Business Associate certain information pursuant to the terms of this MOU, 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 MOU, “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 MOU, 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 MOU, 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 MOU, for, or on behalf of County, provided that such use or disclosure would not violate the HIPAA regulations, if done by County.
- B. ***Specific Use and Disclosure Provisions.*** Except as otherwise indicated in this 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 MOU or as required by law.
- B. ***Safeguards.*** To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI, including electronic PHI, that it creates, receives, maintains, uses or transmits on behalf of County; and to prevent use or disclosure of PHI other than as provided for by this MOU. Business Associate shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities, and which incorporates the requirements of section C,

Security, below. Business Associate will provide County with its current and updated policies.

- C. **Security.** 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 MOU or in an Exhibit incorporated into this MOU; 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 MOU.

Business Associate shall designate a Security Manager 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 MOU:
 - 1) **Discovery of Breach.** To notify County **immediately by telephone call plus email** 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 twenty-four (24) hours by email** of any suspected security incident, intrusion or unauthorized use or disclosure of PHI in violation of this MOU and this Addendum, or potential loss of confidential data affecting this MOU. 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:

<https://www.dhcs.ca.gov/formsandpubs/laws/priv/Documents/Privacy-Incident-Report-PIR.pdf>

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 twenty-four (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 MOU or Addendum.

COUNTY Alicia Tacata
Compliance Manager P.O. Box 2087 Merced, CA 95344 Alicia.Tacata@countyofmerced.com (209) 381-6818

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 MOU 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 MOU and use or disclose PHI.
- 2) Business Associate shall require each employee who receives information privacy and security training to sign a certification, indicating the employee's name and the date on which the training was completed.
- 3) Business Associate shall retain each employee's written certifications for County inspection for a period of three (3) 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 MOU 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 MOU 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 MOU if Business Associate does not cure the breach or end the violation within the time specified by County;
- 2) Immediately terminate this MOU if Business Associate has breached a material term of this 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 MOU if Business Associate is found guilty of a criminal violation of HIPAA. County may terminate this MOU if a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate is a party or has been joined.

C. **Effect of Termination.** Upon termination or expiration of this MOU for any reason, Business Associate shall 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 MOU 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 MOU, available to County at no cost to County to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against County, its Directors, Managers 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 MOU.
- H. **No Waiver of Obligations.** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

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 twenty-four (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 sixty (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 twenty (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 three (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 MOU for more than twenty-four (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 five hundred (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.

Rev. 07/15/2021