

BOARD OF SUPERVISORS

AMENDED AGENDA

Meetings are located at:
Yuba County Government Center
Board Chambers, 915 Eighth Street
Marysville, California



Agenda materials are available at the Yuba County Government Center, 915 8th Street, Marysville and www.co.yuba.ca.us. Any disclosable public record related to an open session item and distributed to all or a majority of the Board less than 72 hours prior to the meeting is available for public inspection at Suite 109 of the Government Center during normal business hours.

MARCH 24, 2015

ADDENDUM TO THE AGENDA – ADD TO CLOSED SESSION ITEM B

8:30 A.M. YUBA COUNTY WATER AGENCY

9:30 A.M. YUBA COUNTY BOARD OF SUPERVISORS - Welcome to the Yuba County Board of Supervisors meeting. As a courtesy to others, please turn off cell phones, pagers, or other electronic devices, which might disrupt the meeting. All items on the agenda other than Correspondence and Board and Staff Members Reports are considered items for which the Board may take action. The public will be given opportunity to comment on action items on the agenda when the item is heard.

- I. **PLEDGE OF ALLEGIANCE** - Led by Supervisor Vasquez
- II. **ROLL CALL** - Supervisors Vasquez, Nicoletti, Griego, Abe, Fletcher
- III. **CONSENT AGENDA:** All matters listed under the Consent Agenda are considered to be routine and can be enacted in one motion.
 - A. Clerk of the Board of Supervisors
 - 1. (115-15) Approve minutes from the meeting of March 10, 2015.
 - B. Community Development and Services
 - 1. (116-15) Award contract to apparent low bidder RNR Construction Inc., for Spring Valley Road at Browns Valley Ditch Bridge Replacement Project and authorize Chair to execute.
 - 2. (117-15) Adopt resolution adopting the Engineer's Report and declaring intention to levy and collect assessments within the Gledhill Landscaping and Lighting District for Fiscal Year 15/16.
 - C. County Administrator
 - 1. (118-15) Approve Regional Waste Management Authority grant application for a CalRecycle Fiscal Year 2015/2016 Local Government Waste Tire Cleanup and Amnesty Grant and authorize the County Administrative Officer to execute submittal letter.
 - D. Health and Human Services
 - 1. (119-15) Approve amended Medical Targeted Care Management provider participation agreement with California Department of Health Care Services and authorize Chair to execute.
 - E. Human Resources and Organizational Services
 - 1. (120-15) Approve Side Letter Agreement for Yuba County Employee Association; and Agreement with Non-Represented employees for share of employer's PERS costs for the 2015/2016 Fiscal Year.
 - F. Sheriff-Coroner
 - 1. (121-15) Adopt resolution assuring authorizing application for Mentally Ill Offender Crime Reduction (MIOCR) grant and assuring compliance with grant requirement.

IV. **SPECIAL PRESENTATION**

- A. (122-15) Present proclamation proclaiming March is American Red Cross Month. (No background information) (Five minute estimate)
- B. (123-15) Present County Employee Services awards. (No background material) (30 minute estimate)

V. **PUBLIC COMMUNICATIONS:** Any person may speak about any subject of concern provided it is within the jurisdiction of the Board of Supervisors and is not already on today's agenda. The total amount of time allotted for receiving such public communication shall be limited to a total of 15 minutes and each individual or group will be limited to no more than 5 minutes. Prior to this time speakers are requested to fill out a "Request to Speak" card and submit it to the Clerk of the Board of Supervisors. Please note: No Board action can be taken on comments made under this heading.

VI. **COUNTY DEPARTMENTS**

- A. County Administrator
 - 1. (124-15) Receive information on proposed Business Incentives Program Committee formation and provide direction as appropriate. (Ten minute estimate)
 - 2. (125-15) Receive introduction of Jill Abel as Director of Human Resources/Risk Manager effective April 1, 2015; approve employment agreement; and authorize Chair to execute. (Ten minute estimate)
 - 3. (126-15) Adopt resolution authorizing the County Administrator to execute a funding agreement to implement a tax neutrality requirement for the PG&E Land Conservation commitment and approve a lump sum payment in lieu of taxes for the conveyed land to a non-profit and direct the tax be apportioned to the taxing entities in Yuba County. (Ten minute estimate)

VII. **ORDINANCES AND PUBLIC HEARINGS:** If you challenge in court the action or decision of the Yuba County Board of Supervisors regarding a zoning, planning, land use or environmental protection matter made at any public hearing described in this notice, you may be limited to raising only those issues you or someone else raised at such public hearing, or in written correspondence delivered to the Yuba County Board of Supervisors at, or prior to, such public hearing and such public comments will be limited to three minutes per individual or group.

- A. (524-14) Ordinance - Hold public hearing, waive reading, and re-introduce ordinance repealing and re-enacting Chapter 10.30 regarding requirements of the National Flood Insurance Program and Community Rating System. (First Reading. Continued from November 18, December 9, 2014; and January 13, 2014) (Land Use and Public Works Committee recommend approval) (Ten minute estimate) (Roll Call Vote)

VIII. **BOARD AND STAFF MEMBERS' REPORTS:** This time is provided to allow Board and staff members to report on activities or to raise issues for placement on future agendas.

IX. **CLOSED SESSION**

- A. Personnel pursuant to Government Code §54957(b)(1) - Public Appointment/Public Health Officer
- B. Personnel pursuant to Government Code §54957 - County Administrator Evaluation

X. **ADJOURN**

11:00 A.M. Land Use and Public Works Committee - (Supervisors Abe and Vasquez - Alternate Supervisor Nicoletti)

- A. (127-15) Consider amending ordinance to establish speed limit of 45 mph on Fruitland Road between Marysville Road and Virginia Road and between Loma Rica Road and Honcut Road - Community Development and Services (Five minute estimate)

In compliance with the Americans with Disabilities Act, the meeting room is wheelchair accessible and disabled parking is available. If you have a disability and need disability-related modifications or accommodations to participate in this meeting, please contact the Clerk of the Board's office at (530) 749-7510 or (530) 749-7353 (fax). Requests must be made two full business days before the start of the meeting. To place an item on the agenda, contact the office of the Clerk of the Board of Supervisors at (530) 749-7510.



CONSENT
AGENDA

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The County of Yuba

B O A R D O F S U P E R V I S O R S

MARCH 10, 2015



The Honorable Board of Supervisors of the County of Yuba met on the above date, commencing at 9:46 a.m., within the Government Center, Marysville, California, with a quorum being present as follows: Supervisors Andy Vasquez, John Nicoletti, Mary Jane Griego, Roger Abe, and Randy Fletcher. Also present were County Administrator Robert Bendorf, County Counsel Angil Morris-Jones, and Clerk of the Board of Supervisors Donna Stottlemeyer. Chair Griego presided.

- I. PLEDGE OF ALLEGIANCE - Led by Supervisor Abe
- II. ROLL CALL - Supervisors Vasquez, Nicoletti, Griego, Abe, Fletcher - Supervisor Nicoletti absent.
- III. CONSENT AGENDA: All matters listed under the Consent Agenda are considered to be routine and can be enacted in one motion.

MOTION: Move to approve MOVED: Andy Vasquez SECOND: Roger Abe
 AYES: Andy Vasquez, Roger Abe, Mary Jane Griego, Randy Fletcher
 NOES: None ABSENT: John Nicoletti ABSTAIN: None

A. Board of Supervisors

1. (096-15) Remove Mark Harrison from Fish and Game Advisory Commission pursuant to Commission Bylaw 92-070 (Attendance). Continued to March 17, 2015.

B. Clerk of the Board of Supervisors

1. (097-15) Appoint Michael Valdez Consumer Representative and Karen James Family Representative to the Behavioral Health Advisory Board with terms ending March 10, 2018 and March 10, 2017 respectively. Approved.
2. (098-15) Approve February 17 and 24, 2015 meeting minutes. Approved.

C. Emergency Services

1. (099-15) Adopt resolution proclaiming the existence of an ongoing local drought emergency in the County of Yuba. Adopted Resolution No. 2015-22, which is on file in Yuba County Resolution Book No. 46.

IV. SPECIAL PRESENTATION

- A. (100-15) Present proclamation recognizing March 2015 as Social Workers Month. (Ten minute estimate) Chair Griego presented the proclamation.

Supervisor Nicoletti joined the meeting at 9:51 a.m.

- B. (103-15) Receive update from Fish and Game Advisory Commission on activities. (Ten minute estimate. No background material) Commissioner Mike Boom provided a Power Point presentation recapping activities.

V. PUBLIC COMMUNICATIONS: None.

VI. COUNTY DEPARTMENTS

A. Administrative Services

1. (101-15) Provide staff direction on alternatives to close out FRAQMD (Feather River Air Quality Management District) Blue Sky Grant. (Ten minute estimate) Director Doug McCoy recapped grant purpose of acquiring electric vehicle which has experienced mechanical issues and cannot be used. Mr. McCoy provided options for closing out the grant and responded to Board inquiries.

MOTION: Move to authorize Auto Service Fund to purchase bike racks at county locations and any remaining funds for school locations

MOVED: John Nicoletti

SECOND: Andy Vasquez

AYES: John Nicoletti, Andy Vasquez, Mary Jane Griego, Randy Fletcher

NOES: Roger Abe ABSENT: None ABSTAIN: None

VII. ORDINANCES AND PUBLIC HEARINGS: The clerk read the disclaimer.

- A. (102-15) Public Hearing - Hold public hearing, receive water rate protest ballots for River Highlands/Gold Village Community Service District and absent majority protest adopt resolution establishing new tiered water rate to take effect on April 1, 2015. (Fifteen minute estimate) Principal Engineer Dan Peterson recapped the process for the water rate increase, procedure for submitting protest ballots, and responded to Board inquiries.

Chair Griego opened the public hearing. The following individuals spoke:

- Mr. Jim Abbott
- Ms. Clare Convery

Public Works Director Mike Lee responded to inquiries regarding monthly expenditures, usage reports, adding waste water users, and continued ban on outdoor watering.

County Administrator Robert Bendorf advised he would meet with Water Agency and county staff to bring back information on the aquifer.

Chair Griego closed the public hearing

The Clerk advised 19 protests ballots were received.

MOTION: Move to adopt establishing new tiered water rate to take effect on April 1, 2015 with annual \$2 monthly increase

MOVED: Andy Vasquez

SECOND: Roger Abe

AYES: Andy Vasquez, Roger Abe, John Nicoletti, Mary Jane Griego, Randy Fletcher

NOES: None ABSENT: None ABSTAIN: None

Adopted Resolution No. 2015-23, which is on file in Yuba County Resolution Book No. 46

- VIII. CLOSED SESSION: The Board retired into closed session at 11:02 a.m. and returned at 12:30 p.m. with all present as indicated above.

County Administrator Robert Bendorf left closed session at 12:08 p.m. during discussion of labor negotiations and returned at 12:12 p.m.

- A. Receive confidential final draft audit report from Bureau of State Audits pursuant to Government Code §54956.75(a) No report
- B. Pending litigation pursuant to Government Code §54956.9(d)(4) - Three cases No report
- C. Personnel pursuant to Government Code §54957(b)(1) - Public Appointment Health Officer No report
- D. Personnel pursuant to Government Code §54957.6(a) - Labor Negotiations - DDAA Negotiators Jill Able No report

- IX. BOARD AND STAFF MEMBERS' REPORTS: None.

- X. RECESSED AT 12:13 P.M. AND RECONVENED AT 3:00 P.M. WITH ALL PRESENT AS ABOVE

- XI. ORDINANCES AND PUBLIC HEARINGS The clerk read the disclaimer.

- A. 3:00 P.M. (088-15) Ordinance - Hold public hearing, waive reading, and adopt ordinance repealing and reenacting Chapter 7.40 Marijuana Cultivation. (Second reading) (Continued from February 24, 2015) (Sixty minute estimate) In response to inquiry by Supervisor Vasquez, County Counsel advised the ordinance could be adopted as an urgency ordinance which would require making findings to constitute an urgency and indicated findings were prepared for consideration.

Code Enforcement Manager Jeremy Strang provided a Power Point Presentation recapping each of the findings.

County Counsel responded to Board inquiries regarding adoption of findings and immediate implementation of the ordinance.

MOTION: Move to adopt the findings of urgency to make the adoption of ordinance as an urgency

MOVED: Andy Vasquez SECOND: Roger Abe

AYES: Andy Vasquez, Roger Abe, John Nicoletti, Mary Jane Griego, Randy Fletcher

NOES: None ABSENT: None ABSTAIN: None

Chair Griego opened the public hearing. The following individuals spoke:

- Mr. Eric Salerno on behalf of Zachary Cross
- Mr. Tony Florendo
- Mr. Tommy Boggess
- Mr. Matt Arvicu
- Ms. Jacqueline McGowan
- Ms. Shelby Lucero
- Mr. Clarence Van Meter
- Ms. Mary Salvato

- Ms. Karen Liggett
- Mr. Bob Bagley, Dobbins
- Ms. Colene Weckman, Brownsville
- Mr. Lee Boutt
- Mr. Richard Boyd
- Mr. Bryan Dozzi, Dobbins
- Mr. Rick Reiss

Supervisor Abe left the chambers at 3:58 p.m. and returned at 3:59 p.m.

- Ms. Lea Smith, Brownsville
- Mr. Buck Weckman
- Ms. Jean Whyatt
- Ms. D. Escheman
- Ms. Melissa Evans, Olivehurst
- Ms. Nancy House
- Ms. Judy Knolle, Loma Rica
- Mr. Andy Schneller, Arboga
- Mr. David Sugel
- Ms. Virginia Black, read statement by Dr. Joe Cassady
- Mr. Mark Pendola, Sacramento
- Mr. Max Del Real, Sacramento
- Mr. Gary Hawthorne, Oregon House
- Ms. Marcia Cecil, Browns Valley
- Ms. Sherry Rodgers, Olivehurst

With no further speakers, Chair Griego closed the public hearing.

Ms. Morris-Jones responded to Board inquiries regarding adoption of ordinance as an urgency and responded to request of Supervisor Griego on reconsideration of vote of urgency findings and stopping the process of the referendum.

In response to Board inquiries, Counsel advised the Board has no authority to stop an initiative.

Chair Griego advised the ad hoc would stay in place for further considerations.

MOTION: Move to waive reading and adopt ordinance as an urgency

MOVED: Andy Vasquez

SECOND: John Nicoletti

AYES: Andy Vasquez, John Nicoletti, Roger Abe, Randy Fletcher

NOES: Mary Jane Griego ABSENT: None ABSTAIN: None

Adopted Urgency Ordinance No. 1538, which is on file in Yuba County Ordinance Book No. 24.

XII. ADJOURN: 4:49 p.m.

Chair

ATTEST: DONNA STOTTLEMEYER
CLERK OF THE BOARD OF SUPERVISORS

Approved: _____

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The County of Yuba

Community Development & Services Agency

Kevin Mallen, Director

Phone - (530) 749-5430 • Fax - (530) 749-5434
 915 8th Street, Suite 123
 Marysville, California 95901
www.co.yuba.ca.us



BUILDING
 749-5440 • Fax 749-5616

CODE ENFORCEMENT
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ENVIRONMENTAL HEALTH • CUPA
 749-5450 • Fax 749-5454

HOUSING AND COMMUNITY SERVICES
 749-5460 • Fax 749-5464

PLANNING
 749-5470 • Fax 749-5434

PUBLIC WORKS • SURVEYOR
 749-5420 • Fax 749-5424

March 24, 2015

TO: YUBA COUNTY BOARD OF SUPERVISORS

FROM: MICHAEL G. LEE, DIRECTOR OF PUBLIC WORKS

SUBJECT: Award Contract to Apparent Low Bidder for the Spring Valley Road at Browns Valley Ditch Bridge Replacement Project

RECOMMENDATION:

The Public Works Department recommends that the Board of Supervisors approve award of the contract for the above project to the apparent low bidder, and to authorize its chairman to execute the contract pending contract approval by County Counsel.

BACKGROUND:

This project consists of removing the existing bridge and replacing it with a new concrete structure and approach roadway along Spring Valley Road at the Browns Valley Ditch located approximately 2 miles northeast of the intersection with State Route 20. The project will be funded through the federal Highway Bridge Program (HBP).

The bids were as shown on the attached sheet.

DISCUSSION:

The work in general will consist of demolishing the existing bridge, install a new concrete bridge structure, replace irrigation culverts, and will reconstruct the existing approach roadway. Striping will also be added. The engineer's estimate for the construction of the project and construction engineering is approximately \$1,357,000. The project is expected to be completed by October 2015.

COMMITTEE ACTION:

The Land Use & Public Works Committee was bypassed as this project is included in the Public Works Budget.

FISCAL IMPACT:

The project will be fully funded with federal HBP funds.

SPRING VALLEY ROAD AT BROWNS VALLEY DITCH BRIDGE REPLACEMENT PROJECT

The bid results were received as follows:

<u>RNR Construction, Inc.</u>	<u>\$994,774.44</u>
<u>K.W. Emerson, Inc.</u>	<u>\$1,023,950.40</u>
<u>McGuire and Hester</u>	<u>\$1,028,787.00</u>
<u>Viking Construction</u>	<u>\$1,296,523.00</u>

The County of Yuba

Community Development & Services Agency

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BUILDING 117-15
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HOUSING AND COMMUNITY SERVICES
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749-5470 • Fax 749-5434

PUBLIC WORKS • SURVEYOR
749-5420 • Fax 749-5424

TO: Yuba County Board of Supervisors

FROM: Michael Lee, Public Works Director 

SUBJECT: Gledhill Landscaping and Lighting District, Resolution adopting the Engineer's Report and declaring intention to levy and collect assessments.

DATE: March 24, 2015

Recommendation

Adopt the attached Resolution approving the Engineer's Report and declaring your Board's intent to levy and collect assessments within the Gledhill Landscaping and Lighting District for fiscal year 2015/2016.

Background

Gledhill Landscaping and Lighting District was formed on July 1, 1993. Per the Streets and Highway Code an Engineer's Report shall be prepared and filed each year.

Discussion

The assessment, shown in the engineer's report, will provide revenue needed to operate the district for fiscal year 2015-2016. There has been no change in the assessment rate from last year's rate. There are 3696 dwelling units that are assessed at \$13.20 for the total revenue of \$48,787.20 for the fiscal year 2015-2016. These funds are used to operate and maintain Fernwood Park in East Linda and Friendship Park in West Linda. In particular, the funds will be used to maintain existing landscaping, repair recreational equipment, improve existing irrigation, install new irrigation and landscaping, and perform other work required to operate the district.

Committee Action

The Land Use & Public Works Committee was bypassed as this action is routine in nature and occurs annually.

Fiscal Impact

No impact to the General Fund. Assessments collected are used to operate and maintain the District.

Attachment

**BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF YUBA**

**RESOLUTION TO ADOPT ENGINEER'S)
REPORT AND DECLARE INTENTION TO)
LEVY AND COLLECT ASSESSMENTS)
WITHIN GLEDHILL LANDSCAPING AND)
LIGHTING DISTRICT)**

RESOLUTION NO. _____

WHEREAS, the Landscaping and Lighting Act of 1972 (Division 15, Part 2, Chapter 3, of the Streets and Highways Code (commencing with section 22620) which relates to the levy of annual assessments after formation of a landscaping and lighting district, requires the legislative body to approve the Engineer's Report and adopt a resolution of intention to levy and collect assessments; and

WHEREAS, the engineer shall prepare and file a report in accordance with Article 4 (commencing with Section 22565) of Chapter 1 of Part 2 of the Streets and Highways Code.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors hereby:

1. Approves the Engineer's Report for Gledhill Landscaping and Lighting District for fiscal year 2015-2016.
2. Declares its intention to levy and collect assessments within the assessment district for fiscal year 2015-2016 in compliance with Streets and Highway, Code section 22624.
3. Declares that the work proposed in the Engineer's Report includes maintenance of existing landscaping, and repair and maintenance of recreation areas and equipment as required to maintain parks within the Gledhill Landscaping and Lighting District for fiscal year 2015-2016.
4. Declares that the Gledhill Landscaping and Lighting District is located in the community of Linda.
5. Declares that the Engineer's Report is on file with the Clerk of the Board of Supervisors at 915 8th Street, Marysville, California, where it may be reviewed for a full and detailed description of the improvements, boundaries of the assessment district, and the proposed assessments upon assessable lots and parcels of land within the district.
6. Declares that the proposed assessments consist of no increase from the current rate of \$13.20 per year per dwelling unit.
7. Declares that a public hearing be scheduled on April 14, 2015 at 9:30 a.m. in the Board of Supervisors Chambers at 915 8th Street, Marysville, California, where all interested persons will be given an opportunity to be heard and all oral statements and written protests made prior to the close of the public hearing will be considered.

8. Declares that any interested person may, prior to the conclusion of the hearing, file a written protest with the Clerk of the Board of Supervisors, or having previously filed a protest, may file a written withdrawal of that protest. A written protest shall state all grounds of objection. A protest by a property owner shall contain a description sufficient to identify the property.

9. Declares that the Clerk of the Board of Supervisors shall publish a notice of public hearing one time at least ten days prior to the public hearing.

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Yuba, State of California, on the _____ day of _____, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Chairman

ATTEST: DONNA STOTTLEMEYER
CLERK OF THE BOARD OF SUPERVISORS

ANGIL P. MORRIS-JONES
YUBA COUNTY COUNSEL
APPROVED AS TO FORM:



**ENGINEER'S REPORT
GLEDHILL LANDSCAPING AND LIGHTING DISTRICT
FISCAL YEAR 2015-2016
COUNTY OF YUBA**

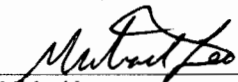
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APPENDIX	B	MAP

Prepared By:

Judy Zirion
Engineering Technician
Department of Public Works
(530) 749-5420

Reviewed by:



Michael Lee
RCE 55795
Exp 12-31-16

**ENGINEER'S REPORT
GLEDHILL LANDSCAPING AND LIGHTING DISTRICT**

22568

Section I: Plans and Specifications

a. Detail Plans
Not applicable

b. Scope of Work

Fiscal Year 2015 - 2016

1. Continue to maintain the landscaping.
2. Continue the maintenance of the athletic areas.
3. Continue the maintenance and replacement of damaged recreation equipment.
4. Improve the existing irrigation facilities.
5. Install new irrigation and landscaping.

22569

Section II: Estimate of Cost

a. Net amount to be assessed per Dwelling Unit on annual basis within the assessment district.	\$ 13.20
b. Dwelling Units within the assessment district.	3696
c. Total income within the assessment.	\$48,787.20
d. Amount of surplus carried over from a previous year.	\$1,412.80
e. Garden reimbursement for water use.	0
f. Interest/Grants	\$300.00
g. Total budget 2014 – 2015	\$50,500.00
h. Detailed cost estimate enclosed as Appendix "A" total cost of construction, maintenance and/or services.	\$50,500.00

22570

Section III: District Diagram

- a. District map enclosed as Appendix "B"
- b. Assessor's Parcel Numbers will be used to give each lot or parcel a district alpha-numeric label for the Gledhill Landscaping and Lighting District.

22572

Section IV: Assessment

"Dwelling unit shall mean a building or portion thereof designed for or occupied exclusively for residential purposes, including one-family or each unit of multi-family dwelling.

- a. Each dwelling unit is to be assessed \$1.10 each month or \$13.20 each year.
- b. For a description of each parcel, please refer to the Yuba County Assessment Rolls.
- c. Each dwelling unit within the district will be assessed the same amount, receiving equal benefit for improvements within the district.
- d. No notes or bonds have been issued at this time.

22567

Section V: Bond or Note Issuance

- a. None to be issued.

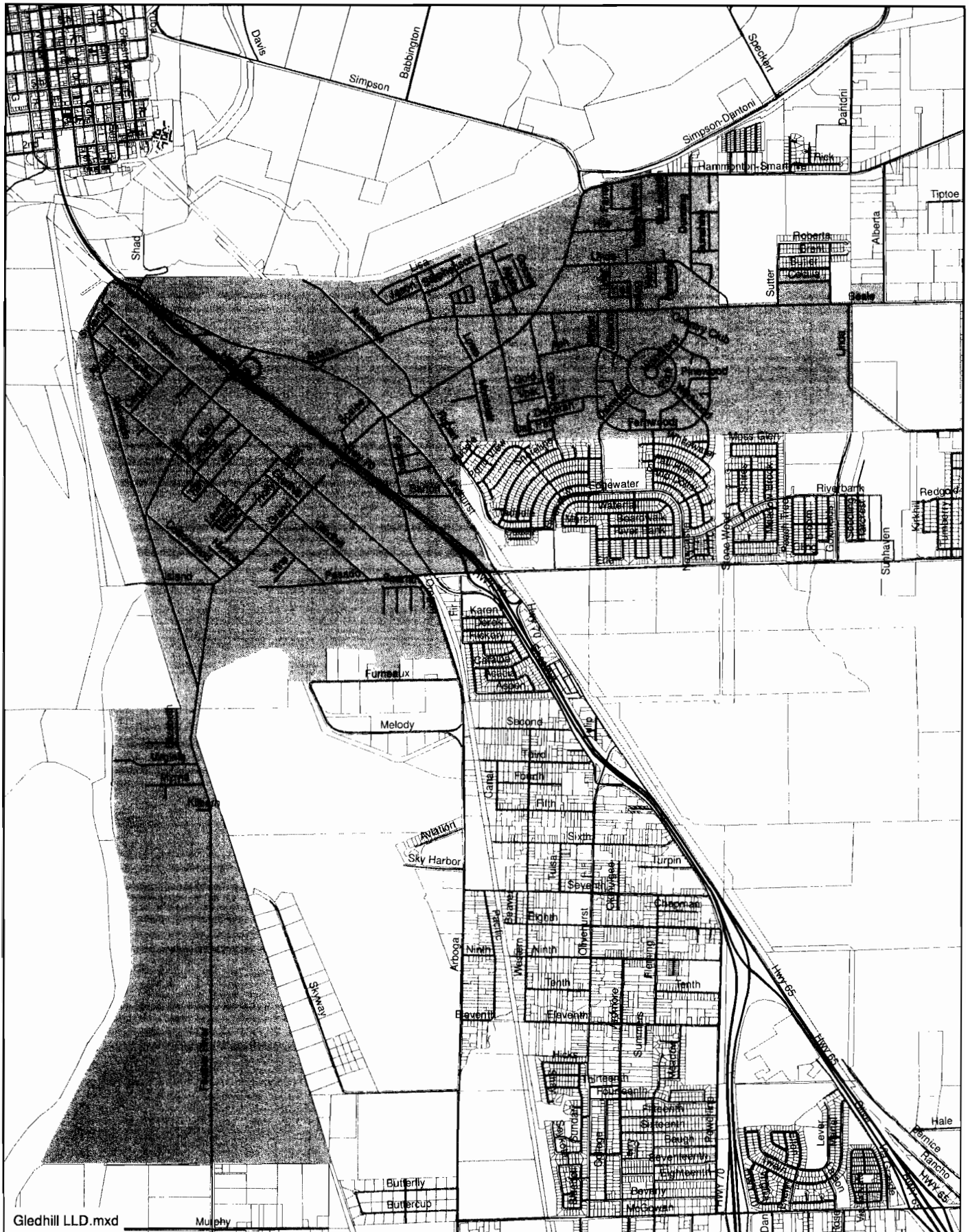
ENGINEER'S REPORT
APPENDIX "A" - COST ESTIMATE

1. PROFESSIONAL SERVICES:

A. Landscape Maintenance	\$ 30,000.00
B. Repairs to Sprinkler Systems	\$ 2,000.00
C. Project Supervision Coordination	0
D. Public Works Administration	\$ 4,000.00
E. Open and Close Fernwood Park	0
F. Recreation Equipment and Sports Area Repairs and Maintenance - Reserve.	\$ 6,000.00
G. Insurance	\$ 3,000.00
Subtotal:	\$ 45,000.00

2. UTILITIES	\$ 5,500.00
Water (\$4,000.00)	
Electrical (\$1,500.00)	
Subtotal:	\$50,500.00

TOTAL: \$50,500.00



APPENDIX "B"

GLEDHILL LANDSCAPING AND LIGHTING DISTRICT

The County of Yuba

OFFICE OF THE COUNTY ADMINISTRATOR

GOVERNMENT CENTER - 915 8TH STREET, SUITE 115
MARYSVILLE, CALIFORNIA 95901-5273
(530) 749-7575 FAX (530) 749-7312



ROBERT BENDORF
COUNTY ADMINISTRATOR

JOHN FLEMING
ECONOMIC DEVELOPMENT COORDINATOR

RUSS BROWN
COMMUNICATIONS & LEGISLATIVE
AFFAIRS COORDINATOR

GRACE M. MULL
MANAGEMENT ANALYST

TEENA CARLQUIST
EXECUTIVE ASSISTANT TO THE
COUNTY ADMINISTRATOR

TO: Board of Supervisors
FROM: Robert Bendorf, County Administrator *RB*
SUBJECT: Authorize Regional Waste Management Authority Grant Application for a
CalRecycle Fiscal Year (FY) 2013/2014 Local Government Waste Tire
Amnesty Grant (TA3 Cycle)
DATE: March 24, 2015

Recommended Action:

Approve authorization of a Regional Waste Management Authority (RWMA) grant application on the County's behalf for the FY 2015/2016 Local Government Waste Tire Amnesty Grant Program (TA3) Cycle, by authorizing the County Administrator to execute the submittal letter.

Background and Discussion: The RWMA is preparing a grant application for submittal to the California Department of Resources, Recycling and Recovery (CalRecycle) for the 2015/16 cycle of the Local Government Waste Tire Amnesty Grant Program for implementation in FY 2015/16 and FY 2016/17. The grant application is being submitted as a regional program under the authority of the RWMA Joint Powers Agreement.

The tire amnesty portion of the program will be designed to motivate residents to clean-up nuisance tires and small tire piles through the provision of free coupons for direct haul to local transfer stations, plus waste tire bins for community clean-up events in each of the fiscal years. Tires will not be accepted from tire businesses or commercial generators. Residents with a coupon will be permitted to drop-off up to 20 tires and each household will be eligible for one coupon per fiscal year. The public education component of the program will focus on proper tire disposal; proper tire care to extend tire life; and, on the health, safety and environmental issues associated with waste tires. The grant request will be for \$53,470 in program funding.

The application which was authorized by the RWMA Board of Directors on March 19th, 2015, requires authorization for the RWMA to act on behalf of each of the member jurisdictions. The Department of Resources, Recycling and Recovery requires authorization, in the form of a letter executed by the County Administrator.

Committee Recommendation: No committee recommendation was sought due to the routine nature of the action.

Fiscal Impact: There are no known costs to the County for these grant funds.

The County of Yuba

OFFICE OF THE COUNTY ADMINISTRATOR

GOVERNMENT CENTER - 915 8TH STREET, SUITE 115
MARYSVILLE, CALIFORNIA 95901-5273
(530) 749-7575 FAX (530) 749-7312



ROBERT BENDORF
COUNTY ADMINISTRATOR

JOHN FLEMING
ECONOMIC DEVELOPMENT COORDINATOR

RUSS BROWN
COMMUNICATIONS & LEGISLATIVE
AFFAIRS COORDINATOR

GRACE M. MULL
MANAGEMENT ANALYST

TEENA CARLQUIST
EXECUTIVE ASSISTANT TO THE
COUNTY ADMINISTRATOR

March 24, 2015

COPY

Keith Martin, Administrator
Regional Waste Management Authority
2100 B Street
Marysville, CA 95901

**Re: Authorization Letter for the Regional Waste Management Authority for
CalRecycle FY 2015/16 Local Government Waste Tire Amnesty Grant (TA3
Cycle)**

Dear Mr. Martin:

I am the County Administrator for the County of Yuba. I am authorized to contractually bind the County of Yuba. Pursuant to this authority, the County of Yuba authorized the Regional Waste Management Authority to submit a regional application, including the County of Yuba as a grant participant and the Regional Waste Management Authority as the lead agency, an application for the FY 2015/2016 Local Government Waste Tire Amnesty Grant Program (TA3 Cycle).

The Regional Waste Management Authority is authorized to execute all documents necessary to implement the grant under the Local Government Waste Tire Amnesty Grant Program, TA3.

Sincerely,

Robert Bendorf,
County Administrator

The County of Yuba

119-15

HEALTH & HUMAN SERVICES DEPARTMENT

Jennifer Vasquez, Director

5730 Packard Ave., Suite 100, P.O. Box 2320, Marysville, California 95901
Phone: (530) 749-6311 FAX: (530) 749-6281



TO: Board of Supervisors
Yuba County

FROM: Jennifer Vasquez, Director
Lynne Olsen, Director of Nursing
Health & Human Services Department

DATE: March 24, 2015

SUBJECT: Approval of the Amended Medi-Cal Targeted Case Management Provider Participation Agreement with the California Department of Health Care Services

RECOMMENDATION: Board of Supervisors approval of the amended Medi-Cal Targeted Case Management (TCM) Provider Participation Agreement (#58-1318A) with the California Department of Health Care Services (DHCS) for participation by Yuba County's Health and Human Services Department (HHSD) in the Medi-Cal TCM program for the term of July 1, 2013 through June 30, 2018.

BACKGROUND: Since 1998, the Yuba County HHSD, has contracted with DHCS to participate in the TCM program which reimburses a portion of the costs of the targeted case management services conducted by the field nursing staff of its Public Health Division and the Yuba County Public Guardian. Approval of this Agreement will allow the continued participation in this program.

DISCUSSION: DHCS issued a Policy and Procedure Letter notifying participants in the TCM Program that the current Provider Participation Agreement must be amended to include language regarding: a Dun and Bradstreet Universal Numbering System (DUNS) number; Health Insurance Portability and Accountability Act and Business Associate Addendum; Medical Eligibility Data System Access Liaison responsibility; new Cost Report procedures; and Memorandum(s) of Understanding with Medi-Cal Managed Care Health Plan(s).

COMMITTEE: The Human Services Committee was bypassed due to the routine nature of the item.

FISCAL IMPACT: Approval of the Amended Medi-Cal Targeted Case Management Provider Participation Agreement will result in the continued reimbursement of costs that will otherwise be met by County funds.

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**MEDI-CAL TARGETED CASE MANAGEMENT
AMENDMENT A TO
PROVIDER PARTICIPATION AGREEMENT**

Name of Provider: Yuba County

PPA #58-1318A

The parties agree that this Amendment A updates Provider Participation Agreement (PPA) # 58-1318, dated 06/27/2013 by amending the PPA in its entirety. This Amendment A removes all provisions of the PPA and inserts the following provisions effective on July 1, 2015.

1. STATEMENT OF INTENT

- A. The Articles of this Provider Participation Agreement, hereinafter referred to as the Agreement, set out the responsibilities of the qualified local governmental agency, named above and hereinafter referred to as Provider, and California Department of Health Care Services (DHCS), hereinafter referred to as the State or DHCS, relative to the provision of Targeted Case Management (TCM) services to eligible Medi-Cal beneficiaries.
- B. The Articles begin with STATEMENT OF INTENT and end with AGREEMENT EXECUTION.
- C. The mutual objectives of the Provider and DHCS are defined in, and governed by, 42 U.S.C. Section 1396n(g).

2. TERM OF AGREEMENT

The term of this Agreement is from July 1, 2013, through June 30, 2018.

3. CONTACT PERSONS

- A. The contact persons during the term of this Agreement are:

<p>Department of Health Care Services Michelle Kristoff, Chief Administrative Claiming Local & School Services Branch Telephone: (916) 341-6106 Fax: (916) 324-0738 Email: Michelle.Kristoff@dhcs.ca.gov</p>	<p>Provider Name: Jennifer Vasquez, Director Telephone: (530) 749-6380 Fax: (530) 749-6281 Email: jvasquez@co.yuba.ca.us</p>
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Name of Provider: Yuba County

PPA #: 58-1318A

B. Direct all inquiries to:

Department of Health Care Services	Provider
Administrative Claiming Local & School Services Branch Targeted Case Management Unit Attention: Sara Schmid Suite 71.3024 MS 4603 P.O. Box 997436 Sacramento, CA, 95899-7436 Phone: (916) 552-9284 Fax: (916) 324-0738 Email: Sara.Schmid@dhcs.ca.gov	Yuba County (58) Cyndi Journagan LGA Coordinator Health & Human Services Department 5730 Packard Avenue, Suite 100 Marysville, CA 95901 Phone: (530) 749-6279 Fax: (530) 749-6281 Email: cjournagan@co.yuba.ca.us

- C. Either party may make changes to the information above by giving written notice to the other party. Said changes shall not require an amendment to this agreement.

4. PROVIDER RESPONSIBILITIES

By entering into this Agreement, the Provider agrees to:

- A. Comply with all applicable federal and State directives, as periodically amended, including but not limited to: Title XIX of the Social Security Act; Titles 42 and 45 of the Code of Federal Regulations (CFR); California Medicaid State Plan; Chapters 7 and 8 of the California Welfare and Institutions (W&I) Code (commencing with Section 14000); Title 22 of the California Code of Regulations (CCR) (commencing with Section 50000); 42 CFR Sections 413.20, 413.24, 433.32, 433.51; State issued policy directives, including Policy and Procedure Letters (PPLs); Federal Office of Management and Budget (OMB) Circular A-87.
- B. Ensure all applicable State and federal requirements, as identified in paragraph 4.A., are met in providing TCM services under this Agreement.
- 1) Failure to ensure that all State and federal requirements are met shall be sufficient cause for DHCS to deny or recoup payments to the Provider, and/or terminate this Agreement.
- C. Ensure all applicable State and federal requirements are met with regard to Expense Allowability / Fiscal Documentation:
- 1) TCM Summary Invoices, received from a Provider and accepted and/or submitted for payment by DHCS, shall not be deemed evidence of allowable agreement costs.

- 2) Supporting documentation of all amounts invoiced shall be maintained for review and audit, and supplied to DHCS upon request, pursuant to this Agreement to permit a determination of expense allowability.
 - a) If the allowability or appropriateness of an expense cannot be determined by DHCS because invoice detail, fiscal records, or backup documentation is nonexistent or inadequate, according to generally accepted accounting principles or practices, all questioned costs may be disallowed and payment may be withheld or recouped by DHCS. Upon receipt of adequate documentation supporting a disallowed or questioned expense, reimbursement may resume for the amount substantiated and deemed allowable.
- D. Possess a Dun and Bradstreet Universal Numbering System (DUNS) Number. Per 2 CFR Part 25 Section 200 (C) (1), the DUNS number is required in order to receive Federal Financial assistance, or reimbursement for services provided. The DUNS number is a unique nine-digit identification number provided by Dun & Bradstreet and must be provided to DHCS prior to any invoice payment processing. LGAs are also required to include language in contracts with its subcontractors requiring them to obtain a DUNS number prior to receipt of federal funds. Failure for an LGA or their subcontractor(s) to possess a DUNS number may result in an LGA not being qualified to receive an award (2 CFR part 25 Section 205 (b)).
 - 1) If an LGA is authorized to make subawards under this award, the LGA may not make a subaward to a subcontractor unless the subcontractor has provided the LGA with their own DUNS number.
- E. Ensure all employees or subcontractors, or employees of subcontractors comply with the Health Insurance Portability and Accountability Act (HIPAA) Business Associate Addendum (Exhibit A), attached hereto and made part of this Agreement. Subcontractors included, but are not limited, to Local Public Entities (LPEs) and County Based Organizations (CBOs).
- F. Designate MEDS Access Liaisons responsible for working directly with DHCS in requesting MEDS access for county/city TCM staff. All MEDS Access Liaisons shall sign a MEDS Oath of Confidentiality provided by DHCS. DHCS will only accept account requests from an authorized MEDS Access Liaison.
 - 1) The MEDS Access Liaison will provide, assign, delete, and track user log-in identification codes generated through DHCS to authorized staff members upon request. The processing of log-in identification codes will be submitted electronically to DHCS to activate (i.e., add, delete, or reset) MEDS access upon receipt.

- 2) Comply with all provisions of the current Computer Matching and Privacy Protection Act Agreement (CMPPA) between the Social Security Administration (SSA) and the California Health and Human Services Agency (CHHSA); and the DHCS Information Exchange Agreement (IEA) with SSA. These data sharing agreements establish terms, conditions, and safeguards under which SSA agrees to disclose information relating to the eligibility for, and payment of, Social Security Income, Special Veterans Benefits, including certain tax return information as authorized by 26 U.S.C. 6103. These agreements are hereby incorporated by reference and made part of this Agreement.

G. By November 1 of each year:

- 1) Submit an annual electronic TCM Cost Report for the service period of July 1 through June 30th to dhsaitcm@dhcs.ca.gov
 - a) Electronic email submission shall include the following completed documents:
 - (1) Completed Cost Report Template signed and scanned (PDF)
 - (2) Completed Cost Report Template (Excel)
 - (3) LGA certification page signed and scanned (PDF)
 - (4) Non-LGA LPE Certification and LGA Attestation Statements for TCM Cost Report signed and scanned (PDF), if applicable.
 - b) Each electronic email submission shall follow the example below when naming the electronic files for the email submission of the Cost Report:

Example:

2013 Santa Cruz CR.xls (Fiscal Year [FY] 2013/14 Santa Cruz Cost Report, Excel version)
2013 Santa Cruz CR.PDF (FY 2013/14 Santa Cruz Cost Report, signed and scanned PDF version)

- c) Each electronic email submission shall follow the example below when naming the email for the submission of the Cost Report:

Example:

Name of LGA, LGA Code, Fiscal Year End Date (FYE), Part xx.
Santa Cruz County 44 FYE 063014 Part 1 of 3

- H. Accept payments as reimbursement in full as received for TCM services pursuant to this Agreement. Payments are subject to be reviewed and audited by DHCS and Centers for Medicare and Medicaid (CMS).
- I. Comply with confidentiality requirements as specified in 42 U.S.C. Section 1396a (a)(7), 42 CFR Section 431.300, W&I Code Sections 14100.2 and 14132.47, and Title 22 CCR Section 51009.
- J. Submit TCM Summary Invoices in accordance with 42 CFR 433.51, Title 22 CCR Sections 51185, 51271, 51272, 51351, 51351.1, 51365, 51535.7, and 51492, and ensure TCM Summary Invoices are postmarked within 12 months from the date of service.
- K. Provide, for audit purposes and in accordance with State issued policy directives, including Policy and Procedure Letters (PPLs), all records in support of allowable TCM services. These must be maintained for the greater of (a) three fiscal years after the end of the quarter the LGA receives reimbursement from DHCS for the expenditures incurred, or (b) three fiscal years after the date of submission of the original or amended TCM cost report, whichever is later pursuant to W&I Code Section 14170. If an audit is in progress, or is identified as forthcoming, all records relevant to the audit shall be retained throughout the audit's duration or the final resolution of all audit exceptions, deferrals and/or disallowances whichever is greater until appeals have finished.
 - 1) Records must fully disclose:
 - a) The name and Medi-Cal number or the beneficiary identification code of the person receiving the TCM service.
 - b) The name of the Provider of TCM services and person providing the service.
 - c) The date and place of service delivery, and the nature and extent of the TCM service provided.
 - 2) The Provider shall furnish said records and any other information regarding expenditures and revenues for providing TCM services, upon request, to the State and to the federal government.
- L. Be responsible for the acts or omissions of its employees and/or subcontractors.
 - 1) The conviction of an employee or subcontractor of the Provider, or of an employee of a subcontractor, of any felony or of a misdemeanor involving fraud, abuse of any Medi-Cal beneficiary or abuse of the Medi-Cal program, shall result in the exclusion of that employee or subcontractor, or employee of

a subcontractor, from participation in the Medi-Cal TCM Program. Failure to exclude a convicted individual from participation in the Medi-Cal TCM Program shall constitute a breach of this Agreement.

- 2) Exclusion after conviction shall result regardless of any subsequent order under Section 1203.4 of the Penal Code allowing a person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.
 - 3) Suspension or exclusion of an employee or a subcontractor, or of an employee of a subcontractor, from participation in the Medi-Cal Program, the Medicaid program or the Medicare Program, shall result in the exclusion of that employee or subcontractor, or employee of a subcontractor, from participation in the Medi-Cal TCM Program. Failure to exclude a suspended or excluded individual from participation in the Medi-Cal TCM Program shall constitute a breach of this Agreement.
 - 4) Revocation, suspension, or restriction of the license, certificate, or registration of any employee, subcontractor, or employee of a subcontractor, shall result in exclusion from the Medi-Cal TCM Program, when such license, certificate, or registration is required for the provision of Medi-Cal TCM services. Failure to exclude an individual whose license, certificate, or registration has been revoked, suspended, or restricted from the provision of Medi-Cal TCM services may constitute a breach of this Agreement.
 - 5) Failure of any employee or subcontractor, or an employee of a subcontractor, to comply with the UC HIPAA Business Associate Addendum (Exhibit A) shall result in the exclusion of that employee or subcontractor, or employee of a subcontractor, from participation in the Medi-Cal TCM Program. Failure to exclude an excluded individual from participation in the Medi-Cal TCM Program shall constitute a breach of this Agreement.
- M. Execute a Memorandum of Understanding (MOU) with Medi-Cal Managed Care Health Plan(s) serving beneficiaries in the same county as the Provider when the Provider is in a Geographic Managed Care, Two-Plan Managed Care, Regional Model, Imperial Model, San Benito Model, or County Organized Health System county in accordance with State issued policy directives, including PPLs and federal directives, all as periodically amended. The MOU will serve to define the respective responsibilities between TCM and Medi-Cal Managed Care Health Plans and must include coordination protocols to ensure non-duplication of services provided to beneficiaries in common.

N. Abide by the following documents, as incorporated herein and made a part of this Agreement by this reference.

- 1) TCM Special Terms and Conditions (Exhibit D (F)).
- 2) HIPAA Business Associate Addendum (Exhibit A).
- 3) CCC 307 - Certification.
- 4) GTC 610 - General Terms and Conditions.
<http://www.ols.dgs.ca.gov/Standard+language>

5. DHCS RESPONSIBILITIES

By entering into this Agreement, DHCS agrees to:

- A. Establish one all-inclusive interim rate for the Provider to claim for TCM services.
- B. Perform settlement reconciliation to reflect the actual costs the Provider incurred in providing TCM services to Medi-Cal beneficiaries.
- C. Review and process TCM Summary Invoices within 24 months from the date of service. Upon review, processing and approval of valid TCM encounters, TCM Summary Invoices shall then be scheduled for payment.
- D. Provide training and technical assistance to enable the Provider to identify costs related to proper invoicing documentation and billing procedures. The State will provide oversight to ensure compliance with the W&I Code Section 14132.44 and all other governing federal and State laws and regulations.

6. AMENDMENT

Should either party, during the term of this Agreement, desire a change or amendment to the Articles of this Agreement, such changes or amendments shall be proposed in writing to the other party, who will respond in writing as to whether the proposed changes/amendments are accepted or rejected. If accepted and after negotiations are concluded, the agreed upon changes shall be made through a process that is mutually agreeable to both DHCS and the Provider. No amendment will be considered binding on either party until it is approved by DHCS.

7. TERMINATION

Either party may terminate this Agreement, without cause, by delivering a signed, written notice of termination to the other party at least (30) days prior to the effective date of termination.

8. GENERAL PROVISIONS

- A. This document constitutes the entire agreement between the parties. Any condition, provision, agreement, or understanding not stated in the Articles of this Agreement shall not affect any rights, duties, or privileges in connection with this Agreement.
- B. The term "days" as used in this Agreement shall mean calendar days unless specified otherwise.
- C. The State shall have the right to access, examine, monitor, and audit all records, documents, conditions, and activities of the Provider and its subcontractor related to the TCM services provided pursuant to this Agreement.
- D. No covenant, condition, duty, obligation, or undertaking made a part of this Agreement shall be waived except by amendment of the Agreement by the parties herein, and forbearance or indulgence in any other form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed or discharged by the party to which the same may apply; and, until performance or satisfaction of all covenants, duties, obligations, or undertakings is complete, the other party shall have the right to invoke any remedy available under this Agreement, or under law, notwithstanding such forbearance or indulgence.
- E. None of the provisions of this Agreement are or shall be construed as for the benefit of, or enforceable by, any person not a party to this Agreement.
- F. DHCS intends to avoid any real or apparent conflict of interest on the part of the Provider, subcontractors, or employees, officers and directors of the Provider or subcontractors. Thus, DHCS reserves the right to determine, at its sole discretion, whether any information, assertion or claim received from any source indicates the existence of a real or apparent conflict of interest; and, if a conflict is found to exist, to require the Provider to submit additional information or a plan for resolving the conflict, subject to DHCS' review and prior approval.
 - 1) Conflicts of interest include, but are not limited to:
 - a) An instance where the Provider or any of its subcontractors, or any employee, officer, or director of the Provider or any subcontractor has an interest, financial or otherwise, whereby the use or disclosure of information obtained while performing services under the contract would allow for private or personal benefit or for any purpose that is contrary to the goals and objectives of this Agreement.
 - b) An instance where the Provider's or any subcontractor's employees, officers, or directors use their positions for purposes that are, or give the

appearance of being, motivated by a desire for private gain for themselves or others, such as those with whom they have family, business or other ties.

- 2) If DHCS is or becomes aware of a known or suspected conflict of interest, the Provider will be given an opportunity to submit additional information or to resolve the conflict. A Provider with a suspected conflict of interest will have five (5) working days from the date of notification of the conflict by DHCS to provide complete information regarding the suspected conflict. If a conflict of interest is determined to exist by DHCS and cannot be resolved to the satisfaction of DHCS, the conflict will be grounds for terminating the contract. DHCS may, at its discretion upon receipt of a written request from the Provider, authorize an extension of the timeline indicated herein.

9. FISCAL PROVISIONS

Reimbursement under this Agreement shall be made in the following manner:

- A. Upon the Provider's compliance with all provisions pursuant to W&I Code Section 14132.44, Title 22 CCR Division 3 (commencing with Section 50000), and this Agreement, and upon the submission of a TCM Summary Invoice, based on valid and substantiated information, DHCS agrees to process the TCM Summary Invoice for reimbursement.
- B. Transfer of funds is contingent upon the availability of federal financial participation (FFP).
- C. The Provider shall verify the certified public expenditure (CPE) from the Provider's General Fund, or from any other funds allowed under federal law and regulation, for Title XIX funds claimed for TCM services performed pursuant to W&I Code Section 14132.44. DHCS shall deny payment of any TCM Summary Invoice submitted under this Agreement, if it determines that the certification is not adequately supported for purposes of FFP. Expenditures certified for TCM costs shall not duplicate, in whole or in part, claims made for the costs of direct patient services.
- D. It is mutually agreed that if the Budget Act for the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event DHCS shall have no liability to pay any funds whatsoever to the Provider or to furnish any other considerations under this Agreement and the Provider shall not be obligated to perform any provisions of this Agreement.
- E. If funding for any FY is reduced or deleted by the Budget Act for purposes of the TCM Program, DHCS shall have the option to either cancel this Agreement, with

no liability occurring to DHCS, or offer an agreement amendment to the Provider to reflect the reduced amount.

10. LIMITATION OF STATE LIABILITY

- A. Notwithstanding any other provision of this Agreement, DHCS shall be held harmless from any federal audit disallowance and interest resulting from payments made by the federal Medicaid program as reimbursement for claims providing TCM services pursuant to W&I Code Section 14132.44, for the disallowed claim or claims, less the amounts already remitted to DHCS pursuant to W&I Code Section 14132.44(m).
- B. To the extent that a federal audit disallowance and interest results from a claim or claims for which the Provider has received reimbursement for TCM services, DHCS shall recoup from the Provider, upon written notice, amounts equal to the amount of the disallowance and interest in that FY for the disallowed claim or claims. All subsequent TCM Summary Invoices submitted to DHCS applicable to any previously disallowed claim or claims, may be held in abeyance, with no payment made, until the federal disallowance issue is resolved, less the amounts already remitted to DHCS pursuant to W&I Code Section 14132.44(m).
- C. Notwithstanding paragraphs 10.A. and B., to the extent that a federal audit disallowance and interest results from a claim or claims for which the Provider has received reimbursement for TCM services provided by a nongovernmental entity under contract with, and on behalf of the Provider, DHCS shall be held harmless by the Provider for 100 percent of the amount of any such federal audit disallowance and interest, for the disallowed claim or claims, less the amounts already remitted to DHCS pursuant to W&I Code Section 14132.44(m).
- D. The Provider agrees that when it is established upon audit that an overpayment has been made, DHCS and Provider shall follow current laws, regulations, and State issued policy directives, including PPLs for the proper treatment of identified overpayment.
- E. DHCS reserves the right to select the method to be employed for the recovery of an overpayment.
- F. Overpayments may be assessed interest charges, and may be assessed penalties, in accordance with W&I Code Sections 14171(h) and 14171.5, respectively.

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AMENDMENT A EXECUTION

The undersigned hereby warrants that s/he has the requisite authority to enter into this Amendment on behalf of County of Yuba (Local Governmental Agency) and thereby bind the above named Local Governmental Agency to the terms and conditions of the same. This Amendment does not go into force until signed by California Department of Health Care Services.

Provider Authorized Contact Person's Signature

Mary Jane Griego

Print Name

Chair, Yuba County Board of Supervisors

Title

915 8th Street, Marysville, CA 95901

Address

Date

FISCAL YEARS:

2013-14

2014-15

2015-16

2016-17

2017-18

California Department of Health Care Services
Authorized Contact Person's Signature

Michelle Kristoff

Print Name

Chief, Administrative Claiming Local & School Services Branch

Title

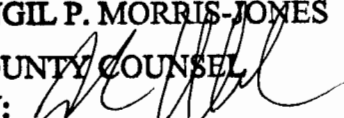
Department of Health Care Services

Name of Department

1501 Capitol Avenue, MS 4603, Sacramento, CA 95899-7413

Address

Date

**APPROVED AS TO FORM
ANGIL P. MORRIS-JONES
COUNTY COUNSEL
BY: **

Special Terms and Conditions

(Only applicable to federally funded Medi-Cal Targeted Case Management Provider Participation Agreements)

The use of headings or titles throughout this exhibit is for convenience only and shall not be used to interpret or to govern the meaning of any specific term or condition. The terms "contract" has the same meaning as "agreement" and the term "Contractor" has the same meaning as "Provider".

This exhibit contains provisions that require strict adherence to various contracting laws and policies. Some provisions herein are conditional and only apply if specified conditions exist (i.e., agreement total exceeds a certain amount, agreement is federally funded, etc.). The provisions herein apply to this agreement unless the provisions are removed by reference on the face of the agreement, the provisions are superseded by an alternate provision appearing elsewhere in the agreement, or the applicable conditions do not exist.

Index of Special Terms and Conditions

1. Federal Equal Employment Opportunity Requirements
2. Subcontract Requirements
3. Audit and Record Retention
4. Site Inspection
5. Air or Water Pollution Requirements
6. Confidentiality of Information
7. Dispute Resolution Process
8. Debarment and Suspension Certification
9. Officials Not to Benefit
10. HIPAA Business Associate Addendum

Federal Equal Opportunity Requirements

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. The Contractor will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or CDHS, setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212). Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.
- b. The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era.
- c. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of the Contractor's commitments under the provisions herein and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Contractor will comply with all provisions of and furnish all information and reports required by Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212) and of the Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e. The Contractor will furnish all information and reports required by Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f. In the event of the Contractor's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further federal and state contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- g. The Contractor will include the provisions of Paragraphs a through g in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or Section 503 of the Rehabilitation Act of 1973 or (38 U.S.C. 4212) of the Vietnam Era Veteran's Readjustment Assistance Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs or CDHS may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation by a subcontractor or vendor as a result of such direction by CDHS, the Contractor may request in writing to CDHS, who, in turn, may request the United States to enter into such litigation to protect the interests of the State and of the United States.

1. Subcontract Requirements

- a. Contractor shall maintain a copy of each subcontract entered into in support of this agreement and shall, upon request by CDHS, make copies available for, inspection, or audit.
- b. CDHS assumes no responsibility for the payment of subcontractors used in the performance of the agreement. Contractor accepts sole responsibility for the payment of subcontractors used in the performance of this agreement.
- c. The Contractor is responsible for all performance requirements under this agreement even though performance may be carried out through a subcontract.
- d. The Contractor shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this agreement and this exhibit.
- e. The Contractor agrees to include the following clause, relevant to record retention, in all subcontracts for services:
- "(Subcontractor Name) agrees to maintain and preserve, his/her records (1) for a period of three years after termination of (Agreement Number) and final payment from CDHS to Contractor, and (2) for such longer period, if any, as is required by applicable statute, to permit CDHS or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records."
- f. Unless otherwise stipulated in writing by CDHS, the Contractor shall be the subcontractor's sole point of contact for all matters related to performance and payment under this agreement.

2. Audit and Record Retention

- a. The Contractor and/or Subcontractor shall maintain books, records, documents, and other evidence, accounting procedures and practices, sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this agreement, including any matching costs and expenses. The foregoing constitutes "records" for the purpose of this provision.
- b. The Contractor's and/or subcontractor's facility or office or such part thereof as may be engaged in the performance of this agreement and his/her records shall be subject at all reasonable times to inspection, audit, and reproduction.
- c. Contractor agrees that CDHS, the Department of General Services, the Bureau of State Audits, or their designated representatives including the Comptroller General of the United States shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this agreement. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in

any subcontract related to performance of this agreement. (GC 8546.7,

- d. The Contractor and/or Subcontractor shall preserve and make available his/her records (1) for a period of three years from the date of final payment under this agreement, and (2) for such longer period, if any, as is required by applicable statute, by any other provision of this agreement, or by subparagraphs (1) or (2) below.
- (1) If this agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.
- (2) If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.
- e. The Contractor and/or Subcontractor may, at its discretion, following receipt of final payment under this agreement, reduce its accounts, books and records related to this agreement to microfilm, computer disk, CD ROM, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, the Contractor and/or Subcontractor must supply or make available applicable devices, hardware, and/or software necessary to view, copy and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.

3. Site Inspection

The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made of the premises of the Contractor or Subcontractor, the Contractor shall provide and shall require Subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

5. Air or Water Pollution Requirements

Any federally funded agreement and/or subcontract in excess of \$100,000 must comply with the following provisions unless said agreement is exempt under 40 CFR 15.5.

- a. Government contractors agree to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act [42 U.S.C. 1857(h)], section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
- b. Institutions of higher education, hospitals, nonprofit organizations and commercial businesses agree to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et seq.), as amended, and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended.

6. Confidentiality of Information

- a. The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure names and other identifying information concerning persons either receiving services pursuant to this agreement or persons whose names or identifying information become available or are disclosed to the Contractor, its employees, agents, or subcontractors as a result of services performed under this agreement, except for statistical information not identifying any such person.
- b. The Contractor and its employees, agents, or subcontractors shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this agreement.
- c. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the CDHS program contract manager all requests for disclosure of such identifying information not emanating from the client or

person.

- d. The Contractor shall not disclose, except as otherwise specifically permitted by this agreement or authorized by the client, any such identifying information to anyone other than CDHS without prior written authorization from the CDHS program contract manager, except if disclosure is required by State or Federal law.
- e. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

7. Dispute Resolution Process

- a. A Contractor grievance exists whenever there is a dispute arising from CDHS' action in the administration of an agreement. If there is a dispute or grievance between the Contractor and CDHS, the Contractor must seek resolution using the procedure outlined below.
 - (1) The Contractor should first informally discuss the problem with the CDHS program contract manager. If the problem cannot be resolved informally, the Contractor shall direct its grievance together with any evidence, in writing, to the program Branch Chief. The grievance shall state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief shall render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. If the Contractor disagrees with the Branch Chief's decision, the Contractor may appeal to the second level.
 - (2) When appealing to the second level, the Contractor must prepare an appeal indicating the reasons for disagreement with Branch Chief's decision. The Contractor shall include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division in which the branch is organized or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal.
- b. If the Contractor wishes to appeal the decision of the Deputy Director of the division in which the branch is organized or his/her designee, the Contractor shall follow the procedures set forth in Division 25.1 (commencing with Section 38050) of the Health and Safety Code and the regulations adopted thereunder. (Title 1, Subchapter 2.5, commencing with Section 251, California Code of Regulations.)
- c. Disputes arising out of an audit, examination of an agreement or other action not covered by subdivision (a) of Section 20204, of Chapter 2.1, Title 22, of the California Code of Regulations, and for which no procedures for appeal are provided in statute, regulation or the agreement, shall be handled in accordance with the procedures identified in Sections 51016 through 51047, Title 22, California Code of Regulations
- d. Unless otherwise stipulated in writing by CDHS, all dispute, grievance and/or appeal correspondence shall be directed to the CDHS program contract manager.
- e. There are organizational differences within CDHS' funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Contractor shall be notified in writing by the CDHS program contract manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.
- f. Grievances regarding processing or payment of claims for services rendered shall be processed in accordance with W&I Code section 14104.5.

8 Debarment and Suspension Certification

- a. By signing this agreement, the Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations including, but not limited to 7 CFR Part 3017, 45 CFR 76, 40 CFR 32 or 34 CFR 85.
- b. By signing this agreement, the Contractor certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 - (2) Have not within a three-year period preceding this application/proposal/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph b(2) herein; and
 - (4) Have not within a three-year period preceding this application/proposal/agreement had one or more public transactions (Federal, State or local) terminated for cause or default.
 - (5) Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR part 9, subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction, unless authorized by the State.
 - (6) Will include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- c. If the Contractor is unable to certify to any of the statements in this certification, the Contractor shall submit an explanation to the CDHS program funding this contract.
- d. The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549.
- e. If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, the CDHS may terminate this agreement for cause or default.

9. Officials Not to Benefit

No members of or delegate of Congress or the State Legislature shall be admitted to any share or part of this agreement, or to any benefit that may arise therefrom. This provision shall not be construed to extend to this agreement if made with a corporation for its general benefits.

10. HIPAA Business Associate Addendum

Recitals – STANDARD RISK

- a. 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:").
- b. The California Department of Health Services ("CDHS") wishes to disclose to Business Associate certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information ("PHI").
- c. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium that relates to the past, present, or future physical or mental condition of an individual, the provision of health 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.

- d. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI, or confidential data that is essential to the ongoing operation of the Business Associate's organization and intended for internal use; or interference with system operations in an information system.
- e. As set forth in this Agreement Contractor, here and after, is the Business Associate of CDHS that provides services, arranges, performs or assists in the performance of functions or activities on behalf of CDHS and creates, receives, maintains, transmits, uses or discloses PHI.
- f. CDHS 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.
- g. The purpose of the Addendum is to satisfy certain standards and requirements of HIPAA and the HIPAA regulations.
- h. The terms used in this Addendum, but not otherwise defined, shall have the same meanings as those terms in the HIPAA regulations.

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

I. Permitted Uses and Disclosures of PHI by Business Associate

- (1) **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 CDHS, provided that such use or disclosure would not violate the HIPAA regulations, if done by CDHS.
- (2) **Specific Use and Disclosure Provisions.** Except as otherwise indicated in this Addendum, Business Associate may:
 - A. ***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.
 - B. ***Provision of Data Aggregation Services.*** Use PHI to provide data aggregation services to CDHS. Data aggregation means the combining of PHI created or received by the Business Associate on behalf of CDHS 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 CDHS.

II. Responsibilities of Business Associate

Business Associate agrees:

- (1) ***Nondisclosure.*** Not to use or disclose Protected Health Information (PHI) other than as permitted or required by this Agreement or as required by law.
- (2) ***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 CDHS; 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 CDHS with its current and updated policies.

- (3) **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 CDHS at the end of the contract period. These steps shall include, at a minimum:
- A. Complying with all of the data system security precautions listed in this Agreement or in an Exhibit incorporated into this Agreement; and
 - B. Complying with the safeguard provisions in the Department's Information Security Policy, embodied in Health Administrative Manual (HAM), sections 6-1000 et seq. and in the Security and Risk Management Policy in the Information Technology Section of the State Administrative Manual (SAM), sections 4840 et seq., in so far as the security standards in these manuals apply to Business Associate's operations. 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 CDHS.

- (4) **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.
- (5) **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 CDHS, 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.
- (6) **Availability of Information to CDHS and Individuals.** To provide access as CDHS may require, and in the time and manner designated by CDHS (upon reasonable notice and during Business Associate's normal business hours) to PHI in a Designated Record Set, to CDHS (or, as directed by CDHS), to an Individual, in accordance with 45 CFR Section 164.524. Designated Record Set means the group of records maintained for CDHS that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for CDHS health plans; or those records used to make decisions about individuals on behalf of CDHS. Business Associate shall use the forms and processes developed by CDHS for this purpose and shall respond to requests for access to records transmitted by CDHS within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.
- (7) **Amendment of PHI.** To make any amendment(s) to PHI that CDHS directs or agrees to pursuant to 45 CFR Section 164.526, in the time and manner designated by CDHS.
- i. **Internal Practices.** To make Business Associate's internal practices, books and records relating to the use and disclosure of PHI received from CDHS, or created or received by Business Associate on behalf of CDHS, available to CDHS or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by CDHS or

by the Secretary, for purposes of determining CDHS's compliance with the HIPAA regulations.

- (8) **Documentation of Disclosures.** To document and make available to CDHS or (at the direction of CDHS) 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.
- (9) **Notification of Breach.** During the term of this Agreement:
- A. **Discovery of Breach.** To notify CDHS 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 CDHS contract manager, the CDHS Privacy Officer and the CDHS Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notification shall be provided by calling the CDHS ITSD Help Desk. Business Associate shall take:
 - i. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment and
 - ii. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
 - B. **Investigation of Breach.** To immediately investigate such security incident, breach, or unauthorized use or disclosure of PHI or confidential data. Within 72 hours of the discovery, to notify the CDHS contract manager(s), the CDHS Privacy Officer, and the CDHS Information Security Officer 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,
 - iv. A description of the probable causes of the improper use or disclosure; and
 - v. Whether Civil Code sections 1798.29 or 1798.82 or any other federal or state laws requiring individual notifications of breaches are triggered.
 - C. **Written Report.** To provide a written report of the investigation to the CDHS contract managers, the CDHS Privacy Officer, and the CDHS Information Security Officer 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.
 - D. **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 CDHS contract managers, the CDHS Privacy Officer, and the CDHS Information Security Officer shall approve the time, manner and content of any such notifications.
 - E. **CDHS Contact Information.** To direct communications to the above referenced CDHS staff, the Contractor shall initiate contact as indicated herein. CDHS 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.

CDHS Contract Manager	CDHS Privacy Officer	CDHS Information Security Officer
See the Agreement for Contract Manager information	Privacy Officer c/o Office of Legal Services California Department of Health Services P.O. Box 997413, MS 0011 Sacramento, CA 95899-7413 Email: privacyofficer@dhs.ca.gov Telephone: (916) 445-4646	Information Security Officer Information Security Office P.O. Box 997413, MS 6302 Sacramento, CA 95899-7413 Email: dhsiso@dhs.ca.gov Telephone: ITSD Help Desk (916) 440-7000 or (800) 579-0874

- (10) **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 CDHS 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:
- A. 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 CDHS under this Agreement and use or disclose PHI.
 - B. 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.
 - C. Business Associate shall retain each employee's written certifications for CDHS inspection for a period of three years following contract termination.

III. Obligations of CDHS

CDHS agrees to:

- (1) **Notice of Privacy Practices.** Provide Business Associate with the Notice of Privacy Practices that CDHS produces in accordance with 45 CFR 164.520, as well as any changes to such notice. Visit this Internet address to view the most current Notice of Privacy Practices: <http://www.dhs.ca.gov/privacyoffice>.
- (2) **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.
- (3) **Notification of Restrictions.** Notify the Business Associate of any restriction to the use or disclosure of PHI that CDHS 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.
- (4) **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 CDHS.

IV. Audits, Inspection and Enforcement

From time to time, CDHS 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 CDHS Privacy Officer in writing. The fact that CDHS 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 CDHS's:

- (1) Failure to detect or

- (2) 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 CDHS's enforcement rights under this Agreement and this Addendum.

V. Termination

- (1) **Termination for Cause.** Upon CDHS's knowledge of a material breach of this Addendum by Business Associate, CDHS shall:
 - A. 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 CDHS;
 - B. Immediately terminate this Agreement if Business Associate has breached a material term of this Addendum and cure is not possible; or
 - C. If neither cure nor termination is feasible, report the violation to the Secretary of the U.S. Department of Health and Human Services.
- (2) **Judicial or Administrative Proceedings.** Business Associate will notify CDHS if it is named as a defendant in a criminal proceeding for a violation of HIPAA. CDHS may terminate this Agreement if Business Associate is found guilty of a criminal violation of HIPAA. CDHS 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.
- (3) **Effect of Termination.** Upon termination or expiration of this Agreement for any reason, Business Associate shall return or destroy all PHI received from CDHS (or created or received by Business Associate on behalf of CDHS) 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.

VI. Miscellaneous Provisions

- (1) **Disclaimer.** CDHS 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.
- (2) **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 CDHS's request, Business Associate agrees to promptly enter into negotiations with CDHS concerning an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA regulations or other applicable laws. CDHS may terminate this Agreement upon thirty (30) days written notice in the event:
 - A. Business Associate does not promptly enter into negotiations to amend this Addendum when requested by CDHS pursuant to this Section or
 - B. Business Associate does not enter into an amendment providing assurances regarding the safeguarding of PHI that CDHS in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.

- (3) **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 CDHS at no cost to CDHS to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CDHS, 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.
- (4) **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 CDHS or Business Associate and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- (5) **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.
- (6) **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.
- (7) **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.
- (8) **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.

Exhibit A
HIPAA Business Associate Addendum

I. Recitals

- A. This Contract (Agreement) has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), 42 U.S.C. section 17921 et seq., and their implementing privacy and security regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations").
- B. The Department of Health Care Services ("DHCS") wishes to disclose to Business Associate certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information ("PHI"), including protected health information in electronic media ("ePHI"), under federal law, and personal information ("PI") under state law.
- C. As set forth in this Agreement, Contractor, here and after, is the Business Associate of DHCS acting on DHCS' behalf and provides services, arranges, performs or assists in the performance of functions or activities on behalf of DHCS and creates, receives, maintains, transmits, uses or discloses PHI and PI. DHCS and Business Associate are each a party to this Agreement and are collectively referred to as the "parties."
- D. The purpose of this Addendum is to protect the privacy and security of the PHI and PI that may be created, received, maintained, transmitted, used or disclosed pursuant to this Agreement, and to comply with certain standards and requirements of HIPAA, the HITECH Act and the HIPAA regulations, including, but not limited to, the requirement that DHCS must enter into a contract containing specific requirements with Contractor prior to the disclosure of PHI to Contractor, as set forth in 45 CFR Parts 160 and 164 and the HITECH Act, and the Final Omnibus Rule as well as the Alcohol and Drug Abuse patient records confidentiality law 42 CFR Part 2, and any other applicable state or federal law or regulation. 42 CFR section 2.1(b)(2)(B) allows for the disclosure of such records to qualified personnel for the purpose of conducting management or financial audits, or program evaluation. 42 CFR Section 2.53(d) provides that patient identifying information disclosed under this section may be disclosed only back to the program from which it was obtained and used only to carry out an audit or evaluation purpose or to investigate or prosecute criminal or other activities, as authorized by an appropriate court order.
- E. The terms used in this Addendum, but not otherwise defined, shall have the same meanings as those terms have in the HIPAA regulations. Any reference to statutory or regulatory language shall be to such language as in effect or as amended.

II. Definitions

- A. Breach shall have the meaning given to such term under HIPAA, the HITECH Act, the HIPAA regulations, and the Final Omnibus Rule.
- B. Business Associate shall have the meaning given to such term under HIPAA, the HITECH Act, the HIPAA regulations, and the final Omnibus Rule.
- C. Covered Entity shall have the meaning given to such term under HIPAA, the HITECH Act, the HIPAA regulations, and Final Omnibus Rule.
- D. Electronic Health Record shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C Section 17921 and implementing regulations.

Exhibit A
HIPAA Business Associate Addendum

- E. Electronic Protected Health Information (ePHI) means individually identifiable health information transmitted by electronic media or maintained in electronic media, including but not limited to electronic media as set forth under 45 CFR section 160.103.
- F. Individually Identifiable Health Information means health information, including demographic information collected from an individual, that is created or received by a health care provider, health plan, employer or health care clearinghouse, and relates to the past, present or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, that identifies the individual or where there is a reasonable basis to believe the information can be used to identify the individual, as set forth under 45 CFR section 160.103.
- G. Privacy Rule shall mean the HIPAA Regulation that is found at 45 CFR Parts 160 and 164.
- H. Personal Information shall have the meaning given to such term in California Civil Code section 1798.29.
- I. Protected Health Information means individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or is transmitted or maintained in any other form or medium, as set forth under 45 CFR section 160.103.
- J. Required by law, as set forth under 45 CFR section 164.103, means a mandate contained in law that compels an entity to make a use or disclosure of PHI that is enforceable in a court of law. This includes, but is not limited to, court orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information, and a civil or an authorized investigative demand. It also includes Medicare conditions of participation with respect to health care providers participating in the program, and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.
- K. Secretary means the Secretary of the U.S. Department of Health and Human Services ("HHS") or the Secretary's designee.
- L. Security Incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI or PI, 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.
- M. Security Rule shall mean the HIPAA regulation that is found at 45 CFR Parts 160 and 164.
- N. Unsecured PHI shall have the meaning given to such term under the HITECH Act, 42 U.S.C. section 17932(h), any guidance issued pursuant to such Act and the HIPAA regulations.

III. Terms of Agreement

A. Permitted Uses and Disclosures of PHI by Business Associate

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 DHCS, provided that such use or disclosure would not violate the

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HIPAA regulations, if done by DHCS. Any such use or disclosure must, to the extent practicable, be limited to the limited data set, as defined in 45 CFR section 164.514(e)(2), or, if needed, to the minimum necessary to accomplish the intended purpose of such use or disclosure, in compliance with the HITECH Act and any guidance issued pursuant to such Act, the HIPAA regulations, the Final Omnibus Rule and 42 CFR Part 2.

1. ***Specific Use and Disclosure Provisions.*** Except as otherwise indicated in this Addendum, Business Associate may:
 - a. ***Use and disclose for management and administration.*** Use and disclose PHI for the proper management and administration of the Business Associate provided that such 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.
 - b. ***Provision of Data Aggregation Services.*** Use PHI to provide data aggregation services to DHCS. Data aggregation means the combining of PHI created or received by the Business Associate on behalf of DHCS 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 DHCS.

B. Prohibited Uses and Disclosures

1. Business Associate shall not disclose PHI about an individual to a health plan for payment or health care operations purposes if the PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full and the individual requests such restriction, in accordance with 42 U.S.C. section 17935(a) and 45 CFR section 164.522(a).
2. Business Associate shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of DHCS and as permitted by 42 U.S.C. section 17935(d)(2).

C. Responsibilities of Business Associate

Business Associate agrees:

1. ***Nondisclosure.*** Not to use or disclose Protected Health Information (PHI) other than as permitted or required by this Agreement or as required by law.
2. ***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 DHCS, in compliance with 45 CFR sections 164.308, 164.310 and 164.312, and to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate shall implement reasonable and appropriate policies and procedures to comply with the standards, implementation specifications and other requirements of 45 CFR section 164, subpart C, in compliance with 45 CFR section 164.316. 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

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which incorporates the requirements of section 3, Security, below. Business Associate will provide DHCS with its current and updated policies.

3. **Security.** To take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI and/or PI, and to protect paper documents containing PHI and/or PI. These steps shall include, at a minimum:
 - a. Complying with all of the data system security precautions listed in Attachment A, the Business Associate Data Security Requirements;
 - b. Achieving and maintaining compliance with the HIPAA Security Rule (45 CFR Parts 160 and 164), as necessary in conducting operations on behalf of DHCS under this Agreement;
 - c. Providing a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III - Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies; and
 - d. 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 DHCS.

- 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 and Subcontractors.

1. To enter into written agreements with any agents, including subcontractors and vendors, to whom Business Associate provides PHI or PI received from or created or received by Business Associate on behalf of DHCS, that impose the same restrictions and conditions on such agents, subcontractors and vendors that apply to Business Associate with respect to such PHI and PI under this Addendum, and that comply with all applicable provisions of HIPAA, the HITECH Act the HIPAA regulations, and the Final Omnibus Rule, including the requirement that any agents, subcontractors or vendors implement reasonable and appropriate administrative, physical, and technical safeguards to protect such PHI and PI. Business associates are directly liable under the HIPAA Rules and subject to civil and, in some cases, criminal penalties for making uses and disclosures of protected health information that are not authorized by its contract or required by law. A business associate also is directly liable and subject to civil penalties for failing to safeguard electronic protected health information in accordance with the HIPAA Security Rule. A "business associate" also is a subcontractor that creates, receives, maintains, or transmits protected health information on behalf of another business associate. Business Associate shall incorporate, when applicable, the relevant provisions of this Addendum into each subcontract or subaward to such agents, subcontractors and vendors, including the requirement that any security incidents or breaches of unsecured PHI or PI be reported to Business Associate.

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2. In accordance with 45 CFR section 164.504(e)(1)(ii), upon Business Associate's knowledge of a material breach or violation by its subcontractor of the agreement between Business Associate and the subcontractor, Business Associate shall:
 - a. Provide an opportunity for the subcontractor to cure the breach or end the violation and terminate the agreement if the subcontractor does not cure the breach or end the violation within the time specified by DHCS; or
 - b. Immediately terminate the agreement if the subcontractor has breached a material term of the agreement and cure is not possible.

F. *Availability of Information to DHCS and Individuals.* To provide access and information:

1. To provide access as DHCS may require, and in the time and manner designated by DHCS (upon reasonable notice and during Business Associate's normal business hours) to PHI in a Designated Record Set, to DHCS (or, as directed by DHCS), to an Individual, in accordance with 45 CFR section 164.524. Designated Record Set means the group of records maintained for DHCS that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for DHCS health plans; or those records used to make decisions about individuals on behalf of DHCS. Business Associate shall use the forms and processes developed by DHCS for this purpose and shall respond to requests for access to records transmitted by DHCS within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.
2. If Business Associate maintains an Electronic Health Record with PHI, and an individual requests a copy of such information in an electronic format, Business Associate shall provide such information in an electronic format to enable DHCS to fulfill its obligations under the HITECH Act, including but not limited to, 42 U.S.C. section 17935(e).
3. If Business Associate receives data from DHCS that was provided to DHCS by the Social Security Administration, upon request by DHCS, Business Associate shall provide DHCS with a list of all employees, contractors and agents who have access to the Social Security data, including employees, contractors and agents of its subcontractors and agents.

G. *Amendment of PHI.* To make any amendment(s) to PHI that DHCS directs or agrees to pursuant to 45 CFR section 164.526, in the time and manner designated by DHCS.

H. *Internal Practices.* To make Business Associate's internal practices, books and records relating to the use and disclosure of PHI received from DHCS, or created or received by Business Associate on behalf of DHCS, available to DHCS or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by DHCS or by the Secretary, for purposes of determining DHCS' compliance with the HIPAA regulations. If any information needed for this purpose is in the exclusive possession of any other entity or person and the other entity or person fails or refuses to furnish the information to Business Associate, Business Associate shall so certify to DHCS and shall set forth the efforts it made to obtain the information.

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I. **Documentation of Disclosures.** To document and make available to DHCS or (at the direction of DHCS) 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 the HITECH Act and its implementing regulations, including but not limited to 45 CFR section 164.528 and 42 U.S.C. section 17935(c). If Business Associate maintains electronic health records for DHCS as of January 1, 2009, Business Associate must provide an accounting of disclosures, including those disclosures for treatment, payment or health care operations, effective with disclosures on or after January 1, 2014. If Business Associate acquires electronic health records for DHCS after January 1, 2009, Business Associate must provide an accounting of disclosures, including those disclosures for treatment, payment or health care operations, effective with disclosures on or after the date the electronic health record is acquired, or on or after January 1, 2011, whichever date is later. The electronic accounting of disclosures shall be for disclosures during the three years prior to the request for an accounting.

J. **Breaches and Security Incidents.** During the term of this Agreement, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach or security incident, and to take the following steps:

1. **Notice to DHCS.** (1) To notify DHCS **immediately by telephone call plus email or fax** upon the discovery of a breach of unsecured PHI or PI in electronic media or in any other media if the PHI or PI was, or is reasonably believed to have been, accessed or acquired by an unauthorized person, or upon the discovery of a suspected security incident that involves data provided to DHCS by the Social Security Administration. (2) To notify DHCS **within 24 hours by email or fax** of the discovery of any suspected security incident, intrusion or unauthorized access, use or disclosure of PHI or PI in violation of this Agreement and this Addendum, or potential loss of confidential data affecting this Agreement. A breach shall be treated as discovered by Business Associate as of the first day on which the breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the breach) who is an employee, officer or other agent of Business Associate.

Notice shall be provided to the DHCS Program Contract Manager, the DHCS Privacy Officer and the DHCS Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notice shall be provided by calling the DHCS ITSD Service Desk. Notice shall be made using the "DHCS Privacy Incident Report" form, including all information known at the time. Business Associate shall use the most current version of this form, which is posted on the DHCS Privacy Office website (www.dhcs.ca.gov, then select "Privacy" in the left column and then "Business Use" near the middle of the page) or use this link: <http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/DHCSBusinessAssociatesOnly.aspx>

Upon discovery of a breach or suspected security incident, intrusion or unauthorized access, use or disclosure of PHI or PI, Business Associate shall take:

- a. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and
- b. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.

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2. **Investigation and Investigation Report.** To immediately investigate such security incident, breach, or unauthorized access, use or disclosure of PHI or PI. Within 72 hours of the discovery, Business Associate shall submit an updated "DHCS Privacy Incident Report" containing the information marked with an asterisk and all other applicable information listed on the form, to the extent known at that time, to the DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer:
3. **Complete Report.** To provide a complete report of the investigation to the DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall be submitted on the "DHCS Privacy Incident Report" form and shall include an assessment of all known factors relevant to a determination of whether a breach occurred under applicable provisions of HIPAA, the HITECH Act, the HIPAA regulations and/or state law. The report shall also include a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure. If DHCS requests information in addition to that listed on the "DHCS Privacy Incident Report" form, Business Associate shall make reasonable efforts to provide DHCS with such information. If necessary, a Supplemental Report may be used to submit revised or additional information after the completed report is submitted, by submitting the revised or additional information on an updated "DHCS Privacy Incident Report" form. DHCS will review and approve the determination of whether a breach occurred and individual notifications are required, and the corrective action plan.
4. **Notification of Individuals.** If the cause of a breach of PHI or PI is attributable to Business Associate or its subcontractors, agents or vendors, Business Associate shall notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and shall pay any costs of such notifications, as well as any costs associated with the breach. The notifications shall comply with the requirements set forth in 42 U.S.C. section 17932 and its implementing regulations, including, but not limited to, the requirement that the notifications be made without unreasonable delay and in no event later than 60 calendar days. The DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer shall approve the time, manner and content of any such notifications and their review and approval must be obtained before the notifications are made.
5. **Responsibility for Reporting of Breaches.** If the cause of a breach of PHI or PI is attributable to Business Associate or its agents, subcontractors or vendors, Business Associate is responsible for all required reporting of the breach as specified in 42 U.S.C. section 17932 and its implementing regulations, including notification to media outlets and to the Secretary. If a breach of unsecured PHI involves more than 500 residents of the State of California or its jurisdiction, Business Associate shall notify the Secretary of the breach immediately upon discovery of the breach. If Business Associate has reason to believe that duplicate reporting of the same breach or incident may occur because its subcontractors, agents or vendors may report the breach or incident to DHCS in addition to Business Associate, Business Associate shall notify DHCS, and DHCS and Business Associate may take appropriate action to prevent duplicate reporting. The breach reporting requirements of this paragraph are in addition to the reporting requirements set forth in subsection 1, above.

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6. **DHCS Contact Information.** To direct communications to the above referenced DHCS staff, the Contractor shall initiate contact as indicated herein. DHCS 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 Addendum or the Agreement to which it is incorporated.

DHCS Program Contract Manager	DHCS Privacy Officer	DHCS Information Security Officer
See the Scope of Work exhibit for Program Contract Manager information	Privacy Officer c/o: Office of HIPAA Compliance Department of Health Care Services P.O. Box 997413, MS 4722 Sacramento, CA 95899-7413 Email: privacyofficer@dhcs.ca.gov Telephone: (916) 445-4646 Fax: (916) 440-7680	Information Security Officer DHCS Information Security Office P.O. Box 997413, MS 6400 Sacramento, CA 95899-7413 Email: iso@dhcs.ca.gov Fax: (916) 440-5537 Telephone: ITSD Service Desk (916) 440-7000 or (800) 579-0874

- K. **Termination of Agreement.** In accordance with Section 13404(b) of the HITECH Act and to the extent required by the HIPAA regulations, if Business Associate knows of a material breach or violation by DHCS of this Addendum, it shall take the following steps:

1. Provide an opportunity for DHCS to cure the breach or end the violation and terminate the Agreement if DHCS does not cure the breach or end the violation within the time specified by Business Associate; or
2. Immediately terminate the Agreement if DHCS has breached a material term of the Addendum and cure is not possible.

- L. **Due Diligence.** Business Associate shall exercise due diligence and shall take reasonable steps to ensure that it remains in compliance with this Addendum and is in compliance with applicable provisions of HIPAA, the HITECH Act and the HIPAA regulations, and that its agents, subcontractors and vendors are in compliance with their obligations as required by this Addendum.

- M. **Sanctions and/or Penalties.** Business Associate understands that a failure to comply with the provisions of HIPAA, the HITECH Act and the HIPAA regulations that are applicable to Business Associate may result in the imposition of sanctions and/or penalties on Business Associate under HIPAA, the HITECH Act and the HIPAA regulations.

IV. Obligations of DHCS

DHCS agrees to:

- A. **Notice of Privacy Practices.** Provide Business Associate with the Notice of Privacy Practices that DHCS produces in accordance with 45 CFR section 164.520, as well as any changes to such notice. Visit the DHCS Privacy Office to view the most current Notice of Privacy Practices at: <http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/default.aspx> or the DHCS website at www.dhcs.ca.gov (select "Privacy in the left column and "Notice of Privacy Practices" on the right side of the page).

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- 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 DHCS has agreed to in accordance with 45 CFR section 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.
- D. *Requests Conflicting with HIPAA Rules.*** Not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA regulations if done by DHCS.

V. Audits, Inspection and Enforcement

- A.** From time to time, DHCS 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 DHCS Privacy Officer in writing. The fact that DHCS 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 DHCS':
 - 1. Failure to detect or
 - 2. 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 DHCS' enforcement rights under this Agreement and this Addendum.
- B.** If Business Associate is the subject of an audit, compliance review, or complaint investigation by the Secretary or the Office of Civil Rights, U.S. Department of Health and Human Services, that is related to the performance of its obligations pursuant to this HIPAA Business Associate Addendum, Business Associate shall notify DHCS and provide DHCS with a copy of any PHI or PI that Business Associate provides to the Secretary or the Office of Civil Rights concurrently with providing such PHI or PI to the Secretary. Business Associate is responsible for any civil penalties assessed due to an audit or investigation of Business Associate, in accordance with 42 U.S.C. section 17934(c).

VI. Termination

- A. *Term.*** The Term of this Addendum shall commence as of the effective date of this Addendum and shall extend beyond the termination of the contract and shall terminate when all the PHI provided by DHCS to Business Associate, or created or received by Business Associate on behalf of DHCS, is destroyed or returned to DHCS, in accordance with 45 CFR 164.504(e)(2)(ii)(I).
- B. *Termination for Cause.*** In accordance with 45 CFR section 164.504(e)(1)(ii), upon DHCS' knowledge of a material breach or violation of this Addendum by Business Associate, DHCS 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 DHCS; or
 - 2. Immediately terminate this Agreement if Business Associate has breached a material term of this Addendum and cure is not possible.

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- C. *Judicial or Administrative Proceedings.*** Business Associate will notify DHCS if it is named as a defendant in a criminal proceeding for a violation of HIPAA. DHCS may terminate this Agreement if Business Associate is found guilty of a criminal violation of HIPAA. DHCS 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.
- D. *Effect of Termination.*** Upon termination or expiration of this Agreement for any reason, Business Associate shall return or destroy all PHI received from DHCS (or created or received by Business Associate on behalf of DHCS) that Business Associate still maintains in any form, and shall retain no copies of such PHI. If return or destruction is not feasible, Business Associate shall notify DHCS of the conditions that make the return or destruction infeasible, and DHCS and Business Associate shall determine the terms and conditions under which Business Associate may retain the PHI. Business Associate shall continue to extend the protections of this Addendum to such PHI, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

VII. Miscellaneous Provisions

- A. *Disclaimer.*** DHCS 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 HITECH Act, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon DHCS' request, Business Associate agrees to promptly enter into negotiations with DHCS concerning an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable laws. DHCS 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 DHCS pursuant to this Section; or
 2. Business Associate does not enter into an amendment providing assurances regarding the safeguarding of PHI that DHCS 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 DHCS at no cost to DHCS to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against DHCS, 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.

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- 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 DHCS 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 HITECH Act, 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, the HITECH Act 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 VI.D 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.

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Attachment A
Business Associate Data Security Requirements

I. Personnel Controls

- A. *Employee Training.*** All workforce members who assist in the performance of functions or activities on behalf of DHCS, or access or disclose DHCS 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.
- B. *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.
- C. *Confidentiality Statement.*** All persons that will be working with DHCS 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 DHCS PHI or PI. The statement must be renewed annually. The Contractor shall retain each person's written confidentiality statement for DHCS inspection for a period of six (6) years following contract termination.
- D. *Background Check.*** Before a member of the workforce may access DHCS 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.

II. Technical Security Controls

- A. *Workstation/Laptop encryption.*** All workstations and laptops that process and/or store DHCS 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 DHCS Information Security Office.
- B. *Server Security.*** Servers containing unencrypted DHCS 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.
- C. *Minimum Necessary.*** Only the minimum necessary amount of DHCS PHI or PI required to perform necessary business functions may be copied, downloaded, or exported.
- D. *Removable media devices.*** All electronic files that contain DHCS PHI or PI data must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, Blackberry, backup tapes etc.). Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES.

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- E. *Antivirus software.*** All workstations, laptops and other systems that process and/or store DHCS PHI or PI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.
- F. *Patch Management.*** All workstations, laptops and other systems that process and/or store DHCS 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.
- G. *User IDs and Password Controls.*** All users must be issued a unique user name for accessing DHCS 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:
- Upper case letters (A-Z)
 - Lower case letters (a-z)
 - Arabic numerals (0-9)
 - Non-alphanumeric characters (punctuation symbols)
- H. *Data Destruction.*** When no longer needed, all DHCS PHI or PI must be wiped using the Gutmann or US Department of Defense (DoD) 5220.22-M (7 Pass) standard, or by degaussing. Media may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods require prior written permission of the DHCS Information Security Office.
- I. *System Timeout.*** The system providing access to DHCS PHI or PI must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.
- J. *Warning Banners.*** All systems providing access to DHCS 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.
- K. *System Logging.*** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for DHCS PHI or PI, or which alters DHCS 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 DHCS 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.
- L. *Access Controls.*** The system providing access to DHCS PHI or PI must use role based access controls for all user authentications, enforcing the principle of least privilege.

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- M. *Transmission encryption.*** All data transmissions of DHCS 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.
- N. *Intrusion Detection.*** All systems involved in accessing, holding, transporting, and protecting DHCS PHI or PI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

III. Audit Controls

- A. *System Security Review.*** All systems processing and/or storing DHCS 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.
- B. *Log Reviews.*** All systems processing and/or storing DHCS PHI or PI must have a routine procedure in place to review system logs for unauthorized access.
- C. *Change Control.*** All systems processing and/or storing DHCS PHI or PI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

IV. Business Continuity / Disaster Recovery Controls

- A. *Emergency Mode Operation Plan.*** Contractor must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic DHCS 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.
- B. *Data Backup Plan.*** Contractor must have established documented procedures to backup DHCS PHI to maintain retrievable exact copies of DHCS 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 DHCS PHI or PI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of DHCS data.

V. Paper Document Controls

- A. *Supervision of Data.*** DHCS 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. DHCS 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.
- B. *Escorting Visitors.*** Visitors to areas where DHCS PHI or PI is contained shall be escorted and DHCS PHI or PI shall be kept out of sight while visitors are in the area.

Exhibit A
HIPAA Business Associate Addendum

- C. Confidential Destruction.** DHCS PHI or PI must be disposed of through confidential means, such as cross cut shredding and pulverizing.
- D. Removal of Data.** DHCS PHI or PI must not be removed from the premises of the Contractor except with express written permission of DHCS.
- E. Faxing.** Faxes containing DHCS 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.
- F. Mailing.** Mailings of DHCS 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 DHCS 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 DHCS to use another method is obtained.

EXHIBIT C

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER:

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Provider to the clause(s) listed below with the exception of clauses 4 and 6 which do not apply to this Agreement. This certification is made under the laws of the State of California.

As used in this certification, the term "Contractor" shall also mean "Provider".

<i>Provider/Bidder Firm Name (Printed)</i> Yuba County Health and Human Services Department		<i>Federal ID Number</i> 94-6000549
<i>By (Authorized Signature)</i> 		
<i>Printed Name and Title of Person Signing</i> Mary Jane Griego, Chair, Yuba County Board of Supervisors		
<i>Date Executed</i> 	<i>Executed in the County of</i> Yuba	

CONTRACTOR CERTIFICATION CLAUSES

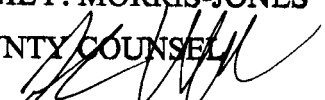
1. STATEMENT OF COMPLIANCE: Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. DRUG-FREE WORKPLACE REQUIREMENTS: Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

- 1) the dangers of drug abuse in the workplace;
- 2) the person's or organization's policy of maintaining a drug-free workplace;
- 3) any available counseling, rehabilitation and employee assistance programs; and,

APPROVED AS TO FORM
ANGIL P. MORRIS-JONES
COUNTY COUNSEL
BY: 

4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

1) receive a copy of the company's drug-free workplace policy statement; and,

2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)

4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT: Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lessor of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

6. SWEATFREE CODE OF CONDUCT:

a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.

b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).

7. DOMESTIC PARTNERS: For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.

2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code §10411):

1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.

**MEDI-CAL TARGETED CASE MANAGEMENT
AMENDMENT A TO
PROVIDER PARTICIPATION AGREEMENT**

Name of Provider: Yuba County

PPA #58-1318A

The parties agree that this Amendment A updates Provider Participation Agreement (PPA) # 58-1318, dated 06/27/2013 by amending the PPA in its entirety. This Amendment A removes all provisions of the PPA and inserts the following provisions effective on July 1, 2015.

1. STATEMENT OF INTENT

- A. The Articles of this Provider Participation Agreement, hereinafter referred to as the Agreement, set out the responsibilities of the qualified local governmental agency, named above and hereinafter referred to as Provider, and California Department of Health Care Services (DHCS), hereinafter referred to as the State or DHCS, relative to the provision of Targeted Case Management (TCM) services to eligible Medi-Cal beneficiaries.
- B. The Articles begin with STATEMENT OF INTENT and end with AGREEMENT EXECUTION.
- C. The mutual objectives of the Provider and DHCS are defined in, and governed by, 42 U.S.C. Section 1396n(g).

2. TERM OF AGREEMENT

The term of this Agreement is from July 1, 2013, through June 30, 2018.

3. CONTACT PERSONS

- A. The contact persons during the term of this Agreement are:

<p>Department of Health Care Services Michelle Kristoff, Chief Administrative Claiming Local & School Services Branch Telephone: (916) 341-6106 Fax: (916) 324-0738 Email: Michelle.Kristoff@dhcs.ca.gov</p>	<p>Provider Name: Jennifer Vasquez, Director Telephone: (530) 749-6380 Fax: (530) 749-6281 Email: jvasquez@co.yuba.ca.us</p>
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Name of Provider: Yuba County
PPA #: 58-1318A

B. Direct all inquiries to:

Department of Health Care Services	Provider
Administrative Claiming Local & School Services Branch Targeted Case Management Unit Attention: Sara Schmid Suite 71.3024 MS 4603 P.O. Box 997436 Sacramento, CA, 95899-7436 Phone: (916) 552-9284 Fax: (916) 324-0738 Email: Sara.Schmid@dhcs.ca.gov	Yuba County (58) Cyndi Journagan LGA Coordinator Health & Human Services Department 5730 Packard Avenue, Suite 100 Marysville, CA 95901 Phone: (530) 749-6279 Fax: (530) 749-6281 Email: cjournagan@co.yuba.ca.us

- C. Either party may make changes to the information above by giving written notice to the other party. Said changes shall not require an amendment to this agreement.

4. PROVIDER RESPONSIBILITIES

By entering into this Agreement, the Provider agrees to:

- A. Comply with all applicable federal and State directives, as periodically amended, including but not limited to: Title XIX of the Social Security Act; Titles 42 and 45 of the Code of Federal Regulations (CFR); California Medicaid State Plan; Chapters 7 and 8 of the California Welfare and Institutions (W&I) Code (commencing with Section 14000); Title 22 of the California Code of Regulations (CCR) (commencing with Section 50000); 42 CFR Sections 413.20, 413.24, 433.32, 433.51; State issued policy directives, including Policy and Procedure Letters (PPLs); Federal Office of Management and Budget (OMB) Circular A-87.
- B. Ensure all applicable State and federal requirements, as identified in paragraph 4.A., are met in providing TCM services under this Agreement.
- 1) Failure to ensure that all State and federal requirements are met shall be sufficient cause for DHCS to deny or recoup payments to the Provider, and/or terminate this Agreement.
- C. Ensure all applicable State and federal requirements are met with regard to Expense Allowability / Fiscal Documentation:
- 1) TCM Summary Invoices, received from a Provider and accepted and/or submitted for payment by DHCS, shall not be deemed evidence of allowable agreement costs.

- 2) Supporting documentation of all amounts invoiced shall be maintained for review and audit, and supplied to DHCS upon request, pursuant to this Agreement to permit a determination of expense allowability.
 - a) If the allowability or appropriateness of an expense cannot be determined by DHCS because invoice detail, fiscal records, or backup documentation is nonexistent or inadequate, according to generally accepted accounting principles or practices, all questioned costs may be disallowed and payment may be withheld or recouped by DHCS. Upon receipt of adequate documentation supporting a disallowed or questioned expense, reimbursement may resume for the amount substantiated and deemed allowable.
- D. Possess a Dun and Bradstreet Universal Numbering System (DUNS) Number. Per 2 CFR Part 25 Section 200 (C) (1), the DUNS number is required in order to receive Federal Financial assistance, or reimbursement for services provided. The DUNS number is a unique nine-digit identification number provided by Dun & Bradstreet and must be provided to DHCS prior to any invoice payment processing. LGAs are also required to include language in contracts with its subcontractors requiring them to obtain a DUNS number prior to receipt of federal funds. Failure for an LGA or their subcontractor(s) to possess a DUNS number may result in an LGA not being qualified to receive an award (2 CFR part 25 Section 205 (b)).
 - 1) If an LGA is authorized to make subawards under this award, the LGA may not make a subaward to a subcontractor unless the subcontractor has provided the LGA with their own DUNS number.
- E. Ensure all employees or subcontractors, or employees of subcontractors comply with the Health Insurance Portability and Accountability Act (HIPAA) Business Associate Addendum (Exhibit A), attached hereto and made part of this Agreement. Subcontractors included, but are not limited, to Local Public Entities (LPEs) and County Based Organizations (CBOs).
- F. Designate MEDS Access Liaisons responsible for working directly with DHCS in requesting MEDS access for county/city TCM staff. All MEDS Access Liaisons shall sign a MEDS Oath of Confidentiality provided by DHCS. DHCS will only accept account requests from an authorized MEDS Access Liaison.
 - 1) The MEDS Access Liaison will provide, assign, delete, and track user log-in identification codes generated through DHCS to authorized staff members upon request. The processing of log-in identification codes will be submitted electronically to DHCS to activate (i.e., add, delete, or reset) MEDS access upon receipt.

- 2) Comply with all provisions of the current Computer Matching and Privacy Protection Act Agreement (CMPPA) between the Social Security Administration (SSA) and the California Health and Human Services Agency (CHHSA); and the DHCS Information Exchange Agreement (IEA) with SSA. These data sharing agreements establish terms, conditions, and safeguards under which SSA agrees to disclose information relating to the eligibility for, and payment of, Social Security Income, Special Veterans Benefits, including certain tax return information as authorized by 26 U.S.C. 6103. These agreements are hereby incorporated by reference and made part of this Agreement.

G. By November 1 of each year:

- 1) Submit an annual electronic TCM Cost Report for the service period of July 1 through June 30th to dhsaitcm@dhcs.ca.gov
 - a) Electronic email submission shall include the following completed documents:
 - (1) Completed Cost Report Template signed and scanned (PDF)
 - (2) Completed Cost Report Template (Excel)
 - (3) LGA certification page signed and scanned (PDF)
 - (4) Non-LGA LPE Certification and LGA Attestation Statements for TCM Cost Report signed and scanned (PDF), if applicable.
 - b) Each electronic email submission shall follow the example below when naming the electronic files for the email submission of the Cost Report:

Example:

2013 Santa Cruz CR.xls (Fiscal Year [FY] 2013/14 Santa Cruz Cost Report, Excel version)
2013 Santa Cruz CR.PDF (FY 2013/14 Santa Cruz Cost Report, signed and scanned PDF version)

- c) Each electronic email submission shall follow the example below when naming the email for the submission of the Cost Report:

Example:

Name of LGA, LGA Code, Fiscal Year End Date (FYE), Part xx.
Santa Cruz County 44 FYE 063014 Part 1 of 3

- H. Accept payments as reimbursement in full as received for TCM services pursuant to this Agreement. Payments are subject to be reviewed and audited by DHCS and Centers for Medicare and Medicaid (CMS).
- I. Comply with confidentiality requirements as specified in 42 U.S.C. Section 1396a (a)(7), 42 CFR Section 431.300, W&I Code Sections 14100.2 and 14132.47, and Title 22 CCR Section 51009.
- J. Submit TCM Summary Invoices in accordance with 42 CFR 433.51, Title 22 CCR Sections 51185, 51271, 51272, 51351, 51351.1, 51365, 51535.7, and 51492, and ensure TCM Summary Invoices are postmarked within 12 months from the date of service.
- K. Provide, for audit purposes and in accordance with State issued policy directives, including Policy and Procedure Letters (PPLs), all records in support of allowable TCM services. These must be maintained for the greater of (a) three fiscal years after the end of the quarter the LGA receives reimbursement from DHCS for the expenditures incurred, or (b) three fiscal years after the date of submission of the original or amended TCM cost report, whichever is later pursuant to W&I Code Section 14170. If an audit is in progress, or is identified as forthcoming, all records relevant to the audit shall be retained throughout the audit's duration or the final resolution of all audit exceptions, deferrals and/or disallowances whichever is greater until appeals have finished.
 - 1) Records must fully disclose:
 - a) The name and Medi-Cal number or the beneficiary identification code of the person receiving the TCM service.
 - b) The name of the Provider of TCM services and person providing the service.
 - c) The date and place of service delivery, and the nature and extent of the TCM service provided.
 - 2) The Provider shall furnish said records and any other information regarding expenditures and revenues for providing TCM services, upon request, to the State and to the federal government.
- L. Be responsible for the acts or omissions of its employees and/or subcontractors.
 - 1) The conviction of an employee or subcontractor of the Provider, or of an employee of a subcontractor, of any felony or of a misdemeanor involving fraud, abuse of any Medi-Cal beneficiary or abuse of the Medi-Cal program, shall result in the exclusion of that employee or subcontractor, or employee of

a subcontractor, from participation in the Medi-Cal TCM Program. Failure to exclude a convicted individual from participation in the Medi-Cal TCM Program shall constitute a breach of this Agreement.

- 2) Exclusion after conviction shall result regardless of any subsequent order under Section 1203.4 of the Penal Code allowing a person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.
 - 3) Suspension or exclusion of an employee or a subcontractor, or of an employee of a subcontractor, from participation in the Medi-Cal Program, the Medicaid program or the Medicare Program, shall result in the exclusion of that employee or subcontractor, or employee of a subcontractor, from participation in the Medi-Cal TCM Program. Failure to exclude a suspended or excluded individual from participation in the Medi-Cal TCM Program shall constitute a breach of this Agreement.
 - 4) Revocation, suspension, or restriction of the license, certificate, or registration of any employee, subcontractor, or employee of a subcontractor, shall result in exclusion from the Medi-Cal TCM Program, when such license, certificate, or registration is required for the provision of Medi-Cal TCM services. Failure to exclude an individual whose license, certificate, or registration has been revoked, suspended, or restricted from the provision of Medi-Cal TCM services may constitute a breach of this Agreement.
 - 5) Failure of any employee or subcontractor, or an employee of a subcontractor, to comply with the UC HIPAA Business Associate Addendum (Exhibit A) shall result in the exclusion of that employee or subcontractor, or employee of a subcontractor, from participation in the Medi-Cal TCM Program. Failure to exclude an excluded individual from participation in the Medi-Cal TCM Program shall constitute a breach of this Agreement.
- M. Execute a Memorandum of Understanding (MOU) with Medi-Cal Managed Care Health Plan(s) serving beneficiaries in the same county as the Provider when the Provider is in a Geographic Managed Care, Two-Plan Managed Care, Regional Model, Imperial Model, San Benito Model, or County Organized Health System county in accordance with State issued policy directives, including PPLs and federal directives, all as periodically amended. The MOU will serve to define the respective responsibilities between TCM and Medi-Cal Managed Care Health Plans and must include coordination protocols to ensure non-duplication of services provided to beneficiaries in common.

N. Abide by the following documents, as incorporated herein and made a part of this Agreement by this reference.

- 1) TCM Special Terms and Conditions (Exhibit D (F)).
- 2) HIPAA Business Associate Addendum (Exhibit A).
- 3) CCC 307 - Certification.
- 4) GTC 610 - General Terms and Conditions.
<http://www.ols.dgs.ca.gov/Standard+language>

5. DHCS RESPONSIBILITIES

By entering into this Agreement, DHCS agrees to:

- A. Establish one all-inclusive interim rate for the Provider to claim for TCM services.
- B. Perform settlement reconciliation to reflect the actual costs the Provider incurred in providing TCM services to Medi-Cal beneficiaries.
- C. Review and process TCM Summary Invoices within 24 months from the date of service. Upon review, processing and approval of valid TCM encounters, TCM Summary Invoices shall then be scheduled for payment.
- D. Provide training and technical assistance to enable the Provider to identify costs related to proper invoicing documentation and billing procedures. The State will provide oversight to ensure compliance with the W&I Code Section 14132.44 and all other governing federal and State laws and regulations.

6. AMENDMENT

Should either party, during the term of this Agreement, desire a change or amendment to the Articles of this Agreement, such changes or amendments shall be proposed in writing to the other party, who will respond in writing as to whether the proposed changes/amendments are accepted or rejected. If accepted and after negotiations are concluded, the agreed upon changes shall be made through a process that is mutually agreeable to both DHCS and the Provider. No amendment will be considered binding on either party until it is approved by DHCS.

7. TERMINATION

Either party may terminate this Agreement, without cause, by delivering a signed, written notice of termination to the other party at least (30) days prior to the effective date of termination.

8. GENERAL PROVISIONS

- A. This document constitutes the entire agreement between the parties. Any condition, provision, agreement, or understanding not stated in the Articles of this Agreement shall not affect any rights, duties, or privileges in connection with this Agreement.
- B. The term "days" as used in this Agreement shall mean calendar days unless specified otherwise.
- C. The State shall have the right to access, examine, monitor, and audit all records, documents, conditions, and activities of the Provider and its subcontractor related to the TCM services provided pursuant to this Agreement.
- D. No covenant, condition, duty, obligation, or undertaking made a part of this Agreement shall be waived except by amendment of the Agreement by the parties herein, and forbearance or indulgence in any other form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed or discharged by the party to which the same may apply; and, until performance or satisfaction of all covenants, duties, obligations, or undertakings is complete, the other party shall have the right to invoke any remedy available under this Agreement, or under law, notwithstanding such forbearance or indulgence.
- E. None of the provisions of this Agreement are or shall be construed as for the benefit of, or enforceable by, any person not a party to this Agreement.
- F. DHCS intends to avoid any real or apparent conflict of interest on the part of the Provider, subcontractors, or employees, officers and directors of the Provider or subcontractors. Thus, DHCS reserves the right to determine, at its sole discretion, whether any information, assertion or claim received from any source indicates the existence of a real or apparent conflict of interest; and, if a conflict is found to exist, to require the Provider to submit additional information or a plan for resolving the conflict, subject to DHCS' review and prior approval.
 - 1) Conflicts of interest include, but are not limited to:
 - a) An instance where the Provider or any of its subcontractors, or any employee, officer, or director of the Provider or any subcontractor has an interest, financial or otherwise, whereby the use or disclosure of information obtained while performing services under the contract would allow for private or personal benefit or for any purpose that is contrary to the goals and objectives of this Agreement.
 - b) An instance where the Provider's or any subcontractor's employees, officers, or directors use their positions for purposes that are, or give the

appearance of being, motivated by a desire for private gain for themselves or others, such as those with whom they have family, business or other ties.

- 2) If DHCS is or becomes aware of a known or suspected conflict of interest, the Provider will be given an opportunity to submit additional information or to resolve the conflict. A Provider with a suspected conflict of interest will have five (5) working days from the date of notification of the conflict by DHCS to provide complete information regarding the suspected conflict. If a conflict of interest is determined to exist by DHCS and cannot be resolved to the satisfaction of DHCS, the conflict will be grounds for terminating the contract. DHCS may, at its discretion upon receipt of a written request from the Provider, authorize an extension of the timeline indicated herein.

9. FISCAL PROVISIONS

Reimbursement under this Agreement shall be made in the following manner:

- A. Upon the Provider's compliance with all provisions pursuant to W&I Code Section 14132.44, Title 22 CCR Division 3 (commencing with Section 50000), and this Agreement, and upon the submission of a TCM Summary Invoice, based on valid and substantiated information, DHCS agrees to process the TCM Summary Invoice for reimbursement.
- B. Transfer of funds is contingent upon the availability of federal financial participation (FFP).
- C. The Provider shall verify the certified public expenditure (CPE) from the Provider's General Fund, or from any other funds allowed under federal law and regulation, for Title XIX funds claimed for TCM services performed pursuant to W&I Code Section 14132.44. DHCS shall deny payment of any TCM Summary Invoice submitted under this Agreement, if it determines that the certification is not adequately supported for purposes of FFP. Expenditures certified for TCM costs shall not duplicate, in whole or in part, claims made for the costs of direct patient services.
- D. It is mutually agreed that if the Budget Act for the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event DHCS shall have no liability to pay any funds whatsoever to the Provider or to furnish any other considerations under this Agreement and the Provider shall not be obligated to perform any provisions of this Agreement.
- E. If funding for any FY is reduced or deleted by the Budget Act for purposes of the TCM Program, DHCS shall have the option to either cancel this Agreement, with

no liability occurring to DHCS, or offer an agreement amendment to the Provider to reflect the reduced amount.

10. LIMITATION OF STATE LIABILITY

- A. Notwithstanding any other provision of this Agreement, DHCS shall be held harmless from any federal audit disallowance and interest resulting from payments made by the federal Medicaid program as reimbursement for claims providing TCM services pursuant to W&I Code Section 14132.44, for the disallowed claim or claims, less the amounts already remitted to DHCS pursuant to W&I Code Section 14132.44(m).
- B. To the extent that a federal audit disallowance and interest results from a claim or claims for which the Provider has received reimbursement for TCM services, DHCS shall recoup from the Provider, upon written notice, amounts equal to the amount of the disallowance and interest in that FY for the disallowed claim or claims. All subsequent TCM Summary Invoices submitted to DHCS applicable to any previously disallowed claim or claims, may be held in abeyance, with no payment made, until the federal disallowance issue is resolved, less the amounts already remitted to DHCS pursuant to W&I Code Section 14132.44(m).
- C. Notwithstanding paragraphs 10.A. and B., to the extent that a federal audit disallowance and interest results from a claim or claims for which the Provider has received reimbursement for TCM services provided by a nongovernmental entity under contract with, and on behalf of the Provider, DHCS shall be held harmless by the Provider for 100 percent of the amount of any such federal audit disallowance and interest, for the disallowed claim or claims, less the amounts already remitted to DHCS pursuant to W&I Code Section 14132.44(m).
- D. The Provider agrees that when it is established upon audit that an overpayment has been made, DHCS and Provider shall follow current laws, regulations, and State issued policy directives, including PPLs for the proper treatment of identified overpayment.
- E. DHCS reserves the right to select the method to be employed for the recovery of an overpayment.
- F. Overpayments may be assessed interest charges, and may be assessed penalties, in accordance with W&I Code Sections 14171(h) and 14171.5, respectively.

[Remainder of page is left intentionally blank.]

AMENDMENT A EXECUTION

The undersigned hereby warrants that s/he has the requisite authority to enter into this Amendment on behalf of County of Yuba (Local Governmental Agency) and thereby bind the above named Local Governmental Agency to the terms and conditions of the same. This Amendment does not go into force until signed by California Department of Health Care Services.

Provider Authorized Contact Person's Signature

Mary Jane Griego

Print Name

Chair, Yuba County Board of Supervisors

Title

915 8th Street, Marysville, CA 95901

Address

Date

FISCAL YEARS:

2013-14

2014-15

2015-16

2016-17

2017-18

California Department of Health Care Services
Authorized Contact Person's Signature

Michelle Kristoff

Print Name

Chief, Administrative Claiming Local & School Services Branch

Title

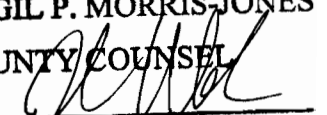
Department of Health Care Services

Name of Department

1501 Capitol Avenue, MS 4603, Sacramento, CA 95899-7413

Address

Date

APPROVED AS TO FORM
ANGIL P. MORRIS-JONES
COUNTY COUNSEL
BY: 

Special Terms and Conditions

(Only applicable to federally funded Medi-Cal Targeted Case Management Provider Participation Agreements)

The use of headings or titles throughout this exhibit is for convenience only and shall not be used to interpret or to govern the meaning of any specific term or condition. The terms "contract" has the same meaning as "agreement" and the term "Contractor" has the same meaning as "Provider".

This exhibit contains provisions that require strict adherence to various contracting laws and policies. Some provisions herein are conditional and only apply if specified conditions exist (i.e., agreement total exceeds a certain amount, agreement is federally funded, etc.). The provisions herein apply to this agreement unless the provisions are removed by reference on the face of the agreement, the provisions are superseded by an alternate provision appearing elsewhere in the agreement, or the applicable conditions do not exist.

Index of Special Terms and Conditions

1. Federal Equal Employment Opportunity Requirements
2. Subcontract Requirements
3. Audit and Record Retention
4. Site Inspection
5. Air or Water Pollution Requirements
6. Confidentiality of Information
7. Dispute Resolution Process
8. Debarment and Suspension Certification
9. Officials Not to Benefit
10. HIPAA Business Associate Addendum

Federal Equal Opportunity Requirements

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. The Contractor will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or CDHS, setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212). Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.
- b. The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era.
- c. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of the Contractor's commitments under the provisions herein and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Contractor will comply with all provisions of and furnish all information and reports required by Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212) and of the Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e. The Contractor will furnish all information and reports required by Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f. In the event of the Contractor's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further federal and state contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- g. The Contractor will include the provisions of Paragraphs a through g in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or Section 503 of the Rehabilitation Act of 1973 or (38 U.S.C. 4212) of the Vietnam Era Veteran's Readjustment Assistance Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs or CDHS may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation by a subcontractor or vendor as a result of such direction by CDHS, the Contractor may request in writing to CDHS, who, in turn, may request the United States to enter into such litigation to protect the interests of the State and of the United States.

1. Subcontract Requirements

- a. Contractor shall maintain a copy of each subcontract entered into in support of this agreement and shall, upon request by CDHS, make copies available for, inspection, or audit.
- b. CDHS assumes no responsibility for the payment of subcontractors used in the performance of the agreement. Contractor accepts sole responsibility for the payment of subcontractors used in the performance of this agreement.
- c. The Contractor is responsible for all performance requirements under this agreement even though performance may be carried out through a subcontract.
- d. The Contractor shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this agreement and this exhibit.
- e. The Contractor agrees to include the following clause, relevant to record retention, in all subcontracts for services:
- "(Subcontractor Name) agrees to maintain and preserve, his/her records (1) for a period of three years after termination of (Agreement Number) and final payment from CDHS to Contractor, and (2) for such longer period, if any, as is required by applicable statute, to permit CDHS or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records."
- f. Unless otherwise stipulated in writing by CDHS, the Contractor shall be the subcontractor's sole point of contact for all matters related to performance and payment under this agreement.

2. Audit and Record Retention

- a. The Contractor and/or Subcontractor shall maintain books, records, documents, and other evidence, accounting procedures and practices, sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this agreement, including any matching costs and expenses. The foregoing constitutes "records" for the purpose of this provision.
- b. The Contractor's and/or subcontractor's facility or office or such part thereof as may be engaged in the performance of this agreement and his/her records shall be subject at all reasonable times to inspection, audit, and reproduction.
- c. Contractor agrees that CDHS, the Department of General Services, the Bureau of State Audits, or their designated representatives including the Comptroller General of the United States shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this agreement. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in

any subcontract related to performance of this agreement. (GC 8546.7,

- d. The Contractor and/or Subcontractor shall preserve and make available his/her records (1) for a period of three years from the date of final payment under this agreement, and (2) for such longer period, if any, as is required by applicable statute, by any other provision of this agreement, or by subparagraphs (1) or (2) below.
 - (1) If this agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.
 - (2) If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.
- e. The Contractor and/or Subcontractor may, at its discretion, following receipt of final payment under this agreement, reduce its accounts, books and records related to this agreement to microfilm, computer disk, CD ROM, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, the Contractor and/or Subcontractor must supply or make available applicable devices, hardware, and/or software necessary to view, copy and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.

3. Site Inspection

The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made of the premises of the Contractor or Subcontractor, the Contractor shall provide and shall require Subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

5. Air or Water Pollution Requirements

Any federally funded agreement and/or subcontract in excess of \$100,000 must comply with the following provisions unless said agreement is exempt under 40 CFR 15.5.

- a. Government contractors agree to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act [42 U.S.C. 1857(h)], section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
- b. Institutions of higher education, hospitals, nonprofit organizations and commercial businesses agree to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et seq.), as amended, and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended.

6. Confidentiality of Information

- a. The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure names and other identifying information concerning persons either receiving services pursuant to this agreement or persons whose names or identifying information become available or are disclosed to the Contractor, its employees, agents, or subcontractors as a result of services performed under this agreement, except for statistical information not identifying any such person.
- b. The Contractor and its employees, agents, or subcontractors shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this agreement.
- c. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the CDHS program contract manager all requests for disclosure of such identifying information not emanating from the client or

person.

- d. The Contractor shall not disclose, except as otherwise specifically permitted by this agreement or authorized by the client, any such identifying information to anyone other than CDHS without prior written authorization from the CDHS program contract manager, except if disclosure is required by State or Federal law.
- e. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

7. Dispute Resolution Process

- a. A Contractor grievance exists whenever there is a dispute arising from CDHS' action in the administration of an agreement. If there is a dispute or grievance between the Contractor and CDHS, the Contractor must seek resolution using the procedure outlined below.
 - (1) The Contractor should first informally discuss the problem with the CDHS program contract manager. If the problem cannot be resolved informally, the Contractor shall direct its grievance together with any evidence, in writing, to the program Branch Chief. The grievance shall state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief shall render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. If the Contractor disagrees with the Branch Chief's decision, the Contractor may appeal to the second level.
 - (2) When appealing to the second level, the Contractor must prepare an appeal indicating the reasons for disagreement with Branch Chief's decision. The Contractor shall include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division in which the branch is organized or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal.
- b. If the Contractor wishes to appeal the decision of the Deputy Director of the division in which the branch is organized or his/her designee, the Contractor shall follow the procedures set forth in Division 25.1 (commencing with Section 38050) of the Health and Safety Code and the regulations adopted thereunder. (Title 1, Subchapter 2.5, commencing with Section 251, California Code of Regulations.)
- c. Disputes arising out of an audit, examination of an agreement or other action not covered by subdivision (a) of Section 20204, of Chapter 2.1, Title 22, of the California Code of Regulations, and for which no procedures for appeal are provided in statute, regulation or the agreement, shall be handled in accordance with the procedures identified in Sections 51016 through 51047, Title 22, California Code of Regulations
- d. Unless otherwise stipulated in writing by CDHS, all dispute, grievance and/or appeal correspondence shall be directed to the CDHS program contract manager.
- e. There are organizational differences within CDHS' funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Contractor shall be notified in writing by the CDHS program contract manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.
- f. Grievances regarding processing or payment of claims for services rendered shall be processed in accordance with W&I Code section 14104.5.

8 Debarment and Suspension Certification

- a. By signing this agreement, the Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations including, but not limited to 7 CFR Part 3017, 45 CFR 76, 40 CFR 32 or 34 CFR 85.
- b. By signing this agreement, the Contractor certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 - (2) Have not within a three-year period preceding this application/proposal/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph b(2) herein; and
 - (4) Have not within a three-year period preceding this application/proposal/agreement had one or more public transactions (Federal, State or local) terminated for cause or default.
 - (5) Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR part 9, subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction, unless authorized by the State.
 - (6) Will include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- c. If the Contractor is unable to certify to any of the statements in this certification, the Contractor shall submit an explanation to the CDHS program funding this contract.
- d. The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549.
- e. If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, the CDHS may terminate this agreement for cause or default.

9. Officials Not to Benefit

No members of or delegate of Congress or the State Legislature shall be admitted to any share or part of this agreement, or to any benefit that may arise therefrom. This provision shall not be construed to extend to this agreement if made with a corporation for its general benefits.

10. HIPAA Business Associate Addendum

Recitals – STANDARD RISK

- a. 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:").
- b. The California Department of Health Services ("CDHS") wishes to disclose to Business Associate certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information ("PHI").
- c. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium that relates to the past, present, or future physical or mental condition of an individual, the provision of health 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.

- d. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI, or confidential data that is essential to the ongoing operation of the Business Associate's organization and intended for internal use; or interference with system operations in an information system.
- e. As set forth in this Agreement Contractor, here and after, is the Business Associate of CDHS that provides services, arranges, performs or assists in the performance of functions or activities on behalf of CDHS and creates, receives, maintains, transmits, uses or discloses PHI.
- f. CDHS 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.
- g. The purpose of the Addendum is to satisfy certain standards and requirements of HIPAA and the HIPAA regulations.
- h. The terms used in this Addendum, but not otherwise defined, shall have the same meanings as those terms in the HIPAA regulations.

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

I. Permitted Uses and Disclosures of PHI by Business Associate

- (1) **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 CDHS, provided that such use or disclosure would not violate the HIPAA regulations, if done by CDHS.
- (2) **Specific Use and Disclosure Provisions.** Except as otherwise indicated in this Addendum, Business Associate may:
 - A. ***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.
 - B. ***Provision of Data Aggregation Services.*** Use PHI to provide data aggregation services to CDHS. Data aggregation means the combining of PHI created or received by the Business Associate on behalf of CDHS 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 CDHS.

II. Responsibilities of Business Associate

Business Associate agrees:

- (1) ***Nondisclosure.*** Not to use or disclose Protected Health Information (PHI) other than as permitted or required by this Agreement or as required by law.
- (2) ***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 CDHS; 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 CDHS with its current and updated policies.

- (3) **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 CDHS at the end of the contract period. These steps shall include, at a minimum:
- A. Complying with all of the data system security precautions listed in this Agreement or in an Exhibit incorporated into this Agreement; and
 - B. Complying with the safeguard provisions in the Department's Information Security Policy, embodied in Health Administrative Manual (HAM), sections 6-1000 et seq. and in the Security and Risk Management Policy in the Information Technology Section of the State Administrative Manual (SAM), sections 4840 et seq., in so far as the security standards in these manuals apply to Business Associate's operations. 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 CDHS.

- (4) **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.
- (5) **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 CDHS, 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.
- (6) **Availability of Information to CDHS and Individuals.** To provide access as CDHS may require, and in the time and manner designated by CDHS (upon reasonable notice and during Business Associate's normal business hours) to PHI in a Designated Record Set, to CDHS (or, as directed by CDHS), to an Individual, in accordance with 45 CFR Section 164.524. Designated Record Set means the group of records maintained for CDHS that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for CDHS health plans; or those records used to make decisions about individuals on behalf of CDHS. Business Associate shall use the forms and processes developed by CDHS for this purpose and shall respond to requests for access to records transmitted by CDHS within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.
- (7) **Amendment of PHI.** To make any amendment(s) to PHI that CDHS directs or agrees to pursuant to 45 CFR Section 164.526, in the time and manner designated by CDHS.
- i. **Internal Practices.** To make Business Associate's internal practices, books and records relating to the use and disclosure of PHI received from CDHS, or created or received by Business Associate on behalf of CDHS, available to CDHS or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by CDHS or

by the Secretary, for purposes of determining CDHS's compliance with the HIPAA regulations.

- (8) **Documentation of Disclosures.** To document and make available to CDHS or (at the direction of CDHS) 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.
- (9) **Notification of Breach.** During the term of this Agreement:
- A. **Discovery of Breach.** To notify CDHS 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 CDHS contract manager, the CDHS Privacy Officer and the CDHS Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notification shall be provided by calling the CDHS ITSD Help Desk. Business Associate shall take:
- i. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment and
 - ii. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
- B. **Investigation of Breach.** To immediately investigate such security incident, breach, or unauthorized use or disclosure of PHI or confidential data. Within 72 hours of the discovery, to notify the CDHS contract manager(s), the CDHS Privacy Officer, and the CDHS Information Security Officer 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,
 - iv. A description of the probable causes of the improper use or disclosure; and
 - v. Whether Civil Code sections 1798.29 or 1798.82 or any other federal or state laws requiring individual notifications of breaches are triggered.
- C. **Written Report.** To provide a written report of the investigation to the CDHS contract managers, the CDHS Privacy Officer, and the CDHS Information Security Officer 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.
- D. **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 CDHS contract managers, the CDHS Privacy Officer, and the CDHS Information Security Officer shall approve the time, manner and content of any such notifications.
- E. **CDHS Contact Information.** To direct communications to the above referenced CDHS staff, the Contractor shall initiate contact as indicated herein. CDHS 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.

CDHS Contract Manager	CDHS Privacy Officer	CDHS Information Security Officer
See the Agreement for Contract Manager information	Privacy Officer c/o Office of Legal Services California Department of Health Services P.O. Box 997413, MS 0011 Sacramento, CA 95899-7413 Email: privacyofficer@dhs.ca.gov Telephone: (916) 445-4646	Information Security Officer Information Security Office P.O. Box 997413, MS 6302 Sacramento, CA 95899-7413 Email: dhsiso@dhs.ca.gov Telephone: ITSD Help Desk (916) 440-7000 or (800) 579-0874

- (10) **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 CDHS 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:
- A. 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 CDHS under this Agreement and use or disclose PHI.
 - B. 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.
 - C. Business Associate shall retain each employee's written certifications for CDHS inspection for a period of three years following contract termination.

III. Obligations of CDHS

CDHS agrees to:

- (1) **Notice of Privacy Practices.** Provide Business Associate with the Notice of Privacy Practices that CDHS produces in accordance with 45 CFR 164.520, as well as any changes to such notice. Visit this Internet address to view the most current Notice of Privacy Practices: <http://www.dhs.ca.gov/privacyoffice>.
- (2) **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.
- (3) **Notification of Restrictions.** Notify the Business Associate of any restriction to the use or disclosure of PHI that CDHS 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.
- (4) **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 CDHS.

IV. Audits, Inspection and Enforcement

From time to time, CDHS 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 CDHS Privacy Officer in writing. The fact that CDHS 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 CDHS's:

- (1) Failure to detect or

- (2) 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 CDHS's enforcement rights under this Agreement and this Addendum.

V. Termination

- (1) **Termination for Cause.** Upon CDHS's knowledge of a material breach of this Addendum by Business Associate, CDHS shall:
 - A. 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 CDHS;
 - B. Immediately terminate this Agreement if Business Associate has breached a material term of this Addendum and cure is not possible; or
 - C. If neither cure nor termination is feasible, report the violation to the Secretary of the U.S. Department of Health and Human Services.
- (2) **Judicial or Administrative Proceedings.** Business Associate will notify CDHS if it is named as a defendant in a criminal proceeding for a violation of HIPAA. CDHS may terminate this Agreement if Business Associate is found guilty of a criminal violation of HIPAA. CDHS 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.
- (3) **Effect of Termination.** Upon termination or expiration of this Agreement for any reason, Business Associate shall return or destroy all PHI received from CDHS (or created or received by Business Associate on behalf of CDHS) 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.

VI. Miscellaneous Provisions

- (1) **Disclaimer.** CDHS 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.
- (2) **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 CDHS's request, Business Associate agrees to promptly enter into negotiations with CDHS concerning an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA regulations or other applicable laws. CDHS may terminate this Agreement upon thirty (30) days written notice in the event:
 - A. Business Associate does not promptly enter into negotiations to amend this Addendum when requested by CDHS pursuant to this Section or
 - B. Business Associate does not enter into an amendment providing assurances regarding the safeguarding of PHI that CDHS in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.

- (3) ***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 CDHS at no cost to CDHS to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CDHS, 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.
- (4) ***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 CDHS or Business Associate and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- (5) ***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.
- (6) ***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.
- (7) ***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.
- (8) ***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.

Exhibit A
HIPAA Business Associate Addendum

I. Recitals

- A. This Contract (Agreement) has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), 42 U.S.C. section 17921 et seq., and their implementing privacy and security regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations").
- B. The Department of Health Care Services ("DHCS") wishes to disclose to Business Associate certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information ("PHI"), including protected health information in electronic media ("ePHI"), under federal law, and personal information ("PI") under state law.
- C. As set forth in this Agreement, Contractor, here and after, is the Business Associate of DHCS acting on DHCS' behalf and provides services, arranges, performs or assists in the performance of functions or activities on behalf of DHCS and creates, receives, maintains, transmits, uses or discloses PHI and PI. DHCS and Business Associate are each a party to this Agreement and are collectively referred to as the "parties."
- D. The purpose of this Addendum is to protect the privacy and security of the PHI and PI that may be created, received, maintained, transmitted, used or disclosed pursuant to this Agreement, and to comply with certain standards and requirements of HIPAA, the HITECH Act and the HIPAA regulations, including, but not limited to, the requirement that DHCS must enter into a contract containing specific requirements with Contractor prior to the disclosure of PHI to Contractor, as set forth in 45 CFR Parts 160 and 164 and the HITECH Act, and the Final Omnibus Rule as well as the Alcohol and Drug Abuse patient records confidentiality law 42 CFR Part 2, and any other applicable state or federal law or regulation. 42 CFR section 2.1(b)(2)(B) allows for the disclosure of such records to qualified personnel for the purpose of conducting management or financial audits, or program evaluation. 42 CFR Section 2.53(d) provides that patient identifying information disclosed under this section may be disclosed only back to the program from which it was obtained and used only to carry out an audit or evaluation purpose or to investigate or prosecute criminal or other activities, as authorized by an appropriate court order.
- E. The terms used in this Addendum, but not otherwise defined, shall have the same meanings as those terms have in the HIPAA regulations. Any reference to statutory or regulatory language shall be to such language as in effect or as amended.

II. Definitions

- A. Breach shall have the meaning given to such term under HIPAA, the HITECH Act, the HIPAA regulations, and the Final Omnibus Rule.
- B. Business Associate shall have the meaning given to such term under HIPAA, the HITECH Act, the HIPAA regulations, and the final Omnibus Rule.
- C. Covered Entity shall have the meaning given to such term under HIPAA, the HITECH Act, the HIPAA regulations, and Final Omnibus Rule.
- D. Electronic Health Record shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C Section 17921 and implementing regulations.

Exhibit A
HIPAA Business Associate Addendum

- E. Electronic Protected Health Information (ePHI) means individually identifiable health information transmitted by electronic media or maintained in electronic media, including but not limited to electronic media as set forth under 45 CFR section 160.103.
- F. Individually Identifiable Health Information means health information, including demographic information collected from an individual, that is created or received by a health care provider, health plan, employer or health care clearinghouse, and relates to the past, present or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, that identifies the individual or where there is a reasonable basis to believe the information can be used to identify the individual, as set forth under 45 CFR section 160.103.
- G. Privacy Rule shall mean the HIPAA Regulation that is found at 45 CFR Parts 160 and 164.
- H. Personal Information shall have the meaning given to such term in California Civil Code section 1798.29.
- I. Protected Health Information means individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or is transmitted or maintained in any other form or medium, as set forth under 45 CFR section 160.103.
- J. Required by law, as set forth under 45 CFR section 164.103, means a mandate contained in law that compels an entity to make a use or disclosure of PHI that is enforceable in a court of law. This includes, but is not limited to, court orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information, and a civil or an authorized investigative demand. It also includes Medicare conditions of participation with respect to health care providers participating in the program, and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.
- K. Secretary means the Secretary of the U.S. Department of Health and Human Services ("HHS") or the Secretary's designee.
- L. Security Incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI or PI, 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.
- M. Security Rule shall mean the HIPAA regulation that is found at 45 CFR Parts 160 and 164.
- N. Unsecured PHI shall have the meaning given to such term under the HITECH Act, 42 U.S.C. section 17932(h), any guidance issued pursuant to such Act and the HIPAA regulations.

III. Terms of Agreement

A. Permitted Uses and Disclosures of PHI by Business Associate

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 DHCS, provided that such use or disclosure would not violate the

Exhibit A
HIPAA Business Associate Addendum

HIPAA regulations, if done by DHCS. Any such use or disclosure must, to the extent practicable, be limited to the limited data set, as defined in 45 CFR section 164.514(e)(2), or, if needed, to the minimum necessary to accomplish the intended purpose of such use or disclosure, in compliance with the HITECH Act and any guidance issued pursuant to such Act, the HIPAA regulations, the Final Omnibus Rule and 42 CFR Part 2.

1. **Specific Use and Disclosure Provisions.** Except as otherwise indicated in this Addendum, Business Associate may:
 - a. **Use and disclose for management and administration.** Use and disclose PHI for the proper management and administration of the Business Associate provided that such 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.
 - b. **Provision of Data Aggregation Services.** Use PHI to provide data aggregation services to DHCS. Data aggregation means the combining of PHI created or received by the Business Associate on behalf of DHCS 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 DHCS.

B. Prohibited Uses and Disclosures

1. Business Associate shall not disclose PHI about an individual to a health plan for payment or health care operations purposes if the PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full and the individual requests such restriction, in accordance with 42 U.S.C. section 17935(a) and 45 CFR section 164.522(a).
2. Business Associate shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of DHCS and as permitted by 42 U.S.C. section 17935(d)(2).

C. Responsibilities of Business Associate

Business Associate agrees:

1. **Nondisclosure.** Not to use or disclose Protected Health Information (PHI) other than as permitted or required by this Agreement or as required by law.
2. **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 DHCS, in compliance with 45 CFR sections 164.308, 164.310 and 164.312, and to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate shall implement reasonable and appropriate policies and procedures to comply with the standards, implementation specifications and other requirements of 45 CFR section 164, subpart C, in compliance with 45 CFR section 164.316. 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

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HIPAA Business Associate Addendum

which incorporates the requirements of section 3, Security, below. Business Associate will provide DHCS with its current and updated policies.

3. **Security.** To take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI and/or PI, and to protect paper documents containing PHI and/or PI. These steps shall include, at a minimum:
 - a. Complying with all of the data system security precautions listed in Attachment A, the Business Associate Data Security Requirements;
 - b. Achieving and maintaining compliance with the HIPAA Security Rule (45 CFR Parts 160 and 164), as necessary in conducting operations on behalf of DHCS under this Agreement;
 - c. Providing a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III - Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies; and
 - d. 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 DHCS.

- 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 and Subcontractors.

1. To enter into written agreements with any agents, including subcontractors and vendors, to whom Business Associate provides PHI or PI received from or created or received by Business Associate on behalf of DHCS, that impose the same restrictions and conditions on such agents, subcontractors and vendors that apply to Business Associate with respect to such PHI and PI under this Addendum, and that comply with all applicable provisions of HIPAA, the HITECH Act the HIPAA regulations, and the Final Omnibus Rule, including the requirement that any agents, subcontractors or vendors implement reasonable and appropriate administrative, physical, and technical safeguards to protect such PHI and PI. Business associates are directly liable under the HIPAA Rules and subject to civil and, in some cases, criminal penalties for making uses and disclosures of protected health information that are not authorized by its contract or required by law. A business associate also is directly liable and subject to civil penalties for failing to safeguard electronic protected health information in accordance with the HIPAA Security Rule. A "business associate" also is a subcontractor that creates, receives, maintains, or transmits protected health information on behalf of another business associate. Business Associate shall incorporate, when applicable, the relevant provisions of this Addendum into each subcontract or subaward to such agents, subcontractors and vendors, including the requirement that any security incidents or breaches of unsecured PHI or PI be reported to Business Associate.

Exhibit A
HIPAA Business Associate Addendum

2. In accordance with 45 CFR section 164.504(e)(1)(ii), upon Business Associate's knowledge of a material breach or violation by its subcontractor of the agreement between Business Associate and the subcontractor, Business Associate shall:
 - a. Provide an opportunity for the subcontractor to cure the breach or end the violation and terminate the agreement if the subcontractor does not cure the breach or end the violation within the time specified by DHCS; or
 - b. Immediately terminate the agreement if the subcontractor has breached a material term of the agreement and cure is not possible.

F. Availability of Information to DHCS and Individuals. To provide access and information:

1. To provide access as DHCS may require, and in the time and manner designated by DHCS (upon reasonable notice and during Business Associate's normal business hours) to PHI in a Designated Record Set, to DHCS (or, as directed by DHCS), to an Individual, in accordance with 45 CFR section 164.524. Designated Record Set means the group of records maintained for DHCS that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for DHCS health plans; or those records used to make decisions about individuals on behalf of DHCS. Business Associate shall use the forms and processes developed by DHCS for this purpose and shall respond to requests for access to records transmitted by DHCS within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.
2. If Business Associate maintains an Electronic Health Record with PHI, and an individual requests a copy of such information in an electronic format, Business Associate shall provide such information in an electronic format to enable DHCS to fulfill its obligations under the HITECH Act, including but not limited to, 42 U.S.C. section 17935(e).
3. If Business Associate receives data from DHCS that was provided to DHCS by the Social Security Administration, upon request by DHCS, Business Associate shall provide DHCS with a list of all employees, contractors and agents who have access to the Social Security data, including employees, contractors and agents of its subcontractors and agents.

G. Amendment of PHI. To make any amendment(s) to PHI that DHCS directs or agrees to pursuant to 45 CFR section 164.526, in the time and manner designated by DHCS.

H. Internal Practices. To make Business Associate's internal practices, books and records relating to the use and disclosure of PHI received from DHCS, or created or received by Business Associate on behalf of DHCS, available to DHCS or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by DHCS or by the Secretary, for purposes of determining DHCS' compliance with the HIPAA regulations. If any information needed for this purpose is in the exclusive possession of any other entity or person and the other entity or person fails or refuses to furnish the information to Business Associate, Business Associate shall so certify to DHCS and shall set forth the efforts it made to obtain the information.

Exhibit A
HIPAA Business Associate Addendum

I. **Documentation of Disclosures.** To document and make available to DHCS or (at the direction of DHCS) 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 the HITECH Act and its implementing regulations, including but not limited to 45 CFR section 164.528 and 42 U.S.C. section 17935(c). If Business Associate maintains electronic health records for DHCS as of January 1, 2009, Business Associate must provide an accounting of disclosures, including those disclosures for treatment, payment or health care operations, effective with disclosures on or after January 1, 2014. If Business Associate acquires electronic health records for DHCS after January 1, 2009, Business Associate must provide an accounting of disclosures, including those disclosures for treatment, payment or health care operations, effective with disclosures on or after the date the electronic health record is acquired, or on or after January 1, 2011, whichever date is later. The electronic accounting of disclosures shall be for disclosures during the three years prior to the request for an accounting.

J. **Breaches and Security Incidents.** During the term of this Agreement, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach or security incident, and to take the following steps:

1. **Notice to DHCS.** (1) To notify DHCS **immediately by telephone call plus email or fax** upon the discovery of a breach of unsecured PHI or PI in electronic media or in any other media if the PHI or PI was, or is reasonably believed to have been, accessed or acquired by an unauthorized person, or upon the discovery of a suspected security incident that involves data provided to DHCS by the Social Security Administration. (2) To notify DHCS **within 24 hours by email or fax** of the discovery of any suspected security incident, intrusion or unauthorized access, use or disclosure of PHI or PI in violation of this Agreement and this Addendum, or potential loss of confidential data affecting this Agreement. A breach shall be treated as discovered by Business Associate as of the first day on which the breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the breach) who is an employee, officer or other agent of Business Associate.

Notice shall be provided to the DHCS Program Contract Manager, the DHCS Privacy Officer and the DHCS Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notice shall be provided by calling the DHCS ITSD Service Desk. Notice shall be made using the "DHCS Privacy Incident Report" form, including all information known at the time. Business Associate shall use the most current version of this form, which is posted on the DHCS Privacy Office website (www.dhcs.ca.gov, then select "Privacy" in the left column and then "Business Use" near the middle of the page) or use this link: <http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/DHCSBusinessAssociatesOnly.aspx>

Upon discovery of a breach or suspected security incident, intrusion or unauthorized access, use or disclosure of PHI or PI, Business Associate shall take:

- a. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and
- b. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.

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2. ***Investigation and Investigation Report.*** To immediately investigate such security incident, breach, or unauthorized access, use or disclosure of PHI or PI. Within 72 hours of the discovery, Business Associate shall submit an updated "DHCS Privacy Incident Report" containing the information marked with an asterisk and all other applicable information listed on the form, to the extent known at that time, to the DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer:
3. ***Complete Report.*** To provide a complete report of the investigation to the DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall be submitted on the "DHCS Privacy Incident Report" form and shall include an assessment of all known factors relevant to a determination of whether a breach occurred under applicable provisions of HIPAA, the HITECH Act, the HIPAA regulations and/or state law. The report shall also include a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure. If DHCS requests information in addition to that listed on the "DHCS Privacy Incident Report" form, Business Associate shall make reasonable efforts to provide DHCS with such information. If necessary, a Supplemental Report may be used to submit revised or additional information after the completed report is submitted, by submitting the revised or additional information on an updated "DHCS Privacy Incident Report" form. DHCS will review and approve the determination of whether a breach occurred and individual notifications are required, and the corrective action plan.
4. ***Notification of Individuals.*** If the cause of a breach of PHI or PI is attributable to Business Associate or its subcontractors, agents or vendors, Business Associate shall notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and shall pay any costs of such notifications, as well as any costs associated with the breach. The notifications shall comply with the requirements set forth in 42 U.S.C. section 17932 and its implementing regulations, including, but not limited to, the requirement that the notifications be made without unreasonable delay and in no event later than 60 calendar days. The DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer shall approve the time, manner and content of any such notifications and their review and approval must be obtained before the notifications are made.
5. ***Responsibility for Reporting of Breaches.*** If the cause of a breach of PHI or PI is attributable to Business Associate or its agents, subcontractors or vendors, Business Associate is responsible for all required reporting of the breach as specified in 42 U.S.C. section 17932 and its implementing regulations, including notification to media outlets and to the Secretary. If a breach of unsecured PHI involves more than 500 residents of the State of California or its jurisdiction, Business Associate shall notify the Secretary of the breach immediately upon discovery of the breach. If Business Associate has reason to believe that duplicate reporting of the same breach or incident may occur because its subcontractors, agents or vendors may report the breach or incident to DHCS in addition to Business Associate, Business Associate shall notify DHCS, and DHCS and Business Associate may take appropriate action to prevent duplicate reporting. The breach reporting requirements of this paragraph are in addition to the reporting requirements set forth in subsection 1, above.

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6. **DHCS Contact Information.** To direct communications to the above referenced DHCS staff, the Contractor shall initiate contact as indicated herein. DHCS 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 Addendum or the Agreement to which it is incorporated.

DHCS Program Contract Manager	DHCS Privacy Officer	DHCS Information Security Officer
See the Scope of Work exhibit for Program Contract Manager information	Privacy Officer c/o: Office of HIPAA Compliance Department of Health Care Services P.O. Box 997413, MS 4722 Sacramento, CA 95899-7413 Email: privacyofficer@dhcs.ca.gov Telephone: (916) 445-4646 Fax: (916) 440-7680	Information Security Officer DHCS Information Security Office P.O. Box 997413, MS 6400 Sacramento, CA 95899-7413 Email: iso@dhcs.ca.gov Fax: (916) 440-5537 Telephone: ITSD Service Desk (916) 440-7000 or (800) 579-0874

- K. **Termination of Agreement.** In accordance with Section 13404(b) of the HITECH Act and to the extent required by the HIPAA regulations, if Business Associate knows of a material breach or violation by DHCS of this Addendum, it shall take the following steps:

1. Provide an opportunity for DHCS to cure the breach or end the violation and terminate the Agreement if DHCS does not cure the breach or end the violation within the time specified by Business Associate; or
2. Immediately terminate the Agreement if DHCS has breached a material term of the Addendum and cure is not possible.

- L. **Due Diligence.** Business Associate shall exercise due diligence and shall take reasonable steps to ensure that it remains in compliance with this Addendum and is in compliance with applicable provisions of HIPAA, the HITECH Act and the HIPAA regulations, and that its agents, subcontractors and vendors are in compliance with their obligations as required by this Addendum.

- M. **Sanctions and/or Penalties.** Business Associate understands that a failure to comply with the provisions of HIPAA, the HITECH Act and the HIPAA regulations that are applicable to Business Associate may result in the imposition of sanctions and/or penalties on Business Associate under HIPAA, the HITECH Act and the HIPAA regulations.

IV. Obligations of DHCS

DHCS agrees to:

- A. **Notice of Privacy Practices.** Provide Business Associate with the Notice of Privacy Practices that DHCS produces in accordance with 45 CFR section 164.520, as well as any changes to such notice. Visit the DHCS Privacy Office to view the most current Notice of Privacy Practices at: <http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/default.aspx> or the DHCS website at www.dhcs.ca.gov (select "Privacy in the left column and "Notice of Privacy Practices" on the right side of the page).

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- 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 DHCS has agreed to in accordance with 45 CFR section 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.
- D. *Requests Conflicting with HIPAA Rules.*** Not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA regulations if done by DHCS.

V. Audits, Inspection and Enforcement

- A.** From time to time, DHCS 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 DHCS Privacy Officer in writing. The fact that DHCS 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 DHCS':
 - 1. Failure to detect or
 - 2. 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 DHCS' enforcement rights under this Agreement and this Addendum.
- B.** If Business Associate is the subject of an audit, compliance review, or complaint investigation by the Secretary or the Office of Civil Rights, U.S. Department of Health and Human Services, that is related to the performance of its obligations pursuant to this HIPAA Business Associate Addendum, Business Associate shall notify DHCS and provide DHCS with a copy of any PHI or PI that Business Associate provides to the Secretary or the Office of Civil Rights concurrently with providing such PHI or PI to the Secretary. Business Associate is responsible for any civil penalties assessed due to an audit or investigation of Business Associate, in accordance with 42 U.S.C. section 17934(c).

VI. Termination

- A. *Term.*** The Term of this Addendum shall commence as of the effective date of this Addendum and shall extend beyond the termination of the contract and shall terminate when all the PHI provided by DHCS to Business Associate, or created or received by Business Associate on behalf of DHCS, is destroyed or returned to DHCS, in accordance with 45 CFR 164.504(e)(2)(ii)(I).
- B. *Termination for Cause.*** In accordance with 45 CFR section 164.504(e)(1)(ii), upon DHCS' knowledge of a material breach or violation of this Addendum by Business Associate, DHCS 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 DHCS; or
 - 2. Immediately terminate this Agreement if Business Associate has breached a material term of this Addendum and cure is not possible.

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- C. *Judicial or Administrative Proceedings.*** Business Associate will notify DHCS if it is named as a defendant in a criminal proceeding for a violation of HIPAA. DHCS may terminate this Agreement if Business Associate is found guilty of a criminal violation of HIPAA. DHCS 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.
- D. *Effect of Termination.*** Upon termination or expiration of this Agreement for any reason, Business Associate shall return or destroy all PHI received from DHCS (or created or received by Business Associate on behalf of DHCS) that Business Associate still maintains in any form, and shall retain no copies of such PHI. If return or destruction is not feasible, Business Associate shall notify DHCS of the conditions that make the return or destruction infeasible, and DHCS and Business Associate shall determine the terms and conditions under which Business Associate may retain the PHI. Business Associate shall continue to extend the protections of this Addendum to such PHI, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

VII. Miscellaneous Provisions

- A. *Disclaimer.*** DHCS 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 HITECH Act, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon DHCS' request, Business Associate agrees to promptly enter into negotiations with DHCS concerning an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable laws. DHCS 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 DHCS pursuant to this Section; or
 2. Business Associate does not enter into an amendment providing assurances regarding the safeguarding of PHI that DHCS 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 DHCS at no cost to DHCS to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against DHCS, 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.

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- 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 DHCS 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 HITECH Act, 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, the HITECH Act 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 VI.D 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.

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Attachment A
Business Associate Data Security Requirements

I. Personnel Controls

- A. *Employee Training.*** All workforce members who assist in the performance of functions or activities on behalf of DHCS, or access or disclose DHCS 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.
- B. *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.
- C. *Confidentiality Statement.*** All persons that will be working with DHCS 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 DHCS PHI or PI. The statement must be renewed annually. The Contractor shall retain each person's written confidentiality statement for DHCS inspection for a period of six (6) years following contract termination.
- D. *Background Check.*** Before a member of the workforce may access DHCS 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.

II. Technical Security Controls

- A. *Workstation/Laptop encryption.*** All workstations and laptops that process and/or store DHCS 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 DHCS Information Security Office.
- B. *Server Security.*** Servers containing unencrypted DHCS 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.
- C. *Minimum Necessary.*** Only the minimum necessary amount of DHCS PHI or PI required to perform necessary business functions may be copied, downloaded, or exported.
- D. *Removable media devices.*** All electronic files that contain DHCS PHI or PI data must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, Blackberry, backup tapes etc.). Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES.

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- E. *Antivirus software.*** All workstations, laptops and other systems that process and/or store DHCS PHI or PI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.
- F. *Patch Management.*** All workstations, laptops and other systems that process and/or store DHCS 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.
- G. *User IDs and Password Controls.*** All users must be issued a unique user name for accessing DHCS 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:
- Upper case letters (A-Z)
 - Lower case letters (a-z)
 - Arabic numerals (0-9)
 - Non-alphanumeric characters (punctuation symbols)
- H. *Data Destruction.*** When no longer needed, all DHCS PHI or PI must be wiped using the Gutmann or US Department of Defense (DoD) 5220.22-M (7 Pass) standard, or by degaussing. Media may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods require prior written permission of the DHCS Information Security Office.
- I. *System Timeout.*** The system providing access to DHCS PHI or PI must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.
- J. *Warning Banners.*** All systems providing access to DHCS 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.
- K. *System Logging.*** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for DHCS PHI or PI, or which alters DHCS 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 DHCS 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.
- L. *Access Controls.*** The system providing access to DHCS PHI or PI must use role based access controls for all user authentications, enforcing the principle of least privilege.

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- M. *Transmission encryption.*** All data transmissions of DHCS 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.
- N. *Intrusion Detection.*** All systems involved in accessing, holding, transporting, and protecting DHCS PHI or PI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

III. Audit Controls

- A. *System Security Review.*** All systems processing and/or storing DHCS 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.
- B. *Log Reviews.*** All systems processing and/or storing DHCS PHI or PI must have a routine procedure in place to review system logs for unauthorized access.
- C. *Change Control.*** All systems processing and/or storing DHCS PHI or PI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

IV. Business Continuity / Disaster Recovery Controls

- A. *Emergency Mode Operation Plan.*** Contractor must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic DHCS 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.
- B. *Data Backup Plan.*** Contractor must have established documented procedures to backup DHCS PHI to maintain retrievable exact copies of DHCS 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 DHCS PHI or PI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of DHCS data.

V. Paper Document Controls

- A. *Supervision of Data.*** DHCS 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. DHCS 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.
- B. *Escorting Visitors.*** Visitors to areas where DHCS PHI or PI is contained shall be escorted and DHCS PHI or PI shall be kept out of sight while visitors are in the area.

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- C. *Confidential Destruction.*** DHCS PHI or PI must be disposed of through confidential means, such as cross cut shredding and pulverizing.
- D. *Removal of Data.*** DHCS PHI or PI must not be removed from the premises of the Contractor except with express written permission of DHCS.
- E. *Faxing.*** Faxes containing DHCS 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.
- F. *Mailing.*** Mailings of DHCS 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 DHCS 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 DHCS to use another method is obtained.

EXHIBIT C

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER:

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Provider to the clause(s) listed below with the exception of clauses 4 and 6 which do not apply to this Agreement. This certification is made under the laws of the State of California.

As used in this certification, the term "Contractor" shall also mean "Provider".

<i>Provider/Bidder Firm Name (Printed)</i> Yuba County Health and Human Services Department		<i>Federal ID Number</i> 94-6000549
<i>By (Authorized Signature)</i> 		
<i>Printed Name and Title of Person Signing</i> Mary Jane Griego, Chair, Yuba County Board of Supervisors		
<i>Date Executed</i> 	<i>Executed in the County of</i> Yuba	

CONTRACTOR CERTIFICATION CLAUSES

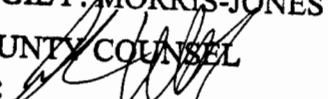
1. STATEMENT OF COMPLIANCE: Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. DRUG-FREE WORKPLACE REQUIREMENTS: Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

- 1) the dangers of drug abuse in the workplace;
- 2) the person's or organization's policy of maintaining a drug-free workplace;
- 3) any available counseling, rehabilitation and employee assistance programs; and,

APPROVED AS TO FORM
ANGIL P. MORRIS-JONES
COUNTY COUNSEL
BY: 

4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

1) receive a copy of the company's drug-free workplace policy statement; and,

2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)

4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT: Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lessor of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

6. SWEATFREE CODE OF CONDUCT:

a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.

b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).

7. DOMESTIC PARTNERS: For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.

2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code §10411):

1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.

The County of Yuba



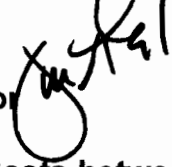
915 8TH STREET, STE 113
MARYSVILLE, CA 95901

(530) 749-7860 • PHONE
(530) 749-7864 • FAX

HUMAN RESOURCES and ORGANIZATIONAL SERVICES

JILL ABEL, INTERIM DIRECTOR

TO: Board of Supervisors

FROM: Jill Abel, Interim Human Resources Director 

RE: Sharing of Employers' CalPERS Pension Costs between the County and YCEA and Non-Represented employees

DATE: March 24, 2015

RECOMMENDATION

It is recommended that the Board of Supervisors approve the attached agreements between the County of Yuba and the Yuba County Employees' Association and the County of Yuba and Non-Represented employees and authorize the Chair to sign.

BACKGROUND

The County of Yuba (County) and the Yuba County Employee's Association (YCEA) have negotiated a contract which includes employees paying a portion of the employer's share of pension cost beginning in the 2015/2016 Fiscal Year. In addition, your board adopted policy between the County and Non-Represented employees in October of 2014.

When these agreements were made, the County only had estimated PERS rates for the 2015/2016 Fiscal Year.

DISCUSSION

Now that the County has received PERS rates for the 2015/2016 Fiscal Year, this agreement is to clarify the employee and employer increased share of cost for the 2015/2016 Fiscal Year for YCEA and Non-Represented employees.

These agreements will be forwarded to CalPERS to begin the process of implementing this change.

FISCAL IMPACT

This item is administrative only and has no fiscal impact.

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AGREEMENT
Between the
NON-REPRESENTED MANAGEMENT GROUP, ELECTED OFFICIALS GROUP, CONFIDENTIAL
GROUP AND NON-REPRESENTED EMPLOYEES
and the
COUNTY OF YUBA

The County of Yuba (County) and the Yuba County Non-Represented Employees identified as Management, Elected, Confidential and Extra Help Employees have agreed to a policy adopted by the Board of Supervisors on October 28, 2014. The policy states Non-Represented employees will pay a portion of the employer's share of pension cost beginning in the 2015/16 Fiscal Year.

Effective July 1, 2015, or as soon thereafter as the CalPERS retirement contract can be amended, the CalPERS Employer Pension Contribution will be as follows:

- Non-Represented Management Group, Confidential Group, Elected Officials Group and Non-Represented Employees MISC Classic Members agree to pay an additional **.824%** toward the Employer Contribution.
- Non-Represented Management Group, Confidential Group, Elected Officials Group and Non-Represented Employees MISC New Members agree to pay an additional **.824%** toward the Employer Contribution.

This Agreement is dated this _____ of March 2015.


APPROVED:

Mary Jane Griego, Chair

APPROVED AS TO FORM:

Angil Morris-Jones
County Counsel

By: _____



SIDE LETTER OF AGREEMENT
Between the
YUBA COUNTY EMPLOYEE'S ASSOCIATION
and the
COUNTY OF YUBA

The County of Yuba (County) and the Yuba County Employee's Association, Local #1 (YCEA) have negotiated a contract which includes employees paying a portion of the employer's share of pension cost beginning in the 2015/16 Fiscal Year. This side letter of agreement is to clarify the YCEA Master Labor Agreement Article 17 Section 17.02 in regards to fiscal year 15/16.

Effective July 1, 2015, or as soon thereafter as the CalPERS retirement contract can be amended, the CalPERS Employer Pension Contribution will be as follows:

- YCEA MISC Classic Members agree to pay an additional **.824%** toward the Employer Contribution.
- YCEA MISC New Members agree to pay an additional **.824%** toward the Employer Contribution.

This Agreement is dated this _____ of March 2015.

APPROVED:

 Mary Jane Griego, Chair
 Board of Supervisors

 Robin Timoszyk,
 YCEA President

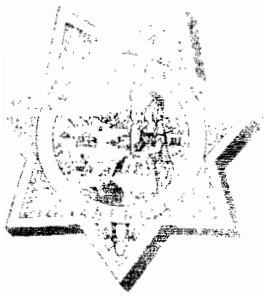
 Jill Abel
 Human Resources Director
 County of Yuba Representative

 Gary Stucky,
 Executive Director
 YCEA, Local #1 Representative

APPROVED AS TO FORM:

Angil Morris-Jones
 County Counsel

By: _____



Yuba County Sheriff's Department

Steven L. Durfor, Sheriff-Coroner

215 5th Street, Suite 150, Marysville, CA 95901

Ph: 530-749-7777 • Fax: 530-741-6445



MARCH 24, 2015

TO: YUBA COUNTY BOARD OF SUPERVISORS

FROM: STEVEN L. DURFOR, SHERIFF

SUBJECT: RESOLUTION AUTHORIZING GRANT APPLICATION AND PROVIDING ASSURANCES

RECOMMENDATION:

Adopt the attached resolution authorizing Sheriff Steven L. Durfor to apply for a Mentally Ill Offender Crime Reduction Grant through the Bureau of State and Community Corrections and to sign the Grant Agreement including amendments. The resolution also assures compliance with statutes and regulations concerning the grant.

BACKGROUND:

The Yuba County Jail has become the largest mental health treatment facility in the county. The number of persons in custody suffering from a mental illness has grown over the years as has the severity of their symptoms. The Sheriff's Office, with the assistance of Sutter-Yuba Mental Health, has done a good job of managing the issue but with current funding and staffing levels, we are only able to do crisis intervention and only those most critically in need get treatment. Further, many of the mentally ill offenders are in jail as a result of behaviors attributable to their illness as opposed to being criminals.

Once their criminal case is resolved, this population is released from jail with no treatment plan or support system and will frequently reoffend. The cycle of recidivism is costly to the taxpayers of the county and is a disservice to the client.

DISCUSSION:

A grant opportunity is currently available through the Bureau of State and Community Corrections for a Mentally Ill Offender Crime Reduction Grant. The program provides funding to support appropriate prevention, intervention, supervision, and incarceration-based services through promising and evidence-based strategies to reduce recidivism and improve quality of life outcomes for mentally ill adult offenders in California.

A condition of the grant application is a resolution from the County's Governing Body authorizing the Sheriff to apply for the grant and sign a Grant Agreement if the grant application is successful. Further assurances are contained in the resolution providing assurances of a matching fund obligation and adherence to statutes and regulations concerning the grant.

Yuba County could greatly benefit from a Mentally Ill Offender Crime Reduction Grant and the local Strategy Committee is committed to submitting a program that will compete well in the statewide grant arena.

COMMITTEE ACTION:

This item was not taken to committee in the interest of time as the grant application must be submitted by April 3, 2015.

FISCAL IMPACT:

The MIOCR Grant requires a 25% match that we intend to meet with AB 109 funding. This funding has been approved by the Community Corrections Partnership at its February 11, 2015 General Meeting and by the Executive Committee at its March 18, 2015 meeting

Attachment

**BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF YUBA**

RESOLUTION ASSURING AUTHORIZING)
APPLICATION FOR MIOCR GRANT AND)
ASSURING COMPLIANCE WITH GRANT)
REQUIREMENTS)
_____)

RESOLUTION NO. _____

WHEREAS the Yuba County Sheriff's Office desires to participate in the Mentally Ill Offender Crime Reduction Grant Program (MIOCR), funded through the State Recidivism Reduction Fund and administered by the Board of State and Community Corrections (hereafter referred to as BSCC).

NOW, THEREFORE, BE IT RESOLVED that Yuba County Sheriff Steven L. Durfor is authorized on behalf of this Governing Board to submit the grant proposal for this funding and sign the grant agreement with the BSCC including any amendments thereof.

BE IT FURTHER RESOLVED that state grant funds received hereunder shall not be used to supplant expenditures controlled by this body.

BE IT FURTHER RESOLVED that the Sheriff's Office agrees to provide matching funds required for said project and abide by the statutes and regulations governing the State Grants Program (including General Terms and Conditions 610) as well as the terms and conditions of the Grant Agreement as set forth by the BSCC.

PASSED AND ADOPTED by the Board of Supervisors of the County of Yuba, State of California, on the _____ day of _____, 2015 by the following votes:

AYES:
NOES:
ABSENT:

CHAIRMAN

ATTEST: Donna Stottlemeyer

Clerk of the Board

APPROVED AS TO FORM:

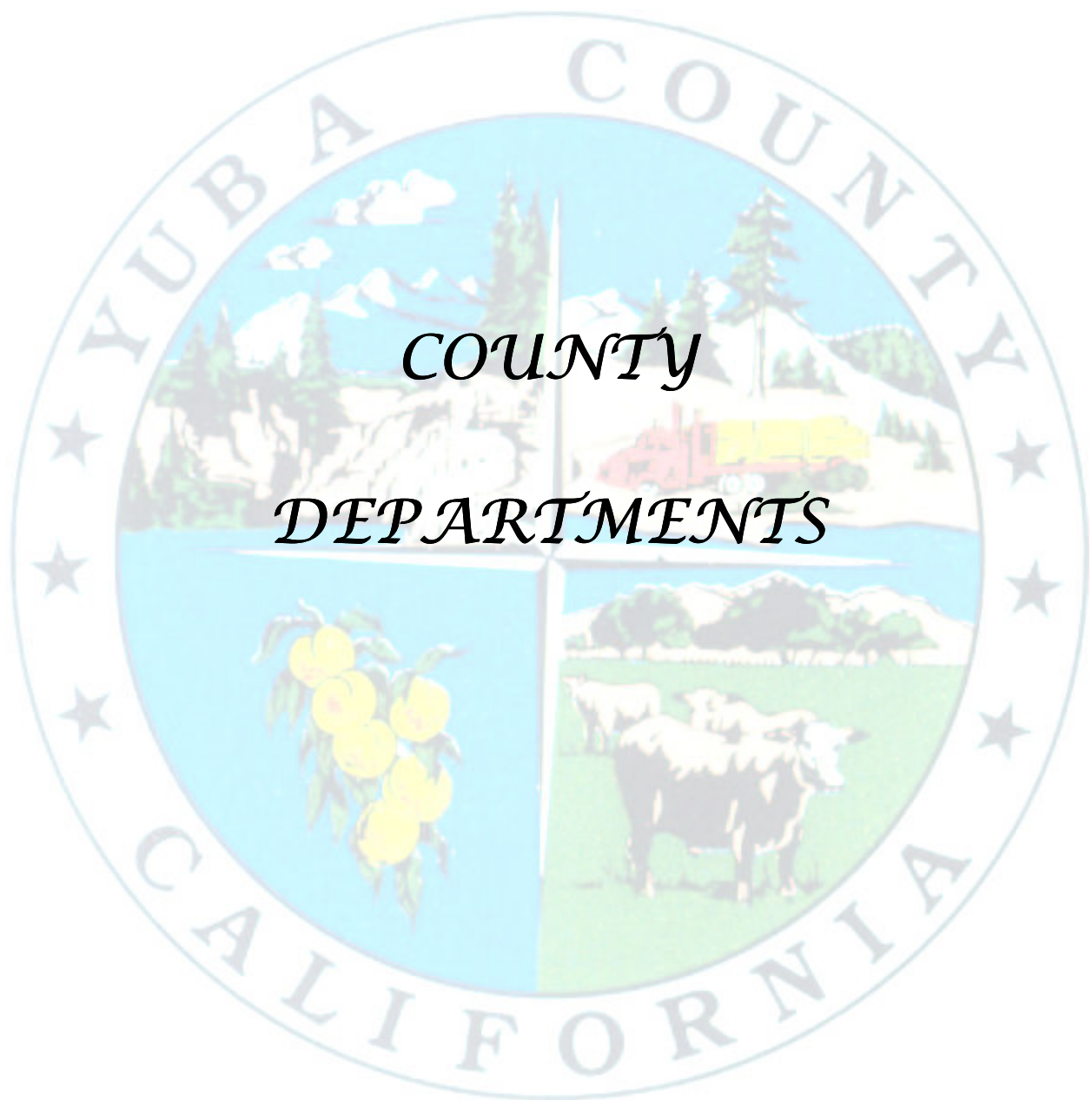
Angil Morris-Jones

County Counsel

By: _____

By:  _____

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COUNTY
DEPARTMENTS

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The County of Yuba

Office of the County Administrator

To: Yuba County Board of Supervisors
 From: Kevin Mallen, CSDA Director
 John Fleming, Economic Development Coordinator
 Subject: **Consideration of Business Incentives Program Committee**
 Date: March 24, 2015

Recommendation:

Receive information on the proposed formation of a Business Incentives Program Committee and provide direction as appropriate.

Background:

Numerous local jurisdictions throughout California offer incentives to relocating or expanding businesses that meet certain criteria. While economic development has and is a high priority for Yuba County and the County has developed numerous economic development tools, the County has never formalized a business incentives program.

Discussion:

The concept behind a formalized incentives program is that businesses considering Yuba County for business locations or existing businesses considering expansion could be offered incentives based on program criteria developed by a Business Incentives Program Committee. The proposed Committee is recommended to consist of two Supervisors, County Administrator, Community Development Director, and Economic Development Coordinator.

The purpose of the Committee would be to develop and implement a Yuba County Business Incentives Program that would include potential incentives in the areas of variances or waivers to County-controlled regulations, expedited County permitting, deferred County required improvements, and tax breaks.

The Committee would develop eligibility criteria as well as a range of potential incentives for the program guidelines and then use the guidelines when negotiating a specific package of incentives for a specific business. Depending on the incentives negotiated, those requiring approval by the full Board would be packaged in an incentives agreement between the business and the County which would be brought before the full Board for approval.

Fiscal Impact

It is proposed that any incentives offered be at no net effect to County revenues.

Committee

Due to the nature of this request, this item is being presented directly to the full Board for consideration.

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The County of Yuba

Office of the County Administrator

Robert Bendorf, County Administrator

TO: Yuba County Board of Supervisors
FROM: Robert Bendorf, County Administrator *RB*
RE: Appointment of Human Resources Director / Risk Manager
DATE: March 24, 2015

RECOMMENDATION

It is recommended the Board of Supervisors receive an introduction of Jill Abel as the Director of Human Resources / Risk Manager effective April 1, 2015, approve the related employment agreement and authorize the Chair to execute the agreement.

BACKGROUND

The current Human Resources Director is retiring effective March 31, 2015. The Human Resources Director / Risk Manager position is a department head that oversees the day to day management of the Human Resources and Risk Management functions. There are many critical services provided by the department including but not limited to; training, benefits management, claims management, workers compensation, insurances, recruitment and retention efforts, labor negotiations, and workforce planning.

DISCUSSION

Jill has served as the Deputy Director for Human Resources / Risk Management for the last five years. Her focus and expertise on developing a more complete Risk Management function, specifically Workers Compensation has been invaluable. She has also excelled in all aspects of Human Resources. Jill is a graduate of Yuba County's Executive Leadership program and has also been involved with our Workforce Excellence Committee. Jill has served as the interim Human Resources / Risk Manager for approximately the last four months. In addition to her County experience, Jill brings several years of private sector human resources experience as well as being a certificated Senior Professional in Human Resources.

FISCAL IMPACT

The Human Resources Director / Risk Manager's compensation is budgeted for FY 2014-2015.

EMPLOYMENT AGREEMENT BY AND BETWEEN

COUNTY OF YUBA AND JILL ABEL

RECITALS

This Agreement is entered into by and between County of Yuba (County) and Jill Abel (Employee) and is dated for convenience this 24th day of March, 2015.

A. County desires to employ Employee as its Human Resources Director/Risk Manager and Employee desires to serve as the Human Resources Director/Risk Manager of the County beginning April 1, 2015.

B. The County Board of Supervisors (Board), as appointing authority, and Employee desire to agree in writing to the terms and conditions of Employee's employment as Yuba County Human Resources Director/Risk Manager.

AGREEMENT

1. PARTIES AND INCORPORATION BY REFERENCE

The parties to this Agreement are County and Employee. The foregoing recitals are incorporated herein by this reference.

2. DUTIES

(a) County agrees to employ Employee and Employee agrees to serve as the Human Resources Director/Risk Manager of Yuba County to perform the functions and duties as specified in the Yuba County Ordinance Code, Resolutions, and all other applicable laws, rules and regulations now in effect or hereafter adopted, and to perform other legally permissible and proper duties and functions as the Board may from time to time assign.

(b) Employee shall perform her duties to the best of her ability in accordance with the highest professional and ethical standards of the profession and shall comply with all general rules and regulations established by County.

(c) Employee shall not engage in any activity which is, or may become, a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under California Law. Employee must complete disclosure forms as required by law and in connection with the performance of any services under this Agreement. Disclosure forms required by law shall be filed in accordance with laws and regulations relating to disclosure forms during the term of this Agreement and thereafter as may be required by law or regulation.

3. TERM

(a) The term of this Agreement shall be from the date first set forth above in Recital A until terminated by either party in accordance with provisions hereinafter set forth or unless terminated by the event of death, incapacity or permanent disability of Employee.

(b) Employee agrees to remain in the exclusive employment of County during the term of this Agreement and, further, agrees that she will not take any position, paid or otherwise, which may, in any degree, conflict or appear to conflict with the duties inherent in the position of the Human Resources Director/Risk Manager of County.

4. TERMINATION AND RESIGNATION

(a) Employee may resign at any time and agrees to give County no less than ninety (90) days advance written notice of the effective date of her resignation.

(b) County may terminate Employee at any time upon written notice. The parties hereto recognize and affirm:

1. Employee is an "at-will" Employee whose employment may be terminated by County without cause;
2. There is no express or implied promise made to Employee for any form of continued employment as Human Resources Director/Risk Manager; and,
3. This Agreement is the sole and exclusive basis for an employment relationship between Employee and County.

(c) A decision to terminate Employee may be made by the County Administrator consistent with this Agreement and with applicable laws, rules and ordinances governing such dismissal.

(d) Employee shall have the option to resign her office instead of being terminated if an action by the County Administrator to terminate has been initiated. Employee shall be given a time certain by which such resignation in writing shall be delivered to the County Administrator.

(e) In the event the County Administrator terminates Employee for cause, Employee shall have the right to a name clearing hearing involving notice of the charges and an opportunity to respond.

5. SEVERANCE PAY

(a) If the County Administrator terminates Employee while she is still willing and able to perform the duties of the Human Resources Director/Risk Manager, County and Employee agree that she will immediately be placed on paid Administrative Leave

for a period of time not to exceed four (4) months. If, within that four month period, Employee secures employment with another PERS employer, Employee agrees to tender her resignation with County of even date with her start date at her new employment, which resignation will discontinue payments under the paid Administrative Leave section. Employee specifically acknowledges and agrees that said payment(s) will release County, its agents, servants, employees and elected officials from any further obligation, whether known or unknown, at the time of any such resignation or termination.

(b) If Employee is terminated for cause, including but not limited to acts of moral turpitude, conflict of interest, or incompatibility of office, County shall have no obligation to continue the employment of Employee or to pay the severance set forth above.

6. SALARY

Commencing with the date of appointment set forth above, Employee shall be compensated according to the Yuba County Classification System - Basic Salary Schedule which identifies the base gross monthly rate of the Human Resources Director/Risk Manager. Additionally, Employee shall be entitled to an increase equal to any cost of living increase given to management employees.

7. SUPPLEMENTAL BENEFITS

County shall also provide Employee the same benefits as provided to County management employees, commensurate with her appointment as Department Head, and as they may be amended from time to time. All actions taken by the County

relating to benefits for management employees shall be actions granting the same benefits to Employee.

8. MONTHLY VEHICLE ALLOWANCE

County agrees to pay Employee, during the term of this Agreement and in addition to other salary and benefits herein provided, the sum of three hundred dollars (\$300.00) per month as a vehicle allowance to be used to purchase, lease, or own, operate and maintain a vehicle. Employee shall be responsible for paying for and maintaining liability, property damage, and comprehensive insurance coverage upon such vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle.

9. VACATION AND SICK LEAVE

Upon commencement of employment, Employee shall be credited with her current vacation and sick leave balances.

10. PERFORMANCE EVALUATION

The County Administrator shall evaluate Employee's performance at least annually. In addition, in connection with and at the time of such evaluation the County Administrator and Employee will set goals and objectives for the ensuing year.

11. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

The County Administrator shall fix any other terms and conditions of employment as it may determine from time to time, provided that such terms and conditions are not inconsistent with provisions of this Agreement or applicable law.

12. NOTICES

Any notices required by this Agreement shall be in writing and either given in person to the recipient or by first class mail, postage prepaid, and addressed as follows:

TO COUNTY: County Administrator
915 Eighth Street, Suite 115
Marysville, CA 95901

TO EMPLOYEE: Jill Abel
915 Eighth Street, Suite 113
Marysville, CA 95901

13. ENTIRE AGREEMENT

This Agreement is the final expression of, and constitutes, the complete Agreement between the parties with respect to the matters set forth herein and supercedes all prior oral or written understandings except as may be set forth herein. This Agreement cannot be modified except by written mutual agreement executed by the parties hereto.

14. ASSIGNMENT

This Agreement is not assignable by either County or Employee. Any Agreement to the contrary by either party shall be void.

15. SEVERABILITY

In the event that any portion of this Agreement is finally held or determined to be illegal or void by a Court having jurisdiction, the remainder of the Agreement shall remain in full force and effect unless the parts found to be void are wholly inseparable from the remaining portion of the Agreement.

IN WITNESS WHEREOF, County and Employee have caused this Agreement to be signed and executed as set forth below.

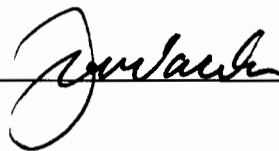
EMPLOYEE

COUNTY OF YUBA


Jill Abel, Employee

by: _____
Mary Jane Griego, Chair Board of Supervisors

APPROVED AS TO FORM
Angil Morris-Jones, COUNTY COUNSEL

by  _____



The County of Yuba

Office of the County Administrator

Robert Bendorf, County Administrator

TO: Yuba County Board of Supervisors
FROM: Robert Bendorf, County Administrator *RB*
RE: Approval of Property Tax Neutrality Requirements of PG&E's
Land Conservation Commitment
DATE: March 24, 2015

RECOMMENDATION

It is recommended the Board of Supervisors:

1. Receive a staff report and adopt a resolution approving a property tax neutrality requirement for the PG&E Land Conservation Commitment, authorizing the County Administrator to sign, and;
2. Approve a lump sum payment in lieu of taxes for the conveyed land to a non-profit and direct the tax be apportioned to the taxing entities in Yuba County.

BACKGROUND

The Pacific Forest and Watershed Lands ("Stewardship Council") is a nonprofit organization, which was formed as the result of a PG&E Settlement Agreement (I.02-04-026) with the California Public Utilities Commission (CPUC) in 2003 and the Stipulation Resolving Issues Regarding the Land Conservation Commitment.

As part of the PG&E Settlement Agreement and Stipulation in 2003, a Land Conservation Commitment was established to permanently protect approximately 140,000 acres of PG&E watershed lands. Located across 22 counties, the lands encompass almost 1,000 parcels. The Watershed Lands stretch from Shasta County in the north to Kern County in the south, from the Sierra Nevada and Cascade ranges to the Eel River watershed in Mendocino County. For planning purposes, the parcels were grouped into 47 planning units.

The Stewardship Council is charged with implementing PG&E's Land

Conservation Commitment.

DISCUSSION

Protecting the Watershed Lands will be accomplished through (1) PG&E's grant of conservation easements to one or more public agencies or qualified conservation organizations so as to protect the natural habitat of fish, wildlife, and plants, the preservation of open space, outdoor recreation by the general public, sustainable forestry, agricultural uses, and historic values (collectively the Beneficial Public Values), and in some cases, (2) PG&E's donation of the Watershed Lands in fee to one or more public entities or qualified conservation organizations, whose ownership would be consistent with these conservation objectives.

As part of this conservation effort, the Stewardship Council will develop a series of Land Conservation and Conveyance Plans (LCCPs) that will detail the specific land conservation and/or disposition requirements for each parcel or parcel cluster. LCCPs represent the Stewardship Council's recommendations for preserving and/or enhancing the Beneficial Public Values of the Watershed Lands to PG&E, and are intended to support required regulatory approvals of the land transactions resulting from the Stewardship Council's recommendations. All fee title donations and conservation easements involving PG&E Watershed Lands must be approved by the California Public Utilities Commission (CPUC) prior to the land transactions being completed.

Tax Neutrality Requirement of Stipulation

The Stipulation requires that the LCCP provide "an analysis of tax and other economic and physical impacts of such disposition strategy, and a commitment by an appropriate entity [which may be PG&E, subject to being authorized by the Commission to fully recover in rates any such costs in approving PG&E's Section 851 application or in another appropriate Commission proceeding, Stewardship Council, donee, or a third party, depending on the individual circumstances] to provide property tax revenue, other equivalent revenue source, or a lump sum payment, so that the totality of dispositions in each affected county under this Land Conservation Commitment will be 'tax neutral' for that county."

Stewardship Council Board Policies and Guidelines

The Stewardship Council board adopted a set of Guidelines Regarding Satisfaction of Tax Neutrality on March 30, 2011, after an opportunity for public comment. Under the guidelines, the Stewardship Council outlined the

following overarching assumptions:

1. The Stewardship Council will address property tax neutrality based upon the most current property taxes paid by PG&E on the lands being transferred at the time of the actual transfer of fee title from PG&E to the selected donee.
2. The Stewardship Council's achievement of property tax neutrality applies to all property taxes that would be distributed directly to County General Funds, School and Fire Districts, Regional Conservation and Water Districts, and any other special districts as defined by the applicable Tax Rate Area.
3. The Settlement and Stipulation direct the Stewardship Council to ensure that the effects of distributions be made tax neutral for the affected counties. Therefore, the Stewardship Council's property tax neutrality commitment will not apply to any amount of property tax payments that are subject to apportionment by the State of California.

In 2012, the Stewardship Council board established a standard methodology for addressing property tax neutrality on the Watershed Lands, and communicated the general principles and approach regarding the achievement of property tax neutrality. The methodology establishes a standard payment process when lands are transferred to organizations that are exempt from paying property taxes. The methodology outlines two in-lieu payment options: a one-time lump sum payment from the Stewardship Council directly to counties, and the Stewardship Council's establishment of an endowment account that would be designed to generate enough investment income to make annual in-lieu payments to counties on an ongoing basis. Regardless of the payment option selected by each county, the payment methodology provides that the county will distribute funds related to the special districts as defined in the Tax Rate Area upon receipt of the lump sum payment or the annual installment payment.

On August 14, 2014 the California Public Utilities Commission approved the tax neutrality guidelines and methodology.

Lands Donated in Yuba County

The only Watershed Lands donated to a tax exempt entity in Yuba County are 41 acres in the Narrows planning unit (the "Property") that has been conveyed in fee to the University of California Regents to expand the Sierra Foothill Research and Extension Center (SFREC). (See attached map) The Stewardship

Council Board adopted a LCCP for that land donation on November 14, 2013 and the CPUC approved the transaction on November 23, 2014. The transaction closed in February 2015.

The Stewardship Council will provide in lieu funding to compensate Yuba County for the loss of property taxes. The transfer of lands to the University of California Regents is expected to result in the reduction of approximately \$530 in annual taxes paid to Yuba County, of which said amount is then distributed to taxing agencies within that tax rate area.

Yuba County may select the option of either receiving a lump sum payment or an annual payment from a trustee selected by the Stewardship Council. If Yuba County chooses the lump-sum option, the Stewardship Council would make a one-time payment of \$13,000 to the county. Yuba County would, in-turn, be required to distribute the funds to the general fund and applicable special districts consistent with the Tax Rate Area in effect for the parcel.

If Yuba County chooses the annual payment option, the Stewardship Council could elect to do one of the following: (1) for an initial period of time, make installment payments itself to Yuba County at a fixed amount to make up the difference in annual tax payments, or (2) after the donation of lands to the University of California Regents deposit a lump sum with a third party trustee, which would be responsible for making annual payments to Yuba County. Pursuant to the methodology described in the Property Tax Neutrality Methodology adopted on June 27, 2012, the trustee will make annual payments equal to 4% of a rolling 20 quarter average of the principal balance invested for the parcel. Yuba County would, in-turn, be required to distribute the funds to the general fund and applicable special districts consistent with the Tax Rate Area in effect for the parcel. A third party trustee has not yet been selected by the Stewardship Council to carry out this duty.

Before in lieu payments are made to Yuba County, the County must enter into a Funding Agreement to Implement Tax Neutrality Requirement. (See attached form agreement.)

FISCAL IMPACT

As stated in the staff report. In addition, the County will receive \$3,000 to offset administrative costs associated with implementing the agreement.

**BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF YUBA**

**RESOLUTION AUTHORIZING THE COUNTY)
ADMINISTRATOR TO EXECUTE A FUNDING)
AGREEMENT TO IMPLEMENT A TAX)
NEUTRALITY REQUIREMENT)**

RESOLUTION NO. _____

WHEREAS, The Funding Agreement to Implement Tax Neutrality Requirement ("Agreement") is entered into as of the Effective Date by and between the Pacific Forest and Watershed Lands Stewardship Council, a California nonprofit public benefit corporation ("Stewardship Council") and County of Yuba, a public entity ("County") with reference to the following; and

WHEREAS, The Stewardship Council was created to oversee the "Land Conservation Commitment" described in that certain Settlement Agreement among Pacific Gas and Electric Company ("PG&E"), PG&E Corporation, and the California Public Utilities Commission (the "Commission") as modified and approved by the Commission in its Opinion and Order of December 18, 2003 (Decision 03-12-035) (the "Settlement Agreement"); and that certain Stipulation Resolving Issues Regarding the Land Conservation Commitment dated September 25, 2003 (the "Stipulation"). The Stewardship Council has limited assets and no foreseeable sources of revenue, and consequently the Stewardship Council is anticipated to dissolve or otherwise wind down or cease to operate in the future; and

WHEREAS, Pursuant to the Settlement Agreement and Stipulation, certain lands owned by PG&E at the time of the Settlement (the "PG&E Watershed Lands") are to be conserved for a broad range of beneficial public values, including the protection of the natural habitat of fish, wildlife and plants; the preservation of open space; outdoor recreation by the general public; sustainable forestry; agricultural uses; and historic values. The Stewardship Council is charged with developing a Land Conservation Plan ("LCP") for the protection and enhancement of the PG&E Watershed Lands; and

WHEREAS, In connection with the Land Conservation Commitment, PG&E has agreed to donate a portion of the PG&E Watershed Lands to eligible organizations, including the lands described below; and

WHEREAS, The Settlement Agreement requires that the LCP assess that any donation will not adversely impact local tax revenue, and the Stipulation requires that an appropriate entity provide property tax revenue, other equivalent revenue source, or a lump sum payment so that the totality of the dispositions in each affected county under the Land Conservation Commitment will be tax neutral for that county ("Tax Neutrality Requirement"). By and through the Agreement, Yuba County and Stewardship

Council desire, among other things, to confirm and acknowledge that the Tax Neutrality Requirement has been met; and

WHEREAS, In consideration of the covenants and obligations set forth herein, the Stewardship Council intends that the funding be provided to Yuba County as described below, and Yuba County desires to accept such funding, all subject to the terms and conditions described in the Agreement.

NOW, THEREFORE, BE IT RESOLVED, The Agreement shall become effective as of the last date it has been signed by both parties. ("Effective Date"). The provisions of the Agreement shall survive the closing of the transactions contemplated hereby and Stewardship Council's dissolution, winding down or ceasing operations; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, The Property consists of approximately 41 acres of real property located in the County of Yuba, State of California, within what is commonly known as the Narrows Planning Unit and as more particularly described in Exhibit A attached and incorporated by this reference; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, Within 30 days of the Effective Date,), the Stewardship Council will set aside and provide for the sum of Thirteen Thousand **Two Hundred and Sixty Nine Dollars** (\$13,269), to be paid to County for the benefit of County . Within 30 days of receiving a report from County accounting for its expenditures in setting up a payment process to special districts, the Stewardship Council will reimburse County for such administrative costs in an amount not to exceed Three Thousand Dollars (\$3,000).

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NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Yuba County Board of Supervisors hereby authorize the county administrator to execute this Funding Agreement to Implement Tax Neutrality Requirement.

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Yuba, State of California on the _____ day of _____, 2015 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Chairman

ATTEST: DONNA STOTTLEMEYER
CLERK OF THE BOARD OF SUPERVISORS

ANGIL P. MORRIS-JONES
YUBA COUNTY COUNSEL
APPROVED AS TO FORM:



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Funding Agreement to Implement Tax Neutrality Requirement

This Funding Agreement to Implement Tax Neutrality Requirement ("Agreement") is entered into as of the Effective Date (defined below) by and between the **Pacific Forest and Watershed Lands Stewardship Council**, a California nonprofit public benefit corporation ("**Stewardship Council**") and **County of Yuba**, a public entity ("**County**") with reference to the following facts:

A. The Stewardship Council was created to oversee the "**Land Conservation Commitment**" described in (1) that certain Settlement Agreement among Pacific Gas and Electric Company ("**PG&E**"), PG&E Corporation, and the California Public Utilities Commission (the "**Commission**") as modified and approved by the Commission in its Opinion and Order of December 18, 2003 (Decision 03-12-035) (the "**Settlement Agreement**"); and (2) that certain Stipulation Resolving Issues Regarding the Land Conservation Commitment dated September 25, 2003 (the "**Stipulation**"). The Stewardship Council has limited assets and no foreseeable sources of revenue, and consequently the Stewardship Council is anticipated to dissolve or otherwise wind down or cease to operate in the future.

B. Pursuant to the Settlement Agreement and Stipulation, certain lands owned by PG&E at the time of the Settlement (the "**PG&E Watershed Lands**") are to be conserved for a broad range of beneficial public values, including the protection of the natural habitat of fish, wildlife and plants; the preservation of open space; outdoor recreation by the general public; sustainable forestry; agricultural uses; and historic values. The Stewardship Council is charged with developing a Land Conservation Plan ("**LCP**") for the protection and enhancement of the PG&E Watershed Lands.

C. In connection with the Land Conservation Commitment, PG&E has agreed to donate a portion of the PG&E Watershed Lands to eligible organizations, including the lands described below in Section 2.

D. The Settlement Agreement requires that the LCP assess that any donation will not adversely impact local tax revenue, and the Stipulation requires that an appropriate entity provide property tax revenue, other equivalent revenue source, or a lump sum payment so that the totality of the dispositions in each affected county under the Land Conservation Commitment will be tax neutral for that county ("**Tax Neutrality Requirement**"). By and through this Agreement, County and Stewardship Council desire, among other things, to confirm and acknowledge that the Tax Neutrality Requirement has been met.

E. In consideration of the covenants and obligations set forth herein, the Stewardship Council intends that the funding be provided to County as described in Section 3, and County desires to accept such funding, all subject to the terms and conditions described in this Agreement.

NOW, THEREFORE, IN CONSIDERATION of the foregoing recitals, and the mutual covenants and obligations of the parties herein contained, the Stewardship Council and County agree as follows:

1. **Effective Date and Term.** This Agreement shall become effective as of the last date it has been signed by both parties. ("**Effective Date**"). The provisions of this Agreement shall survive the closing of the transactions contemplated hereby and Stewardship Council's dissolution, winding down or ceasing operations.

2. **Property.** The Property consists of approximately 41 acres of real property located in the County of Yuba, State of California, within what is commonly known as the Narrows Planning Unit and as more particularly described in Exhibit A attached and incorporated by this reference. The Property was transferred to the Regents of the University of California, a California public corporation on January 28, 2015.

3. **Funding Allocation.** Within 30 days of the Effective Date, the Stewardship Council will set aside and provide for the sum of approximately thirteen thousand two hundred and sixty nine dollars (**\$13,269**) ("**Funding Allocation**"), to be paid to County for the benefit of County ("**Designee Account Holder**").

☒ **Option A: Lump Sum.** The Funding Allocation will be paid to County in a single lump sum payment of thirteen thousand two hundred and sixty nine dollars (\$13,269) no later than 30 days after the Effective Date based upon the Payment Calculation provided in Exhibit B.

☐ **Option B: Installment Payments.** Annual installment payments will be paid to County initially by either the Stewardship Council or the Designee Account Holder and ultimately solely by the Designee Account Holder.

a. If the Stewardship Council elects to make one or more initial installment payments itself, the annual installment would be \$ ____ per year unless an adjustment to the amount is made pursuant to Section 4 of this Agreement. The amount of the installment payment for the year during which the Property was transferred will be prorated and payable to County no later than 60 days after the Stewardship Council and County have agreed to any adjustment of the annual payment amount pursuant to Section 4 of this Agreement. Thereafter, in any year when the Stewardship Council elects to make the annual payment, the payment will be made no later than the close of County's fiscal year (June 30).

b. Upon the Stewardship Council's election to transfer the annual installment payment obligation to the Designee Account Holder, the Stewardship Council will transfer the Funding Allocation in the amount set forth in Option A above to the Designee Account Holder and the Designee Account Holder would deposit the Funding Allocation in an investment account ("**Funding Allocation Account**").

Each annual installment payment made by the Designee Account Holder will be equal to four percent of the rolling twenty quarter average of the net fair market value of the assets of the Funding Allocation Account valued as of the first day of each taxable year of the account (hereinafter "**the valuation date**"). The installment payments will be made annually at the end of each calendar year from income and, to the extent income is not sufficient, from principal. Any income of the Funding Allocation Account for a taxable year in excess of the installment amount shall be added to principal.

4. Satisfaction of Tax Neutrality Requirement.

a. The County hereby agrees with the Tax Neutrality Methodology attached hereto as Exhibit C as being an appropriate method to calculate the Funding Allocation.

b. The parties hereby agree and acknowledge that the Funding Allocation represents a reasonable payment to the County in lieu of property taxes which might otherwise have been received by County from the owner of the Property, and that the Funding Allocation satisfies the Tax Neutrality Requirement with regard to the donation of the Property.

c. The County hereby waives and releases all claims, currently known or unknown, relating to the final calculation of the Funding Allocation and the Tax Neutrality Methodology that was used by the Stewardship Council to determine the amount of the Funding Allocation.

5. Welfare Exemption. County agrees that the County Assessor will not unreasonably withhold approval of the Welfare Exemption from Property Taxes in the event that the Property is subsequently conveyed to another organization qualified for said exemption with regard to the Property.

6. Risk of Loss; Waiver and Release; Estoppel.

a. Provided that County selected the Option B Funding Allocation, effective upon the date that the Option B Funding Allocation has been transferred to the Designee Account Holder, County will assume the risk that the Option B Funding Allocation may be reduced or lost due to market conditions and/or use of principal to make installment payments. Neither the Stewardship Council nor any of the Stewardship Council's direct and indirect past, present and future shareholders, partners, members, trustees, officers, directors, principals, parents, subsidiaries, affiliates, employees, agents, contractors, transferees, successor(s), and assignees (collectively, the "**Related Entities**"), except for the Designee Account Holder, is responsible for management of the funds in the Funding Allocation Account by Designee Account Holder or oversight of the Designee Account Holder.

b. Regardless of the payment option selected, County hereby waives and releases the Stewardship Council and any of the Related Entities, except for the Designee Account Holder, from all claims, currently known or unknown, which may arise from any reduction or loss of the Option B Funding Allocation when held by the Designee Account Holder, any reduction or loss of Funding Allocation under Option A, or potential or actual tax loss, and County is estopped from asserting that the Funding Allocation was not a reasonable payment in lieu of taxes, or otherwise does not satisfy the Tax Neutrality Requirement.

c. County expressly waives any benefits of Section 1542 of the Civil Code of the State of California, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR

AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

7. Distribution of Funding Allocation to Other Local Agencies.

a. County agrees to pay reasonable and timely distributions from said Funding Allocation to special districts and other local agencies consistent with the methodologies described in Division 1 of the California Revenue and Taxation Code. Distributions from the Funding Allocation shall be the sole responsibility of the County and the Stewardship Council shall have no responsibility to verify or ensure that such distributions are paid or made consistent with the methodologies described in Division 1 of the California Revenue and Taxation Code.

b. In consideration for the additional administrative responsibility of the County to set up the process to allocate payments to special districts, the Stewardship Council will provide a one-time reimbursement of up to \$3,000 of the County cost to perform such activities. The Stewardship Council will provide such reimbursement to the County within 30 days of receiving a report from the County accounting for its expenditures in setting up the payment process.

8. Record Keeping. County will indicate the Funding Allocation separately on its books of account, charge expenditures made in furtherance of the purposes of this Agreement against the Funding Allocation, and keep records adequate to enable the use of the Funding Allocation with regard to distributions to special districts and local agencies pursuant to Section 7 to be checked readily by the Stewardship Council or its designee, or to the extent permitted by the California Public Records Act, by members of the public.

9. Communications. The Stewardship Council may include information regarding this Agreement and County in its periodic public reports, press releases, or other public communications.

10. County's Representations. County represents that it was represented by Counsel in connection with the negotiation of this Agreement and that in agreeing to execute this Agreement gave due consideration to all relevant factors, including the current and future property tax potential of the Property and any development potential the Property might have had.

11. Due Authorization. This Agreement and the performance of County's obligations under it are duly authorized and executed, and are, or will be upon the Effective Date, legal, valid, and binding obligations of County; the resolution confirming same shall be attached to this Agreement as Exhibit D. No consent of any judicial or administrative body, government agency, or other party is required for County to enter into and/or to perform County's obligations under this Agreement, except as has already been obtained. County warrants and represents that it is a political subdivision of the State of California or is otherwise an organization described in Section 170(c)(1) or Section 511(a)(2)(B) of the Internal Revenue Code (IRC), and that the undersigned representative of County is duly authorized and empowered to sign this Agreement.

12. Indemnification. County hereby agrees to indemnify, defend, and hold harmless the Stewardship Council and any of the Related Entities, except for the Designee Account Holder, from and against any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties, and reasonable attorney fees and costs, that any one or more of them may incur or suffer and that result from, or are related to, breach of this Agreement by County or any liability or claim made by the County or by any third party in connection with the County's use, management, or distribution of the Funding Allocation.

The Stewardship Council hereby agrees to indemnify, defend, and hold harmless the County, and the County's past, present, and future officers, directors, and employees, from and against any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties, and reasonable attorney fees and costs, that any of them may incur or suffer and that result from, or are related to, breach of this Agreement by the Stewardship Council.

13. Third Party Beneficiaries. The Related Entities, except for the Designee Account Holder, are express third party beneficiaries of this Agreement and shall be entitled to enforce the provisions hereof against County.

14. Attorney Fees. In the event of any action or proceeding to enforce a term or condition of this Agreement, or any action or proceeding in any way arising from this Agreement, the prevailing party in such action, or the nondismissing party when the dismissal occurs other than by a settlement, will be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorney fees and costs of defense paid or incurred in good faith. The "prevailing party," for purposes of this Agreement, will be deemed to be that party who obtains substantially the result sought, whether by settlement, dismissal, or judgment.

15. Assignment. The benefits to be provided under this Agreement are personal to County, and may not be assigned or transferred by County without the prior written approval of the Stewardship Council. The Stewardship Council may assign its rights and obligations hereunder to a third party upon written notice to County. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit and burden of the parties and their respective heirs, successors and assigns.

16. Amendment; Entire Agreement. This Agreement may not be amended or modified except by written instrument signed by both parties. This Agreement constitutes the entire understanding of the parties concerning the subject matter hereof, and supersedes any and all previous negotiations, agreements, or understandings, if any, regarding the matters contained herein.

17. Invalidity of Provision. If any provision of this Agreement as applied to either party or to any circumstance is adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, this fact will in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole.

18. **Headings.** The headings used in this Agreement are provided for convenience only and this Agreement will be interpreted without reference to any headings.

19. **Governing Law.** This Agreement shall be governed by the laws of the State of California.

20. **Counterparts.** This Agreement may be executed in counterparts which together shall constitute a single agreement.

IN WITNESS WHEREOF, Stewardship Council and County have entered into this Funding Agreement to Implement Tax Neutrality Requirement as of the dates set forth below.

Pacific Forest and Watershed Lands Stewardship Council,
a California Nonprofit Public Benefit Corporation

By: _____

Title: _____

Date: _____

COUNTY OF YUBA

By: _____

Title: County Administrator

Date: 03/24/2015

ATTEST:

Clerk of the Board of Supervisors

By: _____

Approved as to form:

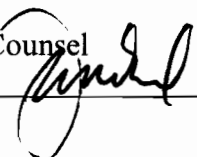
County Counsel
By:  _____

Exhibit A

Donated lands are indicated by the cross-hatched area in the map below, also described as the SBE and APN numbers as shown in Exhibit B.

Appendix 6: Map

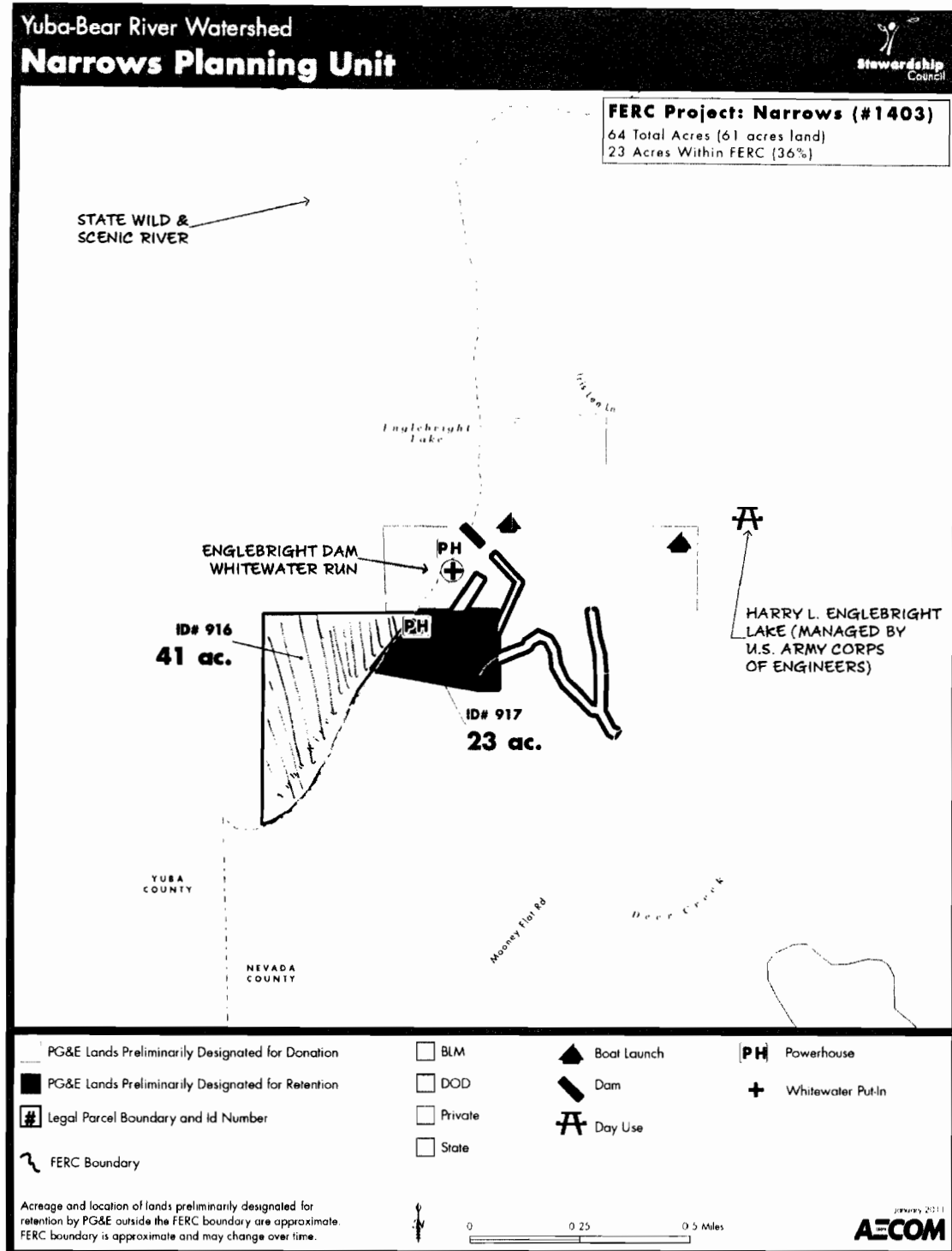


Exhibit B

Payment Calculation (Sample)*

LEGAL ID #	SBE NO.	APN NO.	Total Acres	Non-Unitary Prop Tax	Unitary Prop Tax	Total Taxes	Acres Donated	Taxes on Acres Donated
174	130-45-1-11	018-010-001	640	5,938	0	5,938	632	5,865
	130-45-1-12	018-010-006	398	3,691	0	3,691	398	3,691
	130-45-1-18	016-410-007	640	5,511	427	5,938	574	5,323
	130-45-1-19	018-010-002	643	5,714	251	5,965	619	5,744
	130-45-1-20	018-010-008	640	6,511	169	6,680	621	6,480
	130-45-1-23	016-390-011	560	742	4,453	5,195		0
	130-45-1-24	016-410-005	640	5,863	74	5,938	178	1,652
	130-45-1-25	016-410-008	400	3,683	28	3,711	391	3,624
	130-45-1-27	016-420-001	200	1,855	0	1,855	123	1,139
	135-45-17-6	016-320-026	2	0	21	21	0	0
	135-45-17A-1	023-540-034	80	669	371	1,040		0
	135-45-20-1	016-320-013	184	793	1,234	2,027	54	592
	135-45-20-2	016-410-006	582	5,865	551	6,416	473	5,208
	135-45-20-3	016-390-008, 016-410-002	498	3,279	2,203	5,482	0	0
	135-45-20-4	016-390-010, 016-410-004	571	4,089	2,203	6,293	0	0
	135-45-20-5	016-390-005	123	0	1,357	1,357	0	0
	135-45-20-6	016-250-024, 016-320-012	59	0	652	652		0
	135-45-33-2	018-010-003	271	4,086	0	4,086	256	3,861
	135-45-33-6	018-010-009	202	3,049	0	3,049	173	2,611
174 Total			7,333	61,338	13,996	75,334	4,491	45,791

Funding Allocation Amount Calculation

Annual Base Value: 45,791
 ÷ capitalization rate: 4.0%
 = Funding Allocation Amount: 1,145,000

* N/A

Exhibit C

Property Tax Neutrality Methodology – Attached to email

PROPERTY TAX NEUTRALITY REQUIREMENTS OF PG&E'S LAND CONSERVATION COMMITMENT

Background Information

The Pacific Forest and Watershed Lands ("Stewardship Council") is a nonprofit organization, which was formed as the result of a PG&E Settlement Agreement (I.02-04-026) with the California Public Utilities Commission (CPUC) in 2003 and the Stipulation Resolving Issues Regarding the Land Conservation Commitment ("Stipulation"). As part of the PG&E Settlement Agreement and Stipulation in 2003, a Land Conservation Commitment was established to permanently protect approximately 140,000 acres of PG&E watershed lands ("Watershed Lands"). Located across 22 counties, the lands encompass almost 1,000 parcels. The Watershed Lands stretch from Shasta County in the north to Kern County in the south, from the Sierra Nevada and Cascade ranges to the Eel River watershed in Mendocino County. For planning purposes, the parcels were grouped into 47 planning units.

The Stewardship Council is charged with implementing PG&E's Land Conservation Commitment. Protecting the Watershed Lands will be accomplished through (1) PG&E's grant of conservation easements to one or more public agencies or qualified conservation organizations so as to protect the natural habitat of fish, wildlife, and plants, the preservation of open space, outdoor recreation by the general public, sustainable forestry, agricultural uses, and historic values (collectively the Beneficial Public Values), and in some cases, (2) PG&E's donation of the Watershed Lands in fee to one or more public entities or qualified conservation organizations, whose ownership would be consistent with these conservation objectives.

As part of this conservation effort, the Stewardship Council will develop a series of Land Conservation and Conveyance Plans (LCCPs) that will detail the specific land conservation and/or disposition requirements for each parcel or parcel cluster. LCCPs represent the Stewardship Council's recommendations for preserving and/or enhancing the Beneficial Public Values of the Watershed Lands to PG&E, and are intended to support required regulatory approvals of the land transactions resulting from the Stewardship Council's recommendations. All fee title donations and conservation easements involving PG&E Watershed Lands must be approved by the California Public Utilities Commission (CPUC) prior to the land transactions being completed. For more information about the Stewardship Council, please consult our website at <http://www.stewardshipcouncil.org>.

Tax Neutrality Requirement of Stipulation

The Stipulation requires that the LCCP provide "an analysis of tax and other economic and physical impacts of such disposition strategy, and a commitment by an appropriate entity [which may be PG&E, subject to being authorized by the Commission to fully recover in rates any such costs in approving PG&E's Section 851 application or in another appropriate Commission proceeding, Stewardship Council, donee, or a third party, depending on the individual circumstances] to provide property tax revenue, other equivalent revenue source, or a lump sum payment, so that the totality of dispositions in each affected county under this Land Conservation Commitment will be 'tax neutral' for that county."

Stewardship Council Board Policies and Guidelines Concerning Property Tax Neutrality

The Stewardship Council board adopted a set of Guidelines Regarding Satisfaction of Tax Neutrality on March 30, 2011, after an opportunity for public comment. Under the guidelines, the Stewardship Council outlined the following overarching assumptions:

1. The Stewardship Council will address property tax neutrality based upon the most current property taxes paid by PG&E on the lands being transferred at the time of the actual transfer of fee title from PG&E to the selected donee.
2. The Stewardship Council's achievement of property tax neutrality applies to all property taxes that would be distributed directly to County General Funds, School and Fire Districts, Regional Conservation and Water Districts, and any other special districts as defined by the applicable Tax Rate Area.
3. The Settlement and Stipulation direct the Stewardship Council to ensure that the effects of distributions be made tax neutral for the affected counties. Therefore, the Stewardship Council's property tax neutrality commitment will not apply to any amount of property tax payments that are subject to apportionment by the State of California.

In 2012, the Stewardship Council board established a standard methodology for addressing property tax neutrality on the Watershed Lands, and communicate the general principles and approach regarding the achievement of property tax neutrality. The methodology establishes a standard payment process when lands are transferred to organizations that are exempt from paying property taxes. (See Exhibit C to attached Funding Agreement to Implement Tax Neutrality Requirement.) The methodology outlines two in-lieu payment options: a one-time lump sum payment from the Stewardship Council directly to counties, and the Stewardship Council's establishment of an endowment account that would be designed to generate enough investment income to make annual in-lieu payments to counties on an ongoing basis. Regardless of the payment option selected by each county, the payment methodology provides that the county will distribute funds related to the special districts as defined in the Tax Rate Area upon receipt of the lump sum payment or the annual installment payment.

On August 14, 2014 the California Public Utilities Commission approved Resolution E-4644. The resolution states that the Commission endorses the Guidelines Regarding Satisfaction of Tax Neutrality and the Property Tax Neutrality Methodology adopted by the Stewardship Council.

Achieving Property Tax Neutrality in Yuba County

The only Watershed Lands that will be donated to a tax exempt entity in Yuba County are 41 acres in parcel #916 in the Narrows planning unit (the "Property") that will be conveyed in fee to the University of California Regents to expand the Sierra Foothill Research and Extension Center (SFREC). (See attached map) The Stewardship Council Board adopted a LCCP for that land donation on November 14, 2013 and the CPUC approved the transaction on November 23, 2014. The transaction is expected to close in January or February 2015. A copy of the LCCP can be found on the Stewardship Council's website here

http://www.stewardshipcouncil.org/documents/land_conservation/Narrows/Narrows%20LCCP%202014.03.pdf

The Stewardship Council will provide in lieu funding to compensate Yuba County for the loss of property taxes. The transfer of lands to the University of California Regents is expected to result in the reduction of approximately \$530 in annual taxes paid to Yuba County (as shown in the Table below).

Table 2: Property Tax Detail

Parcel ID	SBE Map Number	Taxes on Acres Transferred
916	005-300-014	\$530

Yuba County may select the option of either receiving a lump sum payment or an annual payment from a trustee selected by the Stewardship Council. If Yuba County chooses the lump-sum option, the Stewardship Council would make a one-time payment of \$13,000 to the county. Yuba County would, in-turn, be required to distribute the funds to the general fund and applicable special districts consistent with the Tax Rate Area in effect for the parcel.

If Yuba County chooses the annual payment option, the Stewardship Council could elect to do one of the following: (1) for an initial period of time, make installment payments itself to Yuba County at a fixed amount to make up the difference in annual tax payments, or (2) after the donation of lands to the University of California Regents deposit a lump sum with a third party trustee, which would be responsible for making annual payments to Yuba County. Pursuant to the methodology described in the Property Tax Neutrality Methodology adopted on June 27, 2012, the trustee will make annual payments equal to 4% of a rolling 20 quarter average of the principal balance invested for the parcel. Yuba County would, in-turn, be required to distribute the funds to the general fund and applicable special districts consistent with the Tax Rate Area in effect for the parcel. A third party trustee has not yet been selected by the Stewardship Council to carry out this duty.

Before in lieu payments are made to Yuba County, the County must enter into a Funding Agreement to Implement Tax Neutrality Requirement. (See attached form agreement.)

Exhibit D

Resolution
(to be attached)



*ORDINANCES
AND
PUBLIC HEARINGS*

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The County of Yuba

Community Development & Services Agency

Kevin Mallen, Director

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PLANNING
749-5470 • Fax 749-5434

PUBLIC WORKS • SURVEYOR
749-5420 • Fax 749-5424

TO: Board of Supervisors

FROM: Kevin Mallen, CDSA Director 

SUBJECT: Update Ordinance Code Chapter 10.30, Floodplain Management

DATE: March 24, 2015

Recommendation

That the Board repeal and re-enact Ordinance Code Title X, Chapter 10.30 in its entirety to better address the requirements of the National Flood Insurance Program and the Community Rating System.

Background

The National Flood Insurance Program (NFIP) provides flood insurance and disaster relief to property owners who live in participating communities. Participation in the NFIP is voluntary; Yuba County joined the NFIP in 1983. Participants in the NFIP have to meet certain minimum standards for construction and floodplain management, and also have to adopt a floodplain management ordinance that specifies the County's floodplain management requirements. The State of California provides a template for floodplain management ordinances; this template reflects the minimum standards required by the NFIP.

Discussion

The NFIP also encourages communities to implement higher standards under the Community Rating System (CRS) program. The CRS program provides incentives in the form of premium discounts for communities to go beyond the minimum floodplain management requirements by developing extra flood protection measures. A community's CRS classification determines the premium discount for policyholders. There are ten CRS classifications: Class "1" requires the most credit points and gives the greatest premium discount (45%); while Class "10" receives no discount. Yuba County is a Class "6" community, and receives a 20% discount on flood insurance premiums. The standards for achieving discounts changed in 2013, so Yuba County needs to adjust its floodplain management standards accordingly. The proposed changes clarify NFIP minimum requirements, remove the existing prohibition against having enclosed areas below the lowest floor elevation, update references, remove minor inconsistencies within the chapter, and minimize floodplain management requirements for the public.

The proposed changes to Chapter 10.30 were first discussed at the Land Use & Public Works Committee on October 21, 2014. A summary of the proposed changes from the current Chapter 10.30 are as follows:

1. Increase allowable exemption size and cost for small, low-cost sheds (10.30.050)

2. Explicitly exempt farming activities and landscape maintenance from definition of development;
3. Define normal farming activities (10.30.050)
4. Update reference manual for Substantial Improvement administration (10.30.070)
5. Authorize County to allow elevation of structures to 5' above grade in "A" zone in lieu of performing detailed study to determine BFE (10.30.070 and 10.30.080)
6. Eliminate prohibition against elevating on fully enclosed area (10.30.070)
7. Owners must present information demonstrating that improvements within SFHA are not Significant Improvements under the NFIP (10.30.070)
8. Added NFIP requirements for placement of fill in SFHA and for Elevation Certificates for new and substantially improved structures (10.30.070)
9. Added clarifications concerning NFIP requirements for flood openings (10.30.080)
10. Added clarification concerning need for variance when wet-floodproofing structures (10.30.080)
11. Added subsection for wet-floodproofing agricultural structures (10.30.080)
12. Added requirement for Elevation Certificates for manufactured homes (10.30.080)
13. Clarified what types of structures may be wet-floodproofed (10.30.090)

The above changes were introduced as an ordinance to repeal and reenact Chapter 10.30 in its entirety on November 18, 2014. A second reading was held on December 9, 2014 and continued to January 13, 2015. At the January 13th hearing the Board directed staff to work with Supervisor Fletcher on additional edits to be considered and to return to the full Board on March 24, 2015. As a result of staff working with Supervisor Fletcher, the following two additional changes are being presented:

1. Added language that Wet-floodproofed structures should not be used as collateral for a federally backed lender and shall not be considered insurable structures under the National Flood Insurance Program, nor shall they be eligible for relief funds in the case of flood damage (10.30.090).
2. Deleted the statement that a violation of this ordinance shall constitute a misdemeanor (10.30.060)

Committee Action

The Land and Public Works Committee reviewed an initial request on October 28, 2014 and recommended approval. Additional revisions to the proposed ordinance were made after direction was provided from members of the Board of Supervisors.

Fiscal Impact

The fiscal impact of updating ordinance code chapter 10.30 is anticipated to be negligible.

ORDINANCE NO. _____

**AN ORDINANCE AMENDING TITLE X, CHAPTER 10.30
OF THE YUBA COUNTY ORDINANCE CODE
BY REPEALING AND REENACTING CHAPTER 10.30 AS AMENDED
RELATING TO FLOODPLAIN MANAGEMENT**

The following ordinance consisting of three (3) sections was duly and regularly passed and adopted by the Board of Supervisors of the County of Yuba, State of California, at a regular meeting of the Board of Supervisors held on ____ day of _____, 20____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Chairman of the Board of Supervisors
of the County of Yuba, State of California

ATTEST: DONNA STOTTLEMEYER
Clerk of the Board of Supervisors

By:_____

APPROVED AS TO FORM
ANGIL MORRIS-JONES
Yuba County Counsel

By:_____

THE BOARD OF SUPERVISORS OF THE COUNTY OF YUBA, STATE OF CALIFORNIA DOES ORDAIN AS FOLLOWS:

Section 1. This ordinance shall take effect Thirty (30) days after its passage, and before the expiration of fifteen (15) days after its passage a summary shall be published with the names of the members voting for and against the same, once in a local newspaper of general circulation in the County of Yuba, State of California.

Section 2. Chapter 10.30 of Title X of the Yuba County Ordinance Code is hereby repealed and Chapter 10.30 is hereby reenacted as amended and set forth herein below:

CHAPTER 10.30

FLOODPLAIN MANAGEMENT

Sections

- 10.30.010 STATUTORY AUTHORIZATION**
- 10.30.020 FINDINGS OF FACT**
- 10.30.030 STATEMENT OF PURPOSE**
- 10.30.040 METHODS OF REDUCING FLOOD LOSSES**
- 10.30.050 DEFINITIONS**
- 10.30.060 GENERAL PROVISIONS**
- 10.30.070 ADMINISTRATION**
- 10.30.080 PROVISIONS FOR FLOOD HAZARD REDUCTION**
- 10.30.090 VARIANCE PROCEDURES**

10.30.010 STATUTORY AUTHORIZATION. The Legislature of the State of California has in Government Code Sections 65302, 65560, and 65800 conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the County of Yuba does hereby adopt the following floodplain management regulations.

10.30.020 FINDINGS OF FACT.

- (a) The flood hazard areas of Yuba County are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- (b) These flood losses are caused by uses that are inadequately elevated, floodproofed, or protected

from flood damage. The cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities also contributes to flood losses.

10.30.030 STATEMENT OF PURPOSE. It is the purpose of this ordinance to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by legally enforceable regulations applied uniformly throughout the community to all publicly and privately owned land within flood prone, mudslide [i.e. mudflow] or flood related erosion areas. These regulations are designed to:

- (a) Protect human life and health;
- (b) Minimize expenditure of public money for costly flood control projects;
- (c) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (d) Minimize prolonged business interruptions;
- (e) Minimize damage to public facilities and utilities such as water and gas mains; electric, telephone and sewer lines; and streets and bridges located in areas of special flood hazard;
- (f) Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future blighted areas caused by flood damage;
- (g) Ensure that potential buyers are notified that property is in an area of special flood hazard; and
- (h) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

10.30.040 METHODS OF REDUCING FLOOD LOSSES. In order to accomplish its purposes, this ordinance includes regulations to:

- (a) Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or flood heights or velocities;
- (b) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction, and mitigated to prevent future losses for existing structure;
- (c) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel floodwaters;
- (d) Control filling, grading, dredging, and other development which may increase flood damage; and
- (e) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or

which may increase flood hazards in other areas.

10.30.050 DEFINITIONS. Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

- (a) "A zone" - see "Special flood hazard area".
- (b) "Accessory structure" means a structure that is either:
 - i. Solely for the parking of no more than 2 cars; or
 - ii. A small, low cost shed for limited storage, less than ~~150~~ 450 square feet and ~~\$1,500~~ 10,000 in value.
- (c) "Accessory use" means a use which is incidental and subordinate to the principal use of the parcel of land on which it is located.
- (d) "Alluvial fan" means a geomorphologic feature characterized by a cone or fan-shaped deposit of boulders, gravel, and fine sediments that have been eroded from mountain slopes, transported by flood flows, and then deposited on the valley floors, and which is subject to flash flooding, high velocity flows, debris flows, erosion, sediment movement and deposition, and channel migration.
- (e) "Apex" means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.
- (f) "Appeal" means a request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance.
- (g) "Area of shallow flooding" means a designated AO or AH Zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.
- (h) "Area of special flood hazard" - See "Special flood hazard area."
- (i) "Base flood" means a flood which has a one percent chance of being equaled or exceeded in any given year (also called the "100-year flood"). Base flood is the term used throughout this ordinance.
- (j) "Base flood elevation" (BFE) means the elevation shown on the Flood Insurance Rate Map for Zones AE, AH, A1-30, VE and V1-V30 that indicates the water surface elevation resulting from a flood that has a 1-percent or greater chance of being equaled or exceeded in any given year.
- (k) "Basement" means any area of the building having its floor subgrade - i.e., below ground level -

on all sides.

(l) "Building" - see "Structure".

(m) "Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials. For the purposes of this ordinance, the following activities shall not be considered development:

1. Normal farming activities; or

+2. Residential and commercial landscape maintenance.

(n) "Encroachment" means the advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain which may impede or alter the flow capacity of a floodplain.

(o) "Existing manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before May 17, 1982.

(p) "Expansion to an existing manufactured home park or subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

(q) "Flood, flooding, or flood water" means:

i. A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters; the unusual and rapid accumulation or runoff of surface waters from any source; and/or mudslides (i.e., mudflows); and

ii. The condition resulting from flood-related erosion.

(r) "Flood Boundary and Floodway Map (FBFM)" means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of special flood hazards and the floodway.

(s) "Flood Insurance Rate Map (FIRM)" means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

(t) "Flood Insurance Study" means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Insurance Rate Map, the Flood Boundary

and Floodway Map, and the water surface elevation of the base flood.

- (u) "Floodplain or flood-prone area" means any land area susceptible to being inundated by water from any source - see "Flooding."
- (v) "Floodplain Administrator" is the community official designated by title to administer and enforce the floodplain management regulations.
- (w) "Floodplain management" means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.
- (x) "Floodplain management regulations" means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as grading and erosion control) and other application of police power which control development in flood-prone areas. This term describes federal, state or local regulations in any combination thereof which provide standards for preventing and reducing flood loss and damage.
- (y) "Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents. For guidelines on dry and wet floodproofing, see FEMA Technical Bulletins TB 1-93, TB 3-93, and TB 7-93.
- (z) "Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. Also referred to as "Regulatory Floodway."
- (aa) "Floodway fringe" is that area of the floodplain on either side of the "Regulatory Floodway" where encroachment may be permitted.
- (bb) "Fraud and victimization" as related to Section 10.30.090 of this ordinance, means that the variance granted must not cause fraud on or victimization of the public. In examining this requirement, the County of Yuba will consider the fact that every newly constructed building adds to government responsibilities and remains a part of the community for fifty to one-hundred years. Buildings that are permitted to be constructed below the base flood elevation are subject during all those years to increased risk of damage from floods, while future owners of the property and the community as a whole are subject to all the costs, inconvenience, danger, and suffering that those increased flood damages bring. In addition, future owners may purchase the property, unaware that it is subject to potential flood damage, and can be insured only at very high flood insurance rates.
- (cc) "Functionally dependent use" means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship

building and ship repair facilities, and does not include long-term storage or related manufacturing facilities.

(dd) "Governing body" is the local governing unit, i.e. county or municipality, that is empowered to adopt and implement regulations to provide for the public health, safety and general welfare of its citizenry.

(ee) "Hardship" as related to Section 10.30.090 of this ordinance means the exceptional hardship that would result from a failure to grant the requested variance. The County of Yuba requires that the variance be exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

(ff) "Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

(gg) "Historic structure" means any structure that is:

- i. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- ii. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- iii. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
- iv. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program as determined by the Secretary of the Interior or directly by the Secretary of the Interior in states without approved programs.

(hh) "Levee" means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding.

(ii) "Levee system" means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

- (jj) "Lowest floor" means the lowest floor of the lowest enclosed area, including basement (see "Basement" definition).
- i. An unfinished or flood resistant enclosure below the lowest floor that is usable solely for parking of vehicles, building access or storage in an area other than a basement area, is not considered a building's lowest floor provided it conforms to applicable non-elevation design requirements, including, but not limited to:
1. The flood openings standard in Section 10.30.080(a)(iii)(3);
 2. The anchoring standards in Section 10.30.080(a)(i);
 3. The construction materials and methods standards in Section 10.30.080(a)(ii); and
 4. The standards for utilities in Section 10.30.080(b).
- ii. For residential structures, all subgrade enclosed areas are prohibited as they are considered to be basements (see "Basement" definition). This prohibition includes below-grade garages and storage areas.
- (kk) "Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle".
- (ll) "Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
- (mm) "Market value" shall be determined by estimating the cost to replace the structure in new condition and adjusting that cost figure by the amount of depreciation which has accrued since the structure was constructed.
- i. The cost of replacement of the structure shall be based on a square foot cost factor determined by reference to a building cost estimating guide recognized by the building construction industry.
 - ii. The amount of depreciation shall be determined by taking into account the age and physical deterioration of the structure and functional obsolescence as approved by the Floodplain Administrator, but shall not include economic or other forms of external obsolescence.

Use of replacement costs or accrued depreciation factors different from those contained in recognized building cost estimating guides may be considered only if such factors are

included in a report prepared by an independent professional appraiser and supported by a written explanation of the differences.

(nn) "Mean sea level" means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

(oo) "New construction", for floodplain management purposes, means structures for which the "start of construction" commenced on or after May 17, 1982, and includes any subsequent improvements to such structures.

| ~~(pp)~~ "New manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after May 17, 1982.

| ~~(pp)~~~~(qq)~~ "Normal Farming Activities" means plowing, seeding, cultivating, minor drainage, harvesting, field leveling outside defined watercourses, contouring, and planting.

| ~~(qq)~~~~(rr)~~ "Obstruction" includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

| ~~(rr)~~~~(ss)~~ "One-hundred-year flood" or "100-year flood" - see "Base flood."

| ~~(ss)~~~~(tt)~~ "Program deficiency" means a defect in a community's floodplain management regulations or administrative procedures that impairs effective implementation of those floodplain management regulations.

| ~~(tt)~~~~(uu)~~ "Public safety and nuisance" as related to Section 10.30.090 of this ordinance, means that the granting of a variance must not result in anything which is injurious to safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

| ~~(uu)~~~~(vv)~~ "Recreational vehicle" means a vehicle which is:

- i. Built on a single chassis;
- ii. 400 square feet or less when measured at the largest horizontal projection;

- iii. Designed to be self-propelled or permanently towable by a light-duty truck; and
 - iv. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
- (ww) "Regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.
- (xx) "Remedy a violation" means to bring the structure or other development into compliance with State or local floodplain management regulations, or if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing State or Federal financial exposure with regard to the structure or other development.
- (yy) "Riverine" means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.
- (zz) "Sheet flow area" - see "Area of shallow flooding."
- (aaa) "Special flood hazard area (SFHA)" means an area in the floodplain subject to a 1 percent or greater chance of flooding in any given year. It is shown on an FBFM or FIRM as Zone A, AO, A1-A30, AE, A99, AR or, AH.
- (bbb) "Start of construction" includes substantial improvement and other proposed new development and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days from the date of the permit. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.
- (ccc) "Structure" means a walled and roofed building that is principally above ground; this includes a gas or liquid storage tank or a manufactured home.
- (ddd) "Substantial damage" means:

- i. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred; or
 - ii. Flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred. This is also known as “repetitive loss.”
- (eee) "Substantial improvement" means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:
 - i. Any project for improvement of a structure to correct existing violations or state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
 - ii. Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."
- (fff) "Variance" means a grant of relief from the requirements of this ordinance which permits construction in a manner that would otherwise be prohibited by this ordinance.
- (ggg) “Violation” means the failure of a structure or other development to be fully compliant with this ordinance. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.
- (hhh) "Water surface elevation" means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.
- (iii) "Watercourse" means a lake, river, creek, stream, wash, arroyo, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

10.30.060 GENERAL PROVISIONS.

- (a) LANDS TO WHICH THIS ORDINANCE APPLIES. This ordinance shall apply to all areas of special flood hazards within the jurisdiction of Yuba County.
- (b) BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD. The areas of

special flood hazard identified by the Federal Emergency Management Agency (FEMA) in the “Flood Insurance Study (FIS) for Yuba County, California” dated November 17, 1981 or subsequent versions currently effective, with accompanying Flood Insurance Rate Maps (FIRM’s) and Flood Boundary and Floodway Maps (FBFM’s), dated May 17, 1982 or subsequent versions currently effective, and all subsequent amendments and/or revisions, are hereby adopted by reference and declared to be a part of this ordinance. This FIS and attendant mapping is the minimum area of applicability of this ordinance and may be supplemented by studies for other areas which allow implementation of this ordinance and which are recommended to the County of Yuba by the Floodplain Administrator. The study, FIRM’s and FBFM’s are on file at the Community Development and Services Agency, 915 8th Street, Marysville, CA.

- (c) COMPLIANCE. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. ~~Violation of the requirements (including violations of conditions and safeguards) shall constitute a misdemeanor.~~ Nothing herein shall prevent the County of Yuba from taking such lawful action as is necessary to prevent or remedy any violation.
- (d) ABROGATION AND GREATER RESTRICTIONS. This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- (e) INTERPRETATION. In the interpretation and application of this ordinance, all provisions shall be:
 - i. Considered as minimum requirements;
 - ii. Liberally construed in favor of the governing body; and
 - iii. Deemed neither to limit nor repeal any other powers granted under state statutes.
- (f) WARNING AND DISCLAIMER OF LIABILITY. The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of Yuba County, any officer or employee thereof, the State of California, or the Federal Emergency Management Agency, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.
- (g) SEVERABILITY. This ordinance and the various parts thereof are hereby declared to be severable. Should any section of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.

10.30.070 ADMINISTRATION.

- (a) DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR. The Community Development and Services Agency Director or designee is hereby appointed to administer, implement, and enforce this ordinance by granting or denying development permits in accord with its provisions.
- (b) DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR. The duties and responsibilities of the Floodplain Administrator shall include, but not be limited to the following:

i. Permit Review.

Review all development permits to determine:

1. Permit requirements of this ordinance have been satisfied, including determination of substantial improvement and substantial damage of existing structures;
2. All other required state and federal permits have been obtained;
3. The site is reasonably safe from flooding;
4. The proposed development does not adversely affect the carrying capacity of areas where base flood elevations have been determined but a floodway has not been designated. This means that the cumulative effect of the proposed development when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than 1 foot at any point within the County of Yuba nor adversely affect adjacent property owners; and
5. All Letters of Map Revision (LOMR's) for flood control projects are approved prior to the issuance of building permits. Building Permits must not be issued based on Conditional Letters of Map Revision (CLOMR's). Approved CLOMR's allow construction of the proposed flood control project and land preparation as specified in the "start of construction" definition.

ii. Development of Substantial Improvement and Substantial Damage Procedures.

The County shall utilize FEMA publication FEMA P-758, "Substantial Improvement / Substantial Damage Desk Reference" or its successor document for identifying and administering requirements relating to substantial improvement and substantial damage. ~~The County shall utilize FEMA publication FEMA 213, "Answers to Questions About Substantially Damaged Buildings," for identifying and administering requirements for substantial improvement and substantial damage.~~

iii. Review, Use and Development of Other Base Flood Data.

When base flood elevation data has not been provided by FEMA in accordance with Section 10.30.060(b), the Floodplain Administrator shall require the development permit applicant to present for review base flood elevation and floodway data from a federal or state agency, or other source, in order to administer Section 10.30.080. If a base flood elevation is not available, a base flood elevation shall be developed by the applicant using the detailed methods as described in the most current edition of FEMA publication, FEMA 265, "Managing Floodplain Development in Approximate Zone A Areas – A Guide for Obtaining and Developing Base (100-year) Flood Elevations". The simplified methods presented in FEMA 265 may be utilized for projects less than 5 acres or 50 lots, whichever is lesser, or for development permit applications for agricultural uses. If the floodplain administrator determines that developing data to establish the base flood elevation would be excessively expensive, the floodplain administrator may at his/her discretion alternatively approve a lowest floor elevation which is five feet above the highest adjacent grade.

iv. Notification of Other Agencies.

1. Alteration or relocation of a watercourse:

- a. Notify adjacent communities and the California Department of Water Resources prior to alteration or relocation;
- b. Submit evidence of such notification to the Federal Emergency Management Agency; and
- c. Assure that the flood carrying capacity within the altered or relocated portion of said watercourse is maintained.

2. Base Flood Elevation changes due to physical alterations:

Within 6 months of information becoming available or project completion, whichever comes first, the Floodplain Administrator shall submit or assure that the permit applicant submits technical or scientific data to FEMA for a Letter of Map Revision (LOMR).

3. Changes in corporate boundaries:

Notify FEMA in writing whenever the corporate boundaries have been modified by annexation or other means and include a copy of a map of the community clearly delineating the new corporate limits.

v. Documentation of Floodplain Development.

Obtain and maintain for public inspection and make available as needed the following:

1. Certification required by Section 10.30.080(a)(iii)(1) and Section 10.30.080(d) (Lowest floor elevation of rResidential Construction structures);

2. Certification required by Section 10.30.080(a)(iii)(2) (Lowest floor elevation or floodproofing of nonresidential construction structures);

2.3. Certification required by Section 10.30.080(d) (Lowest floor elevation of manufactured homes).

3.4. Certification required by Section 10.30.080(a)(iii)(3) (Flood Openings);

4.5. Certification of elevation required by Section 10.30.080(c)(i)(3) (Subdivisions and Other Proposed Development);

5.6. Certification required by Section 10.30.080(f)(ii) (Floodways); and

6.7. Maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its biennial report submitted to the Federal Emergency Management Agency.

vi. Map Determination.

Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazard, where there appears to be a conflict between a mapped boundary and actual field conditions. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 10.30.090.

vii. Remedial Action.

Take action to remedy violations of this ordinance as specified in Section 10.30.060(c).

viii. Planning.

Assure Yuba County General Plan is consistent with floodplain management objectives contained in Chapter 10.30.

ix. Non-conversion of Enclosed Areas Below the Lowest Floor.

~~All areas below the BFE are prohibited from being enclosed, and To ensure that the areas below the BFE shall not be enclosed, used solely for parking vehicles, limited storage, or access to the building and not be finished for use as human habitation without first becoming fully compliant with the floodplain management ordinance in effect at the time of conversion, the Floodplain Administrator shall:~~

~~1. Determine which applicants for new construction and/or substantial improvements have fully enclosed areas below the lowest floor that are 54 (four) feet or higher;~~

~~2. Enter into a "NON-ENCLOSURE/CONVERSION AGREEMENT FOR CONSTRUCTION WITHIN FLOOD HAZARD AREAS" or equivalent with the~~

~~County of Yuba. The agreement shall be recorded with the Yuba County Recorder as a deed restriction, and prohibit any building enclosures, including breakaway walls, below the BFE. The non-conversion~~NON-ENCLOSURE ~~agreement shall be in a form acceptable to the Floodplain Administrator and County Counsel; and~~

- ~~3. Have the authority to inspect any area of a structure below the base flood elevation to ensure compliance upon prior notice of at least 72 hours.~~

(c) DEVELOPMENT PERMIT. A development permit shall be obtained before any construction or other development, including manufactured homes, within any area of special flood hazard established in Section 10.30.060. Application for a development permit shall be made on forms furnished by the County of Yuba. The applicant shall provide the following minimum information:

- i. Plans in duplicate, drawn to scale, showing:
 1. Location, dimensions, and elevation of the area in question, existing or proposed structures, storage of materials and equipment and their location;
 2. Proposed locations of water supply, sanitary sewer, and other utilities;
 3. Grading information showing existing and proposed contours, any proposed fill, and drainage facilities;
 4. Location of the regulatory floodway when applicable;
 5. Base flood elevation information as specified in Section 10.30.060 or Section 10.30.070(b)(iii);
 6. Proposed elevation in relation to mean sea level, of the lowest floor (including basement) of all structures; and
 7. Proposed elevation in relation to mean sea level to which any nonresidential structure will be floodproofed, as required in Section 10.30.080(a)(iii)(2) of this ordinance and detailed in FEMA Technical Bulletin TB 3-93.
- ii. Certification from a registered civil engineer or architect that the nonresidential floodproofed building meets the floodproofing criteria in Section 10.30.080(a)(iii)(2).
- iii. For a crawl-space foundation, location and total net area of foundation openings as required in Section 10.30.080(a)(iii)(3) of this ordinance and detailed in FEMA Technical Bulletins 1-93 and 7-93.
- iv. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.
- v. All appropriate certifications listed in Section 10.30.070(b)(v) of this ordinance.

v.vi. For improvements and repairs to existing structures with the lowest floor below the BFE in a Special Flood Hazard Area (SFHA), applicant must provide evidence that such proposed improvements or repairs do not constitute substantial improvements or repairs to the structure prior to obtaining a building permit. For repairs to structures damaged by flood, fire, or other disasters, such evidence must be in accordance with FEMA P-758 "Substantial Improvement / Substantial Damage Desk Reference."

- (d) APPEALS. The Board of Supervisors of Yuba County shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this ordinance.

Any person who wishes to appeal the decision of the Floodplain Administrator may, within ~~fifteen~~ ten (10) days after such decision is rendered, file an appeal with the Clerk of the Board of Supervisors. The appeal shall be in writing and shall set forth the grounds upon which relief is requested. The decision of the Board of Supervisors shall be final with respect to any variance of appeal.

10.30.080 PROVISIONS FOR FLOOD HAZARD REDUCTION.

- (a) STANDARDS OF CONSTRUCTION. In all areas of special flood hazards the following standards are required:

i. Anchoring.

All new construction and substantial improvements of structures, including manufactured homes, shall be adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

ii. Construction Materials and Methods.

All new construction and substantial improvements of structures, including manufactured homes, shall be constructed:

1. With flood resistant materials, and utility equipment resistant to flood damage for areas ~~below~~ less than one foot above the base flood elevation;
2. Using methods and practices that minimize flood damage;
3. With electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding; and
4. Within Zones AH or AO, so that there are adequate drainage paths around structures on

slopes to guide flood waters around and away from proposed structures.

5. If fill is placed at a site to elevate a building pad above the base flood elevation, then buildings constructed within flood hazard areas must be constructed on compacted fill in accordance with the construction specifications or at least 90 density per ASTM-D698 or equivalent, and extending at least five feet beyond the building foundation walls before dropping below the base flood elevation and shall include appropriate protection from erosion and scour. The design of the fill must be approved by a registered professional engineer.

iii. Elevation and Floodproofing.

1. Residential Construction. All new construction or substantial improvements of residential structures shall have the lowest floor, including basement:
 - a. In AE, AH, A1-30 Zones, elevated one foot above the base flood elevation.
 - b. In an AO zone, elevated above the highest adjacent grade to a height one foot above the depth number specified in feet on the FIRM, or elevated at least three feet above the highest adjacent grade if no depth number is specified.
 - c. In an A zone, without BFE's specified on the FIRM (unnumbered A zone), elevated one foot above the base flood elevation, as determined under Section 10.30.070(b)(iii). If the floodplain administrator determines that developing data to establish the base flood elevation would be excessively expensive, the floodplain administrator may at his/her discretion alternatively approve a lowest floor elevation which is five feet above the highest adjacent grade.~~In an A zone, without BFE's specified on the FIRM (unnumbered A zone), elevated one foot above the base flood elevation, as determined under Section 10.30.070(b)(iii).~~

Upon the completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered civil engineer or licensed land surveyor, and verified by the community building inspector to be properly elevated. Such certification and verification shall be in the form of a National Flood Insurance Program – Elevation Certificate and shall be provided to the Floodplain Administrator.~~Such certification and verification shall be provided to the Floodplain Administrator.~~

2. Nonresidential Construction. All new construction or substantial improvements of nonresidential structures shall either be elevated to conform with Section 10.30.080(a)(iii)(1) or:
 - a. Be floodproofed, together with attendant utility and sanitary facilities, below the elevation recommended under Section 10.30.080(a)(iii)(1), so that the structure is watertight with walls substantially impermeable to the passage of water;

- b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
 - c. Be certified by a registered civil engineer or architect that the standards of Sections 10.30.080(a)(iii)(2)(a&b) are satisfied. Such certification shall be provided to the Floodplain Administrator.
- 3. Flood Openings. All new construction and substantial improvements of structures with fully enclosed areas below the lowest floor (excluding basements) that are usable solely for parking of vehicles, building access or storage, and which are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must meet the following minimum criteria:
 - a. For non-engineered openings:
 - 1. Have a minimum of two openings on different sides having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
 - 2. The bottom of all openings shall be no higher than one foot above grade;
 - ~~2.3.~~ Openings must be located so that the portion of the opening intended to allow for inflow and outflow is below the BFE;
 - ~~3.4.~~ Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwater. The measurement of the net open area must take into consideration any coverings that have solid obstructions, such as grilles, fixed louvers, or faceplates; and
 - ~~4.5.~~ Buildings with more than one enclosed area must have openings on exterior walls for each area to allow flood water to directly enter; or
 - b. Be certified by a registered civil engineer or architect.
- 4. Manufactured homes.
 - a. See Section 10.30.080(d).
- iv. Garages and low cost accessory structures.
 - 1. Attached garages.
 - a. A garage attached to a residential structure, constructed with the garage floor slab below the BFE, must be designed to allow for the automatic entry of flood waters.

See 10.30.080(a)(iii)(3). Areas of the garage below the BFE must be constructed with flood resistant materials. See Section 10.30.080(a)(ii).

- b. A garage attached to a nonresidential structure must meet the above requirements or be dry floodproofed. For guidance on below grade parking areas, see FEMA Technical Bulletin TB-6.

2. Detached garages and accessory structures.

- a. "Accessory structures" used solely for parking (2 car detached garages or smaller) or limited storage (small, low-cost sheds), as defined in Section 10.30.050, may be constructed such that its floor is below the base flood elevation (BFE), provided the structure is designed and constructed in accordance with the following requirements:

- 1. Use of the accessory structure must be limited to parking or limited storage;
- 2. The portions of the accessory structure located below the BFE must be built using flood-resistant materials;
- 3. The accessory structure must be adequately anchored to prevent flotation, collapse and lateral movement;

- 4. Any mechanical and utility equipment in the accessory structure must be elevated or floodproofed ~~to or~~ at least one foot above the BFE;

- 5. The accessory structure must comply with floodplain encroachment provisions in Section 10.30.080(f);

- ~~5.6.~~ The owner has first obtained a wet-floodproofing variance for the accessory structure, except that no variance is required for small, low-cost sheds; and

- ~~6.7.~~ The accessory structure must be designed to allow for the automatic entry of flood waters in accordance with Section 10.30.080(a)(iii)(3).

- b. Detached garages and accessory structures not meeting the above standards must be constructed in accordance with all applicable standards in Section 10.30.080(a).

v. Agricultural structures

- 1. Agricultural structures shall be elevated or dry-floodproofed to at least one foot above the BFE. Agricultural structures may be constructed such that its floor is below the BFE provided the owner applies for and receives a wet-floodproofing variance in accordance with Section 10.30.090.

(b) STANDARDS FOR UTILITIES.

- i. All new and replacement water supply and sanitary sewage systems shall be designed to

minimize or eliminate:

1. Infiltration of flood waters into the systems; and
 2. Discharge from the systems into flood waters.
- ii. On-site waste disposal systems shall be located to avoid impairment to them, or contamination from them during flooding.

(c) STANDARDS FOR SUBDIVISIONS AND OTHER PROPOSED DEVELOPMENT.

- i. All new subdivision proposals and other proposed development, including proposals for manufactured home parks and subdivisions, greater than 50 lots or 5 acres, whichever is the lesser, shall:
1. Identify the Special Flood Hazard Areas (SFHA) and Base Flood Elevations (BFE).
 2. Identify the elevations of lowest floors of all proposed structures and pads on the final plans.
 3. If the site is filled above the base flood elevation, the following as-built information for each structure shall be certified by a registered civil engineer or licensed land surveyor and provided as part of an application for a Letter of Map Revision based on Fill (LOMR-F) to the Floodplain Administrator:
 - a. Lowest floor elevation.
 - b. Pad elevation.
 - c. Lowest adjacent grade.
- ii. All subdivision proposals and other proposed development shall be consistent with the need to minimize flood damage.
- iii. All subdivision proposals and other proposed development shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.
- iv. All subdivisions and other proposed development shall provide adequate drainage to reduce exposure to flood hazards.

(d) STANDARDS FOR MANUFACTURED HOMES.

- i. All manufactured homes that are placed or substantially improved, on sites located: (1) outside of a manufactured home park or subdivision; (2) in a new manufactured home park or

subdivision; (3) in an expansion to an existing manufactured home park or subdivision; or (4) in an existing manufactured home park or subdivision upon which a manufactured home has incurred "substantial damage" as the result of a flood, shall:

1. Within Zones A1-30, AH, and AE on the community's Flood Insurance Rate Map, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated one foot above the base flood elevation and be securely fastened to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
- ii. All manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A1-30, AH, and AE on the community's Flood Insurance Rate Map that are not subject to the provisions of Section 10.30.080(d)(i) will be securely fastened to an adequately anchored foundation system to resist flotation, collapse, and lateral movement, and be elevated so that either the:
 1. Lowest floor of the manufactured home is at least one foot above the base flood elevation; or
 2. Manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade.

Upon the completion of the structure, the elevation of the lowest floor including basement shall be certified by a registered civil engineer or licensed land surveyor, and verified by the community building inspector to be properly elevated. Such certification and verification shall be in the form of a National Flood Insurance Program – Elevation Certificate and shall be provided to the Floodplain Administrator. ~~Such certification and verification shall be provided to the Floodplain Administrator.~~

(e) STANDARDS FOR RECREATIONAL VEHICLES.

- i. All recreational vehicles placed in Zones A1-30, AH, and AE will either:
 1. Be on the site for fewer than 180 consecutive days; or
 2. Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
 3. Meet the permit requirements of Section 10.30.070(c) of this ordinance and the elevation and anchoring requirements for manufactured homes in Section 10.30.080(d)(i).

- (f) FLOODWAYS. Since floodways are an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- i. Until a regulatory floodway is adopted, no new construction, substantial development, or other development (including fill) shall be permitted within Zones A1-30 and AE, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other development, will not increase the water surface elevation of the base flood more than 1 foot at any point within the County of Yuba.
- ii. Within an adopted regulatory floodway, the County of Yuba shall prohibit encroachments, including fill, new construction, substantial improvements, and other development, unless certification by a registered civil engineer is provided demonstrating that the proposed encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- iii. If Sections 10.30.080(f)(i & ii) are satisfied, all new construction, substantial improvement, and other proposed new development shall comply with all other applicable flood hazard reduction provisions of Section 10.30.080.

10.30.090 VARIANCE PROCEDURE.

- (a) NATURE OF VARIANCES. The issuance of a variance is for floodplain management purposes only. Insurance premium rates are determined by statute according to actuarial risk and will not be modified by the granting of a variance.

The variance criteria set forth in this section of the ordinance are based on the general principle of zoning law that variances pertain to a piece of property and are not personal in nature. A variance may be granted for a parcel of property with physical characteristics so unusual that complying with the requirements of this ordinance would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants, or the property owners.

It is the duty of the Yuba County Board of Supervisors to help protect its citizens from flooding. This need is so compelling and the implications of the cost of insuring a structure built below flood level are so serious that variances from the flood elevation or from other requirements in the flood ordinance are quite rare. The long term goal of preventing and reducing flood loss and damage can only be met if variances are strictly limited. Therefore, the variance guidelines provided in this ordinance are more detailed and contain multiple provisions that must be met before a variance can be properly granted. The criteria are designed to screen out those situations in which alternatives other than a variance are more appropriate.

- (b) CONDITIONS FOR VARIANCES.

- i. Generally, variances may be issued for new construction, substantial improvement, and other proposed new development to be erected ~~on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level,~~

providing that the procedures of Sections 10.30.070 and 10.30.080 of this ordinance have been fully considered. ~~As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.~~

ii. Variances to allow wet floodproofing of new or substantially improved non-residential structures may be issued for the following categories of structures:

1. Structures functionally dependent upon close proximity to water;
2. Accessory structures used solely for parking (two-car detached garages or smaller) or limited storage; and
- ~~1.~~ 3. Agricultural structures used exclusively in connection with the production, harvesting, storage, drying, or raising of agricultural commodities, storage of agricultural equipment, or providing temporary shelter for livestock.
4. Wet-floodproofed structures constructed under a variance should not be used as collateral for a federally backed lender and shall not be considered insurable structures under the National Flood Insurance Program, nor shall they be eligible for relief funds in the case of flood damage.

~~ii.~~ iii. Variances may be issued for the repair or rehabilitation of "historic structures" (as defined in Section 10.30.050 of this ordinance) upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as an historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

~~iii.~~ iv. Variances shall not be issued within any mapped regulatory floodway if any increase in flood levels during the base flood discharge would result.

~~iv.~~ v. Variances shall only be issued upon a determination that the variance is the "minimum necessary" considering the flood hazard, to afford relief. "Minimum necessary" means to afford relief with a minimum of deviation from the requirements of this ordinance. For example, in the case of variances to an elevation requirement, this means the Yuba County Board of Supervisors need not grant permission for the applicant to build at grade, or even to whatever elevation the applicant proposes, but only to that elevation which the Yuba County Board of Supervisors believes will both provide relief and preserve the integrity of the local ordinance.

~~v.~~ vi. Any applicant to whom a variance is granted shall be given written notice over the signature of a community official that:

1. The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage, and

2. Such construction below the base flood level increases risks to life and property. It is recommended that a copy of the notice shall be recorded by the Floodplain Administrator in the Office of the Yuba County Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.
- vi. The Floodplain Administrator will maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its biennial report submitted to the Federal Emergency Management Agency.

| (c) APPEAL-BOARD GUIDELINES.

- i. In hearing requests for variances, the Yuba County Board of Supervisors shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and the:
 1. Danger that materials may be swept onto other lands to the injury of others;
 2. Danger of life and property due to flooding or erosion damage;
 3. Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the existing individual owner and future owners of the property;
 4. Importance of the services provided by the proposed facility to the community;
 5. Necessity to the facility of a waterfront location, where applicable;
 6. Availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 7. Compatibility of the proposed use with existing and anticipated development;
 8. Relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 9. Safety of access to the property in time of flood for ordinary and emergency vehicles;
 10. Expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site; and
 11. Costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water system, and streets and bridges.
- ii. Variances shall only be issued upon a:

1. Showing of good and sufficient cause;
 2. Determination that failure to grant the variance would result in exceptional "hardship" to the applicant; and
 3. Determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create a nuisance (see "Public safety and nuisance"), cause "fraud and victimization" of the public, or conflict with existing local laws or ordinances.
- iii. Variances may be issued for new construction, substantial improvement, and other proposed new development necessary for the conduct of a functionally dependent use provided that the provisions of Sections 10.30.090(c)(i) through 10.30.090(c)(iv) are satisfied and that the structure or other development is protected by methods that minimize flood damages during the base flood and does not result in additional threats to public safety and does not create a public nuisance.

Upon consideration of the factors of Section 10.30.090(b)(i) and the purposes of this ordinance, the Yuba County Board of Supervisors may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

Section 3. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.



Land Use and Public Works Committee



The County of Yuba

Community Development & Services Agency

Kevin Mallen, Director

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FINANCE AND ADMINISTRATION
749-5430 • Fax 749-5434

March 24, 2015

TO: YUBA COUNTY LAND USE & PUBLIC WORKS COMMITTEE

FROM: MICHAEL G. LEE, DIRECTOR OF PUBLIC WORKS

SUBJ: TRAFFIC ORDINANCE AMENDMENT TO ESTABLISH SPEED LIMITS ON
FRUITLAND ROAD BETWEEN MARYSVILLE ROAD AND VIRGINIA ROAD AND
BETWEEN LOMA RICA ROAD AND HONCUT ROAD

RECOMMENDATION:

Approve the attached Ordinance Amendment establishing speed limit of 45 mph on Fruitland Road between Marysville Road and Virginia Road and between Loma Rica Road and Honcut Road.

BACKGROUND:

Residents have complained about motorists speeding on these segments of Fruitland Road. Currently, the road segments are not posted for a speed limit and the prima facie speed limit for roads not posted is a maximum of 55 mph.

Speed surveys were conducted in July and September of 2014 for these road segments and the engineering and traffic survey (ETS) was subsequently conducted.

The segment of Fruitland Road between Virginia Road and Loma Rica Road has an established speed limit of 35 mph per current ordinance.

DISCUSSION:

Homes on these roads have a density less than the required density established in the California Vehicle Code to meet the definition of a residence district. Therefore, a prima facie speed limit of 25 mph for a residence district is not applicable. To establish a lower speed limit than 55 mph an engineering and traffic survey (ETS) has to be performed.

The results of the speed study (the raw traffic data) for the Fruitland Road segment between Marysville Road and Virginia Road resulted in an 85th percentile speed of 47.3 mph. The results of the ETS indicated that a reasonable and appropriate speed for this segment is 45 mph, the nearest 5 mph increment to the 85th percentile speed.

The speed survey for the Fruitland Road segment between Loma Rica Road and Honcut Road resulted in an 85th percentile speed of 50.5 mph. The California Manual of Uniform Traffic Control Devices provides guidance on lowering speed limits below the nearest 5 mph increment to the 85th percentile speed if conditions exist that are not readily apparent to drivers. For this segment, staff is proposing to reduce the speed from the 85th percentile speed of 50 mph by an additional 5 mph to 45 mph. This is due to numerous driveways within this segment that are hidden by vegetation and are not readily apparent to drivers. It was concluded that reducing the speed an additional 5 mph in this segment would help reduce the safety concerns of drivers not seeing other motorists entering the roadway from driveways hidden by vegetation.

Therefore, a speed limit of 45 mph for these two segments of Fruitland Road is more than reasonable. The speed limits will not be in effect until signs are installed.

FISCAL IMPACT:

Cost to install all of the signs is approximately \$700 which will be paid from the Road Fund.

ORDINANCE NO. _____

**AN ORDINANCE AMENDING SECTION 9.15.076 OF
CHAPTER 9.15 OF TITLE IX OF THE
YUBA COUNTY ORDINANCE CODE
REGARDING VEHICLE TRAFFIC SPEED LIMITS
ON FRUITLAND ROAD**

The following ordinance, consisting of three (3) sections, was duly and regularly passed and adopted by the Board of Supervisors of the County of Yuba, State of California, at a regular meeting of the Board of Supervisors held on _____ day of _____, 2015, by the following vote:

AYES:

NOES:

ABSENT:

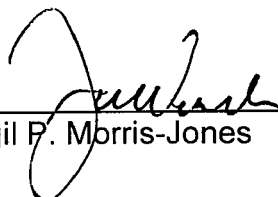
ABSTAIN:

Chair of the Board of Supervisors
of the County of Yuba, State of California

ATTEST: DONNA STOTTLEMEYER
Clerk of the Board of Supervisors

By:_____

APPROVED AS TO FORM
ANGIL P. MORRIS-JONES
COUNTY COUNSEL



Angil P. Morris-Jones

THE BOARD OF SUPERVISORS OF THE COUNTY OF YUBA, STATE OF CALIFORNIA DOES ORDAIN AS FOLLOWS:

Section 1. This ordinance shall take effect Thirty (30) days after its passage, and before the expiration of fifteen (15) days after its passage a summary shall be published with the names of the members voting for and against the same, once in a local newspaper of general circulation in the County of Yuba, State of California.

Section 2. Upon the basis of the engineering and traffic survey, the Yuba County Board of Supervisors hereby determines and declares that a speed limit of 45 miles per hour is more than reasonable or safe for any person to drive a vehicle on or along the sections of roads described and set out herein and the Board hereby determines and declares that the prima facie speed limits set forth herein are more appropriate to facilitate the orderly movement of traffic and are reasonable and safe. Section 9.15.076 of Chapter 9.15 of Title IX is therefore amended as follows:

9.15.076 Fruitland Road

- (a) No person shall drive a vehicle on or along Fruitland Road from Marysville Road to Virginia Road in excess of a speed limit of 45 mile per hour.
- (b) No person shall drive a vehicle on or along Fruitland Road from Virginia Road to Loma Rica Road in excess of a speed limit of 35 mile per hour.

- (c) No person shall drive a vehicle on or along Fruitland Road from Loma Rica Road to Honcut Road in excess of a speed limit of 45 mile per hour.

Section 3. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Engineering and Traffic Survey
For
Fruitland Road

Speed Survey:

Segment #1 is for Fruitland Road Between Marysville Road and Virginia Road. Speed surveys performed on 7/22/14.

Location #1: 2000 ft. west of Marysville Road
677 vehicles with an 85th percentile speed of 54 mph

Location #2: 500 ft. west of Daphne Way
711 vehicles with an 85th percentile speed of 43.3 mph

Location #3: 300 ft. south of Virginia Road
422 vehicles with an 85th percentile speed of 43.2 mph

Weighted Average Analysis with a total of 1,810 vehicles for the 3 locations:

$$\frac{677 \times 54}{1810} + \frac{711 \times 43.3}{1810} + \frac{422 \times 43.2}{1810} = 20.2 + 17 + 10.1 = 47.3 \text{ mph}$$

Initial Rounding to 45 mph for this segment.

Segment #2 is for Fruitland Road Between Loma Rica Road and Honcut Road. Speed surveys performed on 9/03/14.

Location #1: 1000 ft. west of Loma Rica Road
428 vehicles with an 85th percentile speed of 53.7 mph

Location #2: at Littlefield Road
487 vehicles with an 85th percentile speed of 45.5 mph

Location #3: East of Manna Lane
418 vehicles with an 85th percentile speed of 53.3 mph

Weighted Average Analysis with a total of 1,333 vehicles for the 3 locations:

$$\frac{428 \times 53.7}{1333} + \frac{487 \times 45.5}{1333} + \frac{418 \times 53.3}{1333} = 17.2 + 16.6 + 16.7 = 50.5 \text{ mph}$$

Initial Rounding to 50 mph for this segment.

Traffic Collision History:

For segment #1 there was one collision within the last 2 years. The collision was caused by unsafe turning. Therefore, there is no reduction from the initial rounding to the weighted average 85th percentile speed.

For Segment #2 there were two collisions within the last 2 years. One was unsafe turning due to inattention and the other was due to unsafe speed. The collision due to unsafe speed ran off the road and collided with a fixed object. A lower posted speed may have prevented the collision due to unsafe speed. However, with only one collision in the previous two years, a reduction from the initial rounding of the weighted average 85th percentile speed is not recommended.

Conditions not Readily Apparent to Drivers:

In Segment #1 there are no major roadway conditions that are not readily apparent to drivers. The vegetation near the roadway is low native grasses in many areas and not many trees are adjacent the roadway that obstruct sight distance. Driveways are easily noticeable to motorists. Therefore, there is no justification to reduce from the 85th percentile speed due to non-apparent conditions.

In Segment #2 there are many driveway connections that are not readily apparent to drivers due to vegetation beyond the control of the County which increase the potential for motorists to not see vehicles as they enter the roadway. It is recommended that the speed be reduced in this segment by 5 mph due to potential sight distance concerns.

Conclusion:

Since no conditions exist to justify reducing the rounded, weighted 85th percentile speed for Segment #1, the speed limit on Fruitland Road between Marysville Road and Virginia Road should be established at 45 mph.

Since there are conditions not readily apparent to motorists in Segment #2 it is recommended to reduce the speed from the rounded, weighted 85th percentile speed by 5 mph and establish a speed limit of 45 mph.

Prepared By: Van Boeck

Date 3/5/15

Title: Principal Engineer

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