

FORM APPROVED COUNTY COUNSEL
 BY: *Anita C. Willis*
 DATE: 6-14-16
 Department of Concurrence

**SUBMITTAL TO THE BOARD OF SUPERVISORS
 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

987



FROM: Riverside University Health System (RUHS) - Medical Center

SUBMITTAL DATE:
June 8, 2016

SUBJECT: Approval of the Professional Services Agreement with Foley and Lardner, LLP, without securing competitive bids, to provide Legal Counseling Services through June 30, 2021; All Districts; [\$1,250,000]; Hospital Enterprise Funds

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve and authorize the Chairman of the Board to execute the Professional Services Agreement with Foley & Lardner, LLP, without securing competitive bids, in accordance with Ordinance 459.4 for a term of five years, effective July 1, 2016 through June 30, 2021, for an amount not to exceed \$250,000 annually, and;
2. Authorize the Purchasing Agent, in accordance with Ordinance No. 459, as approved by County Counsel, to sign amendments that do not change the substantive terms of the agreement and sign amendments to the compensation provisions that do not exceed ten (10) percent annually.

BACKGROUND:

Summary

Approval of the recommended action will continue the longstanding & beneficial contractual relationship with Foley and Lardner, LLP for five more years to provide legal counsel for the county's medical center and clinics.


 Zareh H. Sarrafian
 Assistant CEO - Health System

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 0	\$ 250,000	\$ 1,250,000	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0	

SOURCE OF FUNDS: Hospital Enterprise Fund - 40050
Budget Adjustment: No
For Fiscal Year: 16/17 to 20/21

C.E.O. RECOMMENDATION:

APPROVE
 BY: *Christopher M. Hans*

County Executive Office Signature Christopher M. Hans

MINUTES OF THE BOARD OF SUPERVISORS

- Positions Added
- Change Order
- A-30
- 4/5 Vote

Prev. Agn. Ref.: 09/22/15 3-3 | District: ALL | Agenda Number:

3-63

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

FORM 11: Approval of the Professional Services Agreement with Foley and Lardner, LLP, without securing competitive bids, to provide Legal Counseling Services through June 30, 2021; All Districts; [\$1,250,000]; Hospital Enterprise Funds

DATE: June 8, 2016

PAGE: Page 2 of 2

BACKGROUND:

Summary (continued)

Foley & Lardner offers specialized services that other firms do not offer, such as Medi-Cal litigation and Medicare regulations, which are critical for RUHS - Medical Center and its Federally Qualified Health Clinics (FQHC). Additionally, Foley and Lardner has a history with Riverside County and the Medical Center going back to 1987, and so has extensive knowledge of Riverside County's hospital operations.

Recent legal areas where Foley and Lardner provided invaluable analysis and advice include: Medicare and Medi-Cal payments and funding issues, strategic planning response to Medi-Cal compliance issues, licensing and certification issues, health care litigation matters, Medi-Cal reimbursement appeals, and legal counseling for affiliations with Loma Linda Hospital as it pertains to Electronic Health Records (EHR) and Clinically Integrated Network (CIN).

Impact on Citizens and Businesses

The hospital, its site-based clinics and community-based clinics serve residents in all five Riverside County supervisorial districts, providing more than 450,000 patient encounters each year. The local economy will reap positive benefits from the presence of a thriving regional health system that is served by a well-paid, educated workforce, and where patients of all incomes can obtain high quality healthcare services that now seek providers in neighboring counties.

Sound legal decisions protect the hospital and its patients.

Contract History and Price Reasonableness

Foley and Lardner has a history with Riverside County and the Medical Center going back to 1987; this has given the legal firm extensive knowledge of this county and its hospital's operations. As the Riverside University Health System continues to improve services, the need for legal advice on special business and health law matters related to operating a university medical center is essential, as well as assistance with issues related to managed care, licensing of prepaid health plans, and capitation payments.

By previous Board action (Item 3-3 of 9/22/15), Foley and Lardner is on an approved list of county vendors.

The Board last approved a five-year contract with Foley and Lardner on May 24, 2011, agenda item 3.42, for an amount not to exceed \$250,000 annually. This new contract requests the same annual amount.

AGREEMENT WITH FOLEY LARDNER, LLP
FOR PROFESSIONAL SERVICES

THIS AGREEMENT is entered into as of the date written below, and is made by and between THE COUNTY OF RIVERSIDE, on behalf of RIVERSIDE UNIVERSITY HEALTH SYSTEM MEDICAL CENTER (RUHS) (hereinafter referred to as "COUNTY") and FOLEY LARDNER, LLP (Law Firm) (hereinafter referred to as "ATTORNEYS"). The Parties hereto agree as follows:

1. **TERM.** This AGREEMENT shall commence on July 1, 2016 and, unless terminated pursuant to Section 6, shall continue in effect through June 30, 2017, with the opportunity to extend pursuant to written amendment for four (4) additional fiscal years in one-year increments or until completion of all projects and resolution of any issues of which ATTORNEYS have been retained, unless sooner pursuant to Section 6 herein.

2. **LEGAL SERVICES.** ATTORNEYS shall serve as legal counsel to the RUHS in connection with the healthcare related matters, subject to prior approval of the County of Riverside Office of County Counsel legal advisor assigned to RUHS (County Counsel).

3. **ASSIGNMENT OF PERSONNEL.** The Supervising Attorney for this AGREEMENT shall be Diane Ung. The Supervising Attorney shall have full authority to act for ATTORNEYS on all matters encompassed by this AGREEMENT and shall be fully responsible for the quality of the work produced.

Upon execution of this AGREEMENT, the Supervising Attorney shall provide to COUNTY the names of other primary professionals (senior partners, junior partners, associates, paralegals, etc.) who will assist in the provision of services under this AGREEMENT. The Supervising Attorney shall, as deemed efficient and appropriate, determine the functions to be performed by each professional and ensure that services are performed by the lowest level of personnel (e.g., junior attorneys, associates and paralegals) qualified to perform the service. COUNTY retains the right to approve or disapprove any and all attorney assignments.

4. **PRIOR APPROVALS.** ATTORNEYS shall obtain the prior written approval of COUNTY before: (i) retaining any consultant; or (ii) commencing travel on behalf of COUNTY outside Riverside County.

5. **PROFESSIONAL CONFLICT OF INTEREST.** ATTORNEYS represent and warrant that no COUNTY employee whose position in COUNTY enables him/her to influence the award of this AGREEMENT or any competing agreement, and no spouse or economic dependent of such employee is, or shall be, employed in any capacity by ATTORNEYS, or shall have any direct or indirect financial interest in this AGREEMENT.

It is possible that some of ATTORNEYS' present or future clients will have disputes with COUNTY during the time that ATTORNEYS are representing the COUNTY. Should a situation arise where a client engages ATTORNEYS in any matter adverse to COUNTY, or in which COUNTY'S interest may be adversely affected, ATTORNEYS will notify COUNTY in writing. Upon receipt of such notice, COUNTY may determine that the conflict can be waived or may

FOLEY LARDNER, LLP

determine that it is in the COUNTY'S best interest to terminate the services of ATTORNEYS. Should COUNTY determine that it is in COUNTY'S best interest to terminate the services of ATTORNEYS, COUNTY will notify ATTORNEYS in writing. ATTORNEYS may then submit any outstanding invoices for payment up to the date of termination .

6. TERMINATION. Services performed under this AGREEMENT may be terminated by COUNTY, in whole or in part, at any time COUNTY deems termination to be in its best interest. COUNTY shall terminate services by delivering to ATTORNEYS a written Termination Notice executed by COUNTY and specifying the extent to which services are terminated and the effective termination date.

7. EFFECT OF TERMINATION. After receiving a Termination Notice, and unless otherwise directed by COUNTY, ATTORNEYS shall: (i) take all steps necessary to stop services on the date and to the extent specified in the Termination Notice; (ii) complete services not terminated by the Termination Notice; and (iii) submit final billing for terminated services within thirty (30) days from the effective termination date.

8. CLOSING REPORT UPON TERMINATION. ATTORNEYS shall deliver a Closing Report to COUNTY immediately after termination of services under Section 6 which shall include, but not be limited to: (i) a brief description of the status of all matters for which services have been provided; and (ii) a discussion of COUNTY's exposure and applicable law, if appropriate.

ATTORNEYS shall give COUNTY copies or originals, as appropriate, of all files and attorney work product relating to all matters for which services have been provided. This includes any computerized index, computer programs and document retrieval system created or used for these matters.

9. COMPENSATION. The maximum compensation pursuant to this Agreement shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000).

10. FEES. The fees for services under this AGREEMENT shall be paid on a monthly, in arrears basis pursuant to the Fee Schedule set forth in Exhibit A, not to exceed the amount set forth in Section 9 herein. ATTORNEYS shall not be obligated to continue to perform services if the fees for such services will exceed the amount in Section 9, and no provision is made to adjust the maximum compensation amount.

11. EXPENSES. COUNTY shall reimburse ATTORNEYS for their actual out-of-pocket expenses, but without any additional costs for having advanced the funds or for expenses generally considered as overhead already reflected in ATTORNEYS' fee.

Reimbursable ordinary expenses shall include, but not be limited to: (i) postage; (ii) courier service; (iii) title reports; (iii) in-house document reproduction; and (iv) long distance phone calls. If any amount charged shall exceed \$250.00 in any one month, prior approval of the COUNTY shall be obtained.

Reimbursable extraordinary expenses shall include charges for which ATTORNEYS have obtained prior approval of COUNTY. Such expenses shall include, but not be limited to:

(i) consultants; (ii) travel outside Riverside County (not to include travel from Los Angeles County); (iii) investigative services and (iv) any expense item exceeding Five Hundred Dollars (\$500.00).

Non-reimbursable expenses shall include, but not be limited to: (i) staff time or overtime for performing secretarial, clerical, or word processing functions; (ii) charges for time spent to provide necessary information for COUNTY'S audits or billing inquiries; (iii) and charges for work performed which had not been authorized by COUNTY.

12. SUPERVISION OF AGREEMENT. The COUNTY Assistant County Executive Officer - Health Systems or his/her designee, in consultation with County Counsel, shall have full authority to act for COUNTY on all matters encompassed by this AGREEMENT.

13. CONFIDENTIALITY. ATTORNEYS shall maintain the confidentiality of all information that it may acquire, arising out of or connected with, its provision of services under this AGREEMENT. The maintenance of confidentiality shall be in accordance with all applicable Federal, State and local laws, regulations, ordinances and directives relating to confidentiality, including the Code of Professional Responsibility. ATTORNEYS shall inform all personnel providing services of the confidentiality provisions of this AGREEMENT. These confidentiality obligations shall survive the termination or expiration of this AGREEMENT.

14. COMMUNICATIONS WITH COUNTY. ATTORNEYS recognize that their relationship with COUNTY and its agents, employees, officers and/or representatives is subject to the attorney-client privilege and that any information acquired during the term of this AGREEMENT from or through COUNTY is confidential and privileged. ATTORNEYS warrant that they shall not disclose or use in any manner whatsoever any of the information obtained from COUNTY and its agents, employees, officers and/or representatives in connection with said relationships or proceedings. ATTORNEYS understand that the Office of County Counsel is the empowered legal representative of COUNTY and ATTORNEYS shall not without specific direction from the Office of County Counsel communicate with, advise or represent COUNTY'S legislative or appointive bodies.

15. INSURANCE. Without limiting or diminishing ATTORNEYS' obligation to indemnify or hold COUNTY harmless, ATTORNEYS shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage during the term of this AGREEMENT.

A. Workers' Compensation:

Statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California, if ATTORNEYS have employees as defined by the State. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of COUNTY, and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

B. Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of ATTORNEYS' performance of its obligations hereunder. Policy shall name COUNTY, its Board of Supervisors, Agencies, Districts, Special Districts, and Departments and their respective elected or appointed officials, directors, officers, employees, agents or representatives as Additional Insureds. The policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this AGREEMENT or be no less than two (2) times the occurrence limit.

C. Vehicle Liability:

If vehicles or mobile equipment are used in the performance of the obligations under this AGREEMENT, then ATTORNEYS shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this AGREEMENT or be no less than two (2) times the occurrence limit. Policy shall name COUNTY, its Board of Supervisors, its Agencies, Districts, Special Districts, and Departments and their respective elected or appointed officials directors, officers, employees, agents or representatives as Additional Insureds.

D. Professional Liability:

ATTORNEYS shall maintain Professional Liability Insurance providing coverage for services included within this AGREEMENT, with a limit of liability of not less than \$1,000,000 per occurrence and \$1,000,000 annual aggregate. If ATTORNEYS' Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this AGREEMENT. Upon termination of this AGREEMENT or the expiration or cancellation of the claims made insurance policy, ATTORNEYS shall purchase at its sole expense either: 1) an Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage from a new insurer with a retroactive date back to the date of, or prior to, the inception of this AGREEMENT; or 3) demonstrate through Certificates of Insurance that ATTORNEYS have maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2) or 3) will continue for a period of five (5) years beyond the termination of this AGREEMENT.

E. General Insurance Provisions - All lines:

1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A:

VIII (A:8) unless such requirements are waived, in writing, by COUNTY'S Risk Manager. If COUNTY'S Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

2) — ATTORNEYS' insurance carrier(s) must declare its insurance self-insured retentions. If such self-insured retentions exceed \$500,000 per occurrence such retentions shall have the prior written consent of COUNTY'S Risk Manager before the commencement of operations under this AGREEMENT.

3) ATTORNEYS shall cause ATTORNEYS' insurance carrier(s) to furnish COUNTY with either: 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by COUNTY'S Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to COUNTY prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this AGREEMENT shall terminate forthwith, unless COUNTY receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverages set forth herein and that the insurance required herein is in full force and effect. ATTORNEYS shall not commence services until the COUNTY has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.

4) It is understood and agreed to by the parties hereto that ATTORNEYS' insurance shall be construed as primary insurance, and COUNTY'S insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

5) If, during the term of this AGREEMENT or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of services which will add additional exposures (such as the use of aircraft, watercraft, cranes, etc.); or, the term of this AGREEMENT, including any extensions thereof, exceeds five (5) years COUNTY reserves the right to adjust the types of insurance required under this AGREEMENT and the monetary limits of liability for the insurance coverages currently required herein, if, in COUNTY Risk Manager's reasonable judgment, the amount or type of insurance carried by ATTORNEYS has become inadequate.

- 6) ATTORNEYS shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this AGREEMENT.
- 7) The insurance requirements contained in this AGREEMENT may be met with a program(s) of self-insurance acceptable to the COUNTY.
- 8) ATTORNEYS agree to notify COUNTY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this AGREEMENT.

16. INDEMNIFICATION. ATTORNEYS shall indemnify and hold harmless COUNTY, its Board of Supervisors, Agencies, Districts, Special Districts and Departments and their respective elected and appointed officials, directors, officers, employees, agents and representatives (hereinafter referred to as "Indemnified Parties") from any liability whatsoever including but not limited to, property damage, bodily injury, or death, based or asserted upon any services of ATTORNEYS, its officers, employees, subcontractors, agents or representatives caused by ATTORNEYS' negligence or willful misconduct in its performance under this AGREEMENT. ATTORNEYS shall defend, at its sole expense, and pay all costs and fees including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards, on behalf of the Indemnified Parties in any claim or action based upon such liability.

With respect to any action or claim subject to indemnification herein by ATTORNEYS, ATTORNEYS shall, at its sole cost, have the right to use counsel of its own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes ATTORNEYS' indemnification to Indemnified Parties as set forth herein.

ATTORNEYS' obligation hereunder shall be satisfied when ATTORNEYS have provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.

The specified insurance limits required in this AGREEMENT shall in no way limit or circumscribe ATTORNEYS' obligations to indemnify and hold harmless the Indemnified Parties herein from third party claims.

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17. NOTICES. All notices and required reports shall be written and hand-delivered or mailed by first class, postage prepaid, addressed to COUNTY or ATTORNEYS at the addresses below, or at any other address COUNTY or ATTORNEYS shall provide in writing to each other:

If to COUNTY:

Riverside University Health System – Medical Center
26520 Cactus Avenue
Moreno Valley, CA 92555

With copy to:

County Counsel
3960 Orange Street, Suite 500
Riverside, CA 92501

If to ATTORNEYS:

Diane Ung, Partner
FOLEY LARDNER, LLP
555 S. Flower Street, Suite 3500
Los Angeles, CA 90071-2411

18. ASSIGNMENT. No part of this AGREEMENT or any right or obligation arising from it is assignable without the written consent of COUNTY. Any attempt by ATTORNEYS to assign or subcontract services relating to this AGREEMENT without the consent of COUNTY shall constitute a material breach of this AGREEMENT. However, ATTORNEYS may retain consultants and experts as ATTORNEYS deem appropriate after receiving the written approval of COUNTY.

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19. COMPLETE AGREEMENT. This AGREEMENT, including exhibit A and the Addendum entitled HIPAA Business Associate Agreement shall constitute the complete and exclusive statement of understanding between COUNTY and ATTORNEYS which supersedes all previous written or oral agreements, and all prior communications between COUNTY and ATTORNEYS relating to the subject matter of this AGREEMENT.

Dated: _____

COUNTY OF RIVERSIDE

ATTEST:
Kecia Harper-Ihem
CLERK OF THE BOARD

By: _____
John J. Benoit
Chairperson, Board of Supervisors

By: _____
Deputy

FOLEY & LARDNER, LLP

By:  _____
Diane Ung, Partner

APPROVED AS TO FORM:
Gregory P. Priamos
COUNTY COUNSEL

By:  _____
Anita C. Willis, Assistant County Counsel

EXHIBIT A

**Foley & Lardner LLP / Riverside County
Agreement for Legal Services
Hourly Rates for Legal Personnel**

July 1, 2016 – June 30, 2017

<u>PERSONNEL</u>	<u>TYPE</u>	<u>OFFICE</u>	<u>HOURLY RATE</u>
Diane Ung	Partner	LA	\$650
Michael Overly	Partner	LA	\$845
Lori Pelliccioni	Partner	LA	\$675
Geoffrey Raux	Partner	Boston	\$555
Richard Rifembark	Partner	LA	\$615
Donald Romano	Partner	D.C.	\$695
Richard Seiden	Partner	LA	\$730
Judy Waltz	Partner	SF	\$735
Elizabeth Elson	Of Counsel	LA	\$610
H. Holden Brooks	Sr. Counsel	MLW	\$555
M. Leeann Habte	Sr. Counsel	LA	\$555
Anil Shankar	Sr. Counsel	LA	\$555
Adam Hepworth	Associate	LA	\$395
Claire Marblestone	Associate	LA	\$440

OTHER PARTNERS

(All Offices) \$500 -- \$845

OTHER OF COUNSEL

(All Offices) \$595 -- \$750

SENIOR COUNSEL

(All Offices) \$465 -- \$595

ASSOCIATES

(All Offices) \$300 -- \$580

PARALEGALS

(All Offices) \$275 -- \$325

SUMMER ASSOCIATES

(All Offices) \$250

Rates reflect discount from the firm's 2016-17 published rates.

HIPAA Business Associate Agreement

Addendum to Contract

Between the County of Riverside and Foley & Lardner, LLP

This HIPAA Business Associate Agreement (the "Addendum") supplements, and is made part of the Legal Service Agreement with Foley & Lardner, LLP (the "Underlying Agreement") between the County of Riverside ("County") and Foley & Lardner, LLP ("Contractor") and shall be effective as of the date the Underlying Agreement is approved by both Parties (the "Effective Date").

RECITALS

WHEREAS, County and Contractor entered into the Underlying Agreement pursuant to which the Contractor provides services to County, and in conjunction with the provision of such services certain protected health information ("PHI") and/or certain electronic protected health information ("ePHI") may be created by or made available to Contractor for the purposes of carrying out its obligations under the Underlying Agreement; and,

WHEREAS, the provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Public Law 104-191 enacted August 21, 1996, and the Health Information Technology for Economic and Clinical Health Act ("HITECH") of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 enacted February 17, 2009, and the laws and regulations promulgated subsequent thereto, as may be amended from time to time, are applicable to the protection of any use or disclosure of PHI and/or ePHI pursuant to the Underlying Agreement; and,

WHEREAS, County is a covered entity, as defined in the Privacy Rule; and,

WHEREAS, to the extent County discloses PHI and/or ePHI to Contractor or Contractor creates, receives, maintains, transmits, or has access to PHI and/or ePHI of County, Contractor is a business associate, as defined in the Privacy Rule; and,

WHEREAS, pursuant to 42 USC §17931 and §17934, certain provisions of the Security Rule and Privacy Rule apply to a business associate of a covered entity in the same manner that they apply to the covered entity, the additional security and privacy requirements of HITECH are applicable to business associates and must be incorporated into the business associate agreement, and a business associate is liable for civil and criminal penalties for failure to comply with these security and/or privacy provisions; and,

WHEREAS, the parties mutually agree that any use or disclosure of PHI and/or ePHI must be in compliance with the Privacy Rule, Security Rule, HIPAA, HITECH and any other applicable law; and,

WHEREAS, the parties intend to enter into this Addendum to address the requirements and obligations set forth in the Privacy Rule, Security Rule, HITECH and HIPAA as they apply to Contractor as a business associate of County, including the establishment of permitted and required uses and disclosures of PHI and/or ePHI created or received by Contractor during the course of performing functions, services and activities on behalf of County, and appropriate limitations and conditions on such uses and disclosures;

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

1. **Definitions.** Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in HITECH, HIPAA, Security Rule and/or Privacy Rule, as may be amended from time to time.

A. "Breach" when used in connection with PHI means the acquisition, access, use or disclosure of PHI in a manner not permitted under subpart E of the Privacy Rule which compromises the security or privacy of the PHI, and shall have the meaning given such term in 45 CFR §164.402.

(1) Except as provided below in Paragraph (2) of this definition, acquisition, access, use, or disclosure of PHI in a manner not permitted by subpart E of the Privacy Rule is presumed to be a breach unless Contractor demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following four factors:

- (a) The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
- (b) The unauthorized person who used the PHI or to whom the disclosure was made;
- (c) Whether the PHI was actually acquired or viewed; and
- (d) The extent to which the risk to the PHI has been mitigated.

(2) Breach excludes:

- (a) Any unintentional acquisition, access or use of PHI by a workforce member or person acting under the authority of a covered entity or business associate, if such acquisition, access or use was made in good faith and within the scope of authority and does not result in

further use or disclosure in a manner not permitted under subpart E of the Privacy Rule.

- (b) Any inadvertent disclosure by a person who is authorized to access PHI at a covered entity or business associate to another person authorized to access PHI at the same covered entity, business associate, or organized health care arrangement in which County participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted by subpart E of the Privacy Rule.
 - (c) A disclosure of PHI where a covered entity or business associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.
- B. "Business associate" has the meaning given such term in 45 CFR §164.501, including but not limited to a subcontractor that creates, receives, maintains, transmits or accesses PHI on behalf of the business associate.
 - C. "Data aggregation" has the meaning given such term in 45 CFR §164.501.
 - D. "Designated record set" as defined in 45 CFR §164.501 means a group of records maintained by or for a covered entity that may include: the medical records and billing records about individuals maintained by or for a covered health care provider; the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or, used, in whole or in part, by or for the covered entity to make decisions about individuals.
 - E. "Electronic protected health information" ("ePHI") as defined in 45 CFR §160.103 means protected health information transmitted by or maintained in electronic media.
 - F. "Electronic health record" means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff, and shall have the meaning given such term in 42 USC §17921(5).
 - G. "Health care operations" has the meaning given such term in 45 CFR §164.501.
 - H. "Individual" as defined in 45 CFR §160.103 means the person who is the subject of protected health information.

- I. "Person" as defined in 45 CFR §160.103 means a natural person, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private.
- J. "Privacy Rule" means the HIPAA regulations codified at 45 CFR Parts 160 and 164, Subparts A and E.
- K. "Protected health information" ("PHI") has the meaning given such term in 45 CFR §160.103, which includes ePHI.
- L. "Required by law" has the meaning given such term in 45 CFR §164.103.
- M. "Secretary" means the Secretary of the U.S. Department of Health and Human Services ("HHS").
- N. "Security incident" as defined in 45 CFR §164.304 means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- O. "Security Rule" means the HIPAA Regulations codified at 45 CFR Parts 160 and 164, Subparts A and C.
- P. "Subcontractor" as defined in 45 CFR §160.103 means a person to whom a business associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of such business associate.
- Q. "Unsecured protected health information" and "unsecured PHI" as defined in 45 CFR §164.402 means PHI not rendered unusable, unreadable, or indecipherable to unauthorized persons through use of a technology or methodology specified by the Secretary in the guidance issued under 42 USC §17932(h)(2).

2. **Scope of Use and Disclosure by Contractor of County's PHI and/or ePHI.**

- A. Except as otherwise provided in this Addendum, Contractor may use, disclose, or access PHI and/or ePHI as necessary to perform any and all obligations of Contractor under the Underlying Agreement or to perform functions, activities or services for, or on behalf of, County as specified in this Addendum, if such use or disclosure does not violate HIPAA, HITECH, the Privacy Rule and/or Security Rule.
- B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Addendum or required by law, in accordance with 45 CFR §164.504(e)(2), Contractor may:

- (1) Use PHI and/or ePHI if necessary for Contractor's proper management and administration and to carry out its legal responsibilities; and,
- (2) Disclose PHI and/or ePHI for the purpose of Contractor's proper management and administration or to carry out its legal responsibilities, only if:
 - (a) The disclosure is required by law; or,
 - (b) Contractor obtains reasonable assurances, in writing, from the person to whom Contractor will disclose such PHI and/or ePHI that the person will:
 - (i) Hold such PHI and/or ePHI in confidence and use or further disclose it only for the purpose for which Contractor disclosed it to the person, or as required by law; and,
 - (ii) Notify Contractor of any instances of which it becomes aware in which the confidentiality of the information has been breached; and,
- (3) Use PHI to provide data aggregation services relating to the health care operations of County pursuant to the Underlying Agreement or as requested by County; and,
- (4) De-identify all PHI and/or ePHI of County received by Contractor under this Addendum provided that the de-identification conforms to the requirements of the Privacy Rule and/or Security Rule and does not preclude timely payment and/or claims processing and receipt.

C. Notwithstanding the foregoing, in any instance where applicable state and/or federal laws and/or regulations are more stringent in their requirements than the provisions of HIPAA, including, but not limited to, prohibiting disclosure of mental health and/or substance abuse records, the applicable state and/or federal laws and/or regulations shall control the disclosure of records.

3. **Prohibited Uses and Disclosures.**

A. Contractor may neither use, disclose, nor access PHI and/or ePHI in a manner not authorized by the Underlying Agreement or this Addendum without patient authorization or de-identification of the PHI and/or ePHI and as authorized in writing from County.

- B. Contractor may neither use, disclose, nor access PHI and/or ePHI it receives from County or from another business associate of County, except as permitted or required by this Addendum, or as required by law.
- C. Contractor agrees not to make any disclosure of PHI and/or ePHI that County would be prohibited from making.
- D. Contractor shall not use or disclose PHI for any purpose prohibited by the Privacy Rule, Security Rule, HIPAA and/or HITECH, including, but not limited to 42 USC §17935 and §17936. Contractor agrees:
 - (1) Not to use or disclose PHI for fundraising, unless pursuant to the Underlying Agreement and only if permitted by and in compliance with the requirements of 45 CFR §164.514(f) or 45 CFR §164.508;
 - (2) Not to use or disclose PHI for marketing, as defined in 45 CFR §164.501, unless pursuant to the Underlying Agreement and only if permitted by and in compliance with the requirements of 45 CFR §164.508(a)(3);
 - (3) Not to disclose PHI, except as otherwise required by law, to a health plan for purposes of carrying out payment or health care operations, if the individual has requested this restriction pursuant to 42 USC §17935(a) and 45 CFR §164.522, and has paid out of pocket in full for the health care item or service to which the PHI solely relates; and,
 - (4) Not to receive, directly or indirectly, remuneration in exchange for PHI, or engage in any act that would constitute a sale of PHI, as defined in 45 CFR §164.502(a)(5)(ii), unless permitted by the Underlying Agreement and in compliance with the requirements of a valid authorization under 45 CFR §164.508(a)(4). This prohibition shall not apply to payment by County to Contractor for services provided pursuant to the Underlying Agreement.

4. **Obligations of County.**

- A. County agrees to make its best efforts to notify Contractor promptly in writing of any restrictions on the use or disclosure of PHI and/or ePHI agreed to by County that may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Addendum.
- B. County agrees to make its best efforts to promptly notify Contractor in writing of any changes in, or revocation of, permission by any individual to use or disclose PHI and/or ePHI, if such changes or revocation may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Addendum.

- C. County agrees to make its best efforts to promptly notify Contractor in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect Contractor's use or disclosure of PHI and/or ePHI.
 - D. County agrees not to request Contractor to use or disclose PHI and/or ePHI in any manner that would not be permissible under HITECH, HIPAA, the Privacy Rule, and/or Security Rule.
 - E. County agrees to obtain any authorizations necessary for the use or disclosure of PHI and/or ePHI, so that Contractor can perform its obligations under this Addendum and/or Underlying Agreement.
5. **Obligations of Contractor.** In connection with the use or disclosure of PHI and/or ePHI, Contractor agrees to:
- A. Use or disclose PHI only if such use or disclosure complies with each applicable requirement of 45 CFR §164.504(e). Contractor shall also comply with the additional privacy requirements that are applicable to covered entities in HITECH, as may be amended from time to time.
 - B. Not use or further disclose PHI and/or ePHI other than as permitted or required by this Addendum or as required by law. Contractor shall promptly notify County if Contractor is required by law to disclose PHI and/or ePHI.
 - C. Use appropriate safeguards and comply, where applicable, with the Security Rule with respect to ePHI, to prevent use or disclosure of PHI and/or ePHI other than as provided for by this Addendum.
 - D. Mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI and/or ePHI by Contractor in violation of this Addendum.
 - E. Report to County any use or disclosure of PHI and/or ePHI not provided for by this Addendum or otherwise in violation of HITECH, HIPAA, the Privacy Rule, and/or Security Rule of which Contractor becomes aware, including breaches of unsecured PHI as required by 45 CFR §164.410.
 - F. In accordance with 45 CFR §164.502(e)(1)(ii), require that any subcontractors that create, receive, maintain, transmit or access PHI on behalf of the Contractor agree through contract to the same restrictions and conditions that apply to Contractor with respect to such PHI and/or ePHI, including the restrictions and conditions pursuant to this Addendum.

- G. Make available to County or the Secretary, in the time and manner designated by County or Secretary, Contractor's internal practices, books and records relating to the use, disclosure and privacy protection of PHI received from County, or created or received by Contractor on behalf of County, for purposes of determining, investigating or auditing Contractor's and/or County's compliance with the Privacy Rule.
- H. Request, use or disclose only the minimum amount of PHI necessary to accomplish the intended purpose of the request, use or disclosure in accordance with 42 USC §17935(b) and 45 CFR §164.502(b)(1).
- I. Comply with requirements of satisfactory assurances under 45 CFR §164.512 relating to notice or qualified protective order in response to a third party's subpoena, discovery request, or other lawful process for the disclosure of PHI, which Contractor shall promptly notify County upon Contractor's receipt of such request from a third party.
- J. Not require an individual to provide patient authorization for use or disclosure of PHI as a condition for treatment, payment, enrollment in any health plan (including the health plan administered by County), or eligibility of benefits, unless otherwise excepted under 45 CFR §164.508(b)(4) and authorized in writing by County.
- K. Use appropriate administrative, technical and physical safeguards to prevent inappropriate use, disclosure, or access of PHI and/or ePHI.
- L. Obtain and maintain knowledge of applicable laws and regulations related to HIPAA and HITECH, as may be amended from time to time.
- M. Comply with the requirements of the Privacy Rule that apply to the County to the extent Contractor is to carry out County's obligations under the Privacy Rule.
- N. Take reasonable steps to cure or end any pattern of activity or practice of its subcontractor of which Contractor becomes aware that constitute a material breach or violation of the subcontractor's obligations under the business associate contract with Contractor, and if such steps are unsuccessful, Contractor agrees to terminate its contract with the subcontractor if feasible.

6. **Access to PHI, Amendment and Disclosure Accounting.** Contractor agrees to:

- A. **Access to PHI, including ePHI.** Provide access to PHI, including ePHI if maintained electronically, in a designated record set to County or an individual as directed by County, within five (5) days of request from County, to satisfy the requirements of 45 CFR §164.524.

- B. **Amendment of PHI.** Make PHI available for amendment and incorporate amendments to PHI in a designated record set County directs or agrees to at the request of an individual, within fifteen (15) days of receiving a written request from County, in accordance with 45 CFR §164.526.
- C. **Accounting of disclosures of PHI and electronic health record.** Assist County to fulfill its obligations to provide accounting of disclosures of PHI under 45 CFR §164.528 and, where applicable, electronic health records under 42 USC §17935(c) if Contractor uses or maintains electronic health records. Contractor shall:
 - (1) Document such disclosures of PHI and/or electronic health records, and information related to such disclosures, as would be required for County to respond to a request by an individual for an accounting of disclosures of PHI and/or electronic health record in accordance with 45 CFR §164.528.
 - (2) Within fifteen (15) days of receiving a written request from County, provide to County or any individual as directed by County information collected in accordance with this section to permit County to respond to a request by an individual for an accounting of disclosures of PHI and/or electronic health record.
 - (3) Make available for County information required by this Section 6.C for six (6) years preceding the individual's request for accounting of disclosures of PHI, and for three (3) years preceding the individual's request for accounting of disclosures of electronic health record.

7. **Security of ePHI.** In the event County discloses ePHI to Contractor or Contractor needs to create, receive, maintain, transmit or have access to County ePHI, in accordance with 42 USC §17931 and 45 CFR §164.314(a)(2)(i), and §164.306, Contractor shall:

- A. Comply with the applicable requirements of the Security Rule, and implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI that Contractor creates, receives, maintains, or transmits on behalf of County in accordance with 45 CFR §164.308, §164.310, and §164.312;
- B. Comply with each of the requirements of 45 CFR §164.316 relating to the implementation of policies, procedures and documentation requirements with respect to ePHI;
- C. Protect against any reasonably anticipated threats or hazards to the security or integrity of ePHI;

- D. Protect against any reasonably anticipated uses or disclosures of ePHI that are not permitted or required under the Privacy Rule;
- E. Ensure compliance with the Security Rule by Contractor's workforce;
- F. In accordance with 45 CFR §164.308(b)(2), require that any subcontractors that create, receive, maintain, transmit, or access ePHI on behalf of Contractor agree through contract to the same restrictions and requirements contained in this Addendum and comply with the applicable requirements of the Security Rule;
- G. Report to County any security incident of which Contractor becomes aware, including breaches of unsecured PHI as required by 45 CFR §164.410; and,
- H. Comply with any additional security requirements that are applicable to covered entities in Title 42 (Public Health and Welfare) of the United States Code, as may be amended from time to time, including but not limited to HITECH.

8. **Breach of Unsecured PHI.** In the case of breach of unsecured PHI, Contractor shall comply with the applicable provisions of 42 USC §17932 and 45 CFR Part 164, Subpart D, including but not limited to 45 CFR §164.410.

A. **Discovery and notification.** Following the discovery of a breach of unsecured PHI, Contractor shall notify County in writing of such breach without unreasonable delay and in no case later than 60 calendar days after discovery of a breach, except as provided in 45 CFR §164.412.

(1) **Breaches treated as discovered.** A breach is treated as discovered by Contractor as of the first day on which such breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor, which includes any person, other than the person committing the breach, who is an employee, officer, or other agent of Contractor (determined in accordance with the federal common law of agency).

(2) **Content of notification.** The written notification to County relating to breach of unsecured PHI shall include, to the extent possible, the following information if known (or can be reasonably obtained) by Contractor:

- (a) The identification of each individual whose unsecured PHI has been, or is reasonably believed by Contractor to have been accessed, acquired, used or disclosed during the breach;
- (b) A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known;

- (c) A description of the types of unsecured PHI involved in the breach, such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved;
- (d) Any steps individuals should take to protect themselves from potential harm resulting from the breach;
- (e) A brief description of what Contractor is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and,
- (f) Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.

- B. **Cooperation.** With respect to any breach of unsecured PHI reported by Contractor, Contractor shall cooperate with County and shall provide County with any information requested by County to enable County to fulfill in a timely manner its own reporting and notification obligations, including but not limited to providing notice to individuals, prominent media outlets and the Secretary in accordance with 42 USC §17932 and 45 CFR §164.404, §164.406 and §164.408. County agrees to make reasonable efforts to provide Contractor with a reasonable opportunity to review and provide comment upon any notifications to individuals, media outlets, the Secretary, or state agencies associated with such breach prior to their release.
- C. **Breach log.** To the extent breach of unsecured PHI involves less than 500 individuals, Contractor shall maintain a log or other documentation of such breaches and provide such log or other documentation on an annual basis to County not later than fifteen (15) days after the end of each calendar year for submission to the Secretary.
- D. **Delay of notification authorized by law enforcement.** If Contractor delays notification of breach of unsecured PHI pursuant to a law enforcement official's statement that required notification, notice or posting would impede a criminal investigation or cause damage to national security, Contractor shall maintain documentation sufficient to demonstrate its compliance with the requirements of 45 CFR §164.412.
- E. **Payment of costs.** With respect to any breach of unsecured PHI caused solely by the Contractor's failure to comply with one or more of its obligations under this Addendum and/or the provisions of HITECH, HIPAA, the Privacy Rule or the

Security Rule, Contractor agrees to pay reasonable costs and expenses attributable to the acts or omissions of Contractor, associated with providing all legally required notifications to individuals, media outlets, and the Secretary. This provision shall not be construed to limit or diminish Contractor's obligations to indemnify, defend and hold harmless County under Section 9 of this Addendum.

- F. **Documentation.** Pursuant to 45 CFR §164.414(b), in the event Contractor's use or disclosure of PHI and/or ePHI violates the Privacy Rule, Contractor shall maintain documentation sufficient to demonstrate that all notifications were made by Contractor as required by 45 CFR Part 164, Subpart D, or that such use or disclosure did not constitute a breach, including Contractor's completed risk assessment and investigation documentation.
- G. **Additional State Reporting Requirements.** The parties agree that this Section 8.G applies only if and/or when County, in its capacity as a licensed clinic, health facility, home health agency, or hospice, is required to report unlawful or unauthorized access, use, or disclosure of medical information under the more stringent requirements of California Health & Safety Code §1280.15. For purposes of this Section 8.G, "unauthorized" has the meaning given such term in California Health & Safety Code §1280.15(j)(2).
- (1) Contractor agrees to assist County to fulfill its reporting obligations to affected patients and to the California Department of Public Health ("CDPH") in a timely manner under the California Health & Safety Code §1280.15.
 - (2) Contractor agrees to report to County any unlawful or unauthorized access, use, or disclosure of patient's medical information without unreasonable delay and no later than five (5) business days after Contractor detects such incident. Contractor further agrees such report shall be made in writing, and shall include substantially the same types of information listed above in Section 8.A.2 (Content of Notification) as applicable to the unlawful or unauthorized access, use, or disclosure as defined above in this section, understanding and acknowledging that the term "breach" as used in Section 8.A.2 does not apply to California Health & Safety Code §1280.15.

9. **Hold Harmless/Indemnification.**

- A. Contractor agrees to indemnify and hold harmless County, all Agencies, Districts, Special Districts and Departments of County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability whatsoever, based or asserted upon any services

of Contractor, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Addendum that are directly attributable to the acts or omission of Contractor, including but not limited to property damage, bodily injury, death, or any other element of any kind or nature whatsoever arising from the performance of Contractor, its officers, agents, employees, subcontractors, agents or representatives from this Addendum. Contractor shall defend, at its sole expense, all costs and fees, including but not limited to attorney fees, cost of investigation, defense and settlements or awards, of County, all Agencies, Districts, Special Districts and Departments of County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents or representatives in any claim or action based upon such alleged acts or omissions.

- B. With respect to any action or claim subject to indemnification herein by Contractor, Contractor shall, at their sole cost, have the right to use counsel of their choice, subject to the approval of County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Contractor's indemnification to County as set forth herein. Contractor's obligation to defend, indemnify and hold harmless County shall be subject to County having given Contractor written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at Contractor's expense, for the defense or settlement thereof. Contractor's obligation hereunder shall be satisfied when Contractor has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.
- C. The specified insurance limits required in the Underlying Agreement of this Addendum shall in no way limit or circumscribe Contractor's obligations to indemnify and hold harmless County herein from third party claims arising from issues of this Addendum.
- D. In the event there is conflict between this clause and California Civil Code §2782, this clause shall be interpreted to comply with Civil Code §2782. Such interpretation shall not relieve the Contractor from indemnifying County to the fullest extent allowed by law.
- E. In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Addendum, this indemnification shall only apply to the subject issues included within this Addendum.

10. **Term.** This Addendum shall commence upon the Effective Date and shall terminate when all PHI and/or ePHI provided by County to Contractor, or created or received by Contractor on behalf of County, is destroyed or returned to County, or, if it is infeasible to return or destroy PHI and/ePHI, protections are extended to such information, in accordance with section 11.B of this Addendum.

11. **Termination.**

A. **Termination for Breach of Contract.** A breach of any provision of this Addendum by either party shall constitute a material breach of the Underlying Agreement and will provide grounds for terminating this Addendum and the Underlying Agreement with or without an opportunity to cure the breach, notwithstanding any provision in the Underlying Agreement to the contrary. Either party, upon written notice to the other party describing the breach, may take any of the following actions:

- (1) Terminate the Underlying Agreement and this Addendum, effective immediately, if the other party breaches a material provision of this Addendum.
- (2) Provide the other party with an opportunity to cure the alleged material breach and in the event the other party fails to cure the breach to the satisfaction of the non-breaching party in a timely manner, the non-breaching party has the right to immediately terminate the Underlying Agreement and this Addendum.
- (3) If termination of the Underlying Agreement is not feasible, the breaching party, upon the request of the non-breaching party, shall implement, at its own expense, a plan to cure the breach and report regularly on its compliance with such plan to the non-breaching party.

B. **Effect of Termination.**

- (1) Upon termination of this Addendum, for any reason, Contractor shall return or, if agreed to in writing by County, destroy all PHI and/or ePHI received from County, or created or received by the Contractor on behalf of County, and, in the event of destruction, Contractor shall certify such destruction, in writing, to County. This provision shall apply to all PHI and/or ePHI which are in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of PHI and/or ePHI, except as provided below in paragraph (2) of this section.

- (2) In the event that Contractor determines that returning or destroying the PHI and/or ePHI is not feasible, Contractor shall provide written notification to County of the conditions that make such return or destruction not feasible. Upon determination by Contractor that return or destruction of PHI and/or ePHI is not feasible, Contractor shall extend the protections of this Addendum to such PHI and/or ePHI and limit further uses and disclosures of such PHI and/or ePHI to those purposes which make the return or destruction not feasible, for so long as Contractor maintains such PHI and/or ePHI.
- (3) Contractor and County agree that this section constitutes notice that, except in certain limited circumstances, such as in the event of the termination of the attorney-client relationship between County and Contractor, it will not be feasible for Contractor to return to County or destroy County's PHI held by Contractor and its agents or subcontractors. To the extent that Contractor retains such information, it shall extend the protections of this Addendum to such PHI and/or ePHI limit further uses and disclosures of such PHI and/or ePHI to those purposes which make the return or destruction not feasible, for so long as Contractor maintains such PHI and/or ePHI.

12. **General Provisions.**

- A. **Retention Period.** Whenever Contractor is required to document or maintain documentation pursuant to the terms of this Addendum, Contractor shall retain such documentation for 6 years from the date of its creation or as otherwise prescribed by law, whichever is later.
- B. **Amendment.** The parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for County to comply with HITECH, the Privacy Rule, Security Rule, and HIPAA generally.
- C. **Survival.** The obligations of Contractor under Sections 3, 5, 6, 7, 8, 9, 11.B and 12.A of this Addendum shall survive the termination or expiration of this Addendum.
- D. **Regulatory and Statutory References.** A reference in this Addendum to a section in HITECH, HIPAA, the Privacy Rule and/or Security Rule means the section(s) as in effect or as amended.
- E. **Conflicts.** The provisions of this Addendum shall prevail over any provisions in the Underlying Agreement that conflict or appear inconsistent with any provision in this Addendum.

F. Interpretation of Addendum.

- (1) This Addendum shall be construed to be part of the Underlying Agreement as one document. The purpose is to supplement the Underlying Agreement to include the requirements of the Privacy Rule, Security Rule, HIPAA and HITECH.
- (2) Any ambiguity between this Addendum and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, Security Rule, HIPAA and HITECH generally.

G. Notices to County. All notifications required to be given by Contractor to County pursuant to the terms of this Addendum shall be made in writing and delivered to the County both by fax and to both of the addresses listed below by either registered or certified mail return receipt requested or guaranteed overnight mail with tracing capability, or at such other address as County may hereafter designate. All notices to County provided by Contractor pursuant to this Section shall be deemed given or made when received by County.

County HIPAA Privacy Officer: HIPAA Privacy Manager
County HIPAA Privacy Officer Address: P.O. Box 1569
Riverside, CA 92502
County HIPAA Privacy Officer Fax: (951) 955-HIPAA or (951) 955-4472
County Departmental Officer: Jan Remm
County Departmental Officer Title: Assistant Hospital Administrator
County Department Address: 26520 Cactus Ave., Moreno Valley, CA 92555
County Department Fax Number: _____

H. Notices to Contractor. All notifications required to be given by County to Contractor pursuant to the terms of this Addendum shall be made in writing and delivered to the County both by fax and to the address listed below by either registered or certified mail return receipt requested or guaranteed overnight mail with tracing capability, or at such other address as Contractor may hereafter designate. All notices to Contractor provided by County pursuant to this Section shall be deemed given or made when received by Contractor.

Foley & Lardner, LLP
321 North Clark Street
Suite 2800
Chicago, IL 60654-5313

Attn: Beth Chiaiese
Phone: 312-832-4318
Facsimile: 312-832-4700

I. **Counterparts.** This Agreement may be executed electronically and in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

J. **Attorney-Client Privilege.** Notwithstanding anything to the contrary contained herein, County and Contractor, recognizing that Contractor serves as an attorney for County, hereby agree that nothing contained in this Addendum:

(1) Waives the attorney-client, work-product, or any other privilege that may be invoked by, or is applicable to, either County or Contractor; or

(2) Imposes any duties or obligations on Contractor that are inconsistent with Contractor's duties and obligations to County as a client of Contractor, including, without limitation, any obligation of confidentiality or other obligation imposed on Contractor under ethical rules applicable to the attorney-client relationship between Contractor and County; or

It is the intent of Contractor and County that nothing contained in this Addendum shall impact any aspect of the attorney-client relationship between the County and Contractor that does not relate to County PHI.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of _____ 2015.

COUNTY OF RIVERSIDE

By: _____

Printed Name: Zareh Sarrafian

Title: CEO

FOLEY & LARDNER, LLP

By: Diane Ung 1/27/2015

Printed Name: Diane Ung

Title: Partner