

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

607



FROM: Riverside County Regional Medical Center (RCRMC)

SUBMITTAL DATE:
July 31, 2012

SUBJECT: Professional Services Agreement with Vache Chakmakian, M.D.

RECOMMENDED MOTION: Move that the Board of Supervisors:

1. Ratify and authorize the Purchasing Agent to sign the Contract Agreement with Vache Chakmakian, M.D. without securing competitive bids; in accordance with Board Policy A-18 and Ordinance 459.4 to provide physician services for RCRMC's Detention Health effective July 1, 2012, with the option to renew annually for four additional years not to exceed \$35,000 annually.
2. Authorize the Purchasing Agent, in accordance with Ordinance No. 459, to exercise renewal options, based on the availability of fiscal funding, and to sign amendments that do not change the substantive terms of the agreement, including amendments to the compensation not to exceed ten percent above the annual aggregate amount of the contract.

(cont'd on page 2)

Douglas D. Bagley

Douglas D. Bagley, Hospital Director

FINANCIAL DATA	Current F.Y. Total Cost:	\$35,000	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2012/2013

SOURCE OF FUNDS: 100% Hospital Enterprise Funds	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: *Debra Cournoyer*
Debra Cournoyer

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Stone, seconded by Supervisor Benoit and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Stone, Benoit and Ashley
Nays: None
Absent: None
Date: July 31, 2012
xc: RCRMC, Purchasing

Kecia Harper-Ihem
Clerk of the Board
By: *Kecia Harper-Ihem*
Deputy

Prev. Agn. Ref.:

District: All

Agenda Number:

3.53

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

FORM APPROVED BY COUNTY COUNSEL
 BY: *NEAL R. KIPNIS* 7/31/12 DATE
 Departmental Concurrence
 Purchasing: *Mark Seller*, Assistant Director
 Policy Consent
 Policy Consent
 Dep't Recomm.:
 Per Exec. Ofc.:

BOARD OF SUPERVISORS

Form 11

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BACKGROUND:

In accordance with Board Policy A-18 and in accordance with Ordinance 459.4; the agreement for Vache Chakmakian, M.D. was developed without securing competitive bids for professional medical services in the amount not to exceed \$35,000 on an annual basis to provide physical exams and medical evaluations to patients of detention health services. RCRMC Detention Health requires that professional medical services be provided for sick call, medical evaluations and routine medical screenings to all patients held in the detention health centers throughout Riverside County. With limited full time physicians within the department covering sick call services, there is a critical need to request contracted physicians to assist in the provision of sick call services especially in the Blythe area. Dr. Vache Chakmakian has agreed to provide coverage at the Blythe location, as requested until additional recruitment and hiring of physicians could be completed by the hospital.

The hospital continues to process hiring full time physicians for the detention health unit. Once RCRMC establishes permanent physicians, it will alleviate the need for contracted physicians to provide this needed service.

Therefore, the Hospital Director requests that the Board approve the abovementioned motions.

FINANCIAL IMPACT:

100% Hospital Funds

REVIEW/APPROVAL:

County Purchasing

County Counsel

DB:ns

Date: 06/22/12

From: Douglas Bagley, Hospital Director Department/Agency: RCRMC

To: Board of Supervisors/Purchasing Agent

Via: Purchasing Agent

Subject: Sole Source Procurement; Request for Detention Health Physician-
Vache Chakmakian, MD

The below information is provided in support of my Department requesting approval for a sole source. Outside of a duly declared emergency, the time to develop a statement of work or specifications is not in itself justification for sole source.

1. **Supply/Service being requested:** Detention Health Physician
2. **Supplier being requested:** Dr. Vache Chakmakian
3. **Alternative suppliers that can or might be able to provide supply/service:** None identified capable and interested in providing services in the remote area of Blythe (desert area)
4. **Extent of market search conducted:** Consultation with physicians listed with Human Resources.
5. **Unique features of the supply/service being requested from this supplier, which no alternative supplier can provide:** In accordance with Board Policy A-18 and in accordance with Ordinance 459.4; the agreement for Vache Chakmakian, M.D. was developed without securing competitive bids for professional medical services. Although the medical services being provided may not be unique, the area where the service is required is remote-- located in Blythe, and Dr. Chakmakian was the only physician interested in providing the service for the period needed.
6. **Reasons why my department requires these unique features and what benefit will accrue to the county:** RCRMC Detention Health requires that professional medical services be provided for sick call, medical evaluations and routine medical screenings to all patients held in the detention health centers throughout Riverside County, which includes the jails in Blythe (desert area).
7. **Price Reasonableness including purchase price and any ongoing maintenance or ancillary costs from the supplier:** The hourly rate is equal to the physicians' rates with detention health's physicians providing the same service with juvenile hall at \$100/hour.
8. **Does moving forward on this product or service further obligate the county to future similar contractual arrangements or any ongoing costs affiliated with this sole source?** No
9. **Period of Performance:** July 1, 2012 through June 30, 2013, with the option to renew annually for four additional years.

P. Bagley 6/26/12

Department Head Signature

Date

Purchasing Department Comments:

Approve

Approve with Condition/s

Disapprove

Not to exceed: \$ 35000

One time

Annual Amount through 6-30-2013

[Signature]

Purchasing Agent

7-2-12

Date

13-027

Approval Number
(Reference on Purchasing Documents)

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
RIVERSIDE COUNTY REGIONAL MEDICAL CENTER AND
VACHE CHAKMAKIAN, M.D.**

1 This Agreement is made and entered into by and between the County of
2 Riverside, a political subdivision of the State of California, through its Medical Center,
3 (Riverside County Regional Medical Center) hereinafter referred to as ("COUNTY"), and
4 **Vache Chakmakian, M.D.**, hereinafter referred to as ("CONTRACTOR").

5 WHEREAS, Government Code Section 31000 authorizes the COUNTY to
6 contract for special services to be provided by persons/entities who are specially
7 trained, experienced and competent to perform the services required; and

8 WHEREAS, Contractor has the expertise, special skills, knowledge and
9 experience to perform the duties set out herein;

10 NOW THEREFORE, in consideration of the mutual promises, covenants and
11 conditions hereinafter contained the PARTIES hereto mutually agree as provided on
12 pages 1 through 42, attached hereto and incorporated herein.

13 **1.0 HIPAA Business Associate Agreement**

14 The CONTRACTOR in this Agreement is subject to all relevant
15 requirements contained in the Health Insurance Portability and Accountability Act of
16 1996 (HIPAA), Public Law 104-91, enacted August 21, 1996, and the laws and
17 regulations promulgated subsequent thereto. CONTRACTOR shall adhere to all terms
18 and conditions as outlined and specified in **Attachment I**, attached hereto and by this
19 reference incorporated herein.

20 //

21 //

22 //

5012 701 -E 11M:35
OFFICE APPROVED BY POLYMERIZATION
SECTIONED RIVERSIDE COUNTY CA

WHEN DOCUMENT IS FULLY EXECUTED RETURN
CLERK'S COPY
to Riverside County Clerk of the Board, Stop 1010
Post Office Box 1147, Riverside, Ca 92502-1147
Thank you.

**PROFESSIONAL SERVICES AGREEMENT
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23 **2.0 DESCRIPTION OF SERVICES**

24 2.1 CONTRACTOR represents and maintains that it is skilled to
25 perform all services, duties and obligations required by this Agreement to fully and
26 adequately complete the project.

27 2.2 PRIMARY SITE – Blyth Jail: Provide sick call services at the Blythe
28 Jail to provide professional medical services during sick call periods of approximately
29 six (6) hours per week, Monday – Friday on days and times mutually acceptable to both
30 parties. (Optional Saturday or Sunday services may be arranged subject to mutual
31 agreement of both parties).

32 2.3 CONTRACTOR may provide coverage at other sites if approved by
33 Detention Health Services Medical Director, on an as needed basis, not to exceed
34 contracted hours.

35 2.4 CONTRACTOR shall perform history and physical examinations,
36 review x-rays, laboratory reports, chart the progress of patients, and update the care
37 plan as needed.

38 2.5 CONTRATOR shall prepare and maintain Detention Health
39 Services reports and records, as required.

40 2.6 CONTRACTOR shall account for service time by signing
41 attendance log. The log will be maintained in the nursing office. The log will be used to
42 verify physician hours billed monthly.

43 2.7 CONTRACTOR will participate in staff development activities and
44 attend Detention Health Services medical meetings and/or conferences as required.

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45 2.8 CONTRACTOR agrees to accept telephone consultations with
46 nursing staff as outlined in Detention Health Services Nursing Protocols.

47 2.9 CONTRACTOR agrees to work and consult with Detention Health
48 Services Medical Director regarding Detention Health Services policies, procedures,
49 protocols, rules and regulations.

50 2.10 CONTRACTOR shall perform the services and duties in
51 conformance to and consistent with the standards generally recognized by
52 professionals in the same discipline in the State of California.

53 2.11 CONTRACTOR further represents and warrants that it has all
54 licenses, permits, qualifications and approvals of whatever nature is legally required to
55 practice its profession/services. CONTRACTOR further represents that it shall keep all
56 such licenses and approvals in effect during the term of this Agreement.
57 CONTRACTOR is not to perform services outside of this Agreement.

58 **3.0 TERM AND TERMINATION**

59 3.1 This Agreement shall be effective July 1, 2012 through the end of
60 County fiscal year, June 30, 2013 and automatically continue on a year-to-year basis
61 thereafter, unless terminated as specified in Section 3.2 below.

62 3.2 Either party may terminate this Agreement with or without cause
63 upon thirty (30) days written notice served upon either party stating the extent and
64 effective date of termination.

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**PROFESSIONAL SERVICES AGREEMENT
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67 **4.0 COMPENSATION**

68 4.1 The COUNTY will pay the CONTRACTOR for services performed
69 and expenses incurred in accordance with the following:

70 4.1.1 A sum of one hundred dollars (\$100) per hour for each hour
71 of service performed.

72 4.2 CONTRACTOR understands that the COUNTY's budget for these
73 services from all contractors providing such services shall not exceed the aggregate
74 amount of thirty five thousand dollars (\$35,000) annually.

75 4.3 Said compensation shall be paid in accordance with an invoice
76 submitted to COUNTY by CONTRACTOR, and COUNTY shall pay the invoice within
77 thirty (30) working days of receipt of the invoice. Compensation is based upon hours
78 worked.

79 4.4 All invoices submitted by CONTRACTOR shall be addressed to,
80 Riverside County Regional Medical Center, Accounts Payable, 26520 Cactus Avenue,
81 Moreno Valley, CA. 92555.

82 4.5 COUNTY reserves the right to correct errors on invoices, after prior
83 notification and discussion with CONTRACTOR, and pay to CONTRACTOR only
84 corrected amounts.

85 **5.0 POLICY AND PROCEDURE**

86 CONTRACTOR hereby agrees that, where applicable, services provided
87 hereunder will be performed in harmony with COUNTY policy and procedure.

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88 5.1 CONTRACTOR warrants that it is, and will remain, in compliance
89 with all State and Federal laws and the standards of the Joint Commission on the
90 Accreditation of Healthcare Organizations (JCAHO).

91 5.2 CONTRACTOR certifies that it is aware of the Occupational Safety
92 and Health Administration (OSHA) regulations of the U.S. Department of Labor, the
93 derivative Cal/OSHA standards and laws and regulations relating thereto, and shall
94 comply therewith as to all relative elements under this Agreement.

95 **6.0 CONFIDENTIALITY**

96 6.1 CONTRACTOR agrees to protect from unauthorized disclosure of
97 names and other identifying information concerning either persons receiving services
98 under this Agreement or persons whose names or other identifying information
99 becomes known to CONTRACTOR as a result of services performed under this
100 Agreement, except statistical information not identifying any such person.

101 6.2 CONTRACTOR shall not disclose, except as otherwise specifically
102 permitted by this Agreement or authorized by the client or client's representative, any
103 such identifying information to anyone other than authorized COUNTY personnel
104 without prior written authorization from the COUNTY.

105 6.3 For the purpose of this paragraph, "identify" shall include, but not
106 limited to, name, identifying number, symbol, or other identifying particular assigned to
107 the individual, such as finger or voiceprint or photograph.

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110 **7.0 HOLD HARMLESS/INDEMNIFICATION**

111 7.1 CONTRACTOR shall indemnify and hold harmless the County of
112 Riverside, its Agencies, Districts, Special Districts and Departments, their respective
113 directors, officers, Board of Supervisors, elected and appointed officials, employees,
114 agents and representatives (individually and collectively hereinafter referred to as
115 Indemnitees) from any liability, claim, action, proceeding or damage whatsoever, based
116 or asserted upon any services of CONTRACTOR, its officers, employees,
117 subcontractors, agents or representatives arising out of or in any way relating to this
118 Agreement, including but not limited to property damage, bodily injury, or death or any
119 other element of any kind or nature whatsoever arising from the performance of
120 CONTRACTOR, its officers, employees, subcontractors, agents or representatives
121 Indemnitors from this Agreement. CONTRACTOR shall defend, at its sole expense, all
122 costs and fees including, but not limited, to attorney fees, cost of investigation, defense
123 and settlements or awards, the Indemnitees in any claim or action based upon such
124 alleged acts or omissions.

125 With respect to any action or claim subject to indemnification herein by CONTRACTOR,
126 CONTRACTOR shall, at their sole cost, have the right to use counsel of their own
127 choice and shall have the right to adjust, settle, or compromise any such action or claim
128 without the prior consent of COUNTY; provided, however, that any such adjustment,
129 settlement or compromise in no manner whatsoever limits or circumscribes
130 CONTRACTOR'S indemnification to Indemnitees as set forth herein.

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131 7.2 CONTRACTOR'S obligation hereunder shall be satisfied when
132 CONTRACTOR has provided to COUNTY the appropriate form of dismissal relieving
133 COUNTY from any liability for the action or claim involved. The specified insurance
134 limits required in this Agreement shall in no way limit or circumscribe CONTRACTOR'S
135 obligations to indemnify and hold harmless the Indemnitees herein from third party
136 claims.

137 7.3 In the event there is conflict between this clause and California Civil
138 Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782.
139 Such interpretation shall not relieve the CONTRACTOR from indemnifying the
140 Indemnitees to the fullest extent allowed by law.

141 7.4 Liability resulting from Professional acts of the CONTRACTOR
142 shall be subject to the terms of **Exhibit A**, consisting of six (6) pages, attached hereto
143 and by this reference incorporated herein.

144 **8.0 INSURANCE**

145 8.1 Without limiting or diminishing the CONTRACTOR'S obligation to
146 indemnify or hold the COUNTY harmless, CONTRACTOR shall procure and maintain
147 or cause to be maintained, at its sole cost and expense, the following insurance
148 coverage's during the term of this Agreement.

149 8.2 WORKERS' COMPENSATION:

150 If the CONTRACTOR has employees as defined by the State of
151 California, the CONTRACTOR shall maintain statutory Workers' Compensation
152 Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall

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153 include Employers' Liability (Coverage B) including Occupational Disease with limits not
154 less than **\$1,000,000** per person per accident. The policy shall be endorsed to waive
155 subrogation in favor of The County of Riverside, and, if applicable, to provide a
156 Borrowed Servant/Alternate Employer Endorsement.

157 8.3 COMMERCIAL GENERAL LIABILITY:

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

168 8.4 VEHICLE LIABILITY:

169 If vehicles or mobile equipment are used in the performance of the
170 obligations under this Agreement, then CONTRACTOR shall maintain liability insurance
171 for all owned, non-owned or hired vehicles so used in an amount not less than
172 \$1,000,000 per occurrence combined single limit. If such insurance contains a general
173 aggregate limit, it shall apply separately to this agreement or be no less than two (2)
174 times the occurrence limit. Policy shall name the County of Riverside, its Agencies,

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175 Districts, Special Districts, and Departments, their respective directors, officers, Board
176 of Supervisors, employees, elected or appointed officials, agents or representatives as
177 Additional Insureds.

178 8.5 GENERAL INSURANCE PROVISIONS - ALL LINES:

179 A. Any insurance carrier providing insurance coverage hereunder
180 shall be admitted to the State of California and have an A M BEST rating of not less
181 than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk
182 Manager. If the County's Risk Manager waives a requirement for a particular insurer
183 such waiver is only valid for that specific insurer and only for one policy term.

184 B. The CONTRACTOR'S insurance carrier(s) must declare its
185 insurance deductibles or self-insured retentions. If such deductibles or self-insured
186 retentions exceed \$500,000 per occurrence such deductibles and/or retentions shall
187 have the prior written consent of the County Risk Manager before the commencement
188 of operations under this Agreement. Upon notification of deductibles or self insured
189 retention's unacceptable to the COUNTY, and at the election of the Country's Risk
190 Manager, CONTRACTOR'S carriers shall either; 1) reduce or eliminate such
191 deductibles or self-insured retention's as respects this Agreement with the COUNTY, or
192 2) procure a bond which guarantees payment of losses and related investigations,
193 claims administration, and defense costs and expenses.

194 C. CONTRACTOR shall cause CONTRACTOR'S insurance
195 carrier(s) to furnish the County of Riverside with either 1) a properly executed original
196 Certificate(s) of Insurance and certified original copies of Endorsements effecting

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197 coverage as required herein, or 2) if requested to do so orally or in writing by the County
198 Risk Manager, provide original Certified copies of policies including all Endorsements
199 and all attachments thereto, showing such insurance is in full force and effect. Further,
200 said Certificate(s) and policies of insurance shall contain the covenant of the insurance
201 carrier(s) that thirty (30) days written notice shall be given to the County of Riverside
202 prior to any material modification, cancellation, expiration or reduction in coverage of
203 such insurance. In the event of a material modification, cancellation, expiration, or
204 reduction in coverage, this Agreement shall terminate forthwith, unless the County of
205 Riverside receives, prior to such effective date, another properly executed original
206 Certificate of Insurance and original copies of endorsements or certified original policies,
207 including all endorsements and attachments thereto evidencing coverage's set forth
208 herein and the insurance required herein is in full force and effect. **CONTRACTOR**
209 ***shall not commence operations until the COUNTY has been furnished original***
210 ***Certificate (s) of Insurance and certified original copies of endorsements or***
211 ***policies of insurance including all endorsements and any and all other***
212 ***attachments as required in this Section. An individual authorized by the***
213 ***insurance carrier to do so on its behalf shall sign the original endorsements for***
214 ***each policy and the Certificate of Insurance.***

215 D. It is understood and agreed to by the parties hereto that the
216 CONTRACTOR'S insurance shall be construed as primary insurance, and the
217 COUNTY'S insurance and/or deductibles and/or self-insured retention's or self-insured
218 programs shall not be construed as contributory.

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

228 F. CONTRACTOR shall pass down the insurance obligations
229 contained herein to all tiers of subcontractors working under this Agreement.

230 G. The insurance requirements contained in this Agreement
231 may be met with a program(s) of self-insurance acceptable to the COUNTY.

232 H. CONTRACTOR agrees to notify COUNTY of any claim by a
233 third party or any incident or event that may give rise to a claim arising from the
234 performance of this Agreement.

235 **9.0 AVAILABILITY OF FUNDING**

236 The COUNTY obligation for payment of any contract beyond the current
237 fiscal year end is contingent upon the availability of funding from which payment can be
238 made. No legal liability on the part of the COUNTY shall arise for payment beyond June
239 30 of the calendar year unless funds are made available for such performance.

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241 **10.0 RECORDS AND DOCUMENTS**

242 CONTRACTOR shall make available, upon written request by and duly
243 authorized Federal, State or COUNTY agency, a copy of this Agreement and such
244 books, documents and records as are necessary to certify the nature and extent of the
245 costs of the services provided by CONTRACTOR. All such CONTRACTOR shall
246 maintain books and records for at least five (5) years from the termination of this
247 Agreement.

248 10.1 CONTRACTOR to provide COUNTY with reports and information
249 relative to this Agreement and in accordance with terms set forth herein, as may be
250 requested by COUNTY.

251 **11.0 MONITORING**

252 CONTRACTOR hereby agrees to establish procedures for self-monitoring
253 and shall permit an appropriate official of the COUNTY, State or Federal government to
254 monitor, access, or evaluate CONTRACTOR'S performance under this Agreement upon
255 reasonable notice to CONTRACTOR and at any reasonable time.

256 **12.0 LICENSE**

257 CONTRACTOR shall, through the term of this Agreement, maintain all
258 licenses necessary for the provision of the services hereunder and required by the laws
259 and regulations of the United States, the State of California, County of Riverside, and all
260 other governmental agencies. CONTRACTOR shall notify COUNTY immediately, in
261 writing, of inability to obtain or maintain such license. Said inability shall be cause for
262 termination of this Agreement.

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263 12.1 CONTRACTOR shall ensure that CONTRACTOR'S employees,
264 agents, and subcontractors performing services under the terms of this Agreement are
265 in compliance with all relative licensing requirements. CONTRACTOR hereby agrees to
266 notify COUNTY immediately, in writing, of inability of CONTRACTOR or any of
267 CONTRACTOR'S employees, agents and subcontractors to obtain or maintain such
268 license(s). Said inability shall be cause for termination of this Agreement.

269 12.2 COPY REQUIRED. A copy of each such license, permit, approval,
270 waiver, exemption, registration, accreditation, and certificate shall be provided to
271 Contracts Administration.

272 12.3 Further, CONTRACTOR hereby agrees to abide by the standards
273 of medical practice of the profession when performing services hereunder.

274 **13.0 NONDISCRIMINATION AND ELIGIBILITY**

275 The CONTRACTOR shall not discriminate in the provision of services,
276 allocation of benefits, accommodation in facilities, or employment of personnel, on the
277 basis of ethnic group identification, race, color, creed, ancestry, religion, national origin,
278 sexual preference, sex, age (over 40), marital status, medical attention, or physical or
279 mental handicap, and shall comply with all other requirements of law regarding non
280 discrimination and affirmative action including those laws pertaining to the prohibition of
281 discrimination against qualified handicapped persons in all programs or activities.

282 13.1 For the purpose of this Agreement, distinctions on the grounds of
283 race, religion, color, sex, national origin, age, or physical or mental handicap include but
284 at not limited to the following:

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285 A. Denying an eligible person or providing to an eligible person
286 any services or benefit which is different, or is provided in a different manner or at a
287 different time from that provided to other eligible persons under this Agreement.

288 B. Treatment in any matter related to his receipt of any service,
289 except when necessary for infection control.

290 C. Restricting an eligible person differently in any way in the
291 enjoyment of any advantage or privilege enjoyed by others receiving similar service or
292 benefit.

293 D. Treating an eligible person differently from others in
294 determining whether he satisfied any eligibility, membership, or other requirement or
295 condition which individuals must meet in order to be provided a similar service or
296 benefit.

297 E. The assignment of times or places for the provision of
298 services on the basis of race, religion, color, sex, national origin, age, or physical or
299 mental handicap of the eligible person to be served.

300 **14.0 CONFLICT OF INTEREST**

301 CONTRACTOR and CONTRACTOR'S employees shall have no interest,
302 and shall nor acquire any interest, direct or indirect, which will conflict in any manner or
303 degree with the performance of services required under this Agreement.

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307 **15.0 ALTERATION**

308 No alteration or variation of the terms of this Agreement shall be valid
309 unless made in writing and signed by the parties hereto, and no oral understanding or
310 agreement not incorporated herein, shall be binding on any of the parties hereto.

311 15.1 Only the County Board of Supervisors or County Purchasing Agent
312 may authorize the alteration or revision of this Agreement. The parties expressly
313 recognize that COUNTY personnel are without authorization to either change or waive
314 any requirements of this Agreement.

315 **16.0 ASSIGNMENT**

316 CONTRACTOR may not delegate the obligations hereunder, either in
317 whole or in part, without prior written consent of COUNTY provided, however,
318 obligations undertaken by CONTRACTOR pursuant to this Agreement may be carried
319 out by means of subcontracts if approved by COUNTY. No subcontract shall terminate
320 or alter the responsibilities of the CONTRACTOR to COUNTY pursuant to this
321 Agreement. CONTRACTOR may not assign the rights hereunder, either in whole or in
322 part, without prior written consent of COUNTY. Any attempted assignment or
323 delegation in derogation of this paragraph shall be void. A change in the business
324 structure of CONTRACTOR, including but not limited to, change in the majority
325 ownership, change in the form of CONTRACTOR'S business organization,
326 management of CONTRACTOR, CONTRACTOR'S ownership of other business
327 dealing with CONTRACTOR under this Agreement, or filing of bankruptcy by
328 CONTRACTOR, shall be deemed an assignment for purposes of this paragraph.

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329 **17.0 ADMINISTRATION**

330 The County of Riverside Purchasing Agent, or designee, shall administer
331 this Agreement on behalf of the COUNTY. The Contracts Administration department is
332 to serve as its liaison with CONTRACTOR in connection with this agreement.

333 **18.0 WAIVER**

334 Any waiver by COUNTY of any breach of any one or more of the terms of
335 this Agreement shall not be construed to be a waiver of any subsequent or other breach
336 of the same or of any other term thereof. Failure on the part of the COUNTY to require
337 exact, full and complete compliance with any terms of this Agreement shall not be
338 construed as in any manner changing the terms hereof or stopping COUNTY from
339 enforcement hereof.

340 **19.0 JURISDICTION, VENUE, SEVERABILITY**

341 This Agreement and its construction and interpretation as to validity,
342 performance and breach shall be construed under the laws of the State of California.
343 Any legal action related to this Agreement shall be filed in the Superior Court of the
344 State of California located in Riverside, California. In the event any provision in this
345 Agreement is held by a court of competent jurisdiction to be invalid, void, or
346 unenforceable, the remaining provisions will nevertheless continue in full force without
347 being impaired or invalidated in any way.

348 **20.0 INDEPENDENT CONTRACTOR**

349 20.1 The CONTRACTOR is, for purposes arising out of this contract, an
350 independent contractor and shall not be deemed an employee of the COUNTY. It is

**PROFESSIONAL SERVICES AGREEMENT
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351 expressly understood and agreed that the CONTRACTOR shall in no event, as a result
352 of this contract, be entitled to any benefits to which COUNTY employees are entitled,
353 including but not limited to overtime, any retirement benefits, worker's compensation
354 benefits, and injury leave or other leave benefits. CONTRACTOR hereby holds
355 COUNTY harmless from any and all claims that may be made against COUNTY based
356 upon any contention by any third party that an employer-employee relationship exists by
357 reason of this agreement.

358 20.2 It is further understood and agreed by the parties hereto that
359 CONTRACTOR in the performance of its obligation hereunder is subject to the control
360 or direction of COUNTY merely as to the result to be accomplished by the services
361 hereunder agreed to be rendered and performed and not as to the means and methods
362 for accomplishing the results.

363 **21.0 SUBCONTRACT FOR WORK OR SERVICES**

364 No contract shall be made by the CONTRACTOR with any party for
365 furnishing any of the work or services herein contained without the prior written approval
366 of the COUNTY Contract Administrator but this provision shall not require the approval
367 of contracts of employment between the CONTRACTOR and personnel assigned for
368 services there under, or for parties named in the proposal and agreed to under any
369 resulting contract.

370 //

371 //

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22.0 INTEREST OF CONTRACTOR

The CONTRACTOR covenants that it presently has no interest, including but not limited to, other projects or independent contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract. The CONTRACTOR further covenants that in the performance of this contract, no person having any such interest shall be employed or retained by it under this contract.

23.0 CONDUCT OF CONTRACTOR

23.1 The CONTRACTOR agrees to inform the COUNTY of all the CONTRACTOR's interest, if any, which are or which the CONTRACTOR believes to be incompatible with any interest of the COUNTY.

23.2 The CONTRACTOR shall not, under circumstances, which might reasonably be interpreted as an attempt to influence the recipient in the conduct of his duties, accept any gratuity or special favor from individuals or organizations with whom the CONTRACTOR is doing business or proposing to do business, in accomplishing the work under the contract.

23.3 The CONTRACTOR shall not use for personal gain or make other improper use of privileged information, which is acquired in connection with his contract. In this connection, the term 'privileged information' includes, but is not limited to, unpublished information relating to technological and scientific development; medical, personnel, or security records of the individuals; anticipated materials requirements or

**PROFESSIONAL SERVICES AGREEMENT
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393 pricing actions; and knowledge of selection of CONTRACTOR or subcontractors in
394 advance of official announcement.

395 23.4 The CONTRACTOR or employees thereof shall not offer gifts,
396 gratuity, favors, and entertainment directly or indirectly to COUNTY employees.

397 **24.0 DISALLOWANCE**

398 In the event the CONTRACTOR receives payment for services under this
399 contract which is later disallowed for nonconformance with the terms and conditions
400 herein by the COUNTY, the CONTRACTOR shall promptly refund the disallowed
401 amount to the COUNTY on request, or at its option, the COUNTY may offset the
402 amount disallowed from any payment due to the CONTRACTOR under any contract
403 with the COUNTY.

404 **25.0 RIGHT TO ACQUIRE EQUIPMENT AND SERVICES**

405 Nothing in this agreement shall prohibit the COUNTY from acquiring the
406 same type or equivalent equipment and/or service from other sources, when deemed by
407 the COUNTY to be in its best interest.

408 **26.0 FORCE MAJEURE**

409 26.1 In the event CONTRACTOR is unable to comply with any provision
410 of this agreement due to causes beyond their control such as acts of God, acts of war,
411 civil disorders, or other similar acts, CONTRACTOR shall not be held liable to COUNTY
412 for such failure to comply.

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413 26.2 In the event COUNTY is unable to comply with any provision of this
414 agreement due to causes beyond its control relating to acts of God, acts of war, civil
415 disorders, or other similar acts, COUNTY shall not be held liable to CONTRACTOR for
416 such failure to comply.

417 **27.0 EDD REPORTING REQUIREMENTS**

418 In order to comply with child support enforcement requirements of the
419 State of California, the County of Riverside may be required to submit a Report of
420 Independent Contractor(s) form **DE 542** to the Employment Development Department.
421 The selected contractor agrees to furnish the required Contractor data and certifications
422 to the County of Riverside within 10 days of notification of award of contract when
423 required by the EDD.

424 It is expressly understood that this data will be transmitted to
425 governmental agencies charged with the establishment and enforcement of child
426 support orders and for no other purposes and will be held confidential by those
427 agencies. Failure of the contractor to timely submit the data and/or certificates required
428 may result in contract being awarded to another Contractor. In the event a contract has
429 been issued, failure of the Contractor to comply with all federal and state reporting
430 requirements for child support enforcement or to comply with all lawfully served Wage
431 and Earnings Assignments Orders and Notices of Assignment shall constitute a material
432 breach of contract. Failure to cure such breach within 60 calendar days of notice from
433 the County shall constitute grounds for termination of the contract.

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434 If you have any questions concerning this reporting requirement, please
435 call (916) 657-0529. You may also contact your local Employment Tax Customer
436 Service Office listed in your telephone directory in the State Government section under
437 "Employment Development Department," or you may access their Internet site at
438 www.edd.ca.gov.

439 **28.0 ENTIRE AGREEMENT**

440 This Agreement, including any Statement(s) of Work entered into pursuant
441 to it, constitutes the entire agreement of the parties hereto with respect to its subject
442 matter and supersedes all prior and contemporaneous representations, proposals,
443 discussions and communications, whether oral or in writing. This contract may be
444 modified only in writing and shall be enforceable in accordance with its terms when
445 signed by each of the parties hereto.

446 **29.0 CAPTIONS AND PARAGRAPH HEADINGS**

447 Captions and paragraph headings used in this Agreement are for
448 convenience only and are not a part of this Agreement and shall not be used in
449 construing this Agreement.

450 **30.0 NOTICES**

451 All correspondence and notices required or contemplated by this
452 Agreement shall be delivered to the respective parties at the addresses set forth below
453 and are deemed submitted one day after their deposit in the United States mail, postage
454 prepaid.

455 //

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
RIVERSIDE COUNTY REGIONAL MEDICAL CENTER AND
VACHE CHAKMAKIAN, M.D.**

456	<u>CONTRACTOR</u>	<u>COUNTY</u>
457	Vache Cakmakian, MD	Riverside County Regional Medical Center
458	PO Box 2097	26520 Cactus Avenue
459	Rancho Cucamonga, CA 92270	Moreno Valley, CA 92555

460 **IN WITNESS WHEREOF**, the parties have executed this Agreement.

461 **CONTRACTOR**

462 By: V. Chakmakian, MD

463 *V. Chakmakian*

464 _____

465 Type or Print Name

COUNTY

By: 

Richard Strickland

Type or Print Name

466 _____

467 Type or Print Title

Procurement Contract Specialist

Type or Print Title

469 Date: 4-14-12

470 _____

Date: AUGUST 20, 2012

FORM APPROVED COUNTY COUNSEL

BY: 

NEAL R. KIPNIS DATE 7/11/12

VACHE CHAKMAKIAN, M.D.

471

PROFESSIONAL LIABILITY INDEMNITY

472 **1.0** As an additional element of compensation to the CONTRACTOR, the
473 COUNTY shall indemnify the CONTRACTOR and provide Professional
474 Liability insurance to the CONTRACTOR (upon approval of County Risk
475 Management) as provided hereunder solely and exclusively to the extent
476 that it pertains the professional medical services performed under this
477 Agreement on behalf of COUNTY, in so long as the CONTRACTOR
478 follows and does not intentionally ignore COUNTY policies and
479 procedures and other regulatory agencies' rules, laws, and standards of
480 care or commit willful or wanton acts of negligence.

481 **2.0** For the purposes of this Exhibit, the term "CONTRACTOR" shall include:

482 2.1 The CONTRACTOR itself;

483 2.2 The CONTRACTOR's physician employees and independent
484 physician contractors; and

485 2.3 Physician extenders employed under this Agreement.

486 **3.0** The COUNTY shall, subject to the terms, limitations, exclusions, and
487 conditions of this Agreement, including this Exhibit, indemnify, defend, and
488 hold harmless the CONTRACTOR for any and all sums which the
489 CONTRACTOR shall by law be held liable to pay for damages arising out
490 of any demand for money or services by any patient or anyone claiming
491 damages on account of bodily injury or mental injury to or death of any
492 patient caused by or alleged to have been caused by error, omission, or

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493 negligence, active or passive, so long as it is not deemed a willful or
494 wanton omission, error, or negligence, nor for punitive damage awards in
495 professional services rendered or that should have been rendered by
496 CONTRACTOR exclusively at HOSPITAL or on behalf of COUNTY,
497 provided always that:

498 3.1 Such malpractice results in a claim being made or legal action
499 commenced against the CONTRACTOR, and notice of such claim
500 or action has been given in accordance with the provisions
501 contained in Section 8 of this Exhibit.

502 3.2 There shall be no liability coverage provided hereunder for any
503 claim or action against the CONTRACTOR for malpractice
504 committed or alleged to have been committed prior to the effective
505 date of the Agreement nor following termination of this Agreement
506 except for services provided during the Term of the Agreement
507 and/or for the CONTRACTOR or physician rendering services
508 hereunder as described in Section 2 of this Exhibit.

509 **4.0** The indemnification promised hereby shall include all theories of liability
510 against the CONTRACTOR regardless of whether said liability is founded
511 on negligence or strict liability or any other rule or law attributing liability to
512 the CONTRACTOR. Such indemnification as is afforded by this
513 Agreement is extended to include the CONTRACTOR only while it is
514 acting within the scope of duty pursuant to the terms of this Agreement

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515 and shall not apply to acts or omissions by or at the direction of the
516 CONTRACTOR or if intentionally committed or committed with malice. In
517 addition, the indemnification promised hereby shall not include any
518 exemplary or punitive damages levied against the CONTRACTOR, any
519 act committed in violation of any laws or ordinances resulting in a criminal
520 conviction, professional services rendered while under the influence of
521 intoxicants or narcotics, or any practice or service not required by the
522 terms of this Agreement.

523 **5.0** In providing for such indemnification, it is not the intent of either party to
524 waive any applicable statutory or other immunity from liability or any
525 claims requirements of the Government Code. Such indemnification shall
526 not exceed one million dollars (\$1,000,000) for any single act or omission
527 identifiable hereunder, or the sum of three million dollars (\$3,000,000)
528 aggregate for all acts or omissions identifiable hereunder per each
529 physician member which occur in any single year of this Agreement.
530 CONTRACTOR acknowledges and agrees that for any claims that exceed
531 one million dollars (\$1,000,000) or three million dollars (\$3,000,000) in the
532 aggregate, CONTRACTOR shall not seek indemnification from COUNTY,
533 and CONTRACTOR shall assume all financial responsibility for such
534 claims. For purposes of this Exhibit, said operating year shall begin with
535 the date on which this Agreement is executed by the COUNTY and shall

VACHE CHAKMAKIAN, M.D.

536 conclude on June 30 of that fiscal year, thereafter, each operating year
537 shall run from July 1 to June 30.

538 **6.0** The COUNTY may provide the indemnification referred to above through a
539 program of self-insurance. The CONTRACTOR shall follow the guidelines
540 and procedures contained in any risk management and HOSPITAL plan,
541 which may be established by COUNTY, and applicable federal and State
542 law.

543 **7.0** As respects the indemnity afforded by this Agreement, the COUNTY shall,
544 in the name of and on behalf of the CONTRACTOR, diligently investigate
545 and defend any an all claims or suits made or brought against
546 CONTRACTOR, shall retain legal counsel (attorney[ies]) skilled in
547 investigation, defenses, and settlement of medical malpractice claims, and
548 shall pay all costs and expenses incurred in any such investigation and
549 defense, including, but not limited to, attorney's fees, expert witness fees,
550 and court costs. In addition to, and not inconsistent with any other
551 provision of this Exhibit, the CONTRACTOR shall cooperate at the
552 discretion of the COUNTY in the investigation, settlement, or defense of
553 any claim or suit against the CONTRACTOR. If the CONTRACTOR in
554 any such claim or suit refuses to consent to any settlement recommended
555 in writing by the COUNTY and elects to contest or continue any legal
556 proceedings, the liability of the COUNTY shall not exceed the amount for
557 which the claim or suit could have been so settled, plus reasonable costs

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558 with its consent up to the date of such refusal. Any judgment rendered
559 against the CONTRACTOR in excess of the settlement amount
560 recommended in writing by the COUNTY shall be the sole responsibility of
561 the CONTRACTOR, including all costs and all attorney's fees relating to
562 such excess amount.

563 **8.0** The following are conditions precedent to the right of the CONTRACTOR
564 to be defended and/or indemnified under this Exhibit, provided that the
565 COUNTY may not disclaim such defense and/or indemnification if it has
566 not been materially prejudiced by the nonperformance of such conditions.

567 8.1 During the Term of this Agreement, the CONTRACTOR shall
568 promptly, but no less than within two (2) business days, after
569 receiving knowledge of any event described in this subsection (8.1)
570 of this Section 8, give to the persons or persons designated by the
571 County notice in writing of:

572 8.1.1 Any conduct or circumstances which the CONTRACTOR
573 believes to give rise to a claim for malpractice being made
574 against the CONTRACTOR; or

575 8.1.2 Any claims for malpractice made against the
576 CONTRACTOR; or

577 8.1.3 The receipt of notice from any person of any intention to hold
578 the CONTRACTOR responsible for any malpractice.

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579 8.2 The CONTRACTOR shall at all times without charge to the
580 COUNTY:

581 8.2.1 Give to the COUNTY or its duly appointed representative
582 any and all information, assistance, and signed statements
583 as the COUNTY may require; and

584 8.2.2 Assist, without cost to the CONTRACTOR, in the COUNTY's
585 defense or any claim, including without limitation,
586 cooperating timely with the COUNTY; and, upon the
587 COUNTY's request, attend hearings and trials, assisting in
588 effecting settlements, securing and giving evidence,
589 obtaining the attendance of witnesses and in the conduct of
590 suits, and to provide current home and work contact
591 numbers until the full and final settlement of pay and all
592 cases involving persons mentioned in Section 2 of this
593 Exhibit.

594 8.3 The CONTRACTOR shall not, without the written consent of
595 COUNTY's duly appointed representative, admit liability for, or
596 settle any claim or:

597 8.3.1 Incur on behalf of the COUNTY any costs or expense in
598 connection with such claim, or

599 8.3.2 Give any material or oral or written statements to anyone in
600 connection with admitting or settling such claim.

HIPAA Business Associate Agreement
Addendum to Contract Between the County of Riverside and
VACHE CHAKMAKIAN, M.D.

601 This HIPAA Business Associate Agreement (the "Addendum")
602 supplements, and is made part of the Professional Services Agreement (the
603 "Underlying Agreement") between the County of Riverside ("County") and **Vache**
604 **Chakmakian, M.D.** ("Contractor") and shall be effective as of the date the
605 Underlying Agreement is approved by both Parties (the "Effective Date").

606 RECITALS

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

613 WHEREAS, the provisions of the Health Insurance Portability and
614 Accountability Act of 1996 ("HIPAA"), Public Law 104-191 enacted August 21,
615 1996, and the Health Information Technology for Economic and Clinical Health
616 Act ("HITECH") of the American Recovery and Reinvestment Act of 2009, Public
617 Law 111-5 enacted February 17, 2009, and the laws and regulations
618 promulgated subsequent thereto, as may be amended from time to time, are
619 applicable to the protection of any use or disclosure of PHI and/or ePHI pursuant
620 to the Underlying Agreement; and,

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

623 WHEREAS, Contractor when a creator or recipient of, or when they have
624 access to, PHI and/or ePHI of County, is a business associate as defined in the
625 Privacy Rule; and,

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

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

HIPAA Business Associate Agreement
Addendum to Contract Between the County of Riverside and
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636 WHEREAS, the parties intend to enter into this Addendum to address the
637 requirements and obligations set forth in the Privacy Rule, Security Rule,
638 HITECH and HIPAA as they apply to Contractor as a business associate of
639 County, including the establishment of permitted and required uses and
640 disclosures of PHI and/or ePHI created or received by Contractor during the
641 course of performing services on behalf of County, and appropriate limitations
642 and conditions on such uses and disclosures;

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

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

648 A. "Breach" when used in connection with PHI means the acquisition,
649 access, use or disclosure of PHI in a manner not permitted by the Privacy
650 Rule which compromises the security or privacy of the PHI, and shall have
651 the meaning given such term in 45 CFR §164.402. For purposes of this
652 definition, "compromises the security or privacy of PHI" means poses a
653 significant risk of financial, reputational, or other harm to the individual,
654 unless a use or disclosure of PHI does not include the identifiers listed at
655 45 CFR §164.514(e)(2), date of birth and zip code. Breach excludes:

656 (1) Any unintentional acquisition, access or use of PHI by a workforce
657 member or person acting under the authority of a covered entity or
658 business associate, if such acquisition, access or use was made in
659 good faith and within the scope of authority and does not result in
660 further use or disclosure in a manner not permitted under subpart E of
661 the Privacy Rule.

662 (2) Any inadvertent disclosure by a person who is authorized to access
663 PHI at a covered entity or business associate to another person
664 authorized to access PHI at the same covered entity, business
665 associate, or organized health care arrangement in which County
666 participates, and the information received as a result of such disclosure
667 is not further used or disclosed in a manner not permitted by subpart E
668 of the Privacy Rule.

669 (3) A disclosure of PHI where a covered entity or business associate has a
670 good faith belief that an unauthorized person to whom the disclosure
671 was made would not reasonably have been able to retain such
672 information.

HIPAA Business Associate Agreement
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- 673 B. "Data aggregation" has meaning given such term in 45 CFR §164.501.
- 674 C. "Designated record set" as defined in 45 CFR §164.501 means a group of
675 records maintained by or for a covered entity that may include: the
676 medical records and billing records about individuals maintained by or for
677 a covered health care provider; the enrollment, payment, claims
678 adjudication, and case or medical management record systems
679 maintained by or for a health plan; or, used, in whole or in part, by or for
680 the covered entity to make decisions about individuals.
- 681 D. "Electronic protected health information" ("ePHI") as defined in 45 CFR
682 §160.103 means protected health information transmitted by or
683 maintained in electronic media.
- 684 E. "Electronic health record" means an electronic record of health-related
685 information on an individual that is created, gathered, managed, and
686 consulted by authorized health care clinicians and staff, and shall have the
687 meaning given such term in 42 USC §17921(5).
- 688 F. "Health care operations" has the meaning given such term in 45 CFR
689 §164.501.
- 690 G. "Individual" as defined in 45 CFR §160.103 means the person who is the
691 subject of protected health information.
- 692 H. "Person" as defined in 45 CFR §160.103 means a natural person, trust or
693 estate, partnership, corporation, professional association or corporation, or
694 other entity, public or private.
- 695 I. "Privacy Rule" means the HIPAA regulations codified at 45 CFR Parts 160
696 and 164, Subparts A and E.
- 697 J. "Protected health information" ("PHI") has the meaning given such term in
698 45 CFR §160.103, which includes ePHI.
- 699 K. "Required by law" has the meaning given such term in 45 CFR §164.103.
- 700 L. "Secretary" means the Secretary of the Department of Health and Human
701 Services ("HHS").
- 702 M. "Security Rule" means the HIPAA Regulations codified at 45 CFR Parts
703 160 and 164, Subparts A and C.
- 704 N. "Unsecured protected health information" and "unsecured PHI" as defined
705 in 45 CFR §164.402 means PHI not rendered unusable, unreadable, or

HIPAA Business Associate Agreement
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706 indecipherable to unauthorized individuals through use of a technology or
707 methodology specified by the Secretary in the guidance issued under 42
708 USC §17932(h)(2) on the HHS web site.

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

710 A. Except as otherwise provided in this Addendum, Contractor may use,
711 disclose, or access PHI and/or ePHI as necessary to perform any and all
712 obligations of Contractor under the Underlying Agreement or to perform
713 functions, activities or services for, or on behalf of, County as specified in
714 this Addendum, if such use or disclosure does not violate HIPAA,
715 HITECH, the Privacy Rule and/or Security Rule.

716 B. Unless otherwise limited herein, in addition to any other uses and/or
717 disclosures permitted or authorized by this Addendum or required by law,
718 in accordance with 45 CFR §164.504(e)(2), Contractor may:

719 (1) Use PHI and/or ePHI if necessary for Contractor's proper management
720 and administration and to carry out its legal responsibilities; and,

721 (2) Disclose PHI and/or ePHI for the purpose of Contractor's proper
722 management and administration or to carry out its legal
723 responsibilities, only if:

724 (a) The disclosure is required by law; or,

725 (b) Contractor obtains reasonable assurances, in writing, from the
726 person to whom Contractor will disclose such PHI and/or ePHI that
727 the person will:

728 (i) Hold such PHI and/or ePHI in confidence and use or further
729 disclose it only for the purpose for which Contractor disclosed it
730 to the person, or as required by law; and,

731 (ii) Notify Contractor of any instances of which it becomes aware in
732 which the confidentiality of the information has been breached;
733 and,

734 (3) Use PHI to provide data aggregation services relating to the health
735 care operations of County pursuant to the Underlying Agreement or as
736 requested by County; and,

737 (4) De-identify all PHI and/or ePHI of County received by Contractor under
738 this Addendum provided that the de-identification conforms to the

HIPAA Business Associate Agreement
Addendum to Contract Between the County of Riverside and
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739 requirements of the Privacy Rule and/or Security Rule and does not
740 preclude timely payment and/or claims processing and receipt.

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

747 **3. Prohibited Uses and Disclosures.**

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

752 B. Contractor may neither use, disclose, nor access PHI and/or ePHI it
753 receives from County or from another business associate of County,
754 except as permitted or required by this Addendum, or as required by law.

755 C. Contractor agrees not to make any disclosure of PHI and/or ePHI that
756 County would be prohibited from making.

757 D. Contractor shall not use or disclose PHI for any purpose prohibited by the
758 Privacy Rule, Security Rule, HIPAA and/or HITECH, including, but not
759 limited to 42 USC §§17935 and 17936. Contractor agrees:

760 (1) Not to use or disclose PHI for fundraising or marketing purposes,
761 unless pursuant to the Underlying Agreement and as permitted by and
762 consistent with the requirements of 42 USC §17936;

763 (2) Not to disclose PHI, except as otherwise required by law, to a health
764 plan for purposes of carrying out payment or health care operations, if
765 the individual has requested this restriction pursuant to 42 USC
766 §17935(a) and 45 CFR §164.522, and has paid out of pocket in full for
767 the health care item or service to which the PHI solely relates; and,

768 (3) Not to receive, directly or indirectly, remuneration in exchange for PHI,
769 unless permitted by 42 USC §17935(d)(2) and with the prior written
770 consent of County. This prohibition shall not apply to payment by
771 County to Contractor for services provided pursuant to the Underlying
772 Agreement.

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- 773 4. **Obligations of County.**
- 774 A. County agrees to make its best efforts to notify Contractor promptly in
775 writing of any restrictions on the use or disclosure of PHI and/or ePHI
776 agreed to by County that may affect Contractor's ability to perform its
777 obligations under the Underlying Agreement, or this Addendum.
- 778 B. County agrees to make its best efforts to promptly notify Contractor in
779 writing of any changes in, or revocation of, permission by any individual to
780 use or disclose PHI and/or ePHI, if such changes or revocation may affect
781 Contractor's ability to perform its obligations under the Underlying
782 Agreement, or this Addendum.
- 783 C. County agrees to make its best efforts to promptly notify Contractor in
784 writing of any known limitation(s) in its notice of privacy practices to the
785 extent that such limitation may affect Contractor's use or disclosure of PHI
786 and/or ePHI.
- 787 D. County agrees not to request Contractor to use or disclose PHI and/or
788 ePHI in any manner that would not be permissible under HITECH, HIPAA,
789 the Privacy Rule, and/or Security Rule.
- 790 E. County agrees to obtain any authorizations necessary for the use or
791 disclosure of PHI and/or ePHI, so that Contractor can perform its
792 obligations under this Addendum and/or Underlying Agreement.
- 793 5. **Obligations of Contractor.** In connection with the use or disclosure of PHI
794 and/or ePHI, Contractor agrees to:
- 795 A. Use or disclose PHI only if such use or disclosure complies with each
796 applicable requirement of 45 CFR §164.504(e). Contractor shall also
797 comply with the additional privacy requirements that are applicable to
798 covered entities in HITECH, as may be amended from time to time.
- 799 B. Not use or further disclose PHI and/or ePHI other than as permitted or
800 required by this Addendum or as required by law. Contractor shall
801 promptly notify County if Contractor is required by law to disclose PHI
802 and/or ePHI.
- 803 C. Use appropriate safeguards to prevent use or disclosure of PHI and/or
804 ePHI other than as provided for by this Addendum.
- 805 D. Mitigate, to the extent practicable, any harmful effect that is known to
806 Contractor of a use or disclosure of PHI and/or ePHI by Contractor in
807 violation of this Addendum.

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- 808 E. Report to County any use or disclosure of PHI and/or ePHI not provided
809 for by this Addendum or otherwise in violation of HITECH, HIPAA, the
810 Privacy Rule, and/or Security Rule of which Contractor becomes aware.
- 811 F. Require any subcontractors or agents to whom Contractor provides PHI
812 and/or ePHI to agree to the same restrictions and conditions that apply to
813 Contractor with respect to such PHI and/or ePHI, including the restrictions
814 and conditions pursuant to this Addendum.
- 815 G. Make available to County or the Secretary, in the time and manner
816 designated by County or Secretary, Contractor's internal practices, books
817 and records relating to the use, disclosure and privacy protection of PHI
818 received from County, or created or received by Contractor on behalf of
819 County, for purposes of determining, investigating or auditing Contractor's
820 and/or County's compliance with the Privacy Rule.
- 821 H. Request, use or disclose only the minimum amount of PHI necessary to
822 accomplish the intended purpose of the request, use or disclosure in
823 accordance with 42 USC §17935(b) and 45 CFR §164.502(b)(1).
- 824 I. Comply with requirements of satisfactory assurances under 45 CFR
825 §164.512 relating to notice or qualified protective order in response to a
826 third party's subpoena, discovery request, or other lawful process for the
827 disclosure of PHI, which Contractor shall promptly notify County upon
828 Contractor's receipt of such request from a third party.
- 829 J. Not require an individual to provide patient authorization for use or
830 disclosure of PHI as a condition for treatment, payment, enrollment in any
831 health plan (including the health plan administered by County), or eligibility
832 of benefits, unless otherwise excepted under 45 CFR §164.508(b)(4) and
833 authorized in writing by County.
- 834 K. Use appropriate administrative, technical and physical safeguards to
835 prevent inappropriate use, disclosure, or access of PHI and/or ePHI.
- 836 L. Obtain and maintain knowledge of applicable laws and regulations related
837 to HIPAA and HITECH, as may be amended from time to time.
- 838 6. **Access to PHI, Amendment and Disclosure Accounting.** Contractor
839 agrees to:
- 840 A. **Access to PHI and electronic health record.** Provide access to PHI in a
841 designated record set to County or an individual as directed by County,
842 within five (5) days of request from County, to satisfy the requirements of

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843 45 CFR §164.524. If Contractor uses or maintains electronic health
844 records, Contractor shall, at the request of County, provide electronic
845 health records in electronic format to enable County to fulfill its obligations
846 under 42 USC §17935(e).

847 **B. Amendment of PHI.** Make PHI available for amendment and incorporate
848 amendments to PHI in a designated record set County directs or agrees to
849 at the request of an individual, within fifteen (15) days of receiving a
850 written request from County, in accordance with 45 CFR §164.526.

851 **C. Accounting of disclosures of PHI and electronic health record.** Assist
852 County to fulfill its obligations to provide accounting of disclosures of PHI
853 under 45 CFR §164.528 and, where applicable, electronic health records
854 under 42 USC §17935(c) if Contractor uses or maintains electronic health
855 records. Contractor shall:

856 (1) Document such disclosures of PHI and/or electronic health records,
857 and information related to such disclosures, as would be required for
858 County to respond to a request by an individual for an accounting of
859 disclosures of PHI and/or electronic health record in accordance with
860 45 CFR §164.528.

861 (2) Within fifteen (15) days of receiving a written request from County,
862 provide to County or any individual as directed by County information
863 collected in accordance with this section to permit County to respond
864 to a request by an individual for an accounting of disclosures of PHI
865 and/or electronic health record.

866 (3) Make available for County information required by this section for six
867 (6) years preceding the individual's request for accounting of
868 disclosures of PHI, and for three (3) years preceding the individual's
869 request for accounting of disclosures of electronic health record.

870 **7. Security of ePHI.** In the event Contractor needs to create, receive, or have
871 access to County ePHI, in accordance with 42 USC §17931 and 45 CFR
872 §§164.314(a)(2)(i), and 164.306, Contractor shall:

873 A. Implement the administrative, physical, and technical safeguards that
874 reasonably and appropriately protect the confidentiality, integrity, and
875 availability of ePHI that Contractor creates, receives, maintains, or
876 transmits on behalf of County as required by the Security Rule, including
877 without limitations, each of the requirements of the Security Rule at 45
878 CFR §§164.308, 164.310, and 164.312;

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- 879 B. Comply with each of the requirements of 45 CFR §164.316 relating to the
880 implementation of policies, procedures and documentation requirements
881 with respect to ePHI;
- 882 C. Protect against any reasonably anticipated threats or hazards to the
883 security or integrity of ePHI;
- 884 D. Protect against any reasonably anticipated uses or disclosures of ePHI
885 that are not permitted or required under the Privacy Rule;
- 886 E. Ensure compliance by Contractor's workforce;
- 887 F. Ensure that any agent, including a subcontractor, to whom it provides
888 ePHI agrees to implement reasonable appropriate safeguards to protect it;
- 889 G. Report to County any security incident of which Contractor becomes
890 aware; and,
- 891 H. Comply with any additional security requirements that are applicable to
892 covered entities in Title 42 (Public Health and Welfare) of the United
893 States Code, as may be amended from time to time, including but not
894 limited to HITECH.
- 895 8. **Breach of Unsecured PHI.** In the case of breach of unsecured PHI,
896 Contractor shall comply with the applicable provisions of 42 USC §17932 and
897 45 CFR Part 164, Subpart D, including but not limited to 45 CFR §164.410.
- 898 A. **Discovery and notification.** Following the discovery of a breach of
899 unsecured PHI, Contractor shall notify County in writing of such breach
900 without unreasonable delay and in no case later than 60 calendar days
901 after discovery of a breach, except as provided in 45 CFR §164.412.
- 902 (1) **Breaches treated as discovered.** A breach is treated as discovered
903 by Contractor as of the first day on which such breach is known to
904 Contractor or, by exercising reasonable diligence, would have been
905 known to Contractor, which includes any person, other than the person
906 committing the breach, who is an employee, officer, or other agent of
907 Contractor (determined in accordance with the federal common law of
908 agency).
- 909 (2) **Content of notification.** The written notification to County relating to
910 breach of unsecured PHI shall include, to the extent possible, the
911 following information if known (or can be reasonably obtained) by
912 Contractor:

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- 913 (a) The identification of each individual whose unsecured PHI has
914 been, or is reasonably believed by Contractor to have been
915 accessed, acquired, used or disclosed during the breach;
- 916 (b) A brief description of what happened, including the date of the
917 breach and the date of the discovery of the breach, if known;
- 918 (c) A description of the types of unsecured PHI involved in the breach,
919 such as whether full name, social security number, date of birth,
920 home address, account number, diagnosis, disability code, or other
921 types of information were involved;
- 922 (d) Any steps individuals should take to protect themselves from
923 potential harm resulting from the breach;
- 924 (e) A brief description of what Contractor is doing to investigate the
925 breach, to mitigate harm to individuals, and to protect against any
926 further breaches; and,
- 927 (f) Contact procedures for individuals to ask questions or learn
928 additional information, which shall include a toll-free telephone
929 number, an e-mail address, web site, or postal address.
- 930 **B. Cooperation.** With respect to any breach of unsecured PHI reported by
931 Contractor, Contractor shall cooperate with County and shall provide
932 County with any information requested by County to enable County to
933 fulfill in a timely manner its own reporting and notification obligations,
934 including but not limited to providing notice to individuals, media outlets
935 and the Secretary in accordance with 42 USC §17932 and 45 CFR §§
936 164.404, 164.406 and 164.408.
- 937 **C. Breach log.** To the extent breach of unsecured PHI involves less than
938 500 individuals, Contractor shall maintain a log or other documentation of
939 such breaches and provide such log or other documentation on an annual
940 basis to County not later than fifteen (15) days after the end of each
941 calendar year for submission to the Secretary.
- 942 **D. Delay of notification authorized by law enforcement.** If Contractor
943 delays notification of breach of unsecured PHI pursuant to a law
944 enforcement official's statement that required notification, notice or posting
945 would impede a criminal investigation or cause damage to national
946 security, Contractor shall maintain documentation sufficient to
947 demonstrate its compliance with the requirements of 45 CFR §164.412.

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948 E. **Payment of costs.** With respect to any breach of unsecured PHI caused
949 solely by the Contractor's failure to comply with one or more of its
950 obligations under this Addendum and/or the provisions of HITECH,
951 HIPAA, the Privacy Rule or the Security Rule, Contractor agrees to pay
952 any and all costs associated with providing all legally required notifications
953 to individuals, media outlets, and the Secretary. This provision shall not
954 be construed to limit or diminish Contractor's obligations to indemnify,
955 defend and hold harmless County under Section 9 of this Addendum.

956 F. **Documentation.** Pursuant to 45 CFR §164.414(b), in the event
957 Contractor's use or disclosure of PHI and/or ePHI violates the Privacy
958 Rule, Contractor shall maintain documentation sufficient to demonstrate
959 that all notifications were made by Contractor as required by 45 CFR Part
960 164, Subpart D, or that such use or disclosure did not constitute a breach.

961 9. **Hold Harmless/Indemnification.**

962 A. Contractor agrees to indemnify and hold harmless County, all Agencies,
963 Districts, Special Districts and Departments of County, their respective
964 directors, officers, Board of Supervisors, elected and appointed officials,
965 employees, agents and representatives from any liability whatsoever,
966 based or asserted upon any services of Contractor, its officers,
967 employees, subcontractors, agents or representatives arising out of or in
968 any way relating to this Addendum, including but not limited to property
969 damage, bodily injury, death, or any other element of any kind or nature
970 whatsoever arising from the performance of Contractor, its officers,
971 agents, employees, subcontractors, agents or representatives from this
972 Addendum. Contractor shall defend, at its sole expense, all costs and
973 fees, including but not limited to attorney fees, cost of investigation,
974 defense and settlements or awards, of County, all Agencies, Districts,
975 Special Districts and Departments of County, their respective directors,
976 officers, Board of Supervisors, elected and appointed officials, employees,
977 agents or representatives in any claim or action based upon such alleged
978 acts or omissions.

979 B. With respect to any action or claim subject to indemnification herein by
980 Contractor, Contractor shall, at their sole cost, have the right to use
981 counsel of their choice, subject to the approval of County, which shall not
982 be unreasonably withheld, and shall have the right to adjust, settle, or
983 compromise any such action or claim without the prior consent of County;
984 provided, however, that any such adjustment, settlement or compromise in
985 no manner whatsoever limits or circumscribes Contractor's indemnification
986 to County as set forth herein. Contractor's obligation to defend, indemnify
987 and hold harmless County shall be subject to County having given

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988 Contractor written notice within a reasonable period of time of the claim or
989 of the commencement of the related action, as the case may be, and
990 information and reasonable assistance, at Contractor's expense, for the
991 defense or settlement thereof. Contractor's obligation hereunder shall be
992 satisfied when Contractor has provided to County the appropriate form of
993 dismissal relieving County from any liability for the action or claim
994 involved.

995 C. The specified insurance limits required in the Underlying Agreement of this
996 Addendum shall in no way limit or circumscribe Contractor's obligations to
997 indemnify and hold harmless County herein from third party claims arising
998 from issues of this Addendum.

999 D. In the event there is conflict between this clause and California Civil Code
1000 §2782, this clause shall be interpreted to comply with Civil Code §2782.
1001 Such interpretation shall not relieve the Contractor from indemnifying
1002 County to the fullest extent allowed by law.

1003 E. In the event there is a conflict between this indemnification clause and an
1004 indemnification clause contained in the Underlying Agreement of this
1005 Addendum, this indemnification shall only apply to the subject issues
1006 included within this Addendum.

1007 10. **Term.** This Addendum shall commence upon the Effective Date and shall
1008 terminate when all PHI and/or ePHI provided by County to Contractor, or
1009 created or received by Contractor on behalf of County, is destroyed or
1010 returned to County, or, if it is infeasible to return or destroy PHI and/ePHI,
1011 protections are extended to such information, in accordance with section 11.B
1012 of this Addendum.

1013 11. **Termination.**

1014 A. **Termination for Breach of Contract.** A breach of any provision of this
1015 Addendum by either party shall constitute a material breach of the
1016 Underlying Agreement and will provide grounds for terminating this
1017 Addendum and the Underlying Agreement with or without an opportunity
1018 to cure the breach, notwithstanding any provision in the Underlying
1019 Agreement to the contrary. Either party, upon written notice to the other
1020 party describing the breach, may take any of the following actions:

1021 (1) Terminate the Underlying Agreement and this Addendum, effective
1022 immediately, if the other party breaches a material provision of this
1023 Addendum.

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1024 (2) Provide the other party with an opportunity to cure the alleged material
1025 breach and in the event the other party fails to cure the breach to the
1026 satisfaction of the non-breaching party in a timely manner, the non-
1027 breaching party has the right to immediately terminate the Underlying
1028 Agreement and this Addendum.

1029 (3) If termination of the Underlying Agreement is not feasible, the non-
1030 breaching party may report the problem to the Secretary, and upon the
1031 non-breaching party's request, the breaching party at its own expense
1032 shall implement a plan to cure the breach and report regularly on its
1033 compliance with such plan to the non-breaching party.

1034 **B. Effect of Termination.**

1035 (1) Upon termination of this Addendum, for any reason, Contractor shall
1036 return or destroy all PHI and/or ePHI received from County, or created
1037 or received by the Contractor on behalf of County, and, in the event of
1038 destruction, Contractor shall certify such destruction, in writing, to
1039 County. This provision shall apply to all PHI and/or ePHI which are in
1040 the possession of subcontractors or agents of Contractor. Contractor
1041 shall retain no copies of PHI and/or ePHI, except as provided below in
1042 paragraph (2) of this section.

1043 (2) In the event that Contractor determines that returning or destroying the
1044 PHI and/or ePHI is not feasible, Contractor shall provide written
1045 notification to County of the conditions that make such return or
1046 destruction not feasible. Upon determination by Contractor that return
1047 or destruction of PHI and/or ePHI is not feasible, Contractor shall
1048 extend the protections of this Addendum to such PHI and/or ePHI and
1049 limit further uses and disclosures of such PHI and/or ePHI to those
1050 purposes which make the return or destruction not feasible, for so long
1051 as Contractor maintains such PHI and/or ePHI.

1052 **12. General Provisions.**

1053 **A. Retention Period.** Whenever Contractor is required to document or
1054 maintain documentation pursuant to the terms of this Addendum,
1055 Contractor shall retain such documentation for 6 years from the date of its
1056 creation or as otherwise prescribed by law, whichever is later.

1057 **B. Amendment.** The parties agree to take such action as is necessary to
1058 amend this Addendum from time to time as is necessary for County to
1059 comply with HITECH, the Privacy Rule, Security Rule, and HIPAA
1060 generally.

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- 1061 C. **Survival.** The obligations of Contractor under Sections 3, 5, 6, 7, 8, 9,
1062 11.B and 12.A of this Addendum shall survive the termination or expiration
1063 of this Addendum.
- 1064 D. **Regulatory and Statutory References.** A reference in this Addendum to
1065 a section in HITECH, HIPAA, the Privacy Rule and/or Security Rule
1066 means the section(s) as in effect or as amended.
- 1067 E. **Conflicts.** The provisions of this Addendum shall prevail over any
1068 provisions in the Underlying Agreement that conflict or appear inconsistent
1069 with any provision in this Addendum.
- 1070 F. **Interpretation of Addendum.**
- 1071 (1) This Addendum shall be construed to be part of the Underlying
1072 Agreement as one document. The purpose is to supplement the
1073 Underlying Agreement to include the requirements of the Privacy Rule,
1074 Security Rule, HIPAA and HITECH.
- 1075 (2) Any ambiguity between this Addendum and the Underlying Agreement
1076 shall be resolved to permit County to comply with the Privacy Rule,
1077 Security Rule, HIPAA and HITECH generally.
- 1078 G. **Notices to County.** All notifications required to be given by Contractor
1079 pursuant to the terms of this Addendum shall be in writing and delivered to
1080 the County by either registered or certified mail return receipt requested or
1081 guaranteed overnight mail with tracing capability at the address listed
1082 below, or at such other address as County may hereafter designate. All
1083 notices provided by Contractor pursuant to this Section shall be deemed
1084 given or made when received by County.
- 1085 Name: Riverside County Regional Medical Center, Compliance
1086 Department
- 1087 Title: Compliance and Privacy Officer
- 1088 Address: 26520 Cactus Avenue, Moreno Valley, CA 92555