

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



ITEM
3.34
(ID # 9899)

MEETING DATE:
Tuesday, July 23, 2019

FROM : HUMAN RESOURCES:

SUBJECT: HUMAN RESOURCES: Ratify and Approve the Trust Agreement for the Voluntary Employees' Beneficiary Association (VEBA) Post Employment Program Health Savings Plan for a contract extension with Washington Trust Bank for Investment Manager and Trustee Services; All Districts. [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Ratify and approve the Trust Agreement for the Voluntary Employees' Beneficiary Association Post-Employment Health Savings Plan with Washington Trust Bank for Trustee and Investment Manager Services from July 1, 2017 through December 31, 2019 (Attachment A).
2. Authorize the chairperson to sign three (3) copies of the document; and direct the Clerk of the Board to retain one (1) copy of the signed document and return two (2) copies of the signed document to Human Resources for distribution.

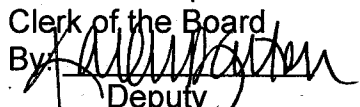
ACTION: Policy


Brenda Diederichs, Assistant CEO / Human Resources Director 6/7/2019

MINUTES OF THE BOARD OF SUPERVISORS

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

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt
Nays: None
Absent: None
Date: July 23, 2019
xc: HR

Kecia R. Harper
Clerk of the Board
By: 
Deputy

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

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 0	\$ 0	\$ 0	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: Fees and services are charged against the Plan assets – no additional cost to the County			Budget Adjustment: No	
			For Fiscal Year: 17/18, 18/19, 19/20	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The County of Riverside VEBA HSP was approved by the Board of Supervisors on November 26, 2002 and was ratified on June 10, 2003. The VEBA HSP account is a health reimbursement arrangement (HRA). An HRA is designed to provide tax-free reimbursement for qualified expenses incurred by the retired participant and/or the retired participant's eligible dependents as provided by the guidelines of the Internal Revenue Service (IRS).

On January 10, 2012 (Agenda Number 3.37, attached hereto for reference), the Board initially approved the VEBA HSP Agreements with three separate vendors to provide administration of the Plan. The County entered into agreements with VEBA Services Group, LLC (VSG), which is now known as Gallagher Benefits Services (GBS) for consulting services, Rehn Associates for recordkeeping services, and Washington Trust Bank for Trustee and investment management services. The three entities provide third-party administration (TPA) services to the Plan on behalf of the County.

Washington Trust Bank currently provides Trustee and investment manager services to the County's VEBA plan. To consolidate the number of vendors servicing the VEBA plan and reduce plan administration costs and engage the most qualified TPA in the market to administer the plan, Human Resources released a Request for Proposal (RFP) and is in the process of finalizing the (RFP) for trustee and investment, recordkeeping and consulting services. A new agreement of the selected plan administrator for the VEBA plan will be submitted to the Board prior to the January 2020 plan year.

Due to the extended time frame it took to release the RFP and a select a final vendor, the services contract with Washington Trust Bank expired. This Form 11 is a request to extend the agreement with Washington Trust Bank to ensure administrative contracts are in order. During the transition period of switching TPA vendors, Washington Trust Bank will continue to act as the Trustee and Investment Manager for the VEBA plan through December 31, 2019.

Impact on Residents and Businesses

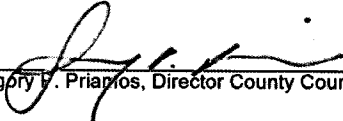
There is no impact on residents or businesses.


Contract History and Price Reasonableness

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

There is no direct cost to the County for the approval of these recommended actions, as costs are paid from plan assets.

Attachment A – Trust Agreement for the Voluntary Employees' Beneficiary Association Post-Employment Health Savings Plan, Trust Agreement dated July 1, 2017 by and between County of Riverside and Washington Trust Bank.


Gregory F. Priaplos, Director County Counsel 7/6/2019


Gregory F. Priaplos, Director County Counsel 7/6/2019

**TRUST AGREEMENT FOR THE
VOLUNTARY EMPLOYEES' BENEFICIARY ASSOCIATION
POST-EMPLOYMENT HEALTH SAVINGS PLAN**

Trust Agreement dated July 1, 2017 by and between
County of Riverside, California and Washington Trust Bank

JUL 23 2019 3.34

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SIGNATURE PAGE.....Error! Bookmark not defined.

HIPPA BUSINESS AGREEMENT 16

This Trust Agreement is made and entered into this 1st day of July 2017 (the "Effective Date") by and between the County of Riverside (the "County"), a political subdivision of the State of California, and Washington Trust Bank (the "Trustee"), a Washington corporation.

RECITALS

WHEREAS, the County established a trust to hold assets exempt from taxation under Section 501(c)(9) of the Internal Revenue Code for the benefit of employees who are eligible and participate in the Post-Employment Health Savings Plan which is funded by the Employer hereunder; and

WHEREAS, the County desires to appoint Washington Trust Bank as Trustee and investment manager of such trust.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree that the Trustee shall hold all funds and other property from time to time contributed or transferred to it pursuant to the provisions hereof, together with all the increments, proceeds, investments, and reinvestments thereof, and the income therefrom, in trust, for the uses and purposes and upon the terms and conditions hereinafter set forth.

ARTICLE I DEFINITIONS AND CONSTRUCTION

- 1.1 Definition. As used in this Agreement, the following terms shall have the meaning hereinafter set out:
- (a) "Agreement" shall mean this instrument, as it may hereafter be amended.
 - (b) "Code" shall mean the Internal Revenue Code of 1986, as the same has been or may hereafter be amended.
 - (c) "Employee" shall mean any current or former employee of the Employer.
 - (d) "Employer" shall mean the County and, individually and collectively, any governmental entity affiliated with the County for purposes of Section 501(c)(9) of the Code that maintains the Plan.
 - (e) "Member" shall mean any Employee who is a participant in the Plan.
 - (f) "Plan" shall mean the County of Riverside, California Voluntary Employees' Beneficiary Association Post-Employment Health Savings Plan and as such plan may be amended, modified, deleted, supplemented or terminated from time to time, for so long as such plan may be funded through the Trust, in whole or in part.
 - (g) "Qualified Investment Manager" shall mean an investment manager as defined in Section 3(38) of the Employee Retirement Income Security Act of 1974, and codified at 29 U.S.C. § 1002(38).
 - (h) "Securities" shall mean common and preferred stocks, contractual obligations of every kind, whether secured or unsecured, equitable interests in real or personal property, and intangible property of every description and howsoever evidenced.

- (i) "Taxes" shall mean taxes and shall be deemed to include any interest or penalties assessed in respect to such taxes.
- (j) "Trust" shall mean the trust established and maintained under this Agreement.

1.2 Construction. Where necessary or appropriate to the meaning thereof, the singular shall be deemed to include the plural, the plural to include the singular, the masculine to include the feminine, the feminine to include the masculine.

ARTICLE II PURPOSE

- 2.1 Purpose. The Trust has been established to provide Employees with post-employment medical benefits as set forth in the Plan, while they are eligible to receive such benefits, and to provide such other permissible payments as may be determined from time to time, and it is intended that the benefits and payments provided by the Plan and funded through the Trust be "life, sick, accident, or other benefits" as that phrase is defined in Section 501(c)(9) of the Code.
- 2.2 Exclusive Benefit. No part of the Trust fund shall be used for purposes other than for (1) the exclusive benefit of Members in accordance with the provisions of the Plan and the Trust, and (2) defraying reasonable expenses of administering the Plan and the Trust.

ARTICLE III MEMBERSHIP

- 3.1 Eligibility for Membership. Each Employee who becomes a participant in the Plan shall become a Member as of the date he so becomes a participant. Upon becoming a Member, such Employee shall be bound by all provisions of this Agreement.
- 3.2 Termination of Membership. An Employee shall cease to be a Member as of the date his participation in the Plan ceases.

ARTICLE IV FUNDING

- 4.1 Contributions. The Employer shall contribute to the Trust such amount or amounts, if any, as the County may determine from time to time. All contributions shall be held, administered, and distributed, in trust, under the terms of this Agreement. The Trustee shall not be under any duty to inquire into the timeliness or correctness of the amounts contributed and delivered to the Trustee hereunder; nor shall the Trustee or any other person be under any duty to enforce the payment of the contributions to be made hereunder and the County agrees to indemnify and hold harmless the Trustee in connection therewith. The Trustee shall not be responsible for the calculation or collection of any contributions under or referred to by the Plan and shall have no duties, except as specified under this Agreement, for the administration of the Trust. Nothing in this Agreement shall entitle any Trustee or Member to inquire into or demand the right to

inspect the books of Employer. Notwithstanding any provision of this Agreement to the contrary, in no event shall the County be required to continue to fund benefits under any Plan through the Trust.

4.2 Irrevocability of Contributions.

(a) In General. Except as may otherwise be permitted by (i) Section 501(c)(9) of the Code, and (ii) Subsection (b) of this Section 4.2, and as will not result in the imposition of tax under Section 4976 of the Code, all contributions made to the Trust shall be irrevocable.

(b) Mistake of Fact. If a contribution or any portion thereof is made to the Trust due to a good faith mistake of fact, then within one (1) year of the date of payment of such contribution to the Trust an amount equal to the excess of (i) the amount of such contribution, over (ii) the amount which would have been contributed had a mistake of fact not occurred, shall be returned to the contributor. The amount(s) of any contribution(s) to be returned to the Employer in accordance with this subsection shall be limited to Trust assets.

4.3 Trust Fund. The Trustee shall receive the contributions from the County in cash or other property acceptable to it. All assets so received together with the income therefrom and any other increment thereon shall be held, managed, and administered by the Trustee pursuant to the terms hereof as a common fund without distinction between principal and income.

4.4 Set Aside of Income. All income of the Trust shall be set aside and used only for the exempt purposes set forth under Section 501(c)(9) of the Code (including defraying reasonable expenses of administering the Plan and Trust).

**ARTICLE V
POWERS AND DUTIES OF THE TRUSTEE**

5.1 Trust Property and Investments. In addition to all powers and duties otherwise expressly set forth in this Agreement and subject to the provisions of Section 5.5, the Trustee shall have the following powers:

- (a) to invest and reinvest all or any part of the Trust, including both principal and income, in Securities, and other property;
- (b) to insure the payment of benefit under a contract or contracts with an insurance company or companies, and hold and retain such contract or contracts as part of the Trust;
- (c) to sell, lease, exchange, or otherwise dispose of all or any part of the Trust;
- (d) to exercise, buy, or sell rights of conversion or subscription;
- (e) to enter into or oppose any plan of consolidation, merger, reorganization, capital readjustment, or liquidation of any corporation or other issuer of Securities held hereunder including any plan for the sale, lease, or mortgage of any of its property or the adjustment or liquidation of any of its indebtedness and, in connection with any such plan, to enter into any other such agreement, and to pay assessments or subscriptions from the other assets held hereunder;

- (f) to retain in cash or otherwise in a form unproductive of income such portion of the Trust as is necessitated by the cash requirements of the Plan; provided, however, that, to the extent feasible, such amounts shall be held in forms of investment which are productive of income but are sufficiently liquid to meet such cash requirements;
- (g) to deposit Securities held hereunder in any depository;
- (h) to deposit all or any part of the Trust, including both principal and interest, in any bank organized under the national banking laws of the United States or under the laws of any State;
- (i) to invest in and commingle assets of the Trust in any common or collective trust fund heretofore or hereafter created and administered by the Trustee or its affiliates; provided, however, that, the instrument establishing such common or collective trust fund including all amendments thereto shall govern any investment therein, and is hereby made a part of this Agreement as if fully set forth herein.

The Trustee shall invest Trust assets as directed, in writing by the County. If no such direction is received from the County, the Trustee shall invest Trust assets in one or more of the money market funds generally utilized by the Trustee with respect to its other trust accounts.

The County may appoint one or more Qualified Investment Managers to direct the Trustee with respect to investment of Trust assets, in which case the County shall notify the Trustee of such appointment. In such case, the Qualified Investment Manager shall have the same power to direct the Trustee with respect to such investments as the County had, and the Trustee shall be under no duty to question, and shall not incur any liability on account of following, any direction of the County or Qualified Investment Manager with respect to such investments. The Trustee shall be under no duty to review the investment guidelines, objectives and restrictions established, or the specific investment instructions given, by the County to such Qualified Investment Manager or to make suggestions to the County in connection therewith.

- 5.2 Claims Against Trust. Subject to the provisions of Section 5.5, and except as regards benefits under the Plan, the Trustee is empowered to compromise and adjust any and all claims, debts, or obligations in favor of or against the Trust, whether such claims be in litigation or not, and to reduce the rate of interest on, to extend or otherwise modify, or to foreclose upon default, or otherwise enforce any such claim, debt, or obligation.
- 5.3 Borrowing. Subject to the provisions in Section 5.5, the Trustee is empowered to borrow money in such amounts and upon such terms and conditions as shall be deemed advisable or proper to carry out the purposes of the Trust and to pledge any Securities or other property for the repayment of any such loan; provided, however, no such loan shall be made by the Trustee individually other than a temporary advancement to the Trust on a cash or overdraft basis.
- 5.4 Registration of Securities; Nominees. The Trustee is empowered to register Securities in its own name, or in the name of its nominee without disclosing the Trust, or to hold the

same in bearer form, and to take title to other property in its own name or in the name of its nominee without disclosing the Trust; but the Trustee shall be responsible for the acts of its nominee.

- 5.5 County Directions. The powers conferred upon the Trustee in Sections 5.1, 5.2, 5.3, and 5.4 shall be exercised by the Trustee in its sole discretion only if and when specifically so authorized in writing by the County. The County shall, at any time and from time to time, certify to the Trustee in writing the name or names of any person authorized to act for the County, with respect to the exercising of any one or more of such powers. Until the County notifies the Trustee that such person is no longer authorized to act for the County, the Trustee may continue to rely on the authorization of such person. The Trustee shall be under no duty or obligation to question any instruction it so receives, except that the Trustee shall have no obligation by reason of any such direction to make any advance or loan in its banking capacity. The Trustee shall have no liability or responsibility for acting without question on the direction of, or failing to act in the absence of any action, unless the Trustee has knowledge that by such action or failure to act it will be participating in or undertaking to conceal a breach of fiduciary duty. The County agrees to indemnify and hold harmless the Trustee for acting or not acting in connection with this Section 5.5; provided, however, that in the event the Trustee is acting in its own discretion, with respect to any assets of the Trust, such indemnification shall be of no effect and the Trustee shall be liable for any breach of fiduciary responsibility in the exercise of its duties under this Agreement and shall indemnify and hold harmless the County for such breach.
- 5.6 Agents, Attorneys, Actuaries, and Accountants. The Trustee is empowered to employ such agents, attorneys, actuaries, and accountants as it may deem necessary or proper in connection with its duties hereunder, and to determine and pay out of the assets of the Trust the reasonable compensation and expenses of such agents, attorneys, actuaries, and accountants.
- 5.7 Other Authority. The Trustee is authorized to execute and deliver any and all instruments and to perform any and all acts which may be necessary or proper to enable it to discharge its duties under this Agreement and to carry out the power and authority conferred upon it.
- 5.8 Directions to the Trustee. The Trustee may rely on any written direction, request, approval, or other document purporting to have been signed on behalf of the County by the person authorized to act for the County.
- 5.9 Payment of Taxes. The Trustee is empowered to pay out of the assets of the Trust, as a general charge thereon, any and all Taxes of whatsoever nature assessed on or in respect thereto; provided, however, that if the County shall notify the Trustee in writing that any such Tax is not lawfully or properly assessed, or is questionable, the Trustee, if so requested by the County, shall contest the validity of such Tax in any manner deemed appropriate by the County. Unless the Trustee shall first have been indemnified to its satisfaction by the County, the Trustee shall not be required to contest the validity of any

Tax, to institute, maintain, or defend against any other action or proceeding, or to incur any other expense in connection with the Trust, except to the extent that the same is sufficient therefore.

- 5.10 Compensation and Expenses. The Trustee shall be entitled to an annual fee of 22 Basis Points (bps) for its all inclusive service and reimbursements for reasonable expenses incurred by the Trustee in the administration of the Trust as Trustee and investment manager of such Trust. The annual fee of 22 bps will be charged against all assets of the Trust, and such annual fee will be prorated and collected each month based on the previous month ending market value of the Trust assets. Example: If the market value of all assets of the Trust is \$23,000,000, the estimated annual fee at 22 bps is \$50,600 ($\$23,000,000 \times 0.0022$), and such amount will be prorated and collected on a monthly basis.
- 5.11 Records and Statements. The Trustee shall keep accurate records of all receipts, disbursements, and other transactions affecting the Trust, which, together with the assets comprising the Trust and all evidences thereof, shall be available during the Trustee's usual business hours for inspection or for the purposes of making copies or reproductions thereof by the County, upon the County's reasonable request. The Trustee shall render to the County monthly statements of receipts, disbursements, and all transactions during the preceding month affecting the Trust. The Trustee further shall render to the County annually a statement of all assets then held by it hereunder.
- 5.12 Court Action Not Required. All the powers and authority herein conferred upon the Trustee shall be exercised by it without the necessity of applying to any court for leave or confirmation. No person dealing with the Trustee shall be required to ascertain whether the Trustee shall have obtained the approval of any court or of any person to any action which it may propose to take hereunder, but every such person may rely solely upon the deed, transfer, or assurance of the Trustee.
- 5.13 Disputes. If a dispute arises as to the payment of any funds or delivery of any assets by the Trustee, the Trustee may withhold such payment or delivery until the dispute is resolved by court of competent jurisdiction or finally settled in writing by the concerned parties.

ARTICLE VI DISPOSITION OF TRUST ASSETS

- 6.1 Payments from the Trust. Unless and until the Plan is terminated as therein provided, the Trustee shall make payments from the Trust for the benefit of Members or to pay reasonable expenses of administering the Plan or Trust, as directed by the County or by any administrator appointed by the County.
- 6.2 No Reversion of Contributions. Except to the extent permitted by Section 4.1 or 4.2, any contribution paid by the County to the Trustee hereunder shall be irrevocable, and it shall be impossible at any time for any part of the Trust's assets to revert to the County or to be

used for or diverted to purposes other than for the exclusive benefit of Members or for the payment of Taxes and expenses of administration except to the extent permitted by law. Subject to the foregoing provisions of this Section 6.2, any excess remaining in the Trust upon satisfaction of all liabilities and requirements of the Trustee hereunder shall be disposed of by the Trustee, as directed by the County, for such purposes as shall not adversely affect the exempt status of the Trust under Section 501(c)(9) of the Code, which may include transfer to another trust or trusts exempt from taxation under Section 501(c)(9) of the Code.

ARTICLE VII SUCCESSION TO THE TRUSTEESHIP

- 7.1 Resignation of the Trustee. Any Trustee acting hereunder may resign at any time by giving notice in writing to the County at least sixty (60) days before such resignation is to become effective, unless the County shall accept as adequate a shorter notice.
- 7.2 Removal of the Trustee. The County may remove, with or without cause, any Trustee acting hereunder by giving notice in writing to such Trustee at least thirty (30) days before such removal is to become effective, unless the Trustee shall accept as adequate a shorter notice.
- 7.3 Appointment of a Successor Trustee. If for any reason a vacancy should occur in the trusteeship, a successor Trustee shall forthwith be appointed by the County by action of duly authorized officer thereof, which successor Trustee may be either a corporation authorized to carry on a trust business or a national banking association. Any successor Trustee appointed hereunder shall execute, acknowledge, and deliver to the County and Trustee an instrument in writing accepting such appointment hereunder. Such successor Trustee thereupon shall become vested with the same title to the Trust property, and the same powers and duties with respect thereto, as are vested in the original Trustee. The predecessor Trustee shall execute all such instruments and perform all such other acts as the successor Trustee shall reasonably request to effectuate the provisions hereof. The successor Trustee shall have no duty to inquire into the administration of the Trust for any period prior to its succession.

ARTICLE VIII AMENDMENT AND TERMINATION

- 8.1 Right of Amendment. Subject to the provisions of Section 8.2, the County reserves the right, by means of a written instrument formally approved by the County's Board of Supervisors and executed in the name of the County to amend the provisions of this Agreement in any manner, provided, however, that the powers and duties of the Trustee shall not be changed without its approval. Any such amendment shall be by written instrument executed by the County and the Trustee. Notwithstanding any provisions of this Section 8.1 to the contrary, any amendment made to this Agreement may be given retroactive effect if in the opinion of the County such amendment is appropriate.

- 8.2 Limitation on Amendment. The County shall make no amendment to this Agreement which shall permit any part of the Trust property to revert to the Employer or be used for or be diverted to purposes other than the exclusive benefit of Members except to the extent permitted by Section 501(c)(9) of the Code and any other applicable law and as will not result in the imposition of an excise tax under Section 4976 of the Code.
- 8.3 Term. The term of this Agreement begins on July 1, 2017 and extends through December 31, 2019. At no time will this Agreement extend beyond June 30, 2020.
- 8.4 Right to Terminate. The Employer has the right to terminate its contributions to the Trust. In the event of complete termination of contributions by the Employer, the Employer shall make no further contributions under the Trust, the Trust shall remain in existence, and all of the provisions of the Trust, which, in the opinion of the Trustee are necessary to the purposes of the Trust, shall remain in force, other than the provisions for contributions by the Employer, and all of the assets in the Trust on the date of termination shall be held, administered, and distributed by the Trustee in the manner provided herein and upon final distribution the Trust shall terminate.
- 8.5 Termination for Breach. The Employer may terminate this Agreement, effective immediately, if Employer, in its sole discretion, determines that Trustee has breached a material provision of this Agreement. Alternatively, Employer may choose to provide Trustee with notice of the existence of an alleged material breach and afford Trustee with an opportunity to cure the alleged material breach and in the event the Trustee fails to cure the breach to the satisfaction of Employer in a timely manner, Employer reserves the right to immediately terminate this Agreement.

ARTICLE IX INDEMNIFICATION

- 9.1 Indemnification. Trustee shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as Indemnitees) from any liability whatsoever, based or asserted upon any services of Trustee, its officers, employees, subcontractor, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever arising from the performance of Trustee, its officers, employees, subcontractor, agents or representatives Indemnitors from this Agreement. Trustee 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, the Indemnitees in any claim or action based upon such alleged acts or omissions.

With respect to any action or claim subject to indemnification herein by Trustee, Trustee shall, at their sole cost, have the right to use counsel of their 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 Trustee's indemnification to Indemnitees as set forth herein.

Trustee's obligation hereunder shall be satisfied when Trustee has 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 Trustee's obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

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

9.2 Insurance. Without limiting or diminishing the Trustee's (Washington Trust Bank, the "Trustee") obligation to indemnify or hold the County harmless, Trustee shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverages during the term of this Agreement. As respects to the insurance section only, the County herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds.

A. Workers' Compensation:

If the Trustee has employees as defined by the State of California, the Trustee shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. 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 The County of Riverside.

B. Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of Trustee's performance of its obligations hereunder. Policy shall name the County as Additional Insured. 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 Trustee 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 the County as Additional Insureds.

D. Professional Liability:

Trustee shall maintain Professional Liability Insurance providing coverage for the Trustee's performance of work included within this Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If Trustee's 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 and Trustee shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Dates Coverage from 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 Trustee has maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue as long as the law allows.

E. Insurance Requirements for IT Trustee Services:

Trustee shall procure and maintain for the duration of the contract insurance against claims for injuries to person or damages to property which may arise from or in connection with the performance of the work hereunder by the Trustee, its agents, representatives, or employees. Trustee shall procure and maintain for the duration of the contract insurance claims arising out of their services and including, but not limited to loss, damage, theft or other misuse of data, infringement of intellectual property, invasion of privacy and breach of data.

Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Trustee in this agreement and shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

If the Trustee maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the Trustee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

F. 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 the County Risk Manager. If the 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) The Trustee must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceed \$500,000 per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention unacceptable to the County, and at the election of the County's Risk Manager, Trustee's carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Agreement with the County, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

3) Trustee shall cause Trustee's insurance carrier(s) to furnish the County of Riverside 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 the County 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 a minimum of ten (10) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. If Trustee insurance carrier(s) policies does not meet the minimum notice requirement found herein, Trustee shall cause Trustee's insurance carrier(s) to furnish a 30 day Notice of Cancellation Endorsement.

4) In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County of Riverside 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 coverage's set forth herein and the insurance required herein is in full force and effect. Trustee shall not commence operations 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.

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

6) 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 work; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; the County reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement, if in the County Risk Management's reasonable judgment, the amount or type of insurance carried by the Trustee has become inadequate.

7) Trustee shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

8) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the County.

9) Trustee agrees 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.

ARTICLE X MISCELLANEOUS

10.1 Validity of Agreement. The validity of this Agreement shall be determined and this Agreement shall be construed and interpreted in accordance with the laws of the State of California. If any provision of this Agreement is held to be illegal or invalid for any reason and such illegality or invalidity prevents the accomplishment of the objectives and purposes of the Trust, in the event of any such holding, the parties may immediately, and if in accordance with appropriate law retroactively, amend the Agreement as is necessary to remedy any such defect.

10.2 No Guarantees. Neither the Employer nor the Trustee guarantees the Trust from loss or depreciation, nor the payment of any amount which may become due to any person hereunder. Nothing contained in the Trust shall constitute a guarantee by the Employer, the County or the Trustee that the assets of the Trust will be sufficient to pay any benefit to any person or make any other payment. Payments to be paid from the Trust are limited to the assets remaining in the Trust at the time payment is made. Prior to the time that distributions are made in conformity with the Plan and the Trust, Members or other persons shall not receive any distribution of cash or other thing of current or exchangeable value, either from the Employer, the County, or the Trustee on account of, or as a result of the Trust fund created hereunder.

- 10.3 Duty to Furnish Information. The County and the Trustee each shall furnish to the other any documents, reports, returns, statements, or other information that the other reasonably deems necessary to perform its duties imposed under any Plan or this Agreement or otherwise imposed by law. The County shall have the right to conduct an audit of Trust income, expenses, investments, and accounts or to have such audit conducted by an audit firm of its choosing. Similarly, Trust records shall be available for inspection and review by any regulatory agencies authorized by law to do so. The Trustee, Employer and Qualified Investment Manager and all persons and entities retained by any of them to perform services with respect to the Trust shall (a) cooperate with any such audit, inspection or review, and (b) retain any records within their possession pertaining to the Trust for a period of at least five (5) years unless they first offer to turn over such records to the County prior to disposing of such records. This Section 10.3 shall survive the termination of this document and the termination of the Trust.
- 10.4 Taxes. The Trustee shall withhold any Tax which by any present or future law is required to be withheld from any payment to any Member hereunder.
- 10.5 Commingled Trust Fund. The fact that separate records may be maintained by the County or Trustee or any other person for each Member or group thereof, shall not be deemed to segregate for or give to such Member or group thereof, any direct interest in any specific assets of the Trust.
- 10.6 Rebates and Adjustments. Notwithstanding any provisions of this Trust to the contrary, the County may, in its discretion and to the extent permitted by Section 501(c)(9) of the Code and as would not result in the imposition of tax under Section 4976 of the Code, direct the Trustee to make administrative adjustments strictly incidental to the providing of benefits to Members. In addition, in the event a benefit is provided or a disbursement is made from the Trust as a result of a directive from the County (or its appointee) and it is determined by the County (or its appointee) that such benefit should not have been provided or disbursement made, the County may make a contribution to reimburse the Trust or engage in efforts to seek the return of the benefit or disbursement. The Trustee shall be under no duty or obligation to inquire into the correctness of any determination made by the County resulting in a direction to the Trustee under this provision.
- 10.7 Specific Accounts. At no time shall any segregated account or separate fund be considered a savings account or investment or asset of any particular Member or group thereof, and no Member or group thereof shall have any right to any particular asset which the County or the Trustee may have allocated to any segregated account or separate fund for accounting purposes.
- 10.8 Inalienability of Benefits. Except as may otherwise be provided herein, the right of any Member or other person or entity to any benefit or payment from the Trust shall not be subject to voluntary or involuntary transfer, alienation, pledge, assignment or other disposition and shall not be subject to attachment, execution, garnishment, sequestration or other legal or equitable process. Any attempt to transfer, alienate, pledge, assign, or

otherwise dispose of such right or any attempt to subject such right to attachment, execution, garnishment, sequestration or other legal or equitable process shall be null and void, unless such action is (i) approved by the County (or its appointee); and (ii) undertaken in accordance with the terms and provisions of the Plan and the Trust.

- 10.9 No Implied Rights. Neither the establishment of the Trust nor any modification thereof, nor the creation of any fund, trust or account thereunder, shall be construed as giving any Member or other person or entity any legal or equitable right unless such right shall be specifically provided for in the Plan and the Trust or conferred by affirmative action of the County in accordance with the express written terms and provisions of the Plan and the Trust.
- 10.10 Status of Employment Relations. The adoption and maintenance of the Trust shall not be deemed to constitute a contract between the Employer and its Employees or any representative thereof or to be consideration for, or an inducement or condition of, the employment of any person. Nothing contained herein shall be deemed to:
- (a) give to any Employee the right to be retained in the employment of the Employer;
 - (b) affect the right of the Employer to discipline or discharge any Employee at any time; or
 - (c) affect any Employee's right to terminate his employment at any time.
- 10.11 Uniform Application. The County shall apply the provisions and any rules, regulations and conditions adopted by it (or its appointee) in a uniform and nondiscriminatory manner in accordance with Sections 505 and 501(c)(9) of the Code, so that all persons similarly situated shall be similarly treated. In addition, all rules, regulations and conditions adopted by it must be reasonably related to the type or amount of benefit or other payment provided under the Trust and must be objectively selected and administered so as to not provide disproportionate benefits in favor of officers or highly compensated employees of the Employer or highly compensated individuals (in accordance with Sections 501 (c)(9) and 505 of the Code).
- 10.12 Parties Bound. This Agreement shall be binding upon the parties hereto, all Employees and, as the case may be, the heirs, executors, administrators, successors, and assigns of each of them.
- 10.13 Governing Law and Venue. This Agreement will be governed, enforced, and interpreted in accordance with the laws of the State of California, except where federal law preempts state law. The venue and jurisdiction for any action arising under this Agreement will be in the state or federal courts in Riverside, California. The parties consent to the jurisdiction and venue of the state or federal courts in Riverside, California and waive any objections to such jurisdiction and venue.. The parties consent to the jurisdiction and venue of the state or federal courts in California and waive any objections to such jurisdiction and venue.

10.14 Entire Agreement. This Agreement (together with all attachments hereto) shall constitute the entire agreement between the parties related to the rights herein granted and the obligations herein assumed. It is the express intention of the Trustee and the County that any and all prior or contemporaneous agreements, promises, negotiations or representations, either oral or written, relating to the subject matter and period governed by this Trust Agreement which are not expressly set forth herein shall be of no further force, effect or legal consequence after the effective date hereunder.

10.15 Delivery of Notices. Any notice or other communication provided for in this Agreement will be given in writing, delivered to the respective parties at the addresses set forth below or to such other address(es) as the parties may hereafter designate, and are deemed to be submitted (1) day after the deposit to the United States Postal Service or private courier if delivered by U.S. Postal Services express delivery or overnight courier that guarantees next day delivery, or five (5) days after their deposit in the United States mail, postage prepaid:

If to the Trustee:

Washington Trust Bank
c/o Steve R. Sherman
Re: County of Riverside Voluntary Employees' Beneficiary Association (VEBA)
Post Employment Program (PEP) Health Savings Plan (HSP)
717 W. Sprague Ave
Spokane, WA 99201

If to the County:

County of Riverside
c/o Human Resources Division
4080 Lemon St. 1st Floor
Riverside, CA 92502-1569

10.16 Severability. In the event any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired or invalidated in any way.

10.17 Government Claims Act. The provisions of the Government Claims Act (California Government Code Section 900 et seq.) must be followed first for any disputes under this Agreement.

10.18 Independent Trustee. The relationship between County and Trustee is an independent Trustee relationship. Neither County nor its employee(s) and/or agent(s) shall be considered to be an employee(s), and/or agent(s) of Trustee. Neither Trustee nor any employee(s) and/or agent(s) of Trustee shall be considered to be an employee(s) and/or agent(s) of County. None of the provisions of this Agreement shall be construed to create a relationship of agency, representation, joint venture, ownership, control or employment

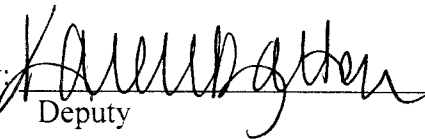
between the parties other than that of independent parties contracting for the purposes of effectuating this Agreement.

- 10.19 Waiver. Any waiver by either party of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same term or of any other term herein.
- 10.20 Conflict of Interest. The parties hereto and their respective employees or agents shall have no interest, and shall not acquire any interest, direct or indirect, which shall conflict in any manner or degree with the performance of services required under this Agreement.
- 10.21 Force Majeure. In case by reason of force majeure either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then except as otherwise expressly provided in this Agreement, if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligations of the party giving such notice (other than the obligations pertaining to Insurance, Section 9.2 herein, or Indemnification, Section 9.1 herein), so far as they are affected by such force majeure, shall be suspended during the continuance of the inability then claimed which shall include a reasonable time for the removal of the effect thereof, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "force majeure," as employed herein, shall mean any cause beyond the reasonable control of the party asserting force majeure and shall include, but shall not be limited to, labor disputes or other industrial disturbances, systemic electrical, telecommunications or other utility failures, earthquakes, hurricanes, tornadoes or other acts of nature, embargoes, riots, acts or orders of government, acts of terrorism or war."
- 10.22 Interpretation. The parties to this Agreement and their counsel have reviewed and revised this Agreement, and the normal rule of construction to the effect that any ambiguities in an agreement are to be resolved against the drafting parties shall not be employed in the interpretation of this Agreement.
- 10.23 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument

IN WITNESS WHEREOF, the parties hereto have caused their duly appointed representatives to execute this Trust Agreement effective as of the Effective Date.

ATTEST:

COUNTY OF RIVERSIDE


By: 
Deputy

By: 
Chairman, Board of Supervisors
KEVIN JEFFRIES

Date: JUL 23 2019

Date: JUL 23 2019

Approved as to Form:
Gregory P. Priamos
County Counsel

By: 
Deputy County Counsel

WASHINGTON TRUST BANK,
a Washington corporation

By: 



Title: V.P.

SUP

Date: 5-23-19

5-23-19

HIPAA Business Associate Agreement
Addendum to Contract
Between the County of Riverside and Washington Trust Bank

This HIPAA Business Associate Agreement (the "Addendum") supplements, and is made part of the Trust Agreement for the Voluntary Employees' Beneficiary Association Post-Employment Health Savings Plan (the "Underlying Agreement") between the County of Riverside ("County") a political subdivision of the State of California, and Washington Trust Bank. ("Trustee") a Washington corporation, and shall be effective as of the date the Underlying Agreement is approved by both Parties (the "Effective Date").

RECITALS

WHEREAS, County and Trustee entered into the Underlying Agreement pursuant to which the Trustee 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 Trustee 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 Trustee or Trustee creates, receives, maintains, transmits, or has access to PHI and/or ePHI of County, Trustee 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 Trustee 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 Trustee 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 Trustee 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 Trustee of County's PHI and/or ePHI.**

- A. Except as otherwise provided in this Addendum, Trustee may use, disclose, or access PHI and/or ePHI as necessary to perform any and all obligations of Trustee 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), Trustee may:
 - 1) Use PHI and/or ePHI if necessary for Trustee's proper management and administration and to carry out its legal responsibilities; and,
 - 2) Disclose PHI and/or ePHI for the purpose of Trustee's proper management and administration or to carry out its legal responsibilities, only if:
 - a) The disclosure is required by law; or,
 - b) Trustee obtains reasonable assurances, in writing, from the person to whom Trustee 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 Trustee disclosed it to the person, or as required by law; and,
 - ii. Notify County 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 Trustee 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. Trustee 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. Trustee 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. Trustee agrees not to make any disclosure of PHI and/or ePHI that County would be prohibited from making.
- D. Trustee 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. Trustee 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 Trustee for services provided pursuant to the Underlying Agreement.

4. **Obligations of County.**

- A. County agrees to make its best efforts to notify Trustee promptly in writing of any restrictions on the use or disclosure of PHI and/or ePHI agreed to by County that may affect Trustee's ability to perform its obligations under the Underlying Agreement, or this Addendum.
- B. County agrees to make its best efforts to promptly notify Trustee 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 Trustee's ability to perform its obligations under the Underlying Agreement, or this Addendum.
- C. County agrees to make its best efforts to promptly notify Trustee in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect Trustee's use or disclosure of PHI and/or ePHI.
- D. County agrees not to request Trustee 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 Trustee can perform its obligations under this Addendum and/or Underlying Agreement.

5. **Obligations of Trustee.** In connection with the use or disclosure of PHI and/or ePHI, Trustee agrees to:

- A. Use or disclose PHI only if such use or disclosure complies with each applicable requirement of 45 CFR §164.504(e). Trustee 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. Trustee shall promptly notify County if Trustee 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 Trustee of a use or disclosure of PHI and/or ePHI by Trustee 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 Trustee 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 Trustee agree through contract to the same restrictions and conditions that apply to Trustee 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, Trustee's internal practices, books and records relating to the use, disclosure and privacy protection of PHI received from County, or created or received by Trustee on behalf of County, for purposes of determining, investigating or auditing Trustee'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 Trustee shall promptly notify County upon Trustee'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 Trustee 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 Trustee becomes aware that constitute a material breach or violation of the subcontractor's obligations under the business associate contract with Trustee, and if such steps are unsuccessful, Trustee agrees to terminate its contract with the subcontractor if feasible.
6. **Access to PHI, Amendment and Disclosure Accounting.** Trustee 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 Trustee uses or maintains electronic health records. Trustee 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 Trustee or Trustee 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, Trustee 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 Trustee 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 Trustee'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 Trustee 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 Trustee 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, Trustee 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, Trustee 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 Trustee as of the first day on which such breach is known to Trustee or, by exercising reasonable diligence, would have been known to Trustee, which includes any person, other than the person committing the breach, who is an employee, officer, or other agent of Trustee (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 Trustee:
 - a) The identification of each individual whose unsecured PHI has been, or is reasonably believed by Trustee 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 Trustee 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 Trustee, Trustee 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.
- C. **Breach log.** To the extent breach of unsecured PHI involves less than 500 individuals, Trustee 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 Trustee 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, Trustee 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 Trustee'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, Trustee agrees to pay any and all costs associated with providing all legally required notifications to individuals, media outlets, and the Secretary. This provision shall not be construed to limit or diminish Trustee'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 Trustee's use or disclosure of PHI and/or ePHI violates the Privacy Rule, Trustee shall maintain documentation sufficient to demonstrate that all notifications were made by Trustee as required by 45 CFR Part 164, Subpart D, or that such use or disclosure did not constitute a breach, including Trustee'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) Trustee 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) Trustee 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 two (2) business days after Trustee detects such incident. Trustee 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. Trustee 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 Trustee, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Addendum, 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 Trustee, its officers, agents, employees, subcontractors, agents or representatives from this Addendum. Trustee 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 Trustee, Trustee 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 Trustee's indemnification to County as set forth herein. Trustee's obligation to defend, indemnify and hold harmless County shall be subject to County having given Trustee 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 Trustee's expense, for the defense or settlement thereof. Trustee's obligation hereunder shall be satisfied when Trustee 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 Trustee'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 Trustee 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 Trustee, or created or received by Trustee 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, Trustee 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 Trustee on behalf of County, and, in the

event of destruction, Trustee 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 Trustee. Trustee shall retain no copies of PHI and/or ePHI, except as provided below in paragraph (2) of this section.

- 2) In the event that Trustee determines that returning or destroying the PHI and/or ePHI is not feasible, Trustee shall provide written notification to County of the conditions that make such return or destruction not feasible. Upon determination by Trustee that return or destruction of PHI and/or ePHI is not feasible, Trustee 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 Trustee maintains such PHI and/or ePHI.

12. **General Provisions.**

- A. **Retention Period.** Whenever Trustee is required to document or maintain documentation pursuant to the terms of this Addendum, Trustee 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 Trustee 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 Trustee 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 Trustee 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: 26520 Cactus Avenue
Moreno Valley, CA 92555

County HIPAA Privacy Officer Phone Number: (951) 955-3515

County HIPAA Privacy Officer Fax Number: (951) 955-8538

Name: Brenda L. Diederichs

Title: Assistant CEO / Human Resources Director

Address: 4080 Lemon Street, 7th Floor
Riverside, CA 92502

Fax: (951) 955-8538

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

FORM APPROVED COUNTY COUNSEL
DATE 11/22/11
BY TAVNY D'IEU

FROM: Human Resources Department

SUBMITTAL DATE:
December 22, 2011

SUBJECT: Approve the Voluntary Employees' Beneficiary Association (VEBA) Post Employment Program Health Savings Plan – Administrative Services Agreement between VEBA Service Group, Third-Party Administrative Service Agreement between A.W. Rehn and Associates, and Trustee and Investment Manager Services between Washington Trust Bank

RECOMMENDED MOTION: That the Board of Supervisors: 1) ratify and approve the attached Agreement with VEBA Service Group, LLC (VSG), to provide consulting services for the County's Voluntary Employees' Beneficiary Association (VEBA) Health Savings Plan (HSP) (Attachment A), effective January 1, 2012 - June 30, 2014; 2) ratify and approve the attached Agreement with A.W. Rehn and Associates, Inc., (Rehn) to provide Third-Party Administrative recordkeeping services on behalf of the Plan (Attachment B), effective January 1, 2012 - June 30, 2014; 3) ratify and approve the attached Agreement with Washington Trust Bank to act as Trustee and Investment Manager for the Plan (Attachment C), effective January 1, 2012 – June 30, 2014; 4) authorize the Chairperson to sign four (4) copies of the Agreements; and 5) retain one (1) copy of each Agreement and return three (3) original copies of each Agreement to Human Resources for distribution.

Barbara A. Olivier
Barbara A. Olivier
Asst. County Executive Officer/Human Resources Dir.

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	No
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2011/12

SOURCE OF FUNDS: Fund fees are charged against the Plan assets.	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE

BY: *Elizabeth J. Olson*
Elizabeth J. Olson

County Executive Office Signature

Dept't Recomm.: Consent Policy
Per Exec. Ofc.: Consent Policy

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Ashley, seconded by Supervisor Buster and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Stone, Benoit and Ashley
Nays: None
Absent: Tavaglione
Date: January 10, 2012
xc: HR, Purchasing

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

Prev. Agn. Ref.: 02/25/2003, 3.16 and District: All Agenda Number:
04/26/2011, 3.35

3.37

BACKGROUND:

The County of Riverside VEBA HSP was approved by the Board of Supervisors on November 26, 2002. Currently Management, Confidential, Unrepresented, Deputy District Attorneys Association (DDAA) and Law Enforcement Management Unit (LEMU) employees who are retiring or terminating with at least five (5) years of service have the option to contribute their eligible leave accruals (vacation, sick, annual leave, etc.) into either the VEBA HSP plan or to the 401(a) Special Pay Plan. Service Employees International Union (SEIU) and Laborers' International Union of North America (LIUNA) members who are retiring from the County are required to contribute their eligible leave accruals to the VEBA HSP. There are approximately 1,658 participants in the plan with assets totaling \$21.8 million as of September 30, 2011.

Request for Proposal (RFP) Process and Award

County Purchasing, on behalf of Human Resources, released a Request for Proposal (RFP HRARC-044) for VEBA HSP Consulting Services, Third Party Administration (TPA), Trustee/Custodian, and an Investment Manager/Advisor, mailing solicitations to fifteen (15) organizations and advertising on the County's internet site. Five (5) organizations submitted bids in response to the RFP. The initial bids ranged from \$31,680 - \$271,200.

The proposals were reviewed by a team of Human Resources Department personnel based on the following evaluation criteria: response to RFP requirements; experience, qualifications, technical ability, and project methodology; overall cost; references; experience in representing public agencies comparable to the County; financial status; clarification and exceptions. The County entered into Best and Final Negotiations resulting in a split bid for services. The organizations selected were VEBA Service Group, LLC (VSG) for consulting services, A.W. Rehn and Associates, Inc., (Rehn) for administrative recordkeeping and payment disbursements, and Washington Trust Bank to act as Trustee and Investment Manager for the Plan. The three organizations were the most responsive/responsible bidders to the RFP requirements and have shown capability to effectively administer a plan of our size and manage costs without sacrificing quality of member satisfaction.

Consulting Services

VSG has expertise in the operation of VEBA plans and is particularly knowledgeable with public agency plans regarding tax-compliance and proper structure. VSG is the current consulting service provider for the County's VEBA HSP, and has delivered expert service and technical oversight to the County for the past eight years. The initial bid responses for consulting services ranged from \$60,000 - \$79,200. VSG submitted a Best and Final bid of \$45,000 per year for consulting services (Attachment A).

Third-Party Administrator (TPA) - Asset Management

Rehn is the current TPA for the County's VEBA HSP. Rehn administers over 60 Health Reimbursement Arrangement (HRA) plans and is particularly knowledgeable of regulations governing VEBA plans. Rehn has provided VEBA TPA services to organization for over 15 years. The initial bid responses for TPA services ranged from \$63,929 - \$120,000. Rehn submitted a Best and Final bid of \$54,000 per year which includes daily reconciliation and posting of employer contributions, weekly calculation of plan disbursements, and Systematic Payments which allows participants to automatically receive monthly disbursements (Attachment B).

Trustee and Investment Manager

Washington Trust Bank has been providing banking and wealth management services to organizations for over 108 years. Washington Trust Bank is the current Trustee for the County's VEBA HSP and has successfully demonstrated its ability to deliver trustee services on behalf of the County for the past seven years. Washington Trust Bank works with VSG and Rehn to seamlessly administer the County's VEBA HSP accounts. In addition to the current services, Washington Trust Bank will also provide advice on investment strategies and guide the County's Deferred Compensation Committee through a disciplined and comprehensive investment process to enable the committee to prudently manage its fiduciary duties and responsibilities. The initial bid response for Trustee and Investment Manager Services ranged from \$31,680 – \$72,000 per year. The low bid of \$31,680 for Trustee and Investment Manager Services was contingent upon selecting the bidder to perform Consulting Services, TPA, Trustee and Investment Manager Services. Washington Trust Bank submitted a Best and Final bid of \$49,280 per year without contingencies for Trustee and Investment Manager Services (Attachment C).

VSG, Rehn, and Washington Trust Bank's fund fees and compensation will be charged against Plan assets and are estimated to cost \$148,280 annually. There is no direct cost to the County for the approval and adoption of the recommended actions. Fees are paid from Plan assets.

Review/Approval:

Purchasing concurs with this request and County Counsel approves the agreement as to form.

ATTACHMENT A

**Voluntary Employees' Beneficiary Association (VEBA) Post Employment Program (PEP)
Health Savings Plan (HSP)**

VEBA Service Group, LLC (VSG)

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

BETWEEN

COUNTY OF RIVERSIDE

AND

VEBA Service Group, LLC

301 10 21 2012

JAN 10 2012 337

**PROFESSIONAL SERVICES AGREEMENT
RIVERSIDE COUNTY**

This Professional Services Agreement is made and entered into this 1st day of January 1, 2012 (the "Effective Date") by and between the County of Riverside (the "COUNTY"), a political subdivision of the State of California, and the VEBA Service Group, LLC (the "CONTRACTOR"), a Washington limited liability company, with references to the following facts:

RECITALS

WHEREAS, COUNTY is in need of the professional services offered by CONTRACTOR, and this Agreement shall be presented to the Board of Supervisors of COUNTY for adoption and authorization; and,

WHEREAS, CONTRACTOR has offered evidence of having the relevant specialized training and/or experience and/or knowledge and is interested in providing the scope of work as set forth herein, including any attachments hereto; and,

WHEREAS, this Agreement is effective only upon the authorization of the Board of Supervisors of COUNTY;

NOW THEREFORE in consideration of the mutual promises, covenants and conditions hereinafter contained, including any attachments hereto, which are incorporated herein by reference, the Parties hereto mutually agree as follows:

1. **SERVICES**

A. **DESCRIPTION OF SERVICES.** CONTRACTOR shall provide employee benefit consulting services to COUNTY for a defined contribution health reimbursement arrangement (hereinafter referred to as the "Plan") offered through a voluntary employees' beneficiary association 501(c)(9) trust (hereinafter referred to as the "Trust"), with such services as set forth in Attachment A attached hereto, and incorporated herein by reference.

B. **SCOPE OF SERVICES.** CONTRACTOR shall furnish labor necessary to perform in a complete, skillful and professional manner all those services described in Attachment A attached hereto, and incorporated herein by reference.

2. **PERIOD OF PERFORMANCE**

The term of this Agreement shall become effective on January 1, 2012 and shall continue in effect through June 30, 2014. At the conclusion of said term, this Agreement shall renew for successive two-year periods. At no time will this Agreement extend beyond June 30, 2016, unless terminated as above or as specified in Section 8 (TERMINATION).

3. **COMPENSATION**

In consideration of services provided by CONTRACTOR pursuant to this Agreement, CONTRACTOR shall be entitled to receive payment by COUNTY as follows:

- A. COMPENSATION for services rendered shall be paid by the Trust on behalf of the County as per the terms of this Agreement.
- B. Said invoices or bills shall be based upon those rates as described and set forth in Attachment B - Schedule of Fees, attached hereto, and incorporated herein by reference.
- C. Payment shall be made "net-30" terms from the completion date of any service as noted above.

4. **INDEPENDENT CONTRACTOR**

It is understood and agreed that CONTRACTOR is an independent contractor and that no relationship of employer-employee exists between the parties hereto. Neither CONTRACTOR nor CONTRACTOR'S officers, agents, employees or subcontractors, shall be entitled to any benefits payable to employees of COUNTY including Worker's Compensation Benefits.

5. **INDEMNIFICATION**

CONTRACTOR shall indemnify and hold harmless COUNTY, its officers, directors, Board of Supervisors, employees and agents from any liability whatsoever, including wrongful death, based on alleged negligence, gross negligence or willful misconduct of or breach of any provisions of this Agreement by the CONTRACTOR, its employees, subcontractors and agents relating to or in any way connected with the accomplishment of the work or performance of service under this Agreement. As part of the foregoing indemnity, CONTRACTOR agrees to protect and defend at its own expense, including attorneys' fees, COUNTY, its officers, directors, Board of Supervisors, agents and employees in any legal action based upon any such alleged negligence, gross negligence, willful misconduct or breach of any provisions of this Agreement.

COUNTY shall indemnify and hold harmless CONTRACTOR, its officers, employees and agents from any liability whatsoever based on alleged negligence, gross negligence or willful misconduct of or breach of any provisions of this Agreement by the COUNTY, its officers, directors and employees, relating to or in any way connected with COUNTY'S obligations under this Agreement. As part of the foregoing indemnity, COUNTY agrees to protect and defend at its own expense, including attorneys' fees, CONTRACTOR, its officers, agents and employees in any legal action based upon any

such alleged negligence, gross negligence, willful misconduct or breach of any provisions of this Agreement.

6. **INSURANCE**

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

- A. **Workers' Compensation:** If CONTRACTOR has employees as defined by the State of California, CONTRACTOR shall maintain Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. 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, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of CONTRACTOR'S performance of its obligations hereunder. Policy shall name the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds. 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 CONTRACTOR 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 the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds.
- D. **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 an A: VIII (A: 8) unless such requirements are waived, in

writing, by the COUNTY Risk Manager. If the COUNTY 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) The CONTRACTOR must declare its self-insured retentions. If such self-insured retentions exceed \$500,000 per occurrence such retentions shall have the prior written consent of COUNTY Risk Manager before the commencement of operations under this Agreement. Upon notification of self insured retentions which are deemed unacceptable to the COUNTY Risk Manager, at the election of COUNTY Risk Manager, CONTRACTOR shall either; 1) reduce or eliminate such self-insured retentions as respects this Agreement with COUNTY, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, defense costs and expenses.
- 3) The CONTRACTOR shall cause their insurance carrier(s) to furnish COUNTY with 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein; and / or, 2) if requested to do so orally or in writing by COUNTY, 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) shall provide no less than ten (10) days written notice be given to the COUNTY prior to any material modification or cancellation of such insurance. In the event of a material modification or cancellation of coverage, this Agreement shall terminate forthwith, unless the 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 and the insurance required herein is in full force and effect. Individual(s) authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance. ***CONTRACTOR shall not commence operations until the COUNTY has been furnished original Certificate(s) of Insurance and certified original copies of endorsements or policies of insurance including all endorsements and any and all other attachments as required in this Section.***
- 4) It is understood and agreed to by the parties hereto that the CONTRACTOR'S insurance shall be construed as primary insurance, and the 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 work 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 the COUNTY reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverage's currently required herein, if, in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONTRACTOR has become inadequate.

- 6) CONTRACTOR shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
- 7) CONTRACTOR agrees 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.

7. **REPORTS**

- A. CONTRACTOR agrees to furnish to COUNTY reports which shall be provided as outlined and identified in Attachment A.
- B. Upon request of COUNTY, CONTRACTOR agrees to furnish to COUNTY copies of work papers, schedules or other work products related to this Agreement.

8. **TERMINATION PROVISION**

- A. Either party may terminate this Agreement at anytime without cause upon sixty (60) days written notice served upon the other party.
- B. If, for any reason, this Agreement is terminated prior to full completion of services, CONTRACTOR agrees to immediately furnish to COUNTY all documents related to services rendered under this Agreement as COUNTY may reasonably request in writing.
- C. Should COUNTY reasonably determine that there is a basis for termination for cause, such termination by COUNTY shall be effected upon five (5) days written notice to CONTRACTOR.

9. **ASSIGNMENT AND DELEGATION**

No contract or agreement shall be made by CONTRACTOR with any party for the furnishing of any of the work or services described herein, and in Attachment A hereto, and this Agreement shall not be assigned by CONTRACTOR, either in whole or in part, without prior written consent of COUNTY, as approved and authorized by the Board of

Supervisors of COUNTY. This provision shall not require the approval of contracts or agreements for the employment between CONTRACTOR and personnel that have been specifically named in this Agreement or in any attachments hereto.

The parties acknowledge and agree that CONTRACTOR's obligations under Attachment D (Business Associate Agreement) may not be assigned and/or delegated.

10. **ALTERATION AND/OR AMENDMENT**

No alteration, amendment, or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto. Only the Board of Supervisors of COUNTY may authorize any alteration or revision of this Agreement on behalf of COUNTY. The parties expressly recognize that COUNTY personnel, including the Chief Executive Officer of COUNTY are without authorization to either change or waive any requirements of this Agreement.

11. **NONDISCRIMINATION**

This Agreement hereby incorporates by reference the provisions of Title 2, California Code of Regulations ("CCR"), Section 8107 et seq., as may be amended from time to time. CONTRACTOR agrees to comply with the provisions of Title 2, CCR, Section 8107 et seq., and further agrees to include this Nondiscrimination Clause in any and all subcontracts to perform services under this Agreement.

12. **CONFLICT OF INTEREST**

CONTRACTOR shall have no interest, and shall not acquire any interest, direct or indirect, which will conflict in any manner or degree with the performance of services required under this Agreement.

13. **CONFIDENTIALITY**

CONTRACTOR agrees to maintain as confidential any reports or advice which CONTRACTOR provided to COUNTY pursuant to this Agreement. CONTRACTOR shall not disclose such information without the prior written approval of the COUNTY.

14. **NOTICES**

All correspondence and notices required or contemplated by this Agreement shall be in writing, delivered to the respective parties at the addresses set forth below or to such other address(es) as the parties may hereafter designate, and are deemed submitted one (1) day after their deposit to the United States Postal Services or a private courier if delivered by U.S. Postal Services express mail or overnight courier that guarantees next day delivery, or five (5) days after their deposit in the United States mail, postage prepaid:

COUNTY:

Stacey Beale
Human Resources Division Manager
County of Riverside
4080 Lemon Street, 1st floor
Riverside, CA 92501
(951) 955-1000

CONTRACTOR:

Mark Wilkerson
Manager
VEBA Service Group, LLC
906 West 2nd Avenue, Suite 400
Spokane, WA 99201-4502
509-838-5571

15. LICENSES

CONTRACTOR shall maintain any professional licenses required by the laws of the State of California at all times while performing services under this Agreement.

16. WORK PRODUCT

All reports, findings, data or documents compiled or assembled by CONTRACTOR under this Agreement becomes the property of COUNTY, and shall be transmitted to COUNTY at the termination of this Agreement, if so requested by COUNTY in writing.

17. SEVERABILITY

In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired or invalidated in any way.

18. WAIVER

Any waiver by either party of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same term or of any other term herein.

19. GOVERNING LAW AND VENUE

A. The provisions of the Government Claims Act (Government Code Section 900, et seq.) must be followed first for any disputes under this Agreement.

- B. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California.
- C. All actions and proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the state or federal (if permitted by law and a party elects to file an action in federal court) courts located in the county of Riverside, State of California.

20. **DISALLOWANCE**

In the event CONTRACTOR receives payment for services under this Agreement which are later disallowed for nonconformance with the terms and conditions herein, CONTRACTOR shall promptly refund the disallowed amount to COUNTY on written request. COUNTY retains the option to offset the amount disallowed from any payment due to CONTRACTOR under this Agreement, or under any other contract or agreement between CONTRACTOR and COUNTY.

21. **COMPLIANCE WITH HIPAA AND HITECH**

The Parties to this Agreement are subject to all relevant requirements contained in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Public Law 104-191, enacted August 21, 1996, the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009 ("HITECH"), Public Law 111-5, enacted February 17, 2009, and the laws and regulations promulgated subsequent thereto. The Parties shall adhere to all terms and conditions as outlined and specified in Attachment D - Business Associate Agreement (BAA) Addendum, attached hereto and by this reference incorporated herein. The Parties agree to cooperate in accordance with the terms and intent of this Agreement and the BAA Addendum for implementation of relevant laws and/or regulations promulgated under HIPAA and HITECH, as may be amended from time to time.

22. **ENTIRE AGREEMENT**

This Agreement, including all attachments, which are hereby incorporated in this Agreement, supersedes any and all other agreements, promises, negotiations or representations, either oral or written, between the parties with respect to the subject matter and period governed by this Agreement and no other agreement, statement or promise relating to this Agreement shall be binding or valid.

23. **RECORDS AND ACCESS**

- A. **RECORDKEEPING.** CONTRACTOR shall maintain and provide adequate records and information as reasonably necessary to properly administer this Agreement consistent with state and federal law. Such records shall be retained

by CONTRACTOR for at least five years from the close of COUNTY's fiscal year in which this Agreement is in effect. CONTRACTOR shall maintain its books and records in accordance with general standards for books and recordkeeping. This obligation is not terminated upon a termination of the Agreement, whether by rescission or otherwise.

- B. ACCESS. All books, records, and papers of CONTRACTOR relating to the performance of this Agreement must be open to inspection and copying during normal business hours by the COUNTY, and state and/or federal regulators (subject to applicable state and federal law governing the confidentiality of protected health information). Said information includes but is not limited to financial records pertaining to the cost of operations and income received for services rendered. Such records shall be made available at all reasonable times upon reasonable request by COUNTY.

24. **COMPLIANCE WITH APPLICABLE LAW**

CONTRACTOR shall comply with all applicable Federal, State and local laws and regulations in the performance of this Agreement. In the event that there is a conflict between the various laws or regulations that may apply, CONTRACTOR shall comply with the more restrictive law or regulation.

25. **CERTIFICATION OF AUTHORITY TO EXECUTE THIS AGREEMENT**

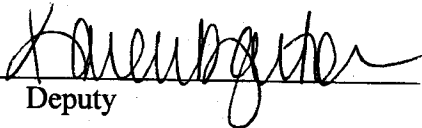
CONTRACTOR certifies that the individual signing below has authority to execute this Agreement on behalf of CONTRACTOR, and may legally bind CONTRACTOR to the terms and conditions of this Agreement, and any attachments hereto.

[The remainder of this page was intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Professional Services Agreement effective as of the Effective Date.

ATTEST:
Clerk of the Board
Kecia Harper-Ihem

COUNTY OF RIVERSIDE

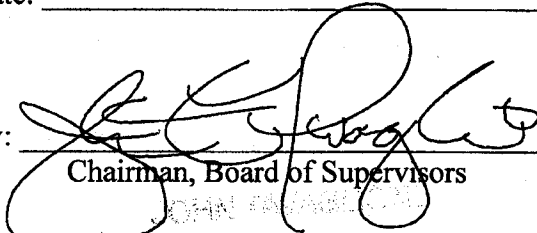
By: 
Deputy

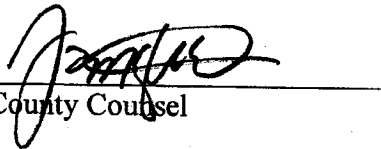
By: 
Barbara Olivier, Assistant CEO/HR Director

Date: JAN 10 2012

Date: _____

Approved as to Form:
Pamela J. Walls
County Counsel

By: 
Chairman, Board of Supervisors
Date: JAN 10 2012

By: 
Deputy County Counsel

VEBA SERVICE GROUP, LLC

By: 
Mark R. Wilkerson, Manager

Date: _____

ATTACHMENT A

SCOPE OF SERVICES

VEBA Service Group, LLC

The CONTRACTOR shall provide the following consulting services to the County:

- (1) Provide advice to County regarding Plan design and Trust operating issues;
- (2) Provide County Plan adoption assistance and ongoing employer service;
- (3) Assist with drafting and design of Plan literature;
- (4) Assist with arranging of printing of Plan literature as requested, monitor and revise as necessary all forms and correspondence to Plan Participants including the following:
 - a. Question & Answer Brochures (Plan descriptive literature)
 - b. Enrollment Forms
 - c. Summary Plan Descriptions
 - d. Summary of Benefits
 - e. Claim Forms
 - f. Systematic Insurance Payment Forms
 - g. Plan Letterhead
 - h. Envelopes
 - i. List of Qualified Expenses
 - j. Participant Notices/Correspondence Regarding Plan Updates & Changes
 - k. COBRA Notices
 - l. HIPAA Notices
 - m. Other forms as necessary for the effective operation of the Plan and Trust;
- (5) Assist third party administration with website design if requested;
- (6) Provide toll-free service lines;
- (7) Provide periodic status reports to the County on a quarterly basis;
- (8) Meet, at least annually, with County representatives at the County of Riverside's Administrative Center.
- (9) Train County support staff as necessary to assist with employer support services, including but not limited to benefits department, payroll or accounting department, human resource department, and legal department;
- (10) Facilitate retention of independent auditor and legal counsel;

- (11) Assist with coordination of Trust activities between contract third party administrator, investment manager, trustee, custodian, auditor, legal counsel, and other applicable persons; and
- (12) The CONTRACTOR shall also coordinate certain legal services. The CONTRACTOR, its employees, its members and the employees of its members are not attorneys, and none of the consulting services to be provided by the CONTRACTOR shall include the practice of law. The CONTRACTOR shall coordinate certain legal services as hereinafter provided, but all such legal services shall be rendered by a third party (hereinafter referred to as the "Attorney") selected by the CONTRACTOR and approved by the COUNTY. The Attorney shall be a lawyer licensed to practice law in one or more states, but need not be licensed as such in the state of California. All fees payable to the Attorney with respect to the specific matters hereinafter set forth shall be paid by the CONTRACTOR. Pursuant to Paragraph 9 of this Agreement, the COUNTY hereby approves and authorizes furnishing of the work or services hereinafter described by the Attorney. The work and services to be provided by the Attorney are as follows:
 - a. Preparation and submission of an application package to the IRS requesting qualification of the Plan and Trust as a voluntary employees' beneficiary association under Section 501(c)(9) of the Internal Revenue Code. The County agrees the Attorney shall be named as attorney-in-fact for the Trust with respect to said application package.
 - b. Provide answers to legal questions, review reports, tax returns, other materials (when requested), review developments, and provide advice and recommendations when requested to do so.
 - c. Drafting of the Plan and the Trust Agreement.
 - d. Additional services as necessary to handle extraordinary or unanticipated legal matters, such as negotiation or supplemental submissions to the IRS during the initial qualification process or IRS audit; revision to governing instruments; responding to legislative or regulatory changes impacting the Plan or Trust; etc. Such work would be charged at standard hourly rates and paid from the Trust. Advance notice would be given to the COUNTY prior to any such work so that the COUNTY would have the opportunity to decide not to have such work performed or make other arrangements with other attorneys to perform the services with respect to the Plan and Trust.

ATTACHMENT B

SCHEDULE OF FEES

VEBA Service Group, LLC

As compensation for all such services and commencing with the effective date of this agreement, the COUNTY shall cause its contract third-party administrator to pay a monthly fee to the CONTRACTOR of \$3,750.00 per month plus \$375.00 per month for legal retainer.

ATTACHMENT C

OWNERSHIP INFORMATION

Please indicate how your organization is legally organized (circle one):

Corporation

Partnership

Sole Proprietorship

Other (please describe): Limited Liability Corporation organized under the laws of the State of Washington

Please indicate the names of the owners that have greater than 10% ownership/interest of CONTRACTOR and their ownership interest. If corporation is publicly traded on a US stock market, indicate "Publicly Traded Corp."

<u>Name</u>	<u>Title</u>	<u>Ownership % (as applicable)</u>
Wilkerson & Associates, Inc. (Wilkerson & Associates, Inc., is a S corporation organized under the laws of the State of Washington and is owned 100% by Mark Wilkerson)		50%
HRA Consultants, Inc. (HRA Consultants, Inc. is a S corporation organized under the laws of the State of Washington and is owned 100% by Mark Wilkerson)		50%

ATTACHMENT D

HIPAA Business Associate Agreement Addendum to Contract Between the County of Riverside and VEBA Service Group, LLC

This HIPAA Business Associate Agreement (the "Addendum") supplements, and is made part of the Professional Service Agreement (the "Underlying Agreement") between the County of Riverside ("County") and VEBA Service Group, LLC ("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, Contractor when a creator or recipient of, or when they have access to, PHI and/or ePHI of County, 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 services 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 by 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. For purposes of this definition, "compromises the security or privacy of PHI" means poses a significant risk of financial, reputational, or other harm to the individual, unless a use or disclosure of PHI does not include the identifiers listed at 45 CFR §164.514(e)(2), date of birth and zip code. Breach excludes:
 - (1) 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.
 - (2) 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.
 - (3) 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. "Data aggregation" has meaning given such term in 45 CFR §164.501.
 - C. "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.
 - D. "Electronic protected health information" ("ePHI") as defined in 45 CFR §160.103 means protected health information transmitted by or maintained in electronic media.
 - E. "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).
 - F. "Health care operations" has the meaning given such term in 45 CFR §164.501.

- G. "Individual" as defined in 45 CFR §160.103 means the person who is the subject of protected health information.
- H. "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.
- I. "Privacy Rule" means the HIPAA regulations codified at 45 CFR Parts 160 and 164, Subparts A and E.
- J. "Protected health information" ("PHI") has the meaning given such term in 45 CFR §160.103, which includes ePHI.
- K. "Required by law" has the meaning given such term in 45 CFR §164.103.
- L. "Secretary" means the Secretary of the Department of Health and Human Services ("HHS").
- M. "Security Rule" means the HIPAA Regulations codified at 45 CFR Parts 160 and 164, Subparts A and C.
- N. "Unsecured protected health information" and "unsecured PHI" as defined in 45 CFR §164.402 means PHI not rendered unusable, unreadable, or indecipherable to unauthorized individuals through use of a technology or methodology specified by the Secretary in the guidance issued under 42 USC §17932(h)(2) on the HHS web site.

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 or marketing purposes, unless pursuant to the Underlying Agreement and as permitted by and consistent with the requirements of 42 USC §17936;
 - (2) 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,
 - (3) Not to receive, directly or indirectly, remuneration in exchange for PHI, unless permitted by 42 USC §17935(d)(2) and with the prior written consent of County. 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 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.
- F. Require any subcontractors or agents to whom Contractor provides PHI and/or ePHI to agree 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.
6. **Access to PHI, Amendment and Disclosure Accounting.** Contractor agrees to:
- A. **Access to PHI and electronic health record.** Provide access to PHI 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. If Contractor uses or maintains electronic health records, Contractor shall, at the request of County, provide electronic health records in electronic format to enable County to fulfill its obligations under 42 USC §17935(e).
 - 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 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 Contractor needs to create, receive, 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. Implement the 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 as required by the Security Rule, including without limitations, each of the requirements of the Security Rule at 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 by Contractor's workforce;
 - F. Ensure that any agent, including a subcontractor, to whom it provides ePHI agrees to implement reasonable appropriate safeguards to protect it;
 - G. Report to County any security incident of which Contractor becomes aware; 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, media outlets and the Secretary in accordance with 42 USC §17932 and 45 CFR §§ 164.404, 164.406 and 164.408.
- 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 any and all costs 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.

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, 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 non-breaching party may report the problem to the Secretary, and upon the non-breaching party's request, the breaching party at its own expense shall implement 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 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.

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 pursuant to the terms of this Addendum shall be in writing and delivered to the County by either registered or certified mail return receipt requested or guaranteed overnight mail with tracing capability at the address listed below, or at such other address as County may

hereafter designate. All notices provided by Contractor pursuant to this Section shall be deemed given or made when received by County.

Name: Barbara A. Olivier

Title: Assistant CEO/Human Resources Director

Address: 4080 Lemon St. 7th floor
Riverside, CA 92502

ADMINISTRATIVE SERVICES CONTRACT

This Administrative Service Contract (the "Agreement") is made and entered into this 1st day of January 1, 2012 (the "Effective Date"), by and between the County of Riverside, a political subdivision of the State of California (the "County"), and A.W. Rehn & Associates, Inc., a Washington corporation (the "Administrator"), and referred to collectively as the "Parties".

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

1.0 Purpose of Contract

- 1.1 The County agrees to contract with the Administrator to provide administrative services for the operation of its Voluntary Employees' Beneficiary Association Post-Employment Program Health Savings Plan (the "Plan") and to compensate the Administrator in accordance with the terms of this Agreement for the performance of such services.
- 1.2 The Administrator agrees to perform services in accord with the provisions of this Agreement, including Attachment A, Appendix A and Appendix B.

2.0 Services

- 2.1 The Administrator shall provide the following services:
 - a) Maintain an office in Spokane, Washington with facilities and personnel adequate to perform the services provided for herein.
 - b) Maintain all official Plan documents and files dealing with the Plan, including but not limited to summary plan descriptions, benefit booklets, Plan documents and agreements, claim forms and correspondence. Administrator is responsible to maintain all documentation required by the Plan and applicable Federal and State statues, laws, and/or regulations. All documentation must be kept by the Administrator until returned to the County. Destruction of any documentation by the Administrator is only allowed if such destruction is allowed under all applicable laws and regulations and Administrator has the written permission of the authorized County representative.
 - c) Provide administrative and benefit processing services as outlined in Appendix A, fixed account administrative services as outlined in Appendix B, and pay all costs relating to providing such services, including, but not limited to, rent, telephone, personnel, and supplies, except as hereinafter expressly excluded.
- 2.2 The services to be provided by the Administrator shall be limited to ministerial functions for the County within the framework of policies, interpretations, rules, practices and procedures established by the County. The Administrator shall not have discretionary authority or control with respect to management of the Plan

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nor shall the Administrator exercise any discretionary authority or control with respect to management or disposition of the assets of the Plan. The Administrator will review all policies, interpretations, rules, practices and procedures established by the County and advise County if one or all of County provided materials or instructions may not conform to the requirements of the approved Plan and/or Federal and State statutes, laws, and/or regulations.

3.0 Records and Documents

- 3.1 All books, records, forms, lists of names, plates, seals, passbooks, journal, ledgers and all other recorded information and documents held by the Administrator incident to the administration of the Plan are and shall remain the property of the County.
- 3.2 All data stored on computer media and in the custody of the Administrator pertaining to the Plan is and shall remain the property of the County. In the event of termination of this Agreement, the Administrator will assist the County or their designees in identifying, understanding and decoding said information.
- 3.3 All systems or programs developed by the Administrator shall remain the property of the Administrator.
- 3.4 The Administrator will send to the County or their designees, at County's expense, to a location to be designated by the County, all records and documents which are the property of the County upon termination of the administrative services of the Administrator.
- 3.5 If the Administrator receives Protected Health Information (PHI) as defined at 45 C.F.R. § 160.103, for any Participant, whether such PHI is sent to the Administrator in error or as a matter of normal business, the Administrator shall maintain such PHI in a manner required by HIPAA regulations. If such information is received in error, the Administrator shall contact the sender and agree to have such PHI returned to the sender or, with the sender's authorization, destroyed. PHI, though more completely defined in HIPAA regulations, is health information that is identifiable to the individual and relates to: (1) the physical or mental conditions of the individual; (2) the provision of health care to the individual; or (3) the payment of provision of health care to the individual.

4.0 Insurance and Indemnification

4.1 Insurance

Without limiting or diminishing the Administrator's obligation to indemnify and hold the County harmless, Administrator shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement.

- a. Workers' Compensation: If Administrator has employees as defined by the State of California, Administrator shall maintain Worker' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. Policy shall be endorsed to waive subrogation in favor of the County of Riverside, include an All States Endorsement and, if applicable, provide a Borrowed Servant/Alternate Employer Endorsement.
- b. Commercial General Liability: Administrator shall maintain Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, completed operations liability, personal and advertising injury covering claims which may arise from or out of Administrator performance of its obligations hereunder, in an amount not less than \$1,000,000 per occurrence combined single limit. Policy shall be endorsed to the County as an Additional Insured. 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 Administrator's vehicle or mobile equipment are used in the performance of the obligations under this Agreement, then Administrator 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 tow (2) times the occurrence limit. Policy shall name the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds. This coverage may be included in the Commercial General Liability policy.
- d. Professional Liability: Administrator shall maintain Professional Liability Insurance providing coverage for performance of work 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 Administrator's 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.
- e. Blanket Commercial Crime Policy: Administrator shall maintain a Blanket Commercial Crime Policy including, but not limited to, coverage under; Forms 'A' - Employee Dishonesty, 'B' - Forgery or Alteration, 'F' - Computer Fraud and 'G' - Extortion, covering all Directors, Officers, employees, agents and representatives of the Administrator who may be involved in any way with, including but not limited to, the direction, handling, depositing, payment or other function that involves County funds

associated with the performance of this Agreement. Administrator shall maintain a limit of liability of not less than an amount per loss equal to, or greater than, the maximum amount of County money that may be in trust or managed by the Administrator at any one time. The Administrator shall show County that such coverage is currently in force and has been in force from the beginning of this Agreement and will remain in force or at least three (3) years subsequent to the termination of this Agreement. If this coverage is written on a "Claims-Made" basis the Administrator will provide either 1) an Extended Reporting Endorsement (also know 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 Administrator has maintained continuous coverage with the same or original insurer. Such extended coverage shall be maintained for a period of three (3) years or until that time when all monies have been reconciled and the County has agreed in writing that all financial issues have been completed and the Administrator no longer has directional control of any County assets held in the Trust under the Plan.

f. 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 the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for the specific insurer and only for one policy term.
- 2) The Administrator's insurance carrier(s) must declare its insurance deductibles or self-insured retentions. If such deductibles or self-insured retentions exceed \$500,000 per occurrence such deductibles and/or retentions shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of deductibles or self insured retention's unacceptable to the County, and at the election of the County's Risk Manager, Administrator's carriers shall either; 1) reduce or eliminate such deductibles or self-insured retention's as respects this Agreement with the County, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.
- 3) Administrator shall cause its insurance carrier(s) to furnish the County of Riverside with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, or 2) if requested to do so orally in writing by the County 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 give to the County of Riverside 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 the County of Riverside 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 coverage's set forth herein and the insurance required herein is in full force and effect. Administrator shall not commence operations until the Sponsor has been furnished original Certificate(s) of Insurance and certified original copies of endorsements or 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 and the insurance company(s), that the Certificate(s) of Insurance and policies shall so covenant and shall be construed as primary insurance, and the County's insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.
- 5) Administrator shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
- 6) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the County.

4.2 Indemnification

Administrator shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, and their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability whatsoever, wherein the material and relevant portion of the alleged liability is based or asserted upon any services of Administrator, its officers, employees, contractors, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever and resulting from any reason whatsoever arising from the performance of Administrator, its officers, agents, employees, subcontractors, or representatives from this Agreement. Administrator 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, the County of Riverside its Agencies, Districts, Special Districts and Departments, and their respective directors, officers, Board of Supervisors,

elected and appointed officials, employees, agents and representatives in any claim or action based upon such alleged acts or omissions.

County shall indemnify and hold harmless Administrator, its officers, employees, contractors, subcontractors, agents or representatives from any liability whatsoever, wherein the material and relevant portion of the alleged liability is based or asserted upon any services of the County of Riverside, its Agencies, Districts, Special Districts and Departments, and their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever and resulting from any reason whatsoever arising from the performance of the County of Riverside, its Agencies, Districts, Special Districts and Departments, and their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from this Agreement. County 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, Administrator, its officers, employees, contractors, subcontractors, agents or representative in any claim or action based upon such alleged acts or omissions.

With respect to any action or claim subject to indemnification herein by either party, the indemnifying party shall, at heir sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of the other party; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes the party's obligation to indemnify the other party as set forth herein. The indemnifying party's obligation to defend, indemnify and hold harmless the other party shall be subject to the indemnified party having given the indemnifying party written notice within a reasonable period of time of the claim or of the commencement of related action, as the case may be, and information and reasonable assistance, at the indemnifying party's expense, for the defense or settlement thereof. The indemnifying party's obligation hereunder shall be satisfied when they have provided to the indemnified party the appropriate form of dismissal relieving the indemnified party from any liability for the action or claim involved.

5.0 Contract Duration and Fees

- 5.1 This Agreement shall be for an initial term of two years and six months, with the option to renew for two additional years, not to exceed June 30, 2016, unless terminated by either party pursuant to the provisions of Article 6.0. After two (2) years of the Agreement, the Administrator reserves the right to renegotiate in good faith an adjustment of the fees set forth in 5.2 if the number of actual Participants in the Plan significantly differs from original projects or for other economic factors.

5.2 As compensation for administrative services, the County shall pay a monthly fee to the Administrator on or before the fifteenth (15th) of \$1.30 per Participant account per month plus an amount computed as .125% of the average monthly assets (as hereinafter defined). The term "Average Monthly Assets" as used herein shall mean a sum computed as the dollar amount of the Trust's cash and cash equivalents plus the fair market value of all securities and other assets of the Trust, averaged on a daily basis for all investments as to which such daily averaging is reasonably possible, and for assets as to which daily averaging is not reasonably possible, averaged on such other basis as will reasonably reflect fluctuations occurring during each calendar month. The County shall cause its Administrator to compute the amount of such fees for each calendar month during the term of this Agreement and to provide Administrator with a true and complete copy of such computations for each such calendar month on or before the fifteenth (15th) day of the following calendar month. The fees so computed in respect of each such calendar month shall be paid by the Trust to Administrator as a deduction from Trust assets, or directly to Administrator at the County's discretion in arrears on or before the fifteenth (15th) day of the following calendar month.

5.3 For additional or reduced services requested by the County, additional or reduced compensation shall be agreed upon by the parties.

5.4 Administrator's fees do not include expenses for the following items:

- a. Printing cost and distribution costs for booklets and other literature and forms prepared for the use of the Participants;
- b. Printed envelopes, stationary and billing forms of the Plan;
- c. Plan audit expense and;
- d. Postage

6.0 Termination Provision

6.1 Either party may terminate this Agreement at anytime without cause upon sixty (60) days written notice served upon the other party.

6.2 If, for any reason, Agreement is terminated prior to full completion of services, Administrator agrees to immediately furnish to County all documents related to services rendered under this Agreement as County may reasonably request in writing.

6.3 Should County reasonably determine that there is a basis for termination for cause, such termination by County shall be effective upon **five (5)** days written notice to Administrator.

7.0 Assignment and Delegation

7.1 No contract or agreement shall be made by Administrator with any party for the furnishing of any of the work or services described herein, including the appendices, and this Agreement shall not be assigned by Administrator, either in whole or in part, without the prior written consent of County, as approved and authorized by the Board of Supervisors of County. This provision shall not require the approval of contracts or agreements for the employment between County and personnel that have been specifically named in this Agreement on behalf of the County. The parties expressly recognize that County personnel, including the Chief Executive Officer of County are without authorization to either change or waive any requirements of this Agreement.

7.2 The parties acknowledge and agree that Administrator's obligations under Attachment A (Business Associate Agreement) may not be assigned and/or delegated.

8.0 Alteration and/or Amendment

8.1 No alteration, amendment, or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto. Only the Board of Supervisors of County may authorize any alteration or revision of this Agreement on behalf of County. The parties expressly recognize that County personnel, including the Chief Executive Officer of County are without authorization to either change or waive any requirements of this Agreement.

9.0 Nondiscrimination

9.1 This Agreement hereby incorporates by reference the provisions of Title 2, California Code of Regulations ("CCR"), Section 8107 et seq., as may be amended from time to time. Administrator agrees to comply with the provisions of Title 2, CCR, Section 8107 et seq., and further agrees to include this Nondiscrimination Clause in any and all subcontracts to perform services under this Agreement.

10.0 Conflict of Interest

10.1 Administrator shall have no interest, and shall not acquire any interest, direct or indirect, which will conflict in any manner or degree with the performance of services required under this Agreement.

11.0 Confidentiality

11.1 Administrator agrees to maintain as confidential any reports or advice which Administrator provided to County pursuant to this Agreement. Administrator shall not disclose such information without the prior written approval of the County.

12.0 Notices

- 12.1 All correspondence and notices required or contemplated by this Agreement shall be in writing, delivered to the respective parties at the addresses set forth below or at such other address(es) as the parties may hereafter designate, and are deemed submitted one (1) day after deposit to the United States Postal Services or a private courier if delivered by U.S. Postal Services express mail or overnight courier that guarantees next day delivery, or five (5) days after their deposit in the United States mail, postage prepaid:

To the County of Riverside:
The County of Riverside
Attn: Stacey Beale
4080 Lemon St., 1st Floor
Riverside, CA 92501

To A.W. Rehn & Associates, Inc.:
Rehn & Associates, Inc.
Attn: Jodi McLaughlin
1322 N. Post St.
Spokane, WA 99201

13.0 Licenses

- 13.1 Administrator shall maintain any professional licenses required by the laws of the State of California at all times while performing services under this Agreement.

14.0 Work Product

- 14.1 All reports, findings, data or documents compiled or assembled by Administrator under this Agreement becomes the property of County, and shall be transmitted to County at the termination of this Agreement, if so requested by County in writing.

15.0 Severability

- 15.1 In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired or invalidated in any way.

16.0 Waiver

- 16.1 Any waiver by either party of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same term or of any other term herein.

17.0 Governing Law and Venue

- 17.1 The provisions of the Government Claims Act (Government Code Section 900, et seq.) must be followed first for any disputes under this Agreement.
- 17.2 This Agreement shall be governed by and interpreted in accordance with the laws of the State of California.
- 17.3 All actions and proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the state or federal (if permitted by law and a party elects to file an action in federal court) courts located in the county of Riverside, State of California.

18.0 Disallowance

- 18.1 In the event Administrator receives payment for services under this Agreement which are later disallowed for nonconformance with the terms and conditions herein, Administrator shall promptly refund the disallowed amount to County on written request. County retains the option to offset the amount disallowed from any payment due to Administrator under this Agreement, or under any other contract or agreement between Administrator and County.

19.0 Compliance with HIPAA and HITECH

- 19.1 The Parties to this Agreement are subject to all relevant requirements contained in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Public Law 104-191, enacted August 21, 1996, the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009 ("HITECH"), Public Law 111-5, enacted February 17, 2009, and the laws and regulations promulgated subsequent thereto. The Parties shall adhere to all terms and conditions as outlined and specified in Attachment A – Business Associate Agreement (BAA), attached hereto and by this reference incorporated herein. The Parties agree to cooperate in accordance with the terms and intent of this Agreement and the BAA for implementation of relevant laws and/or regulations promulgated under HIPAA and HITECH, as may be amended from time to time.

20.0 Miscellaneous

- 20.1 The validity, interpretation and performance of this contract shall be controlled and construed according to the laws of the State of California to the extent not preempted by Federal law.
- 20.2 Administrator warrants that it has no employees prohibited from holding certain positions enumerated under Section 411 of the Employment Retirement Income Security Act (ERISA), codified at 29 U.S.C. § 1111, and that reasonable procedures have been adopted to assure that disqualified persons would not be retained or engaged by Administrator in the future.

- 20.3 Any dispute which may arise between the parties as to the proper interpretation or application of this Agreement shall at the request of either party be submitted to final and binding arbitration according to the commercial arbitration rules of the American Arbitration Association.
- 20.4 This Agreement, including the attached appendices and attachment, which are hereby incorporated in this Agreement, constitutes the entire agreement by and between the parties regarding the matters contemplated by this Agreement, and supersedes any and all other agreements, promises, negotiations or representations, either oral or written, between the parties with respect to the subject matter and period governed by this Agreement and no other agreement, statement or promise relating to this Agreement shall be binding or valid.
- 20.5 The relationship between County and Administrator is an independent contractor relationship. Neither County nor its employee(s) and/or agent(s) shall be considered to be an employee(s), and/or agent(s) of Administrator. Administrator nor any employee(s) and/or agent(s) of Administrator shall be considered to be an employee(s) and/or agent(s) of County. None of the provisions of this Agreement shall be construed to create a relationship of agency, representation, joint venture, ownership, control or employment between the parties other than that of independent parties contracting for the purposes of effectuating this Agreement.
- 20.5 Administrator certifies that the individual signing below has authority to execute this Agreement on behalf of Administrator, and may legally bind Administrator to the terms and conditions of this Agreement, and any appendices and attachments hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of January 1, 2012.

ATTEST:
Clerk of the Board
Kecia Harper-Ihem

COUNTY OF RIVERSIDE:

By: [Signature]
Deputy

By: [Signature]
Chairman, Board of Supervisors

Date: JAN 10 2012

Date: JAN 10 2012

Approved as to form:

Pamela J. Walls
County Counsel

A.W. Rehn & Associates, Inc.
a Washington corporation

By: [Signature]
Deputy County Counsel

By: [Signature]

Printed Name: Lee Teichmer

Title: Vice President

Date: 11-18-2011

APPENDIX A
ADMINISTRATIVE AND BENEFIT PROCESSING SERVICES

The Administrator shall, as provided for in Section 2.1 (c) of the Administrative Services Contract, to which this Appendix is attached and made a part thereof, perform the following additional functions and assume the following additional responsibilities:

1. Upon receipt of advice from Trustee that contributions have been received from County, establish an individual account for each employee reported. Post contributions to each individual account based on investment allocation chosen by the individual.
2. On a monthly basis, provide changes to investment options of the Plan to the Trustee based on claims paid, allocation changes and new contributions received.
3. Deduct applicable monthly fees from each individual Participant's account as an offset against Plan expenses.
4. Value investments on a monthly basis and credit investment earnings or losses after deduction for Plan expenses to each individual Participant's account.
5. Generate and send to each Participant a quarterly statement which includes the following:

Initial balance, previous quarterly balance, additional contributions (if any), distributions for reimbursement of premiums and health care expenses, net investment gain or loss, account fees and ending balance.
6. Generate monthly participant level financial statements and Plan reconciled accounting statements.
7. Process billings and request the Trustee to make distributions from individual Participant's accounts, as required, on a weekly basis for expenses that meet the guidelines of the Internal Revenue Service for eligible expenses as defined by the Internal Revenue Code Section 213. Any claims that are submitted that do not meet the guidelines will be denied and an explanation thereof provided to the Participant.
8. Pay Trustee and Plan expenses as requested.
9. Receive, store, and disburse upon request all forms necessary for Plan operation, including but not limited to summary plan descriptions, brochures, claim forms, and COBRA notices.
10. Coordinate and process all Internal Revenue Service and Department of Labor filings as necessary and required by law, including Form 990 (after completion by Plan Auditor), summary plan descriptions, plan documents, summary annual report, and all other material required by law.

11. Generate and send each new Participant a welcome letter, claim form, summary plan description, COBRA Notice and Privacy Notice.
12. Coordinate and assist in any audit requested of the Plan.
13. Generate and provide monthly cash basis financial statements to Trustee and County.
14. Perform individual participant account recordkeeping functions, including accurate and timely tracking and posting of individual participant contributions, distributions, transfers and earnings allocations.
15. Withhold and report any income taxes or social security taxes due on any taxable benefits paid to Participants.
16. Maintain a dedicated toll free number for participants' calls. Hours of operation must be at least Monday – Thursday from 8:00 am to 5:00 pm and Fridays 8:00 am to 4:00 pm.
17. Store and maintain benefit claim records for a period of seven years.
18. Provide a secure website for Participants to access their individual account information (including account balance, transaction history, and current fund allocations), and for Participants to make fund transfers as allowed under the Plan and address changes.

APPENDIX B
FIXED ACCOUNT ADMINISTRATIVE SERVICES

A. Fixed Annuity Contract

1. County represents that Nationwide Life Insurance Company, an Ohio corporation ("NLIC") underwrites the Fixed Annuity Contract NRC-0111WA (the "Fixed Annuity Contract") assigned to the Plan with Washington Trust Bank, a Washington corporation, as the Trustee of the Plan.
2. County has entered into a Services Agreement with Nationwide Retirement Solutions, Inc., a Delaware corporation ("Nationwide"), whereby Nationwide will make units of the Fixed Annuity Contract available as an investment option under the Plan.
3. Administrator shall perform the fixed account administrative services outlined in this Appendix B on behalf of the Fixed Annuity Contract.

B. Fixed Account Administrative Services

The Administrator shall, as provided for in Section 2.1 (c) of the Administrative Services Contract, to which this Appendix B is attached and made a part thereof, perform the following additional functions and assume the following additional responsibilities:

1. Maintain separate records for each Participant under the Plan, which records shall reflect the dollars of the Fixed Annuity Contract purchased and redeemed and account balances of such Participants. County will require its contracted Nationwide to maintain a single master account on behalf of the Plan and such account shall be in the name of the trustee of the Plan (or its nominee) as the record owner of dollars owned by the Plan.
2. Disburse or credit to the Plan all proceeds of redemption of dollars of the Fixed Annuity Contract.
3. Prepare and transmit to the Plan and/or Participants, as required by law or the Plan, periodic statements showing the total number of dollars of the Fixed Annuity Contract owned by the Participants as of the statement closing date, purchases and redemptions of Fixed Annuity Contract dollars by the Participants during the period covered by the statement and distributions paid during the statement period and such other information as may be required, from time to time, by the Plan.
4. Transmit purchase and redemption orders to Nationwide on behalf of the Plan. No later than three (3) Business Days prior to the beginning of the calendar quarter, Administrator will accept from Nationwide the final unit price to be utilized for each Business Day of the following quarter. Administrator will transmit redemption orders on a weekly basis, if needed, to fund participant reimbursement requests and transmit purchase or redemption

orders by the third business day of the following month for participant reallocation requests and employer contributions received during the prior month. Administrator will apply the quarterly guaranteed rate supplied by Nationwide to calculate earnings on individual participant accounts monthly. Administrator will adjust earnings the following month of any amount that is different from the calculated quarterly guaranteed rate and the monthly statement provided by Nationwide.

5. Settlement of all Orders shall occur by the end of Business Day on Trade Date + 1. Payments for net purchase and/or net redemption Orders shall be made by wire transfer by the Plan (for net purchases) or by the Funds (for net redemptions) to the account designated by the receiving party.
6. Distribute to the Plan and/or Participants, as appropriate, copies of the periodic fund reports to unit holders and other materials that are required by law or otherwise to provide to their unit holders or prospective unit holders under the terms of the Plan.
7. Maintain and preserve all records as required by law or agreement with County to be maintained and preserved in connection with providing administrative services and will comply with all laws, rules and regulations applicable to the provision of the Administrative Services.
8. Make available the books, records and papers of the Administrator that are directly related to its administration of the Fixed Annuity Contract, not to include any records and/or protected health information of Plan Participants, open for inspection and copying during normal business hours by Nationwide, state and/or federal regulators. Administrator shall maintain the above-described books, records and papers in accordance with general standards for books and recordkeeping and shall make them available at all reasonable times upon reasonable request by Nationwide.
9. Shall not disclose to Nationwide any records and/or protected health information of Plan Participants.
10. Keep confidential all proprietary data software, processes, information and documentation related to this Appendix A ("Confidential Information"), except as may be necessary to perform under this Appendix B or as otherwise agreed to from time to time by County and Nationwide.

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ATTACHMENT A

HIPAA Business Associate Agreement Addendum to Contract Between the County of Riverside and A.W. Rehn & Associates

This HIPAA Business Associate Agreement (the "Addendum") supplements, and is made part of the Administrative Services Contract (the "Underlying Agreement") between the County of Riverside ("County") and A.W. Rehn & Associates ("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, Contractor when a creator or recipient of, or when they have access to, PHI and/or ePHI of County, 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 services 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 by 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. For purposes of this definition, "compromises the security or privacy of PHI" means poses a significant risk of financial, reputational, or other harm to the individual, unless a use or disclosure of PHI does not include the identifiers listed at 45 CFR §164.514(e)(2), date of birth and zip code. Breach excludes:
 - (1) 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.
 - (2) 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.
 - (3) 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. "Data aggregation" has meaning given such term in 45 CFR §164.501.
 - C. "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.
 - D. "Electronic protected health information" ("ePHI") as defined in 45 CFR §160.103 means protected health information transmitted by or maintained in electronic media.

- E. "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).
- F. "Health care operations" has the meaning given such term in 45 CFR §164.501.
- G. "Individual" as defined in 45 CFR §160.103 means the person who is the subject of protected health information.
- H. "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.
- I. "Privacy Rule" means the HIPAA regulations codified at 45 CFR Parts 160 and 164, Subparts A and E.
- J. "Protected health information" ("PHI") has the meaning given such term in 45 CFR §160.103, which includes ePHI.
- K. "Required by law" has the meaning given such term in 45 CFR §164.103.
- L. "Secretary" means the Secretary of the Department of Health and Human Services ("HHS").
- M. "Security Rule" means the HIPAA Regulations codified at 45 CFR Parts 160 and 164, Subparts A and C.
- N. "Unsecured protected health information" and "unsecured PHI" as defined in 45 CFR §164.402 means PHI not rendered unusable, unreadable, or indecipherable to unauthorized individuals through use of a technology or methodology specified by the Secretary in the guidance issued under 42 USC §17932(h)(2) on the HHS web site.

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 or marketing purposes, unless pursuant to the Underlying Agreement and as permitted by and consistent with the requirements of 42 USC §17936;
 - (2) 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,

- (3) Not to receive, directly or indirectly, remuneration in exchange for PHI, unless permitted by 42 USC §17935(d)(2) and with the prior written consent of County. 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 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.
 - F. Require any subcontractors or agents to whom Contractor provides PHI and/or ePHI to agree 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 accepted 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.
6. **Access to PHI, Amendment and Disclosure Accounting.** Contractor agrees to:
- A. **Access to PHI and electronic health record.** Provide access to PHI 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. If Contractor uses or maintains electronic health records, Contractor shall, at the request of County, provide electronic health records in electronic format to enable County to fulfill its obligations under 42 USC §17935(e).
 - 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 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 Contractor needs to create, receive, 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. Implement the 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 as required by the Security Rule, including without limitations, each of the requirements of the Security Rule at 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 by Contractor's workforce;
 - F. Ensure that any agent, including a subcontractor, to whom it provides ePHI agrees to implement reasonable appropriate safeguards to protect it;
 - G. Report to County any security incident of which Contractor becomes aware; 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, media outlets and the Secretary in accordance with 42 USC §17932 and 45 CFR §§ 164.404, 164.406 and 164.408.

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 any and all costs 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.

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, 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 non-breaching party may report the problem to the Secretary, and upon the non-breaching party's request, the breaching party at its own expense shall implement 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 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.

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

Name: Barbara A. Olivier

Title: Assistant CEO/Human Resources Director

Address: 4080 Lemon St. 7th floor, Riverside, CA 92502

**TRUST AGREEMENT FOR THE
VOLUNTARY EMPLOYEES' BENEFICIARY ASSOCIATION
POST-EMPLOYMENT HEALTH SAVINGS PLAN**

Trust Agreement dated January 1, 2012 by and between
County of Riverside, California and Washington Trust Bank

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HIPPA BUSINESS AGREEMENT 16

This Trust Agreement is made and entered into this 1st day of January 2012 (the "Effective Date") by and between the County of Riverside (the "County"), a political subdivision of the State of California, and Washington Trust Bank (the "Trustee"), a Washington corporation.

RECITALS

WHEREAS, the County established a trust to hold assets exempt from taxation under Section 501(c)(9) of the Internal Revenue Code for the benefit of employees who are eligible and participate in the Post-Employment Health Savings Plan which is funded by the Employer hereunder; and

WHEREAS, the County desires to appoint Washington Trust Bank as trustee and investment manager of such trust.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree that the Trustee shall hold all funds and other property from time to time contributed or transferred to it pursuant to the provisions hereof, together with all the increments, proceeds, investments, and reinvestments thereof, and the income therefrom, in trust, for the uses and purposes and upon the terms and conditions hereinafter set forth.

ARTICLE I DEFINITIONS AND CONSTRUCTION

1.1 Definition. As used in this Agreement, the following terms shall have the meaning hereinafter set out:

- (a) "Agreement" shall mean this instrument, as it may hereafter be amended.
- (b) "Code" shall mean the Internal Revenue Code of 1986, as the same has been or may hereafter be amended.
- (c) "Employee" shall mean any current or former employee of the Employer.
- (d) "Employer" shall mean the County and, individually and collectively, any governmental entity affiliated with the County for purposes of Section 501(c)(9) of the Code that maintains the Plan.
- (e) "Member" shall mean any Employee who is a participant in the Plan.
- (f) "Plan" shall mean the County of Riverside, California Voluntary Employees' Beneficiary Association Post-Employment Health Savings Plan and as such plan may be amended, modified, deleted, supplemented or terminated from time to time, for so long as such plan may be funded through the Trust, in whole or in part.
- (g) "Qualified Investment Manager" shall mean an investment manager as defined in Section 3(38) of the Employee Retirement Income Security Act of 1974, and codified at 29 U.S.C. § 1002(38).
- (h) "Securities" shall mean common and preferred stocks, contractual obligations of every kind, whether secured or unsecured, equitable interests in real or personal

property, and intangible property of every description and howsoever evidenced.

- (i) "Taxes" shall mean taxes and shall be deemed to include any interest or penalties assessed in respect to such taxes.
- (j) "Trust" shall mean the trust established and maintained under this Agreement.

- 1.2 Construction. Where necessary or appropriate to the meaning thereof, the singular shall be deemed to include the plural, the plural to include the singular, the masculine to include the feminine, the feminine to include the masculine.

ARTICLE II PURPOSE

- 2.1 Purpose. The Trust has been established to provide Employees with post-employment medical benefits as set forth in the Plan, while they are eligible to receive such benefits, and to provide such other permissible payments as may be determined from time to time, and it is intended that the benefits and payments provided by the Plan and funded through the Trust be "life, sick, accident, or other benefits" as that phrase is defined in Section 501(c)(9) of the Code.
- 2.2 Exclusive Benefit. No part of the Trust fund shall be used for purposes other than for (1) the exclusive benefit of Members in accordance with the provisions of the Plan and the Trust, and (2) defraying reasonable expenses of administering the Plan and the Trust.

ARTICLE III MEMBERSHIP

- 3.1 Eligibility for Membership. Each Employee who becomes a participant in the Plan shall become a Member as of the date he so becomes a participant. Upon becoming a Member, such Employee shall be bound by all provisions of this Agreement.
- 3.2 Termination of Membership. An Employee shall cease to be a Member as of the date his participation in the Plan ceases.

ARTICLE IV FUNDING

- 4.1 Contributions. The Employer shall contribute to the Trust such amount or amounts, if any, as the County may determine from time to time. All contributions shall be held, administered, and distributed, in trust, under the terms of this Agreement. The Trustee shall not be under any duty to inquire into the timeliness or correctness of the amounts contributed and delivered to the Trustee hereunder; nor shall the Trustee or any other person be under any duty to enforce the payment of the contributions to be made hereunder and the County agrees to indemnify and hold harmless the Trustee in connection therewith. The Trustee shall not be responsible for the calculation or collection of any contributions under or referred to by the Plan and shall have no duties,

except as specified under this Agreement, for the administration of the Trust. Nothing in this Agreement shall entitle any Trustee or Member to inquire into or demand the right to inspect the books of Employer. Notwithstanding any provision of this Agreement to the contrary, in no event shall the County be required to continue to fund benefits under any Plan through the Trust.

4.2 Irrevocability of Contributions.

- (a) In General. Except as may otherwise be permitted by (i) Section 501(c)(9) of the Code, and (ii) Subsection (b) of this Section 4.2, and as will not result in the imposition of tax under Section 4976 of the Code, all contributions made to the Trust shall be irrevocable.
- (b) Mistake of Fact. If a contribution or any portion thereof is made to the Trust due to a good faith mistake of fact, then within one (1) year of the date of payment of such contribution to the Trust an amount equal to the excess of (i) the amount of such contribution, over (ii) the amount which would have been contributed had a mistake of fact not occurred, shall be returned to the contributor. The amount(s) of any contribution(s) to be returned to the Employer in accordance with this subsection shall be limited to Trust assets.

4.3 Trust Fund. The Trustee shall receive the contributions from the County in cash or other property acceptable to it. All assets so received together with the income therefrom and any other increment thereon shall be held, managed, and administered by the Trustee pursuant to the terms hereof as a common fund without distinction between principal and income.

4.4 Set Aside of Income. All income of the Trust shall be set aside and used only for the exempt purposes set forth under Section 501(c)(9) of the Code (including defraying reasonable expenses of administering the Plan and Trust).

ARTICLE V POWERS AND DUTIES OF THE TRUSTEE

5.1 Trust Property and Investments. In addition to all powers and duties otherwise expressly set forth in this Agreement and subject to the provisions of Section 5.5, the Trustee shall have the following powers:

- (a) to invest and reinvest all or any part of the Trust, including both principal and income, in Securities, and other property;
- (b) to insure the payment of benefit under a contract or contracts with an insurance company or companies, and hold and retain such contract or contracts as part of the Trust;
- (c) to sell, lease, exchange, or otherwise dispose of all or any part of the Trust;
- (d) to exercise, buy, or sell rights of conversion or subscription;
- (e) to enter into or oppose any plan of consolidation, merger, reorganization, capital readjustment, or liquidation of any corporation or other issuer of Securities held hereunder including any plan for the sale, lease, or mortgage of any of its property or the adjustment or liquidation of any of its indebtedness and, in connection with

any such plan, to enter into any other such agreement, and to pay assessments or subscriptions from the other assets held hereunder;

- (f) to retain in cash or otherwise in a form unproductive of income such portion of the Trust as is necessitated by the cash requirements of the Plan; provided, however, that, to the extent feasible, such amounts shall be held in forms of investment which are productive of income but are sufficiently liquid to meet such cash requirements;
- (g) to deposit Securities held hereunder in any depository;
- (h) to deposit all or any part of the Trust, including both principal and interest, in any bank organized under the national banking laws of the United States or under the laws of any State;
- (i) to invest in and commingle assets of the Trust in any common or collective trust fund heretofore or hereafter created and administered by the Trustee or its affiliates; provided, however, that, the instrument establishing such common or collective trust fund including all amendments thereto shall govern any investment therein, and is hereby made a part of this Agreement as if fully set forth herein.

The Trustee shall invest Trust assets as directed, in writing by the County. If no such direction is received from the County, the Trustee shall invest Trust assets in one or more of the money market funds generally utilized by the Trustee with respect to its other trust accounts.

The County may appoint one or more Qualified Investment Managers to direct the Trustee with respect to investment of Trust assets, in which case the County shall notify the Trustee of such appointment. In such case, the Qualified Investment Manager shall have the same power to direct the Trustee with respect to such investments as the County had, and the Trustee shall be under no duty to question, and shall not incur any liability on account of following, any direction of the County or Qualified Investment Manager with respect to such investments. The Trustee shall be under no duty to review the investment guidelines, objectives and restrictions established, or the specific investment instructions given, by the County to such Qualified Investment Manager or to make suggestions to the County in connection therewith.

- 5.2 Claims Against Trust. Subject to the provisions of Section 5.5, and except as regards benefits under the Plan, the Trustee is empowered to compromise and adjust any and all claims, debts, or obligations in favor of or against the Trust, whether such claims be in litigation or not, and to reduce the rate of interest on, to extend or otherwise modify, or to foreclose upon default, or otherwise enforce any such claim, debt, or obligation.
- 5.3 Borrowing. Subject to the provisions in Section 5.5, the Trustee is empowered to borrow money in such amounts and upon such terms and conditions as shall be deemed advisable or proper to carry out the purposes of the Trust and to pledge any Securities or other property for the repayment of any such loan; provided, however, no such loan shall be made by the Trustee individually other than a temporary advancement to the Trust on a cash or overdraft basis.

- 5.4 Registration of Securities; Nominees. The Trustee is empowered to register Securities in its own name, or in the name of its nominee without disclosing the Trust, or to hold the same in bearer form, and to take title to other property in its own name or in the name of its nominee without disclosing the Trust; but the Trustee shall be responsible for the acts of its nominee.
- 5.5 County Directions. The powers conferred upon the Trustee in Sections 5.1, 5.2, 5.3, and 5.4 shall be exercised by the Trustee in its sole discretion only if and when specifically so authorized in writing by the County. The County shall, at any time and from time to time, certify to the Trustee in writing the name or names of any person authorized to act for the County, with respect to the exercising of any one or more of such powers. Until the County notifies the Trustee that such person is no longer authorized to act for the County, the Trustee may continue to rely on the authorization of such person. The Trustee shall be under no duty or obligation to question any instruction it so receives, except that the Trustee shall have no obligation by reason of any such direction to make any advance or loan in its banking capacity. The Trustee shall have no liability or responsibility for acting without question on the direction of, or failing to act in the absence of any action, unless the Trustee has knowledge that by such action or failure to act it will be participating in or undertaking to conceal a breach of fiduciary duty. The County agrees to indemnify and hold harmless the Trustee for acting or not acting in connection with this Section 5.5; provided, however, that in the event the Trustee is acting in its own discretion, with respect to any assets of the Trust, such indemnification shall be of no effect and the Trustee shall be liable for any breach of fiduciary responsibility in the exercise of its duties under this Agreement.
- 5.6 Agents, Attorneys, Actuaries, and Accountants. The Trustee is empowered to employ such agents, attorneys (including attorneys who may be counsel to the County), actuaries, and accountants as it may deem necessary or proper in connection with its duties hereunder, and to determine and pay out of the assets of the Trust the reasonable compensation and expenses of such agents, attorneys, actuaries, and accountants.
- 5.7 Other Authority. The Trustee is authorized to execute and deliver any and all instruments and to perform any and all acts which may be necessary or proper to enable it to discharge its duties under this Agreement and to carry out the power and authority conferred upon it.
- 5.8 Directions to the Trustee. The Trustee may rely on any written direction, request, approval, or other document purporting to have been signed on behalf of the County by the person authorized to act for the County.
- 5.9 Payment of Taxes. The Trustee is empowered to pay out of the assets of the Trust, as a general charge thereon, any and all Taxes of whatsoever nature assessed on or in respect thereto; provided, however, that if the County shall notify the Trustee in writing that any such Tax is not lawfully or properly assessed, or is questionable, the Trustee, if so requested by the County, shall contest the validity of such Tax in any manner deemed appropriate by the County. Unless the Trustee shall first have been indemnified to its

satisfaction by the County, the Trustee shall not be required to contest the validity of any Tax, to institute, maintain, or defend against any other action or proceeding, or to incur any other expense in connection with the Trust, except to the extent that the same is sufficient therefore.

- 5.10 Compensation and Expenses. The Trustee shall be entitled to an annual fee of 22 Basis Points (bps) for its all inclusive service and reimbursements for reasonable expenses incurred by the Trustee in the administration of the Trust as trustee and investment manager of such Trust. The annual fee of 22 bps will be charged against all assets of the Trust, and such annual fee will be prorated and collected each month based on the previous month ending market value of the Trust assets. Example: If the market value of all assets of the Trust is \$23,000,000, the estimated annual fee at 22 bps is \$50,600 ($\$23,000,000 \times 0.0022$), and such amount will be prorated and collected on a monthly basis.
- 5.11 Records and Statements. The Trustee shall keep accurate records of all receipts, disbursements, and other transactions affecting the Trust, which, together with the assets comprising the Trust and all evidences thereof, shall be available during the Trustee's usual business hours for inspection or for the purposes of making copies or reproductions thereof by the County, upon the County's reasonable request. The Trustee shall render to the County monthly statements of receipts, disbursements, and all transactions during the preceding month affecting the Trust. The Trustee further shall render to the County annually a statement of all assets then held by it hereunder.
- 5.12 Court Action Not Required. All the powers and authority herein conferred upon the Trustee shall be exercised by it without the necessity of applying to any court for leave or confirmation. No person dealing with the Trustee shall be required to ascertain whether the Trustee shall have obtained the approval of any court or of any person to any action which it may propose to take hereunder, but every such person may rely solely upon the deed, transfer, or assurance of the Trustee.
- 5.13 Disputes. If a dispute arises as to the payment of any funds or delivery of any assets by the Trustee, the Trustee may withhold such payment or delivery until the dispute is resolved by court of competent jurisdiction or finally settled in writing by the concerned parties.

ARTICLE VI DISPOSITION OF TRUST ASSETS

- 6.1 Payments from the Trust. Unless and until the Plan is terminated as therein provided, the Trustee shall make payments from the Trust for the benefit of Members or to pay reasonable expenses of administering the Plan or Trust, as directed by the County or by any administrator appointed by the County.
- 6.2 No Reversion of Contributions. Except to the extent permitted by Section 4.1 or 4.2, any contribution paid by the County to the Trustee hereunder shall be irrevocable, and it shall

be impossible at any time for any part of the Trust's assets to revert to the County or to be used for or diverted to purposes other than for the exclusive benefit of Members or for the payment of Taxes and expenses of administration except to the extent permitted by law. Subject to the foregoing provisions of this Section 6.2, any excess remaining in the Trust upon satisfaction of all liabilities and requirements of the Trustee hereunder shall be disposed of by the Trustee, as directed by the County, for such purposes as shall not adversely affect the exempt status of the Trust under Section 501(c)(9) of the Code, which may include transfer to another trust or trusts exempt from taxation under Section 501(c)(9) of the Code.

ARTICLE VII SUCCESSION TO THE TRUSTEESHIP

- 7.1 Resignation of the Trustee. Any Trustee acting hereunder may resign at any time by giving notice in writing to the County at least sixty (60) days before such resignation is to become effective, unless the County shall accept as adequate a shorter notice.
- 7.2 Removal of the Trustee. The County may remove, with or without cause, any Trustee acting hereunder by giving notice in writing to such Trustee at least thirty (30) days before such removal is to become effective, unless the Trustee shall accept as adequate a shorter notice.
- 7.3 Appointment of a Successor Trustee. If for any reason a vacancy should occur in the trusteeship, a successor Trustee shall forthwith be appointed by the County by action of duly authorized officer thereof, which successor Trustee may be either a corporation authorized to carry on a trust business or a national banking association. Any successor Trustee appointed hereunder shall execute, acknowledge, and deliver to the County and Trustee an instrument in writing accepting such appointment hereunder. Such successor Trustee thereupon shall become vested with the same title to the Trust property, and the same powers and duties with respect thereto, as are vested in the original Trustee. The predecessor Trustee shall execute all such instruments and perform all such other acts as the successor Trustee shall reasonably request to effectuate the provisions hereof. The successor Trustee shall have no duty to inquire into the administration of the Trust for any period prior to its succession.

ARTICLE VIII AMENDMENT AND TERMINATION

- 8.1 Right of Amendment. Subject to the provisions of Section 8.2, the County reserves the right, by means of a written instrument formally approved by the County's Board of Supervisors and executed in the name of the County to amend the provisions of this Agreement in any manner, provided, however, that the powers and duties of the Trustee shall not be changed without its approval. Any such amendment shall be by written instrument executed by the County and the Trustee. Notwithstanding any provisions of this Section 8.1 to the contrary, any amendment made to this Agreement may be given retroactive effect if in the opinion of the County such amendment is appropriate.

- 8.2 Limitation on Amendment. The County shall make no amendment to this Agreement which shall permit any part of the Trust property to revert to the Employer or be used for or be diverted to purposes other than the exclusive benefit of Members except to the extent permitted by Section 501(c)(9) of the Code and any other applicable law and as will not result in the imposition of an excise tax under Section 4976 of the Code.
- 8.3 Term. The term of this Agreement begin on January 1, 2012 and extends through June 30, 2014. At the conclusion of the term, the Agreement shall renew for successive two-year periods thereafter unless and until terminated according to the terms of the Agreement as provided herein. At no time will this Agreement extend beyond June 30, 2016.
- 8.4 Right to Terminate. The Employer has the right to terminate its contributions to the Trust. In the event of complete termination of contributions by the Employer, the Employer shall make no further contributions under the Trust, the Trust shall remain in existence, and all of the provisions of the Trust, which, in the opinion of the Trustee are necessary to the purposes of the Trust, shall remain in force, other than the provisions for contributions by the Employer, and all of the assets in the Trust on the date of termination shall be held, administered, and distributed by the Trustee in the manner provided herein and upon final distribution the Trust shall terminate.
- 8.5 Termination for Breach. The Employer may terminate this Agreement, effective immediately, if Employer, in its sole discretion, determines that Trustee has breached a material provision of this Agreement. Alternatively, Employer may choose to provide Trustee with notice of the existence of an alleged material breach and afford Trustee with an opportunity to cure the alleged material breach and in the event the Trustee fails to cure the breach to the satisfaction of Employer in a timely manner, Employer reserves the right to immediately terminate this Agreement.

ARTICLE IX INDEMNIFICATION

- 9.1 Indemnification. The Employer will indemnify and hold harmless the Trustee and the Trustee's officers, employees, agents, and representatives from any liability whatsoever, based or asserted upon the performance of the County, the Human Resources Director and the Deferred Compensation Advisory Committee (or the officers, employees, agents, or representatives thereof) arising out of or in any way relating to this Agreement, including but not limited to any costs, expenses, interest, liabilities, loss, fines, penalties, taxes or any other damages of any kind or nature resulting from any reason whatsoever arising from the performance of the County, the Human Resources Director and the Deferred Compensation Advisory Committee (or the officers, employees, agents, or representatives thereof) in connection with this Agreement.

Trustee shall indemnify and hold harmless the County, its Agencies, Districts, Special Districts and Departments, 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 Trustee, its officers, employees, agents, and/or representatives arising out of or in any way relating to this Agreement, including, but not limited to, any costs, expenses, interest, liabilities, loss, fines, penalties, taxes or any other damages of any kind or nature resulting from any reason whatsoever arising from the performance of Trustee, its officers, employees, agents and/or representatives in connection with this Agreement.

- 9.2 Insurance. Without limiting or diminishing the Trustee's obligation to indemnify or hold the County harmless, the Trustee shall procure and maintain or cause to be maintained, at its sole cost and expense, insurance as required by applicable laws and in accordance with industry standards for the Trustee.

ARTICLE X MISCELLANEOUS

- 10.1 Validity of Agreement. The validity of this Agreement shall be determined and this Agreement shall be construed and interpreted in accordance with the laws of the State of California. If any provision of this Agreement is held to be illegal or invalid for any reason and such illegality or invalidity prevents the accomplishment of the objectives and purposes of the Trust, in the event of any such holding, the parties may immediately, and if in accordance with appropriate law retroactively, amend the Agreement as is necessary to remedy any such defect.
- 10.2 No Guarantees. Neither the Employer nor the Trustee guarantees the Trust from loss or depreciation, nor the payment of any amount which may become due to any person hereunder. Nothing contained in the Trust shall constitute a guarantee by the Employer, the County or the Trustee that the assets of the Trust will be sufficient to pay any benefit to any person or make any other payment. Payments to be paid from the Trust are limited to the assets remaining in the Trust at the time payment is made. Prior to the time that distributions are made in conformity with the Plan and the Trust, Members or other persons shall not receive any distribution of cash or other thing of current or exchangeable value, either from the Employer, the County, or the Trustee on account of, or as a result of the Trust fund created hereunder.
- 10.3 Duty to Furnish Information. The County and the Trustee each shall furnish to the other any documents, reports, returns, statements, or other information that the other reasonably deems necessary to perform its duties imposed under any Plan or this Agreement or otherwise imposed by law. The County shall have the right to conduct an audit of Trust income, expenses, investments, and accounts or to have such audit conducted by an audit firm of its choosing. Similarly, Trust records shall be available for inspection and review by any regulatory agencies authorized by law to do so. The Trustee, Employer and Qualified Investment Manager and all persons and entities retained by any of them to perform services with respect to the Trust shall (a) cooperate with any such audit, inspection or review, and (b) retain any records within their possession pertaining to the Trust for a period of at least five (5) years unless they first

offer to turn over such records to the County prior to disposing of such records. This Section 10.3 shall survive the termination of this document and the termination of the Trust.

- 10.4 Taxes. The Trustee shall withhold any Tax which by any present or future law is required to be withheld from any payment to any Member hereunder.
- 10.5 Commingled Trust Fund. The fact that separate records may be maintained by the County or Trustee or any other person for each Member or group thereof, shall not be deemed to segregate for or give to such Member or group thereof, any direct interest in any specific assets of the Trust.
- 10.6 Rebates and Adjustments. Notwithstanding any provisions of this Trust to the contrary, the County may, in its discretion and to the extent permitted by Section 501(c)(9) of the Code and as would not result in the imposition of tax under Section 4976 of the Code, direct the Trustee to make administrative adjustments strictly incidental to the providing of benefits to Members. In addition, in the event a benefit is provided or a disbursement is made from the Trust as a result of a directive from the County (or its appointee) and it is determined by the County (or its appointee) that such benefit should not have been provided or disbursement made, the County may make a contribution to reimburse the Trust or engage in efforts to seek the return of the benefit or disbursement. The Trustee shall be under no duty or obligation to inquire into the correctness of any determination made by the County resulting in a direction to the Trustee under this provision.
- 10.7 Specific Accounts. At no time shall any segregated account or separate fund be considered a savings account or investment or asset of any particular Member or group thereof, and no Member or group thereof shall have any right to any particular asset which the County or the Trustee may have allocated to any segregated account or separate fund for accounting purposes.
- 10.8 Inalienability of Benefits. Except as may otherwise be provided herein, the right of any Member or other person or entity to any benefit or payment from the Trust shall not be subject to voluntary or involuntary transfer, alienation, pledge, assignment or other disposition and shall not be subject to attachment, execution, garnishment, sequestration or other legal or equitable process. Any attempt to transfer, alienate, pledge, assign, or otherwise dispose of such right or any attempt to subject such right to attachment, execution, garnishment, sequestration or other legal or equitable process shall be null and void, unless such action is (i) approved by the County (or its appointee); and (ii) undertaken in accordance with the terms and provisions of the Plan and the Trust.
- 10.9 No Implied Rights. Neither the establishment of the Trust nor any modification thereof, nor the creation of any fund, trust or account thereunder, shall be construed as giving any Member or other person or entity any legal or equitable right unless such right shall be specifically provided for in the Plan and the Trust or conferred by affirmative action of the County in accordance with the express written terms and provisions of the Plan and the Trust.

- 10.10 Status of Employment Relations. The adoption and maintenance of the Trust shall not be deemed to constitute a contract between the Employer and its Employees or any representative thereof or to be consideration for, or an inducement or condition of, the employment of any person. Nothing contained herein shall be deemed to:
- (a) give to any Employee the right to be retained in the employment of the Employer;
 - (b) affect the right of the Employer to discipline or discharge any Employee at any time; or
 - (c) affect any Employee's right to terminate his employment at any time.
- 10.11 Uniform Application. The County shall apply the provisions and any rules, regulations and conditions adopted by it (or its appointee) in a uniform and nondiscriminatory manner in accordance with Sections 505 and 501(c)(9) of the Code, so that all persons similarly situated shall be similarly treated. In addition, all rules, regulations and conditions adopted by it must be reasonably related to the type or amount of benefit or other payment provided under the Trust and must be objectively selected and administered so as to not provide disproportionate benefits in favor of officers or highly compensated employees of the Employer or highly compensated individuals (in accordance with Sections 501 (c)(9) and 505 of the Code).
- 10.12 Parties Bound. This Agreement shall be binding upon the parties hereto, all Employees and, as the case may be, the heirs, executors, administrators, successors, and assigns of each of them.
- 10.13 Governing Law and Venue. This Agreement will be governed, enforced, and interpreted in accordance with the laws of the State of California, except where federal law preempts state law. The venue and jurisdiction for any action arising under this Agreement will be in the state or federal courts in California. The parties consent to the jurisdiction and venue of the state or federal courts in California and waive any objections to such jurisdiction and venue.
- 10.14 Entire Agreement. This Agreement (together with all attachments hereto) shall constitute the entire agreement between the parties related to the rights herein granted and the obligations herein assumed. It is the express intention of the Trustee and the County that any and all prior or contemporaneous agreements, promises, negotiations or representations, either oral or written, relating to the subject matter and period governed by this Trust Agreement which are not expressly set forth herein shall be of no further force, effect or legal consequence after the effective date hereunder.
- 10.15 Delivery of Notices. Any notice or other communication provided for in this Agreement will be given in writing, delivered to the respective parties at the addresses set forth below or to such other address(es) as the parties may hereafter designate, and are deemed to be submitted (1) day after the deposit to the United States Postal Service or private courier if delivered by U.S. Postal Services express delivery or overnight courier that

guarantees next day delivery, or five (5) days after their deposit in the United States mail, postage prepaid:

If to the Trustee:

Washington Trust Bank
c/o Steve R. Sherman
Re: County of Riverside Voluntary Employees' Beneficiary Association (VEBA)
Post Employment Program (PEP) Health Savings Plan (HSP)
717 W. Sprague Ave
Spokane, WA 99201

If to the County:

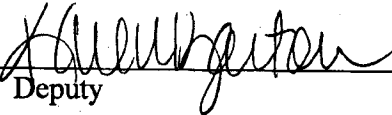
County of Riverside
c/o Human Resources Division
4080 Lemon St. 1st Floor
Riverside, CA 92502-1569

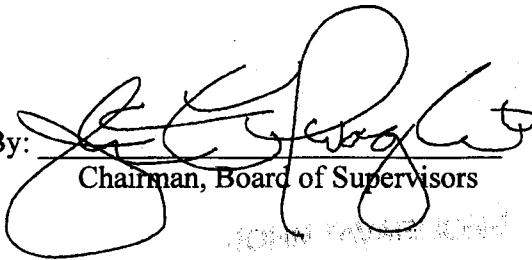
- 10.16 Severability. In the event any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired or invalidated in any way.
- 10.17 Government Claims Act. The provisions of the Government Claims Act (California Government Code Section 900 et seq.) must be followed first for any disputes under this Agreement.
- 10.18 Independent Contractor. The relationship between County and Trustee is an independent contractor relationship. Neither County nor its employee(s) and/or agent(s) shall be considered to be an employee(s), and/or agent(s) of Trustee. Trustee nor any employee(s) and/or agent(s) of Trustee shall be considered to be an employee(s) and/or agent(s) of County. None of the provisions of this Agreement shall be construed to create a relationship of agency, representation, joint venture, ownership, control or employment between the parties other than that of independent parties contracting for the purposes of effectuating this Agreement.
- 10.19 Waiver. Any waiver by either party of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same term or of any other term herein.
- 10.20 Conflict of Interest. The parties hereto and their respective employees or agents shall have no interest, and shall not acquire any interest, direct or indirect, which shall conflict in any manner or degree with the performance of services required under this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused their duly appointed representatives to execute this Trust Agreement effective as of the Effective Date.

ATTEST:
Clerk of the Board
Kecia Harper-Ihem

COUNTY OF RIVERSIDE

By: 
Deputy

By: 
Chairman, Board of Supervisors

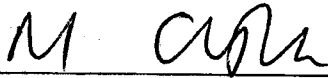
Date: JAN 10 2012

Date: JAN 10 2012

Approved as to Form:
Pamela J. Walls
County Counsel

By: 
Deputy County Counsel

WASHINGTON TRUST BANK,
a Washington corporation

By: 

Title: Senior Vice President

Date: 12/17/11

HIPAA Business Associate Agreement
Addendum to Contract
Between the County of Riverside and Washington Trust Bank

This HIPAA Business Associate Agreement (the "Addendum") supplements, and is made part of the Trust Agreement for the Voluntary Employees' Beneficiary Association Post-Employment Health Savings Plan (the "Underlying Agreement") between the County of Riverside ("County"), a political subdivision of the State of California, and Washington Trust Bank ("Contractor"), a Washington corporation, 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, Contractor when a creator or recipient of, or when they have access to, PHI and/or ePHI of County, 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 services 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 by 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. For purposes of this definition, "compromises the security or privacy of PHI" means poses a significant risk of financial, reputational, or other harm to the individual, unless a use or disclosure of PHI does not include the identifiers listed at 45 CFR §164.514(e)(2), date of birth and zip code. Breach excludes:
 - (1) 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.
 - (2) 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.
 - (3) 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. "Data aggregation" has meaning given such term in 45 CFR §164.501.
 - C. "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.
 - D. "Electronic protected health information" ("ePHI") as defined in 45 CFR §160.103 means protected health information transmitted by or maintained in electronic media.

- E. "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).
- F. "Health care operations" has the meaning given such term in 45 CFR §164.501.
- G. "Individual" as defined in 45 CFR §160.103 means the person who is the subject of protected health information.
- H. "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.
- I. "Privacy Rule" means the HIPAA regulations codified at 45 CFR Parts 160 and 164, Subparts A and E.
- J. "Protected health information" ("PHI") has the meaning given such term in 45 CFR §160.103, which includes ePHI.
- K. "Required by law" has the meaning given such term in 45 CFR §164.103.
- L. "Secretary" means the Secretary of the Department of Health and Human Services ("HHS").
- M. "Security Rule" means the HIPAA Regulations codified at 45 CFR Parts 160 and 164, Subparts A and C.
- N. "Unsecured protected health information" and "unsecured PHI" as defined in 45 CFR §164.402 means PHI not rendered unusable, unreadable, or indecipherable to unauthorized individuals through use of a technology or methodology specified by the Secretary in the guidance issued under 42 USC §17932(h)(2) on the HHS web site.

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 or marketing purposes, unless pursuant to the Underlying Agreement and as permitted by and consistent with the requirements of 42 USC §17936;
 - (2) 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,

- (3) Not to receive, directly or indirectly, remuneration in exchange for PHI, unless permitted by 42 USC §17935(d)(2) and with the prior written consent of County. 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 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.
 - F. Require any subcontractors or agents to whom Contractor provides PHI and/or ePHI to agree 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.
6. **Access to PHI, Amendment and Disclosure Accounting.** Contractor agrees to:
- A. **Access to PHI and electronic health record.** Provide access to PHI 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. If Contractor uses or maintains electronic health records, Contractor shall, at the request of County, provide electronic health records in electronic format to enable County to fulfill its obligations under 42 USC §17935(e).
 - 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 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 Contractor needs to create, receive, 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. Implement the 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 as required by the Security Rule, including without limitations, each of the requirements of the Security Rule at 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 by Contractor's workforce;
 - F. Ensure that any agent, including a subcontractor, to whom it provides ePHI agrees to implement reasonable appropriate safeguards to protect it;
 - G. Report to County any security incident of which Contractor becomes aware; 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, media outlets and the Secretary in accordance with 42 USC §17932 and 45 CFR §§ 164.404, 164.406 and 164.408.

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 any and all costs 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.

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, 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 non-breaching party may report the problem to the Secretary, and upon the non-breaching party's request, the breaching party at its own expense shall implement 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 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.

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

Name: Barbara A. Olivier
Title: Assistant CEO/Human Resources Director
Address: 4080 Lemon St. 7th floor
Riverside, CA 92502

IN WITNESS WHEREOF, the parties hereto have executed this Addendum as set forth below.

Washington Trust Bank, a Washington Corporation

By: M. [Signature]

Title: Senior Vice President

Date: 12/14/11

COUNTY OF RIVERSIDE:
Purchasing

By: [Signature]

Title: Asst. Purchasing Director

Date: 12-22-11