

AGREEMENT FOR PROVISION OF
HIV HOUSING PLUS PROJECT SERVICES

BETWEEN

COUNTY OF ORANGE

AND

AIDS SERVICES FOUNDATION ORANGE COUNTY

DBA RADIANT HEALTH CENTERS

APRIL 01, ~~2020~~2019 THROUGH MARCH 31, ~~2021~~2020

THIS AGREEMENT entered into this ~~1st~~^{1ST} day of April ~~2020 (effective date)~~,~~2019~~, is by and between the COUNTY OF ORANGE, a political subdivision of State of California (COUNTY) and AIDS SERVICES FOUNDATION ORANGE COUNTY dba RADIANT HEALTH CENTERS, a California nonprofit corporation (CONTRACTOR). COUNTY and CONTRACTOR may sometimes be referred to herein individually as "Party" or collectively as "Parties." This Agreement shall be administered by the ~~Director~~County of ~~the COUNTY's~~Orange Health Care Agency or an authorized designee ("ADMINISTRATOR").

WITNESSETH:

WHEREAS, the COUNTY wishes to contract with CONTRACTOR for the provision of HIV Housing Plus Project (HPP) services described herein to the residents of Orange County; and

WHEREAS, COUNTY received funding for these services from the California Department of Public Health, State Office of AIDS; and

WHEREAS, CONTRACTOR is agreeable to the rendering of such services on the terms and conditions hereinafter set forth:

NOW, THEREFORE, in consideration of the mutual covenants, benefits, and promises contained herein, COUNTY and CONTRACTOR do hereby agree as follows:

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REFERENCED CONTRACT PROVISIONS

Term: April 01, ~~2020~~2019 through March 31, ~~2021~~2020

Maximum Obligation: \$ 732,532

Basis for Reimbursement: Actual Cost

Payment Method: Monthly in Arrears

Contractor DUNS Number:- 18-930-0031

Contractor Tax ID Number:- 33-0126481

Notices to COUNTY and CONTRACTOR:

COUNTY: County of Orange
Health Care Agency
Contract Services
405 West 5th Street, Suite 600
Santa Ana, CA 92701-4637

CONTRACTOR: AIDS Services Foundation Orange County
DBA Radiant Health Centers
17892 Sky Park Circle, Suite J.
Irvine, CA 92614
Phil Yaeger, Executive Director
pyaeger@radianthealthcenters.org

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I. ACRONYMS

The following standard definitions are for reference purposes only and may or may not apply in their entirety throughout this Agreement:

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2									
3									
4	A.	ADAP	AIDS Drug Assistance Program						
5	B.	A.	AIDS	Acquired Immune Deficiency Syndrome					
6	C.	ARRA	American Recovery and Reinvestment Act	of 2009					
7	C.	CAPER	Consolidated Annual Performance	D.	ASRS	Alcohol	and		
8			Drug Programs Reporting System						
9			and Evaluation Report						
10	D.	E.	CAN	Certified Nursing Attendants					
11		F.	CAP	Corrective Action Plan					
12		G.	CCC	California Civil Code					
13	H.	E.	CCR	California Code of Regulations					
14		I.	CDC	Centers for Disease Control					
15	J.	F.	CFDA	Catalog of Federal Domestic Assistance					
16	G.	K.	CFR	Code of Federal Regulations					
17	L.	H.	CHPP	COUNTY HIPAA Policies and Procedures					
18	I.	M.	CHS	Correctional Health Services					
19		N.	CIPA	California Information Practices Act					
20		O.	CMPPA	Computer Matching and Privacy Protection Act					
21	P.	J.	COI	Certificate of Insurance					
22	K.	Q.	CPA	Certified Public Accountant					
23		R.	CSI	Client and Services Information					
24		S.	DCR	Data Collection and Reporting					
25		T.	DD	Dually Diagnosed					
26	U.	D/MC	Drug/Medi-Cal						
27	L.	DHCS	California Department of Health Care Services						
28		V.	D/MC	Drug/Medi-Cal					
29	M.	W.	DME	Durable Medical Equipment					
30		X.	DPFS	Drug Program Fiscal Systems					
31		Y.	DRP	Disaster Recovery Plan					
32		Z.	DRS	Designated Record Set					
33	N.	EFA	Emergency Financial Assistance						
34	O.	AA.	EEOC	Equal Employment Opportunity Commission					
35		AB.	EHR	Electronic Health Records					
36		AC.	ePHI	Electronic Protected Health Information					
37	P.	AD.	ERC	Emergency Receiving Center					

<u>1</u>	AE. FFS	Fee For service
<u>2</u>	AF. FIPS	Federal Information Processing Standards
<u>3</u>	AG. FQHC	Federally Qualified Health Center
<u>4</u>	AH. FTE	Full Time Equivalent
<u>5</u>	Q. AI. GAAP	Generally Accepted Accounting Principles
<u>6</u>	R. AJ. HAB	Federal HIV/AIDS Bureau
<u>7</u>	S. AK. HCA	County of Orange Health Care Agency
<u>8</u>	T. HIV	Human Immunodeficiency Virus
<u>9</u>	U. AL. HHS	Federal Health and Human Services Agency
<u>10</u>	AMV. HIPAA	Health Insurance Portability and Accountability Act of 1996,
<u>11</u>		Public Law 104-191
<u>12</u>	W. HOPWA	Housing Opportunities for Persons with AIDS
<u>13</u>	X. HPP	Housing Plus Project
<u>14</u>	Y. AN. HITECH Act	Health Information Technology for Economic and Clinical Health
<u>15</u>		Act, Public Law 111-005
<u>16</u>	AO. HIV	Human Immunodeficiency Virus
<u>17</u>	AP. HRSA	Federal Health Resources and Services Administration
<u>18</u>	Z. AQ. HSC	California Health and Safety Code
<u>19</u>	AA. HUD	Housing and Urban Development
<u>20</u>	AB. AR. ISO	Insurance Services Office
<u>21</u>	AC. AS. ITP	Individualized Treatment Plan
<u>22</u>	AT. LGBTQI	Lesbian, Gay, Bisexual, Transgender, Questioning, and Intersex
<u>23</u>	AU. MAI	Minority AIDS Initiative
<u>24</u>	AV. MOU	Memoranda of Understanding
<u>25</u>	AW. NIH	National Institutes of Health
<u>26</u>	AD. MHP	Mental Health Plan
<u>27</u>	AE. AX. NIST	National Institute of Standards and Technology
<u>28</u>	AY. NOA	Notice of Action
<u>29</u>	AZ. NP	Nurse Practitioner
<u>30</u>	BA. NPDB	National Provider Data Bank
<u>31</u>	BB. NPI	National Provider Identifier
<u>32</u>	BC. NPP	Notice of Privacy Practices
<u>33</u>	BD. OCJS	Orange County Jail System
<u>34</u>	BE. OCPD	Orange County Probation Department
<u>35</u>	BF. AF. OCR	Federal Office for Civil Rights
<u>36</u>	BG. AG. OCSD	Orange County Sheriff's Department
<u>37</u>	BH. AH. OIG	Federal Office of Inspector General

<u>1</u>	BI. AI. OMB	<u>Federal</u> Office of Management and Budget
<u>2</u>	BJ. AJ. OPM	Federal Office of Personnel Management
<u>3</u>	BK. P&P	Policy and Procedure
<u>4</u>	BL. AK. PA DSS	Payment Application Data Security Standard
<u>5</u>	BM. PAF	Partnership Assessment Form
<u>6</u>	BN. AL. PC	State of California Penal Code
<u>7</u>	BO AM. PCI DSS	Payment Card Industry Data Security Standard
<u>8</u>	BP. AN. PHI	Protected Health Information
<u>9</u>	BQ. PI	Personal Information
<u>10</u>	BR. AO. PII	Personally Identifiable Information
<u>11</u>	BS. AP. PLWH/A	Person Living with HIV/AIDS
<u>12</u>	AQ. PRA	<u>California</u> Public <u>Records</u> Record Act
<u>13</u>	BT. QI	Quality Improvement
<u>14</u>	BU. QIC	Quality Improvement Committee
<u>15</u>	BV. AR. QM	Quality Management
<u>16</u>	BW. AS. RAP	Rental Assistance Program
<u>17</u>	AT. RSR	Ryan White Services Reports
<u>18</u>	BX. AU. Ryan White Act	Ryan White HIV/AIDS Treatment Extension Act of
<u>19</u>		2009
<u>20</u>	AV. SIR	Self-Insured Retention
<u>21</u>	AW. <u>BY.</u> SNAP	<u>Supplemental Nutrition</u> STAR Short Term Assistance
<u>22</u>		Program for Rent
<u>23</u>	AX. The HITECH Act	The Health Information Technology for Economic and Clinical Health Act,
<u>24</u>		Public Law 111-005
<u>25</u>	AY. <u>BZ.</u> SSI	<u>Supplemental Security Income</u>
<u>26</u>	CA. STP	Special Treatment Program
<u>27</u>	CB. UOS	Units of Service
<u>28</u>	CC. USC	United States Code
<u>29</u>	CD AZ. W&IC	California Welfare and Institutions Code
<u>30</u>	CE. WIC	Women, Infants and Children

II. ALTERATION OF TERMS

A. This Agreement, together with Exhibits A, B and C attached hereto and incorporated herein, fully expresses the complete understanding of COUNTY and CONTRACTOR with respect to the subject matter of this Agreement.

B. Unless otherwise expressly stated in this Agreement, no addition to, or alteration of the terms of this Agreement or any Exhibits, whether written or verbal, made by the parties, their officers, employees

1 or agents shall be valid unless made in the form of a written amendment to this Agreement, which has
 2 been formally approved and executed by both parties.

3 4 **III. ASSIGNMENT OF DEBTS**

5 Unless this Agreement is followed without interruption by another Agreement between the parties
 6 hereto for the same services and substantially the same scope, at the termination of this Agreement,
 7 CONTRACTOR shall assign to COUNTY any debts owing to CONTRACTOR by or on behalf of
 8 persons receiving services pursuant to this Agreement. CONTRACTOR shall immediately notify by
 9 mail each of these persons, specifying the date of assignment, the County of Orange as assignee, and the

10 #
 11 address to which payments are to be sent. Payments received by CONTRACTOR from or on behalf of
 12 said persons, shall be immediately given to COUNTY.

13 14 **IV. COMPLIANCE**

15 A. COMPLIANCE PROGRAM - ADMINISTRATOR has established a Compliance Program for
 16 the purpose of ensuring adherence to all rules and regulations related to federal and state health care
 17 programs.

18 1. ADMINISTRATOR shall provide CONTRACTOR with a copy of the policies and
 19 procedures relating to ADMINISTRATOR's Compliance Program, Code of Conduct and access to
 20 General Compliance and Annual Provider Trainings.

21 2. CONTRACTOR has the option to provide ADMINISTRATOR ~~ADMINISTRATOR~~ with
 22 proof of its own Compliance Program, Code of Conduct and any Compliance related policies and
 23 procedures. CONTRACTOR's Compliance Program and Code of Conduct and any related policies and
 24 procedures shall be verified by ADMINISTRATOR's Compliance Department to ensure they include all
 25 required elements by ADMINISTRATOR's Compliance Officer as described in this Paragraph IV
 26 (COMPLIANCE). These elements include:

- 27 a. Designation of a Compliance Officer and/or compliance staff.
- 28 b. Written standards, policies and/or procedures.
- 29 c. Compliance related training and/or education program and proof of completion.
- 30 d. Communication methods for reporting concerns to the Compliance Officer.
- 31 e. Methodology for conducting internal monitoring and auditing.
- 32 f. Methodology for detecting and correcting offenses.
- 33 g. Methodology/Procedure for enforcing disciplinary standards.

34 3. If CONTRACTOR does not provide proof of its own Compliance Program to
 35 ADMINISTRATOR, CONTRACTOR shall acknowledge to comply with ADMINISTRATOR's
 36 Compliance Program and Code of Conduct, the CONTRACTOR shall submit to the
 37 ADMINISTRATOR within thirty (30) calendar days of execution of this Agreement a signed

1 acknowledgement that CONTRACTOR shall comply with ADMINISTRATOR's Compliance Program
2 and Code of Conduct.

3 4. If CONTRACTOR elects to have its own Compliance Program, Code of Conduct and any
4 compliance related policies and procedures review by ADMINISTRATOR, then CONTRACTOR shall
5 submit a copy of its compliance program, code of conduct and all relevant policies and procedures to
6 ADMINISTRATOR within thirty (30) calendar days of execution of this Agreement.
7 ADMINISTRATOR's Compliance Officer, or designee, shall review said documents within a
8 reasonable time, which shall not exceed forty five (45) calendar days, and determine if
9 CONTRACTOR's proposed compliance program and code of conduct contain all required elements to
10 the ADMINSTRATOR's satisfaction as consistent with the HCA's Compliance Program and Code of
11 Conduct. ADMINISTRATOR shall inform CONTRACTOR of any missing required elements and
12 CONTRACTOR shall revise its compliance program and code of conduct to meet
13 ADMINISTRATOR's required elements within thirty (30) calendar days after ADMINISTRATOR's
14 Compliance Officer's determination and resubmit the same for review by the ADMINISTRATOR.

15 5. Upon written confirmation from ADMINISTRATOR's Compliance Officer that the
16 CONTRACTOR's compliance program, code of conduct and any compliance related policies and
17 procedures contain all required elements, CONTRACTOR shall ensure that all Covered Individuals
18 relative to this Agreement are made aware of CONTRACTOR's compliance program, code of conduct,
19 related policies and procedures and contact information for the ADMINISTRATOR's Compliance
20 Program.

21 B. SANCTION SCREENING – CONTRACTOR shall screen all Covered Individuals employed or
22 retained to provide services related to this Agreement semi-annually to ensure that they are not
23 designated as Ineligible Persons, as pursuant to this Agreement. Screening shall be conducted against
24 the General Services Administration's Excluded Parties List System or System for Award Management,
25 the Health and Human Services/Office of Inspector General List of Excluded Individuals/Entities, and
26 the California Medi-Cal Suspended and Ineligible Provider List and/or any other list or system as
27 identified by the ADMINISTRATOR.

28 1. For purposes of this Compliance Paragraph, ~~IV (COMPLIANCE)~~, Covered Individuals
29 includes all employees, interns, volunteers, contractors, subcontractors, agents, and other persons who
30 provide health care items or services or who perform billing or coding functions on behalf of
31 ADMINISTRATOR. ~~Notwithstanding the above, this term does not include part-time or per diem~~
32 ~~employees, contractors, subcontractors, agents, and other persons who are not reasonably expected to~~
33 ~~work more than one hundred sixty (160) hours per year; except that any such individuals shall become~~
34 ~~Covered Individuals at the point when they work more than one hundred sixty (160) hours during the~~
35 ~~calendar year.~~ CONTRACTOR shall ensure that all Covered Individuals relative to this Agreement are
36 made aware of ADMINISTRATOR's Compliance Program, Code of Conduct and related policies and
37 procedures (or CONTRACTOR's own compliance program, code of conduct and related policies and

1 procedures if CONTRACTOR has elected to use its own).

2 2. An Ineligible Person shall be any individual or entity who:

3 a. is currently excluded, suspended, debarred or otherwise ineligible to participate in
4 federal and state health care programs; or

5 b. has been convicted of a criminal offense related to the provision of health care items or
6 services and has not been reinstated in the federal and state health care programs after a period of
7 exclusion, suspension, debarment, or ineligibility.

8 3. CONTRACTOR shall screen prospective Covered Individuals prior to hire or engagement.
9 CONTRACTOR shall not hire or engage any Ineligible Person to provide services relative to this
10 Agreement.

11 4. CONTRACTOR shall screen all current Covered Individuals and subcontractors semi-
12 annually to ensure that they have not become Ineligible Persons. CONTRACTOR shall also request that
13 its subcontractors use their best efforts to verify that they are eligible to participate in all federal and
14 State of California health programs and have not been excluded or debarred from participation in any
15 federal or state health care programs, and to further represent to CONTRACTOR that they do not have
16 any Ineligible Person in their employ or under contract.

17 5. Covered Individuals shall be required to disclose to CONTRACTOR immediately any
18 debarment, exclusion or other event that makes the Covered Individual an Ineligible Person.
19 CONTRACTOR shall notify ADMINISTRATOR immediately if a Covered Individual providing
20 services directly relative to this Agreement becomes debarred, excluded or otherwise becomes an
21 Ineligible Person.

22 6. CONTRACTOR acknowledges that Ineligible Persons are precluded from providing federal
23 and state funded health care services by contract with COUNTY in the event that they are currently
24 sanctioned or excluded by a federal or state law enforcement regulatory or licensing agency. If
25 CONTRACTOR becomes aware that a Covered Individual has become an Ineligible Person,
26 CONTRACTOR shall remove such individual from responsibility for, or involvement with, COUNTY
27 business operations related to this Agreement.

28 7. CONTRACTOR shall notify ADMINISTRATOR immediately if a Covered Individual or
29 entity is currently excluded, suspended or debarred, or is identified as such after being sanction screened.
30 Such individual or entity shall be immediately removed from participating in any activity associated
31 with this Agreement. ADMINISTRATOR will determine appropriate repayment from, or sanction(s) to
32 CONTRACTOR for services provided by ineligible person or individual. CONTRACTOR shall
33 promptly return any overpayments within forty-five (45) business days after the overpayment is verified
34 by ADMINISTRATOR.

35 C. GENERAL COMPLIANCE TRAINING – ADMINISTRATOR shall make General
36 Compliance Training available to Covered Individuals.

37 1. CONTRACTOR that have acknowledged to comply with ADMINISTRATOR's

1 Compliance Program shall use its best efforts to encourage completion by all Covered Individuals;
 2 provided, however, that at a minimum CONTRACTOR shall assign at least one (1) designated
 3 representative to complete the General Compliance Trainings when offered.

4 2. Such training will be made available to Covered Individuals within thirty (30) calendar days
 5 of employment or engagement.

6 3. Such training will be made available to each Covered Individual annually.

7 4. ADMINISTRATOR will track training completion while CONTRACTOR shall provide
 8 copies of training certification upon request.

9 5. Each Covered Individual attending a group training shall certify, in writing, attendance at
 10 compliance training. ADMINISTRATOR shall provide instruction on group training completion while
 11 CONTRACTOR shall retain the certifications. —Upon written request by ADMINISTRATOR,
 12 CONTRACTOR shall provide copies of the certifications.

13 D. SPECIALIZED PROVIDER TRAINING – ADMINISTRATOR shall make Specialized
 14 Provider Training, where appropriate, available to Covered Individuals.

15 1. CONTRACTOR shall ensure completion of Specialized Provider Training by all Covered
 16 Individuals relative to this Agreement. This includes compliance with federal and state healthcare
 17 program regulations and procedures or instructions otherwise communicated by regulatory agencies;
 18 including the Centers for Medicare and Medicaid Services or their agents.

19 2. Such training will be made available to Covered Individuals within thirty (30) calendar days
 20 of employment or engagement.

21 3. Such training will be made available to each Covered Individual annually.

22 4. ADMINISTRATOR will track online completion of training while CONTRACTOR shall
 23 provide copies of the certifications upon request.

24 5. Each Covered Individual attending a group training shall certify, in writing, attendance at
 25 compliance training. ADMINISTRATOR shall provide instructions on completing the training in a
 26 group setting while CONTRACTOR shall retain the certifications. Upon written request by
 27 ADMINISTRATOR, CONTRACTOR shall provide copies of the certifications.

28 E. MEDICAL BILLING, CODING, AND DOCUMENTATION COMPLIANCE
 29 STANDARDS

30 1. CONTRACTOR shall take reasonable precaution to ensure that the coding of health care
 31 claims, billings and/or invoices for same are prepared and submitted in an accurate and timely manner
 32 and are consistent with federal, state and county laws and regulations. This includes compliance with
 33 federal and state health care program regulations and procedures or instructions otherwise
 34 communicated by regulatory agencies including the Centers for Medicare and Medicaid Services or their
 35 agents.

36 2. CONTRACTOR shall not submit any false, fraudulent, inaccurate and/or fictitious claims
 37 for payment or reimbursement of any kind.

1 3. CONTRACTOR shall bill only for those eligible services actually rendered which are also
 2 fully documented. When such services are coded, CONTRACTOR shall use proper billing codes which
 3 accurately describes the services provided and must ensure compliance with all billing and
 4 documentation requirements.

5 4. CONTRACTOR shall act promptly to investigate and correct any problems or errors in
 6 coding of claims and billing, if and when, any such problems or errors are identified.

7 5. CONTRACTOR shall promptly return any overpayments within forty-five (45) business
 8 days after the overpayment is verified by the ADMINISTRATOR.

9 6. CONTRACTOR shall meet the HCA MHP Quality Management Program Standards and
 10 participate in the quality improvement activities developed in the implementation of the Quality
 11 Management Program.

12 7. CONTRACTOR shall comply with the provisions of the ADMINISTRATOR's Cultural
 13 Competency Plan submitted and approved by the state. ADMINISTRATOR shall update the Cultural
 14 Competency Plan and submit the updates to the State for review and approval annually. (CCR, Title 9,
 15 §1810.410.subds.(c)-(d).

16 F. Failure to comply with the obligations stated in this Compliance Paragraph ~~IV (COMPLIANCE)~~
 17 shall constitute a breach of the Agreement on the part of CONTRACTOR and grounds for COUNTY to
 18 terminate the Agreement. Unless the circumstances require a sooner period of cure, CONTRACTOR
 19 shall have thirty (30) calendar days from the date of the written notice of default to cure any defaults
 20 grounded on this Compliance Paragraph ~~IV (COMPLIANCE)~~ prior to ADMINITRATOR's right to
 21 terminate this Agreement on the basis of such default.

22 V. CONFIDENTIALITY

23 A. CONTRACTOR shall maintain the confidentiality of all records, including billings and any
 24 audio and/or video recordings, in accordance with all applicable federal, state and county codes and
 25 regulations, as they now exist or may hereafter be amended or changed.

26 1. CONTRACTOR acknowledges and agrees that all persons served pursuant to this
 27 Agreement are clients of the Orange County HIV services system, and therefore it may be necessary for
 28 authorized staff of ADMINISTRATOR to audit client files, or to exchange information regarding
 29 specific clients with COUNTY or other providers of related services contracting with COUNTY.

30 2. CONTRACTOR acknowledges and agrees that it shall be responsible for obtaining written
 31 consents for the release of information from all persons served by CONTRACTOR pursuant to this
 32 Agreement. Such consents shall be obtained by CONTRACTOR in accordance with CCC, Division 1,
 33 Part 2.6, relating to confidentiality of medical information.

34 3. In the event of a collaborative service agreement between HIV services providers,
 35 CONTRACTOR acknowledges and agrees that it is responsible for obtaining releases of information,
 36 from the collaborative agency, for clients receiving services through the collaborative agreement.
 37

1 B. Prior to providing any services pursuant to this Agreement, all members of the Board of
 2 Directors or its designee or authorized agent, employees, consultants, subcontractors, volunteers and
 3 interns of the CONTRACTOR shall agree, in writing, with CONTRACTOR to maintain the
 4 confidentiality of any and all information and records which may be obtained in the course of providing
 5 such services. This Agreement shall specify that it is effective irrespective of all subsequent resignations
 6 or terminations of CONTRACTOR members of the Board of Directors or its designee or authorized
 7 agent, employees, consultants, subcontractors, volunteers and interns.

8 9 VI. COST REPORT CONFLICT OF INTEREST

10 CONTRACTOR shall exercise reasonable care and diligence to prevent any actions or conditions
 11 that could result in a conflict with COUNTY interests. In addition to CONTRACTOR, this obligation
 12 shall apply to CONTRACTOR's employees, agents, and subcontractors associated with the provision of
 13 goods and services provided under this Agreement. CONTRACTOR's efforts shall include, but not be
 14 limited to establishing rules and procedures preventing its employees, agents, and subcontractors from
 15 providing or offering gifts, entertainment, payments, loans or other considerations which could be
 16 deemed to influence or appear to influence COUNTY staff or elected officers in the performance of their
 17 duties.

18 19 VII. COST REPORT

20 A. CONTRACTOR shall submit separate Cost Reports for Period One, Period Two and Period
 21 Three or for a portion thereof. ~~Cost Report~~ to COUNTY no later than sixty (60) calendar days following
 22 the period for which they are prepared or termination of this Agreement. CONTRACTOR shall prepare
 23 the Cost Report in accordance with all applicable federal, state and COUNTY requirements, GAAP and
 24 the Special Provisions Paragraph of this Agreement. CONTRACTOR shall allocate direct and indirect
 25 costs to and between programs, cost centers, services, and funding sources in accordance with such
 26 requirements and consistent with prudent business practice, which costs and allocations shall be
 27 supported by source documentation maintained by CONTRACTOR, and available at any time to
 28 ADMINISTRATOR upon reasonable notice.

29 1. If CONTRACTOR fails to submit an accurate and complete Cost Report within the time
 30 period specified above, ADMINISTRATOR shall have sole discretion to impose one or both of the
 31 following:

32 a. CONTRACTOR may be assessed a late penalty of five hundred dollars (\$500) for each
 33 business day after the above specified due date that the accurate and complete Cost Report is not
 34 submitted. Imposition of the late penalty shall be at the sole discretion of the ADMINISTRATOR. The
 35 late penalty shall be assessed separately on each outstanding Cost Report due COUNTY by
 36 CONTRACTOR.

37 b. ADMINISTRATOR may withhold or delay any or all payments due CONTRACTOR

1 pursuant to any or all agreements between COUNTY and CONTRACTOR until such time that the
2 accurate and complete Cost Report is delivered to ADMINISTRATOR.

3 2. CONTRACTOR may request, in advance and in writing, an extension of the due date of the
4 Cost Report setting forth good cause for justification of the request. Approval of such requests shall be
5 at the sole discretion of ADMINISTRATOR and shall not be unreasonably denied.

6 3. In the event that CONTRACTOR does not submit an accurate and complete Cost Report
7 within one hundred and eighty (180) calendar days following the termination of this Agreement, and
8 CONTRACTOR has not entered into a subsequent or new agreement for any other services with
9 COUNTY, then all amounts paid to CONTRACTOR by COUNTY during the term of the Agreement
10 shall be immediately reimbursed to COUNTY.

11 B. The individual and/or consolidated Cost Report prepared for each period shall be the final
12 financial and statistical report submitted by CONTRACTOR to COUNTY, and shall serve as the basis
13 for final settlement to CONTRACTOR for that period. - CONTRACTOR shall document that costs are
14 reasonable and allowable and directly or indirectly related to the services to be provided hereunder. The
15 Cost Report shall be the final financial record for subsequent audits, if any.

16 C. Final settlement shall be based upon the actual and reimbursable costs for services hereunder,
17 less applicable revenues and any late penalty, not to exceed COUNTY's Maximum Obligation as set
18 forth in the Referenced Contract Provisions of this Agreement. CONTRACTOR shall not claim
19 expenditures to COUNTY which are not reimbursable pursuant to applicable federal, state and
20 COUNTY laws, regulations and requirements. Any payment made by COUNTY to CONTRACTOR,
21 which is subsequently determined to have been for an unreimbursable expenditure or service, shall be
22 repaid by CONTRACTOR to COUNTY in cash, or other authorized form of payment, within thirty (30)
23 calendar days of submission of the Cost Report or COUNTY may elect to reduce any amount owed
24 CONTRACTOR by an amount not to exceed the reimbursement due COUNTY.

25 D. If the Cost Report indicates the actual and reimbursable costs of services provided pursuant to
26 this Agreement, less applicable revenues and late penalty, are lower than the aggregate of interim
27 monthly payments to CONTRACTOR, CONTRACTOR shall remit the difference to COUNTY. Such
28 reimbursement shall be made, in cash, or other authorized form of payment, with the submission of the
29 Cost Report. If such reimbursement is not made by CONTRACTOR within thirty (30) calendar days
30 after submission of the Cost Report, COUNTY may, in addition to any other remedies, reduce any
31 amount owed CONTRACTOR by an amount not to exceed the reimbursement due COUNTY.

32 E. If the Cost Report indicates the actual and reimbursable costs of services provided pursuant to
33 this Agreement, less applicable revenues and late penalty, are higher than the aggregate of interim
34 monthly payments to CONTRACTOR, COUNTY shall pay CONTRACTOR the difference, provided
35 such payment does not exceed the Maximum Obligation of COUNTY.

36 F. All Cost Reports shall contain the following attestation, which may be typed directly on or
37 attached to the Cost Report:

"I HEREBY CERTIFY that I have executed the accompanying Cost Report and supporting documentation prepared by _____ for the cost report period beginning _____ and ending _____ and that, to the best of my knowledge and belief, costs reimbursed through this Agreement are reasonable and allowable and directly or indirectly related to the services provided and that this Cost Report is a true, correct, and complete statement from the books and records of (provider name) in accordance with applicable instructions, except as noted. I also hereby certify that I have the authority to execute the accompanying Cost Report.

Signed _____

Name _____

Title _____

Date _____"

_____ "Date _____"

VIII. DEBARMENT AND SUSPENSION CERTIFICATION

A. CONTRACTOR certifies that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency.

2. Have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

3. Are not presently indicted for or otherwise criminally or civilly charged by a federal, state, or local governmental entity with commission of any of the offenses enumerated in Subparagraph A.2. above.

4. Have not within a three-year period preceding this Agreement had one or more public transactions (federal, state, or local) terminated for cause or default.

5. Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR Part 9, Subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction unless authorized by the State of California.

6. Shall include without modification, the clause titled "Certification Regarding Debarment,

1 Suspension, Ineligibility, and Voluntary Exclusion Lower Tier Covered Transaction,” (i.e., transactions
 2 with sub-grantees and/or contractors) and in all solicitations for lower tier covered transactions in
 3 accordance with 2 CFR Part 376.

4 B. The terms and definitions of this paragraph have the meanings set out in the Definitions and
 5 Coverage sections of the rules implementing 51 F.R. 6370.

6 **IX. DELEGATION, ASSIGNMENT AND SUBCONTRACTS**

8 A. CONTRACTOR may not delegate the obligations hereunder, either in whole or in part, without
 9 prior written consent of COUNTY. CONTRACTOR shall provide written notification of
 10 CONTRACTOR’s intent to delegate the obligations hereunder, either in whole or part, to
 11 ADMINISTRATOR not less than sixty (60) calendar days prior to the effective date of the delegation.
 12 Any attempted assignment or delegation in derogation of this paragraph shall be void.

13 ~~B.~~ B. CONTRACTOR agrees that if there is a change or transfer in ownership of
 14 CONTRACTOR’s business prior to completion of this Agreement, and COUNTY agrees to an
 15 assignment of the Agreement, the new owners shall be required under the terms of sale or other
 16 instruments of transfer to assume CONTRACTOR’s duties and obligations contained in this Agreement
 17 and complete them to the satisfaction of COUNTY. CONTRACTOR may not assign the rights
 18 hereunder, either in whole or in part, without the prior written consent of COUNTY.

19 1. If CONTRACTOR is a nonprofit organization, any change from a nonprofit corporation to
 20 any other corporate structure of CONTRACTOR, including a change in more than fifty percent (50%) of
 21 the composition of the Board of Directors within a two (2) month period of time, shall be deemed an
 22 assignment for purposes of this paragraph, unless CONTRACTOR is transitioning from a community
 23 clinic/health center to a Federally Qualified Health Center and has been so designated by the Federal
 24 Government. Any attempted assignment or delegation in derogation of this subparagraph shall be void.

25 2. If CONTRACTOR is a for-profit organization, any change in the business structure,
 26 including but not limited to, the sale or transfer of more than ten percent (10%) of the assets or stocks of
 27 CONTRACTOR, change to another corporate structure, including a change to a sole proprietorship, or a
 28 change in fifty percent (50%) or more of Board of Directors or any governing body of CONTRACTOR
 29 at one time shall be deemed an assignment pursuant to this paragraph. Any attempted assignment or
 30 delegation in derogation of this subparagraph shall be void.

31 3. If CONTRACTOR is a governmental organization, any change to another structure,
 32 including a change in more than fifty percent (50%) of the composition of its governing body (i.e. Board
 33 of Supervisors, City Council, School Board) within a two (2) month period of time, shall be deemed an
 34 assignment for purposes of this paragraph. Any attempted assignment or delegation in derogation of this
 35 subparagraph shall be void.

36 4. Whether CONTRACTOR is a nonprofit, for-profit, or a governmental organization,
 37 CONTRACTOR shall provide written notification of CONTRACTOR’s intent to assign the obligations

1 hereunder, either in whole or part, to ADMINISTRATOR not less than sixty (60) calendar days prior to
 2 the effective date of the assignment.

3 5. Whether CONTRACTOR is a nonprofit, for-profit, or a governmental organization,
 4 CONTRACTOR shall provide written notification within thirty (30) calendar days to
 5 ADMINISTRATOR when there is change of less than fifty percent (50%) of Board of Directors or any
 6 governing body of CONTRACTOR at one time.

7 6. COUNTY reserves the right to immediately terminate the Agreement in the event
 8 COUNTY determines, in its sole discretion, that the assignee is not qualified or is otherwise
 9 unacceptable to COUNTY for the provision of services under the Agreement.

10 C. CONTRACTOR's obligations undertaken pursuant to this Agreement may be carried out by
 11 means of subcontracts, provided such subcontracts are approved in advance, in writing by
 12 ADMINISTRATOR, meet the requirements of this Agreement as they relate to the service or activity
 13 under subcontract, and include any provisions that ADMINISTRATOR may require, and are authorized
 14 in writing by ADMINISTRATOR prior to the beginning of service delivery.

15 1. After approval of a subcontract, ADMINISTRATOR may revoke the approval of a
 16 subcontract upon five (5) calendar days' written notice to CONTRACTOR if the subcontract
 17 subsequently fails to meet the requirements of this Agreement or any provisions that
 18 ADMINISTRATOR has required. ADMINISTRATOR may disallow subcontractor expenses reported
 19 by CONTRACTOR.

20 2. No subcontract shall terminate or alter the responsibilities of CONTRACTOR to COUNTY
 21 pursuant to this Agreement.

22 3. ADMINISTRATOR may disallow, from payments otherwise due CONTRACTOR,
 23 amounts claimed for subcontracts not approved in accordance with this paragraph.

24 4. This provision shall not be applicable to service agreements usually and customarily entered
 25 into by CONTRACTOR to obtain or arrange for supplies, technical support, and professional services
 26 provided by consultants.

27 D. CONTRACTOR shall notify COUNTY in writing of any change in the CONTRACTOR's
 28 status with respect to name changes that do not require an assignment of the Agreement.
 29 CONTRACTOR is also obligated to notify COUNTY in writing if the CONTRACTOR becomes a party
 30 to any litigation against COUNTY, or a party to litigation that may reasonably affect the
 31 CONTRACTOR's performance under the Contract, as well as any potential conflicts of interest between
 32 CONTRACTOR and County that may arise prior to or during the period of Agreement performance.
 33 While CONTRACTOR will be required to provide this information without prompting from COUNTY
 34 any time there is a change in CONTRACTOR's name, conflict of interest or litigation status,
 35 CONTRACTOR must also provide an update to COUNTY of its status in these areas whenever
 36 requested by COUNTY.

X. DISPUTE RESOLUTION

A. The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Agreement is not disposed of in a reasonable period of time by the CONTRACTOR and the ADMINISTRATOR, such matter shall be brought to the attention of the COUNTY Purchasing Agency by way of the following process:

1. CONTRACTOR shall submit to the COUNTY Purchasing Agency a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Agreement, unless COUNTY, on its own initiative, has already rendered such a final decision.

2. CONTRACTOR's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Agreement, CONTRACTOR shall include with the demand a written statement signed by an authorized representative indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Agreement adjustment for which CONTRACTOR believes COUNTY is liable.

B. Pending the final resolution of any dispute arising under, related to, or involving this Agreement, CONTRACTOR agrees to proceed diligently with the performance of services secured via this Agreement, including the delivery of goods and/or provision of services. CONTRACTOR's failure to proceed diligently shall be considered a material breach of this Agreement.

C. Any final decision of COUNTY shall be expressly identified as such, shall be in writing, and shall be signed by a COUNTY Deputy Purchasing Agent or designee. If COUNTY fails to render a decision within ninety (90) calendar days after receipt of CONTRACTOR's demand, it shall be deemed a final decision adverse to CONTRACTOR's contentions.

D. This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.

XI. EMPLOYEE ELIGIBILITY VERIFICATION

CONTRACTOR warrants that it shall fully comply with all federal and state statutes and regulations regarding the employment of aliens and others and to ensure that employees, subcontractors, and consultants performing work under this Agreement meet the citizenship or alien status requirements set forth in federal statutes and regulations. CONTRACTOR shall obtain, from all employees, subcontractors, and consultants performing work hereunder, all verification and other documentation of employment eligibility status required by federal or state statutes and regulations including, but not

1 limited to, the Immigration Reform and Control Act of 1986, 8 USC §1324 et seq., as they currently
 2 exist and as they may be hereafter amended. CONTRACTOR shall retain all such documentation for all
 3 covered employees, subcontractors, and consultants for the period prescribed by the law.

4 5 **XII. EQUIPMENT**

6 A. Unless otherwise specified in writing by ADMINISTRATOR, Equipment is defined as all
 7 property of a Relatively Permanent nature with significant value, purchased in whole or in part by
 8 ADMINISTRATOR to assist in performing the services described in this Agreement. “Relatively
 9 Permanent” is defined as having a useful life of one (1) year or longer. Equipment which costs \$5,000
 10 or over, including freight charges, sales taxes, and other taxes, and installation costs are defined as
 11 Capital Assets. Equipment which costs between \$600 and \$5,000, including freight charges, sales taxes
 12 and other taxes, and installation costs, or electronic equipment that costs less than \$600 but may
 13 contained PHI or PII, are defined as Controlled Equipment. Controlled Equipment includes, but is not
 14 limited to phones, tablets, audio/visual equipment, computer equipment, and lab equipment. The cost of
 15 Equipment purchased, in whole or in part, with funds paid pursuant to this Agreement shall be
 16 depreciated according to GAAP.

17 B. CONTRACTOR shall obtain ADMINISTRATOR’s ~~prior~~ written approval to purchase any
 18 Equipment with funds paid pursuant to this Agreement. Upon delivery of Equipment, CONTRACTOR
 19 shall forward to ADMINISTRATOR, copies of the purchase order, receipt, and other supporting
 20 documentation, which includes delivery date, unit price, tax, shipping and serial numbers.
 21 CONTRACTOR shall request an applicable asset tag for said Equipment and shall include each
 22 purchased asset in an Equipment inventory.

23 C. Upon ADMINISTRATOR’s prior written approval, CONTRACTOR may expense to COUNTY
 24 the cost of the approved Equipment purchased by CONTRACTOR. To “expense,” in relation to
 25 Equipment, means to charge the proportionate cost of Equipment in the fiscal year in which it is
 26 purchased. Title of expensed Equipment shall be vested with COUNTY.

27 D. CONTRACTOR shall maintain an inventory of all Equipment purchased in whole or in part
 28 with funds paid through this Agreement, including date of purchase, purchase price, serial number,
 29 model and type of Equipment. Such inventory shall be available for review by ADMINISTRATOR, and
 30 shall include the original purchase date and price, useful life, and balance of depreciated Equipment
 31 cost, if any.

32 E. CONTRACTOR shall cooperate with ADMINISTRATOR in conducting periodic physical
 33 inventories of all Equipment. Upon demand by ADMINISTRATOR, CONTRACTOR shall return any
 34 or all Equipment to COUNTY.

35 F. CONTRACTOR must report any loss or theft of Equipment in accordance with the procedure
 36 approved by ADMINISTRATOR and the Notices Paragraph of this Agreement. In addition,
 37 CONTRACTOR must complete and submit to ADMINISTRATOR a notification form when items of

1 Equipment are moved from one location to another or returned to COUNTY as surplus.

2 G. Unless this Agreement is followed without interruption by another agreement between the
3 parties for substantially the same type and scope of services, at the termination of this Agreement for any
4 cause, CONTRACTOR shall return to COUNTY all Equipment purchased with funds paid through this
5 Agreement.

6 H. CONTRACTOR shall maintain and administer a sound business program for ensuring the
7 proper use, maintenance, repair, protection, insurance, and preservation of COUNTY Equipment.
8

9 **XIII. FACILITIES, PAYMENTS AND SERVICES**

10 A. CONTRACTOR agrees to provide the services, staffing, facilities, and supplies in accordance
11 with this Agreement. COUNTY shall compensate, and authorize, when applicable, said services.
12 CONTRACTOR shall operate continuously throughout the term of this Agreement with at least the
13 minimum number and type of staff which meet applicable federal and state requirements, and which are
14 necessary for the provision of the services hereunder.

15 B. In the event that CONTRACTOR is unable to provide the services, staffing, facilities, or
16 supplies as required, ADMINISTRATOR may, at its sole discretion, reduce the Total Maximum
17 Obligation for the appropriate Period as well as the Total Maximum Obligation. -The reduction to the
18 Total Maximum Obligation for the appropriate Period as well as the Total Maximum Obligation shall be
19 in an amount proportionate to the number of days in which CONTRACTOR was determined to be
20 unable to provide services, staffing, facilities or supplies.
21

22 **XIV. INDEMNIFICATION AND INSURANCE**

23 A. CONTRACTOR agrees to indemnify, defend with counsel approved in writing by COUNTY,
24 and hold COUNTY, its elected and appointed officials, officers, employees, agents and those special
25 districts and agencies for which COUNTY's Board of Supervisors acts as the governing Board
26 ("COUNTY INDEMNITEES") harmless from any claims, demands or liability of any kind or nature,
27 including but not limited to personal injury or property damage, arising from or related to the services,
28 products or other performance provided by CONTRACTOR pursuant to this Agreement. If judgment is
29 entered against CONTRACTOR and COUNTY by a court of competent jurisdiction because of the
30 concurrent active negligence of COUNTY or COUNTY INDEMNITEES, CONTRACTOR and
31 COUNTY agree that liability will be apportioned as determined by the court. Neither Party ~~party~~ shall
32 request a jury apportionment.

33 B. Prior to the provision of services under this Agreement, CONTRACTOR agrees to purchase all
34 required insurance at CONTRACTOR's expense ~~and to submit to COUNTY the COI~~, including all
35 endorsements required herein, necessary to satisfy COUNTY that the insurance provisions of this
36 Agreement have been complied with. CONTRACTOR agrees ~~and to keep maintain~~ such insurance
37 coverage, Certificates of Insurance, and endorsements on deposit with COUNTY during the entire term

1 of this Agreement. In addition, all subcontractors performing work on behalf of CONTRACTOR
2 pursuant to this Agreement shall obtain insurance subject to the same terms and conditions as set forth
3 herein for CONTRACTOR.

4 C. CONTRACTOR shall ensure that all subcontractors performing work on behalf of
5 CONTRACTOR pursuant to this Agreement shall be covered under CONTRACTOR's insurance as an
6 Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for
7 CONTRACTOR. CONTRACTOR shall not allow subcontractors to work if subcontractors have less
8 than the level of coverage required by COUNTY from CONTRACTOR under this Agreement. It is the
9 obligation of CONTRACTOR to provide notice of the insurance requirements to every subcontractor
10 and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of
11 insurance must be maintained by CONTRACTOR through the entirety of this Agreement for inspection
12 by COUNTY representative(s) at any reasonable time.

13 D. All SIRs ~~and deductibles~~ shall be clearly stated on the COI. Any SIR or deductible in an
14 amount in excess of \$50,000 shall specifically be approved by the CEO/Office of Risk Management
15 upon review of CONTRACTOR's current audited financial report. If CONTRACTOR's SIR is
16 approved, CONTRACTOR, in addition to, and without limitation of, any other indemnity provision(s) in
17 this Agreement, agrees to all of the following:

18 1. In addition to the duty to indemnify and hold the COUNTY harmless against any and all
19 liability, claim, demand or suit resulting from CONTRACTOR's, its agents, employee's or
20 subcontractor's performance of this Agreement, CONTRACTOR shall defend the COUNTY at its sole
21 cost and expense with counsel approved by Board of Supervisors against same; and

22 2. CONTRACTOR's duty to defend, as stated above, shall be absolute and irrespective of any
23 duty to indemnify or hold harmless; and

24 3. The provisions of California Civil Code Section 2860 shall apply to any and all actions to
25 which the duty to defend stated above applies, and the CONTRACTOR's SIR provision shall be
26 interpreted as though the CONTRACTOR was an insurer and the COUNTY was the insured.

27 E. If CONTRACTOR fails to maintain insurance acceptable to the COUNTY ~~as required in this~~
28 ~~Paragraph XII (INDEMNIFICATION AND INSURANCE)~~ for the full term of this Agreement, the
29 COUNTY may ~~such failure shall constitute a breach of CONTRACTOR'S obligation hereunder and~~
30 ~~ground for COUNTY to~~ terminate this Agreement.

31 F. QUALIFIED INSURER

32 1. The policy or policies of insurance must be issued by an insurer with a minimum
33 rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most
34 current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It
35 is preferred, but not mandatory, that the insurer be licensed to do business in the state of California
36 (California Admitted Carrier).

37 #

2. If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

G. The policy or policies of insurance maintained by CONTRACTOR shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Network Security & Privacy Liability	\$1,000,000 per claims made
Professional Liability Insurance	\$1,000,000 per claims made \$1,000,000 aggregate
Sexual Misconduct Liability	\$1,000,000 per occurrence

H. REQUIRED COVERAGE FORMS

1. The Commercial General Liability coverage shall be written on ISO form CG 00 01, or a substitute form providing liability coverage at least as broad.

2. The Business Automobile Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing coverage at least as broad.

I. REQUIRED ENDORSEMENTS

1. The Commercial General Liability policy shall contain the following endorsements, which shall accompany the COI:

a. An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the *County of Orange, its elected and appointed officials, officers, employees, and agents* as Additional Insureds, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN AGREEMENT.**

#

1 b. A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at
2 least as broad evidencing that the CONTRACTOR's insurance is primary and any insurance or self-
3 insurance maintained by the County of Orange shall be excess and non-contributing.

4 2. The Network Security and Privacy Liability policy shall contain the following endorsements
5 which shall accompany the Certificate of Insurance:

6 a. An Additional Insured endorsement naming the *County of Orange, its elected and*
7 *appointed officials, officers, agents* and employees as Additional Insureds for its vicarious liability.

8 b. A primary and non-contributing endorsement evidencing that the Contractor's
9 insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be
10 excess and non-contributing.

11 J. All insurance policies required by this Agreement shall waive all rights of subrogation against
12 the County of Orange, its elected and appointed officials, officers, agents and employees when acting
13 within the scope of their appointment or employment.

14 K. The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving
15 all rights of subrogation against the County of Orange, its elected and appointed officials, officers,
16 agents and employees, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN**
17 **AGREEMENT.**

18 L. All insurance policies required by this Agreement shall waive all rights of subrogation against
19 the County of Orange, its elected and appointed officials, officers, agents and employees when acting
20 within the scope of their appointment or employment.

21 ~~M-L~~. CONTRACTOR shall notify COUNTY in writing within thirty (30) days of any policy
22 cancellation and within ten (10) days for non-payment of premium and provide a copy of the
23 cancellation notice to COUNTY. Failure to provide written notice of cancellation ~~shall~~ may constitute a
24 breach of CONTRACTOR's obligation hereunder and ground for COUNTY to suspend or terminate this
25 Agreement.

26 ~~NM~~. If CONTRACTOR's Professional Liability, Technology Errors & Omissions and/or
27 Network Security & Privacy Liability are "Claims Made" policies, CONTRACTOR shall agree to
28 maintain coverage for two (2) years following the completion of the Agreement.

29 ~~ON~~. The Commercial General Liability policy shall contain a "severability of interests" clause
30 also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

31 P. Insurance certificates should be forwarded to the agency/department address listed on the
32 solicitation.

33 Q. If the Contractor fails to provide the insurance certificates and endorsements within seven (7)
34 days of notification by CEO/Purchasing or the agency/department purchasing division, award may be
35 made to the next qualified vendor

36 ~~R-O~~. COUNTY expressly retains the right to require CONTRACTOR to increase or decrease
37 insurance of any of the above insurance types throughout the term of this Agreement. Any increase or

1 decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately
 2 protect COUNTY.

3 SP. COUNTY shall notify CONTRACTOR in writing of changes in the insurance requirements. If
 4 CONTRACTOR does not deposit copies of acceptable Certificate of Insurance COIs and endorsements
 5 with COUNTY incorporating such changes within thirty (30) calendar days of receipt of such notice,
 6 ~~such failure shall constitute a breach of CONTRACTOR's obligation hereunder and ground for~~
 7 ~~termination of this Agreement~~ may be in breach without further notice to CONTRACTOR, and by
 8 COUNTY shall be entitled to all legal remedies.

9 T#

10 ~~Q.~~ The procuring of such required policy or policies of insurance shall not be construed to limit
 11 CONTRACTOR's liability hereunder nor to fulfill the indemnification provisions and requirements of
 12 this Agreement, nor act in any way to reduce the policy coverage and limits available from the insurer.

13 UR. SUBMISSION OF INSURANCE DOCUMENTS

14 1. The COI and endorsements shall be provided to COUNTY as follows:
 15 a. Prior to the start date of this Agreement.
 16 b. No later than the expiration date for each policy.
 17 c. Within thirty (30) calendar days upon receipt of written notice by COUNTY regarding
 18 changes to any of the insurance types as set forth in Subparagraph G, ~~above~~ of this Agreement.

19 2. The COI and endorsements shall be provided to the COUNTY at the address as specified in
 20 the Referenced Contract Provisions of this Agreement.

21 3. If CONTRACTOR fails to submit the COI and endorsements that meet the insurance
 22 provisions stipulated in this Agreement by the above specified due dates, ADMINISTRATOR shall have
 23 sole discretion to impose one or both of the following:

24 a. ADMINISTRATOR may withhold or delay any or all payments due CONTRACTOR
 25 pursuant to any and all Agreements between COUNTY and CONTRACTOR until such time that the
 26 required COI and endorsements that meet the insurance provisions stipulated in this Agreement are
 27 submitted to ADMINISTRATOR.

28 b. CONTRACTOR may be assessed a penalty of one hundred dollars (\$100) for each late
 29 COI or endorsement for each business day, pursuant to any and all Agreements between COUNTY and
 30 CONTRACTOR, until such time that the required COI and endorsements that meet the insurance
 31 provisions stipulated in this Agreement are submitted to ADMINISTRATOR.

32 c. If CONTRACTOR is assessed a late penalty, the amount shall be deducted from
 33 CONTRACTOR's monthly invoice.

34 4. In no cases shall assurances by CONTRACTOR, its employees, agents, including any
 35 insurance agent, be construed as adequate evidence of insurance. COUNTY will only accept valid COIs
 36 and endorsements, or in the interim, an insurance binder as adequate evidence of insurance coverage.
 37

XV. INSPECTIONS AND AUDITS

1
2 A. ADMINISTRATOR, any authorized representative of COUNTY, any authorized representative
3 of the State of California, the Secretary of the United States Department of Health and Human Services,
4 the Comptroller General of the United States, or any other of their authorized representatives, shall to
5 the extent permissible under applicable law have access to any books, documents, and records, including
6 but not limited to, financial statements, general ledgers, relevant accounting systems, medical and client
7 records, of CONTRACTOR that are directly pertinent to this Agreement, for the purpose of responding
8 to a beneficiary complaint or conducting an audit, review, evaluation, or examination, or making
9 transcripts during the periods of retention set forth in the Records Management and Maintenance
10 Paragraph of this Agreement. Such persons may at all reasonable times inspect or otherwise evaluate
11 the services provided pursuant to this Agreement, and the premises in which they are provided.

12 B. CONTRACTOR shall actively participate and cooperate with any person specified in
13 Subparagraph A. above in any evaluation or monitoring of the services provided pursuant to this
14 Agreement, and shall provide the above-mentioned persons adequate office space to conduct such
15 evaluation or monitoring.

C. AUDIT RESPONSE

16
17 1. Following an audit report, in the event of non-compliance with applicable laws and
18 regulations governing funds provided through this Agreement, COUNTY may terminate this Agreement
19 as provided for in the Termination Paragraph or direct CONTRACTOR to immediately implement
20 appropriate corrective action. ~~A CAPA plan of corrective action~~ shall be submitted to
21 ADMINISTRATOR in writing within thirty (30) calendar days after receiving notice from
22 ADMINISTRATOR.

23 2. If the audit reveals that money is payable from one party to the other, that is, reimbursement
24 by CONTRACTOR to COUNTY, or payment of sums due from COUNTY to CONTRACTOR, said
25 funds shall be due and payable from one party to the other within sixty (60) calendar days of receipt of
26 the audit results. If reimbursement is due from CONTRACTOR to COUNTY, and such reimbursement
27 is not received within said sixty (60) calendar days, COUNTY may, in addition to any other remedies
28 provided by law, reduce any amount owed CONTRACTOR by an amount not to exceed the
29 reimbursement due COUNTY.

30 D. CONTRACTOR shall retain a licensed certified public accountant, who will prepare an annual
31 Single Audit as required by 31 USC 7501 – 7507, as well as its implementing regulations under 2 CFR
32 Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal
33 Awards. CONTRACTOR shall forward the Single Audit to ADMINISTRATOR within fourteen (14)
34 calendar days of receipt ~~and file with ADMINISTRATOR, an annual, independent, organization-wide~~
35 ~~audit of related expenditures as may be required during the term of this Agreement.~~

36 E. CONTRACTOR shall forward to ADMINISTRATOR a copy of any audit report within
37 fourteen (14) calendar days of receipt. Such audit shall include, but not be limited to, management,

1 financial, programmatic or any other type of audit of CONTRACTOR's operations, whether or not the
 2 cost of such operation or audit is reimbursed in whole or in part through this Agreement.

4 **XVI. LICENSES AND LAWS**

5 A. CONTRACTOR, its officers, agents, employees, affiliates, and subcontractors shall, throughout
 6 the term of this Agreement, maintain all necessary licenses, permits, approvals, certificates,
 7 accreditations, waivers, and exemptions necessary for the provision of the services hereunder and
 8 required by the laws, regulations and requirements of the United States, the State of California,
 9 COUNTY, and all other applicable governmental agencies. CONTRACTOR shall notify
 10 ADMINISTRATOR immediately and in writing of its inability to obtain or maintain, irrespective of the
 11 pendency of any hearings or appeals, permits, licenses, approvals, certificates, accreditations, waivers
 12 and exemptions. Said inability shall be cause for termination of this Agreement.

13 B. ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS

14 1. CONTRACTOR certifies it is in full compliance with all applicable federal and State
 15 reporting requirements regarding its employees and with all lawfully served Wage and Earnings
 16 Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the
 17 term of the Agreement with the County of Orange. Failure to comply shall constitute a material breach
 18 of the Agreement and failure to cure such breach within sixty (60) calendar days of notice from the
 19 COUNTY shall constitute grounds for termination of the Agreement.

20 2. CONTRACTOR agrees to furnish to ADMINISTRATOR within thirty (30) calendar days
 21 of the award of this Agreement:

22 a. In the case of an individual CONTRACTOR, his/her name, date of birth, social security
 23 number, and residence address;

24 b. In the case of a CONTRACTOR doing business in a form other than as an individual,
 25 the name, date of birth, social security number, and residence address of each individual who owns an
 26 interest of ten percent (10%) or more in the contracting entity;

27 3. It is expressly understood that this data will be transmitted to governmental agencies
 28 charged with the establishment and enforcement of child support orders, or as permitted by federal
 29 and/or state statute.

30 C. CONTRACTOR shall comply with all applicable governmental laws, regulations, and
 31 requirements as they exist now or may be hereafter amended or changed. These laws, regulations, and
 32 requirements shall include, but not be limited to, the following:

- 33 1. ARRA of 2009;
- 34 2. 42 CFR, Public Health, H&SC 121025.
- 35 3. HIPAA Privacy Rule, as it may now exist, or be hereafter amended, as applicable;
- 36 4. 42 USC §12101 et seq., Americans with Disabilities Act of 1990.
- 37 5. WIC §15600, et seq., Elder Abuse and Dependent Adult Civil Protection Act.

- 1 6. 45 CFR Part 76, Drug Free Work Place.
- 2 7. CCR, Title 22, Division 6, Community Care Licensing Division.
- 3 8. 42 USC. 12901 et seq., AIDS Housing Opportunity Act.
- 4 9. 31 USC 7501 – 7507, as well as its implementing regulations under 2 CFR Part 200,
- 5 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- 6 10. Ryan White HIV/AIDS Treatment Extension Act of 2009 (Public Law 111-87, October 30,
- 7 2009).
- 8 11. Flood Disaster Protection Act of 1973 (P.L. 93-234).
- 9 12. Title 24, Subtitle B, Chapter 5, Subchapter C, CFR Part 574, Housing Opportunities for
- 10 Persons with AIDS.
- 11 13. 24 CFR Parts 42 (Displacement, Relocation Assistance, and Real Property Acquisition for
- 12 HUD and HUD-Assisted Programs) and 570 (Displacement, relocation, acquisition, and replacement of
- 13 housing).
- 14 14. 24 CFR Part 85, Grants Management Common Rule (State and Local Governments).
- 15 15. 42 USC 7606 The Clean Air Act, as amended (42 USC 1857(h) et seq.).
- 16 16. U.S. Department of Health and Human Services, National Institutes of Health (NIH) Grants
- 17 Policy Statement (10/13).
- 18 17. 33 USC 1368 The Clean Water Act, as amended (33 USC 1368 et seq.), Executive Order
- 19 11738, and Environmental Protection Agency regulations (40 CFR Part 15).
- 20 18. American National Standards Institute Specifications for Making Buildings and Facilities
- 21 Accessible to, and Usable by, the Physically Handicapped, Number A-117.1-R1998.
- 22 19. U.S. Department of Health and Human Services, Public Health Service, PHS Grant Policy
- 23 Statement.
- 24 20. Title XXVI of the Public Health Services Act, as amended by the Ryan White HIV/AIDS
- 25 Treatment Extension Act of 2009 (Public Law 111-87).

26 **XVII. LITERATURE, ADVERTISEMENTS, AND SOCIAL MEDIA**

27 A. Any written information or literature, including educational or promotional materials,

28 distributed by CONTRACTOR to any person or organization for purposes directly or indirectly related

29 to this Agreement must be approved at least thirty (30) days in advance and in writing by

30 ADMINISTRATOR before distribution. For the purposes of this Agreement, distribution of written

31 materials shall include, but not be limited to, pamphlets, brochures, flyers, newspaper or magazine ads,

32 and electronic media such as the Internet.

33 B. Any advertisement through radio, television broadcast, or the Internet, for educational or

34 promotional purposes, made by CONTRACTOR for purposes directly or indirectly related to this

35 Agreement must be approved in advance at least thirty (30) days and in writing by ADMINISTRATOR.

36 C. If CONTRACTOR uses social media (such as Facebook, Twitter, YouTube or other publicly

37

1 available social media sites) in support of the services described within this Agreement,
 2 CONTRACTOR shall develop social media policies and procedures and have them available to
 3 ADMINISTRATOR upon reasonable notice. CONTRACTOR shall inform ADMINISTRATOR of all
 4 forms of social media used to either directly or indirectly support the services described within this
 5 Agreement. CONTRACTOR shall comply with COUNTY Social Media Use Policy and Procedures as
 6 they pertain to any social media developed in support of the services described within this Agreement.
 7 CONTRACTOR shall also include any required funding statement information on social media when
 8 required by ADMINISTRATOR.

9 D. Any information as described in Subparagraphs A. and B. above shall not imply endorsement by
 10 COUNTY, unless ADMINISTRATOR consents thereto in writing.

11 **XVIII. MAXIMUM OBLIGATION**

12 A. The Aggregate Maximum Obligation of COUNTY for services provided in accordance with this
 13 Agreement for HIV Care Services during Period One, Period Two and Period Three are as specified in
 14 the Referenced Contract Provisions of this Agreement. This specific Agreement with CONTRACTOR is
 15 only one of several agreements to which this Aggregate Maximum Obligation applies. It therefore is
 16 understood by the Parties that reimbursement to CONTRACTOR will be only a fraction of these
 17 Aggregate Maximum Obligations, except as allowed for in Subparagraph B. below.

18 B. ADMINISTRATOR may amend the Aggregate Maximum Obligation by an amount not to
 19 exceed ten percent (10%) of Period One funding for this Agreement.
 20

21 **XIX. MINIMUM WAGE LAWS**

22 A. Pursuant to the United States of America Fair Labor Standards Act of 1938, as amended, and
 23 State of California Labor Code, §1178.5, CONTRACTOR shall pay no less than the greater of the
 24 federal or California Minimum Wage to all its employees that directly or indirectly provide services
 25 pursuant to this Agreement, in any manner whatsoever. CONTRACTOR shall require and verify that all
 26 its contractors or other persons providing services pursuant to this Agreement on behalf of
 27 CONTRACTOR also pay their employees no less than the greater of the federal or California Minimum
 28 Wage.
 29

30 B. CONTRACTOR shall comply and verify that its contractors comply with all other federal and
 31 State of California laws for minimum wage, overtime pay, record keeping, and child labor standards
 32 pursuant to providing services pursuant to this Agreement.

33 C. Notwithstanding the minimum wage requirements provided for in this clause, CONTRACTOR,
 34 where applicable, shall comply with the prevailing wage and related requirements, as provided for in
 35 accordance with the provisions of Article 2 of Chapter 1, Part 7, Division 2 of the Labor Code of the
 36 State of California (§§1770, et seq.), as it now exists or may hereafter be amended.
 37

XX. NONDISCRIMINATION

A. EMPLOYMENT

1. During the term of this Agreement, CONTRACTOR and its Covered Individuals (as defined in the "Compliance" paragraph of this Agreement) shall not unlawfully discriminate against any employee or applicant for employment because of his/her race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Additionally, during the term of this Agreement, CONTRACTOR and its Covered Individuals shall require in its subcontracts that subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of his/her race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

2. CONTRACTOR and its Covered Individuals shall not discriminate against employees or applicants for employment in the areas of employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship.

3. CONTRACTOR shall not discriminate between employees with spouses and employees with domestic partners, or discriminate between domestic partners and spouses of those employees, in the provision of benefits.

4. CONTRACTOR shall post in conspicuous places, available to employees and applicants for employment, notices from ADMINISTRATOR and/or the United States Equal Employment Opportunity Commission setting forth the provisions of the Equal Opportunity clause.

5. All solicitations or advertisements for employees placed by or on behalf of CONTRACTOR and/or subcontractor shall state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Such requirements shall be deemed fulfilled by use of the term EOE.

6. Each labor union or representative of workers with which CONTRACTOR and/or subcontractor has a collective bargaining agreement or other contract or understanding must post a notice advising the labor union or workers' representative of the commitments under this Nondiscrimination Paragraph and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

B. SERVICES, BENEFITS AND FACILITIES – CONTRACTOR and/or subcontractor shall not discriminate in the provision of services, the allocation of benefits, or in the accommodation in facilities on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender

1 expression, age, sexual orientation, or military and veteran status in accordance with Title IX of the
 2 Education Amendments of 1972 as they relate to 20 USC §1681 - §1688; Title VI of the Civil Rights
 3 Act of 1964 (42 USC §2000d); the Age Discrimination Act of 1975 (42 USC §6101); Title 9, Division
 4 4, Chapter 6, Article 1 (§10800, et seq.) of the California Code of Regulations; and Title II of the
 5 Genetic Information Nondiscrimination Act of 2008, 42 USC 2000ff, et seq. as applicable, and all other
 6 pertinent rules and regulations promulgated pursuant thereto, and as otherwise provided by state law and
 7 regulations, as all may now exist or be hereafter amended or changed. For the purpose of this
 8 Nondiscrimination paragraph, Discrimination includes, but is not limited to the following based on one
 9 or more of the factors identified above:

- 10 1. Denying a client or potential client any service, benefit, or accommodation.
- 11 2. Providing any service or benefit to a client which is different or is provided in a different
 12 manner or at a different time from that provided to other clients.
- 13 3. Restricting a client in any way in the enjoyment of any advantage or privilege enjoyed by
 14 others receiving any service or benefit.
- 15 4. Treating a client differently from others in satisfying any admission requirement or
 16 condition, or eligibility requirement or condition, which individuals must meet in order to be provided
 17 any service or benefit.
- 18 5. Assignment of times or places for the provision of services.

19 C. COMPLAINT PROCESS – CONTRACTOR shall establish procedures for advising all
 20 Clients~~clients~~ through a written statement that CONTRACTOR's~~CONTRACTOR~~ and/or
 21 subcontractor's Clients~~clients~~ may file all complaints alleging discrimination in the delivery of services
 22 with CONTRACTOR, subcontractor, and ADMINISTRATOR or the U.S. Department of Health and
 23 Human Services Office for Civil Rights~~Services' OCR~~.

24 1. Whenever possible, problems shall be resolved informally and at the point of service.
 25 CONTRACTOR shall establish an internal informal problem resolution process for clients not able to
 26 resolve such problems at the point of service. Clients may initiate a grievance or complaint directly with
 27 CONTRACTOR either orally or in writing.

28 2. Within the time limits procedurally imposed, the complainant shall be notified in writing as
 29 to the findings regarding the alleged complaint and, if not satisfied with the decision, may file an appeal.

30 D. PERSONS WITH DISABILITIES – CONTRACTOR and/or subcontractor agree to comply
 31 with the provisions of §504 of the Rehabilitation Act of 1973, as amended, (29 USC 794 et seq., as
 32 implemented in 45 CFR 84.1 et seq.), and the Americans with Disabilities Act of 1990 as amended (42
 33 USC 12101 et seq.; as implemented in 29 CFR 1630), as applicable, pertaining to the prohibition of
 34 discrimination against qualified persons with disabilities in all programs or activities; and if applicable,
 35 as implemented in Title 45, CFR, §84.1 et seq., as they exist now or may be hereafter amended together
 36 with succeeding legislation.

37 E. RETALIATION – Neither CONTRACTOR nor subcontractor, nor its employees or agents shall

1 intimidate, coerce or take adverse action against any person for the purpose of interfering with rights
2 secured by federal or state laws, or because such person has filed a complaint, certified, assisted or
3 otherwise participated in an investigation, proceeding, hearing or any other activity undertaken to
4 enforce rights secured by federal or state law.

5 F. In the event of non-compliance with this paragraph or as otherwise provided by federal and state
6 law, this Agreement may be canceled, terminated or suspended in whole or in part and CONTRACTOR
7 or subcontractor may be declared ineligible for further contracts involving federal, state or county funds.
8

9 **XXI. NOTICES**

10 A. Unless otherwise specified, all notices, claims, correspondence, reports and/or statements
11 authorized or required by this Agreement shall be effective:

12 1. When written and deposited in the United States mail, first class postage prepaid and
13 addressed as specified in the Referenced Contract Provisions of this Agreement or as otherwise directed
14 by ADMINISTRATOR;

15 2. When faxed, transmission confirmed;

16 3. When sent by Email; or

17 4. When accepted by U.S. Postal Service Express Mail, Federal Express, United Parcel
18 Service, or any other expedited delivery service.

19 B. Termination Notices shall be addressed as specified in the Referenced Contract Provisions of
20 this Agreement or as otherwise directed by ADMINISTRATOR and shall be effective when faxed,
21 transmission confirmed, or when accepted by U.S. Postal Service Express Mail, Federal Express, United
22 Parcel Service, or any other expedited delivery service.

23 C. CONTRACTOR shall notify ADMINISTRATOR, in writing, within twenty-four (24) hours of
24 becoming aware of any occurrence of a serious nature, which may expose COUNTY to liability. Such
25 occurrences shall include, but not be limited to, accidents, injuries, or acts of negligence, or loss or
26 damage to any COUNTY property in possession of CONTRACTOR.

27 D. For purposes of this Agreement, any notice to be provided by COUNTY may be given by
28 ADMINISTRATOR.
29

30 **XXII. NOTIFICATION OF DEATH**

31 A. Upon becoming aware of the death of any person served pursuant to this Agreement,
32 CONTRACTOR shall immediately notify ADMINISTRATOR.

33 B. All Notifications of Death provided to ADMINISTRATOR by CONTRACTOR shall contain
34 the name of the deceased, the date and time of death, the nature and circumstances of the death, and the
35 name(s) of CONTRACTOR's officers or employees with knowledge of the incident.

36 1. TELEPHONE NOTIFICATION – CONTRACTOR shall notify ADMINISTRATOR by
37 telephone immediately upon becoming aware of the death due to non-terminal illness of any person

1 served pursuant to this Agreement; provided, however, weekends and holidays shall not be included for
 2 purposes of computing the time within which to give telephone notice and, notwithstanding the time
 3 limit herein specified, notice need only be given during normal business hours.

4 2. WRITTEN NOTIFICATION

5 a. NON-TERMINAL ILLNESS – CONTRACTOR shall hand deliver, fax, and/or send
 6 via encrypted email to ADMINISTRATOR a written report within sixteen (16) hours after becoming
 7 aware of the death due to non-terminal illness of any person served pursuant to this Agreement.

8 b. TERMINAL ILLNESS – CONTRACTOR shall notify ADMINISTRATOR by written
 9 report hand delivered, faxed, sent via encrypted email, and/or postmarked and sent via U.S. Mail within
 10 forty-eight (48) hours of becoming aware of the death due to terminal illness of any person served
 11 pursuant to this Agreement.

12 c. If there are any questions regarding the cause of death of any person served pursuant to this
 13 Agreement who was diagnosed with a terminal illness, or if there are any unusual circumstances related
 14 to the death, CONTRACTOR shall immediately notify ADMINISTRATOR in accordance with this
 15 Notification of Death Paragraph.

16 **XXIII. NOTIFICATION OF PUBLIC EVENTS AND MEETINGS**

17 A. CONTRACTOR shall notify ADMINISTRATOR of any public event or meeting funded in
 18 whole or in part by the COUNTY, except for those events or meetings that are intended solely to serve
 19 clients or occur in the normal course of business.

20 B. CONTRACTOR shall notify ADMINISTRATOR at least thirty (30) business days in advance
 21 of any applicable public event or meeting. The notification must include the date, time, duration,
 22 location and purpose of the public event or meeting. Any promotional materials or event related flyers
 23 must be approved by ADMINISTRATOR prior to distribution.
 24

25 **XXIV. RECORDS MANAGEMENT AND MAINTENANCE**

26 A. CONTRACTOR, its officers, agents, employees and subcontractors shall, throughout the term
 27 of this Agreement, prepare, maintain and manage records appropriate to the services provided and in
 28 accordance with this Agreement and all applicable requirements.

29 ~~B. CONTRACTOR shall implement and maintain administrative, technical and physical
 30 safeguards to ensure the privacy of PHI and prevent the intentional or unintentional use or disclosure of
 31 PHI in violation of the HIPAA, federal and state regulations and/or CHPP. CONTRACTOR shall
 32 mitigate to the extent practicable, the known harmful effect of any use or disclosure of PHI made in
 33 violation of federal or state regulations and/or COUNTY policies.~~

34 ~~C.~~ B. CONTRACTOR shall ensure appropriate financial records related to cost reporting,
 35 expenditure, revenue, billings, etc., are prepared and maintained accurately and appropriately.

36 C. CONTRACTOR shall ensure all appropriate state and federal standards of documentation,
 37

1 preparation, and confidentiality of records related to ~~CONTRACTOR's~~ participant, client, and/or patient
 2 records ~~are met at all times shall be maintained in a secure manner. CONTRACTOR shall maintain~~
 3 ~~participant, client, and/or patient records and must establish and implement written record management~~
 4 ~~procedures.~~

5 D. CONTRACTOR shall retain all financial records for a minimum of seven (7) years from the
 6 commencement of the contract, unless a longer period is required due to legal proceedings such as
 7 litigations and/or settlement of claims.

8 E. CONTRACTOR shall make records pertaining to the costs of services, participant fees, charges,
 9 billings, and revenues available at one (1) location within the limits of the County of Orange.

10 F. If CONTRACTOR is unable to meet the record location criteria above, ADMINISTRATOR
 11 may provide written approval to CONTRACTOR to maintain records in a single location, identified by
 12 CONTRACTOR.

13 G. CONTRACTOR may be required to retain all records involving litigation proceedings and
 14 settlement of claims for a longer term as directed by ADMINISTRATOR.

15 H. CONTRACTOR shall notify ADMINISTRATOR of any PRA requests related to, or arising out
 16 of, this Agreement, within forty-eight (48) hours. CONTRACTOR shall provide ADMINISTRATOR
 17 all information that is requested by the PRA request.

18 **XXV. RESEARCH AND PUBLICATION**

19 CONTRACTOR shall not utilize information and/or data received from COUNTY, or arising out of,
 20 or developed, as a result of this Agreement for the purpose of personal or professional research, or for
 21 publication.
 22

23 **XXVI. REVENUE**

24 A. CLIENT FEES – CONTRACTOR shall charge a fee to clients to whom services are provided
 25 pursuant to this Agreement, their estates and responsible relatives, in accordance with the fee system
 26 designated by ADMINISTRATOR. This fee shall be based upon the person's ability to pay for services,
 27 but it shall not exceed the actual cost of services provided. No person shall be denied services because
 28 of an inability to pay.
 29

30 B. THIRD-PARTY REVENUE – CONTRACTOR shall make every reasonable effort to obtain all
 31 available third-party reimbursement for which persons served pursuant to this Agreement may be
 32 eligible. Charges to insurance carriers shall be on the basis of CONTRACTOR's usual and customary
 33 charges.

34 C. PROCEDURES – CONTRACTOR shall maintain internal financial controls which adequately
 35 ensure proper billing and collection procedures. CONTRACTOR's procedures shall specifically provide
 36 for the identification of delinquent accounts and methods for pursuing such accounts. CONTRACTOR
 37 shall provide ADMINISTRATOR, monthly, a written report specifying the current status of fees which

1 are billed, collected, transferred to a collection agency, or deemed by CONTRACTOR to be
2 uncollectible.

3 4 **XXVII. SEVERABILITY**

5 If a court of competent jurisdiction declares any provision of this Agreement or application thereof
6 to any person or circumstances to be invalid or if any provision of this Agreement contravenes any
7 federal, state or county statute, ordinance, or regulation, the remaining provisions of this Agreement or
8 the application thereof shall remain valid, and the remaining provisions of this Agreement shall remain
9 in full force and effect, and to that extent the provisions of this Agreement are severable.

10 11 **XXVIII. SPECIAL PROVISIONS**

12 A. CONTRACTOR shall not use the funds provided by means of this Agreement for the following
13 purposes:

- 14 1. Making cash payments to intended recipients of services through this Agreement.
- 15 2. Lobbying any governmental agency or official. CONTRACTOR shall file all certifications
16 and reports in compliance with this requirement pursuant to Title 31, USC, §1352 (e.g., limitation on use
17 of appropriated funds to influence certain federal contracting and financial transactions).
- 18 3. Fundraising.
- 19 4. Purchase of gifts, meals, entertainment, awards, or other personal expenses for
20 CONTRACTOR's staff, volunteers, or members of the Board of Directors or governing body.
- 21 5. Reimbursement of CONTRACTOR's members of the Board of Directors or governing
22 body for expenses or services.
- 23 6. Making personal loans to CONTRACTOR's staff, volunteers, interns, consultants,
24 subcontractors, and members of the Board of Directors or governing body, or its designee or authorized
25 agent, or making salary advances or giving bonuses to CONTRACTOR's staff.
- 26 7. Paying an individual salary or compensation for services at a rate in excess of the current
27 Level I of the Executive Salary Schedule as published by the OPM. The OPM Executive Salary
28 Schedule may be found at www.opm.gov.
- 29 8. Severance pay for separating employees.
- 30 9. Paying rent and/or lease costs for a facility prior to the facility meeting all required building
31 codes and obtaining all necessary building permits for any associated construction.
- 32 10. Purchasing or improving land, including constructing or permanently improving any
33 building or facility, except for tenant improvements.
- 34 11. Satisfying any expenditure of non-federal funds as a condition for the receipt of federal
35 funds (matching).
- 36 12. Contracting or subcontracting with any entity other than an individual or nonprofit entity,
37 unless no nonprofit entity is able and willing to provide such services.

13. Supplanting current funding for existing services.

14. Payment of home mortgages; direct maintenance expense (tires, repairs, etc.) of a privately owned vehicle or any other cost associated with a vehicle, such as lease or loan payments, insurance, or license and registration fees; payment of local or state personal property taxes (for residential property, private automobiles, or any other personal property against which taxes may levied). This restriction does not apply to vehicles operated by organizations for program purposes.

15. To meet professional licensure or program licensure requirements.

16. Providing inpatient hospital services or purchasing major medical equipment.

B. Unless otherwise specified in advance and in writing by ADMINISTRATOR, CONTRACTOR shall not use the funds provided by means of this Agreement for the following purposes:

1. Funding travel or training (excluding mileage or parking).

2. Making phone calls outside of the local area unless documented to be directly for the purpose of client care.

3. Payment for grant writing, consultants, certified public accounting, or legal services.

4. Purchase of artwork or other items that are for decorative purposes and do not directly contribute to the quality of services to be provided pursuant to this Agreement.

5. Purchase of gifts, meals, entertainment, awards, or other personal expenses for CONTRACTOR's clients.

C. To the greatest extent practicable, all equipment and products purchased with funds made available through this Agreement should be American-made.

XXIX. STATUS OF CONTRACTOR

CONTRACTOR is, and shall at all times be deemed to be, an independent contractor and shall be wholly responsible for the manner in which it performs the services required of it by the terms of this Agreement. CONTRACTOR is entirely responsible for compensating staff, subcontractors, and consultants employed by CONTRACTOR. This Agreement shall not be construed as creating the relationship of employer and employee, or principal and agent, between COUNTY and CONTRACTOR or any of CONTRACTOR's employees, agents, consultants, or subcontractors. CONTRACTOR assumes exclusively the responsibility for the acts of its employees, agents, consultants, or subcontractors as they relate to the services to be provided during the course and scope of their employment. CONTRACTOR, its agents, employees, consultants, or subcontractors, shall not be entitled to any rights or privileges of COUNTY's employees and shall not be considered in any manner to be COUNTY's employees.

XXX. TERM

A. The term of this Agreement shall commence as specified in the Referenced Contract Provisions of this Agreement or the execution date, whichever is later. This Agreement shall terminate as specified

1 in the Referenced Contract Provisions of this Agreement unless otherwise sooner terminated as provided
 2 in this Agreement; provided, however, CONTRACTOR shall be obligated to perform such duties as
 3 would normally extend beyond this term, including but not limited to, obligations with respect to
 4 confidentiality, indemnification, audits, reporting and accounting.

5 B. Any administrative duty or obligation to be performed pursuant to this Agreement on a weekend
 6 or holiday may be performed on the next regular business day.

8 **XXXI. TERMINATION**

9 A. Either party may terminate this Agreement, without cause, upon ninety (90~~thirty (30)~~) calendar
 10 days written notice given the other party.

11 B. CONTRACTOR shall be responsible for meeting all programmatic and administrative
 12 contracted objectives and requirements as indicated in this Agreement. CONTRACTOR shall be subject
 13 to the issuance of a CAP for the failure to perform to the level of contracted objectives, continuing to not
 14 meet goals and expectations, and/or for non-compliance. If CAPs are not completed within timeframe
 15 as determined by ADMINISTRATOR notice, payments may be reduced or withheld until CAP is
 16 resolved and/or the Agreement could be terminated.

17 ~~C~~-B. Unless otherwise specified in this Agreement, COUNTY may terminate this Agreement
 18 upon five (5) calendar days' written notice if CONTRACTOR fails to perform any of the terms of this
 19 Agreement. At ADMINISTRATOR's sole discretion, CONTRACTOR may be allowed up to thirty (30)
 20 calendar days for corrective action-

21 ~~D~~C. COUNTY may terminate this Agreement immediately, upon written notice, on the occurrence
 22 of any of the following events:

- 23 1. The loss by CONTRACTOR of legal capacity.
- 24 2. Cessation of services.
- 25 3. The delegation or assignment of CONTRACTOR's services, operation or administration to
 26 another entity without the prior written consent of COUNTY.
- 27 4. The neglect by any physician or licensed person employed by CONTRACTOR of any duty
 28 required pursuant to this Agreement.
- 29 5. The loss of accreditation or any license required by the Licenses and Laws Paragraph of this
 30 Agreement.
- 31 6. The continued incapacity of any physician or licensed person to perform duties required
 32 pursuant to this Agreement.
- 33 7. Unethical conduct or malpractice by any physician or licensed person providing services
 34 pursuant to this Agreement; provided, however, COUNTY may waive this option if CONTRACTOR
 35 removes such physician or licensed person from serving persons treated or assisted pursuant to this
 36 Agreement.

37 **ED. CONTINGENT FUNDING**

- 1 1. Any obligation of COUNTY under this Agreement is contingent upon the following:
- 2 a. The continued availability of federal, state and county funds for reimbursement of
- 3 COUNTY's expenditures, and
- 4 b. Inclusion of sufficient funding for the services hereunder in the applicable budget(s)
- 5 approved by the Board of Supervisors.
- 6 2. In the event such funding is subsequently reduced or terminated, COUNTY may suspend,
- 7 terminate or renegotiate this Agreement upon thirty (30) calendar days' written notice given
- 8 CONTRACTOR. If COUNTY elects to renegotiate this Agreement due to reduced or terminated
- 9 funding, CONTRACTOR shall not be obligated to accept the renegotiated terms.
- 10 FE. In the event this Agreement is suspended or terminated prior to the completion of the term as
- 11 specified in the Referenced Contract Provisions of this Agreement, ADMINISTRATOR may, at its
- 12 sole discretion, reduce the Maximum Obligation of this Agreement in an amount consistent with the
- 13 reduced term of the Agreement.
- 14 GF. In the event this Agreement is terminated by either party pursuant to Subparagraphs B., C. or D.
- 15 above, CONTRACTOR shall do the following:
- 16 1. Comply with termination instructions provided by ADMINISTRATOR in a manner which
- 17 is consistent with recognized standards of quality care and prudent business practice.
- 18 2. Obtain immediate clarification from ADMINISTRATOR of any unsettled issues of contract
- 19 performance during the remaining contract term.
- 20 3. Until the date of termination, continue to provide the same level of service required by this
- 21 Agreement.
- 22 4. If clients are to be transferred to another facility for services, furnish ADMINISTRATOR,
- 23 upon request, all client information and records deemed necessary by ADMINISTRATOR to effect an
- 24 orderly transfer.
- 25 5. Assist ADMINISTRATOR in effecting the transfer of clients in a manner consistent with
- 26 client's best interests.
- 27 6. If records are to be transferred to COUNTY, pack and label such records in accordance with
- 28 directions provided by ADMINISTRATOR.
- 29 7. Return to COUNTY, in the manner indicated by ADMINISTRATOR, any equipment and
- 30 supplies purchased with funds provided by COUNTY.
- 31 8. To the extent services are terminated, cancel outstanding commitments covering the
- 32 procurement of materials, supplies, equipment, and miscellaneous items, as well as outstanding
- 33 commitments which relate to personal services. With respect to these canceled commitments,
- 34 CONTRACTOR shall submit a written plan for settlement of all outstanding liabilities and all claims
- 35 arising out of such cancellation of commitment which shall be subject to written approval of
- 36 ADMINISTRATOR.
- 37 9. Provide written notice of termination of services to each Client being served under this

1 Agreement, within fifteen (15) calendar days of receipt of termination notice. A copy of the notice of
2 termination of services must also be provided to ADMINISTRATOR within the fifteen (15) calendars
3 day period.

4 H—G. The rights and remedies of COUNTY provided in this Termination Paragraph shall not be
5 exclusive, and are in addition to any other rights and remedies provided by law or under this Agreement.

6
7 **XXXII. THIRD PARTY BENEFICIARY**

8 Neither party hereto intends that this Agreement shall create rights hereunder in third parties
9 including, but not limited to, any subcontractors or any clients provided services pursuant to this
10 Agreement.

11
12 **XXXIII. WAIVER OF DEFAULT OR BREACH**

13 Waiver by COUNTY of any default by CONTRACTOR shall not be considered a waiver of any
14 subsequent default. Waiver by COUNTY of any breach by CONTRACTOR of any provision of this
15 Agreement shall not be considered a waiver of any subsequent breach. Waiver by COUNTY of any
16 default or any breach by CONTRACTOR shall not be considered a modification of the terms of this
17 Agreement.

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1 IN WITNESS WHEREOF, the parties have executed this Agreement, in the County of Orange,
2 State of California.

3
4 AIDS SERVICES FOUNDATION ORANGE COUNTY dba RADIANT HEALTH CENTERS

5
6
7 BY: _____ DATED: _____

8
9 TITLE: _____

10
11
12
13
14 COUNTY OF ORANGE

15
16
17 BY: _____ DATED: _____

18 _HEALTH CARE AGENCY

19
20
21
22
23 APPROVED AS TO FORM
24 OFFICE OF THE COUNTY COUNSEL
25 ORANGE COUNTY, CALIFORNIA _____

26
27
28 BY: _____ DATED: _____

29 _DEPUTY

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33
34 If the contracting party is a corporation, two (2) signatures are required: one (1) signature by the Chairman of the Board, the
35 President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer
36 or any Assistant Treasurer. If the contract is signed by one (1) authorized individual only, a copy of the corporate resolution
37 or by-laws whereby the board of directors has empowered said authorized individual to act on its behalf by his or her
signature alone is required by ADMINISTRATOR.

EXHIBIT A
 TO AGREEMENT FOR PROVISION OF
 HIV HOUSING PLUS PROJECT SERVICES
 BETWEEN
 COUNTY OF ORANGE
 AND
 AIDS SERVICES FOUNDATION ORANGE COUNTY
 DBA RADIANT HEALTH CENTERS
 APRIL 01, ~~2020~~2019 THROUGH MARCH 31, ~~2021~~2020

I. ASSURANCE

In accordance with funding requirements under Title XXVI of the Public Health Services Act amended by the Ryan White Act, CONTRACTOR assures that it will:

A. Assure that contract funds are used as payer of last resort. CONTRACTOR shall not use contract funds to make payments for any item or service to the extent that payment for that item or service has already been made, or can reasonably be expected to be made:

1. Under any state compensation program, under an insurance policy, or under any federal or state health benefits program;
2. By an entity that provides health services on a prepaid basis; or
3. By third party reimbursement.

B. Provide, to the maximum extent practicable, HIV related health care and support services without regard to the ability of the individual to pay for such services and without regard to the current or past health condition of the individual with HIV ~~disease~~.

C. Provide services in a setting that is accessible to low income individuals with HIV ~~disease~~.
 D. Permit and cooperate with any official federal or state investigation undertaken regarding programs conducted under the Ryan White Act.

E. Comply with the funding requirements regarding charges for services:
 1. In the case of individuals with an income less than or equal to one hundred percent (100%) of the federal poverty level, CONTRACTOR shall not impose charges on any such individual for the provision of services under this Agreement.

2. In the case of individuals with an income greater than one hundred percent (100%) of the federal poverty level, CONTRACTOR may charge client fees based on a schedule of charges approved by the ADMINISTRATOR. CONTRACTOR may not charge client fees without an approved fee schedule that complies with Ryan White Act legislative intent.

3. In the case of individuals with an income greater than one hundred percent (100%) of the federal poverty level and not exceeding two hundred percent (200%) of such poverty level,

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1 CONTRACTOR shall not, for any calendar year, impose charges in an amount exceeding five percent
 2 (5%) of the annual gross income of the individual involved.

3 4. In the case of individuals with an income greater than two hundred percent (200%) of the
 4 federal poverty level and not exceeding three hundred percent (300%) of such poverty line,
 5 CONTRACTOR shall not, for any calendar year, impose charges in an amount exceeding seven percent
 6 (7%) of the annual gross income of the individual involved.

7 5. In the case of individuals with an income greater than three hundred percent (300%) of the
 8 federal poverty level, CONTRACTOR shall not, for any calendar year, impose charges in an amount
 9 exceeding ten percent (10%) of the annual gross income of the individual involved.

10 6. In the case of individuals with an income greater than five hundred percent (500%) of the
 11 federal poverty level, CONTRACTOR shall allow an exception for individuals with documentation to
 12 receive services with prior approval of ADMINISTRATOR.

13 7. As required by HRSA, CONTRACTOR must have in place policies and procedures for
 14 collecting a nominal fee, greater than zero, based on an individual's annual income and documenting
 15 that a client has met their annual cap on charges.

16 8. As required by HRSA, CONTRACTOR must have in place a process for documenting fees
 17 collected and waiving of fees when the client reaches their annual cap.

18 9. As required by HRSA, CONTRACTOR shall not deny services based on the individual's
 19 failure to pay fee.

20 10. CONTRACTOR shall not report individuals to a debt collection agency for failure to pay
 21 fee.

22
 23 **II. BUDGET**

24 A. The following Budget is set forth for informational purposes only:

25 1. SHORT-TERM HOUSING PLUS PROJECT PAYMENTS

26
 27 ADMINISTRATIVE COST

28 Salaries \$ 10,642

29 Benefits 2,768

30 Operating Expenses

31 Services and Supplies 2,305

32 SUBTOTAL \$ 15,715

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<u>1</u>	DIRECT CARE COST	
<u>2</u>	Salaries	\$ 57,021
<u>3</u>	Benefits	14,826
<u>4</u>	Operating Expenses	
<u>5</u>	Housing Plus Project Payments	<u>644,970</u>
<u>6</u>	SUBTOTAL	\$ 716,817
<u>7</u>		
<u>8</u>	TOTAL COSTS	\$ 732,532
<u>9</u>		

10 B. Any increases or decreases to the budget must be approved, in advance and in writing, by
11 ADMINISTRATOR. Administrative Costs shall not exceed ten percent (10%) of total costs.

12 C. BUDGET/STAFFING MODIFICATIONS – CONTRACTOR may request to shift funds
13 between budgeted line items within a program, for the purpose of meeting specific program needs or for
14 providing continuity of care to its consumers, by utilizing a Budget/Staffing Modification Request form
15 provided by ADMINISTRATOR. CONTRACTOR shall submit a properly completed Budget/Staffing
16 Modification Request to ADMINISTRATOR for consideration, in advance, which will include a
17 justification narrative specifying the purpose of the request, the amount of said funds to be shifted, and
18 the sustaining annual impact of the shift as may be applicable to the current contract period and/or future
19 contract periods. CONTRACTOR shall obtain written approval of any Budget/Staffing Modification
20 Request(s) from ADMINISTRATOR prior to implementation by CONTRACTOR. Failure of
21 CONTRACTOR to obtain written approval from ADMINISTRATOR for any proposed Budget/Staffing
22 Modification Request(s) may result in disallowance of those costs.

23 D. CONTRACTOR shall submit a budget revision request to ADMINISTRATOR to request
24 budget changes hereafter. The budget revision request shall be on a form approved or provided by
25 ADMINISTRATOR.

26 E. CFDA Information

27 1. This Agreement includes federal funds paid to CONTRACTOR. The CFDA number(s) and
28 associated information for federal funds paid through this Agreement are specified below:

30 a. CFDA Year: 2020~~2019~~
31 CFDA No.: 93.917
32 Program Title: Ryan White Part B HIV Care Program (indirect)
33 Federal Agency: Department of Health and Human Services
34 Award Name: HIV Care Program (indirect)
35 Amount: \$ 732,532

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1 2. CONTRACTOR may be required to have an audit conducted in accordance with 31 USC
2 7501 – 7507, as well as its implementing regulations under 2 CFR Part 200. CONTRACTOR shall be
3 responsible for complying with any federal audit requirements within the reporting period specified by
4 31 USC 7501 – 7507, as well as its implementing regulations under 2 CFR Part 200.

5 3. ADMINISTRATOR may revise the CFDA information listed above, and shall notify
6 CONTRACTOR in writing of said revisions.

7 F. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Budget
8 Paragraph of this Exhibit A to the Agreement.

9
10 **III. PAYMENTS**

11 A. COUNTY shall pay CONTRACTOR monthly, in arrears, for the actual costs of providing the
12 services described hereunder, less revenues which are actually received by CONTRACTOR provided,
13 however, the total of such payments does not exceed COUNTY’s Maximum Obligation, as set forth in
14 the Referenced Contract Provisions of the Agreement and provided further, CONTRACTOR’s costs are
15 reimbursable pursuant to county, state and/or federal regulations. All payments are interim payments
16 only and are subject to final settlement in accordance with the Cost Report Paragraph of the Agreement.
17 ADMINISTRATOR may, at its discretion, pay supplemental billings for any month for which the
18 interim payment amount specified above has not been fully paid.

19 1. ADMINISTRATOR shall use the Expenditure and Revenue Report specified in the Reports
20 Paragraph of this Exhibit A to the Agreement to determine payment to CONTRACTOR.

21 2. If, at any time, CONTRACTOR’s Expenditure and Revenue Reports indicate that the
22 monthly interim payments exceed the actual cost of providing services, ADMINISTRATOR may reduce
23 COUNTY payments to CONTRACTOR by an amount not to exceed the difference between the
24 year-to-date interim payment amount to CONTRACTOR and the year-to-date actual cost incurred by
25 CONTRACTOR.

26 3. If, at any time, CONTRACTOR’s Expenditure and Revenue Reports indicate that the
27 interim payment amounts are less than the actual cost of providing services, ADMINISTRATOR may
28 authorize a supplemental payment to CONTRACTOR by an amount not to exceed the difference
29 between the year-to-date interim payment amount to CONTRACTOR and the year-to-date actual cost
30 incurred by CONTRACTOR.

31 B. CONTRACTOR’s billing shall be on a form approved or supplied by COUNTY and provide
32 such information as is required by ADMINISTRATOR. Billings are due the twentieth (20th) calendar
33 day of each month and payments to CONTRACTOR should be released by COUNTY no later than
34 ~~thirty (30)~~~~twenty-one (21)~~ calendar days after receipt of the correctly completed billing form.

35 C. All billings to COUNTY shall be supported, at CONTRACTOR’s facility, by source
36 documentation including, but not limited to, ledgers, journals, time sheets, invoices, bank statements,
37 //

1 canceled checks, receipts, receiving records and records of services provided. ADMINISTRATOR may
2 require CONTRACTOR to submit documentation in support of the monthly billings.

3 D. At ADMINISTRATOR’s sole discretion, ADMINISTRATOR may withhold or delay all or a
4 part of any payment if CONTRACTOR fails to comply with any provision of the Agreement.

5 E. COUNTY shall not reimburse CONTRACTOR for services provided beyond the expiration
6 and/or termination of this Agreement, except as may otherwise be provided under this Agreement, or
7 specifically agreed upon in a subsequent Agreement.

8 F. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the
9 Payments Paragraph of this Exhibit A to the Agreement.

10
11 **IV. REPORTS**

12 A. CONTRACTOR shall maintain records and make reports as required by ADMINISTRATOR.
13 Such reports shall include, but may not be limited to, cooperating in the Evaluation of Administrative
14 Mechanism process and its timelines. CONTRACTOR understands that failure to provide said reports
15 or meet any of the requirements of this Reports Paragraph shall be cause for ADMINISTRATOR to
16 withhold or delay any or a portion of payments to CONTRACTOR, as specified in the Payments
17 Paragraph of this Exhibit A to the Agreement.

18 B. FISCAL

19 1. In support of monthly billings, CONTRACTOR shall submit monthly Expenditure and
20 Revenue Reports to ADMINISTRATOR. These reports shall be on a form acceptable to, or provided
21 by, ADMINISTRATOR and shall report actual costs and revenues for CONTRACTOR’s program(s) or
22 cost center(s) described in the Services Paragraph of this Exhibit A to the Agreement, the number of
23 HIV infected individuals served, and the number of units of service provided by CONTRACTOR with
24 funds from this Agreement (Units of Service Report). The reports shall be due to ADMINISTRATOR
25 no later than twenty (20) calendar days following the end of the month being reported, unless otherwise
26 agreed to in writing by ADMINISTRATOR.

27 2. CONTRACTOR shall submit quarterly Year-End Projection Reports to
28 ADMINISTRATOR. These reports shall be on a form provided or approved by ADMINISTRATOR
29 and shall report anticipated units of services to be provided, and projected year-end actual costs and
30 revenues for CONTRACTOR’s program(s) or cost center(s) described in the Services Paragraph of this
31 Exhibit A to the Agreement. Such reports shall include the actual monthly costs and revenues as of the
32 date submitted and anticipated monthly costs and revenues projected through year-end. Year-End
33 Projection Reports shall be due on the third Monday of the following months each year: ~~April~~July,
34 October, and January; unless otherwise agreed to in writing by ADMINISTRATOR. The Year-End Cost
35 Report shall be submitted to the Administrator on the last Friday of May each year; unless otherwise
36 agreed to in writing by the ADMINISTRATOR.

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1 C. STAFFING – CONTRACTOR shall submit monthly Staffing Reports to ADMINISTRATOR.
2 These reports shall be on a form provided or approved by ADMINISTRATOR and shall report staff by
3 position, actual staff hours worked, and the employees’ names, and shall indicate which staff have taken
4 Compliance Training in accordance with the Compliance Paragraph of this Agreement. The reports
5 shall be due to ADMINISTRATOR no later than twenty (20) calendar days following the end of the
6 month being reported, unless otherwise agreed to in writing by ADMINISTRATOR.

7 D. PROGRAMMATIC – CONTRACTOR shall submit Biannual narrative programmatic reports to
8 ADMINISTRATOR. These reports shall be on a form provided or approved by ADMINISTRATOR
9 and shall include but not be limited to, staff changes and corresponding impact on services, status of
10 licensure and/or certifications, changes in populations being served and reasons for any such changes.
11 CONTRACTOR shall state whether it is or is not progressing satisfactorily in achieving all the terms of
12 this Agreement and, if not, shall specify what steps will be taken to achieve satisfactory progress. The
13 reports shall be due on the ~~last third~~ Monday of ~~July~~ ~~May~~ and ~~January~~ ~~November~~; unless otherwise agreed
14 to in writing by ADMINISTRATOR.

15 E. RSR– CONTRACTOR shall submit to ADMINISTRATOR in a format and manner acceptable
16 to, or provided by, ADMINISTRATOR, documentation of services provided, including characteristics of
17 clients receiving those services and descriptive information about CONTRACTOR’s organization. RSR
18 documentation shall be received by ADMINISTRATOR no later than February 1 for the preceding
19 calendar year.

20 F. Countywide Data Reporting – CONTRACTOR shall fully comply with ADMINISTRATOR
21 requirements for real-time data reporting of client demographics and selected service delivery
22 information for Ryan White funded services. For purposes of this Agreement, real-time data reporting
23 shall be defined as entering data into the COUNTY’s designated data system within five (5) business
24 days of providing services, unless otherwise agreed to in writing by ADMINISTRATOR.

25 G. QM REPORTS – CONTRACTOR shall submit a QM Report with appropriate signature(s) to
26 ADMINISTRATOR. The QM Report shall be submitted in a format provided or approved by
27 ADMINISTRATOR on the last business day of March each year; unless otherwise agreed to in writing
28 by the ADMINISTRATOR. The QM Report shall include but not be limited to:

- 29 1. Summary of QM activities,
- 30 2. Service-specific outcome measure results,
- 31 3. Summary of findings, and
- 32 4. Summary of how findings will be addressed.

33 H. ADDITIONAL REPORTS – CONTRACTOR shall make additional reports as required by
34 ADMINISTRATOR concerning CONTRACTOR’s activities as they affect the services hereunder.
35 ADMINISTRATOR shall be specific as to the nature of information requested and, when possible, shall
36 allow thirty (30) calendar days for CONTRACTOR to respond.

37 //

1 I. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the
2 Reports Paragraph of this Exhibit A to the Agreement.

3 4 V. SERVICES

5 A. CONTRACTOR shall make all services specified herein available to eligible persons who
6 reside in Orange County and are infected with HIV, in accordance with the Agreement.
7 CONTRACTOR shall not charge fees except as allowed in the Agreement.

8 1. Prior to providing any services pursuant to this Agreement, Contractor shall establish a
9 statement of Client Rights and Responsibilities. CONTRACTOR may adopt Client Rights and
10 Responsibilities provided by ADMINISTRATOR, or an alternate version approved by
11 ADMINISTRATOR.

12 2. CONTRACTOR shall develop and maintain formal referral relationships with appropriate
13 entities to facilitate early intervention services for low-income individuals with HIV. Signed MOUs
14 with major points of entry shall be established and must include the names of parties involved, time
15 frame of agreement, and a clearly defined referral process, including follow-up. CONTRACTOR shall
16 keep the original signed MOUs in a central file and send a copy of each MOU to ADMINISTRATOR.
17 CONTRACTOR shall coordinate referral processes with appropriate programs of ADMINISTRATOR,
18 but is not required to enter into MOUs to do so.

19 3. Unless otherwise stated, CONTRACTOR shall verify eligibility for services including, but
20 not limited to proof of HIV status, proof of residency within Orange County, lack of other sources of
21 services, and financial eligibility based on criteria provided or approved by ADMINISTRATOR.
22 Eligibility shall be verified at minimum every six (6) months. Eligibility verification shall be
23 documented in COUNTY's designated data system as required by ADMINISTRATOR.

24 4. CONTRACTOR shall maintain files for all clients. Files, at a minimum, shall contain
25 information necessary for federal reporting, including, but not limited to, name, address, race, ethnicity,
26 gender, date of birth, living situation, household size, income, and types of service provided.

27 5. CONTRACTOR shall not conduct any proselytizing activities, regardless of funding
28 sources, with respect to any person who receives services under the terms of this Agreement. Further,
29 CONTRACTOR agrees that the funds provided hereunder shall not be used to promote, directly or
30 indirectly, any religion, religious creed or cult, denomination or sectarian institution, or religious belief.

31 6. CONTRACTOR shall make its best efforts to provide services pursuant to this Agreement
32 in a manner that is culturally and linguistically appropriate for the population(s) served.
33 CONTRACTOR shall maintain documentation of such efforts which may include, but not be limited to:
34 records of participation in COUNTY sponsored or other applicable training; recruitment and hiring
35 policies and procedures; copies of literature in multiple languages and formats, as appropriate; and
36 descriptions of measures taken to enhance accessibility for, and sensitivity to, persons who are
37 physically challenged.

1 7. It is understood by both parties that ADMINISTRATOR places a high degree of importance
 2 on the availability of accurate and timely data. Examples include data on costs, utilization, and
 3 cost-effectiveness of HIV related services. CONTRACTOR shall cooperate fully in meeting data
 4 requests and requirements specified by ADMINISTRATOR, including at minimum, monthly entry of
 5 client demographic data, service eligibility verification, service utilization information, and instant
 6 reporting of service delivery. It is also understood by both parties that ADMINISTRATOR is committed
 7 to implementing a data collection system that provides for point of service eligibility verification,
 8 service utilization information, and instant reporting of service delivery. CONTRACTOR shall
 9 participate in said system.

10 B. SHORT-TERM HOUSING PLUS PROJECT (HPP) PAYMENTS

11 1. DEFINITION – Short-term rent assistance provided on behalf of individuals/households
 12 who need assistance with rent. This assistance is to be up to 24 months in duration, subject to specific
 13 caps on amount of assistance available, and not to be used as an on-going payment.

14 2. SCOPE OF SERVICES

15 a. CONTRACTOR shall provide HPP Payments, as defined above, to eligible persons.
 16 CONTRACTOR shall limit payments on behalf of individuals/households to no more than up to thirty
 17 percent (~~50% of the individual/household rent through March 2017 and no more than up to 30%~~)%
 18 of the individual/household rent between April ~~2017 and March 2020~~ and March 2021.

19 b. CONTRACTOR shall coordinate client's HIV care with Ryan White case manager.
 20 CONTRACTOR must obtain proof of enrollment in comprehensive healthcare coverage or proof of
 21 application for healthcare coverage. CONTRACTOR must obtain a copy of HIV Viral Load lab
 22 annually.

23 c. CONTRACTOR shall determine eligibility for services within two (2) business days of
 24 receipt of application. CONTRACTOR shall communicate with client, in writing, reasons for the denial
 25 of their application.

26 d. Services to persons eligible for HPP shall be authorized within two (2) business days
 27 following eligibility determination by CONTRACTOR.

28 e. CONTRACTOR must obtain all required documentation for HPP payment (e.g., proof
 29 of unstable or temporary housing, proof that individual/household is not enrolled in any other Housing
 30 Assistance Programs, copy of valid lease, landlord W-9 IRS form, and landlord proof of ownership).

31 f. CONTRACTOR shall disseminate information describing the HPP program and
 32 eligibility requirements to individuals, groups, and private and public agencies that provide services to
 33 persons living with HIV.

34 g. CONTRACTOR shall develop a Housing Plan that must be reviewed and updated with
 35 client, at minimum, quarterly.

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1 h. Outcome measures for these services shall include increased number of clients
 2 maintaining stable housing, and improved access to healthcare and other supportive services among
 3 clients.

4 C. Quality Management (QM) Activities

5 1. CONTRACTOR shall participate in QM activities including, but not limited to,
 6 participation on the QM Committee, QM trainings, development of standards of care, peer reviews, and
 7 the establishment of countywide goals and objectives.

8 D. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the
 9 Services Paragraph of this Exhibit A to the Agreement.

10
 11 **VI. STAFFING**

12 A. CONTRACTOR shall establish a written Code of Conduct for employees, volunteers, interns
 13 and members of the Board of Directors, which shall include, but not be limited to, standards related to
 14 the use of drugs and/or alcohol; staff-client relationships; prohibition of sexual contact with clients; and
 15 conflict of interest. Prior to providing any services pursuant to this Agreement, all members of the
 16 Board of Directors, employees, volunteers and interns of CONTRACTOR shall agree in writing to
 17 maintain the standards set forth in the Code of Conduct.

18 B. CONTRACTOR shall notify ADMINISTRATOR, in writing, within three (3) business days of
 19 any staff vacancies that occur during the term of this Agreement.

20 C. STAFFING LEVELS – CONTRACTOR shall, at minimum, provide the following staff
 21 expressed in FTEs, which shall be equal to an average of forty (40) hours worked per week per period.

22
 23 ADMINISTRATIVE STAFF

24	Director of Finance and Operations	0.030
25	Senior Accountant	0.030
26	Staff Accountant	0.030
27	Accounting Clerk	0.030
28	Data Manager	0.030
29	Executive Assistant	0.005
30	Executive Director	<u>0.005</u>
31	SUBTOTAL	0.160

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DIRECT CARE STAFF

Sr. Director of Programs	0.051
Director Housing and Benefits	0.101
Housing Case Manager	<u>1.100</u>
Eligibility Screener	0.000
SUBTOTAL	1.252
TOTAL FTEs	1.412

D. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Staffing Paragraph of this Exhibit A to the Agreement.

VII. CLIENT GRIEVANCE REVIEW AND RESOLUTION POLICY

A. CONTRACTOR shall adhere to the Client Grievance Review and Resolution Policy established by ADMINISTRATOR.

B. CONTRACTOR shall establish and maintain a Client Grievance Resolution Policy and document that each client to whom services are provided under the terms of this Agreement are given information on the grievance process. CONTRACTOR’s policy shall allow for the client to appeal CONTRACTOR’s decision to ADMINISTRATOR, for review if the client is unsatisfied with CONTRACTOR’s final decision related to a grievance. CONTRACTOR shall submit a copy of its Client Grievance Resolution Policy to ADMINISTRATOR within thirty (30) calendar days of the effective date of this Agreement and within fifteen (15) calendar days of the adoption by CONTRACTOR of any revisions to the policy. CONTRACTOR’s Client Grievance Resolution Policy is subject to approval by ADMINISTRATOR for the purpose of maintaining consistency with established standards and policies.

C. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Client Grievance Review and Resolution Policy Paragraph of this Exhibit A to the Agreement.

VIII. UNITS OF SERVICE

A. HPP – CONTRACTOR shall, at a minimum, provide the following units of service per period:

HPP Bed Days	Payments	<u>24,000</u> 2,550
HPP Unduplicated Clients		<u>200</u> 450

B. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Units of Service Paragraph of this Exhibit A to the Agreement.

EXHIBIT B
TO AGREEMENT FOR PROVISION OF
HIV HOUSING PLUS PROJECT SERVICES
BETWEEN
COUNTY OF ORANGE

AND
AIDS SERVICES FOUNDATION ORANGE COUNTY
DBA ~~aha~~ RADIANT HEALTH CENTERS
APRIL 01, ~~2020~~2019 THROUGH MARCH 31, ~~2021~~2020

I. BUSINESS ASSOCIATE CONTRACT

A. GENERAL PROVISIONS AND RECITALS

1. The parties agree that the terms used, but not otherwise defined below in Subparagraph B., shall have the same meaning given to such terms under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”), and their implementing regulations at 45 CFR Parts 160 and 164 (“the HIPAA regulations”) as they may exist now or be hereafter amended.

2. The parties agree that a business associate relationship under HIPAA, the HITECH Act, and the HIPAA regulations between the CONTRACTOR and COUNTY arises to the extent that CONTRACTOR performs, or delegates to subcontractors to perform, functions or activities on behalf of COUNTY pursuant to, and as set forth in, the Agreement that are described in the definition of “Business Associate” in 45 CFR § 160.103.

3. The COUNTY wishes to disclose to CONTRACTOR certain information pursuant to the terms of the Agreement, some of which may constitute Protected Health Information (“PHI”), as defined below in Subparagraph B.10, to be used or disclosed in the course of providing services and activities pursuant to, and as set forth, in the Agreement.

4. The parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Agreement in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they may exist now or be hereafter amended.

5. The parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA regulations do not pre-empt any state statutes, rules, or regulations that are not otherwise pre-empted by other Federal law(s) and impose more stringent requirements with respect to privacy of PHI.

6. The parties understand that the HIPAA Privacy and Security rules, as defined below in Subparagraphs B.9 and B.14, apply to the CONTRACTOR in the same manner as they apply to a covered entity (COUNTY). CONTRACTOR agrees therefore to be in compliance at all times with the

1 terms of this Business Associate Contract and the applicable standards, implementation specifications,
 2 and requirements of the Privacy and the Security rules, as they may exist now or be hereafter amended,
 3 with respect to PHI and electronic PHI created, received, maintained, transmitted, used, or disclosed
 4 pursuant to the Agreement.

5 B. DEFINITIONS

6 1. "Administrative Safeguards" are administrative actions, and policies and procedures, to
 7 manage the selection, development, implementation, and maintenance of security measures to protect
 8 electronic PHI and to manage the conduct of CONTRACTOR's workforce in relation to the protection
 9 of that information.

10 2. "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted
 11 under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.

12 a. Breach excludes:

13 1) Any unintentional acquisition, access, or use of PHI by a workforce member or
 14 person acting under the authority of CONTRACTOR or COUNTY, if such acquisition, access, or use
 15 was made in good faith and within the scope of authority and does not result in further use or disclosure
 16 in a manner not permitted under the Privacy Rule.

17 2) Any inadvertent disclosure by a person who is authorized to access PHI at
 18 CONTRACTOR to another person authorized to access PHI at the CONTRACTOR, or organized health
 19 care arrangement in which COUNTY participates, and the information received as a result of such
 20 disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule.

21 3) A disclosure of PHI where CONTRACTOR or COUNTY has a good faith belief
 22 that an unauthorized person to whom the disclosure was made would not reasonably have been able to
 23 retain such information.

24 b. Except as provided in paragraph (a) of this definition, an acquisition, access, use, or
 25 disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach
 26 unless CONTRACTOR demonstrates that there is a low probability that the PHI has been compromised
 27 based on a risk assessment of at least the following factors:

28 1) The nature and extent of the PHI involved, including the types of identifiers and the
 29 likelihood of re-identification;

30 2) The unauthorized person who used the PHI or to whom the disclosure was made;

31 3) Whether the PHI was actually acquired or viewed; and

32 4) The extent to which the risk to the PHI has been mitigated.

33 3. "Data Aggregation" shall have the meaning given to such term under the HIPAA Privacy
 34 Rule in 45 CFR § 164.501.

35 4. "Designated Record Set" shall have the meaning given to such term under the HIPAA
 36 Privacy Rule in 45 CFR § 164.501.

37 //

1 5. “Disclosure” shall have the meaning given to such term under the HIPAA regulations in
2 45 CFR § 160.103.

3 6. “Health Care Operations” shall have the meaning given to such term under the HIPAA
4 Privacy Rule in 45 CFR § 164.501.

5 7. “Individual” shall have the meaning given to such term under the HIPAA Privacy Rule in
6 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance
7 with 45 CFR § 164.502(g).

8 8. “Physical Safeguards” are physical measures, policies, and procedures to protect
9 CONTRACTOR’s electronic information systems and related buildings and equipment, from natural
10 and environmental hazards, and unauthorized intrusion.

11 9. “The HIPAA Privacy Rule” shall mean the Standards for Privacy of Individually
12 Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

13 10. “Protected Health Information” or “PHI” shall have the meaning given to such term under
14 the HIPAA regulations in 45 CFR § 160.103.

15 11. “Required by Law” shall have the meaning given to such term under the HIPAA Privacy
16 Rule in 45 CFR § 164.103.

17 12. “Secretary” shall mean the Secretary of the Department of Health and Human Services or
18 his or her designee.

19 13. “Security Incident” means attempted or successful unauthorized access, use, disclosure,
20 modification, or destruction of information or interference with system operations in an information
21 system. “Security incident” does not include trivial incidents that occur on a daily basis, such as scans,
22 “pings”, or unsuccessful attempts to penetrate computer networks or servers maintained by
23 CONTRACTOR.

24 14. “The HIPAA Security Rule” shall mean the Security Standards for the Protection of
25 electronic PHI at 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.

26 15. “Subcontractor” shall have the meaning given to such term under the HIPAA regulations in
27 45 CFR § 160.103.

28 16. “Technical safeguards” means the technology and the policy and procedures for its use that
29 protect electronic PHI and control access to it.

30 17. “Unsecured PHI” or “PHI that is unsecured” means PHI that is not rendered unusable,
31 unreadable, or indecipherable to unauthorized individuals through the use of a technology or
32 methodology specified by the Secretary of Health and Human Services in the guidance issued on the
33 HHS Web site.

34 18. “Use” shall have the meaning given to such term under the HIPAA regulations in 45 CFR §
35 160.103.

36 C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE:

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1 1. CONTRACTOR agrees not to use or further disclose PHI COUNTY discloses to
2 CONTRACTOR other than as permitted or required by this Business Associate Contract or as required
3 by law.

4 2. CONTRACTOR agrees to use appropriate safeguards, as provided for in this Business
5 Associate Contract and the Agreement, to prevent use or disclosure of PHI COUNTY discloses to
6 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
7 other than as provided for by this Business Associate Contract.

8 3. CONTRACTOR agrees to comply with the HIPAA Security Rule at Subpart C of 45 CFR
9 Part 164 with respect to electronic PHI COUNTY discloses to CONTRACTOR or CONTRACTOR
10 creates, receives, maintains, or transmits on behalf of COUNTY.

11 4. CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is
12 known to CONTRACTOR of a Use or Disclosure of PHI by CONTRACTOR in violation of the
13 requirements of this Business Associate Contract.

14 5. CONTRACTOR agrees to report to COUNTY immediately any Use or Disclosure of PHI
15 not provided for by this Business Associate Contract of which CONTRACTOR becomes aware.
16 CONTRACTOR must report Breaches of Unsecured PHI in accordance with Paragraph E below and as
17 required by 45 CFR § 164.410.

18 6. CONTRACTOR agrees to ensure that any Subcontractors that create, receive, maintain, or
19 transmit PHI on behalf of CONTRACTOR agree to the same restrictions and conditions that apply
20 through this Business Associate Contract to CONTRACTOR with respect to such information.

21 7. CONTRACTOR agrees to provide access, within fifteen (15) calendar days of receipt of a
22 written request by COUNTY, to PHI in a Designated Record Set, to COUNTY or, as directed by
23 COUNTY, to an Individual in order to meet the requirements under 45 CFR § 164.524. If
24 CONTRACTOR maintains an Electronic Health Record with PHI, and an individual requests a copy of
25 such information in an electronic format, CONTRACTOR shall provide such information in an
26 electronic format.

27 8. CONTRACTOR agrees to make any amendment(s) to PHI in a Designated Record Set that
28 COUNTY directs or agrees to pursuant to 45 CFR § 164.526 at the request of COUNTY or an
29 Individual, within thirty (30) calendar days of receipt of said request by COUNTY. CONTRACTOR
30 agrees to notify COUNTY in writing no later than ten (10) calendar days after said amendment is
31 completed.

32 9. CONTRACTOR agrees to make internal practices, books, and records, including policies
33 and procedures, relating to the use and disclosure of PHI received from, or created or received by
34 CONTRACTOR on behalf of, COUNTY available to COUNTY and the Secretary in a time and manner
35 as determined by COUNTY or as designated by the Secretary for purposes of the Secretary determining
36 COUNTY's compliance with the HIPAA Privacy Rule.

37 //

1 10. CONTRACTOR agrees to document any Disclosures of PHI COUNTY discloses to
2 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY,
3 and to make information related to such Disclosures available as would be required for COUNTY to
4 respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45
5 CFR § 164.528.

6 11. CONTRACTOR agrees to provide COUNTY or an Individual, as directed by COUNTY, in
7 a time and manner to be determined by COUNTY, that information collected in accordance with the
8 Agreement, in order to permit COUNTY to respond to a request by an Individual for an accounting of
9 Disclosures of PHI in accordance with 45 CFR § 164.528.

10 12. CONTRACTOR agrees that to the extent CONTRACTOR carries out COUNTY's
11 obligation under the HIPAA Privacy and/or Security rules CONTRACTOR will comply with the
12 requirements of 45 CFR Part 164 that apply to COUNTY in the performance of such obligation.

13 13. If CONTRACTOR receives Social Security data from COUNTY provided to COUNTY by
14 a state agency, upon request by COUNTY, CONTRACTOR shall provide COUNTY with a list of all
15 employees, subcontractors and agents who have access to the Social Security data, including employees,
16 agents, subcontractors and agents of its subcontractors.

17 14. CONTRACTOR will notify COUNTY if CONTRACTOR is named as a defendant in a
18 criminal proceeding for a violation of HIPAA. COUNTY may terminate the Agreement, if
19 CONTRACTOR is found guilty of a criminal violation in connection with HIPAA. COUNTY may
20 terminate the Agreement, if a finding or stipulation that CONTRACTOR has violated any standard or
21 requirement of the privacy or security provisions of HIPAA, or other security or privacy laws are made
22 in any administrative or civil proceeding in which CONTRACTOR is a party or has been joined.
23 COUNTY will consider the nature and seriousness of the violation in deciding whether or not to
24 terminate the Agreement.

25 15. CONTRACTOR shall make itself and any subcontractors, employees or agents assisting
26 CONTRACTOR in the performance of its obligations under the Agreement, available to COUNTY at
27 no cost to COUNTY to testify as witnesses, or otherwise, in the event of litigation or administrative
28 proceedings being commenced against COUNTY, its directors, officers or employees based upon
29 claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy,
30 which involves inactions or actions by CONTRACTOR, except where CONTRACTOR or its
31 subcontractor, employee or agent is a named adverse party.

32 16. The Parties acknowledge that federal and state laws relating to electronic data security and
33 privacy are rapidly evolving and that amendment of this Business Associate Contract may be required to
34 provide for procedures to ensure compliance with such developments. The Parties specifically agree to
35 take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH
36 Act, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon
37 COUNTY's request, CONTRACTOR agrees to promptly enter into negotiations with COUNTY

1 concerning an amendment to this Business Associate Contract embodying written assurances consistent
 2 with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other
 3 applicable laws. COUNTY may terminate the Agreement upon thirty (30) days written notice in the
 4 event:

5 a. CONTRACTOR does not promptly enter into negotiations to amend this Business
 6 Associate Contract when requested by COUNTY pursuant to this Paragraph C; or

7 b. CONTRACTOR does not enter into an amendment providing assurances regarding the
 8 safeguarding of PHI that COUNTY deems are necessary to satisfy the standards and requirements of
 9 HIPAA, the HITECH Act, and the HIPAA regulations.

10 17. CONTRACTOR shall work with COUNTY upon notification by CONTRACTOR to
 11 COUNTY of a Breach to properly determine if any Breach exclusions exist as defined in Subparagraph
 12 B.2.a above.

13 D. SECURITY RULE

14 1. CONTRACTOR shall comply with the requirements of 45 CFR § 164.306 and establish
 15 and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR
 16 § 164.308, § 164.310, and § 164.312, with respect to electronic PHI COUNTY discloses to
 17 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY.
 18 CONTRACTOR shall develop and maintain a written information privacy and security program that
 19 includes Administrative, Physical, and Technical Safeguards appropriate to the size and complexity of
 20 CONTRACTOR's operations and the nature and scope of its activities.

21 2. CONTRACTOR shall implement reasonable and appropriate policies and procedures to
 22 comply with the standards, implementation specifications and other requirements of 45 CFR Part 164,
 23 Subpart C, in compliance with 45 CFR § 164.316. CONTRACTOR will provide COUNTY with its
 24 current and updated policies upon request.

25 3. CONTRACTOR shall ensure the continuous security of all computerized data systems
 26 containing electronic PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives,
 27 maintains, or transmits on behalf of COUNTY. CONTRACTOR shall protect paper documents
 28 containing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains,
 29 or transmits on behalf of COUNTY. These steps shall include, at a minimum:

30 a. Complying with all of the data system security precautions listed under Paragraphs E,
 31 below;

32 b. Achieving and maintaining compliance with the HIPAA Security Rule, as necessary in
 33 conducting operations on behalf of COUNTY;

34 c. Providing a level and scope of security that is at least comparable to the level and scope
 35 of security established by the Office of Management and Budget in OMB Circular No. A-130,
 36 Appendix III - Security of Federal Automated Information Systems, which sets forth guidelines for
 37 automated information systems in Federal agencies;

1 4. CONTRACTOR shall ensure that any subcontractors that create, receive, maintain, or
 2 transmit electronic PHI on behalf of CONTRACTOR agree through a contract with CONTRACTOR to
 3 the same restrictions and requirements contained in this Paragraph D of this Business Associate
 4 Contract.

5 5. CONTRACTOR shall report to COUNTY immediately any Security Incident of which it
 6 becomes aware. CONTRACTOR shall report Breaches of Unsecured PHI in accordance with Paragraph
 7 E below and as required by 45 CFR § 164.410.

8 6. CONTRACTOR shall designate a Security Officer to oversee its data security program who
 9 shall be responsible for carrying out the requirements of this paragraph and for communicating on
 10 security matters with COUNTY.

11 E. DATA SECURITY REQUIREMENTS

12 1. Personal Controls

13 a. Employee Training. All workforce members who assist in the performance of functions
 14 or activities on behalf of COUNTY in connection with Agreement, or access or disclose PHI COUNTY
 15 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of
 16 COUNTY, must complete information privacy and security training, at least annually, at
 17 CONTRACTOR's expense. Each workforce member who receives information privacy and security
 18 training must sign a certification, indicating the member's name and the date on which the training was
 19 completed. These certifications must be retained for a period of six (6) years following the termination
 20 of Agreement.

21 b. Employee Discipline. Appropriate sanctions must be applied against workforce
 22 members who fail to comply with any provisions of CONTRACTOR's privacy policies and procedures,
 23 including termination of employment where appropriate.

24 c. Confidentiality Statement. All persons that will be working with PHI COUNTY
 25 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of
 26 COUNTY must sign a confidentiality statement that includes, at a minimum, General Use, Security and
 27 Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the
 28 workforce member prior to access to such PHI. The statement must be renewed annually. The
 29 CONTRACTOR shall retain each person's written confidentiality statement for COUNTY inspection for
 30 a period of six (6) years following the termination of the Agreement.

31 d. Background Check. Before a member of the workforce may access PHI COUNTY
 32 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of
 33 COUNTY, a background screening of that worker must be conducted. The screening should be
 34 commensurate with the risk and magnitude of harm the employee could cause, with more thorough
 35 screening being done for those employees who are authorized to bypass significant technical and
 36 operational security controls. The CONTRACTOR shall retain each workforce member's background
 37 check documentation for a period of three (3) years.

1 2. Technical Security Controls

2 a. Workstation/Laptop encryption. All workstations and laptops that store PHI COUNTY
3 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of
4 COUNTY either directly or temporarily must be encrypted using a FIPS 140-2 certified algorithm which
5 is 128bit or higher, such as Advanced Encryption Standard (AES). The encryption solution must be full
6 disk unless approved by the COUNTY.

7 b. Server Security. Servers containing unencrypted PHI COUNTY discloses to
8 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
9 must have sufficient administrative, physical, and technical controls in place to protect that data, based
10 upon a risk assessment/system security review.

11 c. Minimum Necessary. Only the minimum necessary amount of PHI COUNTY discloses
12 to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
13 required to perform necessary business functions may be copied, downloaded, or exported.

14 d. Removable media devices. All electronic files that contain PHI COUNTY discloses to
15 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
16 must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives,
17 floppies, CD/DVD, Blackberry, backup tapes etc.). Encryption must be a FIPS 140-2 certified algorithm
18 which is 128bit or higher, such as AES. Such PHI shall not be considered “removed from the premises”
19 if it is only being transported from one of CONTRACTOR’s locations to another of CONTRACTOR’s
20 locations.

21 e. Antivirus software. All workstations, laptops and other systems that process and/or
22 store PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or
23 transmits on behalf of COUNTY must have installed and actively use comprehensive anti-virus software
24 solution with automatic updates scheduled at least daily.

25 f. Patch Management. All workstations, laptops and other systems that process and/or
26 store PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or
27 transmits on behalf of COUNTY must have critical security patches applied, with system reboot if
28 necessary. There must be a documented patch management process which determines installation
29 timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable
30 patches must be installed within 30 days of vendor release. Applications and systems that cannot be
31 patched due to operational reasons must have compensatory controls implemented to minimize risk,
32 where possible.

33 g. User IDs and Password Controls. All users must be issued a unique user name for
34 accessing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains,
35 or transmits on behalf of COUNTY. Username must be promptly disabled, deleted, or the password
36 changed upon the transfer or termination of an employee with knowledge of the password, at maximum
37 within 24 hours. Passwords are not to be shared. Passwords must be at least eight characters and must

1 be a non-dictionary word. Passwords must not be stored in readable format on the computer. Passwords
 2 must be changed every 90 days, preferably every 60 days. Passwords must be changed if revealed or
 3 compromised. Passwords must be composed of characters from at least three of the following four
 4 groups from the standard keyboard:

- 5 1) Upper case letters (A-Z)
- 6 2) Lower case letters (a-z)
- 7 3) Arabic numerals (0-9)
- 8 4) Non-alphanumeric characters (punctuation symbols)

9 h. Data Destruction. When no longer needed, all PHI COUNTY discloses to
 10 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
 11 must be wiped using the Gutmann or US Department of Defense (DoD) 5220.22-M (7 Pass) standard, or
 12 by degaussing. Media may also be physically destroyed in accordance with NIST Special Publication
 13 800-88. Other methods require prior written permission by COUNTY.

14 i. System Timeout. The system providing access to PHI COUNTY discloses to
 15 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
 16 must provide an automatic timeout, requiring re-authentication of the user session after no more than 20
 17 minutes of inactivity.

18 j. Warning Banners. All systems providing access to PHI COUNTY discloses to
 19 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
 20 must display a warning banner stating that data is confidential, systems are logged, and system use is for
 21 business purposes only by authorized users. User must be directed to log off the system if they do not
 22 agree with these requirements.

23 k. System Logging. The system must maintain an automated audit trail which can identify
 24 the user or system process which initiates a request for PHI COUNTY discloses to CONTRACTOR or
 25 CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY, or which alters such
 26 PHI. The audit trail must be date and time stamped, must log both successful and failed accesses, must
 27 be read only, and must be restricted to authorized users. If such PHI is stored in a database, database
 28 logging functionality must be enabled. Audit trail data must be archived for at least 3 years after
 29 occurrence.

30 l. Access Controls. The system providing access to PHI COUNTY discloses to
 31 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
 32 must use role based access controls for all user authentications, enforcing the principle of least privilege.

33 m. Transmission encryption. All data transmissions of PHI COUNTY discloses to
 34 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
 35 outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is
 36 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files

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1 containing PHI can be encrypted. This requirement pertains to any type of PHI in motion such as
 2 website access, file transfer, and E-Mail.

3 n. Intrusion Detection. All systems involved in accessing, holding, transporting, and
 4 protecting PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains,
 5 or transmits on behalf of COUNTY that are accessible via the Internet must be protected by a
 6 comprehensive intrusion detection and prevention solution.

7 3. Audit Controls

8 a. System Security Review. CONTRACTOR must ensure audit control mechanisms that
 9 record and examine system activity are in place. All systems processing and/or storing PHI COUNTY
 10 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of
 11 COUNTY must have at least an annual system risk assessment/security review which provides
 12 assurance that administrative, physical, and technical controls are functioning effectively and providing
 13 adequate levels of protection. Reviews should include vulnerability scanning tools.

14 b. Log Reviews. All systems processing and/or storing PHI COUNTY discloses to
 15 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
 16 must have a routine procedure in place to review system logs for unauthorized access.

17 c. Change Control. All systems processing and/or storing PHI COUNTY discloses to
 18 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
 19 must have a documented change control procedure that ensures separation of duties and protects the
 20 confidentiality, integrity and availability of data.

21 4. Business Continuity/Disaster Recovery Control

22 a. Emergency Mode Operation Plan. CONTRACTOR must establish a documented plan
 23 to enable continuation of critical business processes and protection of the security of PHI COUNTY
 24 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of
 25 COUNTY kept in an electronic format in the event of an emergency. Emergency means any
 26 circumstance or situation that causes normal computer operations to become unavailable for use in
 27 performing the work required under this Agreement for more than 24 hours.

28 b. Data Backup Plan. CONTRACTOR must have established documented procedures to
 29 backup such PHI to maintain retrievable exact copies of the PHI. The plan must include a regular
 30 schedule for making backups, storing backup offsite, an inventory of backup media, and an estimate of
 31 the amount of time needed to restore DHCS PHI or PI should it be lost. At a minimum, the schedule
 32 must be a weekly full backup and monthly offsite storage of DHCS data. Business Continuity Plan
 33 (BCP) for contractor and COUNTY (e.g. the application owner) must merge with the DRP.

34 5. Paper Document Controls

35 a. Supervision of Data. PHI COUNTY discloses to CONTRACTOR or CONTRACTOR
 36 creates, receives, maintains, or transmits on behalf of COUNTY in paper form shall not be left
 37 unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means

1 that information is not being observed by an employee authorized to access the information. Such PHI
 2 in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in
 3 baggage on commercial airplanes.

4 b. Escorting Visitors. Visitors to areas where PHI COUNTY discloses to
 5 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY is
 6 contained shall be escorted and such PHI shall be kept out of sight while visitors are in the area.

7 c. Confidential Destruction. PHI COUNTY discloses to CONTRACTOR or
 8 CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must be disposed of
 9 through confidential means, such as cross cut shredding and pulverizing.

10 d. Removal of Data. PHI COUNTY discloses to CONTRACTOR or CONTRACTOR
 11 creates, receives, maintains, or transmits on behalf of COUNTY must not be removed from the premises
 12 of the CONTRACTOR except with express written permission of COUNTY.

13 e. Faxing. Faxes containing PHI COUNTY discloses to CONTRACTOR or
 14 CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY shall not be left
 15 unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement
 16 notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the
 17 intended recipient before sending the fax.

18 f. Mailing. Mailings containing PHI COUNTY discloses to CONTRACTOR or
 19 CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY shall be sealed and
 20 secured from damage or inappropriate viewing of PHI to the extent possible. Mailings which include
 21 500 or more individually identifiable records containing PHI COUNTY discloses to CONTRACTOR or
 22 CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY in a single package
 23 shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless
 24 the prior written permission of COUNTY to use another method is obtained.

25 F. BREACH DISCOVERY AND NOTIFICATION

26 1. Following the discovery of a Breach of Unsecured PHI , CONTRACTOR shall notify
 27 COUNTY of such Breach, however both parties agree to a delay in the notification if so advised by a
 28 law enforcement official pursuant to 45 CFR § 164.412.

29 a. A Breach shall be treated as discovered by CONTRACTOR as of the first day on which
 30 such Breach is known to CONTRACTOR or, by exercising reasonable diligence, would have been
 31 known to CONTRACTOR.

32 b. CONTRACTOR shall be deemed to have knowledge of a Breach, if the Breach is
 33 known, or by exercising reasonable diligence would have known, to any person who is an employee,
 34 officer, or other agent of CONTRACTOR, as determined by federal common law of agency.

35 2. CONTRACTOR shall provide the notification of the Breach immediately to the COUNTY
 36 Privacy Officer. CONTRACTOR's notification may be oral, but shall be followed by written
 37 notification within 24 hours of the oral notification.

1 3. CONTRACTOR’s notification shall include, to the extent possible:
2 a. The identification of each Individual whose Unsecured PHI has been, or is reasonably
3 believed by CONTRACTOR to have been, accessed, acquired, used, or disclosed during the Breach;
4 b. Any other information that COUNTY is required to include in the notification to
5 Individual under 45 CFR §164.404 (c) at the time CONTRACTOR is required to notify COUNTY or
6 promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period
7 set forth in 45 CFR § 164.410 (b) has elapsed, including:
8 1) A brief description of what happened, including the date of the Breach and the date
9 of the discovery of the Breach, if known;
10 2) A description of the types of Unsecured PHI that were involved in the Breach (such
11 as whether full name, social security number, date of birth, home address, account number, diagnosis,
12 disability code, or other types of information were involved);
13 3) Any steps Individuals should take to protect themselves from potential harm
14 resulting from the Breach;
15 4) A brief description of what CONTRACTOR is doing to investigate the Breach, to
16 mitigate harm to Individuals, and to protect against any future Breaches; and
17 5) Contact procedures for Individuals to ask questions or learn additional information,
18 which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.
19 4. COUNTY may require CONTRACTOR to provide notice to the Individual as required in
20 45 CFR § 164.404, if it is reasonable to do so under the circumstances, at the sole discretion of the
21 COUNTY.
22 5. In the event that CONTRACTOR is responsible for a Breach of Unsecured PHI in violation
23 of the HIPAA Privacy Rule, CONTRACTOR shall have the burden of demonstrating that
24 CONTRACTOR made all notifications to COUNTY consistent with this Paragraph F and as required by
25 the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure
26 of PHI did not constitute a Breach.
27 6. CONTRACTOR shall maintain documentation of all required notifications of a Breach or
28 its risk assessment under 45 CFR § 164.402 to demonstrate that a Breach did not occur.
29 7. CONTRACTOR shall provide to COUNTY all specific and pertinent information about the
30 Breach, including the information listed in Section E.3.b.(1)-(5) above, if not yet provided, to permit
31 COUNTY to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as
32 practicable, but in no event later than fifteen (15) calendar days after CONTRACTOR’s initial report of
33 the Breach to COUNTY pursuant to Subparagraph F.2 above.
34 8. CONTRACTOR shall continue to provide all additional pertinent information about the
35 Breach to COUNTY as it may become available, in reporting increments of five (5) business days after
36 the last report to COUNTY. CONTRACTOR shall also respond in good faith to any reasonable
37 //

1 requests for further information, or follow-up information after report to COUNTY, when such request
2 is made by COUNTY.

3 9. If the Breach is the fault of CONTRACTOR, CONTRACTOR shall bear all expense or
4 other costs associated with the Breach and shall reimburse COUNTY for all expenses COUNTY incurs
5 in addressing the Breach and consequences thereof, including costs of investigation, notification,
6 remediation, documentation or other costs associated with addressing the Breach.

7 G. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

8 1. CONTRACTOR may use or further disclose PHI COUNTY discloses to CONTRACTOR
9 as necessary to perform functions, activities, or services for, or on behalf of, COUNTY as specified in
10 the Agreement, provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done
11 by COUNTY except for the specific Uses and Disclosures set forth below.

12 a. CONTRACTOR may use PHI COUNTY discloses to CONTRACTOR, if necessary,
13 for the proper management and administration of CONTRACTOR.

14 b. CONTRACTOR may disclose PHI COUNTY discloses to CONTRACTOR for the
15 proper management and administration of CONTRACTOR or to carry out the legal responsibilities of
16 CONTRACTOR, if:

17 1) The Disclosure is required by law; or

18 2) CONTRACTOR obtains reasonable assurances from the person to whom the PHI is
19 disclosed that it will be held confidentially and used or further disclosed only as required by law or for
20 the purposes for which it was disclosed to the person and the person immediately notifies
21 CONTRACTOR of any instance of which it is aware in which the confidentiality of the information has
22 been breached.

23 c. CONTRACTOR may use or further disclose PHI COUNTY discloses to
24 CONTRACTOR to provide Data Aggregation services relating to the Health Care Operations of
25 CONTRACTOR.

26 2. CONTRACTOR may use PHI COUNTY discloses to CONTRACTOR, if necessary, to
27 carry out legal responsibilities of CONTRACTOR.

28 3. CONTRACTOR may use and disclose PHI COUNTY discloses to CONTRACTOR
29 consistent with the minimum necessary policies and procedures of COUNTY.

30 4. CONTRACTOR may use or disclose PHI COUNTY discloses to CONTRACTOR as
31 required by law.

32 H. PROHIBITED USES AND DISCLOSURES

33 1. CONTRACTOR shall not disclose PHI COUNTY discloses to CONTRACTOR or
34 CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY about an individual to
35 a health plan for payment or health care operations purposes if the PHI pertains solely to a health care
36 item or service for which the health care provider involved has been paid out of pocket in full and the
37 individual requests such restriction, in accordance with 42 USC § 17935(a) and 45 CFR § 164.522(a).

2. CONTRACTOR shall not directly or indirectly receive remuneration in exchange for PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY, except with the prior written consent of COUNTY and as permitted by 42 USC § 17935(d)(2).

I. OBLIGATIONS OF COUNTY

1. COUNTY shall notify CONTRACTOR of any limitation(s) in COUNTY’s notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect CONTRACTOR’s Use or Disclosure of PHI.

2. COUNTY shall notify CONTRACTOR of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect CONTRACTOR’s Use or Disclosure of PHI.

3. COUNTY shall notify CONTRACTOR of any restriction to the Use or Disclosure of PHI that COUNTY has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect CONTRACTOR’s Use or Disclosure of PHI.

4. COUNTY shall not request CONTRACTOR to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by COUNTY.

J. BUSINESS ASSOCIATE TERMINATION

1. Upon COUNTY’s knowledge of a material breach or violation by CONTRACTOR of the requirements of this Business Associate Contract, COUNTY shall:

a. Provide an opportunity for CONTRACTOR to cure the material breach or end the violation within thirty (30) business days; or

b. Immediately terminate the Agreement, if CONTRACTOR is unwilling or unable to cure the material breach or end the violation within (30) days, provided termination of the Agreement is feasible.

2. Upon termination of the Agreement, CONTRACTOR shall either destroy or return to COUNTY all PHI CONTRACTOR received from COUNTY or CONTRACTOR created, maintained, or received on behalf of COUNTY in conformity with the HIPAA Privacy Rule.

a. This provision shall apply to all PHI that is in the possession of Subcontractors or agents of CONTRACTOR.

b. CONTRACTOR shall retain no copies of the PHI.

c. In the event that CONTRACTOR determines that returning or destroying the PHI is not feasible, CONTRACTOR shall provide to COUNTY notification of the conditions that make return or destruction infeasible. Upon determination by COUNTY that return or destruction of PHI is infeasible, CONTRACTOR shall extend the protections of this Business Associate Contract to such PHI and limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible, for as long as CONTRACTOR maintains such PHI.

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1 3. The obligations of this Business Associate Contract shall survive the termination of the
2 Agreement.

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EXHIBIT C
TO AGREEMENT FOR PROVISION OF
HIV HOUSING PLUS PROJECT SERVICES
BETWEEN
COUNTY OF ORANGE

AND
AIDS SERVICES FOUNDATION ORANGE COUNTY
DBA RADIANT HEALTH CENTERS
APRIL 01, ~~2020~~2019 THROUGH MARCH 31, ~~2021~~2020

I. PERSONAL INFORMATION PRIVACY AND SECURITY CONTRACT

Any reference to statutory, regulatory, or contractual language herein shall be to such language as in effect or as amended.

A. DEFINITIONS

1. "Breach" shall have the meaning given to such term under the IEA and CMPPA. It shall include a "PII loss" as that term is defined in the CMPPA.

2. "Breach of the security of the system" shall have the meaning given to such term under the California Information Practices Act, Civil Code § 1798.29(d).

3. "CMPPA Agreement" means the Computer Matching and Privacy Protection Act Agreement between the Social Security Administration and the California Health and Human Services Agency (CHHS).

4. "DHCS PI" shall mean Personal Information, as defined below, accessed in a database maintained by the COUNTY or California Department of Health Care Services (DHCS), received by CONTRACTOR from the COUNTY or DHCS or acquired or created by CONTRACTOR in connection with performing the functions, activities and services specified in the Agreement on behalf of the COUNTY.

5. "IEA" shall mean the Information Exchange Agreement currently in effect between the Social Security Administration (SSA) and DHCS.

6. "Notice-triggering Personal Information" shall mean the personal information identified in Civil Code section 1798.29(e) whose unauthorized access may trigger notification requirements under Civil Code § 1709.29. For purposes of this provision, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print, a photograph or a biometric identifier. Notice-triggering Personal Information includes PI in electronic, paper or any other medium.

7. "Personally Identifiable Information" (PII) shall have the meaning given to such term in the IEA and CMPPA.

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1 8. "Personal Information" (PI) shall have the meaning given to such term in California Civil
2 Code§ 1798.3(a).

3 9. "Required by law" means a mandate contained in law that compels an entity to make a use
4 or disclosure of PI or PII that is enforceable in a court of law. This includes, but is not limited to, court
5 orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental
6 or tribal inspector general, or an administrative body authorized to require the production of information,
7 and a civil or an authorized investigative demand. It also includes Medicare conditions of participation
8 with respect to health care providers participating in the program, and statutes or regulations that require
9 the production of information, including statutes or regulations that require such information if payment
10 is sought under a government program providing public benefits.

11 10. "Security Incident" means the attempted or successful unauthorized access, use, disclosure,
12 modification, or destruction of PI, or confidential data utilized in complying with this Agreement; or
13 interference with system operations in an information system that processes, maintains or stores PI.

14 B. TERMS OF AGREEMENT

15 1. Permitted Uses and Disclosures of DHCS PI and PII by CONTRACTOR. Except as
16 otherwise indicated in this Exhibit, CONTRACTOR may use or disclose DHCS PI only to perform
17 functions, activities, or services for or on behalf of the COUNTY pursuant to the terms of the Agreement
18 provided that such use or disclosure would not violate the California Information Practices Act (CIPA) if
19 done by the COUNTY.

20 2. Responsibilities of CONTRACTOR
21 CONTRACTOR agrees:

22 a. Nondisclosure. Not to use or disclose DHCS PI or PII other than as permitted or
23 required by this Personal Information Privacy and Security Contract or as required by applicable state
24 and federal law.

25 b. Safeguards. To implement appropriate and reasonable administrative, technical, and
26 physical safeguards to protect the security, confidentiality and integrity of DHCS PI and PII, to protect
27 against anticipated threats or hazards to the security or integrity of DHCS PI and PII, and to prevent use
28 or disclosure of DHCS PI or PII other than as provided for by this Personal Information Privacy and
29 Security Contract. CONTRACTOR shall develop and maintain a written information privacy and
30 security program that include administrative, technical and physical safeguards appropriate to the size
31 and complexity of CONTRACTOR's operations and the nature and scope of its activities, which
32 incorporate the requirements of Paragraph (c), below. CONTRACTOR will provide COUNTY with its
33 current policies upon request.

34 c. Security. CONTRACTOR shall ensure the continuous security of all computerized data
35 systems containing DHCS PI and PII. CONTRACTOR shall protect paper documents containing DHCS
36 PI and PII. These steps shall include, at a minimum:

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1) Complying with all of the data system security precautions listed in Paragraph E of the Business Associate Contract, Exhibit B to the Agreement; and

2) Providing a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III-Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies.

3) If the data obtained by CONTRACTOR from COUNTY includes PII, CONTRACTOR shall also comply with the substantive privacy and security requirements in the Computer Matching and Privacy Protection Act Agreement between the SSA and the California Health and Human Services Agency (CHHS) and in the Agreement between the SSA and DHCS, known as the Information Exchange Agreement (IEA). The specific sections of the IEA with substantive privacy and security requirements to be complied with are sections E, F, and G, and in Attachment 4 to the IEA, Electronic Information Exchange Security Requirements, Guidelines and Procedures for Federal, State and Local Agencies Exchanging Electronic Information with the SSA. CONTRACTOR also agrees to ensure that any of CONTRACTOR's agents or subcontractors, to whom CONTRACTOR provides DHCS PII agree to the same requirements for privacy and security safeguards for confidential data that apply to CONTRACTOR with respect to such information.

d. Mitigation of Harmful Effects. To mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR of a use or disclosure of DHCS PI or PII by CONTRACTOR or its subcontractors in violation of this Personal Information Privacy and Security Contract.

e. CONTRACTOR's Agents and Subcontractors. To impose the same restrictions and conditions set forth in this Personal Information and Security Contract on any subcontractors or other agents with whom CONTRACTOR subcontracts any activities under the Agreement that involve the disclosure of DHCS PI or PII to such subcontractors or other agents.

f. Availability of Information. To make DHCS PI and PII available to the DHCS and/or COUNTY for purposes of oversight, inspection, amendment, and response to requests for records, injunctions, judgments, and orders for production of DHCS PI and PII. If CONTRACTOR receives DHCS PII, upon request by COUNTY and/or DHCS, CONTRACTOR shall provide COUNTY and/or DHCS with a list of all employees, contractors and agents who have access to DHCS PII, including employees, contractors and agents of its subcontractors and agents.

g. Cooperation with COUNTY. With respect to DHCS PI, to cooperate with and assist the COUNTY to the extent necessary to ensure the DHCS's compliance with the applicable terms of the CIPA including, but not limited to, accounting of disclosures of DHCS PI, correction of errors in DHCS PI, production of DHCS PI, disclosure of a security breach involving DHCS PI and notice of such breach to the affected individual(s).

h. Breaches and Security Incidents. During the term of the Agreement, CONTRACTOR agrees to implement reasonable systems for the discovery of any breach of unsecured DHCS PI and PII

1 or security incident. CONTRACTOR agrees to give notification of any breach of unsecured DHCS PI
2 and PII or security incident in accordance with Paragraph F, of the Business Associate Contract, Exhibit
3 B to the Agreement.

4 i. Designation of Individual Responsible for Security. CONTRACTOR shall designate an
5 individual, (e.g., Security Officer), to oversee its data security program who shall be responsible for
6 carrying out the requirements of this Personal Information Privacy and Security Contract and for
7 communicating on security matters with the COUNTY.

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