



# Monterey County Board of Supervisors

168 West Alisal Street,  
1st Floor  
Salinas, CA 93901  
831.755.5066

## Board Order

### Agreement No.: A-13598

Upon motion of Supervisor Parker, seconded by Supervisor Alejo and carried by those members present, the Board of Supervisors hereby:

- a. Approved and authorized the Deputy Purchasing Agent for Natividad Medical Center (NMC) or his designee to execute an Agreement with Pacific Health Alliance (PHA) for Third Party Administrator (TPA) Services for the County of Monterey's Pilot Project for the Remaining Uninsured, in an amount up to \$200,000, effective July 1, 2017 through June 30, 2018, subject to further review and approval of County Counsel, County Risk Manager, and County-Auditor Controller; and
- b. Approved and authorized the Deputy Purchasing Agent for NMC or his designee to sign up to three (3) one-year amendments that do not exceed ten percent (10%) (\$20,000) of the original Agreement amount and do not significantly alter the scope of services.

PASSED AND ADOPTED this 27th day of June 2017, by the following vote, to wit:

AYES: Supervisors Alejo, Phillips, Salinas Parker and Adams  
NOES: None  
ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 80 for the meeting June 27, 2017.

Dated: June 27, 2017  
File ID: A 17-287

Gail T. Borkowski, Clerk of the Board of Supervisors  
County of Monterey, State of California

By Denise Hancock  
Deputy

**AGREEMENT TO PROVIDE ADMINISTRATIVE SERVICES FOR THE COUNTY OF MONTEREY EXPANDED PILOT PROJECT FOR THE REMAINING UNINSURED**

This AGREEMENT is made and entered into by and between the County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center hereinafter referred to as "County", and Pacific Health Alliance ("PHA"), hereinafter referred to as "CONTRACTOR."

**RECITALS**

- A. WHEREAS, County established the Pilot Project for the Remaining Uninsured to provide limited scope pharmaceuticals, laboratory tests, and radiology services without charge to approximately 2,000 eligible enrolled individuals ("Pilot Project"). These services were provided by the County Health Department's Federally Qualified look-alike health clinics ("FQHCs") and by the County's Natividad Medical Center ("NMC"), collectively referred hereinto as "County Providers". The Pilot Project for the Remaining Uninsured was implemented from November 2015 through March 2017;
- B. WHEREAS, County desires to expand the Pilot Project for the Remaining Uninsured and allow for the addition of primary and specialty care ambulatory services to be provided without charge to eligible enrolled individuals ("Enrollees") by the County's FQHCs and NMC ("Expanded Program");
- C. WHEREAS, the Expanded Program is subject to a total County appropriations budget limit and an annual enrollment limit;
- D. WHEREAS, County will be assuming financial responsibility for funding the services provided through the Expanded Program, and will be allocating available County funds to County Providers based in part on service utilization data;
- E. WHEREAS, County has identified a need for assistance with certain program administration and reporting functions in connection with the Expanded Program; and
- F. WHEREAS, CONTRACTOR has the expertise and capabilities necessary to provide administrative services to the County to assist in the administration of the Expanded Program.

NOW THEREFORE, County and CONTRACTOR, for the consideration hereinafter named, agree as follows:

**1.0 PERFORMANCE OF THE AGREEMENT**

- 1.1 The component parts of this AGREEMENT include the following:

AGREEMENT  
Exhibit A: Third Party Administration of the County of Monterey Pilot Program  
for the Remaining Uninsured;

Business Associate Agreement (Exhibit B);  
Certificate of Insurance; and  
Additional Insured Endorsements

- 1.2 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this AGREEMENT are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this AGREEMENT and are not employees of the County, or immediate family of an employee of the County.
- 1.3 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this AGREEMENT that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.

## **2.0 SCOPE OF SERVICE**

- 2.1 CONTRACTOR shall assist the County in administering the Expanded Program as set forth Exhibit A herein.
- 2.2 CONTRACTOR shall be responsible for receipt of and processing of UB-04 forms, CMS 1500 forms, and/or other forms as designated or established by County (collectively "Program Service Forms"), which are submitted by County Providers for services provided to Enrollees in accordance with services summary in Exhibit A ("Third Party Administration of the County of Monterey Pilot Program for the Remaining Uninsured"). County Providers will submit Program Service Forms to CONTRACTOR in a manner and format, i.e., electronically or hardcopy, that is mutually established by the parties.
  - 2.2.1 CONTRACTOR shall employ qualified personnel to ensure accurate processing of Program Service Forms.
  - 2.2.2 CONTRACTOR shall prepare monthly reports that list and summarize the Program Services provided by each County Provider during the relevant month, and that identify any adjustments to data reported for prior months.
  - 2.2.3 The County shall specify the data elements, format and timing of the reports, and may make modifications thereto in its discretion.
- 2.3 County shall determine the eligibility criteria to enroll individuals in the Expanded Program, assist with obtaining all pertinent information from individuals applying for the Expanded Program required for enrollment, and CONTRACTOR shall complete applicants' enrollment status.
  - 2.3.1 County providers will be responsible for submitting to CONTRACTOR only those Program Service Forms that pertain to Program Services provided to Enrollees.
  - 2.3.2 The County agrees that CONTRACTOR may rely on the accuracy and completeness of the Expanded Program eligibility determinations without

verification, however, the County may provide corrected information to CONTRACTOR at any time.

- 2.4 CONTRACTOR shall provide to County customized and routine reports as requested at no additional cost to County.
- 2.5 CONTRACTOR shall not incur any costs with respect to the payment of any claims for providing any benefits under the Expanded Program. CONTRACTOR's obligations shall be limited to the duties and responsibilities set forth in this AGREEMENT. The County shall incur all costs of Program Services and shall be responsible for disbursing any County fund amounts to County Providers that provide services as part of the Expanded Program.
- 2.6 County may desire CONTRACTOR perform services not covered by or described in this AGREEMENT. The performance of such additional services shall be subject to the County's agreement to compensate CONTRACTOR for such service the amount agreed upon by the parties, which may be in addition to the fees described in Exhibit A\_\_ hereto.
- 2.7 County has full and final authority and responsibility for the Expanded Program and its operation. CONTRACTOR shall have no duty or power to act on behalf of County in connection with the Expanded Program, except as expressly stated in this AGREEMENT.

### **3.0 TERM OF AGREEMENT**

- 3.1 The term of this AGREEMENT is from August 1, 2017, through June 30, 2018, unless sooner terminated pursuant to the terms of this AGREEMENT. This AGREEMENT is of no force or effect until signed by both CONTRACTOR and County and with County signing last, and CONTRACTOR may not commence work before County signs this AGREEMENT.
- 3.2 The County reserves the right to cancel this AGREEMENT, or any extension of this AGREEMENT, without cause, with a thirty day (30) written notice, or with cause immediately.

### **4.0 TERMINATION**

- 4.1 During the term of this AGREEMENT, the County may terminate the AGREEMENT for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this AGREEMENT shall be reduced in proportion to the services provided prior to the date of termination.
- 4.2 The County may cancel and terminate this AGREEMENT for good cause effective immediately upon written notice to CONTRACTOR. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this AGREEMENT. If the County terminates this AGREEMENT for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner, which County deems proper. The

cost to the County shall be deducted from any sum due the CONTRACTOR under this AGREEMENT.

- 4.3 The County's payment to CONTRACTOR under this AGREEMENT are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for the County's purchase of the indicated quantity of services, then the County may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this AGREEMENT shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this AGREEMENT.

## **5.0 PAYMENT AND PAYMENT CONDITIONS**

- 5.1 County shall pay the CONTRACTOR in accordance with the payment provisions set forth in Exhibit A\_\_, subject to the limitation set forth in this AGREEMENT. The total amount payable to County to CONTRACTOR under this AGREEMENT shall not exceed the sum of Two hundred thousand dollars (\$200,000).
- 5.2 Prices shall remain firm for the initial term of the AGREEMENT. The County does not guarantee any minimum or maximum amount of dollars to be spent under this AGREEMENT.
- 5.3 Invoice amounts shall be billed directly to the ordering department.
- 5.4 CONTRACTOR shall submit such invoice periodically or at the completion of services, but in any event, no later than 30 days after the completion of services. The invoice shall set forth the amount claims by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. The County shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this AGREEMENT, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.
- 5.5 All County of Monterey Purchase Orders issued for the AGREEMENT are valid only during the fiscal year in which they are issued (the fiscal year is defined as July 1 through June 30).
- 5.6 Unauthorized Surcharges or Fees: Invoices containing unauthorized surcharges or unauthorized fees of any kind shall be rejected by County. Surcharges and additional fees not included the AGREEMENT must be approved by County in writing via an Amendment.

## **6.0 INDEMNIFICATION**

- 6.1 CONTRACTOR shall indemnify, defend, and hold harmless the County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs,

and reasonable attorneys' fees) occurring or resulting to any and all persons, firms, or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this AGREEMENT, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the CONTRACTOR's performance of this AGREEMENT, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the County. "CONTRACTOR's performance" includes CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents and subcontractors.

## 7.0 INSURANCE REQUIREMENTS

### 7.1 Evidence of Coverage:

7.1.1 Prior to commencement of this AGREEMENT, CONTRACTOR shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition CONTRACTOR upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. CONTRACTOR shall not receive a "Notice to Proceed" with the work under this AGREEMENT until it has obtained all insurance required and the County has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of CONTRACTOR.

7.2 Qualifying Insurers: All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by County's Purchasing Officer.

### 7.3 Insurance Coverage Requirements:

7.3.1 Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this AGREEMENT a policy or policies of insurance with the following minimum limits of liability:

7.3.1.1. Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence. *(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)*

- 7.3.1.2. Business Automobile Liability Insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this AGREEMENT, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence. *(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)*
- 7.3.1.3. Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this AGREEMENT, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease. *(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)*
- 7.3.1.4. Professional Liability Insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, CONTRACTOR shall, upon the expiration or earlier termination of this AGREEMENT, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this AGREEMENT. *(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)*

7.4 Other Insurance Requirements:

- 7.4.1 All insurance required by this AGREEMENT shall be with a company acceptable to County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this AGREEMENT, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this AGREEMENT.

- 7.4.2 Each liability policy shall provide that County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for CONTRACTOR and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this AGREEMENT, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.
- 7.4.3 Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self- insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.
- 7.4.4 Prior to the execution of this AGREEMENT by County, CONTRACTOR shall file certificates of insurance with County's contract administrator and County's Contracts/Purchasing Division, showing that CONTRACTOR has in effect the insurance required by this AGREEMENT. CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this AGREEMENT, which shall continue in full force and effect.
- 7.4.5 CONTRACTOR shall at all times during the term of this AGREEMENT maintain in force the insurance coverage required under this AGREEMENT and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this AGREEMENT, which entitles County, at its sole discretion, to terminate this AGREEMENT immediately.

## **8.0 RECORDS AND CONFIDENTIALITY**

- 8.1 Confidentiality: CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this AGREEMENT, unless County specifically



permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this AGREEMENT except for the sole purpose of carrying out CONTRACTOR's obligations under this AGREEMENT.

- 8.2 County Records: When this AGREEMENT expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this AGREEMENT.
- 8.3 Maintenance of Records: CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this AGREEMENT.
- 8.4 Access to and Audit of Records: County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of CONTRACTOR and its subcontractors related to services provided under this AGREEMENT. Pursuant to Government Code section 8546.7, if this AGREEMENT involves the expenditure of public funds in excess of \$10,000, the parties to this AGREEMENT may be subject, at the request of County or as part of any audit of County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this AGREEMENT for a period of three years after final payment under the AGREEMENT.

## **9.0 NON-DISCRIMINATION**

- 9.1 During the performance of this contract, CONTRACTOR shall not unlawfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), sex, or sexual orientation. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination. CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code, §12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, §7285.0, et seq.).
- 9.2 The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, § 12900, et seq., set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- 9.3 CONTRACTOR shall include the non-discrimination and compliance provisions of the clause in all AGREEMENTs with subcontractors to perform work under the contract.

## **10.0 RELATIONSHIPS OF PARTIES**

- 10.1 Independent Contractor: CONTRACTOR shall be an independent contractor and shall not be an employee of Monterey County, nor immediate family of an employee of County. CONTRACTOR shall be responsible for all insurance (General Liability, Automobile,

Workers' Compensation, unemployment, etc.) and all payroll-related taxes. CONTRACTOR shall not be entitled to any employee benefits.

### 11.0 LEGAL DISPUTES

- 11.1 CONTRACTOR agrees that this AGREEMENT, and any dispute arising from the relationship between the parties to this AGREEMENT, shall be governed and interpreted by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.
- 11.2 Any dispute that arises under or relates to this AGREEMENT (whether contract, tort, or both) shall be resolved in the Superior Court of California in Monterey County, California.
- 11.3 CONTRACTOR shall continue to perform under this AGREEMENT during any dispute.

### 12.0 INFORMATION PORTABILITY AND ACCOUNTABILITY ACT HIPAA COMPLIANCE

CONTRACTOR agrees to operate its business in a manner as necessary to permit County to comply with its obligations under the Health Insurance Portability and Accountability Act of 1996, Subtitle F, Public Law 104-191, relating to the privacy and security of confidential health information, and any final regulations or rules promulgated by the U.S. Department of Health and Human Services thereunder (collectively, the "HIPAA Standards"). CONTRACTOR and County shall execute a Business Associate Agreement attached hereto as Exhibit [B].

### 13.0 MISCELLANEOUS

- 13.1 Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this AGREEMENT, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the services required to be rendered under this AGREEMENT.
- 13.2 Amendment. This AGREEMENT may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.
- 13.3 Waiver. Any waiver of any terms and conditions of this AGREEMENT must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this AGREEMENT shall not be construed as a waiver of any other terms or conditions in this AGREEMENT.
- 13.4 Contractor. The term "CONTRACTOR" as used in this AGREEMENT includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this AGREEMENT.
- 13.5 Disputes. CONTRACTOR shall continue to perform under this AGREEMENT during any dispute.

- 13.6 Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this AGREEMENT without the prior written consent of the County. None of the services covered by this AGREEMENT shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this AGREEMENT.
- 13.7 Successors and Assigns. This AGREEMENT and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this AGREEMENT to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 13.8 Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this AGREEMENT.
- 13.9 Headings. The headings are for convenience only and shall not be used to interpret the terms of this AGREEMENT.
- 13.10 Time is of the Essence. Time is of the essence in each and all of the provisions of this AGREEMENT.
- 13.11 Governing Law. This AGREEMENT shall be governed by and interpreted under the laws of the State of California.
- 13.12 Non-exclusive Agreement. This AGREEMENT is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.
- 13.13 Construction of Agreement. The County and CONTRACTOR agree that each party has fully participated in the review and revision of this AGREEMENT and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this AGREEMENT or any amendment to this AGREEMENT.
- 13.14 Counterparts. This AGREEMENT may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same AGREEMENT.
- 13.15 Authority. Any individual executing this AGREEMENT on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this AGREEMENT on behalf of such party and bind the party to the terms and conditions of this AGREEMENT.
- 13.16 Integration. This AGREEMENT, including the exhibits, represent the entire AGREEMENT between the County and the CONTRACTOR with respect to the subject matter of this AGREEMENT and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the

effective date of this AGREEMENT, which is the date that the County signs the AGREEMENT.

- 13.17 Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this AGREEMENT and the Provisions of any exhibit or other attachment to this Agreement or other component part thereof, the provisions of this AGREEMENT shall prevail and control.

**14.0 NOTICES**

- 14.1 Notices required to be given to the respective parties under this AGREEMENT shall be deemed given by any of the following means: (1) when personally delivered to County’s contract administrator or to CONTRACTOR’S responsible officer; (2) when personally delivered to the party’s principle place of business during normal business hours, by leaving notice with any person apparently in charge of the office and advising such person of the import and contents of the notice; (3) 24 hours after the notice is transmitted by FAX machine to the other party, at the party’s FAX number specified pursuant to this AGREEMENT’, provided that the party giving notice by FAX must promptly confirm receipt of the FAX by telephone to the receiving party’s office; or, (4) three (3) days after the notice is deposited in the U.S. mail with first class or better postage fully prepaid, addressed to the party as indicated below.

Notices mailed or faxed to the parties shall be addressed as follows:

**TO COUNTY:**

**Gary Gray DO**, Chief Executive Officer  
 County of Monterey, Natividad Medical Center  
 1441 Constitution Blvd.  
 Salinas, CA 93906  
 Tel. No.: (831) 783-2553  
 FAX No.: (831) 755-6254  
 Email: [GrayGR@natividad.com](mailto:GrayGR@natividad.com)

**TO CONTRACTOR:**

**Robert O. Mockler**, Executive Vice President  
 Pacific Health Alliance, Inc.  
 1350 Old Bayshore Highway, Ste. 560  
 Burlingame, CA 94010  
 Tel. No.: (800) 533-4702  
 FAX No.: (800) 801-1200  
 Email: [rmackler@pacifichealthalliance.com](mailto:rmackler@pacifichealthalliance.com)

AND

**TO COUNTY:**

**Keith Honda**, Contract Administrator/  
 Asst. County Administrative Officer  
 County of Monterey, Human Resources  
 168 W. Alisal Street, 3rd Floor.  
 Salinas, CA 93901-2439  
 Tel. No.: (831) 755-5295  
 FAX No.: (831) 751-9597  
 Email: [Hondak@co.monterey.ca.us](mailto:Hondak@co.monterey.ca.us)

IN WITNESS WHEREOF, the County and CONTRACTOR execute this AGREEMENT as follows:

COUNTY OF MONTEREY

CONTRACTOR

By: [Signature]  
NMC Chief Executive Officer

By: PACIFIC HEALTH ALLIANCE INC  
Contractor's Business Name\*

Date: 8/4/17

Date: 8/4/17

By: [Signature]  
Signature of Chair, President, or Vice-President)\*

Date: 8/4/17

Approved to as Form<sup>1</sup>  
By: [Signature]  
County Counsel, Deputy

By: [Signature]  
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)\*

Alison Miller, Executive Vice President of Operations  
Name and Title

Approved to as Fiscal Provisions<sup>2</sup>

Reviewed (as to fiscal provisions)  
[Signature]  
Auditor/Controller  
County of Monterey 8-3-17

## Exhibit A: Third Party Administration of the County of Monterey Pilot Program for the Remaining Uninsured

Effective August 1, 2017, Pacific Health Alliance shall perform the following functions for the County of Monterey:

### **PHA (“Administrator”) Scope:**

Adjudicate Claims for Eligible Persons according to the benefits established by the County of Monterey.

Respond to Inquiries regarding eligibility, benefits and providers.

Provide 20 hours of weekly on-site eligibility worker for the first 90 days at a designated time, then 8 – 10 hours a week on a schedule to be determined.

Provide monthly reports to the County of Monterey on program utilization. (See attached sample reports).

Provide financial reports on program expenditures (reconciliation report budget versus actual.)

Issue Membership Cards to eligible individuals.

Provide consulting services to the County of Monterey on program design, operation and implementation.

Services shall specifically exclude medical management and review.

### **Pricing:**

An implementation fee of \$ 10,000 to establish program benefits, provider payment parameters and model reports

For Claims incurred during the contract period

\$ 5.00 per member month with minimum payment of \$ 3,000

For Claims Incurred prior to the contract period (which would only apply if there are claims that need to be included in the financial reporting of the program, If there are no claims prior to the effective date of the agreement, this section does not apply.)

\$5.00 per claim.

Membership ID cards:\$ 1.00 per member

Reimbursement for reasonable travel and materials, printing and postage.  
Program Operations and Description

## Exhibit A: Third Party Administration of the County of Monterey Pilot Program for the Remaining Uninsured

### **Eligibility**

The program is limited to residents who do not currently qualify for a medical plan and who earn less than 138 % of the federal poverty level. Individuals are encouraged to apply for Medi-Cal when enrolling in the Pilot Project.

The County of Monterey has previously enrolled approximately 2100 residents. These members were determined to be eligible based upon the County's sliding scale fee structure in place at its clinics. Once deemed eligible, members shall maintain membership by submitting updated documents providing proof of continued eligibility annually. The County shall have the ultimate authority to enroll or dis-enroll members. The Administrator will make reasonable enrollment decisions based upon criteria established by the County of Monterey.

Referrals of eligible residents will be made by the county's clinics and Natividad Medical Center (including its clinics). Program enrollment shall be limited to adults above age 19.

The County will set up a new payor class in its financial systems to capture claims and eligibility information.

Initially, the County will provide to PHA an electronic database of enrolled members in a format to be mutually determined. On a monthly basis, there will be a data exchange reflecting updated eligibility. Designated individuals at the County shall have the power to authorize "immediate enrollment" through a process to be delineated.

Pacific Health Alliance will provide a staff person at least eight hours per regular work week to handle on-site eligibility questions. Natividad Medical Center (NMC) has agreed to provide a confidential work space with a telephone line for the PHA staff member.

Residents may apply at NMC or the Monterey County Health Department.

### **Included Providers**

Clinics operated by Monterey County Health Department (HD)  
Specialty Clinics at Natividad Medical Center  
Laboratory Services at Natividad Medical Center  
Radiology Services at Natividad Medical Center  
Salinas Valley Radiology<sup>1</sup>  
Walgreen's Pharmacy<sup>2</sup>

### **Outreach**

NMC and the HD will promote the program.

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<sup>1</sup> Contract not yet established

<sup>2</sup> Limited to participation through the County 340B program. Members may not self-refer nor may prescriptions be written by non-participating physicians.

## Exhibit A: Third Party Administration of the County of Monterey Pilot Program for the Remaining Uninsured

### **Covered Services**

The benefits are limited to services provided on an outpatient basis through:

The clinics operated by the County of Monterey Health Department or Natividad Medical Center; lab or radiology services offered by Natividad Medical Center and a specific formulary under the County's 340B Drug Program.

There are no co-payments, sliding scale or deductibles associated with this program.

**This program is not a program of insurance.**

### **Claim Payment Strategy**

The proposed monthly budget for each category is listed below. These figures are based upon "expected" utilization rates. We recognize that the actual utilization will differ but it gives us a place to begin operations and to evaluate the success of the program on a moving forward basis.



Exhibit A: Third Party Administration of the County of Monterey Pilot Program for the Remaining Uninsured

**Proposed Budget for Claims Expense**

<b>Type Service</b>	<b>Annual</b>	<b>Monthly Pool</b>
Primary Care Office Visits	\$ 720,000	\$ 60,000
Specialty Clinic Visits	\$ 344,000	\$ 28,667
Radiology (Includes Professional Fees)	\$ 200,000	\$ 16,667
Pathology/Lab (Includes Professional Fees)	\$ 150,000	\$ 12,500
Pharmacy – Generic Only	\$ 400,000	\$ 33,332
Administration	\$ 150,000	\$ 12,500
Implementation Fee	\$ 10,000	\$ 833
Expenses (see breakdown below):	\$ 26,000	\$ 2,167
Member Cards	\$ 6,500 <sup>3</sup>	
Member Communications, Mailing	\$ 12,000	
Postage	\$ 3,500	
Travel	\$ 4,000	
<b>Total</b>	<b>\$2,000,000</b>	<b>\$ 166,666</b>

*Source:* Pacific Health Alliance, 2017

<sup>3</sup> Assumes a 2.6 turnover rate of a starting life count of 2,500 enrollees

## Exhibit A: Third Party Administration of the County of Monterey Pilot Program for the Remaining Uninsured

We propose a claims payment strategy that assures that individuals are receiving service by valuing each service at the State's posted Medi-cal fee schedule as of July 15, 2017 and paying out the lesser of the claim amount or the amount determined by the inclusion of the claim into the monthly claims pool.

1. Claims from the primary care clinics will be paid the lower of Medi-Cal rates or as a capped pool equal to the balance of the monthly allotment.
2. Natividad Medical Center lab and radiology will be paid at the lesser of Medi-cal rates or a fixed capitation rate (monthly allotment as above).
3. Claims from Salinas Radiology Medical Group be paid at the Medi-Cal rate. These will be paid on a fee for service basis but then reconciled to assure aggregate payment does not exceed the budgeted radiology pool.
4. Claims from the 340B program will be paid in capitation to Natividad Medical Center after submission of claim information to the payor.

### **Claims Submission**

Claims from county entities would be submitted electronically or in a format to be determined to Pacific Health Alliance on a weekly basis or as agreed. These claims would then be adjudicated for eligibility and inclusion of service and a payment voucher issued. Claims from the other entities could be submitted in paper format.

### **Claims Processing and Payment**

Natividad Medical Center and Clinics operated by the County of Monterey would receive one monthly claims adjudication.

### **Reporting**

Pacific Health Alliance proposes a rich series of reports for the County. In addition to check registers, the County would receive a variety of information related to provider, CPT codes, cost etc. Other reports would be designed by the County.

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BAA”) effective AUGUST 1, 2017 (“Effective Date”), is entered into by and among between the County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center (“Covered Entity”) and PACIFIC HEALTH ALLIANCE (“Business Associate”) (each a “Party” and collectively the “Parties”).

### RECITALS

A. WHEREAS, Business Associate provides certain Services for Covered Entity that involve the Use and Disclosure of Protected Health Information (“PHI”) that is created, received, transmitted, or maintained by Business Associate for or on behalf of Covered Entity.

B. WHEREAS, The Parties are committed to complying with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), and their implementing regulations, including the Standards for the Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E (the “Privacy Rule”), the Breach Notification Standards, 45 C.F.R. Part 160 and 164 subparts A and D (the “Breach Notification Rule”), and the Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C (the “Security Rule”), (collectively “HIPAA”), all as amended from time to time.

C. WHEREAS, The Parties are also committed to complying with the California Confidentiality Laws (defined below).

D. WHEREAS, To the extent that Business Associate is performing activities in connection with covered accounts for or on behalf of Covered Entity, the Parties are also committed to complying with applicable requirements of the Red Flag Rules issued pursuant to the Fair and Accurate Credit Transactions Act of 2003 (“Red Flag Rules”).

E. WHEREAS, The Privacy and Security Rules require Covered Entity and Business Associate to enter into a business associate agreement that meets certain requirements with respect to the Use and Disclosure of PHI. This BAA, sets forth the terms and conditions pursuant to which PHI, and, when applicable, Electronic Protected Health Information (“EPHI”) shall be handled, in accordance with such requirement.

NOW THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this BAA, the Parties agree as follows:

### AGREEMENT

#### 1. DEFINITIONS

**1.1** All capitalized terms used in this BAA but not otherwise defined shall have the meaning set forth in the Privacy Rule, the Breach Notification Rule, or the Security Rule.

(a) “Breach” shall have the same meaning as “breach” as defined in 45 C.F.R. § 164.402 and shall mean the access, acquisition, Use, or Disclosure of PHI in a manner not permitted under the Privacy Rule that compromises the privacy or security of the PHI; the term “Breach” as used in this BAA shall also mean the unlawful or unauthorized access to, Use or Disclosure of a patient’s “medical information” as defined under Cal. Civil Code § 56.05(j), for which notification is required pursuant to Cal. Health & Safety Code 1280.15, or a “breach of the security of the system” under Cal. Civil Code §1798.29.

(b) “California Confidentiality Laws” shall mean the applicable laws of the State of California governing the confidentiality of PHI or Personal Information, including, but not limited to, the California Confidentiality of Medical Information Act (Cal. Civil Code §56, et seq.), the patient access law (Cal. Health & Safety Code §123100 et seq.), the HIV test result confidentiality law (Cal. Health & Safety Code §120975, et seq.), the Lanterman-Petris-Short Act (Cal. Welf. & Inst. Code §5328, et seq.), and the medical identity theft law (Cal. Civil Code 1798.29).

(c) “Protected Health Information” or “PHI” shall mean any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual or the past, present or future payment for the provision of health care to an individual; (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information that can be used to identify the individuals, and (iii) is provided by Covered Entity to Business Associate or created, maintained, received, or transmitted by Business Associate on Covered Entity’s behalf. **PHI includes EPHI.**

(d) “Services” shall mean the services for or functions on behalf of Covered Entity performed by Business Associate pursuant to a Services Agreement between Covered Entity and Business Associate to which this BAA applies.

## **2. PERMITTED USES AND DISCLOSURES OF PHI**

Unless otherwise limited herein, Business Associate may:

(a) Use or Disclose PHI to perform Services for, or on behalf of, Covered Entity, provided that such Use or Disclosure would not violate the Privacy or Security Rules, this BAA, or California Confidentiality Laws;

(b) Use or Disclose PHI for the purposes authorized by this BAA or as otherwise Required by Law;

(c) Use PHI to provide Data Aggregation Services for the Health Care Operations of Covered Entity, if required by the Services Agreement and as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B);

(d) Use PHI if necessary for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate as permitted by 45 C.F.R. § 164.504(e)(4)(i);

(e) Disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate as permitted under 45 C.F.R. § 164.504(e)(4)(ii), provided that Disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is Disclosed that it will remain confidential and be Used or further Disclosed only as Required by Law or for the purpose for which it was Disclosed to the person, and that such person will notify the Business Associate of any instances of which such person is aware that the confidentiality of the information has been breached;

(f) Use PHI to report violations of law to appropriate Federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1); and

(g) De-identify any PHI obtained by Business Associate under this BAA in accordance with 45 C.F.R. § 164.514 and Use or Disclose such de-identified information only as required to provide Services pursuant to the a Services Agreement between the Parties, or with the prior written approval of Covered Entity.

### **3. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI**

**3.1. Responsibilities of Business Associate.** With regard to its Use and/or Disclosure of PHI, Business Associate shall:

(a) Notify the Privacy Officer of Covered Entity, in writing, of: (i) any Use and/or Disclosure of the PHI that is not permitted or required by this BAA; (ii) any Security Incident of which Business Associate becomes aware; and (iii) any suspected Breach. Such notice shall be provided within five (5) business days of Business Associate's discovery of such unauthorized access, acquisition, Use and/or Disclosure. Notwithstanding the foregoing, the Parties acknowledge the ongoing existence and occurrence of attempted but ineffective Security Incidents that are trivial in nature, such as pings and other broadcast service attacks, and unsuccessful log-in attempts. The Parties acknowledge and agree that this Section 3.1(a) constitutes notice by Business Associate to Covered Entity of such ineffective Security Incidents and no additional notification to Covered Entity of such ineffective Security Incidents is required, provided that no such Security Incident results in a Breach. A ransomware attack shall not be considered an ineffective Security Incident and shall be reported to Covered Entity, irrespective of whether such Security Incident results in a Breach. Business Associate shall investigate each Security Incident or unauthorized access, acquisition, Use, or Disclosure of PHI, or suspected Breach that it discovers and shall provide a summary of its investigation to Covered Entity, upon request. If Business Associate or Covered Entity determines that such Security Incident or unauthorized access, acquisition, Use, or Disclosure, or suspected Breach constitutes a Breach, then Business Associate shall comply with the requirements of Section 3.1(a)(i) below;

(i) Business Associate shall provide a supplemental written report in accordance with 45 C.F.R. § 164.410(c), which shall include, to the extent possible, the identification of each individual whose PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, Used or Disclosed during the Breach, to Covered Entity without unreasonable delay, but no later than five (5) business days after discovery of the Breach;

(ii) Covered Entity shall have sole control over the timing and method of providing notification of such Breach to the affected individual(s), the appropriate government agencies, and, if applicable, the media. Business Associate shall assist with the implementation of any decisions by Covered Entity to notify individuals or potentially impacted individuals;

(b) In consultation with the Covered Entity, Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper access, acquisition, Use, or Disclosure, Security Incident, or Breach. Business Associate shall take prompt corrective action, including any action required by applicable State or federal laws and regulations relating to such Security Incident or non-permitted access, acquisition, Use, or Disclosure. Business Associate shall reimburse Covered Entity for its reasonable costs and expenses in providing any required notification to affected individuals, appropriate government agencies, and, if necessary the media, including, but not limited to, any administrative costs associated with providing notice, printing and mailing costs, public relations costs, attorney fees, and costs of mitigating the harm (which may include the costs of obtaining up to one year of credit monitoring services and identity theft insurance) for affected individuals whose PHI or Personal Information has or may have been compromised as a result of the Breach;

(c) Implement appropriate administrative, physical, and technical safeguards and comply with the Security Rule to prevent Use and/or Disclosure of EPHI other than as provided for by this BAA;

(d) Obtain and maintain a written agreement with each of its Subcontractors that creates, maintains, receives, Uses, transmits or has access to PHI that requires such Subcontractors to adhere to the substantially the same restrictions and conditions with respect to PHI that apply to Business Associate pursuant to this BAA;

(e) Make available all internal practices, records, books, agreements, policies and procedures and PHI relating to the Use and/or Disclosure of PHI received from, created, maintained, or transmitted by Business Associate on behalf of Covered Entity to the Secretary of the Department of Health and Human Services (“Secretary”) in a time and manner designated by the Secretary for purposes of determining Covered Entity’s or Business Associate’s compliance with the Privacy Rule. In addition, Business Associate shall promptly make available to Covered Entity such books, records, or other information relating to the Use and Disclosure of PHI for purposes of determining whether Business Associate has complied with this BAA or maintains adequate security safeguards, upon reasonable request by Covered Entity;

(f) Document Disclosures of PHI and information related to such Disclosure and, within thirty (30) days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an individual for an accounting of the Disclosures of the individual's PHI in accordance with 45 C.F.R. § 164.528. At a minimum, the Business Associate shall provide the Covered Entity with the following information: (i) the date of the Disclosure; (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (iii) a brief description of the PHI Disclosed; and (iv) a brief statement of the purpose of such Disclosure which includes an explanation of the basis for such Disclosure. In the event the request for an accounting is delivered directly to the Business Associate, the Business Associate shall, within ten (10) days, forward such request to the Covered Entity. The Business Associate shall implement an appropriate recordkeeping process to enable it to comply with the requirements of this Section;

(g) Subject to Section 4.4 below, return to Covered Entity within thirty (30) days of the termination of this BAA, the PHI in its possession and retain no copies, including backup copies;

(h) Disclose to its Subcontractors or other third parties, and request from Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder;

(i) If all or any portion of the PHI is maintained in a Designated Record Set:

(i) Upon ten (10) days' prior written request from Covered Entity, provide access to the PHI to Covered Entity to meet a request by an individual under 45 C.F.R. § 164.524. Business Associate shall notify Covered Entity within ten (10) days of its receipt of a request for access to PHI from an Individual; and

(ii) Upon ten (10) days' prior written request from Covered Entity, make any amendment(s) to the PHI that Covered Entity directs pursuant to 45 C.F.R. § 164.526. Business Associate shall notify Covered Entity within ten (10) days of its receipt of a request for amendment of PHI from an Individual;

(j) If applicable, maintain policies and procedures to detect and prevent identity theft in connection with the provision of the Services, to the extent required to comply with the Red Flag Rules;

(k) To the extent that Business Associate carries out one or more of Covered Entity's obligations under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligations;

(l) Unless prohibited by law, notify the Covered Entity within five (5) days of the Business Associate's receipt of any request or subpoena for PHI. To the extent

that the Covered Entity decides to assume responsibility for challenging the validity of such request, the Business Associate shall cooperate fully with the Covered Entity in such challenge; and

(m) Maintain policies and procedures materially in accordance with State Confidentiality Laws and industry standards designed to ensure the security and integrity of the Covered Entity's data and protect against threats or hazards to such security.

### **3.2 Business Associate Acknowledgment.**

(a) Business Associate acknowledges that, as between the Business Associate and the Covered Entity, all PHI shall be and remain the sole property of the Covered Entity.

(b) Business Associate further acknowledges that it is obligated by law to comply, and represents and warrants that it shall comply, with HIPAA and the HITECH Act. Business Associate shall comply with all California Confidentiality Laws, to the extent that such state laws are not preempted by HIPAA or the HITECH Act.

(c) Business Associate further acknowledges that uses and disclosures of protected health information must be consistent with NMC's privacy practices, as stated in NMC's Notice of Privacy Practices. The current Notice of Privacy Practices can be retrieved online at: <http://www.natividad.com/quality-and-safety/patient-privacy> . Business Associate agrees to review the NMC Notice of Privacy Practices at this URL at least once annually while doing business with NMC to ensure it remains updated on any changes to the Notice of Privacy Practices NMC may make.

**3.3 Responsibilities of Covered Entity.** Covered Entity shall, with respect to Business Associate:

(a) Provide Business Associate a copy of Covered Entity's notice of privacy practices ("Notice") currently in use;

(b) Notify Business Associate of any changes to the Notice that Covered Entity provides to individuals pursuant to 45 C.F.R. § 164.520, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI;

(c) Notify Business Associate of any changes in, or withdrawal of, the consent or authorization of an individual regarding the Use or Disclosure of PHI provided to Covered Entity pursuant to 45 C.F.R. § 164.506 or § 164.508, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI; and

(d) Notify Business Associate of any restrictions on Use and/or Disclosure of PHI as provided for in 45 C.F.R. § 164.522 agreed to by Covered Entity, to the extent that such restriction may affect Business Associate's Use or Disclosure of PHI.

## **4. TERM AND TERMINATION**



**4.1 Term.** This BAA shall become effective on the Effective Date and shall continue in effect unless terminated as provided in this Section 4. Certain provisions and requirements of this BAA shall survive its expiration or other termination as set forth in Section 5 herein.

**4.2 Termination.** If Covered Entity determines in good faith that Business Associate has breached a material term of this BAA, Covered Entity may either: (i) immediately terminate this BAA and any underlying Services Agreement; or (ii) terminate this BAA and any underlying Services Agreement within thirty (30) days of Business Associate's receipt of written notice of such breach, if the breach is not cured to the satisfaction of Covered Entity.

**4.3 Automatic Termination.** This BAA shall automatically terminate without any further action of the Parties upon the termination or expiration of Business Associate's provision of Services to Covered Entity.

**4.4 Effect of Termination.** Upon termination or expiration of this BAA for any reason, Business Associate shall return all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(J) if, and to the extent that, it is feasible to do so. Prior to returning the PHI, Business Associate shall recover any PHI in the possession of its Subcontractors. To the extent it is not feasible for Business Associate to return or destroy any portion of the PHI, Business Associate shall provide Covered Entity with a statement that Business Associate has determined that it is infeasible to return or destroy all or some portion of the PHI in its possession or in possession of its Subcontractors. In such event, Business Associate shall: (i) retain only that PHI which is necessary for Business Associate to continue its proper management and administration or carry out its legal responsibilities; (ii) return to Covered Entity the remaining PHI that the Business Associate maintains in any form; (iii) continue to extend the protections of this BAA to the PHI for as long as Business Associate retains PHI; (iv) limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction of the PHI not feasible and subject to the same conditions as set out in Section 2 above, which applied prior to termination; and (v) return to Covered Entity the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

## **5. MISCELLANEOUS**

**5.1 Survival.** The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 2.1, 4.4, 5.7, 5.8, 5.11, and 5.12 shall survive termination of this BAA until such time as the PHI is returned to Covered Entity or destroyed. In addition, Section 3.1(i) shall survive termination of this BAA, provided that Covered Entity determines that the PHI being retained pursuant to Section 4.4 constitutes a Designated Record Set.

**5.2 Amendments; Waiver.** This BAA may not be modified or amended, except in a writing duly signed by authorized representatives of the Parties. To the extent that any relevant provision of HIPAA, the HITECH Act, or California Confidentiality

Laws is materially amended in a manner that changes the obligations of the Parties, the Parties agree to negotiate in good faith appropriate amendment(s) to this BAA to give effect to the revised obligations. Further, no provision of this BAA shall be waived, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

**5.3 No Third Party Beneficiaries.** Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

**5.4 Notices.** Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or via facsimile to the facsimile telephone numbers listed below.

If to Business Associate, to:

Attn: PACIFIC HEALTH ALLIANCE  
PRESIDENT  
1525 ROLLINS RD., STE B  
BURLINGAME, CA 94010  
Phone: (800) 533-4742  
Fax: (650) 425-9468

If to Covered Entity, to:

Natividad Medical Center  
Attn: Compliance/Privacy Officer  
1441 Constitution Blvd.  
Salinas, CA 93906  
Phone: 831-755-4111  
Fax: 831-755-6254

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided. Such notice is effective upon receipt of notice, but receipt is deemed to occur on next business day if notice is sent by FedEx or other overnight delivery service.

**5.5 Counterparts; Facsimiles.** This BAA may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

**5.6 Relationship of Parties.** Notwithstanding anything to the contrary in the Services Agreement, Business Associate is an independent contractor and not an agent of Covered Entity under this BAA. Business Associate has the sole right and obligation to supervise, manage, contract, direct, procure, perform, or cause to be performed all Business Associate obligations under this BAA.

**5.7 Choice of Law; Interpretation.** This BAA shall be governed by the laws of the State of California. Any ambiguities in this BAA shall be resolved in a manner that allows Covered Entity and Business Associate to comply with the Privacy Rule, the Security Rule, and the California Confidentiality Laws.

**5.8 Indemnification.** Business Associate shall indemnify, defend, and hold harmless the County of Monterey (the "County"), its officers, agents, and employees from any claim, liability, loss, injury, cost, expense, penalty or damage, including costs incurred by the County with respect to any investigation, enforcement proceeding, or third party action, arising out of, or in connection with, a violation of this BAA or a Breach that is attributable to an act or omission of Business Associate and/or its agents, members, employees, or Subcontractors, excepting only loss, injury, cost, expense, penalty or damage caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the Parties to provide the broadest possible indemnification for the County. This provision is in addition to, and independent of, any indemnification provision in any related or other agreement between the Parties.

**5.9 Applicability of Terms.** This BAA applies to all present and future Service Agreements and Business Associate relationships, written or unwritten, formal or informal, in which Business Associate creates, receives, transmits, or maintains any PHI for or on behalf of Covered Entity in any form whatsoever. This BAA shall automatically be incorporated in all subsequent agreements between Business Associate and Covered Entity involving the Use or Disclosure of PHI whether or not specifically referenced therein. In the event of any conflict or inconsistency between a provision of this BAA and a provision of any other agreement between Business Associate and Covered Entity, the provision of this BAA shall control unless the provision in such other agreement establishes additional rights for Business Associate or additional duties for or restrictions on Business Associate with respect to PHI, in which case the provision of such other agreement will control.

**5.10 Insurance.** In addition to any general and/or professional liability insurance required of Business Associate, Business Associate agrees to obtain and maintain, at its sole expense, liability insurance on an occurrence basis, covering any and all claims, liabilities, demands, damages, losses, costs and expenses arising from a breach of the obligations of Business Associate, its officers, employees, agents and Subcontractors under this BAA. Such insurance coverage will be maintained for the term of this BAA, and a copy of such policy or a certificate evidencing the policy shall be provided to Covered Entity at Covered Entity's request.

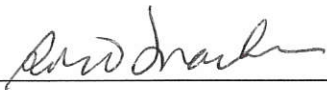
**5.11 Legal Actions.** Promptly, but no later than five (5) business days after notice thereof, Business Associate shall advise Covered Entity of any actual or potential action, proceeding, regulatory or governmental orders or actions, or any material threat thereof that becomes known to it that may affect the interests of Covered Entity or jeopardize this BAA, and of any facts and circumstances that may be pertinent to the prosecution or defense of any such actual or potential legal action or proceeding, except to the extent prohibited by law.


**5.12 Audit or Investigations.** Promptly, but no later than five (5) calendar days after notice thereof, Business Associate shall advise Covered Entity of any audit, compliant review, or complaint investigation by the Secretary or other state or federal agency related to compliance with HIPAA, the HITECH Act, or the California Confidentiality Laws.

IN WITNESS WHEREOF, each of the undersigned has caused this BAA to be duly executed in its name and on its behalf as of the Effective Date.

**BUSINESS ASSOCIATE**

**COVERED ENTITY**

By:   
Print Name ROBERT MACKLER  
Print Title EXECUTIVE VICE PRESIDENT  
Date: 8/4/17

By:   
Print Name: Gary R. Gray  
Print Title: Chief Executive Officer  
Date: 8/4/17