

**CO-APPLICANT AGREEMENT**

**Between**

**COUNTY OF MONTEREY**

**And**

**COMMUNITY HEALTH CENTER BOARD**

## **CO-APPLICANT AGREEMENT**

### **I. PURPOSE:**

This Co-Applicant Agreement (“Agreement”) is entered into by and between the County of Monterey (“County”), acting through the County Board of Supervisors, and the Community Health Center Board (“CHCB”) (hereinafter sometimes each individually referred to as “Party” and collectively referred to as “the Parties”), for the purpose of clarifying Health Resources and Services Administration (“HRSA”) statutory and regulatory requirements regarding the structure and functioning of the governing boards of the Federally Qualified Health Center (“FQHC”) Look-Alike Clinics (“Clinics”) of the Monterey County Health Department, Clinic Services Bureau. In this co-applicant arrangement, the County receives the FQHC Look-Alike designation and CHCB serves as the community health center board, with the County and the CHCB collectively considered as the “health center” or “public center”. The County and CHCB shall work collaboratively in the exercise of governance responsibilities in order to meet HRSA’s Health Center Program requirements.

### **II. INTENT:**

The intent, as described by HRSA, is to clarify and convey policies related to Health Center Program governance requirements that are relevant and flexible enough to assist the Clinics as they continue to develop and expand, while preserving the community-based and patient-directed intent of the Health Center Program.

### **III. CO-APPLICANT OBJECTIVE:**

The objective of the co-applicant arrangement is for the CHCB as the patient/community-based governing board to set health center policy. The co-applicant arrangement shall not allow the County to override the final approvals and required decision-making authorities of the CHCB. However, the co-applicant provision in section 330(k)(H)(ii) recognizes that public agencies may be constrained by law in the delegation of certain government functions, and thus the County is permitted to retain authority over general policies for the health center with an approved co-applicant board arrangement.

### **IV. COUNTY ROLES AND RESPONSIBILITIES:**

- 4.1 County shall be the recipient of the look-alike designation and the legal entity held accountable to HRSA for carrying out the approved Health Center Program scope of project.
- 4.2 The County shall retain authority for the establishment of the following types of general policy:
  - 2.2.1 Fiscal Policies
    - Internal control procedures to ensure sound financial management procedures.

- Purchasing policies and standards.

#### 2.2.2 Personnel Policies

- Employee selection, performance review/evaluations and dismissal procedures.
- Employee compensation, including wage and salary scales and benefit packages.
- Position descriptions and classification.
- Employee grievance procedures.
- Equal opportunity practices.

- 4.3 County departments such as County Counsel, Auditor-Controller, Resource Management Agency, Information Technology, Contracts/Purchasing, and Human Resources shall provide consultation and support to the health center as needed or as required by law.
- 4.4 No employee or immediate family member of an employee of the Monterey County clinics may serve as a member of the CHCB.

### **V. CHCB ROLES AND RESPONSIBILITIES**

- 5.1 CHCB must meet all the size, member selection, and composition requirements and its members must be identified and documented in the health center's application for look-alike designation.
- 5.2 CHCB must retain the ultimate decision-making duties and authorities beyond the general types of fiscal and personnel policies described above.
- 5.3 CHCB shall provide leadership and guidance in support of the health center's mission. The FQHC Clinic Director is responsible for the day-to-day direction and management of the health center. Together, the CHCB, FQHC Clinic Director, and other members of the management team comprise the leadership for the health center and shall work together to ensure a strong organization.
- 5.4 CHCB shall be legally responsible for ensuring the health center is financially stable and is operating in accordance with applicable federal, state, and local laws and regulations as well as its own established policies and procedures.
- 5.5 The CHCB must retain (i.e., may not delegate) the following unrestricted authorities, functions, and responsibilities:
- 5.5.1 Holding monthly meetings and maintaining records/minutes that verify and document the CHCB's functioning.
  - 5.5.2 Approving applications related to the health center project, including grants/designation applications and other HRSA requests regarding scope of project.
  - 5.5.3 Approving the annual health center budget and audit.

- 5.5.4 Long-term strategic planning, which would include regular updating of the health center's mission, goals, and plans, as appropriate.
- 5.5.5 Evaluating the health center's progress in meeting its annual long-term goals.
- 5.5.6 Selecting services beyond those required in law to be provided by the health center, as well as the location and mode of delivery of those services.
- 5.5.7 Determining the hours during which services are provided at health center sites that are appropriate and responsive to the community's needs.
- 5.5.8 Approving the selection/dismissal and evaluating the performance of the health center's FQHC Clinic Director.
- 5.5.9 Establishing general policies and procedures for the health center that are consistent with Health Center Program and applicable grants management requirements.

- 5.6 CHCB shall establish and approve bylaws. The CHCB bylaws, as described in Exhibit A, include the following: Membership; Meetings; Limitations of Authority; Board Duties; Formal Relations with Monterey County; Officers; and Committees.
- 5.7 The CHCB must be a part of the decision making process, specifically in relation to future collaboration, change of status and/or affiliation arrangements of the health center, to assure the CHCB remains in compliance with all governance requirements as per HRSA policies and guidelines.

## **VI. SHARED ROLES AND RESPONSIBILITIES**

- 6.1 Both parties understand that any Health Center Policies, Regulations and Laws promulgated by the U.S. Department of Health and Human Services- Health Resources and Services Administration shall supersede any and all provisions of this Agreement.
- 6.2 Both parties shall jointly monitor this Agreement. Meetings in compliance with the Ralph M. Brown Act shall be convened as needed to evaluate operations to ensure compliance, address issues, develop action plans, or discuss updates/changes from HRSA.

## **VII. TERM AND TERMINATION**

- 7.1 This Agreement shall commence upon the signing by both parties, with the County signing last, and shall remain in full force and effect until terminated.
- 7.2 Termination of the Agreement. This Agreement may be terminated at the earliest time specified below:
  - 7.2.1 Mutual Consent. This Agreement may be terminated at any time by mutual written consent of the Parties.

- 7.2.2 With Cause Termination. Either Party may terminate this Agreement by giving written notice to the other for the other's material failure to perform any of its obligations under this Agreement. The party asserting cause for termination of this Agreement (the "terminating party") shall, in its written notice, specify the breach or deficiency with sufficient information to allow the receiving party to identify the actions necessary to cure such breach. The party receiving the written notice of termination shall have one hundred twenty (120) days from the receipt of such notice to cure the breach or deficiency to the satisfaction of the terminating party (the "Cure Period"). If such party fails to cure the breach or deficiency to the reasonable satisfaction of the terminating party within the Cure Period or if the breach or deficiency is not curable, the terminating party shall have the right to provide written notice of failure to cure the breach or deficiency to the other party following expiration of the Cure Period. The Agreement shall terminate thirty (30) days following receipt of the written notice of failure to cure or at such later date as may be specified in such notice.
- 7.2.3 Without Cause Termination. During the term of this Agreement, either Party may terminate the Agreement for any reason by giving written notice of termination to the other Party of at least three hundred sixty five (365) days prior to the effective date of termination. Such notice shall set forth the effective date of termination.

## **VIII. DISPUTE RESOLUTION**

### **8.1 Dispute Resolution**

- 8.1.1 Informal Resolution. If any dispute arises between or among the Parties as to interpretation or application of any of the terms of this Agreement, the Parties shall attempt to resolve the dispute in accordance with this Agreement prior to arbitration or formal court action. As to any such dispute, the Parties shall first meet and confer in good faith to resolve the matter between themselves. Each Party shall make all reasonable efforts to provide to the other Party or Parties all information relevant to the dispute, to the end that all Parties will have appropriate and adequate information to resolve the dispute.
- 8.1.2 Mediation. Before pursuing any administrative or judicial remedies to resolve any dispute or claim under this Agreement, the Parties hereto shall attempt in good faith to resolve any such dispute or claim by mediation conducted by a mediator mutually selected by the Parties or in the absence of mutual agreement, a panel of three (3) mediators where each Party selects one mediator, and those two mediators select the third mediator. The third mediator shall serve as chairperson and shall adhere to the Commercial Mediation Rules of the American Arbitration Association.
- 8.1.3 Judicial Reference. If mediation is not required under the provisions of this Agreement or mediation has not resolved the dispute and any Party to this Agreement commences a lawsuit relating to a dispute arising under this Agreement all the issues in such action, whether of fact or law, shall be resolved by judicial reference pursuant to the provisions of California Code of Civil

Procedure Sections 638.1 and 641 through 645.1. The Parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. Neither Party shall be required to participate in the judicial reference proceeding unless it is satisfied that all necessary and appropriate parties will participate. The following shall apply to any such proceedings:

- 8.1.3.1 The proceeding shall be brought and held in Monterey County, unless the Parties agree to an alternative venue.
- 8.1.3.2 The Parties shall use the procedures adopted by JAMS/ENDISPUTE (“JAMS”) for judicial reference and selection of a referee (or any entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the Parties).
- 8.1.3.3 The referee must be a retired judge or a licensed attorney with substantial experience in the governance of county health clinics including FQHC-look alike clinics.
- 8.1.3.4 The Parties to the litigation shall agree upon a single referee who shall have the power to try any and all of the issues raised whether of fact or of law, which may be pertinent to the matters in dispute, and to issue a statement of decision thereon. Any dispute regarding the selection of the referee shall be resolved by JAMS or the entity providing the reference services, or, if no entity is involved, by the court in accordance with California Code of Civil Procedure Sections 638 and 640.
- 8.1.3.5 The referee shall be authorized to provide all remedies available in law or equity appropriate under the circumstances of the controversy and consistent with this Agreement, other than punitive damages.
- 8.1.3.6 The referee may require one or more pre-hearing conferences.
- 8.1.3.7 The Parties shall be entitled to discovery, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.
- 8.1.3.8 A stenographic record of the trial shall be made
- 8.1.3.9 The referee’s statement of decision shall contain findings of fact and conclusions of law to the extent applicable.
- 8.1.3.10 The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.
- 8.1.3.11 The Parties shall promptly and diligently cooperate with each other and the referee and perform such acts, as may be necessary for an expeditious

resolution of the dispute.

8.1.3.12 The costs of such proceeding, including the fees of a referee, shall be borne by the County of Monterey.

8.1.3.13 The statement of decision of the referee upon all of the issues considered by the referee shall be binding upon the Parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the referee shall be appealable as if rendered by the court. Except for actions for indemnification, the Parties acknowledge and accept that they are waiving their right to a jury trial to the extent such waiver is authorized by the Legislature in response to the decision of the California Supreme Court in *Grafton Partners v. Superior Court of Alameda County* (August 2005).

## **IX. MISCELLANEOUS PROVISIONS**

- 9.1 Amendment. This Agreement may be amended or modified only by an instrument in writing signed by both parties.
- 9.2 Severability. If any provision of this Agreement shall be invalid, illegal, or unenforceable or void by a court of competent jurisdiction in a final order or judgment that has not been appealed, or in a final determination by an appellate court, then each party shall be relieved of any obligation arising in that provision and, the remaining provisions hereof, if capable of performance, shall not in any way be affected or impaired thereby.
- 9.3 Headings. The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.
- 9.4 Counterparts. This Agreement or any other instrument to be entered into by the Parties in connection with the Agreement may be executed in two or more counterparts and, as so executed, shall constitute one and the same agreement binding on both Parties. In addition, for purposes of executing the Agreement, a document (or signature page thereto) signed and transmitted by facsimile machine shall be treated as an original document. The signature of any Party thereon, for purposes hereof, shall be considered as an original signature, and the document transmitted shall be considered to have the same binding effect as an original signature on an original document. At the request of either Party, any facsimile document shall be re-executed in original form by the Party who executed the facsimile document.

## **VIV. NOTICES:**

Notice to the parties in connection with this Co-Application Agreement shall be given personally, electronic mail or regular mail addressed as follows:

Ray Bullick  
Director of Health  
1270 Natividad Road  
Salinas, CA 93906

CHCB Chairperson  
c/o Clinic Services Administration  
1615 Bunker Hill Way, Ste. 100  
Salinas, CA 93906

**IN WITNESS WHEREOF**, County and CHCB have executed this Co-Application Agreement as of the day and year written below.

**COUNTY OF MONTEREY  
BOARD OF SUPERVISORS**

**COMMUNITY HEALTH CENTER BOARD**

By: \_\_\_\_\_  
Louis R. Calcagno, Chair

By: \_\_\_\_\_  
Joan Wheeler, Chairperson

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form and Legal Liability

By: \_\_\_\_\_  
Stacy L. Saetta, Deputy County Counsel

Date: 12/3/14

Approved as to Fiscal Provisions:

By: \_\_\_\_\_  
Gary Giboney, Auditor-Controller

Date: 12-3-14