

**AGREEMENT  
BETWEEN  
THE COUNTY OF MONTEREY, BY AND THROUGH THE COUNTY OF MONTEREY  
HEALTH DEPARTMENT, BEHAVIORAL HEALTH BUREAU  
AND  
CITY OF SEASIDE POLICE DEPARTMENT  
  
YOUTH DIVERSION PROGRAM**

This Agreement is made and entered by and between the County of Monterey, a political subdivision of the State of California by and through the Monterey County Health Department, Behavioral Health Bureau (hereinafter the “County”) and City of Seaside Police Department (hereinafter the “Collaborator”).

**RECITALS**

- A. The Youth Diversion Program is a partnership between the City of Seaside Police Department and the County to intervene in the early incidence of juvenile delinquency by providing counseling services to youth at risk of school failure and at risk of juvenile justice involvement. The County receives Prevention and Early Intervention (PEI) funds under the Mental Health Services Act (MHSA) to implement the Youth Diversion Program.
- B. The Youth Diversion Program will work in conjunction with community agencies to coordinate required referrals for community service hours, extracurricular activities and parent education. Parent education will be coordinated through other collaborating agencies. The Program will consist of obtaining referrals from Collaborator, assessment, brief individual/family/group therapy, community presentations as needed and referrals to community agencies.
- C. The partnership between Collaborator and County will establish a referral system network that will identify youth and their families who are in need of mental health early intervention services. Youth and their families will gain access to the Youth Diversion Program by referral from Collaborator. Fiscal Year 2009-10 was the first year of Program implementation. The goal is to have twenty-five (25) youth and their families served each fiscal year.

The goals of the Youth Diversion Program are to:

- Coordinate community resources;
- Promote healthy family environments; and
- Reduce recidivism in criminal activity by addressing emotional and psychological needs of youth through the provision of mental health early intervention services.

**1. Term**

Unless terminated earlier pursuant to the provisions set forth below, this Agreement shall remain in full force and effect from **July 1, 2013 through June 30, 2014.**

**2. Role of the Collaborator:**

- a. The Collaborator shall provide a dedicated and confidential room large enough to accommodate three to four people. The room shall be furnished with a desk, chairs, locking file cabinet, and telephone. The room shall be able to accommodate confidential individual therapy, family therapy, and consultation with parents. The room shall be made available at times designated in a schedule of hours to be established by the County and Collaborator. The schedule established pursuant to this Agreement shall include professional development time for the Psychiatric Social Worker (hereafter referred to as “Behavioral Health Therapist”).
- b. The Collaborator shall identify and refer at-risk youth ages seventeen (17) and under (at the time of the referral) in need of an assessment to the Behavioral Health Therapist while adhering to the confidentiality rules and regulations (*Refer to Section c. below*).
- c. The Collaborator shall enforce all confidentiality rules and regulations. Collaborator shall be responsible for informing and obtaining written consent from the youth’s parent or guardian for a **referral** to the Youth Diversion Program for a mental health assessment. Parenting education and family counseling will be offered to youth and families who are in need of services and who agree to participate in the Program.

**3. Role of the County:**

- a. At the time of the assessment appointment with the parent or guardian, the Behavioral Health Therapist will explain and obtain parental/guardianship signatures on all required consent forms for **services** provided through the Youth Division Program. The Behavioral Health Therapist shall be responsible for obtaining the necessary consent and release of information forms to be shared with other agencies or professionals as needed or agreed to by the parties.
- b. The Behavioral Health Therapist shall be available to Collaborator as needed for training and consultation to assist Collaborator to be responsive to the special needs of the referred youths.
- c. The County shall monitor the status of Program activities conducted at Collaborator’s Site.
- d. The County shall retain all data related to the Program at the County site.

- e. In the event of any change in scheduling, staff, or procedures, the County shall notify the Law Enforcement Chief within three (3) business days.
- f. The County shall provide administrative control and oversight of the delivery of mental health services and will employ and supervise one (1) Behavioral Health Therapist.
- g. The Behavioral Health Therapist shall report to the Collaborator's site two (2) days a week providing twenty (20) hours per week at site; unless ill, away from the office or in training.
- h. The Behavioral Health Therapist shall participate in briefings or other meetings at the assigned Collaborator's site, as appropriate.

**4. Exhibits**

The following attached exhibits are incorporated herein by reference and constitute a part of this Memorandum of Understanding:

- EXHIBIT A: CONFIDENTIALITY OF PATIENT INFORMATION
- EXHIBIT B: ASSURANCE OF COMPLIANCE WITH MONTEREY COUNTY CULTURAL COMPETENCY POLICY
- EXHIBIT C: BUSINESS ASSOCIATE AGREEMENT

**5. Personnel**

The County assumes full responsibility for the actions of staff while performing services pursuant to this Agreement and shall be solely responsible for the supervision, daily directions, and control of such matters.

**6. Maintenance and confidentiality of patient information**

- A. The County shall maintain clinical records for each recipient of service in compliance with all state and federal requirements. Such records shall include a description of all services provided by the County in sufficient detail to make possible an evaluation of services, and all data necessary to prepare reports to the State, including treatment plans, records of client interviews, and progress notes. The County shall retain clinical records for a minimum of seven (7) years and, in the case of minors, for at least one (1) year after the minor has reached the age of majority, but for a period of no less than seven years.
- B. Collaborator shall comply with the confidentiality requirements set forth in Exhibit A and incorporated by reference as if fully set forth herein.

**7. Modification**

This Agreement may be revised at any time with thirty (30) days written notice provided by any partner to the other partner, and upon mutual agreement of all the partners. Any revisions/amendments must be signed by all partners and attached to the original Agreement.

**8. Termination**

The County or Collaborator may cancel this Agreement at any time upon thirty (30) calendar days written notice. In addition, if the Collaborator defaults performance of the work under this Agreement, the County may immediately terminate this Agreement by written notice to Collaborator.

**9. Assignment**

This Agreement may not be assigned without the prior written consent of the County.

**10. General Provisions**

- A. All work described herein shall be performed in accordance with applicable Federal, State and local laws and regulations.
- B. There shall be no discrimination because of race, color, religion, sex, national origin, ancestry, age, marital status, sexual orientation, or disability.
- C. Collaborator shall act as independent Collaborator in the performance of the duties hereunder, and no officer, employee or agent of Collaborator employed under this Agreement shall be deemed to be an officer, employee or agent of the County in carrying out the duties of this Agreement. Nothing in this Agreement shall create any of the rights, powers, privileges or immunities of an employee of the County.

**11. Termination due to Cessation of the MHSA PEI Youth Diversion Program Funding**

County shall have the right to terminate this Agreement upon three (3) days written notice in the event that the receipt of funds by County is reduced, suspended or terminated for any reason.

**12. Mutual Indemnification**

- A. The Collaborator shall indemnify, defend, and hold harmless the County, its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Collaborator and/or its agents, employees or other collaborators, excepting only loss, injury or damage

caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Collaborator shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Collaborator is obligated to indemnify, defend and hold harmless the County under this Agreement.

- B. County shall indemnify, defend, and hold harmless Collaborator, its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by the County and/or its agents, employees or other collaborators, excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by the Collaborator. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the Collaborator. The County shall reimburse the Collaborator for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the County is obligated to indemnify, defend and hold harmless the Collaborator under this Agreement.

### 13. Insurance

- A. Insurance Coverage Requirements. Without limiting Collaborator's duty to indemnify, Collaborator shall maintain in effect throughout the term of this agreement a policy or policies of insurance with the following minimum limits of liability:
  - 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, Broadform 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.
  - 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.
  - 3. Workers Compensation Insurance, if Collaborator 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.
  - 4. Professional Liability Insurance, if required for the professional service being profession regulated by the California Business and Professional 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, the Collaborator 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.

- B. Other Insurance Requirements. All insurance required by this agreement shall be with a company acceptable to the 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 Collaborator completes its performance of services under this agreement.

Each liability policy shall provide that the 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 Collaborator 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.

Prior to the execution of this agreement by the County, Collaborator shall file certificates of insurance with the County's contract administrator and the County's Contracts/Purchasing Division, showing that the Collaborator has in effect the insurance required by this agreement. The Collaborator 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.

Collaborator 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 Collaborator and Collaborator shall have five calendar days to send the certificate, evidencing no lapse in coverage during the interim. Failure by Collaborator to maintain such insurance is a default of this agreement, which entitles County, at its sole discretion, to terminate this agreement immediately.

This Agreement constitutes the entire agreement between the parties and supersedes all previous communications, representations or Agreements regarding this subject, whether written, or oral, between the parties.

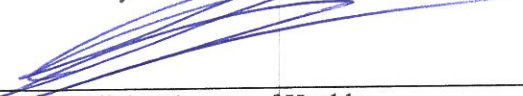
Consent to the terms of this Agreement is indicated by the authorized signatures affixed and dated in the following page.

IN WITNESS WHEREOF, COUNTY and COLLABORATOR have executed this Agreement as of the day and year written below.

**COUNTY OF MONTEREY**


By:   
Mike Derr, Contracts/Purchasing Officer

Date: 12 April 2013

By:   
Ray Bullick, Director of Health

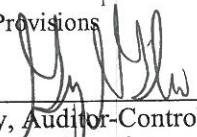
Date: \_\_\_\_\_

Approved as to Form

By:   
Stacy L. Saetta, Deputy County Counsel

Date: annebraun april 9, 2013

Approved as to Fiscal Provisions

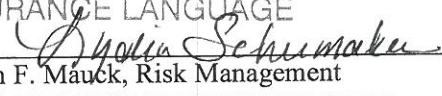
By:   
Gary Giboney, Auditor-Controller

Date: RISK MANAGEMENT 4-9-13

**COUNTY OF MONTEREY**

Approved as to Liability Provisions/INDEMNITY/

INSURANCE LANGUAGE

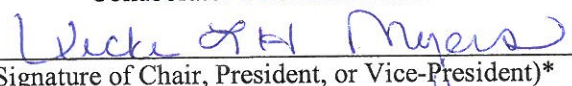
By:   
Steven F. Mauck, Risk Management

Date: Date: 4-16-13

Approved as to Content

By: \_\_\_\_\_  
Wayne Clark, Behavioral Health Director

**COLLABORATOR  
CITY OF SEASIDE POLICE DEPARTMENT**

Collaborator's Business Name\*  
By:   
(Signature of Chair, President, or Vice-President)\*

Vicki Myers, Chief of Police  
Name and Title

Date: March 20, 2013

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

Name and Title

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

\*INSTRUCTIONS: If COLLABORATOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If COLLABORATOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If COLLABORATOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.



**EXHIBIT A:  
CONFIDENTIALITY OF PATIENT INFORMATION**

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**Confidentiality of Patient Information and Records.** All patient information and records are confidential. COLLABORATOR shall maintain the confidentiality of all patient records, including billings and computerized records, in accordance with all state and federal law relating to confidentiality of patient records and patient information, including but not limited to: Welfare and Institutions Code sections 5328, *et seq.*, 14100.2, and 10850, *et seq.*; Title 45 Code of Federal Regulations section 205.50, and Title 42, CFR, section 431.300 *et seq.*

"Patient information" or "confidential information" includes any patient/recipient of services identifying information including, but not limited to: name, identifying numbers, symbol, fingerprint, photograph or voice print. In addition, "patient information" or "confidential information" includes all information COLLABORATOR has obtained about a patient/recipient of services whether or not a documentary record of such information exists.

**Use and Disclosure of Patient Information.** Confidential information gained by COLLABORATOR from access to records and from contact with patients/recipients of service and complainants shall be used by COLLABORATOR only in connection with its performance under this Agreement. COLLABORATOR shall not disclose patient records or information, including the identities of patients/recipients of service, without proper consent to such disclosure or a court order requiring disclosure. In addition, COLLABORATOR shall obtain COUNTY'S authorization to such disclosure prior to any release of confidential information. The COUNTY, through the Behavioral Health Director, shall have access to such confidential information.

**Penalty for Unauthorized Disclosure.** COLLABORATOR understands that disclosure of patient information in violation of law may subject the party releasing the information to a minimum of \$10,000 in civil damages, as set forth in Welfare and Institutions Code Section 5330.

**Duty to Warn.** COLLABORATOR understands that persons providing services under this Agreement may, in certain situations involving a patient or recipient of services who is a danger to himself or others, have a duty to warn third parties of such danger and should consult supervisory staff and/or legal counsel about such duty to warn as appropriate.

**Dissemination of these Confidentiality Provisions.** COLLABORATOR shall inform all its officers, employees, agents, and Collaborators providing services hereunder of these provisions.

*By my signature below, as the authorized representative of the COLLABORATOR named below, I certify acceptance and understanding for myself and the COLLABORATOR of the above confidentiality provisions.*

*Vicki H Myers*

Signature of Authorized Representative

*March 20, 2013*

Date

**CITY OF SEASIDE POLICE DEPARTMENT**

Business Name of Collaborator

Vicki Myers

Name of Authorized Representative (printed)

Chief of Police

Title of Authorized Representative

**EXHIBIT B**  
**ASSURANCE OF COMPLIANCE WITH**  
**MONTEREY COUNTY'S CULTURAL COMPETENCY POLICY**

In a culturally competent system, each provider organization shows respect for and responds to individual differences and special needs. Services are provided in the appropriate cultural context and without discrimination related to race, national origin, income level, religion, gender, sexual orientation, age, or physical disability, to name a few. Culturally competent caregivers are aware of the impact of their own culture on their relationships with consumers/families and know about and respect cultural and ethnic differences. They adapt their skills to meet each individual's/family's values and customs. Cultural competence is a developmental and dynamic process – one that occurs over time.

**Organizations in a Culturally Competent Service System Promote:**

**Quality Improvement**

- Continuous evaluation and quality improvement
- Supporting evidence-based, promising, community defined, and emerging practices that are congruent with ethnic/racial/linguistic group belief systems, cultural values and help-seeking behaviors.

**Collaboration**

- Collaborating with Behavioral Health and other community programs
- Resolving barriers to partnerships with other service providers

**Access**

- Providing new services to unserved and underserved children, youth, adults and/or older adults
- Reducing disparities in access to, and retention in, care as identified in the Mental Health Services Act Plan
- Ensuring representation of mental health services consumers, family members of a mental health services consumer, and/or representatives from unserved communities on their advisory/governance body or committee for development of service delivery and evaluation (with a minimum target of 40%).
- Developing recruitment, hiring, and retention plans that are reflective of the population focus, communities' ethnic, racial, and linguistic populations.

**Culturally Competent Services:**

- Are available, accessible and welcoming to all clients regardless of race, ethnicity, language, age, and sexual orientation.
- Provide a physical environment that is friendly, respectful and inclusive of all cultures.
- Provide information, resources and reading materials in multilingual formats.

- Promote and foment culturally accepted social interactions, respect and healthy behaviors within the family constellation and service delivery system.
- Provide options for services, which are consistent with the client’s beliefs, values, healing traditions, including individual preferences for alternative, spiritual and/or holistic approaches to health.
- Offer services in unserved and underserved communities.
- Have services available in the evening and on weekends to ensure maximum accessibility.
- Offer services in Spanish and other necessary languages (such as Tagalog, Vietnamese, Oaxacan, Trique and other languages spoken of Monterey County residents).

**Definitions for Cultural Competency**

*“Cultural Competence” is defined as a set of congruent practice skills, knowledge, behaviors, attitudes, and policies that come together in a system, agency, or among consumer providers, family members, and professionals that enables that system, agency, or those professionals and consumers, and family member providers to work effectively in cross-cultural situations.*

(Adapted from Cross, et al., 1989; cited in DMH Information Notice No.02-03).

*“Cultural Competence” is a means to eliminating cultural, racial and ethnic disparities. Cultural Competence enhances the ability of the whole system to incorporate the languages, cultures, beliefs and practices of its clients into the service. In this way all clients benefit from services that address their needs from the foundation of their own culture. Strategies for elimination of these disparities must be developed and implemented. Cultural Competence must be supported at all levels of the system.*

(CMHDA Framework for Eliminating Cultural, Linguistic, Racial and Ethnic Behavioral Health Disparities)

*[Cultural Competency] A set of congruent behaviors, attitudes, and policies that come together in a system, agency or amongst professionals and consumers and enables that system, agency or those professionals and consumers to work effectively in cross-cultural situations.*

(Cross, Bazron, Dennis & Issacs, 1989)

*The ability to work effectively with culturally diverse clients and communities.*

(Randall David, 1994)

CONTRACTOR hereby agrees that it will comply with the principles and guidelines set forth in Monterey County’s Health Department – Behavioral Health’s Cultural Competency Policy (as outlined above), and will:

1. Develop organizational capacity to provide services in a culturally and linguistically competent manner. This may include: hiring staff with the linguistic capabilities needed to meet the diverse language needs in Monterey County (for example, Spanish, Tagalog, Vietnamese, Oaxacan, Trique, American Sign Language (ASL), Middle Eastern languages); providing staff with training in cultural competency; making services accessible at locations and times that minimize access barriers, and ensuring that staff have an open, welcoming and positive attitude and feel comfortable working with diverse cultures.
2. Create a physical environment that ensures people of all cultures, ages and sexual orientation feel welcome and cared for. This may include: decorating waiting and treatment areas with pictures that reflect the diverse cultures of Monterey County; providing reading materials, resources and magazines in varied languages, at appropriate reading levels and suitable for different age groups, including children and youth; consideration of cultural differences and preferences when offering refreshments; ensuring that any pictures, symbols or materials on display are not unintentionally disrespectful to another culture.
3. Provide a services delivery environment that ensures people of all cultures, ages and sexual orientation feel welcome and cared for. This may include: respect for individual preferences for alternative, spiritual and/or holistic approaches to health; a reception staff that is competent in the different languages spoken by consumers/families; staff that is knowledgeable of cultural and ethnic differences and needs, and is able and willing to respond in an appropriate and respectful manner.
4. Support the county's goal to reduce disparities to care by increasing access and retention while decreasing barriers to services by unserved and underserved communities.
5. Include the voice of multi-cultural youth, client and family members, including: monolingual and bilingual clients and family members and representatives from unserved and underserved communities, in the advisory/governance body or committee for development of service delivery, planning and evaluation (County Goal: 40%).
6. Participate in outcome evaluation activities aimed at assessing individual organizations as well as countywide cultural competency in providing mental health services.
7. As requested, meet with the Monterey County Health Department - Behavioral Health Director or designee to monitor progress and outcomes of the project.
8. Ensure that 100% of staff, over a 3 year period, participate in cultural competency training including, but not limited to, those offered by Monterey County Behavioral Health.

**Dissemination of these Provisions. CONTRACTOR shall inform all its officers, employees, agents, and subcontractors providing services hereunder of these provisions.**

*By my signature below, as the authorized representative of the CONTRACTOR named below, I certify acceptance and understanding for myself and the CONTRACTOR of the above provisions.*

**CITY OF SEASIDE POLICE  
DEPARTMENT**

\_\_\_\_\_  
Contractor (Organization Name)

\_\_\_\_\_  
Vicki Myers

\_\_\_\_\_  
Name of Authorized Representative  
(printed)

\_\_\_\_\_  
Chief of Police, City of Seaside  
Title of Authorized Representative

Vicki Myers  
Signature of Authorized Representative

March 20, 2013  
Date

**EXHIBIT C**

**BUSINESS ASSOCIATE AGREEMENT**

This Agreement, hereinafter referred to as “**Agreement**”, is made effective **July 1, 2013** by and between the County of Monterey, a political subdivision of the State of California, on behalf of the Health Department, hereinafter referred to as “**Covered Entity**”, and **CITY OF SEASIDE POLICE DEPARTMENT** hereinafter referred to as “**Business Associate**”, (individually, a “Party” and collectively, the “Parties”).

**WITNESSETH:**

**WHEREAS**, Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, known as “the Administrative Simplification provisions,” direct the Department of Health and Human Services to develop standards to protect the security, confidentiality and integrity of health information; and

**WHEREAS**, pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services has issued regulations modifying 45 CFR Parts 160 and 164 (the “HIPAA Privacy Rule”); and

**WHEREAS**, the United States Congress has enacted the American Recovery and Reinvestment Act of 2009 (“ARRA”), which amends HIPAA and the HIPAA Privacy Rule; and

**WHEREAS**, the State of California has enacted statutes designed to safeguard patient privacy including, without limitation, the Confidentiality of Medical Information Act (“CMLA”), California Civil Code § 56 *et seq.*, Senate Bill 541, enacted September 30, 2008, and Assembly Bill 211, enacted September 30, 2008; and

**WHEREAS**, the parties acknowledge that California law may include provisions more stringent and more protective of the confidentiality of health information than the provisions of HIPAA; and

**WHEREAS**, the Parties wish to enter into or have entered into an arrangement whereby Business Associate will provide certain services to Covered Entity, hereby referred to as the “Service Agreement” and, pursuant to such arrangement, Business Associate may be considered a “business associate” of Covered Entity as defined in the HIPAA Privacy Rule and under California law; and

**WHEREAS**, Business Associate may have access to Protected Health Information (as defined below) in fulfilling its responsibilities under such arrangement;

**THEREFORE**, in consideration of the Parties’ continuing obligations under the Service Agreement, compliance with the HIPAA Privacy Rule, as amended by ARRA, compliance with California law, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement in order to address the requirements of the HIPAA Privacy Rule, as amended by ARRA, and California law and to protect the interests of both Parties.

**I. DEFINITIONS**

Except as otherwise defined herein, any and all capitalized terms in this Section shall have the definitions set forth in the HIPAA Privacy Rule. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Privacy Rule, as amended, the HIPAA Privacy Rule shall control. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of CMLA or other California law, California law shall control. Where provisions of this Agreement are different than those mandated in the HIPAA Privacy Rule and California law, but nonetheless are permitted by the HIPAA Privacy Rule and California law, the provisions of this Agreement shall control.

The term “Protected Health Information” means individually identifiable health information including, without limitation, all information, data, documentation, and materials, including without limitation, demographic, medical and financial information, that relates to the past, present, or future physical or mental health or 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; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Business Associate acknowledges and agrees that all Protected Health Information that is created or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by Covered Entity or its operating units to Business Associate or is created or received by Business Associate on Covered Entity’s behalf shall be subject to this Agreement.

**II. CONFIDENTIALITY REQUIREMENTS**

- (a) Business Associate agrees:
  - (i) to access, use, or disclose any Protected Health Information solely: (1) for meeting its obligations as set forth in any agreements between the Parties evidencing their business relationship or (2) as required by applicable law, rule or regulation, or by accrediting or credentialing organization to whom Covered Entity is required to disclose such information or as otherwise permitted under this Agreement, the Service Agreement (if consistent with this Agreement the HIPAA Privacy Rule, and California law), the HIPAA Privacy Rule, or California law and (3) as would be permitted by the HIPAA Privacy Rule and California law if such use or disclosure were made by Covered Entity;
  - (ii) at termination of this Agreement, the Service Agreement (or any similar documentation of the business relationship of the Parties), or upon request of Covered Entity, whichever occurs first, if feasible, Business Associate will return or destroy all Protected Health Information received from or created or received by Business Associate on behalf of Covered Entity that Business Associate still maintains in any form and retain no copies of such information, or if such return or destruction is not feasible, Business Associate will extend the protections of this Agreement to the information and limit further access, uses, and disclosures to those purposes that make the return or destruction of the information not feasible; and
  - (iii) to ensure that its agents, including a subcontractor, to whom it provides Protected Health Information received from or created by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply to Business Associate with respect to

such information. In addition, Business Associate agrees to take reasonable steps to ensure that its employees' actions or omissions do not cause Business Associate to breach the terms of this Agreement.

(b) Notwithstanding the prohibitions set forth in this Agreement, Business Associate may use and disclose Protected Health Information as follows:

(i) if necessary, for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that as to any such disclosure, the following requirements are met:

(A) the disclosure is required by law; or

(B) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and accessed, used, or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached, within five calendar days of discovering said breach of confidentiality;

(ii) for data aggregation services, if to be provided by Business Associate for the health care operations of Covered Entity pursuant to any agreements between the Parties evidencing their business relationship. For purposes of this Agreement, data aggregation services means the combining of Protected Health Information by Business Associate with the protected health information received by Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

(c) Business Associate will implement appropriate safeguards to prevent access to, use of, or disclosure of Protected Health Information other than as permitted in this Agreement. The Secretary of Health and Human Services shall have the right to audit Business Associate's records and practices related to use and disclosure of Protected Health Information to ensure Covered Entity's compliance with the terms of the HIPAA Privacy Rule. Business Associate shall report to Covered Entity any access, use, or disclosure of Protected Health Information which is not in compliance with the terms of this Agreement, the HIPAA Privacy Rule, as amended by ARRA, or under California law, of which it becomes aware within five calendar days of discovering such improper access, use, or disclosure. In addition, Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use, disclosure, or access of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

### **III. AVAILABILITY OF PHI**

Business Associate agrees to make available Protected Health Information to the extent and in the manner required by Section 164.524 of the HIPAA Privacy Rule. Business Associate agrees to make Protected Health Information available for amendment and incorporate any amendments to Protected Health Information in accordance with the requirements of Section 164.526 of the HIPAA Privacy Rule. In addition, Business Associate agrees to make Protected Health Information available for purposes of accounting of disclosures, as required by Section 164.528 of the HIPAA Privacy Rule.

### **IV. TERMINATION**

Notwithstanding anything in this Agreement to the contrary, Covered Entity shall have the right to terminate this Agreement and the Service Agreement immediately if Covered Entity determines that



Business Associate has violated any material term of this Agreement. If Covered Entity reasonably believes that Business Associate will violate a material term of this Agreement and, where practicable, Covered Entity gives written notice to Business Associate of such belief within a reasonable time after forming such belief, and Business Associate fails to provide adequate written assurances to Covered Entity that it will not breach the cited term of this Agreement within a reasonable period of time given the specific circumstances, but in any event, before the threatened breach is to occur, then Covered Entity shall have the right to terminate this Agreement and the Service Agreement immediately, and seek injunctive and/or declaratory relief in a court of law having jurisdiction over Business Associate.

## **V. MISCELLANEOUS**

Except as expressly stated herein, in the HIPAA Privacy Rule, or under California law, the parties to this Agreement do not intend to create any rights in any third parties. The obligations of Business Associate under this Section shall survive the expiration, termination, or cancellation of this Agreement, the Service Agreement and/or the business relationship of the parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein.

This Agreement may be amended or modified only in a writing signed by the Parties. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party. None of the provisions of this Agreement are intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship. This Agreement will be governed by the laws of the State of California. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

The parties agree that, in the event that any documentation of the parties, pursuant to which Business Associate provides services to Covered Entity contains provisions relating to the use or disclosure of Protected Health Information which are more restrictive than the provisions of this Agreement, the provisions of the more restrictive documentation will control. The provisions of this Agreement are intended to establish the minimum requirements regarding Business Associate's use and disclosure of Protected Health Information.

In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect. In addition, in the event a party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of the HIPAA Privacy Rule or California law, such party shall notify the other party in writing. For a period of up to thirty days, the parties shall attempt in good faith to address such concern and amend the terms of this Agreement, if necessary to bring it into compliance. If, at the conclusion of such thirty-day period, a party believes in good faith that the Agreement still fails to comply with the HIPAA Privacy Rule or California law, then either party has the right to terminate this Agreement and the Service Agreement upon written notice to the other party. Neither party may terminate this Agreement without simultaneously terminating the Service Agreement, unless the parties mutually agree in writing to modify this Agreement or immediately replace it with a new Business Associate Agreement that fully complies with the HIPAA Privacy Rule and California law.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.

**COVERED ENTITY:**

COUNTY OF MONTEREY

By: 

Ray Bullick

Title: Director of Health

Date: 5/21/13

**BUSINESS ASSOCIATE:**

CITY OF SEASIDE POLICE  
DEPARTMENT

By: 

Vicki Myers

Title: Chief of Police

Date: March 20, 2013