

AMENDMENT NO. 2 TO MENTAL HEALTH SERVICES AGREEMENT A-12683
BY AND BETWEEN
COUNTY OF MONTEREY AND DAVIS GUEST HOME, INC.

THIS AMENDMENT NO. 2 is made to AGREEMENT A-12683 for the provision of mental health services to adults with severe psychiatric disabilities in an adult residential facility by and between **DAVIS GUEST HOME, INC.**, hereinafter "CONTRACTOR," and the County of Monterey, a political subdivision of the State of California, hereinafter referred to as "COUNTY."

WHEREAS, the COUNTY and CONTRACTOR wish to amend the AGREEMENT to add an Enhanced Services Rate provision for Fiscal Year (FY) 2015-16 and FY 2016-17, increase the total amount of the AGREEMENT by an additional 9.08%, and revise the Program Description, Payment and Billing Provisions, Business Associate Agreement, Provider Invoice, and Monthly Service Level Report.

WHEREAS, the COUNTY and CONTRACTOR previously amended the Agreement on November 25, 2014 via Amendment No. 1.

NOW THEREFORE, the COUNTY and CONTRACTOR hereby agree to amend the AGREEMENT in the following manner:

1. EXHIBIT A-2: PROGRAM DESCRIPTION replaces EXHIBITS A-1 and A. All references in the Agreement to EXHIBIT A shall be construed to refer to EXHIBIT A-2.
2. EXHIBIT B-2: PAYMENT AND BILLING PROVISIONS replaces EXHIBITS B-1 and B. All references in the Agreement to EXHIBIT B shall be construed to refer to EXHIBIT B-2.
3. EXHIBIT F-2: BUSINESS ASSOCIATE AGREEMENT replaces EXHIBIT F. All references in the Agreement to EXHIBIT F shall be construed to refer to EXHIBIT F-2.
4. EXHIBIT G-2: PROVIDER INVOICE replaces EXHIBITS G-1 and G. All references in the Agreement to EXHIBIT G shall be construed to refer to EXHIBIT G-2.
5. EXHIBIT H-2: MONTHLY SERVICE LEVEL REPORT replaces EXHIBITS H-1 and H. All references in the Agreement to EXHIBIT H shall be construed to refer to EXHIBIT H-2.
6. Except as provided herein, all remaining terms, conditions and provisions of the AGREEMENT are unchanged and unaffected by this AMENDMENT and shall continue in full force and effect as set forth in the AGREEMENT.
7. This Amendment No. 2 is effective July 1, 2015.
8. A copy of this AMENDMENT No. 2 shall be attached to the original AGREEMENT executed by the COUNTY on June 3, 2014.

IN WITNESS WHEREOF, COUNTY and CONTRACTOR have executed this Amendment No. 2 to Agreement A-12683 as of the day and year written below.

COUNTY OF MONTEREY

By: _____
Contracts/Purchasing Officer

Date: _____

By: _____
Department Head (if applicable)

Date: _____

By: _____
Board of Supervisors (if applicable)

Date: _____

Approved as to Form ¹
By: AB
County Counsel

Date: 12-1-15

Approved as to Fiscal Provisions²
By: [Signature]
Auditor/Controller

Date: 12-2-15

Approved as to Liability Provisions³
By: _____
Risk Management

Date: _____

CONTRACTOR

DAVIS GUEST HOME, INC.

Contractor's Business Name*

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

Thomas E. Spurr V.P.
Name and Title

Date: 9/1/15

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

Lonny G. Davis Treas
Name and Title

Date: 9/1/15

*INSTRUCTIONS: If CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

¹Approval by County Counsel is required; if Agreement is \$100,000 and less approval by County Counsel is required only when modifications are made to any of the Agreement's standardized terms and conditions

²Approval by Auditor-Controller is required

³Approval by Risk Management is necessary only if changes are made in Sections XI or XII

Monterey County Mental Health Services Agreement
Davis Guest Home, Inc.
Amendment No. 2 to Agreement A-12683
July 1, 2014 – June 30, 2017

EXHIBIT A-2: PROGRAM DESCRIPTION

I. IDENTIFICATION OF PROVIDER

Davis Guest Home, Inc.
1878 East Hatch Road
Modesto, CA 95351

II. CERTIFICATION/TYPE OF FACILITY LICENSE

Davis Guest Home, Inc. is licensed as an Adult Residential Facility to provide community based living that creates a normalizing experience for adults with severe psychiatric disabilities. CONTRACTOR must show evidence of currently meeting all licensing requirements for Community Care facilities authorized by the State Department of Social Services to provide care and supervision to mentally disordered adults, as defined in Section 1502 of the Health and Safety Code. CONTRACTOR must retain ongoing licensure and be in full compliance with licensing regulations. Any complaints received by the CONTRACTOR pertaining to services performed pursuant to this Agreement must be referred in a timely manner to COUNTY (Monterey County Behavioral Health Bureau; MCBHB).

III. SERVICE REQUIREMENT

MCBHB has developed a residential care registry of Monterey County clients in the program. Davis Guest Home, Inc. will accommodate twenty-seven (27) difficult to place MCBHB System of Care clients who have serious mental illness.

IV. PROGRAM GOALS AND OBJECTIVES

In order to receive payment for the care of individuals who are enrolled clients of MCBHB, CONTRACTOR must be licensed by the State of California Community Care Licensing; submit a monthly Provider Invoice as Exhibit G-2 and Monthly Service Level Report as Exhibit H-2 of this Agreement; and provide services that will accomplish the following goals and objectives:

GOAL #1 For clients who require the management of behavioral problems, CONTRACTOR shall provide a level of supervision and intensive interaction that is consistent with the clients' needs as outlined in the client's individualized care plan.

Objectives:

- 1a. CONTRACTOR shall participate with the MCBHB Case Manager, the client and others in the development of an individualized needs assessment and care plan for each client within the first thirty (30) days of placement and retain a signed copy of the documented results in a client chart that is retained in the facility.

- 1b. CONTRACTOR shall work cooperatively with the staff and programs of the MCBHB to accomplish each client's individualized treatment plan and will document significant ongoing problems and/or progress.
- 1c. CONTRACTOR shall attempt to reasonably manage those crisis situations so as to avoid psychiatric hospitalization. The goal will be to reduce the client's need for acute psychiatric services.
- 1d. CONTRACTOR shall work cooperatively with and provide information to the MCBHB Case Manager to facilitate the evaluation of those clients deemed to require re-admission.
- 1e. CONTRACTOR shall provide enhanced nursing services and private room supplemental care to meet the medical needs of the client to remain at the board and care placement, and will record these actions in the client's folder.

GOAL #2 **CONTRACTOR shall assist the client to become more responsible to take medications as prescribed by the treating physician.**

Objectives:

- 2a. CONTRACTOR staff shall transport the client to, and/or will monitor, visits for psychiatric treatment at MCBHB.
- 2b. CONTRACTOR staff shall attend scheduled medication evaluation and planning appointments and will work with MCBHB staff when medications are changed.
- 2c. CONTRACTOR shall store and dispense medication in an approved and effective manner, following State guidelines.
- 2d. CONTRACTOR shall maintain an updated record of the daily dispensing of medication, recording changes in dosages and types and recording the effects of medication administration.

GOAL #3 **CONTRACTOR shall encourage the client to use treatment services and develop continuing support systems.**

Objectives:

- 3a. CONTRACTOR shall provide transportation for the client to attend services and programs as outlined in each client's individual care plan.
- 3b. CONTRACTOR shall educate and encourage the client to use the services of the MCBHB Adult Services Programs and other specialized services identified in each client's individualized care plan.

- 3c. CONTRACTOR staff shall cooperate with the MCBHB Case Manager and the staff of specialized services identified in each client's individualized care plan.
- 3d. CONTRACTOR shall document client attendance at community programs in each client's folder.

GOAL #4 **CONTRACTOR shall encourage the client's use of leisure time in a constructive manner.**

Objectives:

- 4a. CONTRACTOR shall encourage clients to develop regular daily activities or routines.
- 4b. CONTRACTOR shall hold a weekly group session and provide a weekly outing.
- 4c. CONTRACTOR shall post information on a monthly basis about programs, groups and activities that are provided by community agencies; facility activities to supplement those provided by community agencies; and all other activities and group sessions for the general and specialized needs and interest of clients.
- 4d. CONTRACTOR shall document attendance at monthly activities in each client's folder.

GOAL #5 **CONTRACTOR shall encourage the client to maintain an acceptable level of personal hygiene and grooming, as well as physical and dental health.**

Objectives:

- 5a. CONTRACTOR staff shall encourage, track, monitor, and reinforce the maintenance of an acceptable level of personal hygiene and grooming by the client, as well as teach self-care when needed.
- 5b. CONTRACTOR shall provide adequate supplies and materials to accomplish this goal.
- 5c. CONTRACTOR shall ensure that the client receives an annual medical evaluation and dental check-up and will record the date and results of both in the client's folder.
- 5d. CONTRACTOR shall monitor to ensure that the client follows up on any established plan to care for identified medical and dental problems and will record these actions in the client's folder.

GOAL #6 **CONTRACTOR shall provide services in a manner that reflects an understanding of the specialized needs of the seriously mentally ill.**

Objectives:

- 6a. CONTRACTOR shall ensure that all administrative staff and staff responsible for the supervision of clients receive a minimum of twenty (20) hours of specialized training approved by the MCBHB.
- 6b. CONTRACTOR shall document and maintain a record of each staff person's attendance at approved training programs.

GOAL #7 CONTRACTOR shall allow the staff of the MCBHB access to the facility, to the extent authorized by law.

Objective:

- 7a. CONTRACTOR shall work with the staff of the MCBHB to conduct client assessments, monitor care, provide consultation, conduct record reviews and evaluate the results of the services.

V. TREATMENT SERVICES

MCBHB will provide case management services to all clients. Clients who receive services will be assessed and monitored by the MCBHB Case Management staff, initially, and at least every ninety (90) days thereafter. A copy of the completed assessment will be reviewed, scored and approved by the Unit Supervisor. The Behavioral Health Service Manager must certify and approve the assessment for admittance and continuance of the client in the Board and Care Service, Board and Care Patch Supplemental, and Private Room, and Enhanced Services (High Acuity) Supplemental Rate programs. This procedure will be used to assist in the determination of the functional ability and programmatic needs of the clients, and the appropriate placement in programs providing board and care, patch supplemental, private room and enhanced service supplemental services. If there are more clients eligible for the program than funding permits, eligible clients will be placed on a waiting list as vacancies permit.

MCBHB agrees that in the event clients placed at the facility are no longer conserved by Monterey County, CONTRACTOR will be notified as to the change of Conservator status.

MCBHB agrees to continue case management responsibility for any client whose Monterey County conservatorship terminates while at CONTRACTOR's facility.

MCBHB further agrees to work towards avoiding a non-conserved client leaving CONTRACTOR's facility and becoming a Stanislaus County permanent resident. All efforts will be made to relocate such a client to Monterey County for placement.

VI. BED HOLDS

CONTRACTOR will hold a resident's bed for a total of ten days for in-patient hospitalization (Medical and/or Psychiatric) per occurrence and seven days per month for overnight passes. Upon written requests, exceptions can be accepted with COUNTY approval. Hospital days and passes require payment to CONTRACTOR within time frames indicated above; extensions may be secured with written notice to CONTRACTOR.

VII. NOTICE OF TERMINATION

COUNTY will give CONTRACTOR a written two-week notice upon terminating a resident's placement at CONTRACTOR'S facility. COUNTY will be responsible for payment of the term indicated in the termination notice in the event residents are moved from CONTRACTORS facility without provision of a two-week written notice, or before the date indicated on the notice.

VIII. CONTRACT MONITOR

Robert L. Jackson
Behavioral Health Services Manager
Monterey County Health Department
Behavioral Health Bureau
1270 Natividad Road
Salinas, CA 93906
Telephone: (831) 755-6351
Email: JacksonRL@co.monterey.ca.us

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EXHIBIT B-2: PAYMENT AND BILLING PROVISIONS

I. PAYMENT TYPES

Negotiated Rate

II. PAYMENT AUTHORIZATION FOR SERVICES

The COUNTY'S commitment to authorize reimbursement to the CONTRACTOR for services as set forth in this Exhibit B-2 is contingent upon COUNTY authorized admission and service, and CONTRACTOR'S commitment to provide care and services in accordance with the terms of this Agreement.

III. PAYMENT RATE

A. Board and Care Service Rate:

Board and Care shall be paid from the clients Supplemental Security Income (SSI) or Supplemental Security Income/Social Security Administration (SSI/SSA) benefits. If the client does not yet receive SSI or SSI/SSA benefits, or those benefits have been diminished due to back payments owed to other entities, or are not at a level to cover the standard residential care rates, COUNTY will provide payment to cover the delinquent and/or amount owed. The clients SSI or SSI/SSA monthly residential board and care rate is currently \$1,014.00 per month for a client who receives one check and \$1,034.00 for a client who receives two checks (this monthly amount is subject to annual adjustments by the Federal Government and State of California). These annual adjustments shall be effective without the need for any amendment to this Agreement.

Board and Care Service				
Fiscal Year	Board & Care Monthly Service	Number of Months/Year	Estimated # of Clients Per Day	Maximum Annual Amounts
July 1, 2014 - June 30, 2015	\$1003 - \$1023	12	2	\$24,552
July 1, 2015 - June 30, 2016	\$1014 - \$1034	12	2	\$24,816
July 1, 2016 - June 30, 2017	\$1014 - \$1034	12	2	\$24,816
TOTAL MAXIMUM COUNTY OBLIGATION:				\$74,184

B. Board and Care Patch Rates:

The COUNTY agrees to pay an augmentation to the SSI/SSA rate based on the service descriptions and rates outlined in the following tables, and shall be subject to the applicable cost report provisions of this Agreement.

Board and Care Patch / Supplemental Rate Program				
Fiscal Year	Board & Care Daily Patch	Number of Days/Year	Estimated # of Clients Per Day	Maximum Annual Amounts
July 1, 2014 - June 30, 2015	\$85	365	27	\$837,675
July 1, 2015 - June 30, 2016	\$95	365	27	\$936,225
July 1, 2016 - June 30, 2017	\$95	365	27	\$936,225
TOTAL MAXIMUM COUNTY OBLIGATION:				\$2,710,125

Board and Care Patch / Private Room Supplemental Rate			
Fiscal Year	Board & Care Private Room Daily Patch	Number of Days/Year	Maximum Annual Amounts
Aug. 18, 2014 - June 30, 2015	\$113	317	\$35,821
July 1, 2015 - June 30, 2016	\$123	365	\$44,895
July 1, 2016 - June 30, 2017	\$123	365	\$44,895
TOTAL MAXIMUM COUNTY OBLIGATION:			\$125,611

Board and Care Patch / Enhanced Services (High Acuity) Supplemental Rate			
Fiscal Year	Board & Care High Acuity Daily Patch	Number of Days/Year	Maximum Annual Amounts
July 1, 2015 - June 30, 2016	\$113	180	\$20,340
July 1, 2016 - June 30, 2017	\$113	180	\$20,340
TOTAL MAXIMUM COUNTY OBLIGATION:			\$40,680

IV. PAYMENT CONDITIONS

- A. In order to receive any payment under this Agreement, CONTRACTOR shall submit reports and claims in such form as General Ledger, Payroll Report and other accounting documents as needed, and as may be required by the County of Monterey Department of Health, Behavioral Health Bureau. Specifically, CONTRACTOR shall submit its claims on the Provider Invoice form provided as Exhibit G-2 and Monthly Service Level Report provided as Exhibit H-2 to this Agreement, along with backup documentation, on a monthly basis, to COUNTY so as to reach the Behavioral Health Bureau no later than the thirtieth (30th) day of the month following the month of service. See Section III, above, for payment amount information to be reimbursed each fiscal year period of this Agreement. The amount requested for reimbursement shall be in accordance with the approved budget and shall not exceed the actual net costs incurred for services provided under this Agreement.

CONTRACTOR shall submit via email a monthly claim using the Provider Invoice form provided as Exhibit G-2 and Monthly Service Level Report provided as Exhibit H-2 in

Excel format with electronic signature along with supporting documentations, as may be required by the COUNTY for services rendered to:

MCHDBHFinance@co.monterey.ca.us

- B. CONTRACTOR shall submit all claims for reimbursement under this Agreement within thirty (30) calendar days after the termination or end date of this Agreement. All claims not submitted after thirty (30) calendar days following the termination or end date of this Agreement shall not be subject to reimbursement by the COUNTY. Any claim(s) submitted for services that preceded thirty (30) calendar days prior to the termination or end date of this Agreement may be disallowed, except to the extent that such failure was through no fault of CONTRACTOR. Any "obligations incurred" included in claims for reimbursements and paid by the COUNTY which remain unpaid by the CONTRACTOR after thirty (30) calendar days following the termination or end date of this Agreement shall be disallowed, except to the extent that such failure was through no fault of CONTRACTOR under audit by the COUNTY.
- C. If CONTRACTOR fails to submit claim(s) for services provided under the terms of this Agreement as described above, the COUNTY may, at its sole discretion, deny payment for that month of service and disallow the claim.
- D. COUNTY shall review and certify CONTRACTOR'S claim either in the requested amount or in such other amount as COUNTY approves in conformity with this Agreement, and shall then submit such certified claim to the COUNTY Auditor. The County Auditor-Controller shall pay the amount certified within thirty (30) calendar days of receiving the certified invoice.
- E. To the extent that the COUNTY determines CONTRACTOR has improperly claimed services, COUNTY may disallow payment of said services and require CONTRACTOR to resubmit said claim of services for payment, or COUNTY may make corrective accounting transactions.
- F. If COUNTY certifies payment at a lesser amount than the amount requested COUNTY shall immediately notify the CONTRACTOR in writing of such certification and shall specify the reason for it. If the CONTRACTOR desires to contest the certification, the CONTRACTOR must submit a written notice of protest to the COUNTY within twenty (20) calendar days after the CONTRACTOR'S receipt of the COUNTY notice. The parties shall thereafter promptly meet to review the dispute and resolve it on a mutually acceptable basis. No court action may be taken on such a dispute until the parties have met and attempted to resolve the dispute in person.
- G. In special situations CONTRACTOR may require an adjustment to the daily rate based upon acuity, medical complexity, situations requiring a private room, and behavior problems requiring staff interventions beyond typical staff to client ratios. COUNTY may choose to pay the adjusted daily rate or move resident to a higher level of care.

V. MAXIMUM OBLIGATION OF COUNTY

A. Subject to the limitations set forth herein, COUNTY shall pay to CONTRACTOR during the term of this Agreement a maximum amount of **\$2,950,600** for services rendered under this Agreement.

B. Maximum Annual Liability:

FISCAL YEAR MAXIMUM LIABILITY	AMOUNT
July 1, 2014 - June 30, 2015	\$898,048
July 1, 2015 - June 30, 2016	\$1,026,276
July 1, 2016 - June 30, 2017	\$1,026,276
TOTAL MAXIMUM LIABILITY	\$2,950,600

D. If, as of the date of signing this Agreement, CONTRACTOR has already received payment from COUNTY for services rendered under this Agreement, such amount shall be deemed to have been paid out under this Agreement and shall be counted towards COUNTY'S maximum liability under this Agreement.

E. If for any reason this Agreement is canceled, COUNTY'S maximum liability shall be the total utilization to the date of cancellation not to exceed the maximum amount listed above.

F. As an exception to Section D. above with respect to the Survival of Obligations after Termination, COUNTY, any payer, and CONTRACTOR shall continue to remain obligated under this Agreement with regard to payment for services required to be rendered after termination.

VI. BILLING AND PAYMENT LIMITATIONS

Adjustment of Claims Based on Other Data and Information: The COUNTY shall have the right to adjust claims based upon data and information that may include, but are not limited to, COUNTY'S claims processing information system reports, remittance advices, and billing system data.

VII. LIMITATION OF PAYMENTS BASED ON FUNDING AND BUDGETARY RESTRICTIONS

A. This Agreement shall be subject to any restrictions, limitations, or conditions imposed by State which may in any way affect the provisions or funding of this Agreement, including, but not limited to, those contained in State's Budget Act.

B. This Agreement shall also be subject to any additional restrictions, limitations, or conditions imposed by the Federal government which may in any way affect the provisions or funding of this Agreement.

- C. In the event that the COUNTY'S Board of Supervisors adopts, in any fiscal year, a COUNTY Budget which provides for reductions in COUNTY Agreements, the COUNTY reserves the right to unilaterally reduce its payment obligation under this Agreement to implement such Board reductions for that fiscal year and any subsequent fiscal year during the term of this Agreement, correspondingly. The COUNTY'S notice to the CONTRACTOR regarding said reduction in payment obligation shall be provided within thirty (30) calendar days of the Board's approval of such action.
- D. Notwithstanding any other provision of this Agreement, COUNTY shall not be obligated for CONTRACTOR'S performance hereunder or by any provision of this Agreement during any of COUNTY'S current or future fiscal year(s) unless and until COUNTY'S Board of Supervisors appropriates funds for this Agreement in COUNTY'S Budget for each such fiscal year. In the event funds are not appropriated for this Agreement, then this Agreement shall terminate as of June 30 of the last fiscal year for which funds were appropriated. COUNTY shall notify CONTRACTOR of any such non-appropriation of funds at the earliest possible date and the services to be provided by the CONTRACTOR under this Agreement shall also be reduced or terminated.

VIII. AUTHORITY TO ACT FOR THE COUNTY

The Director of the Health Department of the County of Monterey may designate one or more persons within the County of Monterey for the purposes of acting on his/her behalf to implement the provisions of this Agreement. Therefore, the term "Director" in all cases shall mean "Director or his/her designee."

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EXHIBIT F-2: BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”), effective **July 1, 2015** (“Effective Date”), is entered into by and among the County of Monterey, a political subdivision of the State of California, on behalf of the Health Department (“Covered Entity”) and **Davis Guest Home, Inc.** (“Business Associate”) (each a “Party” and collectively the “Parties”).

Business Associate provides certain services for Covered Entity (“Services”) that involve the use and disclosure of Protected Health Information that is created or received by Business Associate from or on behalf of Covered Entity (“PHI”). The Parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E as amended from time to time (the “Privacy Rule”), and with the Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C as amended from time to time (the “Security Rule”), under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health Act and its implementing regulations (“HITECH”). Business Associate acknowledges that, pursuant to HITECH, 45 C.F.R. §§ 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards), 164.316 (policies and procedures and documentation requirements) and 164.502 *et seq.* apply to Business Associate in the same manner that such sections apply to Covered Entity. The additional requirements of Title XIII of HITECH contained in Public Law 111-005 that relate to privacy and security and that are made applicable with respect to covered entities shall also be applicable to Business Associate. The Parties are also committed to complying with the California Confidentiality of Medical Information Act, Ca. Civil Code §§ 56 *et seq.* (“CMIA”), where applicable. Business Associate acknowledges that the CMIA prohibits Business Associate from further disclosing the PHI it receives from Covered Entity where such disclosure would be violative of the CMIA. 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”). This Agreement sets forth the terms and conditions pursuant to which PHI, and, when applicable, Electronic Protected Health Information (“EPHI”), shall be handled. The Parties further acknowledge that state statutes or other laws or precedents may impose data breach notification or information security obligations, and it is their further intention that each shall comply with such laws as well as HITECH and HIPAA in the collection, handling, storage, and disclosure of personal data of patients or other personal identifying information exchanged or stored in connection with their relationship.

The Parties agree as follows:

1. DEFINITIONS

All capitalized terms used in this Agreement but not otherwise defined shall have the meaning set forth in the Privacy Rule, Security Rule and HITECH.

2. PERMITTED USES AND DISCLOSURES OF PHI

2.1 Unless otherwise limited herein, Business Associate may:

(a) use or disclose PHI to perform functions, activities or Services for, or on behalf of, Covered Entity as requested by Covered Entity from time to time, provided that such use or disclosure would not violate the Privacy or Security Rules or the standards for Business Associate Agreements set forth in 45 C.F.R. § 164.504(e), exceed the minimum necessary to accomplish the intended purpose of such use or disclosure, violate the additional requirements of HITECH contained in Public Law 111-005 that relate to privacy and security, or violate the CMIA;

(b) disclose PHI for the purposes authorized by this Agreement only: (i) to its employees, subcontractors and agents; (ii) as directed by this Agreement; or (iii) as otherwise permitted by the terms of this Agreement;

(c) use PHI in its possession to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B);

(d) use PHI in its possession for 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 the PHI in its possession to third parties for the proper management and administration of Business Associate to the extent and in the manner 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 persons to whom the information is disclosed that it will remain confidential and 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 the Business Associate of any instances of which it is aware in which 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);

(g) de-identify any PHI obtained by Business Associate under this Agreement for further use or disclosure only to the extent such de-identification is pursuant to this Agreement, and use such de-identified data in accordance with 45 C.F.R. § 164.502(d)(1).

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) use and/or disclose the PHI only as permitted or required by this Agreement or as otherwise Required by Law;

(b) report to the privacy officer of Covered Entity, in writing, (i) any use and/or disclosure of the PHI that is not permitted or required by this Agreement of which Business Associate becomes aware, and (ii) any Breach of unsecured PHI as specified by HITECH, within two (2) days of Business Associate's determination of the occurrence of such unauthorized use and/or disclosure. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure. The notification of any Breach of unsecured PHI shall include, to the extent possible, the identification of each individual whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used or disclosed during the Breach.

(c) use commercially reasonable safeguards to maintain the security of the PHI and to prevent use and/or disclosure of such PHI other than as provided herein;

(d) obtain and maintain an agreement with all of its subcontractors and agents that receive, use, or have access to, PHI pursuant to which agreement such subcontractors and agents agree to

adhere to the same restrictions and conditions on the use and/or disclosure of PHI that apply to Business Associate pursuant to this Agreement;

(e) make available all internal practices, records, books, agreements, policies and procedures and PHI relating to the use and/or disclosure of PHI to the Secretary for purposes of determining Covered Entity or Business Associate's compliance with the Privacy Rule;

(f) document disclosures of PHI and information related to such disclosure and, within ten (10) 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, as well as provide an accounting of disclosures, as required by HITECH, directly to an individual provided that the individual has made a request directly to Business Associate for such an accounting. 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 two (2) 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 twenty-one (21) days of the termination of this Agreement, the PHI in its possession and retain no copies, including backup copies;

(h) disclose to its subcontractors, agents 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 in a Designated Record Set to Covered Entity or, as directed by Covered Entity, the individual to whom such PHI relates or his or her authorized representative to meet a request by such individual under 45 C.F.R. § 164.524; 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;

(j) 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) 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;

(l) maintain a formal security program materially in accordance with all applicable data security and privacy 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

The 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.

3.2 Additional Responsibilities of Business Associate with Respect to EPHI. In the event that Business Associate has access to EPHI, in addition to the other requirements set forth in this Agreement relating to PHI, Business Associate shall:

(a) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity as required by 45 C.F.R. Part 164, Subpart C;

(b) ensure that any subcontractor or agent to whom Business Associate provides any EPHI agrees in writing to implement reasonable and appropriate safeguards to protect such EPHI; and

(c) report to the privacy officer of Covered Entity, in writing, any Security Incident involving EPHI of which Business Associate becomes aware within two (2) days of Business Associate's discovery of such Security Incident. For purposes of this Section, a Security Incident shall mean (consistent with the definition set forth at 45 C.F.R. § 164.304), the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure.

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 limitations in the Notice pursuant to 45 C.F.R. § 164.520, to the extent that such limitations may affect Business Associate's use or disclosure of PHI;

(c) 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;

(d) 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

(e) notify Business Associate, in writing and in a timely manner, 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. TERMS AND TERMINATION

4.1 Term. This Agreement shall become effective on the Effective Date and shall continue in effect unless terminated as provided in this Article 4. Certain provisions and requirements of this Agreement shall survive its expiration or other termination as set forth in Section 5.1 herein.

4.2 Termination. Either Covered Entity or Business Associate may terminate this Agreement and any related agreements if the terminating Party determines in good faith that the terminated Party has breached a material term of this Agreement; provided, however, that no Party may terminate this Agreement if the breaching Party cures such breach to the reasonable satisfaction of the terminating Party within thirty (30) days after the breaching Party's receipt of written notice of such breach.

4.3 Automatic Termination. This Agreement 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 Agreement for any reason, Business Associate shall return all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(I) if, and to the extent that, it is feasible to do so. Prior to doing so, Business Associate shall recover any PHI in the possession of its subcontractors or agents. 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 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 or agents. Business Associate shall extend any and all protections, limitations and restrictions contained in this Agreement to any PHI retained after the termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed.

5. MISCELLANEOUS

5.1 Survival. The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 4.4, 5.1, 5.6, and 5.7, and Section 2.1 (solely with respect to PHI that Business Associate retains in accordance with Section 4.4 because it is not feasible to return or destroy such PHI), shall survive termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed. In addition, Section 3.1(i) shall survive termination of this Agreement, 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 Agreement 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 the HIPAA, HITECH or Red Flag Rules is materially amended in a manner that changes the obligations of Business Associates or Covered Entities, the Parties agree to negotiate in good faith appropriate amendment(s) to this Agreement to give effect to the revised obligations. Further, no provision of this Agreement 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 Agreement 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:

Lonny G. Davis
President
Davis Guest Home, Inc.
1878 East Hatch Rd.
Modesto, CA 95351
Tele: (209) 402-7900

If to Covered Entity, to:

Ray Bullick
Director of Health
1270 Natividad Rd.
Salinas, CA 93906
Tele: (831) 755-4526
FAX: (831) 755-4980

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 Agreement 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 Choice of Law; Interpretation. This Agreement shall be governed by the laws of the State of California; as provided, however, that any ambiguities in this Agreement shall be resolved in a manner that allows Business Associate to comply with the Privacy Rule, and, if applicable, the Security Rule and the CMIA.

5.7 Indemnification. Contractor shall indemnify, defend, and hold harmless the County of Monterey (hereinafter County), its officers, agents, and employees from any claim, liability, loss, injury, cost, expense, penalty or damage, including the County's reasonable cost of providing notification of and of mitigating any acquisition, access, use or disclosure of PHI in a manner not permitted by this BAA, arising out of, or in connection with, performance of this BAA by Contractor and/or its agents, members, employees, or sub-contractors, 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 this BAA to provide the broadest possible indemnification for the County. Contractor shall reimburse the County for all costs, attorneys' fees, expenses, and liabilities incurred by the County with respect to any investigation, enforcement proceeding or litigation in which Contractor is obligated to indemnify, defend, and hold harmless the County under this BAA. This provision is in addition to and independent of any indemnification provision in any related or other agreement between the Covered Entity and the Business Associate.

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

**COUNTY OF MONTEREY, ON BEHALF
OF THE HEALTH DEPARTMENT**

DAVIS GUEST HOME, INC.

By: _____

By:  _____

Print Name: _____

Print Name: Lonny G Davis

Print Title: _____

Print Title: President

Date: _____

Date: 9/8/15

BAA-Health Department Revised 12/12/2014

