

**FIRST AMENDMENT TO AGREEMENT BETWEEN THE COUNTY OF TULARE  
AND THE COMMUNITY HEALTH CENTER BOARD**

This Co-Applicant Agreement ("Agreement") entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, shall memorialize and reiterate the nature of the relationship between County of Tulare ("COUNTY"), acting through the County Board of Supervisors, and the Tulare County Community Health Center Board, ("CHCB"), who shall be considered as Co-Applicants ("Co-Applicants") as applied to Health Resources and Services Administration (HRSA) Regulations and Authorities pertaining to the operation of a Federally Qualified Health Center ("FQHC") lookalike in the County of Tulare, California; and

WHEREAS, the COUNTY, through its Health and Human Services Agency (HHS), provides primary care services to medically underserved communities and vulnerable populations in the County; and

WHEREAS, the United States Department of Health and Human Services Health Resources and Services Administration (HRSA) has established a program for FQHC lookalikes; and

WHEREAS, the COUNTY believes it can better serve these populations through COUNTY participation in the FQHC lookalike program; and

WHEREAS, the COUNTY's participation in the FQHC lookalike program requires the COUNTY to comply with the applicable law and the formal policies of the United States Department of Health and Human Services HRSA; and

WHEREAS, the establishment of a community-based board that assumes specified authority and oversight responsibility over FQHC lookalike is a requirement for the COUNTY's participation in the FQHC lookalike program; and

WHEREAS, the oversight of the FQHCs lookalikes shall be undertaken in the manner specified in law, pursuant to the regulations promulgated by HRSA, and recognizing the Co-Applicant status of the COUNTY, a unit of local government;

WHEREAS, consistent with applicable Federal laws, regulations, and policies regarding the establishment of a FQHC lookalikes, the Parties have agreed to enter into a co-applicant arrangement for the purpose of maintaining the COUNTY's Health Center FQHC lookalike status; and

WHEREAS, under such arrangement the COUNTY through its HHS, the public entity responsible for the operation of the Health Center, shall retain authority over certain general policy-setting functions and management of the Health Center, including specified governance functions, and, to the extent permitted by the COUNTY's enabling legislation, the COUNTY and the CHCB shall share the authority to perform additional governance functions as specified in this Agreement; and

WHEREAS, the Parties wish to set forth in this Agreement, the authorities to be exercised by each Party and the shared responsibilities of the Parties with respect to the Health Center, in accordance with the Governance Requirements and other applicable Federal laws, regulations, policies and County Code;

WHEREAS, this amendment replaces and supersedes Agreement No. 28902;  
and

NOW, THEREFORE, the COUNTY and the CHCB agree as follows:

**A. Role of the CHCB**

1. Composition. As described in the CHCB Bylaws, CHCB provides community-based governance and oversight of the COUNTY's Health Center. The structure and composition of the CHCB shall be as follows:
2. Membership categories.
  - a. Board Members - Consumers:
    - i. A majority of members of the board shall be individuals who are served by the Health Center. This means an individual who is a currently registered patient who

has accessed Health Center services in the past 24 months and received at least one treatment.

- ii. As a group, patient members of the board reasonably represent individuals who are served by the Health Center in terms of demographic factors such as race, ethnicity gender, socioeconomic status, and age.
  - iii. A legal guardian of a patient who is a dependent child or adult, a legal sponsor of an immigrant, or a caretaker relative may also be considered a patient for purposes of board representation.
- b. Board Members - Community Members:
- i. Members of the board have a broad range of skills, expertise and perspectives representing the community served by the Health Center.
  - ii. Members shall be individuals from differing segments of the County with expertise in community affairs, finance, legal affairs, business or other commercial concerns.
  - iii. Members may be an advocate who has personally experienced being a member of, or have expertise in or work closely with, the special population such as individuals experiencing homelessness.
- c. The appointed Project Director or designee represents the County and is a non-voting ex-officio member of the CHCB.
3. Establishment of CHCB.
- a. The initial voting members of the CHCB shall be nominated and appointed by the Board of Supervisors.
  - b. Nominations for voting membership on the CHCB may be submitted by anyone so long as the nominee meets the membership requirements of the Co-Applicant Agreement and the Bylaws. Once approved by the CHCB, staff will provide the nominations to the Clerk of the Board or designee.
  - c. The Clerk of the Board, or designee, reviews materials and submits for ratification by the Board of Supervisors.

#### **B. Governance Authorities and Responsibilities**

1. The CHCB shall have authority and responsibility for the Health Center activities as set forth below.
  - a. Collaborative Exercise of Authority. While the COUNTY, as the public agency, is accountable for carrying out the approved Health Center Program scope of project, the term "co-applicant" is used to reflect that the public agency would not qualify on its own as meeting all the Health Center requirements. Both the COUNTY and the co-applicant CHCB collectively constitute the "Health Center." The CHCB however, retains the decision-making on duties and authorities beyond the general types of fiscal and personnel policies described above. The co-applicant arrangement allows for the CHCB and the COUNTY to work collaboratively in the exercise of governance responsibilities.
  - b. Adoption of Policies. Subject to the COUNTY's fiscal and personnel policies, including collective bargaining requirements, the CHCB shall adopt the Health Center's policies concerning: (i) hours of operation; (ii) health services provided; (iii) quality-of-care audit procedures; and (iv) in the event of relocation or redevelopment of the physical plant, the locations of the Health Center's sites.
  - c. Project Director. Subject to the COUNTY's personnel policies, the CHCB shall have final authority to select, remove, and evaluate the Health Center's Project Director, as described in this Agreement.

- d. Approval of the Annual Budgets. Subject to the COUNTY's fiscal policies, the CHCB shall have authority to adopt Health Center's annual operating and capital budget, consistent with this Agreement.
  - e. Evaluation of the Health Center's Activities and Achievements. At least once every three years, the CHCB, in conjunction with the COUNTY's HHSAs, shall conduct an evaluation of the Health Center's activities and achievements and recommend, as necessary, and revision of the Health Center's strategic plan.
  - f. Approval of Applications. The CHCB shall approve annual reapplications/designations, changes to the scope, policies as required by HRSA, in accordance with all applicable requirements of HRSA.
  - g. Compliance. The CHCB, in conjunction with the COUNTY's HHSAs, shall assure the Health Center's compliance with applicable federal, state, and local laws, regulations, and policies. On at least an annual basis, the CHCB shall evaluate the Health Center's compliance activities and, recommend, as necessary, the revision, restructuring, or updating of the compliance program by the COUNTY's HHSAs.
  - h. Quality Management. The CHCB shall evaluate the quality management programs developed and recommended by the staff of the Health Center and approved by the COUNTY's HHSAs in accordance with Section (C) (5) (f). The CHCB shall be integrated into the COUNTY's HHSAs' quality management activities related to the Health Center, including audits and state quality management reporting requirements. Quality management reports shall be shared periodically between the CHCB and the COUNTY's HHSAs representatives responsible for quality management matters at the Health Center. The Health Center's Project Director shall, as appropriate, report to the CHCB on matters concerning the quality of the medical services provided by the Health Center.
  - i. Evaluation of the CHCB. On at least annually, the CHCB shall evaluate its compliance with the Governance Requirements and report its findings and any recommendations for corrective action to the COUNTY's HHSAs. The CHCB shall evaluate itself and its actions for effectiveness, efficiency, and compliance with the authorities set forth in this Agreement on a yearly basis, consistent with the requirements of the HRSA compliance manual.
2. Duties and Evaluation of the Project Director of the Health Center.
    - a. Duties. The Project Director (a COUNTY employee) shall be responsible for the daily operations of the Health Care Center. The Project Director shall be responsible for the proper administration of all personnel policies applicable to the Health Center. The Project Director shall also have the authority to administer all contracts for goods and services as required for the operation of the Health Center, subject to the laws and policies applicable to the COUNTY's procurement and purchasing, the Health Center approved budget, and the laws and policies applicable to the COUNTY HHSAs' administration of the budget and contracts.
    - b. Evaluation. The CHCB shall review the Project Director's performance annually and shall comply with all applicable personnel, and other employment related requirements of the COUNTY. The review shall be coordinated and conducted by the CHCB's Executive Committee. The report of the annual review shall be submitted to the full CHCB and to the COUNTY's Director of Public Health.
      - i. The Executive Committee will be comprised of CHCB member(s), COUNTY Human Resource representatives, and Members of Executive Management of Tulare County Health and Human Services Agency, Public Health
3. Selection, Approval, and Removal of the Project Director.
    - a. Executive Committee.

- i. The Executive Committee shall select candidates for the position of Project Director, evaluate and conduct preliminary interviews of candidates for the Project Director in accordance with the COUNTY's personnel policies and procedures.
- ii. The Executive Committee shall recommend one (1) or more candidates from those individuals previously evaluated and interviewed for presentation to the CHCB.
- b. Selection and Approval. Subject to the COUNTY's personnel and hiring policies, the CHCB shall have authority to select and approve the Project Director from the slate of candidates presented by the Executive Committee.
- c. Removal.
  - i. In accordance with the COUNTY's personnel policies, the Executive Committee shall develop criteria for removal of the Project Director, which will be presented to the full CHCB for approval.
  - ii. Subject to the COUNTY's personnel policies, collective bargaining agreements and related requirements, the CHCB shall have authority to require the removal of the Project Director from his or her position based on the criteria developed by the Executive Committee.

**C. Role of the COUNTY**

1. The COUNTY as a public agency. In accordance with federal requirements, the COUNTY and the CHCB, recognize that the COUNTY as a public agency is constrained by law in the delegation of certain government functions to other entities, and is permitted to retain authority over general policies. Therefore, the COUNTY as a public agency center with an approved co-applicant board arrangement does not need further justification to retain authority for the establishment of the following types of general policies and procedures:
  - a. Fiscal Policies and Procedures.
    - i. Internal control procedures to ensure sound financial management procedures.
    - ii. Purchasing policies and standards.
  - b. Personnel Policies and Procedures.
    - i. Employee selection, performance review/evaluations, and dismissal procedures.
    - ii. Employee compensation, including wage and salary scales and benefit packages.
    - iii. Position descriptions and classification.
    - iv. Employee grievance procedures.
    - v. Equal opportunity practices.
2. Notwithstanding the terms of this Agreement or the Bylaws of the CHCB and subject to the authorities shared with the CHCB, neither Party shall take any action inconsistent with the COUNTY's authority to manage:
  - a. Fiscal Controls.
    - i. The COUNTY through its HHSA shall develop and approve the annual operating and capital budgets of the Health Center. The HHSA shall present such budgets to the CHCB for review and adoption.
    - ii. The COUNTY will spend funds that are consistent with the CHCB adopted budget. The Parties shall not materially deviate from the adopted budget except that the COUNTY through its HHSA, as manager of the Health Center, may modify planned fiscal activities if there is a reduction in available resources (e.g. decreased levels of reimbursement, diminished revenues, or adverse labor events). The COUNTY through its HHSA shall immediately notify the CHCB of any budgetary change that would materially modify the scope of the Health Center and seek the necessary approvals of such changes.

- iii. The COUNTY through its HHSa shall be solely responsible for the management of the financial affairs of the Health Center, including capital and operating borrowing.
  - iv. The COUNTY through its HHSa shall have sole authority to develop and implement financial policies and controls related to the Health Center, as set forth in this Agreement.
  - v. All funds received for services provided and all income otherwise generated by the Health Center, including fees, premiums, third- party reimbursements and other state and local operational funding, as well as all Program Income greater than the amount budgeted ("Excess Program Income"), shall be under the control of the COUNTY. All Program Income and Excess Program Income shall be used to further the goals of the Health Center's federally approved program.
  - vi. The COUNTY through its HHSa shall have sole authority to receive, manage, allocate, and disburse, as applicable, revenues necessary for the operation of the Health Center, consistent with this Agreement.
3. **Funding from Governmental and Charitable Sources** Neither Party shall take any action that would negatively impact the COUNTY's funding from federal, state, or local sources or financial support from foundations or other charitable organizations.
4. **Employer-Employee Relations**
  - a. Subject to the limitation of Section B(3) of this Agreement regarding the selection, evaluation, approval and removal of the Health Center's Project Director, the COUNTY and its HHSa shall have sole authority over employment matters and development and approval of personnel policies and procedures, including but not limited to, the selection, discipline and dismissal, salary and benefit scales, employee grievance procedures and processes, equal employment opportunity practices, collective bargaining agreements, labor disputes and other labor and human resources issues, as well as agreements for the provision of staff who are employees of other agencies or organizations. Consistent with this Agreement, the CHCB shall ratify and adopt the personnel policies and procedures developed and approved by the COUNTY.
  - b. The Project Director of the Health Center shall be an employee of the COUNTY HHSa. Removal of the Project Director by the CHCB pursuant to this Agreement shall not constitute a termination of employment but a removal from the role of Project Director, this action will not impede the continuation of the employee's relationship with the COUNTY.
5. **Operational Responsibilities** Subject to the governance responsibilities exercised by the CHCB as administered by the Project Director, the COUNTY shall conduct the day-to-day operations of the Health Center. Such operational responsibilities shall include but not be limited to:
  - a. Applying for and maintaining all licenses, permits, certifications, accreditations and approvals necessary for the operation of the Health Center.
  - b. Subject to the limitations set forth in this Agreement, employing or contracting personnel to perform all clinical, managerial, and administrative services necessary to assure the provision of high quality healthcare services to the Health Center's patients.
  - c. Preparing and submitting cost reports, supporting data, and other materials required in connection with reimbursement under Medicare, Medicaid, and other third-party payment contracts and programs.
  - d. Preparing monthly financial reports, which shall be submitted to the CHCB, and managing financial matters related to the operation of the Health Center.
  - e. Unless otherwise stated in this Agreement, establishment of the Health Center's operational, management, and patient care policies.
  - f. Establishing ongoing quality improvement programs.

- g. Ensuring the effective and efficient operation of the Health Center.

**D. Mutual Obligations**

1. Record Keeping and Reporting.

- a. Record keeping. Each Party shall maintain records, reports, supporting documents and all other relevant books, papers and other documents to enable the Parties to meet all Health Center-related reporting requirements. Records shall be maintained for a period of four (4) years from the date this Agreement expires or is terminated, unless state and/or federal law requires that records be maintained for a period greater than the four (4) year period specified herein ("the retention period"). If an audit, litigation, or other action involving the records is started before the end of the retention period, the Parties agree to maintain the records until the end of the retention period or until the audit, litigation, or other action is completed, whichever is later. The Parties shall make available to each other, HHS and the Comptroller General of the United States, the California Department of Health Care Services, the Office of the Comptroller of the State of California or any of their duly authorized representatives, upon appropriate notice, such records, reports, books, documents, and papers as may be necessary for audit, examination, excerpt, transcription, and copy purposes, for as long as such records, reports, books, documents, and papers are retained. This right also includes timely and reasonable access to each Party's personnel for purposes of interview and discussion related to such documents.
- b. Confidentiality. Subject to the COUNTY's obligations, if any, to make public its records in accordance with applicable law, the Parties agree that all information, records, data, and data elements collected and maintained for the administration of this Agreement (in any form, including, but not limited to; written, oral, or contained on video tapes, audio tapes, computer diskettes or other storage devices) shall be treated as confidential and proprietary information. Accordingly, each Party shall take all reasonable precautions to protect such information from unauthorized disclosure; however, nothing contained herein shall be construed to prohibit any authorized Federal or other appropriate official from obtaining, reviewing, and auditing any information, record, data, and data element to which (s)he is lawfully entitled. The Parties (and their directors, officers, employees, agents, and contractors) shall maintain the privacy and confidentiality of all protected health information ("PHI") of the patients receiving care provided by the Health Center, in accordance with all applicable state and federal laws and regulations, including the Health Insurance Portability and Accountability Act ("HIPAA").
- c. Medical Records. The Parties agree that the COUNTY's HHS, as the operator of the Health Center, shall retain ownership of medical records established and maintained; relating to diagnosis and treatment of patients served by the Health Center.
- d. Insurance.
  - i. The COUNTY shall maintain Professional Liability Insurance, Workers' Compensation Insurance, and General Liability and Property Damage Insurance to cover Health Center activities.
  - ii. This Section shall survive the termination of this Agreement without regard to the cause for termination.

- 2. Copyrightable Material. If any copyrightable material is developed under this Agreement, the HHS, Co-Applicant, and the U.S. Department of Health and Human Services ("HHS") shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, authorize others, or otherwise use such material.

**E. Governing Law**

1. **Applicable Laws, Regulations, and Policies.** This Agreement shall be governed and construed in accordance with applicable Federal laws, regulations, and policies. In addition, each Party covenants to comply with all applicable laws, ordinances, and codes of the State of California and all local governments in the performance of the Agreement, including all licensing standards and applicable accreditation standards.
2. **New HRSA Directives.** The Health Center's Project Director shall submit promptly to each Party any directives or policies that are received from HRSA after execution of this Agreement and the Parties shall comply with such additional directives/policies, as they become applicable.
3. **Non-Discrimination.** By signing this Agreement, the CHCB agrees to comply with the COUNTY's Equal Employment Opportunity Non-Discrimination Policy and all related personnel policies as well as all related federal requirements.
4. **Term.** This Agreement shall remain in effect during the Health Center's designation as a public entity FQHC-LAL or, as applicable, the project period of any Section 330 grant award that the HHS receives with CHCB as its Co-Applicant, unless the termination of CHCB at an earlier date in accordance with the terms of Section F of this Agreement.

**F. Termination**

1. **Reporting.** Termination of this agreement will be reported to HRSA within ten (10) days.
  2. **For Cause Termination.** Either party may terminate this Agreement "for cause" in the event that the other Party fails to meet its material obligations under this Agreement. Such "for cause" termination shall require ninety (90) days prior written notice of intent to terminate during which period the Party that has allegedly failed to meet its material obligations may cure such failure or demonstrate that no such failure has occurred. Any dispute between the Parties regarding whether a breach of a material obligation has occurred, or that such a breach has been satisfactorily cured, will be resolved in accordance with this Agreement.
  3. **Without Cause.** Either party may terminate this agreement without cause with one hundred twenty (120) days' notice.
  4. **Termination by Mutual Agreement.** This Agreement may be terminated upon the mutual approval of the Parties in writing.
  5. **Termination Contingent upon HRSA Approval.** With the exception of a termination for cause arising from the voluntary or involuntary loss of the Health Center's FQHC lookalike designation either party may terminate this agreement on one hundred twenty (120) days written notice; however, such termination shall not become effective unless and until HRSA issues its written approval of such termination.
  6. **Dispute Resolution and Mediation.** The Parties shall first attempt to resolve any dispute or impasse in decision-making arising under or relating to this Agreement by informal discussions between the Project Director of the Health Center and the Chair of the CHCB. Any dispute or impasse not resolved within a reasonable time following such discussions (not to exceed thirty (30) days) shall be resolved by mediation by the County Administrative Officer. If the Parties are unable to resolve the dispute through mediation, either Party may pursue any remedy available at law.
  7. **Notices.** All notices permitted or required by this Agreement shall be deemed given when made in writing and delivered personally or deposited in the United States Mail, first class postage prepaid, Certified and Return Receipt Requested, addressed to the other Party at the addresses set forth below or such other addresses as the Party may designate in writing: For CHCB: 2611 N. Dinuba Blvd. Visalia, CA 93291 For the County of Tulare: 5957 S. Mooney Blvd. Visalia, CA 93277
- G. Assignment** This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective transferees, successors and assigns; provided that neither Party shall

have the right to assign, delegate or transfer this Agreement, or its rights and obligations hereunder, without the express prior written consent of the other Party and HRSA. Furthermore, the Co-Applicant shall not execute a merger, consolidation, or major structural or contractual affiliation with a third party that materially impacts the governance or operation of the Health Center or materially impairs its performance under this Agreement without the written consent of the County of Tulare. The Parties agree that the Co-Applicant's designation by HRSA as an FQHC look-alike cannot be transferred to another entity without express prior written consent from HRSA.

- H. **Severability** The terms of this Agreement are severable, and the illegality or invalidity of any term or provision shall not affect the validity of any other term or provision, all of which shall remain in full force and effect.
- I. **Amendments** The Parties may agree to amend this Agreement, which shall be in writing and signed by the Parties.
- J. **Waiver** No provision of this Agreement shall be waived by any act, omission or knowledge of a Party or its agents or employees except by an instrument in writing expressly waiving such provision and signed by a duly authorized officer or representative of the waiving Party.
- K. **Agency** Except as may be required by the State as a condition of licensure, neither Party is, nor shall be deemed to be, an employee, agent, co-venture or legal representative of the other Party for any purpose. Neither Party shall be entitled to enter into any contracts in the name of, or on behalf of the other Party, nor shall either Party be entitled to pledge the credit of the other Party in any way or hold itself out as having the authority to do so.
- L. **Third-Party Beneficiaries** None of the provisions of this Agreement shall be for the benefit of or enforceable by any third party, including, without limitation, any creditor of either Party. No third party shall obtain any right under any provision of this Agreement or shall by reason of any provisions make any claim relating to any debt, liability, and obligation or otherwise against any Party to this Agreement.
- M. **Force Majeure** In the event either Party is unable to timely perform its obligations hereunder due to causes that are beyond its control, including, without limitation, strikes, riots, earthquakes, epidemics, war, fire, or any other general catastrophe or act of God, neither Party shall be liable to the other for any loss or damage resulting therefrom.
- N. **Co-Applicant CHCB Bylaws** Duly approved bylaws have been enacted by the CHCB and are party to this agreement articulating an enduring structure and scope of authority guiding the activities of the CHCB. Those Bylaws mirror this Agreement, are intended for the regulation of the CHCB, and shall be regarded as rules and regulations of the CHCB.
- O. **Entire Agreement** This Agreement constitutes the entire agreement between the Parties and no statements, promises or inducements made by a Party or by agents of either Party, which are not contained in this Agreement, shall be valid or binding.
- P. **Execution** In witness whereof, the parties have executed this agreement below by their authorized representatives.



**Tulare County Community Health Center Board**

Date: 11-15-18

By [Signature]

Print Name David Anderson

Title CHCB - chair

Date: 11-16-2018

By [Signature]

Print Name Cynthia Dias

Title CHCB - Vice Chair

[Pursuant to Corporations Code section 313, County policy requires that contracts with a Corporation be signed by both (1) the chairman of the Board of Directors, the president or any vice-president (or another officer having general, operational responsibilities), and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer (or another officer having recordkeeping or financial responsibilities), unless the contract is accompanied by a certified copy of a resolution of the corporation's Board of Directors authorizing the execution of the contract. Similarly, pursuant to California Corporations Code section 17703.01, County policy requires that contracts with a Limited Liability Company be signed by at least two managers, unless the contract is accompanied by a certified copy of the articles of organization stating that the LLC is managed by only one manager.]

**COUNTY OF TULARE**

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

By \_\_\_\_\_  
Chairman, Board of Supervisors

ATTEST: JASON T. BRITT  
County Administrative Officer/Clerk of the Board  
of Supervisors of the County of Tulare

By \_\_\_\_\_  
Deputy Clerk

Approved as to Form  
County Counsel

By [Signature] 11/28/18  
Deputy

Matter # 20181892