

## **AGREEMENT**

**THIS AGREEMENT** is entered into as of \_\_\_\_\_, between the **COUNTY OF TULARE**, referred to as **COUNTY**, and **THE HOUSING AUTHORITY OF THE COUNTY OF TULARE**, a Public Agency, referred to as **CONTRACTOR**, with reference to the following:

A. **COUNTY** wishes to enter into an agreement with the **CONTRACTOR** to provide affordable housing for low income Tulare County residents including special needs clients with mental illness; and

B. **CONTRACTOR** has the experience and qualifications to provide these services **COUNTY** requires pertaining to **COUNTY'S** Mental Health Program; and

C. **CONTRACTOR** is willing to enter into this Agreement with **COUNTY** upon the terms and conditions set forth herein.

### **ACCORDINGLY, IT IS AGREED:**

1. **TERM:** This Agreement shall become effective as of December 1, 2013 and shall continue unless otherwise terminated as provided in this Agreement.
2. **SERVICES TO BE PERFORMED:** See attached **EXHIBIT A**
3. **PAYMENT FOR SERVICES:** See attached **EXHIBIT B**.
4. **INDEPENDENT CONTRACTOR STATUS:**

(a) This Agreement is entered into by both parties with the express understanding that **CONTRACTOR** will perform all services required under this Agreement as an independent contractor. Nothing in this Agreement shall be construed to constitute the **CONTRACTOR** or any of its agents, employees or officers as an agent, employee or officer of **COUNTY**.

(b) **CONTRACTOR** agrees to advise everyone it assigns or hires to perform any duty under this agreement that they are not employees of **COUNTY**. Subject to any performance criteria contained in this Agreement, **CONTRACTOR** shall be solely responsible for determining the means and methods of performing the specified services and **COUNTY** shall have no right to control or exercise any supervision over **CONTRACTOR** as to how the services will be performed. As **CONTRACTOR** is not

COUNTY'S employee, CONTRACTOR is responsible for paying all required state and federal taxes. In particular, COUNTY will not:

1. Withhold FICA (Social Security) from CONTRACTOR'S payments.
2. Make state or federal unemployment insurance contributions on CONTRACTOR'S behalf.
3. Withhold state or federal income tax from payments to CONTRACTOR.
4. Make disability insurance contributions on behalf of CONTRACTOR.
5. Obtain unemployment compensation insurance on behalf of CONTRACTOR.

(c) Notwithstanding this independent contractor relationship, COUNTY shall have the right to monitor and evaluate the performance of CONTRACTOR to assure compliance with this Agreement.

5. **COMPLIANCE WITH LAW:** CONTRACTOR shall provide services in accordance with applicable Federal, State, and local laws, regulations and directives. With respect to CONTRACTOR'S employees, CONTRACTOR shall comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.

6. **GOVERNING LAW:** This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. The parties agree that this contract is made in and shall be performed in Tulare County, California.

7. **RECORDS AND AUDIT:** CONTRACTOR shall maintain complete and accurate records with respect to the services rendered and the costs incurred under this Agreement. In addition, CONTRACTOR shall maintain complete and accurate records with respect to any payments to employees or subcontractors. All such records shall be prepared in accordance with generally accepted accounting procedures, shall be clearly identified, and shall be kept readily accessible. Upon request, CONTRACTOR shall make such records available within Tulare County to the Auditor of Tulare County and to his agents and representatives, for the purpose of auditing and/or copying such records for a period of five (5) years from the date of final payment under this Agreement.

**8. CONFLICT OF INTEREST:**

(a) CONTRACTOR agrees to, at all times during the performance of this Agreement, comply with the law of the State of California regarding conflicts of interests and appearance of conflicts of interests, including, but not limited to Government Code Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated pursuant thereto by the California Fair Political Practices Commission. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including CONTRACTOR for this purpose, from making any decision on behalf of COUNTY in which such officer, employee or consultant/contractor has a direct or indirect financial interest. A violation can occur if the public officer, employee or consultant/contractor participates in or influences any COUNTY decision which has the potential to confer any pecuniary benefit on CONTRACTOR or any business firm in which CONTRACTOR has an interest, with certain narrow exceptions.

(b) CONTRACTOR agrees that if any facts come to its attention which raise any questions as to the applicability of conflicts of interests laws, it will immediately inform the COUNTY designated representative and provide all information needed for resolution of this question.

**9. INSURANCE:** Prior to approval of this Agreement by COUNTY, CONTRACTOR shall file with the Clerk of the Board of Supervisors evidence of insurance as set forth in **EXHIBIT C** attached, which outlines the minimum scope, specifications, and limits of insurance required under this Agreement. Additional insured endorsements required as outlined in **EXHIBIT C** shall not be used to reduce limits available to COUNTY as an additional insured from the CONTRACTOR'S full policy limits. Insurance policies shall not be used to limit liability or to limit the indemnification provisions and requirements of this Agreement or act in any way to reduce the policy coverage and limits available from the insurer(s). Failure to maintain or renew coverage, or to provide evidence of renewal, may be considered a material breach of this Agreement.

**10. INDEMNIFICATION:** CONTRACTOR shall hold harmless, defend and indemnify COUNTY, its agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including COUNTY property, arising from, or in connection with, the performance by CONTRACTOR or its agents, officers and employees under this Agreement. This indemnification specifically includes any claims that may be made against COUNTY by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, and any claims made against COUNTY alleging civil rights violations by CONTRACTOR under Government Code

sections 12920 et seq. (California Fair Employment and Housing Act), and any fines or penalties imposed on COUNTY for CONTRACTOR'S failure to provide form DE-542, when applicable. This indemnification obligation shall continue beyond the term of this Agreement as to any acts or omissions occurring under this Agreement or any extension of this Agreement.

#### 11. **TERMINATION:**

(a) Without Cause: Both COUNTY and CONTRACTOR will have the right to terminate this Agreement without cause by giving ninety (90) days prior written notice of intention to terminate pursuant to this provision, specifying the date of termination. COUNTY will pay to the CONTRACTOR the compensation earned for work performed and not previously paid for to the date of termination. COUNTY will not pay lost anticipated profits or other economic loss. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONTRACTOR of any and all plans, specifications and estimates, and other documents prepared by CONTRACTOR in accordance with this Agreement. No sanctions will be imposed.

(b) With Cause: This Agreement may be terminated by either party should the other party:

- (1) be adjudged a bankrupt, or
- (2) become insolvent or have a receiver appointed, or
- (3) make a general assignment for the benefit of creditors, or
- (4) suffer any judgment which remains unsatisfied for 30 days, and which would substantively impair the ability of the judgment debtor to perform under this Agreement, or
- (5) materially breach this Agreement.

In addition, COUNTY may terminate this Agreement based on:

- (6) material misrepresentation, either by CONTRACTOR or anyone acting on CONTRACTOR's behalf, as to any matter related in any way to COUNTY's retention of CONTRACTOR.

Further, CONTRACTOR may terminate this Agreement with thirty (30) days' notice based upon:

- (7) Failure of COUNTY to make payments to CONTRACTOR in accordance with the Scope of Services.

COUNTY will pay to the CONTRACTOR the compensation earned for work performed and not previously paid for to the date of termination. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONTRACTOR of any and all plans, specifications and estimates, and other documents prepared by CONTRACTOR by the date of termination in accordance with this Agreement. County will not pay lost anticipated profits or other economic loss, nor will the County pay compensation or make reimbursement to cure a breach arising out of or resulting from such termination. If this Agreement is terminated and the expense of finishing the CONTRACTOR'S scope of work exceeds the unpaid balance of the agreement, the CONTRACTOR must pay the difference to the County. Sanctions taken will be possible rejection of future proposals based on specific causes of non performance.

(c) Effects of Termination: Expiration or termination of this Agreement shall not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities. Where CONTRACTOR's services have been terminated by the County, said termination will not affect any rights of the County to recover damages against the CONTRACTOR.

(d) Suspension of Performance: Independent of any right to terminate this Agreement, the authorized representative of COUNTY for which CONTRACTOR's services are to be performed, may immediately suspend performance by CONTRACTOR, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by CONTRACTOR to comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

12. **LOSS OF FUNDING:** It is understood and agreed that if the funding is either discontinued or reduced for this project for the COUNTY, that the COUNTY shall have the right to terminate this Agreement. In such event, the affected party shall provide the other party with at least thirty (30) days prior written notice of such termination.

13. **FORM DE-542:** If CONTRACTOR is an individual, CONTRACTOR acknowledges that this Agreement is subject to filing obligations pursuant to Unemployment Insurance Code Section 1088.8. Accordingly, COUNTY has an obligation to file a report with the Employment Development Department, which report will include the CONTRACTOR's full name, social security number, address, the date this contract was executed, the total amount of the contract, the contract's expiration date or whether it is ongoing. CONTRACTOR agrees to cooperate with COUNTY to make such information available and to complete Form DE- 542. Failure to provide the required information may, at COUNTY's option, prevent approval of this Agreement, or be grounds for termination by COUNTY.

**14. NOTICES:**

(a) Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

**COUNTY:**

CONTRACT UNIT

TULARE COUNTY HEALTH & HUMAN SERVICES AGENCY

5957 S. Mooney Boulevard

Visalia, CA 93277

**Fax No.:** 559-737-4059

**Phone No.:** 559-624-8000

**CONTRACTOR:**

THE HOUSING AUTHORITY OF TULARE COUNTY

P.O. Box 791

5140 W. Cypress Avenue

Visalia, CA 93279

**Fax No.:** \_\_\_\_\_

**Phone No.:** 559-627-3700

(b) Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received on the fifth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

**15. ASSIGNMENT/SUBCONTRACTING:** Unless otherwise provided in this Agreement, COUNTY is relying on the personal skill, expertise; training and experience of CONTRACTOR and CONTRACTOR'S employees and no part of this Agreement may be assigned or subcontracted by CONTRACTOR without the prior written consent of COUNTY.

**16. DISPUTE RESOLUTION:** If a dispute arises out of or relating to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation or some other dispute resolution procedure, unless the parties mutually agree otherwise. The mediator shall be mutually selected by the parties, but in case of disagreement, the mediator shall be selected by lot from among two

nominations provided by each party. All costs and fees required by the mediator shall be split equally by the parties; otherwise each party shall bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, either party may pursue litigation to resolve the dispute.

17. **FURTHER ASSURANCES:** Each party will execute any additional documents and perform any further acts that may be reasonably required to effect the purposes of this Agreement.

18. **CONSTRUCTION:** This Agreement reflects the contributions of all undersigned parties and accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret any alleged uncertainty or ambiguity.

19. **HEADINGS:** Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.

20. **NO THIRD-PARTY BENEFICIARIES INTENDED:** Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

21. **WAIVERS:** The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other party.

22. **EXHIBITS AND RECITALS:** The recitals and the exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

23. **CONFLICT WITH LAWS OR REGULATIONS/SEVERABILITY:** This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties to be, in conflict with any code or regulation governing its subject matter, only the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement shall continue in full force and effect.

24. **ENTIRE AGREEMENT REPRESENTED:** This Agreement represents the entire agreement between CONTRACTOR and COUNTY as to its subject matter and no

prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified without the written consent of both parties.

**25. ASSURANCES OF NON-DISCRIMINATION:** CONTRACTOR shall not discriminate in employment or in the provision of services on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

(a) It is recognized that both the Contractor and the County have the responsibility to protect County employees and clients from unlawful activities, including discrimination and sexual harassment in the workplace. Accordingly, Contractor agrees to provide appropriate training to its employees regarding discrimination and sexual harassment issues, and to promptly and appropriately investigate any allegations that any of its employees may have engaged in improper discrimination or harassment activities. The County, in its sole discretion, has the right to require Contractor to replace any employee who provides services of any kind to County pursuant to this Agreement with other employees where County is concerned that its employees or clients may have been or may be the subjects of discrimination or harassment by such employees. The right to require replacement of employees as aforesaid shall not preclude County from terminating this Agreement with or without cause as provided for herein.

**26. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA):**

(a) CONTRACTOR shall comply with the Health Insurance Portability and Accountability Act (HIPAA) Business Associate exhibit, as set forth in **EXHIBIT D** attached.

(b) At termination of this Agreement, CONTRACTOR shall, if feasible, return or destroy all protected health information received from, or created or received by, CONTRACTOR on behalf of the COUNTY that CONTRACTOR still maintains in any form, and retain no copies of such information; or, if such return or destruction is not feasible, extend the protections of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information feasible.

(c) COUNTY may immediately terminate this Agreement if COUNTY determines that CONTRACTOR has violated a material term of this provision.

**27. CULTURAL COMPETENCE AND DIVERSITY:** CONTRACTOR shall comply with the Cultural Competence exhibit, as set forth in **EXHIBIT E** attached.



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**THE PARTIES**, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

**COUNTY OF TULARE**

Date: \_\_\_\_\_ BY \_\_\_\_\_  
Chairman, Board of Supervisors

ATTEST: JEAN M. ROUSSEAU  
County Administrative Officer/Clerk of the Board  
of Supervisors of the County of Tulare

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

**THE HOUSING AUTHORITY OF TULARE COUNTY**

Date: 7-17-14 By Ken Kugler  
TITLE EXECUTIVE DIRECTOR

Date: \_\_\_\_\_ By \_\_\_\_\_  
TITLE \_\_\_\_\_

Corporations Code section 313 requires that contracts with a corporation be signed by both (1) the chairman of the Board of Directors, the president or any vice-president, and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer, unless the contract is accompanied by a certified copy of the corporation's Board of Directors' resolution authorizing the execution of the contract.

Approved as to Form  
County Counsel

By [Signature]  
Deputy (2014196)

Date 7-22-14

## **EXHIBIT A**

### **SCOPE OF SERVICES**

#### **Program Description**

The Community Living Center (CLC) provides a transitional housing option for adults with severe and persistent mental illness which is a more independent living setting for Transitional Living Center (TLC) residents in their movement towards independent living in the community. The CLC program employs the Wellness and Recovery Action Plan (WRAP). The WRAP model teaches participants recovery and self-management skills and strategies that: promote higher levels of wellness, stability and quality of life; decrease the need for costly, invasive therapies; decrease the incidence of serious mental health challenges; decrease traumatic life events; increase understanding of these mental health challenges and decrease stigma; raise participants' level of hope, and encourage actively working toward wellness; and increase participants' sense of personal responsibility and empowerment. Achieving wellness in mental health treatment and everyday living is paramount for residents at CLC. While the consumer may be achieving recovery goals as they relate to mental health treatments such as medication management or substance abuse resolution, it is also important to focus on the consumer's ability to manage day-to-day activities in personal and inter-personal relationships. The Housing Authority of the County of Tulare (HATC) and Tulare County Mental Health (TCMH) have been operating facilities in Tulare County for the mentally ill in a cooperative and productive fashion to achieve their common goals, and to benefit county residents for well over 30 years. The TLC has been partnered in the above manner since it first began operation in 1981.

The terms described below represent current understandings between the parties.

#### **Joint Responsibilities**

- Participate in a collaborative planning process that will strengthen linkages between the two organizations that are ongoing in the **Community Living Center, Transitional Living Center, and East Tulare Apartment Cottages.**

#### **HATC Responsibilities**

- Own and manage the TLC either directly or through an affiliated limited partnership or some other approved entity and restrict the use of apartments to the mentally ill in accordance with this Agreement.
- Provide professional property management services for the project. This includes calculation of incomes for eligibility with respect to income and assets, and establishment of rent and utility allowances for clients. Rents at the CLC have historically been set by the State of California through the Rental Housing Construction Program (RHCP) which also provided an annuity and debt service for the

project. With the RHCP ending, TCMH may, if it chooses, modify the rental percentage collected from clients, charge flat rents or continue charging rents as they are currently constituted. Rents are presently calculated at 25% of income after deduction of a utility allowance, and are restricted to persons with incomes at or below 30% of median income for Tulare County. HATC agrees that admission will continue to be limited to persons at or below 30% of median income, as referred by TCMH. Rents will be restricted to 25% of the adjusted income unless instructed otherwise by TCMH. The current budget is based upon current assumptions and would change in the event the above formula is revised.

- House clients referred to the CLC by TCMH, provided they meet income requirements. HATC processes prospective mental health clients for TCMH. TCMH refers clients per established procedures.
- Evict clients as necessary at the direction of TCMH.
- Provide property maintenance services in a manner that provides quality, safe, permanent affordable housing.
- Develop operating budgets and submit those sixty (60) days in advance for concurrence by TCMH.
- Collaborate with service partners to facilitate procedures to inform tenants of the services that are available to them. Establish and implement procedures to notify service partners of tenants experiencing housing difficulties.
- Work with TCMH to house referred tenants from the TLC, or through other referral sources of TCMH. HATC will provide vacancy reports to TCMH semi-annually, in an effort to allow TCMH to track vacancies in shared housing.
- Make debt services payments if required for any permanent loan.

### **TCMH Responsibilities**

- Provide staff as necessary to provide clinical case management services adequate for Apartments.
- Provide a resident supervisor to provide client services if TCMH deems it necessary.
- Rents shall be collected by TCMH and provided to HATC not later than 10 days from client's due date. Provide sufficient referrals so as to insure the apartments are substantially occupied. In the event vacancies are in excess of budgeted amounts (currently 3% per annum); resulting in lost rental income from clients to CLC, reimburse HATC annually for those losses at the end of the fiscal year upon demand. Provide reimbursement to HATC for uncollected rents on a shared housing basis and utilities to the extent HATC cannot offset collection losses through tenant deposits upon vacates.
- Provide monthly payments to HATC based upon an annual sum of \$50,244. An adjusted year end payment shall be made to HATC not later than 30 days from invoice with back up documentation based upon actual rent collections from clients. The total "not to exceed" payment is limited to \$60,000 for the budget year, provided rent calculations are not altered by TCMH. In the event TCMH elects to revise the income or rent formula, both parties will take steps to revise the budget accordingly. It is understood that the mental health gap subsidy payment reflected in the approved budget may be offset by any Aftercare Vouchers utilized by tenants at CLC. HATC agrees to inform and adjust the required mental health gap subsidy payment based

upon the Aftercare Voucher payments. .

- Help develop and follow emergency and other program procedures.
- Provide tenants with basic housing needs such as toiletries and bathroom supplies, bedding, towels, and other minor appliances—to the extent they are needed and accommodated by the site—such as microwave oven, toaster, and kitchenware
- Act as the money management services provider for all tenants who lack an authorized provider, coordinating with Property and Case Management to enroll new participants as needed

# EXHIBIT B

## Community Living Center Proposed Budget Fiscal 2014

INCOME	AMOUNT	PUM
1 Dwelling Rents from Clients	57,180	198.54
Vacancy Factor (3%)	-1,715	-5.96
2 Interest Income	225	0.78
3 Mental Health GAP Subsidy	50,244	174.46
4 Other Income	50	0.17
Total Income	105,984	368.00
EXPENSES		
4 Management Fee	14,400	50.00
5 Manager Salaries	6,155	21.37
6 Legal	50	0.17
7 Audit	1,000	3.47
8 Miscellaneous Administrative Expenses	1,250	4.34
9 Electricity	1,525	5.30
10 Water/Sewer	8,077	28.05
11 Gas	250	0.87
12 Garbage & Trash	1,923	6.68
13 Grounds/Lawn Maint Contract	4,700	16.32
14 Labor/Maintenance Salaries	5,643	19.59
15 Materials	1,785	6.20
16 Contract Costs	5,200	18.06
17 Real Estate Taxes	0	0.00
18 Insurance	999	3.47
19 Workers Compensation Insurance	557	1.93
20 Employee Benefits	4,345	15.09
21 Bank/Analysis Fees	276	0.96
Total Operating Expenses	58,135	201.86
Cash Flow	47,849	166.14
22 Debt Service	36,100	125.35
23 Replacement Reserve	7,200	25.00
Cash Flow After Replacement Reserve/Debt	4,549	15.79

Prepared by: Dana K. Watson

Date: 1/7/2014

Approved by: \_\_\_\_\_

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

**EXHIBIT "C"**  
**NON-PROFESSIONAL SERVICES**  
**INSURANCE REQUIREMENTS**

CONTRACTOR shall provide and maintain insurance for the duration of this Agreement against claims for injuries to persons and damage to property which may arise from, or in connection with, performance under the Agreement by the CONTRACTOR, his agents, representatives, employees and subcontractors, if applicable.

**A. Minimum Scope & Limits of Insurance**

1. Insurance Services Office Commercial General Liability coverage of \$1,000,000 combined single limit per occurrence (occurrence Form CG 00 01). If an annual aggregate applies it must be no less than \$2,000,000.
2. Insurance Services Office Form Number CA 00 01 covering Automobile Liability, (any auto) of \$1,000,000 per occurrence. If an annual aggregate applies it must be no less than 2,000,000.
3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

**B. Specific Provisions of the Certificate**

1. If any of the required insurance is written on a claims made form, the retroactive date must be before the date of the contract or the beginning of the contract work and must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work.
2. CONTRACTOR must submit endorsements to the General Liability and Auto Liability reflecting the following provisions:
  - a. *The COUNTY, its officers, agents, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Contractor; or automobiles owned, leased, hired or borrowed by the CONTRACTOR.*
  - b. *For any claims related to this project, the CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, its officers, agents, officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, agents, officials, employees or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.*
  - c. *Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days prior written notice has been provided to the County.*
3. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the CONTRACTOR, its employees, agents and subcontractors.
  - a. *Waiver of Subrogation. The workers' compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the CONTRACTOR, its employees, agents and subcontractors. CONTRACTOR waives all rights against the COUNTY and its officers, agents, officials, employees and*

*volunteers for recovery of damages to the extent these damages are covered by the workers compensation and employers liability.*

C. Deductibles and Self-Insured Retentions

The COUNTY Risk Manager must approve any deductible or self-insured retention that exceeds \$100,000.

D. Acceptability of Insurance

Insurance must be placed with insurers with a current rating given by A.M. Best and Company of no less than A-:VII and a Standard & Poor's rating (if rated) of at least BBB and from a company approved by the Department of Insurance to conduct business in California. Any waiver of these standards is subject to approval by the County Risk Manager.

E. Verification of Coverage

Prior to approval of this Agreement by the COUNTY, the CONTRACTOR shall file with the submitting department, certificates of insurance with original endorsements effecting coverage and a copy of the declarations page from the policy in effect in a form acceptable to the COUNTY. Endorsements must be signed by persons authorized to bind coverage on behalf of the insurer. The COUNTY reserves the right to require certified copies of all required insurance policies at any time.

**Exhibit "D"**  
**HIPAA REQUIREMENT**

The Health insurance Portability and Accountability Act of 1996 (HIPAA)

A. Definitions: Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule.

1. *Business Associate.* "Business Associate" shall mean CONTRACTOR.
2. *Covered Entity.* "Covered Entity" shall mean COUNTY.
3. *Individual.* "Individual" shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
4. *Privacy Rule.* "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
5. *Protected Health Information.* "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
6. *Required By Law.* "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 164.501.
7. *Secretary.* "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

B. Obligations and Activities of CONTRACTOR

1. CONTRACTOR agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.
2. CONTRACTOR agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
3. CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR of a use or disclosure of Protected Health Information by CONTRACTOR in violation of the requirements of this Agreement.
4. CONTRACTOR agrees to report to COUNTY any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.
5. CONTRACTOR agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by CONTRACTOR on behalf of COUNTY agrees to the same restrictions and conditions that apply through this Agreement to CONTRACTOR with respect to such information. CONTRACTOR agrees to provide access, at the request of COUNTY, and in the time and manner requested by COUNTY, to Protected Health Information in a Designated Record Set, to COUNTY or, as directed by COUNTY, to an Individual in order to meet the requirements under 45 CFR 164.524



6. CONTRACTOR agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the COUNTY directs or agrees to pursuant to 45 CFR 164.526 at the request of COUNTY or an Individual, and in the time and manner requested by COUNTY
  7. CONTRACTOR agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by CONTRACTOR on behalf of, COUNTY to the COUNTY, in a time and manner requested by COUNTY for purposes of determining CONTRACTOR'S and/or COUNTY'S compliance with the Privacy Rule.
  8. CONTRACTOR agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for COUNTY to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528
  9. CONTRACTOR shall provide to COUNTY or an individual, in time and manner designated by COUNTY, information collected in accordance with Title 45, CFR, Section 164.528, to permit the Department to respond to a request by the individual for an accounting of disclosures of PHI in accordance with Title 45, CFR, Section 164.528
- C. General Use and Disclosure Provisions: Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information on behalf of, or to provide services to, COUNTY, if such use or disclosure of Protected Health Information would not violate the Privacy Rule if done by COUNTY or the minimum necessary policies and procedures of the COUNTY.
- D. Specific Use and Disclosure
1. Except as otherwise limited in this Agreement, CONTRACTOR may use Protected Health Information for the proper management and administration of the CONTRACTOR or to carry out the legal responsibilities of the CONTRACTOR.
  2. Except as otherwise limited in this Agreement, CONTRACTOR may disclose Protected Health Information for the proper management and administration of the CONTRACTOR, provided that disclosures are Required By Law, or CONTRACTOR obtains reasonable assurances from the person 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 CONTRACTOR of any instances of which it is aware in which the confidentiality of the information has been breached.
  3. Except as otherwise limited in this Agreement, CONTRACTOR may use Protected Health Information to provide Data Aggregation services to COUNTY as permitted by 42 CFR 164.504(e)(2)(i)(B)

4. CONTRACTOR may use Protected Health Information to report violations of law to appropriate Federal and State authorities consistent with § 164.502(j)(1)

E. Obligations of COUNTY

1. COUNTY shall notify CONTRACTOR of any limitation(s) in its notice of privacy practices of COUNTY in accordance with 45 CFR 164.520, to the extent that such limitation may affect CONTRACTOR'S use or disclosure of Protected Health Information.
2. COUNTY shall notify CONTRACTOR of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect CONTRACTOR'S use or disclosure of Protected Health Information
3. COUNTY shall notify CONTRACTOR of any restrictions to the use or disclosure of Protected Health Information that COUNTY has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect CONTRACTOR'S use or disclosure of Protected Health Information.

F. Permissible Requests by COUNTY: Except as otherwise provided herein, COUNTY shall not request CONTRACTOR to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by COUNTY

G. Miscellaneous

1. *Regulatory References.* A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
2. *Amendment.* The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for COUNTY to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub L. No. 104-191.
3. *Survival.* The respective rights and obligations of CONTRACTOR under this Exhibit shall survive the termination of this Agreement.
4. *Interpretation.* Any ambiguity in this Agreement shall be resolved to permit COUNTY to comply with the Privacy Rule.

## EXHIBIT "E"

### CULTURAL COMPETENCE AND DIVERSITY

The CONTRACTOR is encouraged to support Tulare County Health and Human Services Agency in the journey to work effectively across and among all cultures. It is the desire of HHSA that services be sensitive to the diversity of the community served, including but not limited to ethnic, linguistic, sexual and cultural characteristics. Sensitivity includes acceptance and respect for the cultural values, beliefs and practices of the community, as well as the ability to apply an understanding of the relationships of language and culture to the delivery of supports and services.

CONTRACTOR and COUNTY agree that:

- **Cultural competence** is the integration and transformation of knowledge about individuals and groups of people into specific standards, policies, practices, and attitudes used in appropriate cultural settings to increase the quality of services, thereby producing better outcomes. Competence in cross-cultural functioning means learning new patterns of behavior and effectively applying them in appropriate settings.

CONTRACTOR will strive to:

- Ensure that agents, employees or officers providing services are sensitive to the ethnic, linguistic, sexual and cultural diversity of the community served. Sensitivity includes acceptance and respect for the cultural values, beliefs and practices of the community, as well as the ability to apply an understanding of the relationships of language and culture to the delivery of supports and services.
- Assure equal access for people with diverse cultural backgrounds and/or limited English proficiency. Limited English Proficiency includes literacy issues: those who cannot either read or write in any language.