

**AMENDMENT NO. 1  
TO STANDARD AGREEMENT  
BETWEEN COUNTY OF MONTEREY AND  
San Benito County**

**THIS AMENDMENT** is made to the STANDARD AGREEMENT for the provision of services in San Benito County that assist Supplemental Nutrition Assistance Program-Education (SNAP-ED) eligible consumers in adopting healthy eating and physical activity behaviors as part of a healthy lifestyle as requested by and between the **County of Monterey**, a political subdivision of the State of California (hereinafter referred to as "COUNTY") and **San Benito County** (hereinafter referred to as CONTRACTOR).

**WHEREAS**, the COUNTY and CONTRACTOR wish to amend the STANDARD AGREEMENT to extend the term of the STANDARD AGREEMENT and compensate the CONTRACTOR for the services.

**NOW THEREFORE**, the COUNTY and CONTRACTOR hereby agree to amend Agreement as follows:

1. **Section 2.01** is hereby amended and restated to read in its entirety as follows:

"County shall pay the CONTRACTOR in accordance with the payment provisions set forth in Exhibit A.1, subject to the limitations set forth in this Agreement. The total amount payable by County to CONTRACTOR under this Agreement is not to exceed the sum of **\$1,116,984.**

2. **Section 3.01** is hereby amended and restated to read in its entirety as follows:

"The term of this Agreement is from **October 1, 2013** to **September 30, 2019,** unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and County and with County signing last, and CONTRACTOR may not commence work before County signs this Agreement."

3. **Section 4.01** is hereby amended and restated to read in its entirety as follows:

"4.01. The following attached exhibits are incorporated and constitute a part of this Agreement:

**Exhibit A.1 Scope of Services/Payment Provisions**

4. **Exhibit A** shall be removed and replaced with **Exhibit A.1.**
5. Except as provided herein, all remaining terms, conditions and provisions of AGREEMENT are unchanged and unaffected by this AMENDMENT NO. 1, and shall remain in full force and effect as set forth in the AGREEMENT.
6. This AMENDMENT NO. 1 is effective September 1, 2016.

7. A copy of this AMENDMENT NO. 1 shall be attached to the original AGREEMENT executed by the COUNTY on January 31, 2014.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the County and CONTRACTOR execute this Amendment No. 1 to AGREEMENT as follows:

MONTEREY COUNTY

CONTRACTOR

\_\_\_\_\_  
Mike Derr: Contracts/Purchasing Officer

By: \_\_\_\_\_  
Signature of Chair, President, or  
Vice-President

Dated: \_\_\_\_\_

\_\_\_\_\_  
Printed Name and Title

Approved as to Fiscal Provisions:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Gary Giboney, Auditor/Controller

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
Printed Name and Title

Approved as to Liability Provisions:

\_\_\_\_\_  
Steve Mauck, Risk Management

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Stacy Saetta, Deputy County Counsel

APPROVED AS TO LEGAL FORM  
SAN BENITO COUNTY COUNSEL

 9-7-2016  
DEPUTY COUNTY COUNSEL DATE

Dated: \_\_\_\_\_

\*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.

**EXHIBIT A.1**  
**SCOPE OF SERVICES/PAYMENT PROVISIONS**

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**County of Monterey  
and  
San Benito County**

This Exhibit A.1 shall be incorporated by reference as part of Agreement attached hereto governing work to be performed under the attached referenced Agreement, the nature of the working relationship between the **County of Monterey**, a political subdivision of the State of California (hereinafter referred to as "COUNTY") and **San Benito County**, (hereinafter referred to as CONTRACTOR) and specific obligations of the CONTRACTOR.

**I. Scope of Services**

**BACKGROUND:**

Funded through the United States Department of Agriculture, the California Department of Public Health (CDPH) awarded to the County of Monterey on behalf of its Health Department a grant for the period of October 1, 2013 to September 30, 2019, in the amount of \$186,164 per year. The Nutrition Education Obesity Prevention grants purpose is to provide SNAP-Ed (Supplemental Nutrition Assistance Program-Education) allowable nutrition education and obesity prevention activities and interventions for low income Californians. CDPH asked the COUNTY") to be the lead agency and to subcontract with CONTRACTOR.

**Scope of Services (Deliverables):**

**CONTRACTOR shall provide the following:**

- A.** Compile data for and report quarterly on educational activities, completing all relevant components on the Activity Tracking Form (ATF):
  - 1. The number, SNAP-Ed status, age, gender, race/ethnicity of SNAP-Ed eligible individuals receiving what type of evidence based direct nutrition education and in what setting.
  - 2. The number of evidence based nutrition education and health promotion messages to address SNAP-Ed goals, at least half of which are "Half your Plate: Fruits and Vegetables" and "Rethink Your Drink".
  - 3. Community public relations events and community messages promoting healthy foods and beverages and physical activity in SNAP-Ed eligible census tracts and venues.
- B.** Implement an annual integrated work plan, describing evidence based nutrition education and obesity prevention and evaluation strategies to improve the health of the SNAP-Ed eligible population.
- C.** Eighteen hundred SNAP-Ed eligible individuals will receive evidence based direct nutrition education annually.
- D.** Provide fifteen nutrition education classes per year addressing SNAP-Ed goals.



- E. Attend four community events promoting nutrition education messages such as MyPlate, Rethink Your Drink, Make Half Your Plate Fruits and Veggies, Dietary Guidelines, or other NEOP allowable materials to SNAP-Ed eligible population.
- F. Attend a quarterly coalition and/or partnership meeting established with other USDA funded partners to address community nutrition issues, enhance the consistency of food and nutrition messaging and reaching consensus on how best to improve access to healthy foods, beverages and physical activity in the SNAP-Ed eligible communities.
- G. Report on Policy, Systems or Environmental change process, including reach, effectiveness, adoption, implementation and challenges overcome.
- H. Document all expenses incurred in a quarterly expense report with the ability to provide all back up documentation for one quarter's expenses in sufficient detail to Monterey County Health Department.
- I. Attend three to five NEOP-sponsored trainings, meetings or conferences annually.
- J. **California Department of Public Health (CDPH) Nutrition Education and Obesity Prevention (NEOP) Branch. The following Deliverables are CDPH's request that the COUNTY be the lead agency and subcontract with the CONTRACTOR.**

**Deliverables for Local Health Department Grants  
FY-2017-19**

**Overall State Level Goal and Focus**

The California SNAP-Ed goal is to improve the likelihood that persons eligible for SNAP-Ed will make healthy food and physical activity choices within a limited budget consistent with the current *Dietary Guidelines for Americans* and *Physical Activity Guidelines for Americans*.

California SNAP-Ed focuses on preventing nutrition and activity-related chronic diseases and improving food security among persons eligible for SNAP-Ed by:

- Providing information and education to promote food resource management, healthy eating, and a physically active lifestyle, and
- Creating supportive food and activity environments in collaboration with community partners in order to make healthy choices easier where people eat, live, learn, work, play, and shop.

**K. CONTRACTOR shall provide the following (Overall State Level Goals and Focus):**

**Behavioral Outcomes**

**Goal 1: Increase Consumption of Healthy Foods and Beverages and Decrease Consumption of Unhealthy Foods and Beverages**

- **Objective 1a:** Annually improve the dietary quality of meals and snacks consumed by the SNAP-Ed eligible population consistent with the current *Dietary Guidelines for Americans*.

- **Objective 1b:** Annually increase consumption of fruits and vegetables among the SNAP-Ed eligible population.
- **Objective 1c:** Annually decrease consumption of added sugar from food and beverages among the SNAP-Ed eligible population.

**Goal 2: Increase Physical Activity**

- **Objective 2:** Annually increase physical activity among the SNAP-Ed eligible population consistent with the current *Physical Activity Guidelines for Americans*.

**Goal 3: Improve Food Resource Management**

- **Objective 3a:** Annually improve resource management behaviors<sup>[1]</sup> among the SNAP-Ed eligible population.
- **Objective 3b:** Annually increase food security<sup>[2]</sup> among the SNAP-Ed eligible population.

**Physical & Social Environment Outcomes**

**Goal 4: Increase access to and/or appeal<sup>[3]</sup> of healthy dietary choices and decrease access to and/or appeal of unhealthy dietary choices where people eat, live, learn, work, play, or shop.**

- **Objective 4a:** Annually improve<sup>[4]</sup> food environments at SNAP-Ed eligible sites.
- **Objective 4b:** Annually improve the proportion of healthy to unhealthy food environments in SNAP-Ed eligible communities.

**Goal 5: Increase access to and/or appeal<sup>[3]</sup> of physical activity opportunities for SNAP-Ed eligible populations.**

- **Objective 5a:** Annually improve<sup>[4]</sup> environments and opportunities for physical activity at SNAP-Ed eligible sites.
- **Objective 5b:** Annually increase physical activity opportunities and improved environments community-wide in SNAP-Ed eligible communities.

<sup>1</sup> Behaviors, such as reading labels, shopping with a list and comparing prices to maximize use of limited resources to support a healthy diet.

<sup>2</sup> Defined as not running out of food at the end of the month.

<sup>3</sup> Defined as availability, affordability, appropriateness to priority population, variety, quality, and marketing strategies such as placement, point of decision prompts, healthy defaults, and promotion.

<sup>4</sup> Defined as a combination of introducing healthy changes at new sites and deepening or maintaining changes at existing sites.

**B. PAYMENT PROVISIONS**

**CDPH funding for year one of this Agreement** October 1, 2016 to September 30, 2017 is in the amount of \$184,164. It is anticipated that funding for years two and three will be the same.

- COUNTY will provide the scopes of services/budgets to CONTRACTOR for years two & three, once funding is determined by CDPH for those years. County shall pay for the performance of all things necessary for or incidental to the performance of work as set forth in the state's provided budget below.

- Both parties understand and agree that this Standard Agreement is made contingent upon availability of funds. If funds from the state or federal source are not obtained and continued at a level sufficient to allow for COUNTY'S continuation of these services.
- COUNTY may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the
- COUNTY may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

**C. ADDITIONAL FISCAL AND ADMINISTRATIVE GUIDELINES**

1. Fiscal and Administrative Guidelines Manual and any revisions thereto.  
<http://www.cdph.ca.gov/programs/cpns/Pages/FiscalandAdministrativeGuidelinesManual.aspx>
2. NEOPB Program Letters and any revisions thereto.  
<http://www.cdph.ca.gov/programs/cpns/Pages/ProgramLetters.aspx>
3. United States Department of Agriculture, Supplemental Nutrition Assistance Program Education (SNAP-Ed) Plan Guidance.  
<http://snap.nal.usda.gov/national-snap-ed/snap-ed-plan-guidance-and-templates>

**D. INVOICING AND PAYMENTS**

1. For services satisfactorily rendered, and upon receipt and approval of the invoices, the County agrees to compensate the Contractor in accordance with the above listed terms. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.
2. Invoices shall be submitted on a quarterly basis.
3. Invoices shall be submitted in duplicate to:

**Monterey County Health Department  
Nutrition Programs  
Attn: Niaomi Hrepich, Health Program Coordinator  
632 East Alisal Street  
Salinas, CA 93905  
(831) 796-2872**

4. Invoices shall:
  - i. Be prepared on Contractor letterhead. An authorized official, employee, or agent certifying that the expenditures claimed represent services performed under this contract must sign invoices.
  - ii. Bear the Contractor's name as shown on the agreement.
  - iii. Identify the billing and/or performance period covered by the invoice.
  - iv. Itemize costs for the billing period in the same detail as indicated in the scope of services in the agreement. Reimbursement may only be sought for those costs and/or cost categories expressly identified as allowable in this agreement and approved by the County of Monterey.

**E. EXPENSES/FISCAL DOCUMENTATION**

1. Invoices, received from Contractor and accepted and/or submitted for payment by the County, shall not be deemed evidence of allowable agreement costs.
2. Contractor shall maintain for review and audit and provide to County upon request, adequate documentation of all expenses claimed pursuant to this agreement to permit a determination of expense allowability.

## ORIGINAL AGREEMENT

**COUNTY OF MONTEREY STANDARD AGREEMENT  
(MORE THAN \$100,000)**

This **Agreement** is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter "County") and:

San Benito County

(hereinafter "CONTRACTOR").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

**1.0 GENERAL DESCRIPTION.**

- 1.01 The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of this Agreement. The goods and/or services are generally described as follows:

**Provide** services in San Benito County that assist Supplemental Nutrition Assistance Program-Education (SNAP-Ed) eligible consumers in adopting healthy eating and physical activity behaviors as part of a healthy lifestyle.

**2.0 PAYMENT PROVISIONS.**

- 2.01 County shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement. The total amount payable by County to CONTRACTOR under this Agreement shall not exceed the sum of \$ 570,000.00.

**3.0 TERM OF AGREEMENT.**

- 3.01 The term of this Agreement is from October 1, 2013 to September 30, 2016, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and County and with County signing last, and **CONTRACTOR may not commence work before County signs this Agreement.**
- 3.02 The County reserves the right to cancel this Agreement, or any extension of this Agreement, without cause, with a thirty day (30) written notice, or with cause immediately.

**4.0 SCOPE OF SERVICES AND ADDITIONAL PROVISIONS.**

- 4.01 The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

**Exhibit A**     **Scope of Services/Payment Provisions**

**Exhibit B**     **Business Associate Agreement**



## 5.0 PERFORMANCE STANDARDS.

- 5.01 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the County, or immediate family of an employee of the County.
- 5.02 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 5.03 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

## 6.0 PAYMENT CONDITIONS.

- 6.01 Prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provided in this paragraph. The County does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.
- 6.02 Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of the Agreement. Rate changes are not binding unless mutually agreed upon in writing by the County and the CONTRACTOR.
- 6.03 Invoice amounts shall be billed directly to the ordering department.
- 6.04 CONTRACTOR shall submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. The County shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

## 7.0 TERMINATION.

- 7.01 During the term of this Agreement, the County may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.



- 7.02 The County may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If County terminates this Agreement for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner, which County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement.
- 7.03 The County's payments to CONTRACTOR under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for the County's purchase of the indicated quantity of services, then the County may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

## 8.0 INDEMNIFICATION.

- 8.01 CONTRACTOR shall indemnify, defend, and hold harmless the County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the CONTRACTOR's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the County. "CONTRACTOR's performance" includes CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents and subcontractors.

## 9.0 INSURANCE REQUIREMENTS.

### 9.01 Evidence of Coverage:

Prior to commencement of this Agreement, the Contractor shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the Contractor upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. The Contractor shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and the County has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

### 9.02 Qualifying Insurers:

All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to

the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

- 9.03 Insurance Coverage Requirements: Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

**Commercial General Liability Insurance,** including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

*(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)*

**Business Automobile Liability Insurance,** covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

*(Note: any proposed modifications to these auto insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)*

**Workers' Compensation Insurance,** if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

*(Note: any proposed modifications to these workers' compensation insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)*

**Professional Liability Insurance,** if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

*(Note: any proposed modifications to these auto insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)*

9.04 Other Requirements:

All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

## 10.0 RECORDS AND CONFIDENTIALITY.

- 10.01 Confidentiality. CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this Agreement, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.
- 10.02 County Records. When this Agreement expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this Agreement.
- 10.03 Maintenance of Records. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.
- 10.04 Access to and Audit of Records. The County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the County or as part of any audit of the County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 10.05 Royalties and Inventions. County shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of County.

## 11.0 NON-DISCRIMINATION.

- 11.01 During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal,

state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

## 12.0 COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANTS.

- 12.01 If this Agreement has been or will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.

## 13.0 INDEPENDENT CONTRACTOR.

- 13.01 In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability which County may incur because of CONTRACTOR's failure to pay such taxes.

## 14.0 NOTICES.

- 14.01 Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the County and CONTRACTOR'S contract administrators at the addresses listed below:

FOR COUNTY:	FOR CONTRACTOR:
Edward L. Moreno, MD, MPH, Health Officer/Director, Public Health Bureau	James A. Rydingsword, MPA, HHSA Director, San Benito County
Name and Title	Name and Title
1270 Natividad Road	439 Fourth Street
Salinas, CA 93906	Hollister, CA 95023
Address	Address
(831) 755-4526	(831) 630-5124
Phone	Phone



## 15.0 MISCELLANEOUS PROVISIONS.

- 15.01 Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the services required to be rendered under this Agreement.
- 15.02 Amendment. This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.
- 15.03 Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 15.04 Contractor. The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.
- 15.05 Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 15.06 Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.
- 15.07 Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 15.08 Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 15.09 Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 15.10 Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.
- 15.11 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 15.12 Non-exclusive Agreement. This Agreement is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.

- 15.13 Construction of Agreement. The County and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 15.14 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- 15.15 Authority. Any individual executing this Agreement on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- 15.16 Integration. This Agreement, including the exhibits, represent the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.
- 15.17 Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

-----This section left blank intentionally-----



## 16.0 SIGNATURE PAGE.

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

### COUNTY OF MONTEREY

By: \_\_\_\_\_  
Contracts/Purchasing Officer

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

By: \_\_\_\_\_  
Department Head (if applicable)

Date: 2-5-14

By: \_\_\_\_\_  
Board of Supervisors (if applicable)

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

Approved as to Form<sup>1</sup>

By: \_\_\_\_\_  
County Counsel

Date: 12/12/13

Approved as to Fiscal Provisions<sup>2</sup>

By: \_\_\_\_\_  
Auditor/Controller

Date: 12-19-13

Approved as to Liability Provisions/  
INSURANCE LANGUAGE

By: \_\_\_\_\_  
Risk Management

Date: 1-8-14

### CONTRACTOR

San Benito County  
Contractor's Business Name\*

By: \_\_\_\_\_  
(Signature of Chair, President, or Vice-President)\*

Anthony Botelho, Chair  
Name and Title

Date: 11/19/13

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

DENISE R. THOME CLERK OF THE BOARD  
Name and Title

Date: 11/19/13

APPROVED AS TO LEGAL FORM  
SAN BENITO COUNTY COUNSEL

Dr. L. W. 10-30-11  
DEPUTY COUNTY COUNSEL DATE

County Board of Supervisors' Agreement Number: \_\_\_\_\_, approved on (date): \_\_\_\_\_

\*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.

<sup>1</sup>Approval by County Counsel is required

<sup>2</sup>Approval by Auditor-Controller is required

<sup>3</sup>Approval by Risk Management is necessary only if changes are made in paragraphs 8 or 9

**EXHIBIT A**  
**Scope of Services / Payment Provisions**  
**To the**  
**Standard Agreement**  
**Between**  
**County of Monterey**  
**And**  
**San Benito County**

**A. SCOPE OF SERVICES**

**BACKGROUND:**

Funded through the United States Department of Agriculture, the California Department of Public Health (CDPH) awarded to the County of Monterey on behalf of its Health Department a three year grant for the period of October 1, 2013 to September 30, 2016, in the amount of \$1,319,529, approved by the Monterey County Board of Supervisors on October 1, 2013, File Number A 13-230. The grant replaces the Network Local Incentive Award grant and is now a Local Health Department award. The purpose of the grant is to implement the project, "Supplemental Nutrition Assistance Program-Education (SNAP-Ed). Since funding is now received at the state level, counties are funded separately. CDPH asked Monterey County (hereinafter "County") to be the lead agency and to subcontract with San Benito County (hereinafter "Contractor"), a collaborative partnership for over 10 years as part of the Regional Network grant.

**Scope of Services:**

Contractor shall provide the following:

Compile data for and report quarterly on educational activities, completing all relevant components on the Activity Tracking Form (ATF):

- A) The number, SNAP status, age, gender, race/ethnicity of SNAP-Ed eligible individuals receiving what type of evidence based direct nutrition education and in what setting.
- B) The number of evidence based nutrition education and health promotion messages to address SNAP-Ed goals, at least half of which are "Half your Plate: Fruits and Vegetables" and "Rethink Your Drink".
- C) Community public relations events and community messages promoting healthy foods and beverages and physical activity in SNAP-eligible census tracts and venues.

Implement an annual nutrition education work plan, describing evidence based nutrition education and obesity prevention and evaluation strategies to improve the health of the SNAP-Ed eligible population.

Eighteen hundred SNAP-Ed eligible individuals will receive evidence based direct nutrition education annually.

C/P 3/4/2010

Provide fifteen nutrition education classes per year addressing SNAP-Ed goals.

Attend two community events promoting nutrition education messages such as MyPlate, Rethink Your Drink, Make Half Your Plate Fruits and Veggies, Dietary Guidelines, or other Network allowable materials to SNAP eligible population.

Attend a quarterly coalition and/or partnership meeting established with other USDA funded partners to address community nutrition issues, enhance the consistency of food and nutrition messaging and reaching consensus on how best to improve access to healthy foods, beverages and physical activity in the SNAP eligible communities.

Report on Policy, Systems or Environmental change process, including reach, effectiveness, adoption, implementation and challenges overcome.

Document all expenses incurred in a quarterly expense report with the ability to provide all back up documentation for one quarter's expenses in sufficient detail to Monterey County Health Department.

Attend three to five Network-sponsored trainings, meetings or conferences annually.

**The following is CDPH's Deliverables (Scope of Services) provided to Monterey County as part of County's award. The deliverables that have an X in the box apply to San Benito County:**

**CALIFORNIA DEPARTMENT OF PUBLIC HEALTH  
NUTRITION EDUCATION AND OBESITY PREVENTION (NEOP) BRANCH  
Deliverables for Local Health Department Grants  
FFY 2014-2016**

**GOAL:** Supplemental Nutrition Assistance Program Nutrition Education (SNAP-Ed) participants and those eligible up to 185 percent Federal Poverty Level (FPL) are educated and receive support to consume healthy foods and beverages, reduce consumption of less healthy foods and beverages and to increase physical activity. These are the behavioral outcomes that the United States Department of Agriculture (USDA) expects and have the potential to reduce the prevalence of obesity and the onset of related chronic diseases in the SNAP-Ed population.

**Objective 1: Consumption and Access to Healthy Foods - Fruit and Vegetables**

By September 2014, as measured by statewide surveys and other surveillance systems, the percent of eligible Californian adults, teens, and children consuming fruits and vegetables will increase (measured as at least five servings of fruit and vegetables a day, two servings of fruit/day, and three servings of vegetables/day).

Objective 2: Consumption and Access to Healthy Beverages and Reduced Consumption of Unhealthy Beverages

By September 2014, as measured by statewide surveys and other surveillance systems, the percent of eligible Californian adults, teens, and children consuming low fat/nonfat milk and water will increase and consuming sugary beverages will decrease

Objective 3: Physical Activity and Sedentary Behavior

By September 2014, as measured by statewide surveys and other surveillance systems, the percent of eligible California adults, teens, and children who meet their respective age-level goals for physical activity will increase and the percent of youth who report watching two or fewer hours of television a day will increase

Objective 4 - Environmental Supports for Nutrition Education

By September 2014, as measured by policy/systems/environmental change reports, at least 50 percent of local health departments will report successful implementation of one (or more) place-based nutrition standard(s) or environmental support(s) to nutrition education.

**DELIVERABLES/OUTCOME MEASURES:** In order to assure that CDPH meets the above goal and objectives, the Local Health Department (LHD) is responsible for meeting USDA assurances and the following checked deliverables:

**Local Health Department Deliverables**

<b>Deliverable 1</b>	Three-year nutrition education plan, updated annually, describing nutrition education and obesity prevention and evaluation strategies to improve the health of the SNAP-Ed eligible population based on the Social Ecological Model (SEM), and an assessment using ethnicity, obesity, chronic disease and related data for the jurisdiction.	<input checked="" type="checkbox"/>
<b>Deliverable 2</b>	Compile data for and report quarterly on educational activities, completing all relevant components on the Activity Tracking Form (ATF):  A) The number, SNAP status, age, gender, race/ ethnicity of SNAP-Ed eligible individuals receiving what type of evidence-based direct nutrition education and in what setting. (Note: When this information is not available, report as indirect education contacts as in B) or C) below.)  B) The number of evidence-based nutrition education and health promotion messages to address SNAP-Ed goals, at least half of which are "Half Your Plate: Fruits and Vegetables" and "Rethink Your Drink".	<input checked="" type="checkbox"/>  <input checked="" type="checkbox"/>





<b>Deliverable 5</b>	Quarterly Expense documenting all expenses incurred during the quarter with the ability to provide back-up documentation for one quarter's expenses in sufficient detail to allow CDPH to ascertain compliance with USDA grant rules for allowable expenses. Likewise, provide Quarterly Progress Reports describing in detail the program activities conducted during the quarter, and the ability to provide source documentation in sufficient detail to support the reported activities.	<input checked="" type="checkbox"/>
<b>Deliverable 6</b>	Evaluation of a minimum series of five nutrition education classes using practice or evidence-based lessons using the <i>Network's</i> standard pre/post-test Impact/Outcome evaluation design for a specified number of individuals. (Note: Required only for LHDs receiving $\geq$ \$350,000 in the base grant)	<input type="checkbox"/>

**B. PAYMENT PROVISIONS**

**CDPH funding for year one of this Agreement (October 1, 2013 to September 30, 2014) is in the amount of \$184,664.00.** It is anticipated that funding for years two and three will be the same. County will provide the scopes of services/budgets to Contractor for years two & three, once funding is determined by CDPH for those years. County shall pay for the performance of all things necessary for or incidental to the performance of work as set forth in the state's provided budget below.

Both parties understand and agree that this Standard Agreement is made contingent upon availability of funds. If funds from the state or federal source are not obtained and continued at a level sufficient to allow for County's continuation of these services, County may give written notice of this fact to Contractor, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

*The remainder of the page was intentionally left blank*

**C. INVOICING AND PAYMENTS**

1. For services satisfactorily rendered, and upon receipt and approval of the invoices, the County agrees to compensate the Contractor in accordance with the above listed terms. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.
2. Invoices shall be submitted on a quarterly basis.
3. Invoices shall be submitted in duplicate to:

**Monterey County Health Department  
WIC/Nutrition Program  
Attn: Niaomi Hrepich, Sup PH Nutritionist  
632 East Alisal Street  
Salinas, CA 93905  
(831) 796-2872**

4. Invoices shall:
  - i. Be prepared on Contractor letterhead. An authorized official, employee, or agent certifying that the expenditures claimed represent services performed under this contract must sign invoices.
  - ii. Bear the Contractor's name as shown on the agreement.
  - iii. Identify the billing and/or performance period covered by the invoice.
  - iv. Itemize costs for the billing period in the same detail as indicated in the scope of services in the agreement. Reimbursement may only be sought for those costs and/or cost categories expressly identified as allowable in this agreement and approved by the County of Monterey.

**D. EXPENSES/FISCAL DOCUMENTATION**

1. Invoices, received from Contractor and accepted and/or submitted for payment by the County, shall not be deemed evidence of allowable agreement costs.
2. Contractor shall maintain for review and audit and provide to County upon request, adequate documentation of all expenses claimed pursuant to this agreement to permit a determination of expense allowability.



## BUSINESS ASSOCIATE AGREEMENT

This Agreement, hereinafter referred to as "**Agreement**", is made effective October 1, 2013 by and between the County of Monterey, a political subdivision of the State of California, on behalf of the Health Department, hereinafter referred to as "**Covered Entity**", and San Benito County, hereinafter referred to as "**Business Associate**", (individually, a "Party" and collectively, the "Parties").

### WITNESSETH:

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

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

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

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

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

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

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

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

### **I. DEFINITIONS**

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

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

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

## II. CONFIDENTIALITY REQUIREMENTS

(a) Business Associate agrees:

(i) to access, use, or disclose any Protected Health Information solely: (1) for meeting its obligations as set forth in any agreements between the Parties evidencing their business relationship or (2) as required by applicable law, rule or regulation, or by accrediting or credentialing organization to whom Covered Entity is required to disclose such information or as otherwise permitted under this Agreement, the Service Agreement (if consistent with this Agreement the HIPAA Privacy Rule, and California law), the HIPAA Privacy Rule, or California law and (3) as would be permitted by the HIPAA Privacy Rule and California law if such use or disclosure were made by Covered Entity;

(ii) at termination of this Agreement, the Service Agreement (or any similar documentation of the business relationship of the Parties), or upon request of Covered Entity, whichever occurs first, if feasible, Business Associate will return or destroy all Protected Health Information received from or created or received by Business Associate on behalf of Covered Entity that Business Associate still maintains in any form and retain no copies of such information, or if such return or destruction is not feasible, Business Associate will extend the protections of this Agreement to the information and limit further access, uses, and disclosures to those purposes that make the return or destruction of the information not feasible; and

(iii) to ensure that its agents, including a subcontractor, to whom it provides Protected Health Information received from or created by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply to Business Associate with respect to such information. In addition, Business Associate agrees to take reasonable steps to ensure that its employees' actions or omissions do not cause Business Associate to breach the terms of this Agreement.

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

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

(A) the disclosure is required by law; or

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

(ii) for data aggregation services, if to be provided by Business Associate for the health care operations of Covered Entity pursuant to any agreements between the Parties evidencing their business

relationship. For purposes of this Agreement, data aggregation services means the combining of Protected Health Information by Business Associate with the protected health information received by Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

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

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

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

### **IV. TERMINATION**

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

### **V. MISCELLANEOUS**

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

This Agreement may be amended or modified only in a writing signed by the Parties. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party. None of the provisions of this Agreement are intended to create, nor will they be deemed to create any relationship



Attachment B

between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship. This Agreement will be governed by the laws of the State of California. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

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

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

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

**COVERED ENTITY:**

County of Monterey

By: \_\_\_\_\_

Title: Director of Health or designee

Date: 2-5-14

**BUSINESS ASSOCIATE:**

San Benito County

By: \_\_\_\_\_

Title: Director

Date: 11/20/2013