First Amendment to Non-Standard Service Agreement
Between the County of Santa Clara and
Planned Parenthood Mar Monte

This is the First Amendment to the Non-Standard Service Agreement between the County of Santa Clara (COUNTY) and Planned Parenthood Mar Monte (CONTRACTOR) entered into on July 1, 2009 to provide case management services to Adolescent Family Life Program (AFLP) and Cal-Learn clients, [PO# 4300005934].

This Contract is amended as follows effective immediately upon approval:

1. Attachment A1, AFLP Scope of Work, is amended to reflect a change in the minimum number of Months of Service from 4,488 to 1,968 as stated in Section 6, Performance Standards, A.

2. Attachment E1, Business Associate Agreement, is replaced in its entirety with Business Associate Agreement which has been revised for the purpose of including additional privacy and security requirements.


3. All other terms and conditions of the Agreement remain in full force and effect. In the event of a conflict between the original Agreement and this Amendment, this Amendment controls.

COUNTY OF SANTA CLARA:
By: Dan Peddy cord, RN, MPA/HA Date
Public Health Director
Public Health Department

CONTRACTOR:
By: Linda T. Williams Date
CEO / President
Planned Parenthood Mar Monte

APPROVED AS TO FORM AND LEGALITY:
Juniper Lesnik Downs Date
Deputy County Counsel

APPROVED:
Emily Harrison Date
Deputy County Executive

Attachments:
Attachment A1: AFLP Scope of Work
Attachment E1 – Business Associate Agreement
For County Use Only – SAP

<table>
<thead>
<tr>
<th>SCC Vendor Number:</th>
<th>General Ledger</th>
<th>Cost Center</th>
<th>Amount</th>
<th>WBS</th>
<th>Internal Order</th>
</tr>
</thead>
<tbody>
<tr>
<td>Line 1</td>
<td>5255500</td>
<td>2921</td>
<td>$1,230,344</td>
<td>FY 10</td>
<td></td>
</tr>
<tr>
<td>Line 2</td>
<td>H, I or J</td>
<td>Expense Dept. Code</td>
<td>Capital Project Code</td>
<td>“PCA” code - Optional</td>
<td></td>
</tr>
</tbody>
</table>

Please give the reason for an increase in price, where there is no change in scope of service or term date:

______________________________

☐ Amend amount of agreement as follows:

A. Maximum Financial Obligation: (Current Contract Amount) $ 
B. Requested amount to be amended: $ 
C. Revised maximum contract amount: (A + B will equal C) $ 

**CONTRACT HISTORY**

If agreement covers services that occur in more than one fiscal year, enter information below.
Attachment A1
Adolescent Family Life Program (AFLP)
Scope of Work (SOW)
Fiscal Year(s): 2009-2010

Agency Name: County of Santa Clara Public Health Department
Agreement Number: 2007-43

1. Service Overview

The AFLP Agency agrees to provide to the California Department of Public Health (CDPH) the services described herein.

The AFLP focuses on the prevention of unplanned pregnancy, promotion of positive birth outcomes, improvement of the economic, health and social well being of adolescents, mothers and children. The AFLP Agency will define, coordinate and integrate systems of care; provide comprehensive case management services; and promote good health for mothers and children.

2. Service Location

The services shall be performed at various Agencies throughout California.

3. Service Hours

The services shall be provided during normal Agency working hours, excluding national holidays.

4. Project Representatives

The AFLP representatives and contacts during the term of this agreement will be:

| California Department of Public Health Maternal, Child and Adolescent Health Division Program Allocations, Integrity and Support Branch | Agency |
| Contract Manager: Dale Price 1615 Capitol Avenue, MS 8305 PO Box 997420 Sacramento, CA 95899-7420 Telephone: (916) 341-6702 Fax: (916) 650-0307 | Agency Name: County of Santa Clara Public Health Department Agency Contact: Colleen Martin Agency Address: 976 Lenzen Ave., 2nd Floor City, State, Zip: San Jose, CA 95126 Telephone: (408) 792-5186 Fax: (408) 792-5041 Email: colleen.martin@phd.sccgov.org |

Either party may make changes to the information above by giving written notice to the other party. Said changes shall not require an amendment to this agreement.
Attachment A1
Adolescent Family Life Program (AFLP)
Scope of Work (SOW)
Fiscal Year(s): 2009-2010

Agency Name: County of Santa Clara Public Health Department
Agreement Number: 2007-43

5. Allowable Informal SOW Changes

A. The AFLP Agency or the State may propose informal changes or revisions to the activities, tasks, deliverables and/or performance time frames specified in the SOW provided such changes do not alter the overall goals and basic purpose of the agreement.

B. Informal SOW changes may include the substitution of specified activities or tasks, alteration or substitution of agreement deliverables and modifications to anticipated completion/target dates.

C. Informal SOW changes processed hereunder shall not require a formal agreement amendment, provided the AFLP Agency's annual budget does not increase or decrease as a result of the informal SOW change.

D. Unless otherwise stipulated in this agreement, all informal SOW changes and revisions are subject to prior written approval by the State.

E. In implementing this provision, the State may provide a format for the Agency's use to request informal SOW changes. If no format is provided by the State, the Agency may devise its own format for this purpose.
6. Performance Requirements

A. In accordance with AFLP Standards, AFLP Agency will provide, at a minimum, the following case management Months of Service (MOS) to eligible adolescents and their children who are not enrolled in Cal-Learn for fiscal year(s):

1.968 AFLP MOS for the budget period of 07/01/09 through 06/30/10

If this SOW is for multiple years, please list additional years below:

B. For each fiscal year of the contract period, the Agency shall submit the deliverables identified below. With the exception of the Management Information System (MIS) Data, the LodeStar program, all deliverables shall be submitted to the Maternal, Child and Adolescent Health (MCAH) Division in accordance with the AFLP Policies and Procedures Manual and postmarked no later than the due date. The LodeStar Data shall be submitted to the current MIS contractor by the date specified below.

<table>
<thead>
<tr>
<th>Deliverables for each FY</th>
<th>Due Date for each FY</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) Annual Progress Report and Form 5</td>
<td>Aug. 15</td>
</tr>
<tr>
<td>2) MOS <strong>Quarterly</strong> Report and Form 4 (Quarterly Report Cover Sheet)</td>
<td>Oct. 31, Jan. 31, Apr. 30, July 31</td>
</tr>
<tr>
<td>3) Caseload Analysis <strong>Quarterly</strong> Report and Form 4</td>
<td>Oct. 31, Jan. 31, Apr. 30, July 31</td>
</tr>
<tr>
<td>4) Form 6 (Quarterly)</td>
<td>Oct. 31, Jan. 31, Apr. 30, July 31</td>
</tr>
<tr>
<td>5) MIS Data (content of previous month)</td>
<td>10th of each month for CD or diskettes 7th and/or 17th of each month for electronic submission</td>
</tr>
</tbody>
</table>

7. See the following pages for a detailed description of the services to be performed.
## AFLP SOW
### Fiscal Year(s): 2009-2010

### Goal 1: Define, coordinate and integrate systems of care that support and assist pregnant and parenting adolescents and their children.

<table>
<thead>
<tr>
<th>Major Objectives</th>
<th>Major Functions, Tasks and Activities</th>
<th>Timeline</th>
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<tbody>
<tr>
<td>1. AFLP Agency will establish and/or actively participate in local collaboratives designed to establish, sustain, and enhance comprehensive systems of care for children, adolescents and their families.</td>
<td>1.1 AFLP Agency will participate in the development and integration of local and state initiatives that promote a seamless system of care for children and adolescents whenever possible.</td>
<td>Ongoing</td>
<td>1.1.1 Describe in Annual Progress Report*, Agency involvement and efforts at the system level to develop and integrate these initiatives during the reporting period.</td>
</tr>
<tr>
<td></td>
<td>1.2 AFLP Agency will establish formal and/or informal agreements with local MCAH and other State and local agencies to develop and maintain non-duplicative, comprehensive systems of care that facilitate service delivery.</td>
<td>Ongoing</td>
<td>1.2.1 Describe any formal memorandums of understanding (MOU), interagency agreements (IA), or informal agreements that were established or renewed this fiscal year with programs that provide similar services and/or serve the same target population. Maintain documents to support MOUs and IAs in Agency files.</td>
</tr>
<tr>
<td>2. In accordance with the AFLP Standards, the AFLP Agency will collaborate with a network of local service providers to assure that appropriate and necessary community services are available to clients.</td>
<td>2.1 Program director or designee will participate in collaborative, community network activities that address the comprehensive needs and services of pregnant and parenting adolescents and their children.</td>
<td>Quarterly, at a minimum</td>
<td>2.1.1 Maintain network coordination documentation, summaries, and/or minutes of meetings attended in AFLP Agency files. Describe network activities in Annual Progress Report.</td>
</tr>
</tbody>
</table>

* Refer to Performance Requirements on Page 3 for specific timelines.
### Goal 1: Define, coordinate and integrate systems of care that support and assist pregnant and parenting adolescents and their children.

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<tbody>
<tr>
<td>2.2</td>
<td>Program director or designee will identify and promote provider collaboration and participation to expand local community services.</td>
<td>Ongoing</td>
<td>2.2.1 Describe in the Annual Progress Report* on-going and/or new agency activities to engage service providers.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2.2.2 Identify changes in the Annual Progress Report* for any providers newly added and/or lost to the service network since the last reporting period. Describe the impact of the changes on the AFLP population.</td>
</tr>
<tr>
<td>2.3</td>
<td>AFLP Agency will identify and promote the availability, accessibility, and cultural appropriateness of adolescent services and resources.</td>
<td>Ongoing</td>
<td>2.3.1 Describe in the Annual Progress Report* the availability, accessibility and cultural appropriateness of community services for clients.</td>
</tr>
<tr>
<td>2.4</td>
<td>Program director or designee will work with existing providers to address service gaps, barriers and service quality.</td>
<td>Ongoing</td>
<td>2.4.1 Describe in the Annual Progress Report* agency activities that address gaps, barriers and/or positive improvements to community services for clients.</td>
</tr>
</tbody>
</table>

* Refer to Performance Requirements on Page 3 for specific timelines.
Goal 2: Enhance the health, educational achievement, economic, personal and societal integration and independence of pregnant and parenting adolescents through case management.

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<tr>
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</thead>
<tbody>
<tr>
<td>1. In accordance with AFLP Standards, AFLP Agency will provide the MOS as specified under Performance Requirements to eligible adolescents and their children who are not enrolled in Cal-Learn.</td>
<td>1.1 AFLP Agency will conduct activities necessary to ensure that appropriate and eligible clients are referred to the program, and enrolled or appropriately placed on a waiting list.</td>
<td>Ongoing</td>
<td>1.1.1 Maintain documentation of outreach activities in agency files and summarize in Annual Progress Report*.</td>
</tr>
<tr>
<td></td>
<td>1.2 AFLP Agency will maintain policies and criteria for program admission that incorporate weighted risk factors, in addition to standardized entry criteria.</td>
<td>Annually</td>
<td>1.2.1 Submit Form 5 with the Annual Progress Report to the MCAH Division.</td>
</tr>
<tr>
<td></td>
<td>1.3 AFLP clients and their children will be assigned a primary case manager who will provide comprehensive case management services tailored to the clients' specific needs and priorities. Case management includes, but is not limited to: Intake • Completion of the Comprehensive Baseline Assessment (CBA) elements • Ongoing assessment of client needs, priorities, and resources • Annual comprehensive reassessment, at a minimum • Development, implementation, monitoring, and revision of the ISP with the client at least quarterly and as needed • Advocacy on behalf of client</td>
<td>Ongoing</td>
<td>1.3.1 Case managers will maintain individual client records that include: Current signed and dated Consent Forms • Completed Release of Information Forms, as needed, that include agency name, purpose, and time limit for sharing records • Intake information • Completion of the CBA and Reassessment as specified in the AFLP Policies and Procedures Manual, and periodic updates • Individual Service Plan (ISP) and updates • Referral documentation • Case notes and summaries signed and dated • Case conference documentation • Exit summary</td>
</tr>
</tbody>
</table>

* Refer to Performance Requirements on Page 3 for specific timelines.
## AFLP SOW
### Fiscal Year(s): 2009-2010

### Goal 2: Enhance the health, educational achievement, economic, personal and societal integration and independence of pregnant and parenting adolescents through case management.

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<tbody>
<tr>
<td></td>
<td>• Monthly client contact</td>
<td></td>
<td>1.4.1 AFLP Agency will submit the Caseload Analysis Report*, MOS Report*, and Form 4* to MCAH.</td>
</tr>
<tr>
<td></td>
<td>• Quarterly client contact in the home</td>
<td></td>
<td>1.5.1 AFLP Agency to submit MIS Data** to the MCAH Division or designee.</td>
</tr>
<tr>
<td>1.4</td>
<td>AFLP Agency will utilize the State supported MIS Data** to track client count and calculate MOS.</td>
<td>Quarterly</td>
<td></td>
</tr>
<tr>
<td>1.5</td>
<td>AFLP Agency will collect and input data elements contained in the State supported MIS Data** each month to ensure that all current activity is reflected in the data sent to the MCAH Division or designee.</td>
<td>Monthly</td>
<td></td>
</tr>
<tr>
<td>2.1</td>
<td>AFLP Agency will maintain and revise program SID as needed to reflect the current operating practices of the program as changes occur.</td>
<td>Annually</td>
<td>2.1.1 Submit Form 5 with the Annual Progress Report to the MCAH Division.</td>
</tr>
<tr>
<td>2.2</td>
<td>The SID will be made available to staff at all program sites.</td>
<td>Ongoing</td>
<td>2.2.1 A current/updated version of the SID* will be available at every program site.</td>
</tr>
<tr>
<td>2.3</td>
<td>All staff will be oriented to the SID, its location and use.</td>
<td>Ongoing</td>
<td>2.3.1 AFLP Agency will maintain documentation of staff orientation to the SID and all staff will be familiar with its location and content.</td>
</tr>
</tbody>
</table>

* Refer to Performance Requirements on Page 3 for specific timelines.

** State supported MIS Data is currently "LodeStar". Agency will not be held financially liable for modifications of AFLP MIS that result in increased and/or uncompensated agency costs.
### Major Objectives

| 3. AFLP Agency will maintain sufficient staff to administer the program and provide case management services in accordance with AFLP Standards and AFLP Policies and Procedures. |

### Major Functions, Tasks and Activities

| 3.1 AFLP Agency will maintain an updated personnel list, including name, position, and total FTE percent for each staff member on the AFLP budget. For AFLP staff also providing case management in Cal-Learn, the list will include total FTE percent for each program. |
| 3.2 AFLP Agency will notify the MCAH Division Program Consultant and Contract Manager of personnel vacancies. |
| 3.3 Upon resignation or change in the AFLP Director, AFLP Agency will notify MCAH Division and submit a plan for the interim oversight of the program. |
| 3.4 A written request for approval of the interim and/or permanent program director, along with the applicant's resume/curriculum vitae, will be submitted to MCAH Division prior to appointment of the program director. |
| 3.5 AFLP Agency will maintain a monthly case manager ratio of no more than 50 clients per FTE case manager. This consists of all clients (open, new and exited clients) on the caseload |

### Time Line

| 3.1.1 AFLP Agency will submit to MCAH Form 6 containing Personnel and FTE List* for all staff employed during the report period, and maintain a copy in agency files. |
| 3.2.1 Personnel vacancies and new hires that occurred during the report period will be reflected on Form 6* and submitted to the MCAH Division. |
| 3.2.2 Describe the impact of personnel changes in the Annual Progress Report. |
| 3.3.1 AFLP Agency will submit their plan to the MCAH Division within two weeks of notification of change to the project director position. |
| 3.4.1 Written documentation of MCAH Division approval of the interim and/or permanent program director must be received by State MCAH Division prior to appointment, and correspondence maintained in agency file. |
| 3.5.1 AFLP Agency will submit the Caseload Analysis Report*, MOS Report*, and Form 4* to MCAH Division. The reports will include current aggregate FTEs for current AFLP case manager |

* Refer to Performance Requirements on Page 3 for specific timelines.
### Goal 2: Enhance the health, educational achievement, economic, personal and societal integration and independence of pregnant and parenting adolescents through case management.

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<thead>
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<tr>
<td></td>
<td>throughout the month. This limit includes all clients served by the case manager, i.e. Cal-Learn.</td>
<td>Ongoing</td>
<td>positions, including aggregate caseload count.</td>
</tr>
<tr>
<td>3.6 AFLP Agency will designate a non-case management staff person to routinely enter required program data into the AFLP MIS. ***</td>
<td>Ongoing</td>
<td>3.6.1 AFLP Agency will complete data entry during the month the data was collected and submit to MCAH Division or designee by the 7th day of the following month unless otherwise specified.</td>
<td></td>
</tr>
<tr>
<td>4. AFLP Agency will maintain qualified staff to administer the program and provide case management services in accordance with AFLP Standards and Policies and Procedures.</td>
<td>Ongoing</td>
<td>4.1.1 AFLP Agency will maintain written standards, policies and procedures, duty statements, orientation activities and staff training on file.</td>
<td></td>
</tr>
<tr>
<td>4.1 AFLP Agency will maintain written policies that include, at a minimum, a specific duty statement for each position listed on the AFLP budget; procedures for orientation of staff to AFLP Standards; and provision for job-related training and technical assistance (TA).</td>
<td>Ongoing</td>
<td>4.1.2 New positions and/or revisions in duty statements will be submitted for MCAH Division approval prior to the position being included on the AFLP budget.</td>
<td></td>
</tr>
<tr>
<td>4.2 AFLP Agency will provide each employee with a duty statement and orientation. Appropriate and ongoing supervision and technical assistance will be provided.</td>
<td>Ongoing</td>
<td>4.2.1 AFLP Agency will maintain documentation of orientation, supervision, and technical assistance provided by agency to each AFLP staff member.</td>
<td></td>
</tr>
<tr>
<td>4.3 AFLP Agency will identify training and TA needs of AFLP staff.</td>
<td>Ongoing, at a minimum annually</td>
<td>4.3.1 AFLP Agency will identify needs and requests for training and TA for AFLP staff in the Annual Progress Reports* and maintain copy in agency files.</td>
<td></td>
</tr>
</tbody>
</table>

* Refer to Performance Requirements on Page 3 for specific timelines.

*** Does not apply to Agencies with 1000 allocated MOS or less per fiscal year.

AFLP SOW (Rev 05/2009)
**Goal 2:** Enhance the health, educational achievement, economic, personal and societal integration and independence of pregnant and parenting adolescents through case management.

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<tr>
<td>4.4</td>
<td>AFLP Agency will provide and/or obtain job related training and TA for AFLP staff as needed.</td>
<td>Ongoing, at a minimum annually,</td>
<td>4.4.1 Training and TA provided to AFLP staff will be maintained in agency files and reported in the Annual Progress Report*.</td>
</tr>
<tr>
<td>4.5</td>
<td>AFLP Agency will develop and implement Quality Assurance (QA) activities consistent with the AFLP Policies and Procedures.</td>
<td>Ongoing</td>
<td>4.5.1 AFLP Agency will document QA process in SID and maintain documentation of QA in agency files.</td>
</tr>
<tr>
<td>4.6</td>
<td>AFLP Director will participate in required statewide AFLP Directors meetings and State sponsored trainings; and, if funding available, regional meetings.</td>
<td>Ongoing</td>
<td>4.6.1 Attendance at State sponsored meetings and/or trainings will be documented by training attendance sheets maintained by the State.</td>
</tr>
</tbody>
</table>

* Refer to Performance Requirements on Page 3 for specific timelines.
### Goal 3: To promote implementation of the State MCAH 5-Year Plan and attainment of its goals and objectives as specified in the California MCAH Priorities (see last page of this document).

<table>
<thead>
<tr>
<th>Major Objectives</th>
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</thead>
</table>
| 1. Promote primary and preventive health care utilization by pregnant and parenting adolescents and their children. | 1.1. As determined by the needs of the client, case manager activities will focus on, but are not limited to, the following: Prevention of:  
  - Poor Perinatal Outcomes (e.g. Low Birth Weight, Birth Defects, Infant Mortality, Maternal Mortality)  
  - Sexually Transmitted Infections  
  - Unplanned Repeat Pregnancy  
  - HIV/AIDS  
  - Substance Abuse (Alcohol, Drugs, Tobacco, including children's exposure to second hand smoke)  
  - Violence  
  - Injury (Intentional/Unintentional) Promotion of:  
  - Breastfeeding  
  - General Health  
  - Exercise and Good Nutrition  
  - Family Planning  
  - Early and Consistent Prenatal Care  
  - Well-child care  
  - Age-appropriate Immunizations  
  - School Attendance, when appropriate  
  - Educational Achievement  
  - Healthy Lifestyle Choices  
  - Healthy Parent-Child and Peer Relationships | Ongoing | 1.1.1 Health education, counseling, referral and/or participation in prevention/health promotion activities will be documented in the client chart and described in the Annual Progress Report*. |

* Refer to Performance Requirements on Page 3 for specific timelines.
AFLP Scope of Work  
Fiscal Year(s): 2009-2010

Goal 3: To promote implementation of the State MCAH 5-Year Plan and attainment of its goals and objectives as specified in the California MCAH Priorities (see last page of this document).

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<tbody>
<tr>
<td>1.2</td>
<td>Case managers will monitor and collect immunization status information of adolescents and index children and promote and record age appropriate immunizations based on the current State Immunization Program Guidelines.</td>
<td>Ongoing</td>
<td>1.2.1 Submit immunization information to MCAH Division or designee via the AFLP MIS ** and record information in client chart.</td>
</tr>
<tr>
<td>1.3</td>
<td>Case managers will assist in identifying and accessing a primary health care provider for each client and her/his children. Lack of access to an identified provider or inability to identify a provider will be documented.</td>
<td>Ongoing</td>
<td>1.3.1 Primary health care provider or identified barrier to care will be documented in client’s chart.</td>
</tr>
<tr>
<td>1.4</td>
<td>AFLP Agency will collect State specified adolescent health data.</td>
<td>Ongoing</td>
<td>1.4.1 Submit to MCAH Division or designee via the MIS Data** as requested.</td>
</tr>
<tr>
<td>1.5</td>
<td>Case managers will assure that all the elements of the CBA are completed and clients' comprehensive needs are reassessed annually.</td>
<td>Ongoing</td>
<td>1.5.1 Assessments will be documented in client charts.</td>
</tr>
</tbody>
</table>

** State supported MIS Data is currently "LodeStar". Agency will not be held financially liable for modifications of AFLP MIS that result in increased and/or uncompensated agency costs.
AFLP Scope of Work
Fiscal Year(s): 2009-2010

California MCAH Division Priorities: 2006 - 2010

1. Enhance preconception care and eliminate disparities in infant and maternal morbidity and mortality.

2. Promote healthy lifestyle practices among MCAH populations and reduce the percentage of overweight children and adolescents.

3. Promote responsible sexual behavior to decrease the rate of teen pregnancy and sexually transmitted infections.

4. Improve mental health and decrease substance use among children, adolescents and pregnant or parenting women.

5. Improve access to care and quality of health and dental services, including the reduction of disparities.

6. Decrease unintentional and intentional injuries and violence, including community, family, and intimate partner violence.

7. Increase breastfeeding initiation and duration.
ATTACHMENT E1 - BUSINESS ASSOCIATE AGREEMENT

WHEREAS, County of Santa Clara ("County" or "Covered Entity") is a Covered Entity, as defined below, and wishes to disclose certain Protected Health Information ("PHI") to Planned Parenthood Mar Monte "Business Associate" pursuant to the terms of the Agreement and this amendment ("Business Associate Agreement" or "BAA"); and

WHEREAS, Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable law; and

WHEREAS, as part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require Covered Entity to enter into a contract containing specific requirements with Business Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations ("C.F.R.") and contained in this Addendum.

In consideration of the mutual promises below and the exchange of information pursuant to this Addendum, the parties agree as follows:

I. Definitions

Terms used, but not otherwise defined, and terms with initial capital letters in this provision of the Agreement have the same meaning as defined under the Health Insurance Portability and Accountability Act of 1996, 42 USC §§ 1320d et seq. ("HIPAA") and the implementing regulations and with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

Privacy Breach: Any reported, suspected, actual or alleged acquisition, access, use or disclosure of Protected Health Information in a manner not permitted or allowed under state or federal privacy laws.

Business Associate — A person, organization, or agency other than a workforce member that provides specific functions, activities, or services that involve the use, creation, or disclosure of PHI for, or on behalf of, a HIPAA covered health care component. Examples of business associate functions are activities such as claims processing or administration, data analysis, utilization review, quality assurance, billing, benefit management, practice management, and repricing; and legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services.

Covered Entity shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.
**Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

**Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.

**Electronic Health Record** shall have the meaning given to such term in the HITECt Act, including, but not limited to, 42 U.S.C. Section 17921.

**Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

**Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.

**Protected Health Information or PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental 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 (ii) 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, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].

**Protected Information** shall mean PHI provided by Santa Clara County to Business Associate or created or received by Business Associate on Santa Clara County’s behalf.

**Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.

**Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h).

II. **Duties & Responsibilities of Business Associate**

a. **Permitted Uses.** Business Associate shall not use Protected Information except for the purpose of performing Business Associate’s obligations under the Contract and as permitted under the Contract and Addendum. Further, Business Associate shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by CE. However, Business Associate may use Protected Information (i) for the proper management and administration of Business Associate, (ii) to carry out the legal responsibilities of Business Associate, or (iii) for Data Aggregation purposes for the Health Care Operations of CE [45 C.F.R. Sections 164.504(e)(2)(ii)(A) and 164.504(e)(4)(i)].

b. **Permitted Disclosures.** Business Associate shall not disclose Protected Information except for the purpose of performing Business Associate’s obligations under the Contract and as permitted under the Contract and Addendum. Business Associate shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by CE. However, Business Associate may disclose Protected Information (i) for the
proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate; (iii) as required by law; or (iv) for Data Aggregation purposes for the Health Care Operations of CE. If Business Associate discloses Protected Information to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Addendum and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify Business Associate of any breaches of confidentiality of the Protected Information within 10 calendar days of discovery, to the extent it has obtained knowledge of such breach [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)].

c. **Prohibited Uses and Disclosures.** Business Associate shall not use or disclose Protected Information for fundraising or marketing purposes. Business Associate shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates [42 U.S.C. Section 17935(a)]. Business Associate shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of CE and as permitted by the HITECH Act, 42 U.S.C. section 17935(d)(2); however, this prohibition shall not affect payment by CE to Business Associate for services provided pursuant to the Contract.

d. **Appropriate Safeguards.** Business Associate Shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Contract that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, in accordance with 45 C.F.R. Sections 164.308, 164.310, 164.312 and 164.316. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. Business Associate shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. Section 164.316 [42 U.S.C. Section 17931].

e. **Reporting of Improper Access, Use or Disclosure.** Business Associate shall report to CE in writing of any access, use or disclosure of Protected Information not permitted by the Contract and Addendum, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than 10 calendar days after discovery [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)]. The breach notice must contain: (1) a brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known, (2) a description of the types of PHI that were involved in the breach, (3) any steps individuals should take to protect themselves from potential harm resulting from the breach, (4) a brief description of what the business associate is doing to investigate the breach, to mitigate harm to individuals, and to protect against further breaches, and (5) contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, website or postal address. [45 C.F.R Section 164.410] Business Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
f. Business Associate’s Agents. Business Associate shall ensure that any agents, including subcontractors, to whom it provides Protected Information, agree in writing to the same restrictions and conditions that apply to Business Associate with respect to such PHI and implement the safeguards required by paragraph c above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. Business Associate shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).

g. Access to Protected Information. Business Associate shall make Protected Information maintained by Business Associate or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within ten (10) days of a request by CE to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable CE to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e).

h. Electronic PHI. If Business Associate receives, creates, transmits or maintains EPHI on behalf of COVERED ENTITY, Business Associate will, in addition, do the following:

(1) Develop, implement, maintain and use appropriate administrative, physical, and technical safeguards in compliance with Section 1173(d) of the Social Security Act, Title 42, Section 1320(s) or the United States Code and Title 45, Part 162 and 164 of CFR to preserve the integrity and confidentiality of all electronically maintained or transmitted PHI received from or on behalf of COVERED ENTITY.

(2) Document and keep these security measures current and available for inspection by COVERED ENTITY.

(3) Ensure that any agent, including a subcontractor, to whom the Business Associate provides EPHI agrees to implement reasonable and appropriate safeguards to protect it.

(4) Report to the COVERED ENTITY any Security Incident of which it becomes aware. For the purposes of this Agreement, Security Incident means, as set forth in 45 C.F.R section 164.304, “the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.”

i. Amendment of PHI. Within ten (10) days of receipt of a request from Santa Clara County for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Business Associate or its agents or subcontractors shall make such Protected Information available to Santa Clara County for amendment and incorporate any such amendment to enable Santa Clara County to fulfill its obligations under the Privacy Rule. If any individual requests an amendment of Protected Information directly from Business Associate or its agents or subcontractors, Business Associate must notify Santa Clara County in writing within five (5) days of the request. Any approval or denial of amendment of Protected Information maintained by Business Associate or its agents or subcontractors shall be the responsibility of CE.

j. Accounting Rights. Promptly upon any disclosure of Protected Information for which Santa Clara County is required to account to an individual, Business Associate and its agents or
subcontractors shall make available to Santa Clara County the information required to provide an accounting of disclosures to enable Santa Clara County to fulfill its obligations under the Privacy Rule, and the HITECH Act, as determined by CE. Business Associate agrees to implement a process that allows for an accounting to be collected and maintained by Business Associate and its agents or subcontractors for at least six (6) years prior to the request. Accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for three (3) years prior to the request, and only to the extent Business Associate maintains an electronic health record and is subject to this requirement.

At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, Business Associate shall within five (5) days of a request forward it to Santa Clara County in writing. It shall be CE's responsibility to prepare and deliver any such accounting requested. Business Associate shall not disclose any Protected Information except as set forth in Agreement.

k. Governmental Access to Records. Business Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to Santa Clara County and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining Business Associate's compliance with the Privacy Rule. Business Associate shall provide to Santa Clara County a copy of any Protected Information that Business Associate provides to the Secretary concurrently with providing such Protected Information to the Secretary.

l. Minimum Necessary. Business Associate (and its agents or subcontractors) shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use, or disclosure. Business Associate understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."

m. Data Ownership. Business Associate acknowledges that Business Associate has no ownership rights with respect to the Protected Information.

n. Breach Pattern or Practice by Covered Entity. If the Business Associate knows of a pattern of activity or practice of the Santa Clara County that constitutes a material breach or violation of the CE's obligations under the Contract or Addendum or other arrangement, the Business Associate must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the Business Associate must terminate the Contract or other arrangement if feasible, or if termination is not feasible, report the problem to the Secretary of DHHS. Business Associate shall provide written notice to Santa Clara County of any pattern of activity or practice of the Santa Clara County that Business Associate believes constitutes a material breach or violation of the CE's obligations under the Contract or Addendum or other arrangement.
within five (5) days of discovery and shall meet with Santa Clara County to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

o. Audits, Inspection and Enforcement. Within ten (10) days of a written request by CE, Business Associate and its agents or subcontractors shall allow Santa Clara County to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this Addendum for the purpose of determining whether Business Associate has complied with this Addendum; provided, however, that (i) Business Associate and Santa Clara County shall mutually agree in advance upon the scope, timing and location of such an inspection, (ii) Santa Clara County shall protect the confidentiality of all confidential and proprietary information of Business Associate to which Santa Clara County has access during the course of such inspection; and (iii) Santa Clara County shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Business Associate.

The fact that Santa Clara County inspects, or fails to inspect, or has the right to inspect, Business Associate’s facilities, systems, books, records, agreements, policies and procedures does not relieve Business Associate of its responsibility to comply with this Addendum, nor does CE’s (i) failure to detect or (ii) detection, but failure to notify Business Associate or require Business Associate’s remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of CE’s enforcement rights under the Contract or Addendum.

Business Associate shall notify Santa Clara County within ten (10) days of learning that Business Associate has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights.

III. Termination

a. Material Breach. A breach by Business Associate of any provision of this Addendum, as determined by CE, shall constitute a material breach of the Contract and shall provide grounds for immediate termination of the Contract, any provision in the Contract to the contrary notwithstanding [45 C.F.R. Section 164.504(e)(2)(iii)].

b. Judicial or Administrative Proceedings. Santa Clara County may terminate the Contract, effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

c. Effect of Termination. Upon termination of the Contract for any reason, Business Associate shall, at the option of CE, return or destroy all Protected Information that Business Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by CE, Business Associate shall continue to extend the protections of Section 2 of this Addendum to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 C.F.R. Section 164.504(e)(ii)(2)(I)]. If Santa Clara
County elects destruction of the PHI, Business Associate shall certify in writing to Santa Clara County that such PHI has been destroyed.

IV. General Provisions

a. **Indemnification.** In addition to the indemnification language in the Agreement, Business Associate agrees to be responsible for, and defend, indemnify and hold harmless the County for any breach of Business Associate’s privacy or security obligations under the Agreement, including any fines and assessments that may be made against SCVHHS or the Business Associate for any privacy breaches or late reporting.

b. **Disclaimer.** The County of Santa Clara makes no warranty or representation that compliance by Business Associate with this Addendum, HIPAA, the HITECH Act, or the HIPAA Regulations will be adequate or satisfactory for Business Associate’s own purposes. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

c. **Amendment to Comply with Law.** The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Contract of Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that Santa Clara County must receive satisfactory written assurance from Business Associate that Business Associate will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule or other applicable laws. Santa Clara County may terminate the Contract upon thirty (30) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend the Contract or Addendum when requested by Santa Clara County pursuant to this Section or (ii) Business Associate does not enter into an amendment to the Contract or Addendum providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

d. **Assistance in Litigation of Administrative Proceedings.** Business Associate shall make itself, and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under the Contract or Addendum, available to CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers or employees based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where Business Associate or its subcontractor, employee or agent is named adverse party.

e. **No Third-Party Beneficiaries.** Nothing express or implied in the Contract or Addendum is intended to confer, nor shall anything herein confer, upon any person other than CE, Business
Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

f. **Effect on Contract.** Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of the Contract shall remain in force and effect.

g. **Interpretation.** The provisions of this Addendum shall prevail over any provisions in the Contract that may conflict or appear inconsistent with any provision in this Addendum. This Addendum and the Contract shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule. The parties agree that any ambiguity in this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

h. **Survivorship.** The respective rights and responsibilities of Business Associate related to the handling of PHI survive termination of this Agreement.