



Contract Number

SAP Number

Department of Public Health

Department Contract Representative	Staci McClane
Telephone Number	909-601-5622
Contractor	
Contractor Representative	
Telephone Number	
Contract Term	Upon execution through September 23, 2029
Original Contract Amount	Non-financial
Amendment Amount	N/A
Total Contract Amount	N/A
Cost Center	N/A
Grant Number (if applicable)	N/A

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, San Bernardino County (County) desires to improve access to hospital-grade breast pumps for Women, Infants and Children (WIC) Program participants who have given birth to a child that is receiving care in a Neonatal Intensive Care Unit (NICU); and

WHEREAS, _____ (Contractor) has the need for additional hospital-grade breast pumps for its patients who are WIC participants and have given birth to a child that is receiving care in the NICU; and

WHEREAS, the County has hospital-grade breast pumps available to loan to Contractor for WIC participant use; and

WHEREAS, it is of mutual benefit to the parties that County provides hospital-grade breast pumps to Contractor for use with its WIC participants with a child(ren) in the NICU;

NOW THEREFORE, the parties hereto enter into this Memorandum of Understanding (MOU) as a full statement of their respective responsibilities during the term of this MOU, and in consideration of the representations made above and the covenants and conditions set forth herein, the parties agree as follows:

A. DEFINITIONS

1. Women, Infants and Children (WIC) Program (Program) – Special supplemental nutrition program for women, infants, and children serving to safeguard the health of low-income pregnant, postpartum, and breastfeeding women, infants, and children up to age 5 who are at nutritional risk by providing nutritious foods to supplement diets, information on healthy eating including breastfeeding promotion and support, and referrals to health care.
2. Hospital-Grade Breast Pump – Powerful, multi-user breast pump designed for frequent and long-term use, with stronger suction strength, durable motors, and a closed system to prevent cross-contamination.
3. Pump Closet Program – A program designed to provide hospitals with hospital-grade breast pumps to loan to WIC participants who have given birth to a child that is receiving care in the NICU and therefore cannot be with the mother full time. This allows the mother to pump breast milk which is then provided to the infant when the infant is not able to breastfeed due to medical care, therefore not using formula.

B. COUNTY RESPONSIBILITIES

The County shall:

1. Provide hospital-grade breast pumps, accompanying kits, and breastfeeding educational material to Contractor to issue to WIC mothers who have delivered a child that is receiving care in the NICU and a breast pump is needed.
2. Ensure breast pumps are clean and sanitized, and in working order before delivering to Contractor.
3. Work with the Contractor to replenish its supply for additional WIC participants in need of a breast pump as breast pumps, accompanying kits, and educational materials are issued to eligible mothers.
4. Deliver “Pump Loan Agreement” (Attachment A) forms and “Breast Pump Check Out” (Attachment B) forms and breast-feeding education packets to Contractor as needed.
5. Receive the “Pump Loan Agreement” (Attachment A) forms and “Breast Pump Check Out” (Attachment B) forms via fax at (909) 381-0218 or email to wicpumps@dph.sbcounty.gov and log the forms and information into the Program’s breast pump inventory database.
6. Notify Contractor when the Program’s pump inventory is low, or if unable to deliver due to a holiday, etc.
7. Perform reconciliation of pump inventory monthly and contact Contractor with any discrepancies.
8. Provide training to the Contractor on the Program, including how to refer/enroll a patient into the WIC Program for additional services.
9. Receive returned breast pumps from WIC participants and process for reuse.

C. CONTRACTOR RESPONSIBILITIES

The Contractor shall:

1. Store the breast pumps in a secure location.

2. Verify that each participant who receives a loaner breast pump from the Program is a current WIC participant via their WIC card or the WIC app on their phone. Check out breast pumps only to a WIC participant who has an admitted infant in the Contractor's NICU.
3. Refer eligible mothers to the County's WIC Program for breast feeding assistance and/or WIC enrollment.
4. Ensure that each WIC participant in the Pump Closet Program receives a new, unopened breast pump attachment kit.
5. Demonstrate and educate each WIC participant in the Pump Closet Program on how to use the breast pump and troubleshoot issues. Instruct the WIC participant who to contact if additional assistance or information regarding the breast pump is needed.
6. Provide the WIC participant with an educational patient breastfeeding packet, as provided by the County.
7. Obtain signed "Pump Loan Agreement" (Attachment A) forms from WIC participant when a breast pump is issued. Fax to the Program at (909)-381-0218 or email a copy of the form to wicpumps@dph.sbcounty.gov.
8. Instruct the WIC participant to return the breast pump to their local WIC office when the breast pump is no longer necessary.
9. Ensure appropriate hospital staff are trained and competent in the use of the breast pumps and can educate the WIC participant in the use and care of the breast pump.
10. Contact Program via phone at (909) 388-5668 or email at wicpumps@dph.sbcounty.gov when inventory of loaner breast pumps is low to receive additional inventory as available from Program.
11. Contact Program via phone at (909) 388-5668 or email at wicpumps@dph.sbcounty.gov if experiencing any issues with the Program loaned breast pumps.
12. Submit a monthly report, "Breast Pump Check Out" (Attachment B) form(s) on the 1st of each month identifying the Program breast pumps on hand, including breast pump identification number via FAX at (909) 381-0218 or email at wicpumps@dph.sbcounty.gov
13. Provide education to Contractor staff that will be working with the Pump Closet Program and WIC participants.

D. INDEMNIFICATION AND INSURANCE REQUIREMENTS

1. Indemnification

Each party to this MOU agrees to indemnify and hold harmless the other party and its officers, employees, agents, and volunteers from any and all claims or actions arising from the other party's acts, errors or omissions, and for any costs or expenses incurred by the other party on account of any claim therefore.

2. Additional Insured

All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability policies, shall contain endorsements naming the County and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

3. Waiver of Subrogation Rights

The Contractor shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against the County.

4. Policies Primary and Non-Contributory

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

5. Severability of Interests

The Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Contractor and the County or between the County and any other insured or additional insured under the policy.

6. Proof of Coverage

The Contractor shall furnish Certificates of Insurance to the County Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, the Contractor shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

7. Acceptability of Insurance Carrier

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

8. Deductibles and Self-Insured Retention

Any and all deductibles or self-insured retentions in excess of ten-thousand dollars (\$10,000) shall be declared to and approved by Risk Management.

9. Failure to Procure Coverage

In the event that any policy of insurance required under this Contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the Contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the Contractor or County payments to the Contractor will be reduced to pay for County purchased insurance.

10. Insurance Review

Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. Contractor agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

11. Insurance Specifications

The Contractor agrees to provide insurance set forth in accordance with the requirements herein. If the Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Contractor agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

Commercial/General Liability Insurance – The Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of the Contractor providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include: (a) Premises operations and mobile equipment. (b) Products and completed operations. (c) Broad form property damage (including completed operations). (d) Explosion, collapse and underground hazards. (e) Personal injury (f) Contractual liability. (g) \$2,000,000 general aggregate limit

E. CONFIDENTIALITY

1. Pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act, regulations have been promulgated governing the privacy of individually identifiable health information. The HIPAA Privacy Rule and Security Rule specify requirements with respect to contracts between a Covered Entity and its Business Associates. Contractor shall comply with the attached Business Associate Agreement (Attachment C). Contractor further agrees to comply with the requirements of other federal and state law that applies to the information collected and maintained by Contractor for services performed pursuant to Contract.
2. County shall protect from unauthorized use or disclosure names and other identifying information concerning persons receiving services pursuant to this MOU, except for statistical information not identifying any participant. The County shall not use or disclose any identifying information for any other purpose other than carrying out the Department's obligations under this MOU, except as may otherwise be required by the law. This provision will remain in force even after the termination of the MOU.

F. TERM AND TERMINATION

This MOU is effective upon execution of both parties and expires on September 23, 2029.

However, this MOU may be terminated at any time, with or without cause, by either party after giving the other party thirty (30) days advance written notice of its intention to terminate. The Director of Public Health is authorized to exercise the County's rights with respect to any termination of this MOU.

G. GENERAL PROVISIONS

1. When notices are required to be given pursuant to this MOU, the notices shall be in writing and mailed to the following respective addresses listed below:

Contractor: NAME
 STREET ADDRESS
 CITY, STATE ZIP

County: San Bernardino County
 Department of Public Health/WIC Program
 1505 S. D Street
 San Bernardino, CA 92415

2. Nothing contained in this MOU shall be construed as creating a joint venture, partnership or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto.
3. No waiver of any of the provisions of the MOU shall be effective unless it is made in writing which refers to provisions so waived and which is executed by the Parties. No course of dealing and no delay or failure of a Party in exercising any right under the MOU shall affect any other or future exercise of that right or any exercise of any other right. A Party shall not be precluded from exercising a right by its having partially exercised that right or its having previously abandoned or discontinued steps to enforce that right.
4. Any alterations, variations, or modifications, or waivers of provisions of the MOU, unless specifically allowed in the MOU, shall be valid only when they have been reduced to writing, duly signed and approved by the Authorized Representatives of both parties as an amendment to this MOU. No oral understanding or agreement not incorporated herein shall be binding on any of the Parties hereto.
5. If any provision of the MOU is held by a court of competent jurisdiction to be unenforceable or contrary to law, it shall be modified where practicable to the extent necessary so as to be enforceable (giving effect to the intention of the Parties) and the remaining provisions of the MOU shall not be affected.
6. This MOU shall be covered by and construed in all aspects in accordance with the laws of the State of California without regard to principles of conflict of laws. The Parties agree to the exclusive jurisdiction of the federal court located in the County of Riverside and the state court located in the County of San Bernardino, for any and all disputes arising under this MOU, to the exclusion of all other federal and state courts.
7. In the event of any dispute, claim, question or disagreement arising from or relating to this MOU or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.
8. The parties under this MOU shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provision of this MOU are specifically made severable. If a provision of the MOU is terminated or held to be invalid, illegal or unenforceable, the validity and enforceability of the remaining provisions shall remain in full effect.
9. In the event of a subpoena or other legal process commenced by a third party in any way concerning the services provided under this MOU is served upon Contractor or County, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and County further agree to cooperate with the other

party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonable required and at the expense of the party to whom the legal process is directed, except as otherwise proceed herein in connection with defense obligations by Contractor for County.

10. Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding this MOU.

The County, by written notice, may immediately terminate any MOU if it determines that any improper consideration as directed in the preceding paragraph was offered to any officer, employee or agent of the County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once an MOU has been awarded.

Contractor shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or to the County Administrative office. In the event of termination under this provision, the County is entitled to pursue any available legal remedies.

11. **Campaign Contribution Disclosure (SB 1439)**

Contractor has disclosed to the County using Attachment D, whether it has made any campaign contributions of more than \$250 to any member of the Board of Supervisors or County elected officer [Sheriff, Assessor-Recorder-Clerk, Auditor-Controller/Treasurer/Tax Collector and the District Attorney] within the earlier of: (1) the date of the submission of Contractor's proposal to the County, or (2) 12 months before the date this Contract was approved by the Purchasing Department. Contractor acknowledges that under Government Code section 84308, Contractor is prohibited from making campaign contributions of more than \$250 to any member of the Board of Supervisors or County elected officer for 12 months after the County's consideration of the Contract.

In the event of a proposed amendment to this Contract, the Contractor will provide the County a written statement disclosing any campaign contribution(s) of more than \$250 to any member of the Board of Supervisors or other County elected officer within the preceding 12 months of the date of the proposed amendment.

Campaign contributions include those made by any agent/person/entity on behalf of the Contractor or by a parent, subsidiary or otherwise related business entity of Contractor.

H. **ATTORNEY'S FEES AND COSTS**

In any legal action to enforce or declare any party's rights hereunder, each party, including the prevailing party, shall bear its own costs and attorneys' fees. This section shall not apply to those costs and attorneys' fees directly arising from any third-party legal action against a party hereto and payable under the indemnification requirement of this MOU.

I. **ENTIRE MOU**

This MOU, including all attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, completed, and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this MOU not expressly set forth herein are of no force or effect. This MOU is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this MOU and signs the same of its own free will.

J. ELECTRONIC SIGNATURES

This MOU may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same MOU. The parties shall be entitled to sign and transmit an electronic signature of this MOU (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original sign MOU upon request.

IN WITNESS WHEREOF, the San Bernardino County and the Contractor have each caused this MOU to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY

►

Department of Public Health Director

Name _____
(Print or type name of person signing contract)

Dated: _____

(Print or type name of corporation, company, contractor, etc.)

By ► _____
(Authorized signature - sign in blue ink)

Name _____
(Print or type name of person signing contract)

Title _____
(Print or Type)

Dated: _____

Address _____

Approved as to Legal Form

Adam Ebright, Deputy County Counsel

Date: _____

ATTACHMENT A PUMP LOAN AGREEMENT FORM



Public Health
Women, Infants and Children

PUMP LOAN AGREEMENT

Participant Information

Name: _____
WIC ID #: _____
Phone: _____
Email: _____

Infant Information

Name: _____
Delivery Hosp: _____
Date of Birth: _____

Alternate Contact Person Required #1 (not living in same household)

Name: _____
Phone: _____
Address: _____
City: _____
Zip Code: _____

Message Contact #2

Name: _____
Phone: _____

Co-Signer Contact (if applicable)

Name: _____
Phone: _____

Pump Loaned

Reason for Pump Loan: _____ Serial #: _____

Loan Conditions

I have received information on my rights and responsibilities as a WIC participant and I will:

- Maintain my WIC enrollment.
- Notify WIC of changes to name, address and/or telephone number for myself and/or my alternate contact.
- Use the breast pump and pumping kit according to the manufacturer's instructions for assembly, use and cleaning.
- Keep the breast pump and case in my possession.
- Notify the WIC Program by calling (909) 388-5668, (909) 388-5673 or 1 (800) 472-2321 if the pump is not working properly or if parts break.
- Return the breast pump and case **clean and in good condition**.
- Pay the WIC Program up to **\$1,500** if the pump is not returned. (If the pump is stolen, a copy of the police report must be provided as proof of theft.)


I agree with the loan conditions and understand that continued use of the pump is at the discretion of the WIC Program. I understand that a WIC employee will contact me for the dual purpose of providing support and information and to assess my continuing need for the breast pump. I have been instructed on how to use the breast pump and how to safely store my breast milk. I give WIC my permission to contact my alternate contact in order to locate me.

Initials _____

Conditions of Loan Agreement

The San Bernardino County WIC Program and pump vendor reserve the right to repair or replace any equipment which becomes defective under normal use. Furthermore, the San Bernardino County WIC Program and vendor will not become liable for incidental or consequential damages resulting from defective equipment. Their liability is limited to repair or replacement of the equipment.

Participant Signature: _____ Date: _____

WIC Site Use WIC Site: _____ Staff Signature: _____ Date: _____	Return Date: _____ Staff Name: _____ Pump Condition: <input type="checkbox"/> Clean <input type="checkbox"/> Dirty <input type="checkbox"/> Broken Pump Survey Provided: <input type="checkbox"/> WIC Wise Updated: <input type="checkbox"/>  Pump Survey
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WIC Admin Use: Letter to Ppt/Alt: _____

Reported to CDPH: _____

"WIC is an equal opportunity employer."

Revised 5/1/2023



ACUERDO DE PRÉSTAMO DE EXTRACTOR DE LECHE

Información del Participante

Nombre: _____
WIC ID #: _____
Teléfono: _____
Correo Electrónico: _____

Información del Infante:

Nombre: _____
Hosp. de partos: _____
Fecha de nacimiento: _____

Se Requiere una Persona de Contacto Alternativo #1 (que no viva en el mismo hogar)

Nombre: _____
Teléfono: _____
Dirección: _____
Ciudad: _____
Código Postal: _____

Contacto Alternativo #2

Nombre: _____
Teléfono: _____

Contacto de Co-Firmante (Si aplica)

Nombre: _____
Teléfono: _____

Información Sobre el Extracto de Leche

Motivo por el Préstamo: _____ Número de Serie: _____

Condiciones de Préstamo

He recibido información sobre mis derechos y responsabilidades como participante de WIC y yo:

- Mantendré mi inscripción en WIC.
- Notificaré a WIC sobre cambios a mi nombre, dirección y/o número de teléfono para mi y/o mi contacto alternativo.
- Utilizaré el extractor de leche y el kit de extracción de acuerdo con las instrucciones del fabricante para el montaje, uso y limpieza.
- Mantendré el extractor de leche y el estuche en mi posesión.
- Notificaré al programa WIC llamando al (909) 388-5668, (909) 388-5673 o al 1 (800) 472-2321 si el extractor no funciona correctamente o si las piezas se rompen.
- Devolveré el extractor y el estuche **limpios y en buenas condiciones**.
- Pagare al Programa WIC hasta **\$1,500** si el extractor no se devuelve. (Si el extractor ha sido robado, yo proporcionaré una copia del reporte de policía como prueba del robo.)

Estoy de acuerdo con las condiciones del préstamo y entiendo que el uso continuo del extractor de leche queda a discreción del Programa WIC. Entiendo que en empleado de WIC se comunicará conmigo con el doble propósito de brindar apoyo e información y evaluar mi necesidad continua del extractor de leche. Me han educado sobre cómo usar el extractor de leche y cómo almacenar mi leche materna de manera segura. Doy mi permiso a WIC para que se comuniquen con mi contacto alternativo para localizarme.


Iniciales _____

Condiciones de Acuerdo de Préstamo

El programa de WIC del Condado de San Bernardino y el proveedor de extractores de leche se reservan el derecho de reparar o reemplazar cualquier equipo que se vuelva defectuoso con el uso normal. Además, el Programa WIC del Condado de San Bernardino y el proveedor no serán responsables por daños incidentales o consecuentes que resulten de equipos defectuosos. Su responsabilidad se limita a reparar o reemplazar el equipo.

Firma del Participante: _____ Fecha: _____

La información abajo será completado por la oficina de WIC.

WIC Site Use WIC Site: _____ Staff Signature: _____ Date: _____	Return Date: _____ Staff Name: _____ Pump Condition: <input type="checkbox"/> Clean <input type="checkbox"/> Dirty <input type="checkbox"/> Broken Pump Survey Provided: <input type="checkbox"/> WIC Wise Updated: <input type="checkbox"/>	 Pump Survey
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WIC Admin Use: Letter to Ppt/Alt: _____ Reported to CDPH: _____

ATTACHMENT B

BREAST PUMP CHECKOUT FORM

Log ***ALL*** pumps removed from the secure storage location and loaned to a patient.

Fax this sheet to (909) 381-0218 on the 1st of each month or send an email to wicpumps@dph.sbcounty.gov

For questions contact (909) 388-5668.

Date	Pump Serial #	Patient First and Last Name	Hospital Staff Name	Hospital Staff Signature

ATTACHMENT C

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (Agreement) supplements and is made a part of the contract (Contract) by and between the San Bernardino County Department of Public Health (hereinafter Covered Entity) and [INSERT CONTRACTOR NAME HERE] (hereinafter Business Associate). This Agreement is effective as of the effective date of the Contract.

RECITALS

WHEREAS, Covered Entity (CE) wishes to disclose certain information to Business Associate (BA) pursuant to the terms of the Contract, which may include Protected Health Information (PHI); and

WHEREAS, CE and BA intend to protect the privacy and provide for the security of the PHI disclosed to BA 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 (HITECH Act), their implementing regulations, and other applicable laws; and

WHEREAS, The Privacy Rule and the Security Rule require CE to enter into a contract containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, sections 164.314, subdivision (a), 164.502, subdivision (e), and 164.504, subdivision (e) of the Code of Federal Regulations (C.F.R.) and contained in this Agreement; and

WHEREAS, Pursuant to HIPAA and the HITECH Act, BA shall fulfill the responsibilities of this Agreement by being in compliance with the applicable provisions of the HIPAA Standards for Privacy of PHI set forth at 45 C.F.R. sections 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards), 164.316 (Policies and Procedures and Documentation Requirements), and, 164.400, et seq. and 42 United States Code (U.S.C.) section 17932 (Breach Notification Rule), in the same manner as they apply to a CE under HIPAA;

NOW THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this Agreement, the parties agree as follows:

I. Definitions

Unless otherwise specified herein, capitalized terms used in this Agreement shall have the same meanings as given in the Privacy Rule, the Security Rule, the Breach Notification Rule, and HITECH Act, as and when amended from time to time.

- a. Breach shall have the same meaning given to such term under the HIPAA Regulations [45 C.F.R. §164.402] and the HITECH Act [42 U.S.C. §§17921 et seq.], and as further described in California Civil Code section 1798.82.
- b. Business Associate (BA) shall have the same meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to 42 U.S.C. section 17921 and 45 C.F.R. section 160.103.
- c. Covered Entity (CE) shall have the same meaning given to such term as under the Privacy Rule and Security Rule, including, but not limited to 45 C.F.R. section 160.103.
- d. Designated Record Set shall have the same meaning given to such term under 45 C.F.R. section 164.501.
- e. Electronic Protected Health Information (ePHI) means PHI that is maintained in or transmitted by electronic media as defined in the Security Rule, 45 C.F.R. section 164.103.
- f. Individual shall have the same meaning given to such term under 45 C.F.R. section 160.103.

- g. Privacy Rule means the regulations promulgated under HIPAA by the United States Department of Health and Human Services (HHS) to protect the privacy of Protected Health Information, including, but not limited to, 45 C.F.R. Parts 160 and 164, subparts A and E.
- h. Protected Health Information (PHI) shall have the same meaning given to such term under 45 C.F.R. section 160.103, limited to the information received from, or created or received by Business Associate from or on behalf of, CE.
- i. Security Rule means the regulations promulgated under HIPAA by HHS to protect the security of ePHI, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, subparts A and C.
- j. Unsecured PHI shall have the same 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, subdivision (h).

II. Obligations and Activities of BA

a. Permitted Uses and Disclosures

BA may disclose PHI: (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) for purposes of Treatment, Payment and Operations (TPO); (iv) as required by law; or (v) for Data Aggregation purposes for the Health Care Operations of CE. Prior to making any other disclosures, BA must obtain a written authorization from the Individual.

If BA discloses PHI to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such PHI will be held confidential as provided pursuant to this Agreement 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 BA of any breaches of confidentiality of the PHI, 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)]

b. Prohibited Uses and Disclosures

- i. BA shall not use, access or further disclose PHI other than as permitted or required by this Agreement and as specified in the attached Contract or as required by law. Further, BA shall not use PHI in any manner that would constitute a violation of the Privacy Rule or the HITECH Act. BA shall disclose to its employees, subcontractors, agents, or other third parties, and request from CE, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.
- ii. BA shall not use or disclose PHI for fundraising or marketing purposes.
- iii. BA shall not disclose PHI 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) and 45 C.F.R. section 164.522(a)(1)(i)(A).)
- iv. BA shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of CE and as permitted by the HITECH Act (42 U.S.C. section 17935(d)(2); and 45 C.F.R. section 164.508); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to this Agreement.

c. Appropriate Safeguards

- i. BA shall implement appropriate safeguards to prevent the unauthorized use or disclosure of PHI, including, but not limited to, administrative, physical and technical safeguards that reasonably protect the confidentiality, integrity and availability of the PHI BA creates, receives, maintains, or transmits on behalf of the CE, in accordance with 45 C.F.R. sections 164.308, 164.310, 164.312 and 164.316. [45 C.F.R. sections 164.504(e)(2)(ii)(b) and 164.308(b).]
- ii. In accordance with 45 C.F.R. section 164.316, BA shall maintain reasonable and appropriate written policies and procedures for its privacy and security program in order to comply with the standards, implementation specifications, or any other requirements of the Privacy Rule and applicable provisions of the Security Rule.

- iii. BA shall provide appropriate training for its workforce on the requirements of the Privacy Rule and Security Rule as those regulations affect the proper handling, use confidentiality and disclosure of the CE's PHI.

Such training will include specific guidance relating to sanctions against workforce members who fail to comply with privacy and security policies and procedures and the obligations of the BA under this Agreement.

d. Subcontractors

BA shall enter into written agreements with agents and subcontractors to whom BA provides CE's PHI that impose the same restrictions and conditions on such agents and subcontractors that apply to BA with respect to such PHI, and that require compliance with all appropriate safeguards as found in this Agreement.

e. Reporting of Improper Access, Use or Disclosure or Breach

Every suspected and actual Breach shall be reported immediately, but no later than one (1) business day upon discovery, to CE's Office of Compliance, consistent with the regulations under HITECH Act. Upon discovery of a Breach or suspected Breach, BA shall complete the following actions:

- i. Provide CE's Office of Compliance with the following information to include but not limited to:
 - 1. Date the Breach or suspected Breach occurred;
 - 2. Date the Breach or suspected Breach was discovered;
 - 3. Number of staff, employees, subcontractors, agents or other third parties and the names and titles of each person allegedly involved;
 - 4. Number of potentially affected Individual(s) with contact information; and
 - 5. Description of how the Breach or suspected Breach allegedly occurred.
- ii. Conduct and document a risk assessment by investigating without unreasonable delay and in no case later than five (5) calendar days of discovery of the Breach or suspected Breach to determine the following:
 - 1. The nature and extent of the PHI involved, including the types of identifiers and likelihood of re-identification;
 - 2. The unauthorized person who had access to the PHI;
 - 3. Whether the PHI was actually acquired or viewed; and
 - 4. The extent to which the risk to PHI has been mitigated.
- iii. Provide a completed risk assessment and investigation documentation to CE's Office of Compliance within ten (10) calendar days of discovery of the Breach or suspected Breach with a determination as to whether a Breach has occurred. At the discretion of CE, additional information may be requested.
 - 1. If BA and CE agree that a Breach has not occurred, notification to Individual(s) is not required.
 - 2. If a Breach has occurred, notification to the Individual(s) is required and BA must provide CE with affected Individual(s) name and contact information so that CE can provide notification.
- iv. Make available to CE and governing State and Federal agencies in a time and manner designated by CE or governing State and Federal agencies, any policies, procedures, internal practices and records relating to a Breach or suspected Breach for the purposes of audit or should the CE reserve the right to conduct its own investigation and analysis.

f. Access to PHI

To the extent BA maintains a Designated Record Set on behalf of CE, BA shall make PHI maintained by BA 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. If BA maintains ePHI, BA shall provide such information in electronic format to enable CE to fulfill its

obligations under the HITECH Act. If BA receives a request from an Individual for access to PHI, BA shall immediately forward such request to CE.

g. Amendment of PHI

If BA maintains a Designated Record Set on behalf of the CE, BA shall make any amendment(s) to PHI in a Designated Record Set that the CE directs or agrees to, pursuant to 45 C.F.R. section 164.526, or take other measures as necessary to satisfy CE's obligations under 45 C.F.R. section 164.526, in the time and manner designated by the CE.

h. Access to Records

BA shall make internal practices, books, and records, including policies and procedures, relating to the use, access and disclosure of PHI received from, or created or received by BA on behalf of, CE available to the Secretary of HHS, in a time and manner designated by the Secretary, for purposes of the Secretary determining CE's compliance with the Privacy Rule and Security Rule and patient confidentiality regulations. Any documentation provided to the Secretary shall also be provided to the CE upon request.

i. Accounting for Disclosures

BA, its agents and subcontractors shall document disclosures of PHI and information related to such disclosures as required by HIPAA. This requirement does not apply to disclosures made for purposes of TPO. BA shall provide an accounting of disclosures to CE or an Individual, in the time and manner designated by the CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. 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 PHI and, if known, the address of the entity or person; (iii) a brief description of PHI 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.

j. Termination

CE may immediately terminate this agreement, and any related agreements, if CE determines that BA has breached a material term of this agreement. CE may, at its sole discretion, provide BA an opportunity to cure the breach or end the violation within the time specified by the CE.

k. Return of PHI

Upon termination of this Agreement, BA shall return all PHI required to be retained by the BA or its subcontractors, employees or agents on behalf of the CE. In the event the BA determines that returning the PHI is not feasible, the BA shall provide the CE with written notification of the conditions that make return not feasible. Additionally, the BA must follow established policies and procedures to ensure PHI is safeguarded and disposed of adequately in accordance with 45 C.F.R. section 164.310, and must submit to the CE a certification of destruction of PHI. For destruction of ePHI, the National Institute of Standards and Technology (NIST) guidelines must be followed. BA further agrees to extend any and all protections, limitations, and restrictions contained in this Agreement, to any PHI retained by BA or its subcontractors, employees or agents after the termination of this Agreement, and to limit any further use, access or disclosures.

l. Breach by the CE

Pursuant to 42 U.S.C. section 17934, subdivision (b), if the BA is aware of any activity or practice by the CE that constitutes a material Breach or violation of the CE's obligations under this Agreement, the BA must take reasonable steps to address the Breach and/or end eliminate the continued violation, if the BA has the capability of mitigating said violation. If the BA is unsuccessful in eliminating the violation and the CE continues with non-compliant activity, the BA must terminate the Agreement (if feasible) and report the violation to the Secretary of HHS.

m. Mitigation

BA shall have procedures in place to mitigate, to the extent practicable, any harmful effect that is known to BA of a use, access or disclosure of PHI by BA, its agents or subcontractors in violation of the requirements of this Agreement.

n. Costs Associated to Breach

BA shall be responsible for reasonable costs associated with a Breach. Costs shall be based upon the required notification type as deemed appropriate and necessary by the CE and shall not be reimbursable under the Agreement at any time. CE shall determine the method to invoice the BA for said costs. Costs shall incur at the current rates and may include, but are not limited to the following:

- Postage;
- Alternative means of notice;
- Media notification; and
- Credit monitoring services.

o. Direct Liability

BA may be held directly liable under HIPAA for impermissible uses and disclosures of PHI; failure to provide breach notification to CE; failure to provide access to a copy of ePHI to CE or individual; failure to disclose PHI to the Secretary of HHS when investigating BA's compliance with HIPAA; failure to provide an accounting of disclosures; and, failure to enter into a business associate agreement with subcontractors.

p. Indemnification

BA agrees to indemnify, defend and hold harmless CE and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, penalties, injuries, costs and expenses (including costs for reasonable attorney fees) that are caused by or result from the acts or omissions of BA, its officers, employees, agents and subcontractors, with respect to the use, access, maintenance or disclosure of CE's PHI, including without limitation, any Breach of PHI or any expenses incurred by CE in providing required Breach notifications.

q. Judicial or Administrative Proceedings

CE may terminate the Contract, effective immediately, if (i) BA is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws or (ii) a finding or stipulation is made in any administrative or civil proceeding in which the BA has been joined that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws.

r. Insurance

In addition to any general and/or professional liability insurance coverage required of BA under the Contract for services, BA shall provide appropriate liability insurance coverage during the term of this Agreement to cover any and all claims, causes of action, and demands whatsoever made for loss, damage, or injury to any person arising from the breach of the security, privacy, or confidentiality obligations of BA, its agents or employees, under this Agreement and under HIPAA 45 C.F.R. Parts 160 and 164, Subparts A and E.

s. Assistance in Litigation or Administrative Proceedings

BA shall make itself, and any subcontractors, employees, or agents assisting BA in the performance of its obligations under the Agreement, 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 BA or its subcontractor, employee or agent is a named adverse party.

III. **Obligations of CE**

- a. CE shall notify BA of any of the following, to the extent that such may affect BA's use, access, maintenance or disclosure of PHI:
 - i. Any limitation(s) in CE's notice of privacy practices in accordance with 45 C.F.R. section 164.520.
 - ii. Any changes in, or revocation of, permission by an individual to use, access or disclose PHI.
 - iii. Any restriction to the use, access or disclosure of PHI that CE has agreed to in accordance with 45 C.F.R. section 164.522.

IV. General Provisions

- a. Remedies

BA agrees that CE shall be entitled to seek immediate injunctive relief as well as to exercise all other rights and remedies which CE may have at law or in equity in the event of an unauthorized use, access or disclosure of PHI by BA or any agent or subcontractor of BA that received PHI from BA.

- b. Ownership

The PHI shall be and remain the property of the CE. BA agrees that it acquires no title or rights to the PHI.

- c. Regulatory References

A reference in this Agreement to a section in the Privacy Rule and Security Rule and patient confidentiality regulations means the section as in effect or as amended.

- d. No Third-Party Beneficiaries

Nothing express or implied in the Contract or this Agreement is intended to confer, nor shall anything herein confer, upon any person other than CE, BA and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

- e. Amendment

The parties acknowledge that state and federal laws related to privacy and security of PHI are rapidly evolving and that amendment of the Contract or this Agreement may be required to ensure compliance with such developments. The parties shall negotiate in good faith to amend this Agreement when and as necessary to comply with applicable laws. If either party does not agree to so amend this Agreement within 30 days after receiving a request for amendment from the other, either party may terminate the Agreement upon written notice. To the extent an amendment to this Agreement is required by law and this Agreement has not been so amended to comply with the applicable law in a timely manner, the amendment required by law shall be deemed to be incorporated into this Agreement automatically and without further action required by either of the parties. Subject to the foregoing, this Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed and agreed to by BA and CE.

- f. Interpretation

Any ambiguity in this Agreement shall be resolved to permit CE to comply with the Privacy and Security Rules, the HITECH Act, and all applicable patient confidentiality regulations.

- g. Compliance with State Law

In addition to HIPAA and all applicable HIPAA Regulations, BA acknowledges that BA and CE may have confidentiality and privacy obligations under State law, including, but not limited to, the California Confidentiality of Medical Information Act (Cal. Civil Code §56, et seq. ("CMIA")). If any provisions of this Agreement or HIPAA Regulations or the HITECH Act conflict with CMIA or any other California State law regarding the degree of protection provided for PHI and patient medical records, then BA shall comply with the more restrictive requirements.

- h. Survival

The respective rights and obligations and rights of CE and BA relating to protecting the confidentiality or a patient's PHI shall survive the termination of the Contract or this Agreement.



ATTACHMENT D
Campaign Contribution Disclosure
(SB 1439)

DEFINITIONS

Actively supporting the matter: (a) Communicate directly with a member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, District Attorney, Auditor-Controller/Treasurer/Tax Collector] for the purpose of influencing the decision on the matter; or (b) testifies or makes an oral statement before the County in a proceeding on the matter for the purpose of influencing the County's decision on the matter; or (c) communicates with County employees, for the purpose of influencing the County's decision on the matter; or (d) when the person/company's agent lobbies in person, testifies in person or otherwise communicates with the Board or County employees for purposes of influencing the County's decision in a matter.

Agent: A third-party individual or firm who, for compensation, is representing a party or a participant in the matter submitted to the Board of Supervisors. If an agent is an employee or member of a third-party law, architectural, engineering or consulting firm, or a similar entity, both the entity and the individual are considered agents.

Otherwise related entity: An otherwise related entity is any for-profit organization/company which does not have a parent-subsidary relationship but meets one of the following criteria:

- (1) One business entity has a controlling ownership interest in the other business entity;
- (2) there is shared management and control between the entities; or
- (3) a controlling owner (50% or greater interest as a shareholder or as a general partner) in one entity also is a controlling owner in the other entity.

For purposes of (2), "shared management and control" can be found when the same person or substantially the same persons own and manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis; or there is otherwise a regular and close working relationship between the entities.

Parent-Subsidiary Relationship: A parent-subsidiary relationship exists when one corporation has more than 50 percent of the voting power of another corporation.

Contractors must respond to the questions on the following page. If a question does not apply respond N/A or Not Applicable.

1. Name of Contractor: _____
2. Is the entity listed in Question No.1 a nonprofit organization under Internal Revenue Code section 501(c)(3)?
 Yes ☐ If yes, skip Question Nos. 3-4 and go to Question No. 5 No ☐
3. Name of Principal (i.e., CEO/President) of entity listed in Question No. 1, if the individual actively supports the matter and has a financial interest in the decision: _____
4. If the entity identified in Question No.1 is a corporation held by 35 or less shareholders, and not publicly traded ("closed corporation"), identify the major shareholder(s):

5. Name of any parent, subsidiary, or otherwise related entity for the entity listed in Question No. 1 (see definitions above):

Company Name	Relationship

6. Name of agent(s) of Contractor:

Company Name	Agent(s)	Date Agent Retained (if less than 12 months prior)

7. Name of Subcontractor(s) (including Principal and Agent(s)) that will be providing services/work under the awarded contract if the subcontractor (1) actively supports the matter and (2) has a financial interest in the decision and (3) will be possibly identified in the contract with the County or board governed special district.

Company Name	Subcontractor(s):	Principal and/or Agent(s):

8. Name of any known individuals/companies who are not listed in Questions 1-7, but who may (1) actively support or oppose the matter submitted to the Board and (2) have a financial interest in the outcome of the decision:

Company Name	Individual(s) Name

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9. Was a campaign contribution, of more than \$250, made to any member of the San Bernardino County Board of Supervisors or other County elected officer within the prior 12 months, by any of the individuals or entities listed in Question Nos. 1-8?

No ☐ If **no**, please skip Question No. 10.

Yes ☐ If **yes**, please continue to complete this form.

10. Name of Board of Supervisor Member or other County elected officer: _____

Name of Contributor: _____

Date(s) of Contribution(s): _____

Amount(s): _____

Please add an additional sheet(s) to identify additional Board Members or other County elected officers to whom anyone listed made campaign contributions.

By signing the Contract, Contractor certifies that the statements made herein are true and correct. Contractor understands that the individuals and entities listed in Question Nos. 1-8 are prohibited from making campaign contributions of more than \$250 to any member of the Board of Supervisors or other County elected officer while award of this Contract is being considered and for 12 months after a final decision by the County.