

**AGREEMENT BETWEEN
SAN BERNARDINO COUNTY PRESCHOOL SERVICES
AND
BORREGO COMMUNITY HEALTH FOUNDATION
FOR
DELIVERY OF SCHOOL BASED HEALTH CARE SERVICES**

This Agreement is made and entered into this 8th day of April, 2020, in the State of California, by and between the San Bernardino County Preschool Services (**SBCPS**), the "**County**", and Borrego Community Health Foundation, "**BCHF**," collectively, the "**Parties**."

RECITALS

WHEREAS, **BCHF** is a non-profit public benefit corporation, organized and existing under the laws of the State of California. **BCHF** operates two (2) Federally Qualified Health Centers (FQHC's) in the County of San Bernardino, located at 590 N. D Street 92401, Downtown San Bernardino, CA., and Barstow Community Health Center, located at 750 E. Main St., Barstow, CA. 92311 which provide comprehensive primary care, and specialty care, including mobile services;

WHEREAS, in an effort to increase access to healthcare services for the underserved families in the schools and communities of **SBCPS**, **BCHF** desires to provide medical and dental care in the preschools of the County. **BCHF** is further able to assist eligible families to access healthcare services by assisting in the application process for public programs including Child Health and Disability Prevention ("**CHDP**") and Medi-Cal; and

WHEREAS, in order to better serve the needs of students in its enrollment area, the County wishes to coordinate with **BCHF** to increase access to healthcare services to the students and families in various opportunities that may be identified from time-to-time, including, but not limited to, school-based medical/dental care, mobile services, care coordination, referral to medical home or other services.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. AGREEMENTS BY BCHF

BCHF agrees to provide services, as follows:

1. **BCHF** shall provide school-based health services at mutually agreed upon County preschool sites. Services may include basic primary care, family practice, and preventive care including age appropriate immunizations and acute care as well as mobile dental services. Health services will be provided on a schedule that is mutually determined between the parties, and are subject to change from time to time. The parties will consider and pursue other opportunities for delivery of health care services to improve the health of students in the **SBCPS** area as the need may arise from time to time, including but not limited to school screenings, events, and health fairs.
2. **BCHF** will complete oral screening forms on examined children to determine whether further treatment is warranted.

3. On-campus care shall be provided using mobile vans or portable medical and/or dental units owned or operated by BCHF. These services will be scheduled with the schools and County Preschool Services Administration as deemed appropriate by both parties.
4. The medical and/or dental care provided by BCHF Providers pursuant to this Agreement will be within clinically accepted standards of care and within the scope of services of the established BCHF Federally Qualified Health Center (FQHC).
5. BCHF will be responsible for adhering to all applicable laws regarding obtaining appropriate parent/guardian consent for services provided pursuant to this Agreement.
6. BCHF will provide sufficient qualified staffing for the provision of services.
7. BCHF will assess families seeking care and assist them in resolving barriers to care. This may include assistance with application for public programs or referral to the San Bernardino D Street Medical Center or Barstow Community Health Center or other community services. BCHF will work with the **SBCPS** administration and health program to address school related health issues.
8. BCHF will perform said services in accordance with standards of care independently in keeping with BCHF's independent scope of practice and not as an employee of the County.
9. BCHF will bill Medi-Cal or other third party payers or public programs for services provided. Children and families will be encouraged and assisted to apply for these programs if determined to be eligible. Within its capacity to do so, BCHF will provide services at no charge or on a discounted rate to children and families who do not otherwise qualify for such programs. **SBCPS** shall bear no financial responsibility for services provided to its students pursuant to this Agreement.
10. BCHF will provide the technical support to implement electronic health records and other technical elements of the implementation of the program.
11. 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. Contractor acknowledges that it is a covered entity and subject to the requirements of HIPAA and HITECH, and their implementing regulations. BCHF agrees to fully comply with the terms of HIPAA and HITECH, and regulations promulgated thereunder, and to ensure any Subcontractors utilized to fulfill Services pursuant to this Contract comply with said provisions. BCHF further agrees to comply with the requirements of all other applicable federal and state laws that pertain to the protection of health information.

II. AGREEMENTS BY SBCPS

County agrees as follows:

1. At approved school sites, provide space for the delivery of services. This may include the parking space for a forty-foot mobile unit or space for portable equipment. Access to restrooms shall be readily available.
2. Pursue other opportunities to provide healthcare services and coordination of care throughout the

underserved communities within the **SBCPS** area.

3. BCHF operations includes mobile electronic communication infrastructure. From time to time, BCHF may require access to electronic connectivity at locations where systems are out of reach of the established service. This may include access to internet and phone.
4. **SBCPS** shall ensure that all families of children to be screened are provided and have completed a SBCPS Permission for Release of Information form so BCHF can share medical and dental information with SBCPS. SBCPS will provide BCHF with the original executed authorization form or legible copy thereof for BCHF's records. BCHF will not share any information with SBCPS concerning the screenings without this completed authorization form. Information will remain confidential to all other parties and such information will be used only to determine the best available professional services to be rendered, except as may otherwise be required by law.
5. Work with BCHF staff in the coordination of school-based health functions as they develop through collaborative efforts. This will include at least bi-monthly meetings to discuss upcoming projects and plan and evaluate activities for the purpose of ongoing improvement.
6. **SBCPS** will communicate openly regarding any concerns presented by children and families served by BCHF and allow for resolution of such issues. All formal complaints will be investigated thoroughly through the Patient Relations designee.
7. Support the implementation efforts through school-based communication methods and visibility of the programs and services.
8. **SBCPS** shall not be liable to BCHF for any costs or expenses paid or incurred by BCHF in performing Services for **SBCPS**.
9. **SPCPS** shall ensure the availability of designated points of contact to represent **SPCPS** in discussions regarding development of this program. Initially, BCHF shall communicate with Arlene Molina, or other designee. **SBCPS** designated point of contact shall work with BCHF to develop the program and pursue diligent and amicable resolution to any dispute that may arise incidental to the services contemplated in this Agreement.

III. TERM AND TERMINATION

1. The initial term of the Agreement is from April 8, 2020 through April 30, 2023. This Agreement will be automatically renewed thereafter for a period of two (2) years unless otherwise terminated by either party, for a total agreement term of no more than five years. The Parties will meet no later than sixty (60) days prior to the termination date to address the conditions of the renewal, if applicable.
2. This Agreement may be terminated by **County** or BCHF, with or without cause, upon sixty (60) days written notice. In the event of termination, neither party shall be entitled to anticipatory, lost profits or consequential damages as a result of any termination. Notwithstanding anything in this Agreement to the contrary, BCHF reserves the right to terminate this Agreement with or without notice in the event of an occurrence which, in its sole discretion, seriously jeopardizes patient care or safety.

IV. STAFFING

BCHF, BCHF's employees and/or BCHF's agents providing Services pursuant to this Agreement shall:

1. Be qualified to render services pursuant to this Agreement. Any employee and/or agent who is providing medical or dental care shall be a licensed medical/dental practitioner, as defined by the State of California, and shall provide care in a manner that is consistent with the standards of the profession.
2. Be free of active tuberculosis as evidenced by the submission to an examination within the last twelve (12) months. This requirement shall be consistent with the requirements for school employees as defined in California Education Code Section 49406.

V. REGULATIONS

1. BCHF shall abide by all applicable federal, state, and local statutes, ordinances, rules, regulations, and standards, as well as the standards and requirements imposed upon the **County** by federal and/or state agencies providing funding to the County.
2. BCHF shall be subject to the rules, regulations and policies of **SBCPS**, including recognizing the confidential nature of information regarding pupils and their records.
3. BCHF agrees not to use or further disclose any protected health information, as defined in 42 CFR Part 164, or individual health information as defined in 42 CFR Part 142, collectively "PHI", concerning a student unless permitted by this Agreement and applicable federal and state privacy and security laws and regulations, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). In addition, BCHF will implement appropriate safeguards to prevent the use and disclosure of a student's PHI beyond the scope of what is provided for by this Agreement and permitted under the law.
4. BCHF agrees not to disclose any student information in a manner which would violate the Family Educational Rights and Privacy Act (FERPA). In addition, BCHF will implement appropriate safeguards to prevent the use and disclosure of a student's educational records beyond the scope of what is provided for by this Agreement and permitted under the law.
5. In the interest of public health, the **SBCPS** is proud to provide a healthy, tobacco-free environment. Smoking or the use of any tobacco products are prohibited in buildings and vehicles, and on any property owned, leased or contracted for by the County. Smoking or the use of any tobacco products are prohibited in and around **SBCPS** students by BCHF at all times.
6. BCHF, and BCHF's staff, shall at all times comply with the provisions and requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.).

VI. CERTIFICATIONS, REPRESENTATIONS AND WARRANTIES

BCHF makes the following certifications, representations, and warranties for the benefit of the **SBCPS** and BCHF acknowledges and agrees that the **SBCPS**, in deciding to engage BCHF pursuant to this Agreement, is relying upon the truth and validity of the following certifications, representations and warranties and their effectiveness throughout the term of this Agreement and the course of BCHF's engagement hereunder:

1. BCHF is qualified in all respects to provide to the **SBCPS** all of the Services contemplated by this Agreement and, to the extent required by any applicable laws, BCHF has all such licenses and/or governmental approvals as would be required to carry out and perform for the benefit of the **SBCPS**, such services as are called for hereunder.
2. BCHF, in providing the Services and in otherwise carrying out its obligations to the **SBCPS** under this Agreement, shall, at all times, comply with all applicable federal, state and local laws, rules, regulations, and ordinances, including workers' compensation and equal protection and non-discrimination laws.
3. BCHF shall at all times enforce appropriate discipline and good order itself and among its employees and shall not employ or work any unfit person or anyone not skilled in providing the Services required under this Agreement. Any person in the employ of the BCHF, or an agent thereof, whom **SBCPS**, in its sole discretion, may deem incompetent, unfit, intemperate, troublesome or otherwise undesirable shall be excluded from providing services under this Agreement.
4. BCHF, and BCHF's staff, shall at all times follow the instructions and directions of **SBCPS** staff during a school campus emergency or during a school campus emergency practice drill, as to evacuation, assembly, emergency care, protection of persons and property, and ingress and egress to the campus. At any time it becomes necessary for the BCHF to request emergency services while on **SBCPS** property, such services shall be requested by calling 911. BCHF shall immediately notify the site administrator that 911 emergency services have been requested.

VII. INDEPENDENT CONTRACTOR

It is expressly understood and agreed to by both Parties that BCHF, while engaged in carrying out and complying with any of the terms and conditions of this Agreement, as an independent contractor and is not an officer, agent, or employee of the **SBCPS**. BCHF employees shall under no circumstance be considered or held to be employees of **SBCPS** and **SBCPS** shall have no obligation to provide any benefits including Workers' Compensation or Unemployment Insurance coverage for or on behalf of such employees.

VIII. CHILD ABUSE REPORTING

BCHF shall establish a procedure acceptable to **SBCPS** to ensure that all employees performing services under this Agreement report child abuse or neglect to a child protective agency as defined in California Penal Code Section 11166.

IX. BACKGROUND CHECK

BCHF shall provide a written statement, in the form and with the content similar to Exhibit "A", that BCHF has completed the criminal background check requirements of California Education Code Section 45125.1 and that none of its employees that may come in contact with **SBCPS** students have been convicted of a violent felony listed in California Penal Code Section 667.5(c) 1192.7(c). BCHF agrees to comply with this contract provision by submitting fingerprints through the districts' provider for services.

X. NOTICES

All notices, claims, correspondence, reports, and/or statements authorized or required by the

BCHF

District

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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.

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.

Severability of Interests – BCHF 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.

Proof of Coverage – BCHF 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.

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".

XII. INSURANCE

Without limiting or diminishing the Parties' obligation to indemnify or hold the other party harmless, each party shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage during the term of this Agreement.

1. **Workers' Compensation/Employers Liability** – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Contractor and all risks to such persons under this Contract.

If BCHF has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.

With respect to Contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

2. **Commercial/General Liability Insurance** – BCHF 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.
3. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If BCHF is transporting one (1) or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If BCHF owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

4. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.
5. Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim or occurrence and two million (\$2,000,000) aggregate limits.

Directors and Officers Insurance coverage with limits of not less than one million (\$1,000,000) shall be required for contracts with charter labor committees or other not-for-profit organizations advising or acting on behalf of the County.

If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the start of the contract work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after contract completion.

6. Abuse/Molestation Insurance – BCHF shall have abuse or molestation insurance providing coverage for all employees for the actual or threatened abuse or molestation by anyone of any person in the care, custody, or control of any insured, including negligent employment, investigation and supervision. The policy shall provide coverage for both defense and indemnity with liability limits of not less than one million dollars (\$1,000,000) with a two million dollars (\$2,000,000) aggregate limit.
7. Cyber (internet) and Electronic Data Processing (EDP) Insurance – Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering claims involving privacy violations, information theft, damage to or

destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved County entities and cover breach response cost as well as regulatory fines and penalties.

8. Additional insured endorsements are required for general, property damage, sexual abuse and automobile liability policy coverage. Such a provision, however, shall only apply in proportion to and to the extent of the negligent acts or omissions of the other Party, its officers, agents, or employees. Each Party, upon the execution of this Agreement, shall furnish the other Party with Certificates of Insurance evidencing compliance with all requirements. Certificates shall provide for thirty (30) days advance written notice to **County** of any material modifications, change or cancellation of the above insurance coverage.

XIII. CONFLICT OF INTEREST

BCHF covenants that it presently has no interest, including but not limited to, other projects or independent agreements, and shall not acquire any such interest, direct or indirect, which are, or which the BCHF believes to be, incompatible in any manner or degree with the performance of services required to be performed under this Agreement. BCHF further covenants that in the performance of this Agreement, no person having any such interest shall be employed or retained by it under this Agreement.

BCHF agrees to inform **SBCPS** of all of the BCHF's interests, if any, which are or which the BCHF believes to be, incompatible with any interests of **SBCPS**.

XIV. ASSIGNMENT

BCHF shall not assign the whole or any part of this Agreement without the written consent of the **County**.

XV. THIRD PARTY BENEFICIARY

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of any third party against either the **County** or BCHF.

XVI. NON-WAIVER

The failure of either party to insist upon strict performance of any of the terms, conditions, or covenants in this Agreement shall not be deemed a waiver of any right or remedy that either party may have and shall not be deemed a waiver of any right or remedy for a subsequent breach or default of the terms, conditions or covenants herein contained.

XVII. AUTHORITY

The individuals executing this Agreement on behalf of the parties each represent and warrant that they have the legal right and actual authority to bind the parties to the terms and conditions hereof.

XVIII. GOVERNING LAW AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of California. Jurisdiction and venue shall be agreed upon in the appropriate courts in the County of San

Bernardino, State of California.

XIX. ENTIRE AGREEMENT/MODIFICATIONS

This Agreement constitutes the entire Agreement between the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements, either written or oral. All exhibits referenced herein and attached hereto shall be deemed incorporated into and made a part of this Agreement by each reference as though fully set forth in each instance in the text hereof. This Agreement may only be modified by written agreement signed by both Parties.

Any purchase order issued by **SBCPS** in connection with this Agreement is deemed to be issued for **County's** administrative or billing identification purposes only. The terms and conditions contained herein shall exclusively govern the Services to be provided hereunder.

XX. COUNTERPARTS

The Parties may execute this Agreement in two or more counterparts, which shall, in the aggregate, be signed by all of the Parties. Each counterpart shall be deemed an original instrument as against any Party who has signed it. The Parties further agree that signatures sent by electronic mail, in .PDF format, shall be treated as original signatures to this Agreement.

IN WITNESS WHEREOF, the Parties hereto on the day and year written below have executed this Agreement.

**BORREGO COMMUNITY
HEALTH FOUNDATION**

SAN BERNARDINO COUNTY

Mark Connelly
Chief Operating Officer

Name: Curt Hagman
Title: Chairman, Board of
Supervisors

Date:_____

Date:_____

EXHIBIT A

Background Check Requirements

With respect to the Agreement dated _____ by and between the San Bernardino County Preschool Services ("County") and Borrego Community Health Foundation ("BCHF") for medical and dental services, BCHF hereby certifies to the County Board of Supervisors that it has completed the background check requirements of California Education Code Section 45125.1 and that none of its employees that may come in contact with **SBCPS** students have been convicted of a violent felony listed in California Penal Code Section 667.5(c) or a serious felony listed in California Penal Code Section 1192.7(c).

Mikia Wallis, Chief Executive Officer

Date