

AGENDA TRANSMITTAL FORM

<input type="checkbox"/>	Regular Agenda
<input checked="" type="checkbox"/>	Consent Agenda
<input type="checkbox"/>	Blue Slip
<input type="checkbox"/>	Closed Session
Meeting Date Requested:	
09/09/2014	

To: Board of Supervisors

Date: 08/27/2014

Resol.

From: James Foley, Director of HHS

(Department Head - please type)

Phone Ext. 412

Department Head Signature

Agenda Title:

Request for approval of a Resolution and the Mental Health Services Act (MHSA) Agreement No. 14-90309 with Dept. of Health Care Services

Summary: (Provide detailed summary of the purpose of this item; attach additional page if necessary)

The Director of Health and Human Services, Behavioral Health Department requests the Board of Supervisors approve the resolution delegating signature authority to James Foley, LCSW and agreement # 14-90309 with the Department of Health Care Services and Behavioral Health as it relates to providing Mental Health Services Act (MHSA) programs.

Recommendation/Requested Action:

Approval of Agreement and Resolution

Fiscal Impacts (attach budget transfer form if appropriate)

None

Staffing Impacts

None

Is a 4/5ths vote required?

Yes

No

Contract Attached:

Yes

No

N/A

Resolution Attached:

Yes

No

N/A

Ordinance Attached

Yes

No

N/A

Comments:

Committee Review?

N/A

Name

Committee Recommendation:

Request Reviewed by:

Chairman

Counsel

Auditor

GSA Director

CAO

Risk Management

Distribution Instructions: (Inter-Departmental Only, the requesting Department is responsible for distribution outside County Departments)

Return two original Agreements, CCC forms, Resolution to Angie Grau in BH., 1 original will be returned to BOS after State signs

FOR CLERK USE ONLY

Meeting Date

September 9, 2014

Time

9 a.m.

Item #

3A

Board Action: Approved Yes ___ No ___

Unanimous Vote: Yes ___ No ___

Ayes:

Resolution

Ordinance

Other:

Noes

Resolution

Ordinance

Absent:

Comments:

Distributed on

A new ATF is required from

I hereby certify this is a true and correct copy of action(s) taken and entered into the official records of the Amador County Board of Supervisors.

Completed by

Department
For meeting
of

ATTEST:

Clerk or Deputy Board Clerk

Save

**BEFORE THE BOARD OF SUPERVISORS OF THE
COUNTY OF AMADOR, STATE OF CALIFORNIA**

IN THE MATTER OF:

RESOLUTION APPROVING STANDARD)	
AGREEMENT (#14-90309) WITH THE)	RESOLUTION NO. 14-XXX
STATE OF CALIFORNIA DEPARTMENT OF)	
HEALTH CARE SERVICES)	

BE IT RESOLVED by the Board of Supervisors of the County of Amador, State of California, that said Board does hereby approve the Standard Agreement by and between the County of Amador and State of California Department of Health Care Services on the terms and conditions contained therein as it relates to providing Mental Health Service Act (MHSA) Projects for Assistance in Transition from Homelessness (PATH), Community Mental Health Services Grant (MHBG) programs and oversees county provision of community mental health services provided with realignment funds for the term of the contract (July 1, 2014 through June 30, 2015).

BE IT FURTHER RESOLVED by said Board, delegating signature authority to James Foley, LCSW HHS Director.

The foregoing resolution was duly passed and adopted by the Board of Supervisors of the County of Amador at a regular meeting thereof, held on the _____ day of September, 2014, by the following vote:

AYES:

NOES:

ABSENT:

Theodore F. Novelli
Chairman, Board of Supervisors

ATTEST:

JENNIFER BURNS Clerk of the
Board of Supervisors, Amador County,
California

(RESOLUTION NO. 14-xxx)

STATE OF CALIFORNIA
STANDARD AGREEMENT
 STD 213_DHCS (Rev. 01/13)

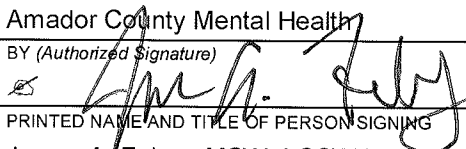

REGISTRATION NUMBER	AGREEMENT NUMBER 14-90309
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- This Agreement is entered into between the State Agency and the Contractor named below:
 STATE AGENCY'S NAME (Also known as DHCS, CDHS, DHS or the State)
 Department of Health Care Services
 CONTRACTOR'S NAME (Also referred to as Contractor)
 Amador County Mental Health
- The term of this Agreement is: July 1, 2014 through June 30, 2015
- The maximum amount of this Agreement is: \$ 0
Zero dollars
- The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of this Agreement.

Exhibit A – Program Specifications	13 pages
Exhibit A – Attachment I	1 page
Exhibit B – Funds Provision	1 page
Exhibit C * – General Terms and Conditions	<u>GTC 610</u>
Exhibit F – Information Confidentiality and Security Requirements	7 pages
Exhibit G – Privacy and Information Security Provisions	32 pages
Exhibit G – Attachment B – Information Exchange Agreement between the Social Security Administration (SSA) and the California Department of Health Care Services	66 pages

Items shown above with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at http://www.ols.dqs.ca.gov/Standard_Language/default.htm.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		<i>California Department of General Services Use Only</i>
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) Amador County Mental Health		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING James A. Foley, MSW, LCSW HHS Director		
ADDRESS 10877 Conductor Blvd, Sutter Creek, CA 95685-9682		
STATE OF CALIFORNIA		
AGENCY NAME Department of Health Care Services		<input checked="" type="checkbox"/> Exempt per: W&I Code § 14703
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING Christina Soares, Chief, Contracts Management Unit		
ADDRESS 1501 Capitol Avenue, Suite 71.5195, MS 1403, P.O. Box 997413, Sacramento, CA 95899-7413		

CCC-307

CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

<i>Contractor/Bidder Firm Name (Printed)</i>		<i>Federal ID Number</i>
Amador County Mental Health		946000505
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
Theodore F. Novelli, Chairman, Board of Supervisors		
<i>Date Executed</i>	<i>Executed in the County of</i>	
	Amador	

CONTRACTOR CERTIFICATION CLAUSES

1. **STATEMENT OF COMPLIANCE**: Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. **DRUG-FREE WORKPLACE REQUIREMENTS**: Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

- 1) the dangers of drug abuse in the workplace;
- 2) the person's or organization's policy of maintaining a drug-free workplace;
- 3) any available counseling, rehabilitation and employee assistance programs; and,
- 4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

- 1) receive a copy of the company's drug-free workplace policy statement; and,
- 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the

certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)

4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT: Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lessor of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

6. SWEATFREE CODE OF CONDUCT:

a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.

b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations,

or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).

7. DOMESTIC PARTNERS: For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.

2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code §10411):

1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.

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Exhibit A
Program Specifications

1. Service Overview

The California Department of Health Care Services (hereafter referred to as DHCS or Department) administers the Mental Health Services Act, Projects for Assistance in Transition from Homelessness (PATH) and Community Mental Health Services Grant (MHBG) programs and oversees county provision of community mental health services provided with realignment funds. Contractor (hereafter referred to as County in this Exhibit) must meet certain conditions and requirements to receive funding for these programs and community mental health services. This Agreement, which is County's performance contract, as required by Welfare and Institutions Code (W&I) sections 5650(a), 5847, and Title 9, California Code of Regulations (CCR), section 3310, sets forth conditions and requirements that County must meet in order to receive this funding. This Agreement does not cover federal financial participation or State general funds as they relate to Medi-Cal services provided through the Mental Health Plan Contracts. County agrees to comply with all of the conditions and requirements described herein.

DHCS shall monitor this Agreement to ensure compliance with applicable federal and State law and applicable regulations (W&I §§ 5610 and 5651.)

2. Service Location

The services shall be performed at appropriate sites as described in this contract.

3. Service Hours

The services shall be provided during times required by this contract.

4. Project Representatives

A. The project representatives during the term of this Agreement will be:

Department of Health Care Services	Contractor's Name
Contract Manager: Dina Kokkos-Gonzales Telephone: (916) 552-9055 Fax: (916) 440-7620 Email: Dina.Kokkos@dhcs.ca.gov	Contract Manager: James A. Foley, MSW, LCSW Telephone: (209) 223-6625 Fax: (209) 223-0920 Email: Jfoley@amadorgov.org

B. Direct all inquiries to:

Exhibit A
Program Specifications

Department of Health Care Services	Contractor's Name
Mental Health Services Division/Program Policy Unit Attention: Dee Taylor 1500 Capitol Avenue, MS 2702 P.O. Box Number 997413 Sacramento, CA, 95899-7413	Attention: James A. Foley Street address & room number, if applicable P.O. Box Number (if applicable) City, State, Zip Code
Telephone: (916) 552-9536 Fax: (916) 440-7620 Email: Dee.Taylor@dhcs.ca.gov	Telephone: (209) 223-6625 Fax: Email: Jfoley@amadorgov.org

C. 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.

5. Services to be Performed

County shall adhere to the program principles and, to the extent funds are available, County shall provide the array of treatment options in accordance with Welfare and Institutions Code sections 5600.2 through 5600.9, inclusive.

A. GENERAL REQUIREMENTS FOR AGREEMENT

County shall comply with all of the requirements Section A.1 of this Provision for all County mental health programs, including those specified in Sections B, C and D. County shall provide all of the data and information specified in Section A.2 to the extent that the data and information is required for each of the County mental health programs, including those specified in Sections B, C and D of this Provision, for which it receives federal or State funds.

- 1) W&I section 5651 provides specific assurances, listed below, that must be included in this Agreement. County shall:
 - a. Comply with the expenditure requirements of Section 17608.05,
 - b. Provide services to persons receiving involuntary treatment as required by Part 1 (commencing with Section 5000) and Part 1.5 (commencing with Section 5585) of Division 5 of the Welfare and Institution Code,
 - c. Comply with all of the requirements necessary for Medi-Cal reimbursement for mental health treatment services and case management programs provided to Medi-Cal eligible individuals, including, but not limited to, the provisions set forth in Chapter 3 (commencing with Section 5700) of the Welfare and Institutions Code, and submit cost reports and other data to DHCS in the form and manner determined by the DHCS,
 - d. Ensure that the Local Mental Health Advisory Board has reviewed and approved procedures ensuring citizen and professional involvement at all stages of the planning process pursuant to W&I section 5604.2,
 - e. Comply with all provisions and requirements in law pertaining to patient rights,

Exhibit A
Program Specifications

- f. Comply with all requirements in federal law and regulation pertaining to federally funded mental health programs,
 - g. Provide all data and information set forth in Sections 5610, 5664 and 5845(d)(6) of the Welfare and Institutions Code,
 - h. If the County elects to provide the services described in Chapter 2.5 (commencing with Section 5670) of Division 5 of the Welfare and Institution Code, comply with guidelines established for program initiatives outlined in this chapter, and
 - i. Comply with all applicable laws and regulations for all services delivered, including all laws, regulations, and guidelines of the Mental Health Services Act.
- 2) County shall comply with all data and information submission requirements specified in this Agreement.
- a. County shall provide all applicable data and information required by federal and/or State law in order to receive any funds to pay for its mental health programs and services, including but not limited to its MHSA programs, PATH grant (if the County receives funds from this grant) or MHBG grant. These federal and State laws include, Title 42, United States Code, sections 290cc-21 through 290cc-35 and 300x through 300x-9, inclusive, W&I sections 5610 and 5664 and the regulations that implement, interpret or make specific, these federal and State laws and any DHCS-issued guidelines that relate to the programs or services.
 - b. County shall comply with the reporting requirements set forth in Division 1 of Title 9 of the California Code of Regulations (CCR) and any other reporting requirements for which County receives federal or State funding source for mental health programs. County shall submit complete and accurate information to DHCS including, but not limited, to the following:
 - i. Client and Service Information (CSI) System Data (See Subparagraph c of this Paragraph)
 - ii. MHSA Quarterly Progress Reports, as specified in Title 9, CCR, section 3530.20. MHSA Quarterly Progress Reports provide the actual number of clients served by MHSA-funded program. Reports are submitted on a quarterly basis.
 - iii. Full Service Partnership Performance Outcome data, as specified in Title 9, CCR, section 3530.30.
 - iv. Consumer Perception Survey data, as specified in Title 9, CCR, section 3530.40.
 - v. County shall submit the Annual Mental Health Services Act Revenue and Expenditure Report to DHCS and the Mental Health Services Oversight and Accountability Commission (MHSOAC), pursuant to W&I section 5899(a) and Title 9, CCR, section 3510 and DHCS-issued guidelines.
 - c. County shall submit CSI data to DHCS, in accordance with the requirements set forth in the DHCS' CSI Data Dictionary. County shall:

Exhibit A
Program Specifications

- i. Report monthly CSI data to DHCS within 60 calendar days after the end of the month in which services were provided.
 - ii. Report within 60 calendar days or be in compliance with an approved plan of correction the DHCS's CSI Unit.
 - iii. Make diligent efforts to minimize errors on the CSI error file.
 - iv. Notify DHCS 90 calendar days prior to any change in reporting system and/or change of automated system vendor.
- d. In the event that DHCS or County determines that changes requiring a change in County's or DHCS' obligation must be made relating to either the DHCS' or County's information needs due to federal or state law changes or business requirements, both the DHCS and County agree to provide notice to the other party as soon as practicable prior to implementation. This notice shall include information and comments regarding the anticipated requirements and impacts of the projected changes. DHCS and County agree to meet and discuss the design, development, and costs of the anticipated changes prior to implementation.
- e. If applicable to a specific federal or State funding source covered by this Agreement, County shall require each of its subcontractors to submit a fiscal year-end cost report, due to DHCS no later than December 31 following the close of the fiscal year, in accordance with applicable federal and State laws regulations and DHCS-issued guidelines.
- f. If applicable to a specific federal or State funding source covered by this Agreement, County shall comply with W&I section 5751.7 and ensure that minors are not admitted into inpatient psychiatric treatment with adults. If the health facility does not have specific separate housing arrangements, treatment staff, and treatment programs designed to serve children or adolescents it must request a waiver of this requirement from DHCS as follows:
- i. If this requirement creates an undue hardship on County, County may request a waiver of this requirement. County shall submit the waiver request on Attachment I of this Agreement, to DHCS.
 - ii. DHCS shall review County's waiver request and provide a written notice of approval or denial of the waiver. If County's waiver request is denied, it shall comply with the provision of W&I section 5751.7.
 - iii. County shall submit, and DHCS shall accept, the waiver request only at the time County submits this Agreement, signed by County, is submitted to DHCS for execution. County shall complete Attachment I, including responses to items 1 through 4 and attach it to this Agreement. See Exhibit A, Attachment I, entitled "Request For Waiver" of this Agreement for additional submission information.
 - iv. In unusual or emergency circumstances, when counties need to request waivers after the annual Performance Contract has been executed, these requests should be sent immediately to: Licensing and Certification Section, Program Oversight and Compliance Branch, California Department of Health Care Services, 1700 K Street, MS 2800, Sacramento, CA 95811-4037, Phone: (916) 323-1864.

Exhibit A
Program Specifications

- v. Each admission of a minor to a facility that has an approved waiver shall be reported to the Local Mental Health Director.
- g. If County chooses to participate in the Assisted Outpatient Treatment program (AOT) Demonstration Project Act of 2002 it shall be required to comply with all applicable statutes including, but not limited to, W&I sections 5345 through 5349.5, inclusive. In addition, County shall submit to DHCS any documents that DHCS requests as part of its statutory responsibilities in accordance with DHCS Letter No.: 03-01 dated March 20, 2003.
- h. For all mental health funding sources received by County that require submission of a cost report, County shall submit a fiscal year-end cost report by December 31st following the close of the fiscal year in accordance with County's existing or future mental health programs applicable federal and State law. State law includes at least W&I section 5705, applicable regulations and DHCS-issued guidelines. The cost report shall be certified by the mental health director and one of the following: the County mental health departments chief financial officer (or equivalent), and individual who has delegated authority to sign for, and reports directly to the county mental health department's chief financial officer (or equivalent), or the county's auditor-controller (or equivalent) . Data submitted shall be full and complete. The County shall also submit a reconciled cost report certified by the mental health director and the county's auditor-controller as being true and correct, no later than 18 months after the close of the following fiscal year.

If the County does not submit the cost reports by the reporting deadlines or does not meet the other requirements, DHCS shall request a plan of correction with specific timelines (W&I §5897 (d)). If County does not submit cost reports by the reporting deadlines or the County does not meet the other requirements, DHCS may, after a hearing held with no less than 20 days-notice to the county mental health director (W&I § 5655) withhold payments from the MHS Fund until the County is in compliance with W&I section 5664.

B. THE MENTAL HEALTH SERVICES ACT PROGRAM

1) Program Description

Proposition 63, which created the Mental Health Services Act (MHSA), was approved by the voters of California on November 2, 2004. The Mental Health Services (MHS) Fund, which provides funds to counties for the implementation of its MHSA programs, was established pursuant to W&I section 5890. The MHSA was designed to expand California's public mental health programs and services through funding received by a one percent tax on incomes in excess of \$1 million. Counties use this funding for projects and programs for prevention and early intervention, community services and supports, workforce development and training, innovation, plus capital facilities and technological needs through mental health projects and programs. The State Controller distributes MHS Funds to the counties to plan for and provide mental health programs and other related activities outlined in a county's three-year program and expenditure plan or annual update. MHS Funds are distributed by the State Controller's Office to the counties on a monthly basis.

DHCS shall monitor County's use of MHS Funds to ensure that the county meets the MHSA and MHS Fund requirements. (W&I section 5651(c).)

Exhibit A
Program Specifications

2) Issue Resolution Process

County shall have an Issue Resolution Process (Process) to handle client disputes related to the provision of their mental health services. The Process shall be completed in an expedient and appropriate manner. County shall develop a log to record issues submitted as part of the Process. The log shall contain the date of the issue was received; a brief synopsis of the issue; the final issue resolution outcome; and the date the final issue resolution was reached.

3) Revenue and Expenditure Report

County shall submit its Revenue and Expenditure Report (RER) by December 31st following the close of the fiscal year in accordance with W&I sections 5705 and 5899, regulations and DHCS-issued guidelines. The RER shall be certified by the mental health director and one of the following: County mental health department's chief financial officer (or equivalent), and individual who has delegated authority to sign for, and reports directly to the County mental health department's chief financial officer (or equivalent), or the County's auditor-controller (or equivalent), using the DHCS-issued certification form. Data submitted shall be full and complete. County shall also submit a reconciled RER certified by the mental health director and the county's auditor-controller as being true and correct, using the DHCS-issued certification form, no later than 18 months after the close of the following fiscal year.

If County does not submit the RER by the reporting deadlines or the RER does not meet the requirements, DHCS shall request a plan of correction with specific timelines (W&I § 5897(d)). If the RER is not timely submitted, or does not meet the requirements, DHCS may, after a hearing held with no less than 20 days- notice to the county mental health director (W&I § 5655), withhold payments from the MHS Fund until the County is in compliance with Title 9, CCR, sections 3505(d) and 3510(c).

4) Distribution and Use of Local Mental Health Services Funds:

- a. W&I section 5891 provides that, commencing July 1, 2012, on or before the 15th day of each month, pursuant to a methodology provided by DHCS, the State Controller shall distribute to County's Local Mental Health Service Fund, established by County pursuant to W&I section 5892(f), all unexpended and unreserved funds on deposit as of the last day of the prior month in the Mental Health Services Fund for the provision of specified programs and other related activities.
- b. County shall allocate the monthly Local MHS Fund in accordance with W&I section 5892 as follows :
 - i. Twenty percent of the funds shall be used for prevention and early intervention (PEI) programs in accordance with Part 3.6 of Division 5 of the Welfare and Institutions Code (commencing with Section 5840). The expenditure for PEI may be increased by County if DHCS determines that the increase will decrease the need and cost for additional services to severely mentally ill persons in County by an amount at least commensurate with the proposed increase.
 - ii. The balance of funds shall be distributed to County's mental health programs for services to persons with severe mental illnesses pursuant to Part 4 of Division 5 of the Welfare and Institutions Code (commencing with Section 5850), for the children's

Exhibit A
Program Specifications

system of care and Part 3 of Division 5 of the Welfare and Institutions Code (commencing with Section 5800), for the adult and older adult system of care.

- iii. Five percent of the total funding for the County's mental health programs established pursuant to Part 3 of Division 5 of the Welfare and Institutions Code (commencing with Section 5800), Part 3.6 of Division 5 of the Welfare and Institutions Code (commencing with Section 5840), and Part 4 of Division 5 of the Welfare and Institutions Code (commencing with Section 5850) shall be utilized for innovative programs in accordance with W&I sections 5830, 5847 and 5848.
 - iv. Programs for services pursuant to Part 3 of Division 5 of the Welfare and Institutions Code (commencing with Section 5800), and Part 4 of Division 5 of the Welfare & Institutions Code (commencing with Section 5850) may include funds for technological needs and capital facilities, human resource needs, and a prudent reserve to ensure services do not have to be significantly reduced in years in which revenues are below the average of previous years. The total allocation for these purposes shall not exceed 20 percent of the average amount of funds allocated to County for the previous five years.
 - v. Allocations in Subparagraphs i. through iii. above, include funding for annual planning costs pursuant to W&I section 5848. The total of these costs shall not exceed five percent of the total annual revenues received for the Local MHS Fund. The planning costs shall include moneys for County's mental health programs to pay for the costs of having consumers, family members, and other stakeholders participate in the planning process and for the planning and implementation required for private provider contracts to be significantly expanded to provide additional services.
 - c. County shall use Local MHS Fund monies to pay for those portions of the mental health programs/services for children and adults for which there is no other source of funds available. (W&I §§ 5813.5(b), 5878.3(a) and 9 CCR 3610(d).
 - d. County shall only use Local MHS Funds to expand mental health services. These funds shall not be used to supplant existing state or county funds utilized to provide mental health services. These funds shall only be used to pay for the programs authorized in W&I section 5892. These funds may not be used to pay for any other program and may not be loaned to County's general fund or any other County fund for any purpose. (W&I § 5891.)
 - e. All expenditures for County mental health programs shall be consistent with a currently approved three-year program and expenditure plan or annual update pursuant to W&I section 5847. (W&I § 5892(g).)
- 5) Three-Year Program and Expenditure Plan and Annual Updates:
- a. County shall prepare and submit a three-year program and expenditure plan, and annual updates, adopted by County's Board of Supervisors, to the Mental Health Services Oversight and Accountability Commission (MHSOAC) and the Department of Health Care Services (DHCS) within 30 calendar days after adoption. The three-year program and expenditure plan and annual updates shall include all of the following:
 - i. A program for Prevention and Early Intervention (PEI) in accordance with Part 3.6 of Division 5 of the Welfare and Institutions Code (commencing with Section 5840).

Exhibit A
Program Specifications

- ii. A program for services to children in accordance with Part 4 of Division 5 of the Welfare and Institutions Code (commencing with Section 5850), to include a wraparound program pursuant to Chapter 4 of Part 6 of Division 9 of the Welfare and Institutions Code (commencing with Section 18250), or provide substantial evidence that it is not feasible to establish a wraparound program in the County.
 - iii. A program for services to adults and seniors in accordance with Part 3 of Division 5 of the Welfare and Institutions Code (commencing with Section 5800).
 - iv. A program for innovations in accordance with Part 3.2 of Division 5 of the Welfare and Institutions Code (commencing with Section 5830). Counties shall expend funds for their innovation programs upon approval by the Mental Health Services Oversight and Accountability Commission.
 - v. A program for technological needs and capital facilities needed to provide services pursuant to Part 3 of Division 5 of the Welfare and Institutions Code (commencing with Section 5800), Part 3.6 of Division 5 of the Welfare and Institutions Code (commencing with Section 5840), and Part 4 of Division 5 of the Welfare and Institutions Code (commencing with Section 5850). All plans for proposed facilities with restrictive settings shall demonstrate that the needs of the people to be served cannot be met in a less restrictive or more integrated setting.
 - vi. Identification of shortages in personnel to provide services pursuant to the above programs and the additional assistance needed from the education and training programs established pursuant to Part 3.1 of Division 5 of the Welfare and Institutions Code (commencing with Section 5820) and Title 9, CCR, section 3830(b).
 - vii. Establishment and maintenance of a prudent reserve to ensure the County program will continue to be able to serve children, adults, and seniors that it is currently serving pursuant to Part 3 of Division 5 of the Welfare and Institutions Code (commencing with Section 5800), Part 3.6 of Division 5 of the Welfare and Institutions Code (commencing with Section 5840), and Part 4 of Division 5 of the Welfare and Institutions Code (commencing with Section 5850), during years in which revenues for the MHS Fund are below recent averages adjusted by changes in the state population and the California Consumer Price Index.
 - viii. Certification by County's mental health director, which ensures that County has complied with all pertinent regulations, laws, and statutes of the MHSA, including stakeholder participation and non-supplantation requirements.
 - ix. Certification by County's Mental Health Director and County's Auditor-Controller that the County has complied with any fiscal accountability requirements as directed by DHCS, and that all expenditures are consistent with the requirements of the MHSA.
- b. County shall include services in the programs described in Subparagraphs 5.a.i. through 5.a.v., inclusive, to address the needs of transition age youth between the ages of 16 years old to 25 years old, including the needs of transition age foster youth pursuant to W&I section 5847(c).

Exhibit A
Program Specifications

- c. County shall prepare expenditure plans for the programs described in Subparagraphs 5.a.i. through 5.a.v., inclusive, and annual expenditure updates. Each expenditure plan update shall indicate the number of children, adults, and seniors to be served, and the cost per person. (W&I § 5847(e)).
 - d. County's three-year program and expenditure plan and annual updates shall include reports on the achievement of performance outcomes for services pursuant to the Adult and Older Adult Mental Health System of Care Act, Prevention and Early Intervention, and the Children's Mental Health Services Act funded by the MHS Fund and established jointly by DHCS and the MHSOAC, in collaboration with the California Mental Health Director's Association. (W&I § 5848(c)). County contracts with providers shall include the performance goals from the County's three-year program and expenditure plan and annual updates that apply to each provider's programs and services.
 - e. County's three-year program and expenditure plan and annual update shall consider ways to provide services that are similar to those established pursuant to the Mentally Ill Offender Crime Reduction Grant Program. Funds shall not be used to pay for persons incarcerated in state prison or parolees from state prisons. (W&I § 5813.5(f))
- 6) Planning Requirements and Stakeholder Involvement:
- a. County shall develop its three-year program and expenditure plan and annual update with local stakeholders, including adults and seniors with severe mental illness, families of children, adults, and seniors with severe mental illness, providers of services, law enforcement agencies, education, social services agencies, veterans, representatives from veterans organizations, providers of alcohol and drug services, health care organizations, and other important interest. Counties shall demonstrate a partnership with constituents and stakeholders throughout the process that includes meaningful stakeholder involvement on mental health policy, program planning, and implementation, monitoring, quality improvement, evaluation, and budget allocations. County shall prepare and circulate a draft plan and update for review and comment for at least 30 calendar days to representatives of stakeholders interest and any interested party who has requested a copy of the draft plans. (W&I § 5848(a))
 - b. County's mental health board, established pursuant to W&I section 5604, shall conduct a public hearing on the County's draft three-year program and expenditure plan and annual updates at the close of the 30 calendar day comment period. Each adopted three-year program and expenditure plan or annual update shall summarize and analyze substantive recommendations and describe substantive changes to the three-year program and expenditure plan and annual updates. The County's mental health board shall review the adopted three-year program and expenditure plan and annual updates and make recommendations to County's mental health department for amendments. (W&I § 5848(b) and Title 9, CCR, § 3315.)
- 7) County Requirements for Handling MHSA Funds
- a. County shall place all funds received from the State MHS Fund into a Local MHS Fund. The Local MHS Fund balance shall be invested consistent with other County funds and the interest earned on the investments shall be transferred into the Local MHS Fund. (W&I § 5892(f).)

Exhibit A
Program Specifications

- b. The earnings on investment of these funds shall be available for distribution from the fund in future years. (W&I § 5892 (f).)
- c. Other than funds placed in a reserve in accordance with an approved plan, any funds allocated to County which it has not spent for the authorized purpose within the three years shall revert to the State. County may retain MSHA Funds for capital facilities, technological needs, or education and training for up to 10 years before reverting to the State. (W&I § 5892(h).)

8) Department Compliance Investigations:

DHCS may investigate County's performance of the Mental Health Services Act related provisions of this Agreement and compliance with the provisions of the Mental Health Services Act, and relevant regulations. In conducting such an investigation DHCS may inspect and copy books, records, papers, accounts, documents and any writing as defined by Evidence Code Section 250 that is pertinent or material to the investigation of the County. For purposes of this Paragraph "provider" means any person or entity that provides services, goods, supplies or merchandise, which are directly or indirectly funded pursuant to MHSA. (Gov. Code §§ 1180, 1181, 1182 and W&I Code § 14124.2.)

9) County Breach, Plan of Correction and Withholding of State Mental Health Funds:

- a. If DHCS determines that County is out-of-compliance with the Mental Health Services Act related provisions of this Agreement, DHCS may request that County submit a plan of correction, including a specific timeline to correct the deficiencies, to DHCS. (W&I § 5897(d).)
- b. If DHCS determines that County is substantially out-of-compliance with any provision of the Mental Health Services Act or relevant regulations, including all reporting requirements, and that administrative action is necessary, DHCS may after a hearing held with no less than 20 days- notice to the county mental health director (W&I § 5655):
 - i. Withhold part or all state mental health funds from County; and/or
 - ii. Require County to enter into negotiations with DHCS to agree on a plan for County to address County's non-compliance. (W&I § 5655.)

C. PROJECTS FOR ASSISTANCE IN TRANSITION FROM HOMELESSNESS (PATH) PROGRAM (Title 42, United States Code, sections 290cc-21 through 290cc-35, inclusive)

Pursuant to Title 42, United State Code, sections 290cc-21 through 290cc-35, inclusive, the State of California has been awarded federal homeless funds through the federal McKinney Projects for Assistance in Transition from Homelessness (PATH) formula grant. The PATH grant funds community based outreach, mental health and substance abuse referral/treatment, case management and other support services, as well as a limited set of housing services for the homeless mentally ill.

While county mental health programs serve thousands of homeless persons with realignment funds and other local revenues, the PATH grant augments these programs by

Exhibit A
Program Specifications

providing services to approximately 8,300 additional persons annually. The county determines its use of PATH funds based on county priorities and needs.

If County wants to receive PATH funds, it shall submit its RFA responses and required documentation specified in DHCS' Request for Application (RFA). County shall complete its RFA responses in accordance with the instructions, enclosures and attachments available on the DHCS website at:

<http://www.dhcs.ca.gov/services/MH/Pages/PATH.aspx>.

If County applied for and DHCS approved its request to receive PATH grant funds, the RFA, County's RFA responses and required documentation, and DHCS' approval constitute provisions of this Agreement and are incorporated by reference herein. County shall comply with all provisions of the RFA and the County's RFA responses in order to receive its PATH grant funds.

D. COMMUNITY MENTAL HEALTH SERVICES GRANT (MHBG) PROGRAM (Title 42, United States Code section 300x-1 et seq.)

DHCS awards federal Community Mental Health Services Block Grant funds (known as Mental Health Block Grant (MHBG)) to counties in California. The county mental health agencies provide a broad array of mental health services within their mental health system of care (SOC) programs. These programs provide services to the following target populations: children and youth with serious emotional disturbances (SED), adults and older adults with serious mental illnesses (SMI).

The MHBG funds provide the counties with a stable, flexible, and non-categorical funding base that the counties can use to develop innovative programs or augment existing programs within their SOC. The MHBG funds also assist the counties in providing an appropriate level of community mental health services to the most needy individuals in the target populations who have a mental health diagnosis, and/or individuals who have a mental health diagnosis with a co-occurring substance abuse disorder.

If County wants to receive MHBG funds, it shall submit its RFA responses and required documentation specified in DHCS' RFA. County shall complete its RFA responses in accordance with the instructions, enclosures and attachments available on the DHCS website at:

<http://www.dhcs.ca.gov/services/MH/Pages/MHBG.aspx>.

If County applied for and DHCS approved its request to receive MHBG grant funds, the RFA, County's RFA responses and required documentation, and DHCS' approval constitute provisions of this Agreement and are incorporated by reference herein. County shall comply with all provisions of the RFA and the County's RFA responses in order to receive its MHBG grant funds.

Exhibit A
Program Specifications

E. SPECIAL TERMS AND CONDITIONS

1. Audit and Record Retention

(Applicable to agreements in excess of \$10,000)

- a. The Contractor and/or Subcontractor shall maintain books, records, documents, and other evidence, accounting procedures and practices, sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Agreement, including any matching costs and expenses. The foregoing constitutes "records" for the purposes of this provision.
- b. The Contractor's and/or Subcontractor's facility or office or such part thereof as may be engaged in the performance of this Agreement and his/her records shall be subject at all reasonable times to inspection, audit, and reproduction.
- c. Contractor agrees that DHCS, the Department of General Services, the Bureau of State Audits, or their designated representatives including the Comptroller General of the United States shall have the right to review and copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, CCR Title 2, Section 1896).
- d. The Contractor and/or Subcontractor shall preserve and make available his/her records (1) for a period of three years from the date of final payment under this Agreement, and (2) for such longer period, if any, as is required by applicable statute, by any other provision of this Agreement, or by subparagraphs (1) or (2) below.
 - 1) If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.
 - 2) If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.
- e. The Contractor and/or Subcontractor shall comply with the above requirements and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in Public Contract Code § 10115.10, if applicable.
- f. The Contractor and/or Subcontractor may, at its discretion, following receipt of final payment under this Agreement, reduce its accounts, books, and records related to this Agreement to microfilm, computer disk, CD ROM, DVD, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, the Contractor and/or Subcontractor must supply or make available applicable devices, hardware, and/or software necessary to view, copy, and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.
- g. The Contractor shall, if applicable, comply with the Single Audit Act and the audit reporting requirements set forth in OMB Circular A-133.

2. Dispute Resolution Process

- a. A Contractor grievance exists whenever there is a dispute arising from DHCS' action in the administration of an agreement. If there is a dispute or grievance between the

Exhibit A
Program Specifications

Contractor and DHCS, the Contractor must seek resolution using the procedure outlined below.

- 1) The Contractor should first informally discuss the problem with the DHCS Program Contract Manager. If the problem cannot be resolved informally, the Contractor shall direct its grievance together with any evidence, in writing, to the program Branch Chief. The grievance shall state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief shall render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. If the Contractor disagrees with the Branch Chief's decision, the Contractor may appeal to the second level.
- 2) When appealing to the second level, the Contractor must prepare an appeal indicating the reasons for disagreement with Branch Chief's decision. The Contractor shall include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division in which the branch is organized or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal.
- b. If the Contractor wishes to appeal the decision of the Deputy Director of the division in which the branch is organized or his/her designee, the Contractor shall follow the procedures set forth in Health and Safety Code Section 100171.
- c. Unless otherwise stipulated in writing by DHCS, all dispute, grievance and/or appeal correspondence shall be directed to the DHCS Program Contract Manager.
- d. There are organizational differences within DHCS' funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Contractor shall be notified in writing by the DHCS Program Contract Manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.

3. Novation

- a. If the Contractor proposes any novation agreement, DHCS shall act upon the proposal within 60 days after receipt of the written proposal. DHCS may review and consider the proposal, consult and negotiate with the Contractor, and accept or reject all or part of the proposal. Acceptance or rejection of the proposal may be made orally within the 60-day period and confirmed in writing within five days of said decision. Upon written acceptance of the proposal, DHCS will initiate an amendment to this Agreement to formally implement the approved proposal.

Exhibit A, Attachment I
Request for Waiver

Request for Waiver Pursuant To Section 5751.7 of the Welfare and Institutions Codes

_____ hereby requests a waiver for the following public or private health facilities pursuant to Section 5751.7 of the Welfare and Institutions Code for the term of this contract. These are facilities where minors may be provided psychiatric treatment with nonspecific separate housing arrangements, treatment staff, and treatment programs designed to serve minors. However, no minor shall be admitted for psychiatric treatment into the same treatment ward as an adult receiving treatment who is in the custody of any jailor for a violent crime, is a known registered sex offender, or has a known history of, or exhibits inappropriate sexual or other violent behavior which would present a threat to the physical safety of others.

The request for waiver must include, as an attachment, the following:

1. A description of the hardship to the County/City due to inadequate or unavailable alternative resources that would be caused by compliance with the state policy regarding the provision of psychiatric treatment to minors.
2. The specific treatment protocols and administrative procedures established by the County/City for identifying and providing appropriate treatment to minors admitted with adults.
3. Name, address, and telephone number of the facility
 - Number of Beds
 - Type of Facility / Licensure (including licensing agency and license #)
 - A copy of the facility's license or certificate
4. The County Board of Supervisors' decision to designate a facility as a facility for evaluation and treatment pursuant to Welfare and Institutions Codes 5150, 5585.50, and 5585.55.

Execution of this contract shall constitute approval of this waiver. Any waiver granted in the prior fiscal year's contract shall be deemed to continue until execution of this contract.

**Exhibit B
Funds Provision**

1. Budget Contingency Clause

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, DHCS shall have no liability to pay any funds whatsoever to Amador County Mental Health or to furnish any other considerations under this Agreement and Amador County Mental Health shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, DHCS shall have the option to either cancel this Agreement with no liability occurring to DHCS, or offer an agreement amendment to Amador County Mental Health to reflect the reduced amount.

Exhibit F
Information Confidentiality and Security Requirements

1. **Definitions.** For purposes of this Exhibit, the following definitions shall apply:
 - A. **Public Information:** Information that is not exempt from disclosure under the provisions of the California Public Records Act (Government Code sections 6250-6265) or other applicable state or federal laws.
 - B. **Confidential Information:** Information that is exempt from disclosure under the provisions of the California Public Records Act (Government Code sections 6250-6265) or other applicable state or federal laws.
 - C. **Sensitive Information:** Information that requires special precautions to protect from unauthorized use, access, disclosure, modification, loss, or deletion. Sensitive Information may be either Public Information or Confidential Information. It is information that requires a higher than normal assurance of accuracy and completeness. Thus, the key factor for Sensitive Information is that of integrity. Typically, Sensitive Information includes records of agency financial transactions and regulatory actions.
 - D. **Personal Information:** Information that identifies or describes an individual, including, but not limited to, their name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. **It is DHCS' policy to consider all information about individuals private unless such information is determined to be a public record.** This information must be protected from inappropriate access, use, or disclosure and must be made accessible to data subjects upon request. Personal Information includes the following:

Notice-triggering Personal Information: Specific items of personal information (name plus Social Security number, driver license/California identification card number, or financial account number) that may trigger a requirement to notify individuals if it is acquired by an unauthorized person. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph. See Civil Code sections 1798.29 and 1798.82.
2. **Nondisclosure.** The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure any Personal Information, Sensitive Information, or Confidential Information (hereinafter identified as PSCI).
3. The Contractor and its employees, agents, or subcontractors shall not use any PSCI for any purpose other than carrying out the Contractor's obligations under this Agreement.
4. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the DHCS Program Contract Manager all requests for disclosure of any PSCI not emanating from the person who is the subject of PSCI.
5. The Contractor shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the person who is the subject of PSCI, any PSCI to anyone other than DHCS without prior written authorization from the DHCS Program Contract Manager, except if disclosure is required by State or Federal law.

Exhibit F
Information Confidentiality and Security Requirements

6. The Contractor shall observe the following requirements:

A. Safeguards. The Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PSCI, including electronic PSCI that it creates, receives, maintains, uses, or transmits on behalf of DHCS. Contractor shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities, including at a minimum the following safeguards:

1) Personnel Controls

- a. Employee Training.** All workforce members who assist in the performance of functions or activities on behalf of DHCS, or access or disclose DHCS PSCI, must complete information privacy and security training, at least annually, at Business Associate's expense. Each workforce member who receives information privacy and security training must sign a certification, indicating the member's name and the date on which the training was completed. These certifications must be retained for a period of six (6) years following contract termination.
- b. Employee Discipline.** Appropriate sanctions must be applied against workforce members who fail to comply with privacy policies and procedures or any provisions of these requirements, including termination of employment where appropriate.
- c. Confidentiality Statement.** All persons that will be working with DHCS PHI or PI must sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to DHCS PHI or PI. The statement must be renewed annually. The Contractor shall retain each person's written confidentiality statement for DHCS inspection for a period of six (6) years following contract termination.
- d. Background Check.** Before a member of the workforce may access DHCS PHI or PI, a thorough background check of that worker must be conducted, with evaluation of the results to assure that there is no indication that the worker may present a risk to the security or integrity of confidential data or a risk for theft or misuse of confidential data. The Contractor shall retain each workforce member's background check documentation for a period of three (3) years following contract termination.

2) Technical Security Controls

- a. Workstation/Laptop encryption.** All workstations and laptops that process and/or store DHCS PHI or PI must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as Advanced Encryption Standard (AES). The encryption solution must be full disk unless approved by the DHCS Information Security Office.
- b. Server Security.** Servers containing unencrypted DHCS PHI or PI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.

Exhibit F
Information Confidentiality and Security Requirements

- c. **Minimum Necessary.** Only the minimum necessary amount of DHCS PHI or PI required to perform necessary business functions may be copied, downloaded, or exported.
- d. **Removable media devices.** All electronic files that contain DHCS PHI or PI data must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, Blackberry, backup tapes etc.). Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES.
- e. **Antivirus software.** All workstations, laptops and other systems that process and/or store DHCS PHI or PI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.
- f. **Patch Management.** All workstations, laptops and other systems that process and/or store DHCS PHI or PI must have critical security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within 30 days of vendor release.
- g. **User IDs and Password Controls.** All users must be issued a unique user name for accessing DHCS PHI or PI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password, at maximum within 24 hours. Passwords are not to be shared. Passwords must be at least eight characters and must be a non-dictionary word. Passwords must not be stored in readable format on the computer. Passwords must be changed every 90 days, preferably every 60 days. Passwords must be changed if revealed or compromised. Passwords must be composed of characters from at least three of the following four groups from the standard keyboard:
 - Upper case letters (A-Z)
 - Lower case letters (a-z)
 - Arabic numerals (0-9)
 - Non-alphanumeric characters (punctuation symbols)
- h. **Data Destruction.** When no longer needed, all DHCS PHI or PI must be wiped using the Gutmann or US Department of Defense (DoD) 5220.22-M (7 Pass) standard, or by degaussing. Media may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods require prior written permission of the DHCS Information Security Office.
- i. **System Timeout.** The system providing access to DHCS PHI or PI must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.
- j. **Warning Banners.** All systems providing access to DHCS PHI or PI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.
- k. **System Logging.** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for DHCS PHI or PI, or which alters

Exhibit F
Information Confidentiality and Security Requirements

DHCS PHI or PI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If DHCS PHI or PI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.

- l. Access Controls.** The system providing access to DHCS PHI or PI must use role based access controls for all user authentications, enforcing the principle of least privilege.
- m. Transmission encryption.** All data transmissions of DHCS PHI or PI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing PHI can be encrypted. This requirement pertains to any type of PHI or PI in motion such as website access, file transfer, and E-Mail.
- n. Intrusion Detection.** All systems involved in accessing, holding, transporting, and protecting DHCS PHI or PI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

3) Audit Controls

- a. System Security Review.** All systems processing and/or storing DHCS PHI or PI must have at least an annual system risk assessment/security review which provides assurance that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews should include vulnerability scanning tools.
- b. Log Reviews.** All systems processing and/or storing DHCS PHI or PI must have a routine procedure in place to review system logs for unauthorized access.
- c. Change Control.** All systems processing and/or storing DHCS PHI or PI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

4) Business Continuity / Disaster Recovery Controls

- a. Emergency Mode Operation Plan.** Contractor must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic DHCS PHI or PI in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this Agreement for more than 24 hours.
- b. Data Backup Plan.** Contractor must have established documented procedures to backup DHCS PHI to maintain retrievable exact copies of DHCS PHI or PI. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and an estimate of the amount of time needed to restore DHCS PHI or PI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of DHCS data.

5) Paper Document Controls

Exhibit F
Information Confidentiality and Security Requirements

- a. **Supervision of Data.** DHCS PHI or PI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. DHCS PHI or PI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.
 - b. **Escorting Visitors.** Visitors to areas where DHCS PHI or PI is contained shall be escorted and DHCS PHI or PI shall be kept out of sight while visitors are in the area.
 - c. **Confidential Destruction.** DHCS PHI or PI must be disposed of through confidential means, such as cross cut shredding and pulverizing.
 - d. **Removal of Data.** DHCS PHI or PI must not be removed from the premises of the Contractor except with express written permission of DHCS.
 - e. **Faxing.** Faxes containing DHCS PHI or PI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending the fax.
 - f. **Mailing.** Mailings of DHCS PHI or PI shall be sealed and secured from damage or inappropriate viewing of PHI or PI to the extent possible. Mailings which include 500 or more individually identifiable records of DHCS PHI or PI in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission of DHCS to use another method is obtained.
- B. Security Officer.** The Contractor shall designate a Security Officer to oversee its data security program who will be responsible for carrying out its privacy and security programs and for communicating on security matters with DHCS.
- C. Discovery and Notification of Breach.** The Contractor shall notify DHCS **immediately by telephone call plus email or fax** upon the discovery of breach of security of PSCI in computerized form if the PSCI was, or is reasonably believed to have been, acquired by an unauthorized person, or upon the discovery of a suspected security incident that involves data provided to DHCS by the Social Security Administration **or within twenty-four (24) hours by email or fax** of the discovery of any suspected security incident, intrusion or unauthorized use or disclosure of PSCI in violation of this Agreement, or potential loss of confidential data affecting this Agreement. Notification shall be provided to the DHCS Program Contract Manager, the DHCS Privacy Officer and the DHCS Information Security Officer. Notice shall be made using the "DHCS Privacy Incident Report" form, including all information known at the time. The Contractor shall use the most current version of this form, which is posted on the DHCS Privacy Office website (www.dhcs.ca.gov, then select "Privacy" in the left column and then "Business Use" near the middle of the page) or use this link: <http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/DHCSBusinessAssociatesOnly.aspx> If the incident occurs after business hours or on a weekend or holiday and involves electronic PSCI, notification shall be provided by calling the DHCS Information Technology Services Division (ITSD) Help Desk. Contractor shall take:
- 1) Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment and

Exhibit F
 Information Confidentiality and Security Requirements

- 2) Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
- D. Investigation of Breach.** The Contractor shall immediately investigate such security incident, breach, or unauthorized use or disclosure of PSCI and within seventy-two (72) hours of the discovery, The Contractor shall submit an updated "DHCS Privacy Incident Report" containing the information marked with an asterisk and all other applicable information listed on the form, to the extent known at that time, to the DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer:
- E. Written Report.** The Contractor shall provide a written report of the investigation to the DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall include, but not be limited to, the information specified above, as well as a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure.
- F. Notification of Individuals.** The Contractor shall notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and shall pay any costs of such notifications, as well as any costs associated with the breach. The DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer shall approve the time, manner and content of any such notifications.
7. **Affect on lower tier transactions.** The terms of this Exhibit shall apply to all contracts, subcontracts, and subawards, regardless of whether they are for the acquisition of services, goods, or commodities. The Contractor shall incorporate the contents of this Exhibit into each subcontract or subaward to its agents, subcontractors, or independent consultants.
8. **Contact Information.** To direct communications to the above referenced DHCS staff, the Contractor shall initiate contact as indicated herein. DHCS reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Exhibit or the Agreement to which it is incorporated.

DHCS Program Contract Manager	DHCS Privacy Officer	DHCS Information Security Officer
See the Scope of Work exhibit for Program Contract Manager information	Privacy Officer c/o Office of Legal Services Department of Health Care Services P.O. Box 997413, MS 0011 Sacramento, CA 95899-7413 Email: privacyofficer@dhcs.ca.gov Telephone: (916) 445-4646	Information Security Officer DHCS Information Security Office P.O. Box 997413, MS 6400 Sacramento, CA 95899-7413 Email: iso@dhcs.ca.gov Telephone: ITSD Help Desk (916) 440-7000 or (800) 579-0874

9. **Audits and Inspections.** From time to time, DHCS may inspect the facilities, systems, books and records of the Contractor to monitor compliance with the safeguards required in the Information Confidentiality and Security Requirements (ICSR) exhibit. Contractor shall promptly remedy any violation of any provision of this ICSR exhibit. The fact that DHCS inspects, or fails to inspect, or has

Exhibit F
Information Confidentiality and Security Requirements

the right to inspect, Contractor's facilities, systems and procedures does not relieve Contractor of its responsibility to comply with this ICSR exhibit.

EXHIBIT G

PRIVACY AND INFORMATION SECURITY PROVISIONS

This Exhibit G is intended to protect the privacy and security of specified Department information that Contractor may access, receive, or transmit under this Agreement. The Department information covered under this Exhibit G consists of: (1) Protected Health Information as defined under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA")(PHI); and (2) Personal Information (PI) as defined under the California Information Practices Act (CIPA), at California Civil Code Section 1798.3. Personal Information may include data provided to the Department by the Social Security Administration.

Exhibit G consists of the following parts:

1. Exhibit G-1, HIPAA Business Associate Addendum, which provides for the privacy and security of PHI.
2. Exhibit G-2, which provides for the privacy and security of PI in accordance with specified provisions of the Agreement between the Department and the Social Security Administration, known as the Information Exchange Agreement (IEA) and the Computer Matching and Privacy Protection Act Agreement between the Social Security Administration and the California Health and Human Services Agency (Computer Agreement) to the extent Contractor access, receives, or transmits PI under these Agreements. Exhibit G-2 further provides for the privacy and security of PI under Civil Code Section 1798.3(a) and 1798.29.
3. Exhibit G-3, Miscellaneous Provision, sets forth additional terms and conditions that extend to the provisions of Exhibit G in its entirety.

EXHIBIT G-1

HIPAA Business Associate Addendum

1. Recitals.

- A. A business associate relationship under 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"), 42 U.S.C. Section 17921 et seq., and their implementing privacy and security regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations") between Department and Contractor arises only to the extent that Contractor creates, receives, maintains, transmits, uses or discloses PHI or ePHI on the Department's behalf, or provides services, arranges, performs or assists in the performance of functions or activities on behalf of the Department that are included in the definition of "business associate" in 45 C.F.R. 160.103 where the provision of the service involves the disclosure of PHI or ePHI from the Department, including but not limited to, utilization review, quality assurance, or benefit management. To the extent Contractor performs these services, functions, and activities on behalf of Department, Contractor is the Business Associate of the Department, acting on the Department's behalf. The Department and Contractor are each a party to this Agreement and are collectively referred to as the "parties."
- B. The Department wishes to disclose to Contractor certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information ("PHI"), including protected health information in electronic media ("ePHI"), under federal law, to be used or disclosed in the course of providing services and activities as set forth in Section 1.A. of Exhibit G-1 of this Agreement. This information is hereafter referred to as "Department PHI".
- C. The purpose of this Exhibit G-1 is to protect the privacy and security of the PHI and ePHI that may be created, received, maintained, transmitted, used or disclosed pursuant to this Agreement, and to comply with certain standards and requirements of HIPAA, the HITECH Act, and the HIPAA regulations, including, but not limited to, the requirement that the Department must enter into a contract containing

specific requirements with Contractor prior to the disclosure of PHI to Contractor, as set forth in 45 CFR Parts 160 and 164 and the HITECH Act. To the extent that data is both PHI or ePHI and Personally Identifying Information, both Exhibit G-2 (including Attachment B, the SSA Agreement between SSA, CHHS and DHCS, referred to in Exhibit G-2) and this Exhibit G-1 shall apply.

- D. The terms used in this Exhibit G-1, but not otherwise defined, shall have the same meanings as those terms have in the HIPAA regulations. Any reference to statutory or regulatory language shall be to such language as in effect or as amended.

2. Definitions.

- A. Breach shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- B. Business Associate shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- C. Covered Entity shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- D. Department PHI shall mean Protected Health Information or Electronic Protected Health Information, as defined below, accessed by Contractor in a database maintained by the Department, received by Contractor from the Department or acquired or created by Contractor in connection with performing the functions, activities and services on behalf of the Department as specified in Section 1.A. of Exhibit G-1 of this Agreement. The terms PHI as used in this document shall mean Department PHI.
- E. Electronic Health Records shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921 and implementing regulations.
- F. Electronic Protected Health Information (ePHI) means individually identifiable health information transmitted by electronic media or maintained in electronic media, including but not limited to electronic media as set forth under 45 CFR section 160.103.
- G. Individually Identifiable Health Information means health information, including demographic information collected from an individual, that is created or received by a health care provider, health plan, employer or health care clearinghouse, and relates to the past, present or future

physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, that identifies the individual or where there is a reasonable basis to believe the information can be used to identify the individual, as set forth under 45 CFR Section 160.103.

- H. Privacy Rule shall mean the HIPAA Regulations that are found at 45 CFR Parts 160 and 164, subparts A and E.
- I. Protected Health Information (PHI) means individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or is transmitted or maintained in any other form or medium, as set forth under 45 CFR Section 160.103 and as defined under HIPAA.
- J. Required by law, as set forth under 45 CFR Section 164.103, means a mandate contained in law that compels an entity to make a use or disclosure of PHI that is enforceable in a court of law. This includes, but is not limited to, court orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information, and a civil or an authorized investigative demand. It also includes Medicare conditions of participation with respect to health care providers participating in the program, and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.
- K. Secretary means the Secretary of the U.S. Department of Health and Human Services ("HHS") or the Secretary's designee.
- L. Security Incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of Department PHI, or confidential data utilized by Contractor to perform the services, functions and activities on behalf of Department as set forth in Section 1.A. of Exhibit G-1 of this Agreement; or interference with system operations in an information system that processes, maintains or stores Department PHI.
- M. Security Rule shall mean the HIPAA regulations that are found at 45 CFR Parts 160 and 164.
- N. Unsecured PHI shall have the meaning given to such term under the

HITECH Act, 42 U.S.C. Section 17932(h), any guidance issued by the Secretary pursuant to such Act and the HIPAA regulations.

3. Terms of Agreement.

A. Permitted Uses and Disclosures of Department PHI by Contractor.

Except as otherwise indicated in this Exhibit G-1, Contractor may use or disclose Department PHI only to perform functions, activities or services specified in Section 1.A of Exhibit G-1 of this Agreement, for, or on behalf of the Department, provided that such use or disclosure would not violate the HIPAA regulations or the limitations set forth in 42 CFR Part 2, or any other applicable law, if done by the Department. Any such use or disclosure, if not for purposes of treatment activities of a health care provider as defined by the Privacy Rule, must, to the extent practicable, be limited to the limited data set, as defined in 45 CFR Section 164.514(e)(2), or, if needed, to the minimum necessary to accomplish the intended purpose of such use or disclosure, in compliance with the HITECH Act and any guidance issued pursuant to such Act, and the HIPAA regulations.

B. Specific Use and Disclosure Provisions. Except as otherwise indicated in this Exhibit G-1, Contractor may:

- 1) **Use and Disclose for Management and Administration.** Use and disclose Department PHI for the proper management and administration of the Contractor's business, provided that such disclosures are required by law, or the Contractor obtains reasonable assurances from the person to whom the information is disclosed, in accordance with section D(7) of this Exhibit G-1, that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Contractor of any instances of which it is aware that the confidentiality of the information has been breached.
- 2) **Provision of Data Aggregation Services.** Use Department PHI to provide data aggregation services to the Department to the extent requested by the Department and agreed to by Contractor. Data aggregation means the combining of PHI created or received by the Contractor, as the Business Associate, on behalf of the Department

with PHI received by the Business Associate in its capacity as the Business Associate of another covered entity, to permit data analyses that relate to the health care operations of the Department

C. Prohibited Uses and Disclosures

- 1) Contractor shall not disclose Department PHI about an individual to a health plan for payment or health care operations purposes if the Department PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full and the individual requests such restriction, in accordance with 42 U.S.C. Section 17935(a) and 45 CFR Section 164.522(a).
- 2) Contractor shall not directly or indirectly receive remuneration in exchange for Department PHI.

D. Responsibilities of Contractor

Contractor agrees:

- 1) **Nondisclosure.** Not to use or disclose Department PHI other than as permitted or required by this Agreement or as required by law, including but not limited to 42 CFR Part 2.
- 2) **Compliance with the HIPAA Security Rule.** To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Department PHI, including electronic PHI, that it creates, receives, maintains, uses or transmits on behalf of the Department, in compliance with 45 CFR Sections 164.308, 164.310 and 164.312, and to prevent use or disclosure of Department PHI other than as provided for by this Agreement. Contractor shall implement reasonable and appropriate policies and procedures to comply with the standards, implementation specifications and other requirements of 45 CFR Section 164, subpart C, in compliance with 45 CFR Section 164.316. Contractor shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities, and which incorporates the requirements of section 3, Security, below. Contractor will provide the Department with its current and updated policies upon request.
- 3) **Security.** Contractor shall take any and all steps necessary to ensure

the continuous security of all computerized data systems containing PHI and/or PI, and to protect paper documents containing PHI and/or PI. These steps shall include, at a minimum:

- a. Complying with all of the data system security precautions listed in Attachment A, Data Security Requirements;
 - b. Achieving and maintaining compliance with the HIPAA Security Rule (45 CFR Parts 160 and 164), as necessary in conducting operations on behalf of DHCS under this Agreement; and
 - c. Providing a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III- Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies.
- 4) **Security Officer.** Contractor shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this section and for communicating on security matters with the Department.
- 5) **Mitigation of Harmful Effects.** To mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Department PHI by Contractor or its subcontractors in violation of the requirements of this Exhibit G.
- 6) **Reporting Unauthorized Use or Disclosure.** To report to Department any use or disclosure of Department PHI not provided for by this Exhibit G of which it becomes aware.
- 7) **Contractor's Agents and Subcontractors.**
- a. To enter into written agreements with any agents, including subcontractors and vendors to whom Contractor provides Department PHI, that impose the same restrictions and conditions on such agents, subcontractors and vendors that apply to Contractor with respect to such Department PHI under this Exhibit G, and that require compliance with all applicable provisions of HIPAA, the HITECH Act and the HIPAA regulations, including the requirement that any agents, subcontractors or vendors implement reasonable and appropriate administrative, physical, and technical

safeguards to protect such PHI. As required by HIPAA, the HITECH Act and the HIPAA regulations, including 45 CFR Sections 164.308 and 164.314, Contractor shall incorporate, when applicable, the relevant provisions of this Exhibit G-1 into each subcontract or subaward to such agents, subcontractors and vendors, including the requirement that any security incidents or breaches of unsecured PHI be reported to Contractor.

- b. In accordance with 45 CFR Section 164.504(e)(1)(ii), upon Contractor's knowledge of a material breach or violation by its subcontractor of the agreement between Contractor and the subcontractor, Contractor shall:
 - i) Provide an opportunity for the subcontractor to cure the breach or end the violation and terminate the agreement if the subcontractor does not cure the breach or end the violation within the time specified by the Department; or
 - ii) Immediately terminate the agreement if the subcontractor has breached a material term of the agreement and cure is not possible.

8) **Availability of Information to the Department and Individuals to Provide Access and Information:**

- a. To provide access as the Department may require, and in the time and manner designated by the Department (upon reasonable notice and during Contractor's normal business hours) to Department PHI in a Designated Record Set, to the Department (or, as directed by the Department), to an Individual, in accordance with 45 CFR Section 164.524. Designated Record Set means the group of records maintained for the Department health plan under this Agreement that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for the Department health plan for which Contractor is providing services under this Agreement; or those records used to make decisions about individuals on behalf of the Department. Contractor shall use the forms and processes developed by the Department for this purpose and shall respond to requests

for access to records transmitted by the Department within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.

- b. If Contractor maintains an Electronic Health Record with PHI, and an individual requests a copy of such information in an electronic format, Contractor shall provide such information in an electronic format to enable the Department to fulfill its obligations under the HITECH Act, including but not limited to, 42 U.S.C. Section 17935(e) and the HIPAA regulations.
- 9) **Amendment of Department PHI.** To make any amendment(s) to Department PHI that were requested by a patient and that the Department directs or agrees should be made to assure compliance with 45 CFR Section 164.526, in the time and manner designated by the Department, with the Contractor being given a minimum of twenty (20) days within which to make the amendment.
- 10) **Internal Practices.** To make Contractor's internal practices, books and records relating to the use and disclosure of Department PHI available to the Department or to the Secretary, for purposes of determining the Department's compliance with the HIPAA regulations. If any information needed for this purpose is in the exclusive possession of any other entity or person and the other entity or person fails or refuses to furnish the information to Contractor, Contractor shall provide written notification to the Department and shall set forth the efforts it made to obtain the information.
- 11) **Documentation of Disclosures.** To document and make available to the Department or (at the direction of the Department) to an individual such disclosures of Department PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of such PHI, in accordance with the HITECH Act and its implementing regulations, including but not limited to 45 CFR Section 164.528 and 42 U.S.C. Section 17935(c). If Contractor maintains electronic health records for the Department as of January 1, 2009 and later, Contractor must provide an accounting of disclosures, including those disclosures for treatment, payment or health care operations. The electronic accounting of disclosures shall be for disclosures during the three years prior to the request for an accounting.

- 12) **Breaches and Security Incidents.** During the term of this Agreement, Contractor agrees to implement reasonable systems for the discovery and prompt reporting of any breach or security incident, and to take the following steps:
- a. **Initial Notice to the Department.** (1) To notify the Department **immediately by telephone call or email or fax** upon the discovery of a breach of unsecured PHI in electronic media or in any other media if the PHI was, or is reasonably believed to have been, accessed or acquired by an unauthorized person. (2) To notify the Department **within 24 hours (one hour if SSA data) by email or fax** of the discovery of any suspected security incident, intrusion or unauthorized access, use or disclosure of PHI in violation of this Agreement or this ExhibitG-1, or potential loss of confidential data affecting this Agreement. A breach shall be treated as discovered by Contractor as of the first day on which the breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the breach) who is an employee, officer or other agent of Contractor.

Notice shall be provided to the Information Protection Unit, Office of HIPAA Compliance. If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notice shall be provided by calling the Information Protection Unit (916.445.4646, 866-866-0602) or by emailing privacyofficer@dhcs.ca.gov). Notice shall be made using the DHCS "Privacy Incident Report" form, including all information known at the time. Contractor shall use the most current version of this form, which is posted on the DHCS Information Security Officer website (www.dhcs.ca.gov, then select "Privacy" in the left column and then "Business Partner" near the middle of the page) or use this link:

<http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/DHCSBusinessAssociatesOnly.aspx>

Upon discovery of a breach or suspected security incident, intrusion or unauthorized access, use or disclosure of Department PHI, Contractor shall take:

- i) Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the

operating environment; and

- ii) Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
- b. **Investigation and Investigation Report.** To immediately investigate such suspected security incident, security incident, breach, or unauthorized access, use or disclosure of PHI . Within 72 hours of the discovery, Contractor shall submit an updated "Privacy Incident Report" containing the information marked with an asterisk and all other applicable information listed on the form, to the extent known at that time, to the Information Protection Unit.
- c. **Complete Report.** To provide a complete report of the investigation to the Department Program Contract Manager and the Information Protection Unit within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall be submitted on the "Privacy Incident Report" form and shall include an assessment of all known factors relevant to a determination of whether a breach occurred under applicable provisions of HIPAA, the HITECH Act, and the HIPAA regulations. The report shall also include a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure. If the Department requests information in addition to that listed on the "Privacy Incident Report" form, Contractor shall make reasonable efforts to provide the Department with such information. If, because of the circumstances of the incident, Contractor needs more than ten (10) working days from the discovery to submit a complete report, the Department may grant a reasonable extension of time, in which case Contractor shall submit periodic updates until the complete report is submitted. If necessary, a Supplemental Report may be used to submit revised or additional information after the completed report is submitted, by submitting the revised or additional information on an updated "Privacy Incident Report" form. The Department will review and approve the determination of whether a breach occurred and whether individual notifications and a corrective action plan are required.

- d. **Responsibility for Reporting of Breaches.** If the cause of a breach of Department PHI is attributable to Contractor or its agents, subcontractors or vendors, Contractor is responsible for all required reporting of the breach as specified in 42 U.S.C. section 17932 and its implementing regulations, including notification to media outlets and to the Secretary (after obtaining prior written approval of DHCS). If a breach of unsecured Department PHI involves more than 500 residents of the State of California or under its jurisdiction, Contractor shall first notify DHCS, then the Secretary of the breach immediately upon discovery of the breach. If a breach involves more than 500 California residents, Contractor shall also provide, after obtaining written prior approval of DHCS, notice to the Attorney General for the State of California, Privacy Enforcement Section. If Contractor has reason to believe that duplicate reporting of the same breach or incident may occur because its subcontractors, agents or vendors may report the breach or incident to the Department in addition to Contractor, Contractor shall notify the Department, and the Department and Contractor may take appropriate action to prevent duplicate reporting.
- e. **Responsibility for Notification of Affected Individuals.** If the cause of a breach of Department PHI is attributable to Contractor or its agents, subcontractors or vendors and notification of the affected individuals is required under state or federal law, Contractor shall bear all costs of such notifications as well as any costs associated with the breach. In addition, the Department reserves the right to require Contractor to notify such affected individuals, which notifications shall comply with the requirements set forth in 42U.S.C. section 17932 and its implementing regulations, including, but not limited to, the requirement that the notifications be made without unreasonable delay and in no event later than 60 calendar days after discovery of the breach. The Department Privacy Officer shall approve the time, manner and content of any such notifications and their review and approval must be obtained before the notifications are made. The Department will provide its review and approval expeditiously and without unreasonable delay.
- f. **Department Contact Information.** To direct communications to the above referenced Department staff,

the Contractor shall initiate contact as indicated herein. The Department reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Addendum or the Agreement to which it is incorporated.

Department Program Contract Manager	DHCS Privacy Officer	DHCS Information Security Officer
See the Exhibit A, Scope of Work for Program Contract Manager information	Information Protection Unit c/o: Office of HIPAA Compliance Department of Health Care Services P.O. Box 997413, MS 4722 Sacramento, CA 95899-7413 (916) 445-4646; (866) 866-0602 Email: privacyofficer@dhcs.ca.gov Fax: (916) 440-7680	Information Security Officer DHCS Information Security Office P.O. Box 997413, MS 6400 Sacramento, CA 95899-7413 Email: iso@dhcs.ca.gov Telephone: ITSD Service Desk (916) 440-7000; (800) 579-0874 Fax: (916)440-5537

- 13) **Termination of Agreement.** In accordance with Section 13404(b) of the HITECH Act and to the extent required by the HIPAA regulations, if Contractor knows of a material breach or violation by the Department of this Exhibit G-1, it shall take the following steps:

- a. Provide an opportunity for the Department to cure the breach or end the violation and terminate the Agreement if the Department does not cure the breach or end the violation within the time specified by Contractor; or
 - b. Immediately terminate the Agreement if the Department has breached a material term of the Exhibit G-1 and cure is not possible.
- 14) **Sanctions and/or Penalties.** Contractor understands that a failure to comply with the provisions of HIPAA, the HITECH Act and the HIPAA regulations that are applicable to Contractors may result in the imposition of sanctions and/or penalties on Contractor under HIPAA, the HITECH Act and the HIPAA regulations.

E. Obligations of the Department.

The Department agrees to:

- 1) **Permission by Individuals for Use and Disclosure of PHI.** Provide the Contractor with any changes in, or revocation of, permission by an Individual to use or disclose Department PHI, if such changes affect the Contractor's permitted or required uses and disclosures.
- 2) **Notification of Restrictions.** Notify the Contractor of any restriction to the use or disclosure of Department PHI that the Department has agreed to in accordance with 45 CFR Section 164.522, to the extent that such restriction may affect the Contractor's use or disclosure of PHI.
- 3) **Requests Conflicting with HIPAA Rules.** Not request the Contractor to use or disclose Department PHI in any manner that would not be permissible under the HIPAA regulations if done by the Department.
- 4) **Notice of Privacy Practices.** Provide Contractor with the web link to the Notice of Privacy Practices that DHCS produces in accordance with 45 CFR Section 164.520, as well as any changes to such notice. Visit the DHCS website to view the most current Notice of Privacy Practices at:
<http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/NoticeofPrivacyPractices.aspx> or the DHCS website at www.dhcs.ca.gov (select "Privacy in the right column and "Notice of Privacy Practices" on the right side of the page).

F. Audits, Inspection and Enforcement

If Contractor is the subject of an audit, compliance review, or complaint investigation by the Secretary or the Office for Civil Rights, U.S. Department of Health and Human Services, that is related to the performance of its obligations pursuant to this HIPAA Business Associate Exhibit G-1, Contractor shall immediately notify the Department. Upon request from the Department, Contractor shall provide the Department with a copy of any Department PHI that Contractor, as the Business Associate, provides to the Secretary or the Office of Civil Rights concurrently with providing such PHI to the Secretary. Contractor is responsible for any civil penalties assessed due to an audit or investigation of Contractor, in accordance with 42 U.S.C. Section 17934(c).

G. Termination.

- 1) **Term.** The Term of this Exhibit G-1 shall extend beyond the termination of the Agreement and shall terminate when all Department PHI is destroyed or returned to the Department, in accordance with 45 CFR Section 164.504(e)(2)(ii)(J).
- 2) **Termination for Cause.** In accordance with 45 CFR Section 164.504(e)(1)(iii), upon the Department's knowledge of a material breach or violation of this Exhibit G-1 by Contractor, the Department shall:
 - a. Provide an opportunity for Contractor to cure the breach or end the violation and terminate this Agreement if Contractor does not cure the breach or end the violation within the time specified by the Department; or
 - b. Immediately terminate this Agreement if Contractor has breached a material term of this Exhibit G-1 and cure is not possible.

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EXHIBIT G-2

Privacy and Security of Personal Information and Personally Identifiable Information Not Subject to HIPAA

1. Recitals.

- A. In addition to the Privacy and Security Rules under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) the Department is subject to various other legal and contractual requirements with respect to the personal information (PI) and personally identifiable information (PII) it maintains. These include:
- 1) The California Information Practices Act of 1977 (California Civil Code §§1798 et seq.),
 - 2) The Agreement between the Social Security Administration (SSA) and the Department, known as the Information Exchange Agreement (IEA), which incorporates the Computer Matching and Privacy Protection Act Agreement (CMPPA) between the SSA and the California Health and Human Services Agency. The IEA, including the CMPPA is attached to this Exhibit G as Attachment B and is hereby incorporated in this Agreement.
 - 3) Title 42 Code of Federal Regulations, Chapter I, Subchapter A, Part 2.
- B. The purpose of this Exhibit G-2 is to set forth Contractor's privacy and security obligations with respect to PI and PII that Contractor may create, receive, maintain, use, or disclose for or on behalf of Department pursuant to this Agreement. Specifically this Exhibit applies to PI and PII which is not Protected Health Information (PHI) as defined by HIPAA and therefore is not addressed in Exhibit G-1 of this Agreement, the HIPAA Business Associate Addendum; however, to the extent that data is both PHI or ePHI and PII, both Exhibit G-1 and this Exhibit G-2 shall apply.
- C. The IEA Agreement referenced in A.2) above requires the Department to extend its substantive privacy and security terms to subcontractors who receive data provided to DHCS by the Social Security Administration. If Contractor receives data from DHCS that includes data provided to DHCS by the Social Security Administration, Contractor must comply with the following specific sections of the IEA Agreement: E. Security Procedures, F. Contractor/Agent Responsibilities, and G. Safeguarding and Reporting Responsibilities for Personally Identifiable Information ("PII"), and in Attachment 4 to the IEA, Electronic Information Exchange Security Requirements, Guidelines and Procedures for Federal, State and Local

Agencies Exchanging Electronic Information with the Social Security Administration. Contractor must also ensure that any agents, including a subcontractor, to whom it provides DHCS data that includes data provided by the Social Security Administration, agree to the same requirements for privacy and security safeguards for such confidential data that apply to Contractor with respect to such information.

- D. The terms used in this Exhibit G-2, but not otherwise defined, shall have the same meanings as those terms have in the above referenced statute and Agreement. Any reference to statutory, regulatory, or contractual language shall be to such language as in effect or as amended.

2. Definitions.

- A. "Breach" shall have the meaning given to such term under the IEA and CMPPA. It shall include a "PII loss" as that term is defined in the CMPPA.
- B. "Breach of the security of the system" shall have the meaning given to such term under the California Information Practices Act, Civil Code section 1798.29(f).
- C. "CMPPA Agreement" means the Computer Matching and Privacy Protection Act Agreement between the Social Security Administration and the California Health and Human Services Agency (CHHS).
- D. "Department PI" shall mean Personal Information, as defined below, accessed in a database maintained by the Department, received by Contractor from the Department or acquired or created by Contractor in connection with performing the functions, activities and services specified in this Agreement on behalf of the Department.
- E. "IEA" shall mean the Information Exchange Agreement currently in effect between the Social Security Administration (SSA) and the California Department of Health Care Services (DHCS).
- F. "Notice-triggering Personal Information" shall mean the personal information identified in Civil Code section 1798.29 whose unauthorized access may trigger notification requirements under Civil Code section 1798.29. For purposes of this provision, identity shall include, but not be limited to, name, address, email address, identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print, a photograph or a biometric identifier. Notice-triggering Personal Information includes PI in electronic, paper or any other medium.

- G. “Personally Identifiable Information” (PII) shall have the meaning given to such term in the IEA and CMPPA.
- H. “Personal Information” (PI) shall have the meaning given to such term in California Civil Code Section 1798.3(a).
- I. “Required by law” means a mandate contained in law that compels an entity to make a use or disclosure of PI or PII that is enforceable in a court of law. This includes, but is not limited to, court orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information, and a civil or an authorized investigative demand. It also includes Medicare conditions of participation with respect to health care providers participating in the program, and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.
- J. “Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PI, or confidential data utilized in complying with this Agreement; or interference with system operations in an information system that processes, maintains or stores PI.

3. Terms of Agreement

A. Permitted Uses and Disclosures of Department PI and PII by Contractor

Except as otherwise indicated in this Exhibit G-2, Contractor may use or disclose Department PI only to perform functions, activities or services for or on behalf of the Department pursuant to the terms of this Agreement provided that such use or disclosure would not violate the California Information Practices Act (CIPA) if done by the Department.

B. Responsibilities of Contractor

Contractor agrees:

- 1) **Nondisclosure.** Not to use or disclose Department PI or PII other than as permitted or required by this Agreement or as required by applicable state and federal law.

- 2) **Safeguards.** To implement appropriate and reasonable administrative, technical, and physical safeguards to protect the security, confidentiality and integrity of Department PI and PII, to protect against anticipated threats or hazards to the security or integrity of Department PI and PII, and to prevent use or disclosure of Department PI or PII other than as provided for by this Agreement. Contractor shall develop and maintain a written information privacy and security program that include administrative, technical and physical safeguards appropriate to the size and complexity of Contractor's operations and the nature and scope of its activities, which incorporate the requirements of section 3, Security, below. Contractor will provide DHCS with its current policies upon request.

- 3) **Security.** Contractor shall take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI and/or PI, and to protect paper documents containing PHI and/or PI. These steps shall include, at a minimum:
 - a. Complying with all of the data system security precautions listed in Attachment A, Business Associate Data Security Requirements;
 - b. Providing a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III- Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies; and
 - c. If the data obtained by Contractor from DHCS includes PII, Contractor shall also comply with the substantive privacy and security requirements in the Computer Matching and Privacy Protection Act Agreement between the SSA and the California Health and Human Services Agency (CHHS) and in the Agreement between the SSA and DHCS, known as the Information Exchange Agreement, which are attached as Attachment B and incorporated into this Agreement. The specific sections of the IEA with substantive privacy and security requirements to be complied with are sections E, F, and G, and in Attachment 4 to the IEA, Electronic Information Exchange Security Requirements, Guidelines and Procedures for Federal, State and Local Agencies Exchanging Electronic Information with the SSA. Contractor also agrees to ensure that any agents, including a subcontractor to whom it provides

DHCS PII, agree to the same requirements for privacy and security safeguards for confidential data that apply to Contractor with respect to such information.

- 4) **Mitigation of Harmful Effects.** To mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Department PI or PII by Contractor or its subcontractors in violation of this Exhibit G-2.
- 5) **Contractor's Agents and Subcontractors.** To impose the same restrictions and conditions set forth in this Exhibit G-2 on any subcontractors or other agents with whom Contractor subcontracts any activities under this Agreement that involve the disclosure of Department PI or PII to the subcontractor.
- 6) **Availability of Information to DHCS.** To make Department PI and PII available to the Department for purposes of oversight, inspection, amendment, and response to requests for records, injunctions, judgments, and orders for production of Department PI and PII. If Contractor receives Department PII, upon request by DHCS, Contractor shall provide DHCS with a list of all employees, contractors and agents who have access to Department PII, including employees, contractors and agents of its subcontractors and agents.
- 7) **Cooperation with DHCS.** With respect to Department PI, to cooperate with and assist the Department to the extent necessary to ensure the Department's compliance with the applicable terms of the CIPA including, but not limited to, accounting of disclosures of Department PI, correction of errors in Department PI, production of Department PI, disclosure of a security breach involving Department PI and notice of such breach to the affected individual(s).
- 8) **Confidentiality of Alcohol and Drug Abuse Patient Records.** Contractor agrees to comply with all confidentiality requirements set forth in Title 42 Code of Federal Regulations, Chapter I, Subchapter A, Part 2. Contractor is aware that criminal penalties may be imposed for a violation of these confidentiality requirements.
- 9) **Breaches and Security Incidents.** During the term of this Agreement, Contractor agrees to implement reasonable systems for the discovery and prompt reporting of any breach or security incident, and to take the following steps:
 - a. Initial Notice to the Department. (1) To notify the Department

immediately by telephone call or email or fax upon the discovery of a breach of unsecured Department PI or PII in electronic media or in any other media if the PI or PII was, or is reasonably believed to have been, accessed or acquired by an unauthorized person, or upon discovery of a suspected security incident involving Department PII. (2) To notify the Department **within one (1) hour by email or fax** if the data is data subject to the SSA Agreement; and **within 24 hours by email or fax** of the discovery of any suspected security incident, intrusion or unauthorized access, use or disclosure of Department PI or PII in violation of this Agreement or this Exhibit G-1 or potential loss of confidential data affecting this Agreement. A breach shall be treated as discovered by Contractor as of the first day on which the breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the breach) who is an employee, officer or other agent of Contractor.

- b. Notice shall be provided to the Information Protection Unit, Office of HIPAA Compliance. If the incident occurs after business hours or on a weekend or holiday and involves electronic Department PI or PII, notice shall be provided by calling the Department Information Security Officer. Notice shall be made using the DHCS "Privacy Incident Report" form, including all information known at the time. Contractor shall use the most current version of this form, which is posted on the DHCS Information Security Officer website (www.dhcs.ca.gov, then select "Privacy" in the left column and then "Business Partner" near the middle of the page) or use this link:
<http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/DHCSBusinessAssociatesOnly.aspx> .
- c. Upon discovery of a breach or suspected security incident, intrusion or unauthorized access, use or disclosure of Department PI or PII, Contractor shall take:
 - i. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and
 - ii. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and

regulations.

- d. **Investigation and Investigation Report.** To immediately investigate such suspected security incident, security incident, breach, or unauthorized access, use or disclosure of PHI. Within 72 hours of the discovery, Contractor shall submit an updated "Privacy Incident Report" containing the information marked with an asterisk and all other applicable information listed on the form, to the extent known at that time, to the Department Information Security Officer.
- e. **Complete Report.** To provide a complete report of the investigation to the Department Program Contract Manager and the Information Protection Unit within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall be submitted on the "Privacy Incident Report" form and shall include an assessment of all known factors relevant to a determination of whether a breach occurred. The report shall also include a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure. If the Department requests information in addition to that listed on the "Privacy Incident Report" form, Contractor shall make reasonable efforts to provide the Department with such information. If, because of the circumstances of the incident, Contractor needs more than ten (10) working days from the discovery to submit a complete report, the Department may grant a reasonable extension of time, in which case Contractor shall submit periodic updates until the complete report is submitted. If necessary, a Supplemental Report may be used to submit revised or additional information after the completed report is submitted, by submitting the revised or additional information on an updated "Privacy Incident Report" form. The Department will review and approve the determination of whether a breach occurred and whether individual notifications and a corrective action plan are required.
- f. **Responsibility for Reporting of Breaches.** If the cause of a breach of Department PI or PII is attributable to Contractor or its agents, subcontractors or vendors, Contractor is responsible for all required reporting of the breach as specified in CIPA, section 1798.29 and as may be required under the IEA. Contractor shall bear all costs of required

notifications to individuals as well as any costs associated with the breach. The Privacy Officer shall approve the time, manner and content of any such notifications and their review and approval must be obtained before the notifications are made. The Department will provide its review and approval expeditiously and without unreasonable delay.

- g. If Contractor has reason to believe that duplicate reporting of the same breach or incident may occur because its subcontractors, agents or vendors may report the breach or incident to the Department in addition to Contractor, Contractor shall notify the Department, and the Department and Contractor may take appropriate action to prevent duplicate reporting.
- h. **Department Contact Information.** To direct communications to the above referenced Department staff, the Contractor shall initiate contact as indicated herein. The Department reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Addendum or the Agreement to which it is incorporated.

Department Program Contract	DHCS Privacy Officer	DHCS Information Security Officer
See the Exhibit A, Scope of Work for Program Contract Manager information	Information Protection Unit c/o: Office of HIPAA Compliance Department of Health Care Services P.O. Box 997413, MS 4722 Sacramento, CA 95899-7413 (916) 445-4646 Email: privacyofficer@dhcs.ca.gov Telephone:(916) 445-4646	Information Security Officer DHCS Information Security Office P.O. Box 997413, MS 6400 Sacramento, CA 95899-7413 Email: iso@dhcs.ca.gov Telephone: ITSD Service Desk (916) 440-7000 or (800) 579-0874

10) Designation of Individual Responsible for Security

Contractor shall designate an individual, (e.g., Security Officer), to oversee its data security program who shall be responsible for carrying out the requirements of this Exhibit G-2 and for communicating on security matters with the Department.

EXHIBIT G-3

Miscellaneous Terms and Conditions

Applicable to Exhibit G

- 1) **Disclaimer.** The Department makes no warranty or representation that compliance by Contractor with this Exhibit G, HIPAA or the HIPAA regulations will be adequate or satisfactory for Contractor's own purposes or that any information in Contractor's possession or control, or transmitted or received by Contractor, is or will be secure from unauthorized use or disclosure. Contractor is solely responsible for all decisions made by Contractor regarding the safeguarding of the Department PHI, PI and PII.

- 2) **Amendment.** The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Exhibit G 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, and the HIPAA regulations, and other applicable state and federal laws. Upon either party's request, the other party agrees to promptly enter into negotiations concerning an amendment to this Exhibit G embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, and the HIPAA regulations, and other applicable state and federal laws. The Department may terminate this Agreement upon thirty (30) days written notice in the event:
 - a) Contractor does not promptly enter into negotiations to amend this Exhibit G when requested by the Department pursuant to this section; or
 - b) Contractor does not enter into an amendment providing assurances regarding the safeguarding of Department PHI that the Department deems is necessary to satisfy the standards and requirements of HIPAA and the HIPAA regulations.

- 3) **Judicial or Administrative Proceedings.** Contractor will notify the Department if it is named as a defendant in a criminal proceeding for a violation of HIPAA or other security or privacy law. The Department may terminate this Agreement if Contractor is found guilty of a criminal violation of HIPAA. The Department may terminate this Agreement if a finding or stipulation that the Contractor has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Contractor is a party or

has been joined. DHCS will consider the nature and seriousness of the violation in deciding whether or not to terminate the Agreement.

- 4) **Assistance in Litigation or Administrative Proceedings.** Contractor shall make itself and any subcontractors, employees or agents assisting Contractor in the performance of its obligations under this Agreement, available to the Department at no cost to the Department to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the Department, its directors, officers or employees based upon claimed violation of HIPAA, or the HIPAA regulations, which involves inactions or actions by the Contractor, except where Contractor or its subcontractor, employee or agent is a named adverse party.
- 5) **No Third-Party Beneficiaries.** Nothing express or implied in the terms and conditions of this Exhibit G is intended to confer, nor shall anything herein confer, upon any person other than the Department or Contractor and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- 6) **Interpretation.** The terms and conditions in this Exhibit G shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, and the HIPAA regulations. The parties agree that any ambiguity in the terms and conditions of this Exhibit G shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act and the HIPAA regulations, and, if applicable, any other relevant state and federal laws.
- 7) **Conflict.** In case of a conflict between any applicable privacy or security rules, laws, regulations or standards the most stringent shall apply. The most stringent means that safeguard which provides the highest level of protection to PHI, PI and PII from unauthorized disclosure. Further, Contractor must comply within a reasonable period of time with changes to these standards that occur after the effective date of this Agreement.
- 8) **Regulatory References.** A reference in the terms and conditions of this Exhibit G to a section in the HIPAA regulations means the section as in effect or as amended.
- 9) **Survival.** The respective rights and obligations of Contractor under Section 3, Item D of Exhibit G-1, and Section 3, Item B of Exhibit G-2, Responsibilities of Contractor, shall survive the termination or expiration of this Agreement.

- 10) **No Waiver of Obligations.** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.
- 11) **Audits, Inspection and Enforcement.** From time to time, and subject to all applicable federal and state privacy and security laws and regulations, the Department may conduct a reasonable inspection of the facilities, systems, books and records of Contractor to monitor compliance with this Exhibit G. Contractor shall promptly remedy any violation of any provision of this Exhibit G. The fact that the Department inspects, or fails to inspect, or has the right to inspect, Contractor's facilities, systems and procedures does not relieve Contractor of its responsibility to comply with this Exhibit G. The Department's failure to detect a non-compliant practice, or a failure to report a detected non-compliant practice to Contractor does not constitute acceptance of such practice or a waiver of the Department's enforcement rights under this Agreement, including this Exhibit G.
- 12) **Due Diligence.** Contractor shall exercise due diligence and shall take reasonable steps to ensure that it remains in compliance with this Exhibit G and is in compliance with applicable provisions of HIPAA, the HITECH Act and the HIPAA regulations, and other applicable state and federal law, and that its agents, subcontractors and vendors are in compliance with their obligations as required by this Exhibit G.
- 13) **Term.** The Term of this Exhibit G-1 shall extend beyond the termination of the Agreement and shall terminate when all Department PHI is destroyed or returned to the Department, in accordance with 45 CFR Section 164.504(e)(2)(ii)(I), and when all Department PI and PII is destroyed in accordance with Attachment A.
- 14) **Effect of Termination.** Upon termination or expiration of this Agreement for any reason, Contractor shall return or destroy all Department PHI, PI and PII that Contractor still maintains in any form, and shall retain no copies of such PHI, PI or PII. If return or destruction is not feasible, Contractor shall notify the Department of the conditions that make the return or destruction infeasible, and the Department and Contractor shall determine the terms and conditions under which Contractor may retain the PHI, PI or PII. Contractor shall continue to extend the protections of this Exhibit G to such Department PHI, PI and PII, and shall limit further use of such data to those purposes that make the return or destruction of such data infeasible. This provision shall apply to Department PHI, PI and PII that is in the possession of subcontractors or agents of Contractor.

Attachment A
Data Security Requirements

1. Personnel Controls

- A. **Employee Training.** All workforce members who assist in the performance of functions or activities on behalf of the Department, or access or disclose Department PHI or PI must complete information privacy and security training, at least annually, at Contractor's expense. Each workforce member who receives information privacy and security training must sign a certification, indicating the member's name and the date on which the training was completed. These certifications must be retained for a period of six (6) years following termination of this Agreement.
- B. **Employee Discipline.** Appropriate sanctions must be applied against workforce members who fail to comply with privacy policies and procedures or any provisions of these requirements, including termination of employment where appropriate.
- C. **Confidentiality Statement.** All persons that will be working with Department PHI or PI must sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to Department PHI or PI. The statement must be renewed annually. The Contractor shall retain each person's written confidentiality statement for Department inspection for a period of six (6) years following termination of this Agreement.
- D. **Background Check.** Before a member of the workforce may access Department PHI or PI, a background screening of that worker must be conducted. The screening should be commensurate with the risk and magnitude of harm the employee could cause, with more thorough screening being done for those employees who are authorized to bypass significant technical and operational security controls. The Contractor shall retain each workforce member's background check documentation for a period of three (3) years.

2. Technical Security Controls

- A. **Workstation/Laptop encryption.** All workstations and laptops that store Department PHI or PI either directly or temporarily must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as

Advanced Encryption Standard (AES). The encryption solution must be full disk unless approved by the Department Information Security Office.

- B. **Server Security.** Servers containing unencrypted Department PHI or PI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.
- C. **Minimum Necessary.** Only the minimum necessary amount of Department PHI or PI required to perform necessary business functions may be copied, downloaded, or exported.
- D. **Removable media devices.** All electronic files that contain Department PHI or PI data must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, Blackberry, backup tapes etc.). Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES.
- E. **Antivirus software.** All workstations, laptops and other systems that process and/or store Department PHI or PI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.
- F. **Patch Management.** All workstations, laptops and other systems that process and/or store Department PHI or PI must have critical security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within 30 days of vendor release. Applications and systems that cannot be patched within this time frame due to significant operational reasons must have compensatory controls implemented to minimize risk until the patches can be installed. Applications and systems that cannot be patched must have compensatory controls implemented to minimize risk, where possible.
- G. **User IDs and Password Controls.** All users must be issued a unique user name for accessing Department PHI or PI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password. Passwords are not to be shared. Passwords must be at least eight characters and must be a non-dictionary word. Passwords must not be stored in readable format on the computer. Passwords must be changed at least every 90 days, preferably every 60 days. Passwords must be changed if revealed or compromised. Passwords must be composed of characters from at least three of the following four groups from the standard keyboard:

- 1) Upper case letters (A-Z)
 - 2) Lower case letters (a-z)
 - 3) Arabic numerals (0-9)
 - 4) Non-alphanumeric characters (punctuation symbols)
- H. **Data Destruction.** When no longer needed, all Department PHI or PI must be wiped using the Gutmann or US Department of Defense (DoD) 5220.22-M (7 Pass) standard, or by degaussing. Media may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods require prior written permission of the Department Information Security Office.
- I. **System Timeout.** The system providing access to Department PHI or PI must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.
- J. **Warning Banners.** All systems providing access to Department PHI or PI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.
- K. **System Logging.** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for Department PHI or PI, or which alters Department PHI or PI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If Department PHI or PI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.
- L. **Access Controls.** The system providing access to Department PHI or PI must use role based access controls for all user authentications, enforcing the principle of least privilege.
- M. **Transmission encryption.** All data transmissions of Department PHI or PI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing Department PHI can be encrypted. This requirement pertains to any type of Department PHI or PI in motion such as website access, file transfer, and E-Mail.

- N. **Intrusion Detection.** All systems involved in accessing, holding, transporting, and protecting Department PHI or PI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

3. **Audit Controls**

- A. **System Security Review.** Contractor must ensure audit control mechanisms that record and examine system activity are in place. All systems processing and/or storing Department PHI or PI must have at least an annual system risk assessment/security review which provides assurance that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews should include vulnerability scanning tools.
- B. **Log Reviews.** All systems processing and/or storing Department PHI or PI must have a routine procedure in place to review system logs for unauthorized access.
- C. **Change Control.** All systems processing and/or storing Department PHI or PI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

4. Business Continuity / Disaster Recovery Controls

- A. **Emergency Mode Operation Plan.** Contractor must establish a documented plan to enable continuation of critical business processes and protection of the security of Department PHI or PI held in an electronic format in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this Agreement for more than 24 hours.
- B. **Data Backup Plan.** Contractor must have established documented procedures to backup Department PHI to maintain retrievable exact copies of Department PHI or PI. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and an estimate of the amount of time needed to restore Department PHI or PI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of Department data.

5. Paper Document Controls

- A. **Supervision of Data.** Department PHI or PI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. Department PHI or PI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.
- B. **Escorting Visitors.** Visitors to areas where Department PHI or PI is contained shall be escorted and Department PHI or PI shall be kept out of sight while visitors are in the area.
- C. **Confidential Destruction.** Department PHI or PI must be disposed of through confidential means, such as cross cut shredding and pulverizing.
- D. **Removal of Data.** Only the minimum necessary Department PHI or PI may be removed from the premises of the Contractor except with express written permission of the Department. Department PHI or PI shall not be considered "removed from the premises" if it is only being transported from one of Contractor's locations to another of Contractor's locations.
- E. **Faxing.** Faxes containing Department PHI or PI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in

error to destroy them. Fax numbers shall be verified with the intended recipient before sending the fax.

- F. **Mailing.** Mailings containing Department PHI or PI shall be sealed and secured from damage or inappropriate viewing of such PHI or PI to the extent possible. Mailings which include 500 or more individually identifiable records of Department PHI or PI in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission of the Department to use another method is obtained.

AGENDA TRANSMITTAL FORM

Resol/Agmt

To: Board of Supervisors

Date: 08/28/2014

From: Charles T. Iley, County Administrative Officer
(Department Head - please type)

Phone Ext. x470

<input type="radio"/>	Regular Agenda
<input checked="" type="radio"/>	Consent Agenda
<input type="radio"/>	Blue Slip
<input type="radio"/>	Closed Session
Meeting Date Requested:	
<u>09/09/2014</u>	

Department Head Signature _____

Agenda Title: California Home Finance Authority Joint Powers Agreement

Summary: (Provide detailed summary of the purpose of this item; attach additional page if necessary)
Approval of revisions to the subject agreement to bring it current and provide administrative clarity to various matters.

Recommendation/Requested Action: _____

Fiscal Impacts (attach budget transfer form if appropriate)	Staffing Impacts

Is a 4/5ths vote required? Yes No

Contract Attached: Yes No N/A
 Resolution Attached: Yes No N/A
 Ordinance Attached: Yes No N/A

Committee Review? N/A

Name _____

Committee Recommendation: _____

Comments: _____

Request Reviewed by:

Chairman _____	Counsel <u>CG</u>
Auditor <u>EJK</u>	GSA Director <u>Hof</u>
CAO <u>AI</u>	Risk Management _____

Distribution Instructions: (Inter-Departmental Only, the requesting Department is responsible for distribution outside County Departments)

FOR CLERK USE ONLY

Meeting Date September 9, 2014 Time 9 a.m. Item # 3B

Board Action: Approved Yes ___ No ___ Unanimous Vote: Yes ___ No ___

Ayes: _____ Resolution _____ Ordinance _____ Other: _____

Noes: _____ Resolution _____ Ordinance _____

Absent: _____ Comments: _____

Distributed on _____	A new ATF is required from _____	I hereby certify this is a true and correct copy of action(s) taken and entered into the official records of the Amador County Board of Supervisors.
	Department _____	
Completed by _____	For meeting _____	ATTEST: _____ Clerk or Deputy Board Clerk
	of _____	

Save

Print Form



To: Chuck Iley, CAO
From: Greg Norton
Executive Director
Date: August 19, 2014
Re: California Home Finance Authority Joint Powers Agreement

On August 13, 2014, the Board of Directors of California Home Finance Authority (CHF), formally known as CRHMFA Homebuyers Fund, a Joint Powers Authority of which Amador County is a member, voted unanimously to approve proposed revisions to the CHF Joint Powers Authority (JPA) Agreement. The JPA Agreement was last amended and restated January 28, 2004. The primary purposes of the proposed revisions are to bring the Agreement current and provide administrative clarity to various matters.

Following approval by the CHF Board of Directors, the next step for acceptance of the revisions is for the Agreement to be provided to each Member County for review and approval by the Member County Board of Supervisors. The Agreement revisions are deemed passed upon adoption of the revisions by a majority of the thirty-three (33) Member Counties. We are requesting that counties review and approve the proposed changes by adopting a resolution within the next 60 days, with a targeted completion date of **October 21, 2014**. A sample resolution is attached to assist with your efforts.

Two copies of the Agreement are included to assist with the County's review and approval process. One version is the January 28, 2004 version with all proposed revisions in track changes. The other is a clean copy of the proposed revised JPA Agreement. The primary specific revisions to the Agreement are as follows:

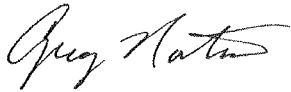
- Formal name change to California Home Finance Authority (CHF)
- Clarification that financing of acquisition, improvements and rehabilitation is not limited to residential properties; stating that such activity may occur on real property in accordance with applicable provisions of law for the benefit of residents and communities. This clarifies the ability of CHF to provide energy efficiency and renewable financing programs for commercial, industrial, municipal buildings, etc. as well as residential properties.
- Clarification that the Authority may establish and administer a district for energy program activities. Please note that each County would separately determine if it wanted to participate in any such district, if created.

- Increases the number of members necessary to establish a quorum from ten (10) to twelve (12).
- Establishes an Executive Committee of the Authority.
- Reduces the number of days for presentation and action by each Member's Board of Supervisors for revision of the Agreement from 180 to 60 days to permit more timely revision.

If you have any questions or would like to discuss the proposed revisions and/or the approval process, please contact me at 916-447-4806 or via email at gnorton@rcrcnet.org.

Thank you in advance for your efforts to have the Agreement reviewed and approved by the Board of Supervisors.

Sincerely,

A handwritten signature in cursive script that reads "Greg Norton".

Greg Norton
Executive Director
CHF

cc: Supervisor Richard Forster, CHF Chairman
Attachment:
Sample Resolution

RESOLUTION _____

**RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF _____
APPROVING PROPOSED REVISIONS TO THE CALIFORNIA
HOME FINANCE AUTHORITY (CHF) JOINT POWERS AGREEMENT**

WHEREAS, on August 13, 2013, the Board of Directors of California Home Finance Authority (CHF), formerly known as CRHMFA Homebuyers Fund, a Joint Powers Authority of which _____ County is a member, voted unanimously to approve proposed revisions to the CHF Joint Powers Authority (JPA) Agreement, to bring the Agreement current and provide administrative clarity on various matters; and

WHEREAS, the revisions to the JPA Agreement have been provided to each Member County for review and approval; and

WHEREAS, the members of the Board of Supervisors of the County of _____ have each been provided with a copy of the revisions to the JPA Agreement for review;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF _____, as follows:

1. The Board of Supervisors hereby approves the revisions to the JPA Agreement, in substantially the form attached hereto as Exhibit A and incorporated herein by reference.
2. The Board of Supervisors authorizes and directs the Clerk of the Board of Supervisors to transmit a copy of this Resolution to the Executive Director of CHF.

PASSED AND ADOPTED this ____ day of _____ 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Chair of the Board of Supervisors

Clerk of the Board of Supervisors

CALIFORNIA HOME FINANCE AUTHORITY

AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT
(Updated_____)

THIS AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT ("Agreement") is entered into by and among the counties listed on Attachment 1 hereof and incorporated herein by reference. All such counties are referred to herein as "Members" with the respective powers, privileges and restrictions provided herein.

RECITALS

A. WHEREAS, the California Rural Home Mortgage Finance Authority ("CRHMFA") was created by a Joint Exercise of Powers Agreement dated July 1, 1993 pursuant to the Joint Exercise of Powers Act (commencing with Article 1 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Act"). By Resolution 2003-02, adopted on January 15, 2003, the name of the authority was changed to CRHMFA Homebuyers Fund. The most recent amendment to the Joint Exercise of Powers Agreement was on January 28, 2004.

B. WHEREAS, the Members of CRHMFA Homebuyers Fund desire to update, reaffirm, clarify and revise certain provisions of the joint powers agreement, including the renaming of the joint powers authority, as set forth herein.

C. WHEREAS, the Members are each empowered by law to finance the construction, acquisition, improvement and rehabilitation of real property.

D. WHEREAS, by this Agreement, the Members desire to create and establish a joint powers authority to exercise their respective powers for the purpose of financing the construction, acquisition, improvement and rehabilitation of real property within the jurisdiction of the Authority as authorized by the Act.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Members individually and collectively agree as follows:

1. Definitions

Unless the context otherwise requires, the following terms shall for purposes of this Agreement have the meanings specified below:

"Act" means the Joint Exercise of Powers Act, commencing with Article 1 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, including the Marks-Roos Local Bond Pooling Act of 1985, as amended.

"Agreement" means this Joint Exercise of Powers Agreement, as the same now exists or as it

may from time to time be amended as provided herein.

"Associate Member" means a county, city or other public agency which is not a voting member of the Rural County Representatives of California, a California nonprofit corporation ("RCRC"), with legal power and authority similar to that of the Members, admitted pursuant to paragraph 4.d. below to associate membership herein by vote of the Board.

"Audit Committee" means a committee made up of the nine-member Executive Committee.

"Authority" means California Home Finance Authority ("CHF"), formerly known as CRHMFA Homebuyers Fund or California Rural Home Mortgage Finance Authority.

"Board" means the governing board of the Authority as described in Section 7 below.

"Bonds" means bonds, notes, warrants, leases, certificates of participation, installment purchase agreements, loan agreements and other securities or obligations issued by the Authority, or financing agreements entered into by the Authority pursuant to the Act and any other obligation within the meaning of the term "Bonds" under the Act.

"Delegate" means the Supervisor designated by the governing board of each Member to serve on the Board of the Authority.

"Executive Committee" means the nine-member Executive Committee of the Board established pursuant to Section 10 hereof.

"Member" means any county which is a member of RCRC, has executed this Agreement and has become a member of the Authority.

"Obligations" means bonds, notes, warrants, leases, certificates of participation, installment purchase agreements, loan agreements and other securities or obligations issued by the Authority, or financing agreements entered into by the Authority pursuant to the Act and any other financial or legal obligation of the Authority under the Act.

"Program" or "Project" means any work, improvement, program, project or service undertaken by the Authority.

"Rural County Representatives of California" or "RCRC" means the nonprofit entity incorporated under that name in the State of California.

"Supervisor" means an elected County Supervisor from an RCRC member county.

2. Purpose

The purpose of the Authority is to provide financing for the acquisition, construction, ,

improvement and rehabilitation of real property in accordance with applicable provisions of law for the benefit of residents and communities. In pursuit of this purpose, this Agreement provides for the joint exercise of powers common to any of its Members and Associate Members as provided herein, or otherwise authorized by the Act and other applicable laws, including assisting in financing as authorized herein, jointly exercised in the manner set forth herein.

3. Principal Place of Business

The principal office of the Authority shall be 1215 K Street, Suite 1650, Sacramento, California 95814.

4. Creation of Authority; Addition of Members or Associate Members

a. The Authority is hereby created pursuant to the Act. As provided in the Act, the Authority shall be a public entity separate and distinct from the Members or Associate Members.

b. The Authority will cause a notice of this Agreement or any amendment hereto to be prepared and filed with the office of the Secretary of State of California in a timely fashion in the manner set forth in Section 6503.3 of the Act.

c. A county that is a member of RCRC may petition to become a member of the Authority by submitting to the Board a resolution or evidence of other formal action taken by its governing body adopting this Agreement. The Board shall review the petition for membership and shall vote to approve or disapprove the petition. If the petition is approved by a majority of the Board, such county shall immediately become a Member of the Authority.

d. An Associate Member may be added to the Authority upon the affirmative approval of its respective governing board and pursuant to action by the Authority Board upon such terms and conditions, and with such rights, privileges and responsibilities, as may be established from time to time by the Board. Such terms and conditions, and rights, privileges and responsibilities may vary among the Associate Members. Associate Members shall be entitled to participate in one or more programs of the Authority as determined by the Board, but shall not be voting members of the Board. The Executive Director of the Authority shall enforce the terms and conditions for prospective Associate Members to the Authority as provided by resolution of the Board and as amended from time to time by the Board. Changes in the terms and conditions for Associate Membership by the Board will not constitute an amendment of this Agreement.

5. Term and Termination of Powers

This Agreement shall become effective from the date hereof until the earlier of the time when all Bonds and any interest thereon shall have been paid in full, or provision for such payment shall have been made, or when the Authority shall no longer own or hold any interest in a public capital improvement or program. The Authority shall continue to exercise the powers herein conferred upon it until termination of this Agreement, except that if any Bonds are issued and delivered, in no event shall the exercise of the powers herein granted be terminated until all

Bonds so issued and delivered and the interest thereon shall have been paid or provision for such payment shall have been made and any other debt incurred with respect to any other financing program established or administered by the Authority has been repaid in full and is no longer outstanding.

6. Powers; Restriction upon Exercise

a. To effectuate its purpose, the Authority shall have the power to exercise any and all powers of the Members or of a joint powers authority under the Act and other applicable provisions of law, subject, however, to the conditions and restrictions herein contained. Each Member or Associate Member may also separately exercise any and all such powers. The powers of the Authority are limited to those of a general law county.

b. The Authority may adopt, from time to time, such resolutions, guidelines, rules and regulations for the conduct of its meetings and the activities of the Authority as it deems necessary or desirable to accomplish its purpose.

c. The Authority shall have the power to finance the construction, acquisition, improvement and rehabilitation of real property, including the power to purchase, with the amounts received or to be received by it pursuant to a bond purchase agreement, bonds issued by any of its Members or Associate Members and other local agencies at public or negotiated sale, for the purpose set forth herein and in accordance with the Act. All or any part of such bonds so purchased may be held by the Authority or resold to public or private purchasers at public or negotiated sale. The Authority shall set any other terms and conditions of any purchase or sale contemplated herein as it deems necessary or convenient and in furtherance of the Act. The Authority may issue or cause to be issued Bonds or other indebtedness, and pledge any of its property or revenues as security to the extent permitted by resolution of the Board under any applicable provision of law. The Authority may issue Bonds in accordance with the Act in order to raise funds necessary to effectuate its purpose hereunder and may enter into agreements to secure such Bonds. The Authority may issue other forms of indebtedness authorized by the Act, and to secure such debt, to further such purpose. The Authority may utilize other forms of capital, including, but not limited to, the Authority's internal resources, capital markets and other forms of private capital investment authorized by the Act..

d. The Authority is hereby authorized to do all acts necessary for the exercise of its powers, including, but not limited to:

- (1) executing contracts,
- (2) employing agents, consultants and employees,
- (3) acquiring, constructing or providing for maintenance and operation of any building, work or improvement,
- (4) acquiring, holding or disposing of real or personal property wherever located, including property subject to mortgage,
- (5) incurring debts, liabilities or obligations,
- (6) receiving gifts, contributions and donations of property, funds, services and

- any other forms of assistance from persons, firms, corporations or governmental entities,
- (7) suing and being sued in its own name, and litigating or settling any suits or claims,
 - (8) doing any and all things necessary or convenient to the exercise of its specific powers and to accomplishing its purpose
 - (9) establishing and/or administering districts to finance and refinance the acquisition, installation and improvement of energy efficiency, water conservation and renewable energy improvements to or on real property and in buildings. The Authority may enter into one or more agreements, including without limitation, participation agreements and implementation agreements to implement such programs.

e. Subject to the applicable provisions of any indenture or resolution providing for the investment of monies held thereunder, the Authority shall have the power to invest any of its funds as the Board deems advisable, in the same manner and upon the same conditions as local agencies pursuant to Section 53601 of the Government Code of the State of California.

f. All property, equipment, supplies, funds and records of the Authority shall be owned by the Authority, except as may be provided otherwise herein or by resolution of the Board.

g. Pursuant to the provisions of Section 6508.1 of the Act, the debts, liabilities and obligations of the Authority shall not be debts, liabilities and obligations of the Members or Associate Members. Any Bonds, together with any interest and premium thereon, shall not constitute debts, liabilities or obligations of any Member. The Members or Associate Members hereby agree that any such Bonds issued by the Authority shall not constitute general obligations of the Authority but shall be payable solely from the moneys pledged to the repayment of principal or interest on such Bonds under the terms of the resolution, indenture, trust, agreement or other instrument pursuant to which such Bonds are issued. Neither the Members or Associate Members nor the Authority shall be obligated to pay the principal of or premium, if any, or interest on the Bonds, or other costs incidental thereto, except from the revenues and funds pledged therefor, and neither the faith and credit nor the taxing power of the Members or Associate Members or the Authority shall be pledged to the payment of the principal of or premium, if any, or interest on the Bonds, nor shall the Members or Associate Members of the Authority be obligated in any manner to make any appropriation for such payment. No covenant or agreement contained in any Bond shall be deemed to be a covenant or agreement of any Delegate, or any officer, agent or employee of the Authority in an individual capacity, and neither the Board nor any officer thereof executing the Bonds or any document related thereto shall be liable personally on any Bond or be subject to any personal liability or accountability by reason of the issuance of any Bonds.

7. Governing Board

- a. The Board shall consist of the number of Delegates equal to one representative

from each Member.

b. The governing body of each Member shall appoint one of its Supervisors to serve as a Delegate on the Board. A Member's appointment of its Delegate shall be delivered in writing (which may be by electronic mail) to the Authority and shall be effective until he or she is replaced by such governing body or no longer a Supervisor; any vacancy shall be filled by the governing body of the Member in the same manner provided in this paragraph b..

c. The governing body of each Member of the Board shall appoint a Supervisor as an alternate to serve on the Board in the absence of the Delegate; the alternate may exercise all the rights and privileges of the Delegate, including the right to be counted in constituting a quorum, to participate in the proceedings of the Board, and to vote upon any and all matters. No alternate may have more than one vote at any meeting of the Board, and any Member's designation of an alternate shall be delivered in writing (which may be by electronic mail) to the Authority and shall be effective until such alternate is replaced by his or her governing body or is no longer a Supervisor, unless otherwise specified in such appointment. Any vacancy shall be filled by the governing body of the Member in the same manner provided in this paragraph c..

d. Any person who is not a member of the governing body of a Member and who attends a meeting on behalf of such Member may not vote or be counted toward a quorum but may, at the discretion of the Chair, participate in open meetings he or she attends.

e. Each Associate Member may designate a non-voting representative to the Board who may not be counted toward a quorum but who may attend open meetings, propose agenda items and otherwise participate in Board Meetings.

f. Delegates shall not receive compensation for serving as Delegates, but may claim and receive reimbursement for expenses actually incurred in connection with such service pursuant to rules approved by the Board and subject to the availability of funds.

g. The Board shall have the power, by resolution, to the extent permitted by the Act or any other applicable law, to exercise any powers of the Authority and to delegate any of its functions to the Executive Committee or one or more Delegates, officers or agents of the Authority, and to cause any authorized Delegate, officer or agent to take any actions and execute any documents for and in the name and on behalf of the Board or the Authority.

h. The Board may establish such committees as it deems necessary for any lawful purpose; such committees are advisory only and may not act or purport to act on behalf of the Board or the Authority.

i. The Board shall develop, or cause to be developed, and review, modify as necessary, and adopt each Program.

8. Meetings of the Board

a. The Board shall meet at least once annually, but may meet more frequently upon call of any officer or as provided by resolution of the Board.

b. Meetings of the Board shall be called, noticed, held and conducted pursuant to the provisions of the Ralph M. Brown Act, Chapter 9 (commencing with Section 54950) of Part I of Division 2 of Title 5 of the Government Code of the State of California.

c. The Secretary of the Authority shall cause minutes of all meetings of the Board to be taken and distributed to each Member as soon as possible after each meeting.

d. The lesser of twelve (12) Delegates or a majority of the number of current Delegates shall constitute a quorum for transacting business at any meeting of the Board, except that less than a quorum may act to adjourn a meeting. Each Delegate shall have one vote.

e. Meetings may be held at any location designated in notice properly given for a meeting and may be conducted by telephonic or similar means in any manner otherwise allowed by law.

9. Officers; Duties; Official Bonds

a. The Board shall elect a chair and vice chair from among the Delegates at the Board's annual meeting who shall serve a term of one (1) year or until their respective successor is elected. The chair shall conduct the meetings of the Board and perform such other duties as may be specified by resolution of the Board. The vice chair shall perform such duties in the absence or in the event of the unavailability of the chair.

b. The Board shall contract annually with RCRC to administer the Agreement and to provide administrative services to the Authority, and the President and Chief Executive Officer of RCRC shall serve *ex officio* as Executive Director, Secretary, Treasurer, and Auditor of the Authority. As chief executive of the Authority, the Executive Director is authorized to execute contracts and other obligations of the Authority, unless prior Board approval is required by a third party, by law or by Board specification, and to perform other duties specified by the Board. The Executive Director may appoint such other officers as may be required for the orderly conduct of the Authority's business and affairs who shall serve at the pleasure of the Executive Director. Subject to the applicable provisions of any indenture or resolution providing for a trustee or other fiscal agent, the Executive Director, as Treasurer, is designated as the custodian of the Authority's funds, from whatever source, and, as such, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Act. The Executive Director, as Auditor, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Act.

c. The Legislative Advocate for the Authority shall be the Rural County Representatives of California.

d. The Treasurer and Auditor are public officers who have charge of, handle, or have access to all property of the Authority, and a bond for such officer in the amount of at least one

hundred thousand dollars (\$100,000.00) shall be obtained at the expense of the Authority and filed with the Executive Director. Such bond may secure the faithful performance of such officer's duties with respect to another public office if such bond in at least the same amount specifically mentions the office of the Authority as required herein. The Treasurer and Auditor shall cause periodic independent audits to be made of the Authority's books by a certified public accountant, or public accountant, in compliance with Section 6505 of the Act.

e. The business of the Authority shall be conducted under the supervision of the Executive Director by RCRC personnel.

10. Executive Committee of the Authority

a. Composition

The Authority shall appoint nine (9) members of its Board to serve on an Executive Committee.

b. Powers and Limitations

The Executive Committee shall act in an advisory capacity and make recommendations to the Authority Board. Duties will include, but not be limited to, review of the quarterly and annual budgets, service as the Audit Committee for the Authority, periodically review this Agreement; and complete any other tasks as may be assigned by the Board. The Executive Committee shall be subject to all limitations imposed by this Agreement, other applicable law, and resolutions of the Board.

c. Quorum

A majority of the Executive Committee shall constitute a quorum for transacting business of the Executive Committee.

11. Disposition of Assets

Upon termination of this Agreement, all remaining assets and liabilities of the Authority shall be distributed to the respective Members in such manner as shall be determined by the Board and in accordance with the law.

12. Agreement Not Exclusive; Operation in Jurisdiction of Member

This Agreement shall not be exclusive, and each Member expressly reserves its rights to carry out other public capital improvements and programs as provided for by law and to issue other obligations for those purposes. This Agreement shall not be deemed to amend or alter the terms of other agreements among the Members or Associate Members.

13. Conflict of Interest Code

The Authority shall by resolution adopt a Conflict of Interest Code as required by law.

14. Contributions and Advances

Contributions or advances of public funds and of personnel, equipment or property may be made to the Authority by any Member, Associate Member or any other public agency to further the purpose of this Agreement. Payment of public funds may be made to defray the cost of any contribution. Any advance may be made subject to repayment, and in that case shall be repaid in the manner agreed upon by the advancing Member, Associate Member or other public agency and the Authority at the time of making the advance.

15. Fiscal Year; Accounts; Reports; Annual Budget; Administrative Expenses

a. The fiscal year of the Authority shall be the period from January 1 of each year to and including the following December 31, except for any partial fiscal year resulting from a change in accounting based on a different fiscal year previously.

b. Prior to the beginning of each fiscal year, the Board shall adopt a budget for the succeeding fiscal year.

c. The Authority shall establish and maintain such funds and accounts as may be required by generally accepted accounting principles. The books and records of the Authority are public records and shall be open to inspection at all reasonable times by each Member and its representatives.

d. The Auditor shall either make, or contract with a certified public accountant or public accountant to make, an annual audit of the accounts and records of the Authority. The minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code of the State of California, and shall conform to generally accepted auditing standards. When an audit of accounts and records is made by a certified public accountant or public accountant, a report thereof shall be filed as a public record with each Member (and also with the auditor of Sacramento County as the county in which the Authority's office is located) within 12 months after the end of the fiscal year.

e. In any year in which the annual budget of the Authority does not exceed five thousand dollars (\$5,000.00), the Board may, upon unanimous approval of the Board, replace the annual audit with an ensuing one-year period, but in no event for a period longer than two fiscal years.

16. Duties of Members or Associate Members; Breach

If any Member or Associate Member shall default in performing any covenant contained herein, such default shall not excuse that Member or Associate Member from fulfilling its other obligations hereunder, and such defaulting Member or Associate Member shall remain liable for

the performance of all covenants hereof. Each Member or Associate Member hereby declares that this Agreement is entered into for the benefit of the Authority created hereby, and each Member or Associate Member hereby grants to the Authority the right to enforce, by whatever lawful means the Authority deems appropriate, all of the obligations of each of the parties hereunder. Each and all of the remedies given to the Authority hereunder or by any law now or hereafter enacted are cumulative, and the exercise of one right or remedy shall not impair the right of the Authority to any or all other remedies.

17. Indemnification

To the full extent permitted by law, the Board may authorize indemnification by the Authority of any person who is or was a Board Delegate, alternate, officer, consultant, employee or other agent of the Authority, and who was or is a party or is threatened to be made a party to a proceeding by reason of the fact that such person is or was such a Delegate, alternate, officer, consultant, employee or other agent of the Authority. Such indemnification may be made against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding, if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Authority and, in the case of a criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful and, in the case of an action by or in the right of the Authority, acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

18. Immunities

All of the privileges and immunities from liabilities, exemptions from law, ordinances and rules, all pension, relief, disability, workers' compensation and other benefits which apply to the activity of officers, agents or employees of any of the Members or Associate Members when performing their respective functions, shall apply to them to the same degree and extent while engaged as Delegates or otherwise as an officer, agent or other representative of the Authority or while engaged in the performance of any of their functions or duties under the provisions of this Agreement.

19. Amendment

This Agreement may be amended by the adoption of the amendment by the governing bodies of a majority of the Members. The amendment shall become effective on the first day of the month following the last required member agency approval. An amendment may be initiated by the Board, upon approval by a majority of the Board. Any proposed amendment, including the text of the proposed change, shall be given by the Board to each Member's Delegate for presentation and action by each Member's board within 60 days, which time may be extended by the Board.

The list of Members, Attachment 1, may be updated to reflect new and/or withdrawn Members without requiring formal amendment of the Agreement by the Authority Board of Directors.

20. **Withdrawal of Member or Associate Member**

If a Member withdraws as member of RCRC, its membership in the Authority shall automatically terminate. A Member or Associate Member may withdraw from this Agreement upon written notice to the Board; provided however, that no such withdrawal shall result in the dissolution of the Authority as long as any Bonds or other obligations of the Authority remain outstanding. Any such withdrawal shall become effective thirty (30) days after a resolution adopted by the Member's governing body which authorizes withdrawal is received by the Authority. Notwithstanding the foregoing, any termination of membership or withdrawal from the Authority shall not operate to relieve any terminated or withdrawing Member or Associate Member from Obligations incurred by such terminated or withdrawing Member or Associate Member prior to the time of its termination or withdrawal.

20. **Miscellaneous**

a. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

b. **Construction.** The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section referred to.

c. **Approvals.** Wherever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

d. **Jurisdiction; Venue.** This Agreement is made in the State of California, under the Constitution and laws of such State and is to be so construed; any action to enforce or interpret its terms shall be brought in Sacramento County, California.

e. **Integration.** This Agreement is the complete and exclusive statement of the agreement among the parties hereto, and it supersedes and merges all prior proposals, understandings, and other agreements, whether oral, written, or implied in conduct, between and among the parties relating to the subject matter of this Agreement.

f. **Successors; Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties hereto. Except to the extent expressly provided herein, no Member may assign any right or obligation hereunder without the consent of the Board.

g. **Severability.** Should any part, term or provision of this Agreement be decided by the courts to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms or provisions hereof shall not be affected thereby.

The parties hereto have caused this Agreement to be executed and attested by their properly authorized officers.

AS ADOPTED BY THE MEMBERS:

Originally dated July 1, 1993

Amended and restated December 10, 1998

Amended and restated February 18, 1999

Amended and restated September 18, 2002

Amended and restated January 28, 2004

Amended and restated _____

[SIGNATURES ON FOLLOWING PAGES]

COUNTY OF AMADOR

By: _____

Dated: _____

Name:

Title:

Attest:

By: _____

Clerk of the Board of Supervisors

[PLEASE SEND TO:

California Home Finance Authority
1215 K Street, Suite 1650
Sacramento, CA 95814]

CRHMFA HOMEBUYERS FUND CALIFORNIA HOME FINANCE AUTHORITY

AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT

(Updated January 28, 2004 _____)

THIS AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT ("Agreement") is entered into by and among the counties listed on Attachment 1 hereof and incorporated herein by reference. All such counties are referred to herein as "Members" with the respective powers, privileges and restrictions provided herein.

RECITALS

A. A. WHEREAS, the California Rural Home Mortgage Finance Authority ("CRHMFA") was created by a Joint Exercise of Powers Agreement dated July 1, 1993 pursuant to the Joint Exercise of Powers Act (commencing with Article 1 of Chapter 5 of Division 7 of Title 11 of the Government Code of the State of California, hereinafter, (the "Act") authorizes the Members to create a. By Resolution 2003-02, adopted on January 15, 2003, the name of the authority was changed to CRHMFA Homebuyers Fund. The most recent amendment to the Joint Exercise of Powers authority to be called CRHMFA Homebuyers Fund (California Rural Home Mortgage Finance Authority) (the "Authority") which has the power to exercise jointly any powers common to any or all of the Members; and Agreement was most recently amended on January 28, 2004.

B. WHEREAS, the Members of CRHMFA Homebuyers Fund desire to update, reaffirm, clarify and revise certain provisions of the joint powers agreement, including the renaming of the joint powers authority, as set forth herein.

B. WHEREAS, the Members are each empowered by law to finance the construction, acquisition, improvement and rehabilitation of residential real property; and.

C. WHEREAS, by this Agreement, the Members have determined that desire to create and establish a joint exercise of powers authority should be formed to exercise their respective powers for the purpose of financing home mortgages with respect to the construction, acquisition, improvement and rehabilitation of real property within the boundaries of the Members and Associate Members; and jurisdiction of the Authority as authorized by the Act.

D. WHEREAS, by this Agreement the Members desire to create and establish the Authority for the purposes set forth herein and to exercise the powers described herein and as provided by law,

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Members individually and collectively agree as follows:

1. ~~1.~~ Definitions

Unless the context otherwise requires, the following terms shall for purposes of this Agreement have the meanings specified below:

"Act" means the Joint Exercise of Powers Act, commencing with Article 1 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, including the Marks-Roos Local Bond Pooling Act of 1985, as amended.

"Agreement" means this Joint Exercise of Powers Agreement, as the same now exists or as it may from time to time be amended as provided herein.

"Associate Member" means a county, city or other public agency which is not a voting member of the ~~Regional Council of Rural Counties~~ Rural County Representatives of California, a California nonprofit corporation ("RCRC"), with legal power and authority similar to that of the Members, admitted pursuant to paragraph 4.d. below to associate membership herein by vote of the Board.

"Audit Committee" means a committee made up of the nine-member Executive Committee.

"Authority" means California Home Finance Authority ("CHF"), formerly known as the CRHMFA Homebuyers Fund or California Rural Home Mortgage Finance Authority created hereby.

"Board " means the governing board of the Authority as described in Section 7 below.

"Bonds" means bonds, notes, warrants, leases, certificates of participation, installment purchase agreements, loan agreements and other securities or obligations issued by the Authority, or financing agreements entered into by the Authority pursuant to the Act and any other obligation within the meaning of the term "Bonds" under the Act.

"Delegate" means the Supervisor designated by the governing board of each Member to serve on the Board of the Authority.

"Executive Committee" means the nine-member Executive Committee of the Board established pursuant to Section 10 hereof.

"Member" means any county which is a member of RCRC, has executed this Agreement and has become a member of the Authority.

"Obligations" means bonds, notes, warrants, leases, certificates of participation, installment

purchase agreements, loan agreements and other securities or obligations issued by the Authority, or financing agreements entered into by the Authority pursuant to the Act and any other financial or legal obligation of the Authority under the Act.

“Program” or “Project” means any work, improvement, program, project or service undertaken by the Authority ~~relating to the financing and development of residential housing.~~

~~“Regional Council of Rural Counties~~**Rural County Representatives of California**” or **“RCRC”** means the nonprofit entity incorporated under that name in the State of California.

“Supervisor” means an elected County Supervisor from an RCRC member county.

2. Purpose

The purpose of the Authority is to provide financing for the acquisition, construction, ~~acquisition~~, improvement and rehabilitation of ~~residential~~ real property in accordance with applicable provisions of law for the benefit of ~~households within the boundaries of the Members or Associate Members~~ residents and communities. In pursuit of this purpose, this Agreement provides for the joint exercise of powers common to any of its Members and Associate Members as provided herein, or otherwise authorized by the Act and other applicable laws, including assisting in financing as authorized herein, jointly exercised in the manner set forth herein.

3. Principal Place of Business

The principal office of the Authority shall be ~~801-12th~~1215 K Street, Suite ~~600~~1650, Sacramento, California 95814.

4. Creation of Authority; Addition of Members or Associate Members

a. ~~CRHMFA Homebuyers Fund~~The Authority is hereby created pursuant to the Act. As provided in the Act, the Authority shall be a public entity separate and distinct from the Members or Associate Members.

b. The Authority will cause a notice of this Agreement or any amendment hereto to be prepared and filed with the office of the Secretary of State of California in a timely fashion in the manner set forth in Section 6503.3 of the Act.

c. A county that is a member of RCRC may petition to become a member of the Authority by submitting to the Board a resolution ~~adopted~~or evidence of other formal action taken by its governing body adopting this Agreement. The Board shall review the petition for membership and shall vote to approve or disapprove the petition. If the petition is approved by a majority of the Board, such county shall immediately become a Member of the Authority.

d. An Associate Member~~Member~~ may be added to the Authority upon the affirmative approval of ~~their~~its respective governing board and pursuant to action by the Authority Board upon such terms and conditions, and with such rights, privileges and responsibilities, as may be established from time to time by the Board. Such terms and conditions, and rights, privileges and responsibilities may vary among the Associate Members. Associate Members shall be entitled to participate in one or more ~~housing~~programs of the Authority as determined by the Board, but shall not be voting members of the Board. The Executive Director of the Authority shall enforce the terms and conditions for prospective Associate Members to the Authority as provided by resolution of the Board and as amended from time to time by the Board. Changes in the terms and conditions for Associate Membership by the Board will not constitute an amendment of this Agreement.

5. Term and Termination of Powers

This Agreement shall become effective from the date hereof until the earlier of the time when all Bonds and any interest thereon shall have been paid in full, or provision for such payment shall have been made, or when the Authority shall no longer own or hold any interest in a public capital improvement or program. The Authority shall continue to exercise the powers herein conferred upon it until termination of this Agreement, except that if any Bonds are issued and delivered, in no event shall the exercise of the powers herein granted be terminated until all Bonds so issued and delivered and the interest thereon shall have been paid or provision for such payment shall have been made and any other debt incurred with respect to any other financing

program established or administered by the Authority has been repaid in full and is no longer outstanding.

6. Powers; Restriction upon Exercise

a. To effectuate its purpose, the Authority shall have the power to exercise any and all powers of the Members or of a joint powers authority under the Act and other applicable provisions of law, subject, however, to the conditions and restrictions herein contained. Each Member or Associate Member may also separately exercise any and all such powers. The powers of the Authority are limited to those of a general law county.

b. The Authority may adopt, from time to time, such resolutions, guidelines, rules and regulations for the conduct of its meetings and the activities of the Authority as it deems necessary or desirable to accomplish its purpose.

c. The Authority shall have the power to finance ~~residential mortgages~~ the construction, acquisition, improvement and rehabilitation of real property, including the power to purchase, with the amounts received or to be received by it pursuant to a bond purchase agreement, bonds issued by any of its Members or Associate Members and other local agencies at public or negotiated sale, for the purpose set forth herein and in accordance with the Act. All or any part of such bonds so purchased may be held by the Authority or resold to public or private purchasers at public or negotiated sale. The Authority shall set any other terms and conditions of any purchase or sale contemplated herein as it deems necessary or convenient and in furtherance of the Act. The Authority may issue or cause to be issued Bonds or other indebtedness, and pledge any of its property or revenues as security to the extent permitted by resolution of the Board under any applicable provision of law. The Authority may issue Bonds in accordance with the Act in order to raise funds necessary to effectuate its purpose hereunder and may enter into agreements to secure such Bonds. The Authority may issue other forms of indebtedness authorized by the Act, and to secure such debt, to further such purpose. The Authority may utilize other forms of capital, including, but not limited to, the Authority's internal resources, capital markets and other forms of private capital investment authorized by the Act.

d. The Authority is hereby authorized to do all acts necessary for the exercise of its powers, including, but not limited to:

- (1) executing contracts,
- (2) employing agents, consultants and employees,
- (3) acquiring, constructing or providing for maintenance and operation of any building, work or improvement,
- (4) acquiring, holding or disposing of real or personal property wherever located, including property subject to mortgage,
- (5) incurring debts, liabilities or obligations,
- (6) receiving gifts, contributions and donations of property, funds, services and

- any other forms of assistance from persons, firms, corporations or governmental entities,
- (7) suing and being sued in its own name, and litigating or settling any suits or claims, and
 - (8) doing any and all things necessary or convenient to the exercise of its specific powers and to accomplishing its purpose, and
 - (9) establishing and/or administering districts to finance and refinance the acquisition, installation and improvement of energy efficiency, water conservation and renewal energy improvements to or on real property and in buildings. The Authority may enter into one or more agreements, including without limitation, participation agreements and implementation agreements to implement such programs.

e. Subject to the applicable provisions of any indenture or resolution providing for the investment of monies held thereunder, the Authority shall have the power to invest any of its funds as the Board deems advisable, in the same manner and upon the same conditions as local agencies pursuant to Section 53601 of the Government Code of the State of California.

f. All property, equipment, supplies, funds and records of the Authority shall be owned by the Authority, except as may be provided otherwise herein or by resolution of the Board.

g. Pursuant to the provisions of Section 6508.1 of the Act, the debts, liabilities and obligations of the Authority shall not be debts, liabilities and obligations of the Members or Associate Members. ~~The~~Any Bonds, together with any interest and premium thereon, shall not constitute debts, liabilities or obligations of any Member. The Members or Associate Members hereby agree that any such Bonds issued by the Authority shall not constitute general obligations of the Authority but shall be payable solely from the moneys pledged to the repayment of principal or interest on such Bonds under the terms of the resolution, indenture, trust, agreement or other instrument pursuant to which such Bonds are issued. Neither the Members or Associate Members nor the Authority shall be obligated to pay the principal of or premium, if any, or interest on the Bonds, or other costs incidental thereto, except from the revenues and funds pledged therefor, and neither the faith and credit nor the taxing power of the Members or Associate Members or the Authority shall be pledged to the payment of the principal of or premium, if any, or interest on the Bonds, nor shall the Members or Associate Members of the Authority be obligated in any manner to make any appropriation for such payment. No covenant or agreement contained in any Bond shall be deemed to be a covenant or agreement of any Delegate, or any officer, agent or employee of the Authority in an individual capacity, and neither the Board nor any officer thereof executing the Bonds or any document related thereto shall be liable personally on any Bond or be subject to any personal liability or accountability by reason of the issuance of any Bonds.

7. Governing Board

a. The Board shall consist of the number of Delegates equal to one representative from each Member.

b. The governing body of each Member shall appoint one of its Supervisors to serve as a Delegate on the Board. A Member's ~~designation~~appointment of its Delegate shall be delivered in writing (which may be by electronic mail) to the ~~Secretary~~Authority and shall be effective until he or she is replaced by such governing body or no longer a Supervisor; any vacancy shall be filled by the governing body of the Member in the same manner provided ~~above~~in this paragraph b.

c. The governing body of each Member of the Board shall ~~designate~~appoint a Supervisor as an alternate to serve on the Board in the absence of the Delegate; the alternate may exercise all the rights and privileges of the Delegate, including the right to be counted in constituting a quorum, to participate in the proceedings of the Board, and to vote upon any and all matters. No alternate may have more than one vote at any meeting of the Board, and any Member's designation of an alternate shall be delivered in writing (which may be by electronic mail) to the ~~Secretary~~Authority and shall be effective until such alternate is replaced by his or her governing body or is no longer a Supervisor, unless otherwise specified in such ~~writing~~appointment. Any vacancy shall be filled by the governing body of the Member in the same manner provided ~~above~~in this paragraph c.

d. Any person who is not a member of the governing body of a Member and who attends a meeting on behalf of such Member may not vote or be counted toward a quorum but may, at the discretion of the Chair, participate in open meetings he or she attends.

e. Each Associate Member may designate a non-voting representative to the Board who may not be counted toward a quorum but who may attend open meetings, propose agenda items and otherwise participate in Board Meetings.

f. Delegates shall not receive compensation for serving as Delegates, but may claim and receive reimbursement for expenses actually incurred in connection with such service pursuant to rules approved by the Board and subject to the availability of funds.

g. The Board shall have the power, by resolution, to the extent permitted by the Act or any other applicable law, to exercise any powers of the Authority and to delegate any of its functions to the Executive Committee or one or more Delegates, officers or agents of the Authority, and to cause any authorized Delegate, officer or agent to take any actions and execute any documents for and in the name and on behalf of the Board or the Authority.

h. The Board may establish such committees as it deems necessary for any lawful purpose; such committees are advisory only and may not act or purport to act on behalf of the Board or the Authority.

i. The Board shall develop, or cause to be developed, and review, modify as necessary, and adopt each Program.

8. Meetings of the Board

a. The Board shall meet at least once annually, but may meet more frequently upon call of any officer or as provided by resolution of the Board.

b. Meetings of the Board shall be called, noticed, held and conducted pursuant to the provisions of the Ralph M. Brown Act, Chapter 9 (commencing with Section 54950) of Part I of Division 2 of Title 5 of the Government Code of the State of California.

c. The Secretary of the Authority shall cause minutes of all meetings of the Board to be taken and distributed to each Member as soon as possible after each meeting.

d. The lesser of ~~ten~~twelve (~~10~~12) Delegates or a majority of the number of current Delegates shall constitute a quorum for transacting business at any meeting of the Board, except that less than a quorum may act to adjourn a meeting. Each Delegate shall have one vote.

e. Meetings may be held at any location designated in notice properly given for a meeting and may be conducted by telephonic or similar means in any manner otherwise allowed by law.

9. Officers; Duties; Official Bonds

a. The Board shall elect a chair and vice chair from among the Delegates at the Board's annual meeting who shall serve a term of one (1) year or until their respective successor is elected. The chair shall conduct the meetings of the Board and perform such other duties as may be specified by resolution of the Board. The vice chair shall perform such duties in the absence or in the event of the unavailability of the chair.

b. The Board shall contract annually with RCRC ~~for administration of~~ to administer the Agreement and to provide administrative services to the Authority, and the President and Chief Executive Officer of RCRC shall serve *ex officio* as Executive Director, Secretary, Treasurer, and Auditor of the Authority. As chief executive of the Authority, the Executive Director is authorized to execute contracts and other obligations of the Authority, unless prior Board approval is required by a third party, by law or by Board specification, and to perform other duties specified by the Board. The Executive Director may appoint such other officers as may be required for the orderly conduct of the Authority's business and affairs who shall serve at the pleasure of the Executive Director. Subject to the applicable provisions of any indenture or resolution providing for a trustee or other fiscal agent, the Executive Director, as Treasurer, is designated as the custodian of the Authority's funds, from whatever source, and, as such, shall have the powers,

duties and responsibilities specified in Section 6505.5 of the Act. The Executive Director, as Auditor, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Act.

c. The Legislative Advocate for the Authority shall be the ~~Regional Council of Rural Counties~~Rural County Representatives of California.

d. The Treasurer and Auditor are public officers who have charge of, handle, or have access to all property of the Authority, and a bond for such officer in the amount of at least one hundred thousand dollars (\$100,000.00) shall be obtained at the expense of the Authority and filed with the Executive Director. Such bond may secure the faithful performance of such officer's duties with respect to another public office if such bond in at least the same amount specifically mentions the office of the Authority as required herein. The Treasurer and Auditor shall cause periodic independent audits to be made of the Authority's books by a certified public accountant, or public accountant, in compliance with Section 6505 of the Act.

e. The business of the Authority shall be conducted under the supervision of the Executive Director by RCRC personnel.

10. Executive Committee of the Authority

a. Composition

The Authority shall appoint nine (9) members of its Board to serve on an Executive Committee.

b. Powers and Limitations

The Executive Committee shall act in an advisory capacity and make recommendations to the Authority Board. Duties will include, but not be limited to, review of the quarterly and annual budgets, service as the Audit Committee for the Authority, periodically review this Agreement; and complete any other tasks as may be assigned by the Board. The Executive Committee shall be subject to all limitations imposed by this Agreement, other applicable law, and resolutions of the Board.

c. Quorum

A majority of the Executive Committee shall constitute a quorum for transacting business of the Executive Committee.

1011. Disposition of Assets

Upon termination of this Agreement, all remaining assets and liabilities of the Authority shall be distributed to the respective Members and ~~Associate Members~~ in such manner as shall be determined by the Board and in accordance with the law.

1112. Agreement Not Exclusive; Operation in Jurisdiction of Member

~~This Agreement shall not be exclusive, and each Member expressly reserves its rights to carry out other public capital improvements and programs as provided for by law and to issue other obligations for those purposes. This Agreement shall not be deemed to amend or alter the terms of other agreements among the Members or Associate Members, except as expressly provided herein; provided, however, that the Authority shall not make or purchase any home mortgage secured by any home within the jurisdiction of a Member or Associate Member financed by an issue of Bonds without the consent of that Member or Associate Member to the issuance of those Bonds and that the giving or withholding of that consent is in the sole and absolute discretion of the Member or Associate Member, but if given by the Member or Associate Member and then relied upon by the Authority for purposes of entering into agreements with developers, lenders, other Members, Associate Members or others, such consent may not be revoked.~~

1213. Conflict of Interest Code

The Authority shall by resolution adopt a Conflict of Interest Code as required by law.

1314. Contributions and Advances

Contributions or advances of public funds and of personnel, equipment or property may be made to the Authority by any Member, Associate Member or any other public agency to further the purpose of this Agreement. Payment of public funds may be made to defray the cost of any contribution. Any advance may be made subject to repayment, and in that case shall be repaid in the manner agreed upon by the advancing Member, Associate Member or other public agency and the Authority at the time of making the advance.

1415. Fiscal Year; Accounts; Reports; Annual Budget; Administrative Expenses

a. The fiscal year of the Authority shall be the period from January 1 of each year to and including the following December 31, except for any partial fiscal year resulting from a change in accounting based on a different fiscal year previously.

b. Prior to the beginning of each fiscal year, the Board shall adopt a budget for the succeeding fiscal year.

c. The Authority shall establish and maintain such funds and accounts as may be required by generally accepted accounting principles. The books and records of the Authority are public records and shall be open to inspection at all reasonable times by each Member and its representatives.

d. The Auditor shall either make, or contract with a certified public accountant or public accountant to make, an annual audit of the accounts and records of the Authority. The minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code of the State of California, and shall conform to generally accepted auditing standards. When an audit of accounts and records is made by a certified public accountant or public accountant, a report thereof shall be filed as a public ~~records~~record with each Member (and also with the auditor of ~~each~~Sacramento County as the county in which the Authority's office is a Member located) within 12 months after the end of the fiscal year.

e. In any year in which the annual budget of the Authority does not exceed five thousand dollars (\$5,000.00), the Board may, upon unanimous approval of the Board, replace the annual audit with an ensuing one-year period, but in no event for a period longer than two fiscal years.

1516. Duties of Members or Associate Members; Breach

If any Member or Associate Member shall default in performing any covenant contained herein, such default shall not excuse that Member or Associate Member from fulfilling its other obligations hereunder, and such defaulting Member or Associate Member shall remain liable for the performance of all covenants hereof. Each Member or Associate Member hereby declares that this Agreement is entered into for the benefit of the Authority created hereby, and each Member or Associate Member hereby grants to the Authority the right to enforce, by whatever lawful means the Authority deems appropriate, all of the obligations of each of the parties hereunder. Each and all of the remedies given to the Authority hereunder or by any law now or hereafter enacted are cumulative, and the exercise of one right or remedy shall not impair the right of the Authority to any or all other remedies.

1617. Indemnification

To the full extent permitted by law, the Board may authorize indemnification by the Authority of any person who is or was a Board Delegate, alternate, officer, consultant, employee or other agent of the Authority, and who was or is a party or is threatened to be made a party to a proceeding by reason of the fact that such person is or was such a Delegate, alternate, officer, consultant, employee or other agent of the Authority. Such indemnification may be made against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding, if such person acted in good faith ~~and~~ and in a manner such person reasonably believed to be in the best interests of the Authority and, in the case of a criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful and, in the case of an action by or in the right of the Authority, acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

1718. Immunities

All of the privileges and immunities from liabilities, exemptions from law, ordinances and rules, all pension, relief, disability, workers' compensation and other benefits which apply to the activity of officers, agents or employees of any of the Members or Associate Members when performing their respective functions, shall apply to them to the same degree and extent while engaged as Delegates or otherwise as an officer, agent or other representative of the Authority or while engaged in the performance of any of their functions or duties under the provisions of this Agreement.

1819. Amendment

This Agreement may be amended by the adoption of the amendment by the governing bodies of a majority of the Members. The amendment shall become effective on the first day of the month following the last required member agency approval. An amendment may be initiated by the Board, upon approval by a majority of the Board. Any proposed amendment, including the text of the proposed change, shall be given by the Board to each Member's Delegate for

presentation and action by each Member's board within ~~180~~90 days, which time may be extended by the Board.

The list of Members, Attachment 1, may be updated to reflect new and/or withdrawn Members without requiring formal amendment of the Agreement by the Authority Board of Directors.

~~19~~20. **Withdrawal of Member or Associate Member**

If a Member withdraws as member of RCRC, its membership in the Authority shall automatically terminate. A Member or Associate Member may withdraw from this Agreement upon written notice to the Board; provided however, that no such withdrawal shall result in the dissolution of the Authority as long as any Bonds or other obligations of the Authority remain outstanding. Any such withdrawal shall become effective thirty (30) days after a resolution adopted by the Member's governing body which authorizes withdrawal is received by the ~~Secretary of the Board~~Authority. Notwithstanding the foregoing, any termination of membership or withdrawal from the Authority shall not operate to relieve any terminated or withdrawing Member or Associate Member from Obligations incurred by such terminated or withdrawing Member or Associate Member prior to the time of its termination or withdrawal.

20. Miscellaneous

a. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

b. **Construction.** The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section referred to.

c. **Approvals.** Wherever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

d. **Jurisdiction; Venue.** This Agreement is made in the State of California, under the Constitution and laws of such State and is to be so construed; any action to enforce or interpret its terms shall be brought in Sacramento County, California.

e. **Integration.** This Agreement is the complete and exclusive statement of the agreement among the parties hereto, and it supersedes and merges all prior proposals, understandings, and other agreements, whether oral, written, or implied in conduct, between and among the parties relating to the subject matter of this Agreement.

f. **Successors; Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties hereto. Except to the extent expressly provided herein, no Member may assign any right or obligation hereunder without the consent of the Board.

g. **Severability.** Should any part, term or provision of this Agreement be decided by the courts to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms or provisions hereof shall not be affected thereby.

The parties hereto have caused this Agreement to be executed and attested by their properly authorized officers.

~~Supervisor Richard Forster, Chair~~

AS ADOPTED BY THE MEMBERS:

Originally dated July 1, 1993

Amended and restated December 10, 1998

Amended and restated February 18, 1999

Amended and restated September 18, 2002

Amended and restated January 28, 2004

Amended and restated _____

[SIGNATURES ON FOLLOWING PAGES]

~~Amador~~ **COUNTY OF AMADOR**

~~Butte~~ County

~~Calaveras~~ County

By: _____

~~Colusa~~ County

Name:

~~Del Norte~~ County

Title:

~~El Dorado~~ County

Dated: _____

Attest:

By: _____

Clerk of the Board of Supervisors

[PLEASE SEND TO:

California Home Finance Authority

1215 K Street, Suite 1650

Sacramento, CA 95814

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