

AGREEMENT

THIS Agreement is made and entered into this 22nd day of September, 2020, by and between the COUNTY OF FRESNO, a Political Subdivision of the State of California, hereinafter referred to as "COUNTY", and United Health Centers of San Joaquin Valley, a tax-exempt entity whose address is 3875 West Beechwood Avenue, Fresno, Ca 93722, hereinafter referred to as "CONTRACTOR".

WITNESSETH

WHEREAS, as a result of the COVID-19 pandemic the COUNTY had a need to provide COVID-19 testing information and testing services to COUNTY employees who are experiencing COVID-19 symptoms or who have been involved in exposure events in which they had close contact with an individual who tested positive for COVID-19; and

WHEREAS, in addition, the COUNTY had a need for a way to maintain adequate staffing levels for critical services as well as meet new safety and reporting requirements set forth in Executive Order N-62-20; and

WHEREAS, COUNTY, through its County Administrative Officer and CONTRACTOR entered into a Memorandum of Understanding in June 2020 to provide for CONTRACTOR's COVID-19 testing of the employees of the County; and

WHEREAS, the COUNTY and CONTRACTOR wish to enter into this Agreement to replace and supersede the June 2020 Memorandum of Understanding retroactive to June 19, 2020.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties hereto agree as follows:

1. OBLIGATIONS OF THE CONTRACTOR

A. CONTRACTOR shall contact employees and set up telephonic appointments and testing referrals to one of the local testing locations.

B. CONTRACTOR shall provide drive through COVID-19 Testing and test results for employees.

C. CONTRACTOR shall administer and oversee all services related to direct health care services to COUNTY employees.

1 D. All the COUNTY's request for services by CONTRACTOR provided for under this
2 Agreement, shall be at the sole discretion of COUNTY's - Human Resources Department Risk
3 Management Division.

4 2. OBLIGATIONS OF THE COUNTY

5 A. COUNTY, or its designee, shall provide CONTRACTOR with the appropriate
6 identification of employees in need of CONTRACTOR services.

7 B. COUNTY, or its designee, shall assist employees in scheduling of appointments
8 and/or notify CONTRACTOR of employee referral.

9 C. Both parties agree to comply with all applicable federal, state and local laws, rules
10 and regulations including the Health Insurance Portability and Accountability Act of 1996("HIPAA") and
11 modified by the Health Information Technology for Economic and Clinical Health ("HITECH") Act of 2009
12 and the Omnibus Rule of 2013 in the performance of their obligations hereunder.

13 3. TERM

14 The term of this Agreement shall be effective commencing June 19, 2020 through and
15 including June 30, 2021. This agreement may be extended for two (2) additional consecutive twelve
16 (12) month periods upon written approval of both parties no later than thirty (30) days prior to the first
17 day of the next twelve (12) month extension period. The Director of Human Resources, or his designee,
18 is authorized to execute such written approval on behalf of COUNTY based on CONTRACTOR'S
19 satisfactory performance.

20 4. TERMINATION

21 A. Non-Allocation of Funds - The terms of this Agreement, and the services to be
22 provided hereunder, are contingent on the approval of funds by the appropriating government agency.
23 Should sufficient funds not be allocated, the services provided may be modified, or this Agreement
24 terminated, at any time by giving the CONTRACTOR thirty (30) days advance written notice.

25 B. Breach of Contract - The COUNTY may immediately suspend or terminate this
26 Agreement in whole or in part, where in the determination of the COUNTY there is:

- 27 1) An illegal or improper use of funds;
28 2) A failure to comply with any term of this Agreement;

- 3) A substantially incorrect or incomplete report submitted to the COUNTY;
- 4) Improperly performed service.

In no event shall any payment by the COUNTY constitute a waiver by the COUNTY of any breach of this Agreement or any default which may then exist on the part of the CONTRACTOR. Neither shall such payment impair or prejudice any remedy available to the COUNTY with respect to the breach or default.

The COUNTY shall have the right to demand of the CONTRACTOR the repayment to the COUNTY of any funds disbursed to the CONTRACTOR under this Agreement, which in the judgment of the COUNTY were not expended in accordance with the terms of this Agreement. The CONTRACTOR shall promptly refund any such funds upon demand.

C. Without Cause_- Under circumstances other than those set forth above, this Agreement may be terminated by COUNTY upon the giving of thirty (30) days advance written notice of an intention to terminate to CONTRACTOR.

5. COMPENSATION:

COUNTY agrees to pay CONTRACTOR and CONTRACTOR agrees to receive compensation for satisfactory services performed under this Agreement at a "per case fee" of \$200 for services that include initial medical consultation, COVID-19 testing and test results. CONTRACTOR agrees to collect health insurance policy information for each referral and to bill health insurance carriers with whom it contracts with for services provided under this Agreement. The maximum \$200 fee shall be reduced by any health insurance reimbursement amount due to CONTRACTOR for each referral. For referrals involving health insurance carriers that CONTRACTOR does not contract with at the time services are rendered, the \$200 maximum fee will apply. In any case, the referred individual will not be charged a co-payment or co-insurance fee as the maximum \$200 fee paid by COUNTY per referral is inclusive of said co-payment or co-insurance fees.

Payment shall be made upon certification or other proof satisfactory to COUNTY that services have been performed by CONTRACTOR and that billed amounts have been reduced by insurance reimbursements as specified in this Agreement.

In no event shall services performed under this Agreement exceed Seven Hundred Thousand and No/100 Dollars (\$700,000.00) during the initial period June 19, 2020 through June,30, 2021.

1 Should the term of this Agreement be extended for two (2) additional consecutive twelve (12) month
2 periods, in no event shall services performed under this Agreement during each of those (12) month
3 periods exceed Seven Hundred Thousand and No/100 Dollars (\$700,000.00). It is understood that all
4 expenses incidental to CONTRACTOR's performance of services under this Agreement shall be borne by
5 CONTRACTOR.

6 6. INVOICING

7 CONTRACTOR shall submit a detailed invoice on contractor letterhead, to include the
8 following information: dates services provided, number of staff hours worked, number of initial reports,
9 wellness check reviews and wellness check monitoring calls.

10 CONTRACTOR shall submit monthly invoices to the County of Fresno, Risk Management
11 Division located at 2220 Tulare Street, 16th Floor Fresno, CA 93721, or electronically to e-mail address:
12 HRRiskWorkersComp@fresnocountyca.gov.

13 Payments by County shall be in arrears, for services provided during the preceding month,
14 within forty-five (45) days from date of receipt, verification and approval of CONTRACTOR'S invoice and
15 supporting documentation by COUNTY. If CONTRACTOR should fail to comply with any provision of the
16 Agreement, COUNTY shall be relieved of its obligation for further compensation.

17 7. FUNDING:

18 Funding for this Agreement is provided through legislative action for COVID-19 response.
19 Services will be covered using one or more of the following funding sources; the Coronavirus Aid, Relief,
20 and Economic Security (CARES) Act Funding (Pub. L. No. 116-136) and Risk Management ISF
21 appropriations.

22 8. INDEPENDENT CONTRACTOR: In performance of the work, duties and obligations
23 assumed by CONTRACTOR under this Agreement, it is mutually understood and agreed that
24 CONTRACTOR, including any and all of the CONTRACTOR'S officers, agents, and employees will at all
25 times be acting and performing as an independent contractor, and shall act in an independent capacity and
26 not as an officer, agent, servant, employee, joint venturer, partner, or associate of the COUNTY.
27 Furthermore, COUNTY shall have no right to control or supervise or direct the manner or method by which
28 CONTRACTOR shall perform its work and function. However, COUNTY shall retain the right to administer

1 this Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the
2 terms and conditions thereof.

3 CONTRACTOR and COUNTY shall comply with all applicable provisions of law and the
4 rules and regulations, if any, of governmental authorities having jurisdiction over matters the subject
5 thereof.

6 Because of its status as an independent contractor, CONTRACTOR shall have absolutely
7 no right to employment rights and benefits available to COUNTY employees. CONTRACTOR shall be
8 solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee
9 benefits. In addition, CONTRACTOR shall be solely responsible and save COUNTY harmless from all
10 matters relating to payment of CONTRACTOR employees, including compliance with Social Security
11 withholding and all other regulations governing such matters. It is acknowledged that during the term of this
12 Agreement, CONTRACTOR may be providing services to others unrelated to the COUNTY or to this
13 Agreement.

14 9. MODIFICATION: Any matters of this Agreement may be modified from time to time by the
15 written consent of all the parties without, in any way, affecting the remainder.

16 10. NON-ASSIGNMENT: Neither party shall assign, transfer or sub-contract this Agreement
17 nor their rights or duties under this Agreement without the prior written consent of the other party.

18 11. HOLD HARMLESS: CONTRACTOR agrees to indemnify, save, hold harmless, and at
19 COUNTY'S request, defend the COUNTY, its officers, agents, and employees from any and all costs and
20 expenses (including attorney's fees and costs), damages, liabilities, claims, and losses occurring or
21 resulting to COUNTY in connection with the performance, or failure to perform, by CONTRACTOR, its
22 officers, agents, or employees under this Agreement, and from any and all costs and expenses (including
23 attorney's fees and costs), damages, liabilities, claims, and losses occurring or resulting to any person, firm,
24 or corporation who may be injured or damaged by the performance, or failure to perform, of
25 CONTRACTOR, its officers, agents, or employees under this Agreement.

26 12. INSURANCE

27 Without limiting the COUNTY's right to obtain indemnification from CONTRACTOR or any
28 third parties, CONTRACTOR, at its sole expense, shall maintain in full force and effect, the following

1 insurance policies or a program of self-insurance, including but not limited to, an insurance pooling
2 arrangement or Joint Powers Agreement (JPA) throughout the term of the Agreement:

3 A. Commercial General Liability

4 Commercial General Liability Insurance with limits of not less than Two Million
5 Dollars (\$2,000,000.00) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000.00).
6 This policy shall be issued on a per occurrence basis. COUNTY may require specific coverages including
7 completed operations, products liability, contractual liability, Explosion-Collapse-Underground, fire legal
8 liability or any other liability insurance deemed necessary because of the nature of this contract.

9 B. Automobile Liability

10 Comprehensive Automobile Liability Insurance with limits of not less than One
11 Million Dollars (\$1,000,000.00) per accident for bodily injury and for property damages. Coverage should
12 include any auto used in connection with this Agreement.

13 C. Professional Liability

14 If CONTRACTOR employs licensed professional staff, (e.g., Ph.D., R.N., L.C.S.W.,
15 M.F.C.C.) in providing services, Professional Liability Insurance with limits of not less than One Million
16 Dollars (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00) annual aggregate.

17 CONTRACTOR agrees that it shall maintain, at its sole expense, in full force and
18 effect for a period of (3) years following the termination of this Agreement, one or more policies of
19 professional liability insurance with limits of coverage as specified herein.

20 D. Worker's Compensation

21 A policy of Worker's Compensation insurance as may be required by the
22 California Labor Code.

23 E. Cyber Liability

24 CONTRACTOR shall obtain cyber liability insurance with limits not less than Two
25 Million Dollars (\$2,000,000) per occurrence. Coverage shall include, but not be limited to, claims
26 involving Cyber Risks. The cyber liability policy shall be endorsed to cover the full replacement value of
27 damage to, alteration of, loss of, or destruction of intangible property (including but not limited to
28 information or data) that is in the care, custody, or control of the CONTRACTOR.

1 For purposes of the technology professional liability insurance and the cyber liability insurance
2 required under this Agreement, Cyber Risks include, but are not limited to, (i) security breaches, which
3 include disclosure of, whether intentional or unintentional, information provided by COUNTY, information
4 provided by or obtained from any person, or personal-identifying information relating to any person, to
5 an unauthorized third party; (ii) breach of any of CONTRACTOR's obligations under this Agreement
6 relating to data security, protection, preservation, usage, storage, transmission, and the like; (iii)
7 infringement of intellectual property including, but not limited to, infringement of copyright, trademark,
8 and trade dress; (iv) invasion of privacy, including any release of private information; (v) information theft
9 by any person or entity, whatsoever; (vi) damage to or destruction or alteration of electronic information;
10 (vii) extortion related to CONTRACTOR's obligations under this Agreement regarding electronic
11 information, including information provided by COUNTY, information provided by or obtained from any
12 person, or personal-identifying information relating to any person; (viii) network security; (ix) data breach
13 response costs, including security breach response costs; (x) regulatory fines and penalties related to
14 CONTRACTOR's obligations under this Agreement regarding electronic information, including
15 information provided by COUNTY, information provided by or obtained from any person, or personal-
16 identifying information relating to any person; and (xi) credit monitoring expenses.

17 Additional Requirements Relating to Insurance

18 CONTRACTOR shall obtain endorsements to the Commercial General Liability insurance naming
19 the County of Fresno, its officers, agents, and employees, individually and collectively, as additional
20 insured, but only insofar as the operations under this Agreement are concerned. Such coverage for
21 additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained
22 by COUNTY, its officers, agents and employees shall be excess only and not contributing with insurance
23 provided under CONTRACTOR's policies herein. This insurance shall not be cancelled or changed without
24 a minimum of thirty (30) days advance written notice given to COUNTY.

25 CONTRACTOR hereby waives its right to recover from COUNTY, its officers, agents, and
26 employees any amounts paid by the policy of worker's compensation insurance required by this
27 Agreement. CONTRACTOR is solely responsible to obtain any endorsement to such policy that may be
28 necessary to accomplish such waiver of subrogation, but CONTRACTOR's waiver of subrogation under

1 this paragraph is effective whether or not CONTRACTOR obtains such an endorsement.

2 Within Thirty (30) days from the date CONTRACTOR signs and executes this Agreement,
3 CONTRACTOR shall provide certificates of insurance and endorsement as stated above for all of the
4 foregoing policies, as required herein, to the County of Fresno, (Paul Nerland, Human Resources Director,
5 2220 Tulare Street, 16th floor, Fresno, CA 93721), stating that such insurance coverage have been
6 obtained and are in full force; that the County of Fresno, its officers, agents and employees will not be
7 responsible for any premiums on the policies; that for such worker's compensation insurance the
8 CONTRACTOR has waived its right to recover from the COUNTY, its officers, agents, and employees any
9 amounts paid under the insurance policy and that waiver does not invalidate the insurance policy; that such
10 Commercial General Liability insurance names the County of Fresno, its officers, agents and employees,
11 individually and collectively, as additional insured, but only insofar as the operations under this Agreement
12 are concerned; that such coverage for additional insured shall apply as primary insurance and any other
13 insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees, shall be excess
14 only and not contributing with insurance provided under CONTRACTOR's policies herein; and that this
15 insurance shall not be cancelled or changed without a minimum of thirty (30) days advance, written notice
16 given to COUNTY.

17 In the event CONTRACTOR fails to keep in effect at all times insurance coverage as herein
18 provided, the COUNTY may, in addition to other remedies it may have, suspend or terminate this
19 Agreement upon the occurrence of such event.

20 All policies shall be issued by admitted insurers licensed to do business in the State of California,
21 and such insurance shall be purchased from companies possessing a current A.M. Best, Inc. rating of A
22 FSC VII or better.

23 13. AUDITS AND INSPECTIONS: The CONTRACTOR shall at any time during business
24 hours, and as often as the COUNTY may deem necessary, make available to the COUNTY for examination
25 all of its records and data with respect to the matters covered by this Agreement. The CONTRACTOR
26 shall, upon request by the COUNTY, permit the COUNTY to audit and inspect all of such records and data
27 necessary to ensure CONTRACTOR'S compliance with the terms of this Agreement.

28 If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be

1 subject to the examination and audit of the Auditor General for a period of three (3) years after final
2 payment under contract (Government Code Section 8546.7).

3 14. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT

4 A. The parties to this Agreement shall be in strict conformance with all applicable
5 Federal and State of California laws and regulations, including but not limited to Sections 5328, 10850, and
6 14100.2 *et seq.* of the Welfare and Institutions Code, Sections 2.1 and 431.300 *et seq.* of Title 42, Code of
7 Federal Regulations (CFR), Section 56 *et seq.* of the California Civil Code and the Health Insurance
8 Portability and Accountability Act (HIPAA), including but not limited to Section 1320 D *et seq.* of Title 42,
9 United States Code (USC) and its implementing regulations, including, but not limited to Title 45, CFR,
10 Sections 142, 160, 162, and 164, The Health Information Technology for Economic and Clinical Health Act
11 (HITECH) regarding the confidentiality and security of patient information, and the Genetic Information
12 Nondiscrimination Act (GINA) of 2008 regarding the confidentiality of genetic information.

13 Except as otherwise provided in this Agreement, CONTRACTOR, as a Business Associate
14 of COUNTY, may use or disclose Protected Health Information (PHI) to perform functions, activities or
15 services for or on behalf of COUNTY, as specified in this Agreement, provided that such use or disclosure
16 shall not violate the Health Insurance Portability and Accountability Act (HIPAA), USC 1320d *et seq.* The
17 uses and disclosures of PHI may not be more expansive than those applicable to COUNTY, as the
18 "Covered Entity" under the HIPAA Privacy Rule (45 CFR 164.500 *et seq.*), except as authorized for
19 management, administrative or legal responsibilities of the Business Associate.

20 B. CONTRACTOR, including its subcontractors and employees, shall protect, from
21 unauthorized access, use, or disclosure of names and other identifying information, including genetic
22 information, concerning persons receiving services pursuant to this Agreement, except where permitted in
23 order to carry out data aggregation purposes for health care operations [45 CFR Sections 164.504 (e)(2)(i),
24 164.504 (3)(2)(ii)(A), and 164.504 (e)(4)(i)] This pertains to any and all persons receiving services pursuant
25 to a COUNTY funded program. This requirement applies to electronic PHI. CONTRACTOR shall not use
26 such identifying information or genetic information for any purpose other than carrying out CONTRACTOR
27 obligations under this Agreement.

28 C. CONTRACTOR, including its subcontractors and employees, shall not disclose any

1 such identifying information or genetic information to any person or entity, except as otherwise specifically
2 permitted by this Agreement, authorized by Subpart E of 45 CFR Part 164 or other law, required by the
3 Secretary, or authorized by the client/patient in writing. In using or disclosing PHI that is permitted by this
4 Agreement or authorized by law, CONTRACTOR shall make reasonable efforts to limit PHI to the
5 minimum necessary to accomplish intended purpose of use, disclosure or request.

6 D. For purposes of the above sections, identifying information shall include, but not be
7 limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such
8 as finger or voice print, or photograph.

9 E. For purposes of the above sections, genetic information shall include genetic tests of
10 family members of an individual or individual, manifestation of disease or disorder of family members of an
11 individual, or any request for or receipt of, genetic services by individual or family members. Family
12 member means a dependent or any person who is first, second, third, or fourth degree relative.

13 F. CONTRACTOR shall provide access, at the request of COUNTY, and in the time
14 and manner designated by COUNTY, to PHI in a designated record set (as defined in 45 CFR Section
15 164.501), to an individual or to COUNTY in order to meet the requirements of 45 CFR Section 164.524
16 regarding access by individuals to their PHI. With respect to individual requests, access shall be provided
17 within thirty (30) days from request. Access may be extended if CONTRACTOR cannot provide access
18 and provides individual with the reasons for the delay and the date when access may be granted. PHI shall
19 be provided in the form and format requested by the individual or COUNTY.

20 CONTRACTOR shall make any amendment(s) to PHI in a designated record set at
21 the request of COUNTY or individual, and in the time and manner designated by COUNTY in accordance
22 with 45 CFR Section 164.526.

23 CONTRACTOR shall provide to COUNTY or to an individual, in a time and manner
24 designated by COUNTY, information collected in accordance with 45 CFR Section 164.528, to permit
25 COUNTY to respond to a request by the individual for an accounting of disclosures of PHI in accordance
26 with 45 CFR Section 164.528.

27 G. CONTRACTOR shall report to COUNTY, in writing, any knowledge or reasonable
28 belief that there has been unauthorized access, viewing, use, disclosure, security incident, or breach of

1 unsecured PHI not permitted by this Agreement of which it becomes aware, immediately and without
2 reasonable delay and in no case later than two (2) business days of discovery. Immediate notification shall
3 be made to COUNTY's Information Security Officer, Privacy Officer, COUNTY's Department of Behavioral
4 Health HIPAA Representative, and COUNTY's Risk Manager within two (2) business days of discovery.
5 The notification shall include, to the extent possible, the identification of each individual whose unsecured
6 PHI has been, or is reasonably believed to have been, accessed, acquired, used, disclosed, or breached.
7 CONTRACTOR shall take prompt corrective action to cure any deficiencies and any action pertaining to
8 such unauthorized disclosure required by applicable Federal and State Laws and regulations.
9 CONTRACTOR shall investigate such breach and is responsible for all notifications required by law and
10 regulation or deemed necessary by COUNTY and shall provide a written report of the investigation and
11 reporting required to COUNTY's Information Security Officer and Privacy Officer. This written investigation
12 and description of any reporting necessary shall be postmarked within the thirty (30) working days of the
13 discovery of the breach to the addresses below:

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15 County of Fresno
16 Dept. of Behavioral Health
17 HIPAA Representative
18 (559) 600-6439
19 P.O. Box 11867
20 Fresno, CA 93775

County of Fresno
Dept. of Public Health
Privacy Officer
(559) 600-6405
P.O. Box 11867
Fresno, CA 93775

County of Fresno
Information Technology Services
Information Security Officer
(559) 600-5800
333 W. Pontiac Way
Clovis, CA 93612

19 County of Fresno
20 Risk Manager
21 (559) 600-1851
22 2220 Tulare Street, 16th Floor
23 Fresno, CA 93721

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CONTRACTOR shall make its internal practices, books, and records relating to the
use and disclosure of PHI received from COUNTY, or created or received by the CONTRACTOR on
behalf of COUNTY, in compliance with HIPAA's Privacy Rule, including, but not limited to the
requirements set forth in Title 45, CFR, Sections 160 and 164. CONTRACTOR shall make its internal
practices, books, and records relating to the use and disclosure of PHI received from COUNTY or created

1 or received by the CONTRACTOR on behalf of COUNTY, available to the United States Department of
2 Health and Human Services (Secretary) upon demand.

3 CONTRACTOR shall cooperate with the compliance and investigation reviews
4 conducted by the Secretary. PHI access to the Secretary must be provided during the CONTRACTOR's
5 normal business hours, however, upon exigent circumstances access at any time must be granted. Upon
6 the Secretary's compliance or investigation review, if PHI is unavailable to CONTRACTOR and in
7 possession of a Subcontractor, it must certify efforts to obtain the information to the Secretary.

8 H. Safeguards

9 CONTRACTOR shall implement administrative, physical, and technical safeguards
10 as required by the HIPAA Security Rule, Subpart C of 45 CFR 164, that reasonably and appropriately
11 protect the confidentiality, integrity, and availability of PHI, including electronic PHI, that it creates,
12 receives, maintains or transmits on behalf of COUNTY and to prevent unauthorized access, viewing, use,
13 disclosure, or breach of PHI other than as provided for by this Agreement. CONTRACTOR shall conduct
14 an accurate and thorough assessment of the potential risks and vulnerabilities to the confidential, integrity
15 and availability of electronic PHI. CONTRACTOR shall develop and maintain a written information privacy
16 and security program that includes administrative, technical and physical safeguards appropriate to the
17 size and complexity of CONTRACTOR's operations and the nature and scope of its activities. Upon
18 COUNTY's request, CONTRACTOR shall provide COUNTY with information concerning such safeguards.

19 CONTRACTOR shall implement strong access controls and other security
20 safeguards and precautions in order to restrict logical and physical access to confidential, personal (e.g.,
21 PHI) or sensitive data to authorized users only. Said safeguards and precautions shall include the
22 following administrative and technical password controls for all systems used to process or store
23 confidential, personal, or sensitive data:

- 24 1. Passwords must not be:
- 25 a. Shared or written down where they are accessible or recognizable by
26 anyone else; such as taped to computer screens, stored under keyboards, or visible in a work area;
- 27 b. A dictionary word; or
- 28 c. Stored in clear text

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- 2. Passwords must be:
 - a. Eight (8) characters or more in length;
 - b. Changed every ninety (90) days;
 - c. Changed immediately if revealed or compromised; and
 - d. Composed of characters from at least three (3) of the following four (4) groups from the standard keyboard:
 - i. Upper case letters (A-Z);
 - ii. Lowercase letters (a-z);
 - iii. Arabic numerals (0 through 9); and
 - iv. Non-alphanumeric characters (punctuation symbols).

CONTRACTOR/S shall implement the following security controls on each workstation or portable computing device (e.g., laptop computer) containing confidential, personal, or sensitive data:

- 1. Network-based firewall and/or personal firewall;
- 2. Continuously updated anti-virus software; and
- 3. Patch management process including installation of all operating system/software vendor security patches.

CONTRACTOR shall utilize a commercial encryption solution that has received FIPS 140-2 validation to encrypt all confidential, personal, or sensitive data stored on portable electronic media (including, but not limited to, compact disks and thumb drives) and on portable computing devices (including, but not limited to, laptop and notebook computers).

CONTRACTOR shall not transmit confidential, personal, or sensitive data via e-mail or other internet transport protocol unless the data is encrypted by a solution that has been validated by the National Institute of Standards and Technology (NIST) as conforming to the Advanced Encryption Standard (AES) Algorithm. CONTRACTOR must apply appropriate sanctions against its employees who fail to comply with these safeguards. CONTRACTOR must adopt procedures for terminating access to PHI when employment of employee ends.

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I. Mitigation of Harmful Effects

CONTRACTOR shall mitigate, to the extent practicable, any harmful effect that is suspected or known to CONTRACTOR of an unauthorized access, viewing, use, disclosure, or breach of PHI by CONTRACTOR or its subcontractors in violation of the requirements of these provisions. CONTRACTOR/S must document suspected or known harmful effects and the outcome.

J. CONTRACTOR Subcontractors

CONTRACTOR shall ensure that any of its contractors, including subcontractors, if applicable, to whom CONTRACTOR provide PHI received from or created or received by CONTRACTOR on behalf of COUNTY, agree to the same restrictions, safeguards, and conditions that apply to CONTRACTOR with respect to such PHI and to incorporate, when applicable, the relevant provisions of these provisions into each subcontract or sub-award to such agents or subcontractors.

K. Employee Training and Discipline

CONTRACTOR shall train and use reasonable measures to ensure compliance with the requirements of these provisions by employees who assist in the performance of functions or activities on behalf of COUNTY under this Agreement and use or disclose PHI and discipline such employees who intentionally violate any provisions of these provisions, including termination of employment.

L. Termination for Cause

Upon COUNTY's knowledge of a material breach of these provisions by CONTRACTOR, COUNTY shall either:

1. Provide an opportunity for CONTRACTOR to cure the breach or end the violation and terminate this Agreement if CONTRACTOR do not cure the breach or end the violation within the time specified by COUNTY; or
2. Immediately terminate this Agreement if CONTRACTOR have breached a material term of these provisions and cure is not possible.
3. If neither cure nor termination is feasible, the COUNTY's Privacy Officer shall report the violation to the Secretary of the U.S. Department of Health and Human Services.

1 M. Judicial or Administrative Proceedings

2 COUNTY may terminate this Agreement in accordance with the terms and conditions of this Agreement
3 as written hereinabove, if: (1) CONTRACTOR is found guilty in a criminal proceeding for a violation of
4 the HIPAA Privacy or Security Laws or the HITECH Act; or (2) a finding or stipulation that the
5 CONTRACTOR have violated a privacy or security standard or requirement of the HITECH Act, HIPAA
6 or other security or privacy laws in an administrative or civil proceeding in which the CONTRACTOR is a
7 party.

8 N. Effect of Termination

9 Upon termination or expiration of this Agreement for any reason, CONTRACTOR
10 shall return or destroy all PHI received from COUNTY (or created or received by CONTRACTOR on
11 behalf of COUNTY) that CONTRACTOR still maintain in any form, and shall retain no copies of such
12 PHI. If return or destruction of PHI is not feasible, it shall continue to extend the protections of these
13 provisions to such information, and limit further use of such PHI to those purposes that make the return
14 or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of
15 subcontractors or agents, if applicable, of CONTRACTOR. If CONTRACTOR destroys the PHI data, a
16 certification of date and time of destruction shall be provided to the COUNTY by CONTRACTOR.

17 O. Disclaimer

18 COUNTY makes no warranty or representation that compliance by
19 CONTRACTOR with these provisions, the HITECH Act, HIPAA or the HIPAA regulations will be
20 adequate or satisfactory for CONTRACTOR's' own purposes or that any information in CONTRACTOR
21 possession or control, or transmitted or received by CONTRACTOR, is or will be secure from
22 unauthorized access, viewing, use, disclosure, or breach. CONTRACTOR is solely responsible for all
23 decisions made by CONTRACTOR regarding the safeguarding of PHI.

24 P. Amendment

25 The parties acknowledge that Federal and State laws relating to electronic data
26 security and privacy are rapidly evolving and that amendment of these provisions may be required to
27 provide for procedures to ensure compliance with such developments. The parties specifically agree to
28 take such action as is necessary to amend this agreement in order to implement the standards and

1 requirements of HIPAA, the HIPAA regulations, the HITECH Act and other applicable laws relating to
2 the security or privacy of PHI. COUNTY may terminate this Agreement upon thirty (30) days written
3 notice in the event that CONTRACTOR does not enter into an amendment providing assurances
4 regarding the safeguarding of PHI that COUNTY in its sole discretion, deems sufficient to satisfy the
5 standards and requirements of HIPAA, the HIPAA regulations and the HITECH Act.

6 Q. No Third-Party Beneficiaries

7 Nothing express or implied in the terms and conditions of these provisions is
8 intended to confer, nor shall anything herein confer, upon any person other than COUNTY or
9 CONTRACTOR and their respective successors or assignees, any rights, remedies, obligations or
10 liabilities whatsoever.

11 R. Interpretation

12 The terms and conditions in these provisions shall be interpreted as broadly as
13 necessary to implement and comply with HIPAA, the HIPAA regulations and applicable State laws. The
14 parties agree that any ambiguity in the terms and conditions of these provisions shall be resolved in
15 favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.

16 S. Regulatory References

17 A reference in the terms and conditions of these provisions to a section in the
18 HIPAA regulations means the section as in effect or as amended.

19 T. Survival

20 The respective rights and obligations of CONTRACTOR as stated in this Section
21 shall survive the termination or expiration of this Agreement.

22 U. No Waiver of Obligations

23 No change, waiver or discharge of any liability or obligation hereunder on any one
24 or more occasions shall be deemed a waiver of performance of any continuing or other obligation or
25 shall prohibit enforcement of any obligation on any other occasion.

26 15. NON-DISCRIMINATION:

27 During the performance of this Agreement, CONTRACTOR shall not unlawfully discriminate
28 against any employee or applicant for employment, or recipient of services, because of race, religious

1 creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic
2 information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, military
3 status or veteran status pursuant to all applicable State of California and Federal statutes and regulation.

4 16. REPORTS:

5 CONTRACTOR shall work with the COUNTY to develop monthly reports.

6 17. SINGLE AUDIT CLAUSE:

7 A. If CONTRACTOR expends Seven Hundred Fifty Thousand Dollars (\$750,000) or
8 more Federal and Federal flow-through monies, CONTRACTOR agrees to conduct an annual audit in
9 accordance with the requirements of the Single Audit Standards as set forth in Office of Management and
10 Budget (OMB) Title 2 of the Code of Federal Regulations, Chapter II, Part 200. CONTRACTOR shall
11 submit said audit and management letter to COUNTY. The audit must include a statement of findings or a
12 statement that there were no findings. If there were negative findings, CONTRACTOR must include a
13 corrective action plan signed by an authorized individual. CONTRACTOR agree to take action to correct
14 any material non-compliance or weakness found as a result of such audit. Such audit shall be delivered to
15 COUNTY'S Risk Management Administration for review within nine (9) months of the end of any fiscal year
16 in which funds were expended and/or received for the program. Failure to perform the requisite audit
17 functions as required by this Agreement may result in COUNTY performing the necessary audit tasks, or at
18 the COUNTY'S option, contracting with a public accountant to perform said audit, or, may result in the
19 inability of COUNTY to enter into future agreements with the CONTRACTOR.

20 B. A single audit report is not applicable if all CONTRACTOR' S Federal contracts do
21 not exceed the Seven Hundred Fifty Thousand Dollars (\$750,000) requirement or CONTRACTOR federal
22 funding is through Drug Medi-Cal.

23 18. NOTICES

24 The persons and their addresses having authority to give and receive notices under this
25 Agreement include the following:

26 COUNTY
27 County of Fresno
Risk Management
2220 Tulare Street, 16th Floor
28 Fresno, CA 93721

CONTRACTOR
United Health Center
3875 West Beechwood
Fresno, CA, 93722

1
2 All notices between the COUNTY and CONTRACTOR provided for or permitted under this
3 Agreement must be in writing and delivered either by personal service, by first-class United States mail, by
4 an overnight commercial courier service, or by telephonic facsimile transmission. A notice delivered by
5 personal service is effective upon service to the recipient. A notice delivered by first-class United States
6 mail is effective three COUNTY business days after deposit in the United States mail, postage prepaid,
7 addressed to the recipient. A notice delivered by an overnight commercial courier service is effective one
8 COUNTY business day after deposit with the overnight commercial courier service, delivery fees prepaid,
9 with delivery instructions given for next day delivery, addressed to the recipient. A notice delivered by
10 telephonic facsimile is effective when transmission to the recipient is completed (but, if such transmission is
11 completed outside of COUNTY business hours, then such delivery shall be deemed to be effective at the
12 next beginning of a COUNTY business day), provided that the sender maintains a machine record of the
13 completed transmission. For all claims arising out of or related to this Agreement, nothing in this section
14 establishes, waives, or modifies any claims presentation requirements or procedures provided by law,
15 including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code,
16 beginning with section 810).

17 19. GOVERNING LAW:

18 Venue for any action arising out of or related to this Agreement shall only be in Fresno
19 County, California.

20 The rights and obligations of the parties and all interpretation and performance of this Agreement
21 shall be governed in all respects by the laws of the State of California.

22 20. DISCLOSURE OF SELF-DEALING TRANSACTIONS:

23 This provision is only applicable if the CONTRACTOR is operating as a corporation (a
24 for-profit or non-profit corporation) or if during the term of the agreement, the CONTRACTOR changes
25 its status to operate as a corporation.

26 Members of the CONTRACTOR'S Board of Directors shall disclose any self-dealing
27 transactions that they are a party to while CONTRACTOR is providing goods or performing services
28 under this agreement. A self-dealing transaction shall mean a transaction to which the CONTRACTOR

1 is a party and in which one or more of its directors has a material financial interest. Members of the
2 Board of Directors shall disclose any self-dealing transactions that they are a party to by completing and
3 signing a Self-Dealing Transaction Disclosure Form, attached hereto as Exhibit "A" and incorporated
4 herein by reference, and submitting it to the COUNTY prior to commencing with the self-dealing
5 transaction or immediately thereafter.

6 21. SEVERABILITY:

7 The positions of this Agreement are severable. The invalidity or unenforceability of any
8 one provision in the Agreement shall not affect the other provisions.

9
10 22. ENTIRE AGREEMENT:

11 This Agreement, including all exhibits constitutes the entire agreement between the
12 CONTRACTOR and COUNTY with respect to the subject matter hereof and supersedes all previous
13 Agreement negotiations, proposals, commitments, writings, advertisements, publications, and
14 understanding of any nature whatsoever unless expressly included in this Agreement. Effective June 19,
15 2020, this Agreement replaces and supersedes the June, 2020 Memorandum of Understanding between
16 the parties relating to the subject matter of this Agreement in its entirety.

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1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year
2 first hereinabove written.

3
4 **UNITED HEALTH CENTERS**

5
6 By: Justin Preas

7 Justin Preas
8 Print Name

9 Title: Deputy Chief Executive Officer

10 Mailing Address: 3875 North
11 Beechwood
Fresno, CA 93722

COUNTY OF FRESNO

12
13
14 Ernest Buddy Mendes
15 ERNEST BUDDY MENDES, Chairman of
16 the Board of Supervisors of the County of
17 Fresno

18
19 **ATTEST:**

Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

20 By: Lisei Cuyg

Deputy

21 **FOR ACCOUNTING USE ONLY:**

22 Fund: 1060

23 Subclass: 10000

24 ORG: 89250100

25 Account: 7295
26
27
28

Exhibit A

SELF-DEALING TRANSACTION DISCLOSURE FORM

In order to conduct business with the County of Fresno (hereinafter referred to as “County”), members of a contractor’s board of directors (hereinafter referred to as “County Contractor”), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

“A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest.”

The definition above will be utilized for purposes of completing this disclosure form.

INSTRUCTIONS

- (1) Enter board member’s name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member’s company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
 - a. The name of the agency/company with which the Corporation has the transaction; and
 - b. The nature of the material financial interest in the Corporation’s transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.
- (5) Form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

Exhibit A

(1) Company Board Member Information:			
Name:		Date:	
Job Title:			
(2) Company/Agency Name and Address:			
(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to):			
(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a):			
(5) Authorized Signature			
Signature:		Date:	