

A G R E E M E N T

THIS AGREEMENT is made and entered into this 26th day of August, 2020, by and between the COUNTY OF FRESNO, a Political Subdivision of the State of California, hereinafter referred to as "COUNTY", and Family HealthCare Network, a designated Federally Qualified Health Center (FQHC) by both the Federal and State Governments, whose address is 305 E. Center Avenue, Visalia, CA 93277, hereinafter referred to as "CONTRACTOR". COUNTY and CONTRACTOR are referred to collectively as "Parties", or "Party" individually to this Agreement.

WITNESSETH:

WHEREAS, COUNTY, through its Department of Public Health, has a need to collaborate through local Federally Qualified Community Health Centers to increase COVID-19 testing capacity in population groups who need additional supports accessing testing and/or addressing immediate testing needs identified within both rural and urban communities; and

WHEREAS, CONTRACTOR, has the facilities, equipment and personnel skilled to provide COVID-19 testing services; and

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 conduct COVID-19 testing services as described in Exhibit A, attached hereto and by this reference incorporated herein.

B. CONTRACTOR shall collaborate with COUNTY to address testing event needs as requested by the COUNTY.

2. **OBLIGATIONS OF THE COUNTY**

A. COUNTY shall perform all services and fulfill all responsibilities, as described in Exhibit A.

B. COUNTY shall collaborate with CONTRACTOR to coordinate testing events.

3. **TERM**

The term of this Agreement shall be effective upon execution through and including June

1 30, 2021. This Agreement may be extended for one (1) additional twelve (12) month period upon written
2 approval of parties no later than thirty (30) days prior to the first day of the next twelve (12) month extension
3 period. The COUNTY DPH Director or his or her designee is authorized to execute such written approval
4 on behalf of COUNTY based on CONTRACTOR'S satisfactory performance.

5 4. TERMINATION

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

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

- 13 1) An illegal or improper use of funds;
- 14 2) A failure to comply with any term of this Agreement;
- 15 3) A substantially incorrect or incomplete report submitted to the COUNTY;
- 16 4) Improperly performed service.

17 In no event shall any payment by the COUNTY constitute a waiver by the COUNTY of any breach
18 of this Agreement or any default which may then exist on the part of the CONTRACTOR. Neither shall such
19 payment impair or prejudice any remedy available to the COUNTY with respect to the breach or default.
20 The COUNTY shall have the right to demand of the CONTRACTOR the repayment to the COUNTY of any
21 funds disbursed to the CONTRACTOR under this Agreement, which in the judgment of the COUNTY were
22 not expended in accordance with the terms of this Agreement. The CONTRACTOR shall promptly refund
23 any such funds upon demand.

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

27 5. COMPENSATION:

28 A. COUNTY agrees to pay CONTRACTOR and CONTRACTOR agree to receive

1 compensation for services satisfactorily performed at the rates identified in Exhibit A-1. Payment shall be
2 made upon certification or other proof satisfactory to COUNTY that services have actually been performed
3 by CONTRACTOR as specified in this Agreement.

4 B. In no event shall services performed under this Agreement be in excess of Three
5 Hundred Thousand and No/100 Dollars (\$300,000.00) during the full term of this Agreement. It is
6 understood that all expenses incidental to CONTRACTOR performance of services under this
7 Agreement shall be borne by CONTRACTOR.

8 C. Payments by COUNTY shall be in arrears, for services, within forty-five (45) days
9 from date of receipt, verification and approval of CONTRACTOR's invoice and support documentation by
10 COUNTY. If CONTRACTOR should fail to comply with any provision of the Agreement, COUNTY shall be
11 relieved of its obligation for further compensation.

12 It is understood that all expenses incidental to CONTRACTOR performance of
13 services under this Agreement shall be borne by CONTRACTOR.

14 6. INVOICING

15 CONTRACTOR shall submit a detailed invoice on contractor letterhead, to include the
16 following information: date services provided, number of consumer encounters, number of test sample
17 collections, and reference Contract Number (to be provided by COUNTY), by the fifth (5th) working day of
18 each month for the prior month's services to COUNTY and/or 10 days after each Event.

19 CONTRACTOR shall submit invoices to the County of Fresno, Department of Public Health,
20 Business Office, P.O. Box 11867, Fresno, CA 93775, or electronically to e-mail address:

21 DPHBOAP@fresnocountyca.gov.

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23 7. FUNDING:

24 Funding for this Agreement is provided through legislative action for COVID-19 response.
25 Services will be covered using one or more of the following funding sources; the Coronavirus Aid, Relief,
26 and Economic Security (CARES) Act Funding (Pub. L. No. 116-136/CFDA 21.019), Federal Emergency
27 Management Agency (FEMA) Disaster Grants-Public Assistance Funding (CDFA 97.036), and/or any
28 other funding made available through legislation.

1 8. INDEPENDENT CONTRACTOR:

2 In performance of the work, duties and obligations assumed by CONTRACTOR under this
3 Agreement, it is mutually understood and agreed that CONTRACTOR, including any and all of the
4 CONTRACTOR officers, agents, and employees will at all times be acting and performing as an
5 independent CONTRACTOR, and shall act in an independent capacity and not as an officer, agent,
6 servant, employee, joint venturer, partner, or associate of the COUNTY. Furthermore, COUNTY shall have
7 no right to control or supervise or direct the manner or method by which CONTRACTOR shall perform its
8 work and function. However, COUNTY shall retain the right to administer this Agreement so as to verify that
9 CONTRACTOR is performing its obligations in accordance with the terms and conditions thereof.

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

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

19 9. MODIFICATION:

20 Any matters of this Agreement may be modified from time to time by the written consent of
21 all the parties without, in any way, affecting the remainder. Any modifications, made pursuant to the above
22 provisions, shall be effective as to the CONTRACTOR identified in the written modification, and shall not
23 alter or affect the existing Master Agreement between COUNTY, and the remaining CONTRACTOR.

24 10. NON-ASSIGNMENT:

25 Neither party shall assign, transfer or sub-contract this Agreement nor their rights or duties
26 under this Agreement without the prior written consent of the other party.

27 11. HOLD HARMLESS:

28 CONTRACTOR agrees to indemnify, save, hold harmless, and at COUNTY's request,

1 defend the COUNTY, its officers, agents, and employees from any and all costs and expenses (including
2 attorney's fees and costs), damages, liabilities, claims, and losses occurring or resulting to COUNTY in
3 connection with the performance, or failure to perform, by CONTRACTOR, its officers, agents, or
4 employees under this Agreement, and from any and all costs and expenses (including attorney's fees and
5 costs), damages, liabilities, claims, and losses occurring or resulting to any person, firm, or corporation who
6 may be injured or damaged by the performance, or failure to perform, of CONTRACTOR, its officers,
7 agents, or employees under this Agreement.

8 COUNTY agrees to indemnify, save, hold harmless, and at CONTRACTOR's request,
9 defend CONTRACTOR, its officers, agents and employees from any and all costs and expenses, (including
10 attorney fees and costs), damages, liabilities, claims, and losses occurring or resulting to CONTRACTOR in
11 connection with the performance, or failure to perform, by COUNTY, its officers, agents, or employees
12 under this Agreement, and from any and all costs and expenses (including attorney's fees and costs),
13 damages, liabilities, claims, and losses occurring or resulting to any person, firm, or corporation who may
14 be injured or damaged by the performance, or failure to perform, of COUNTY, its officers, agents, or
15 employees under this Agreement.

16 12. INSURANCE:

17 Without limiting the COUNTY's right to obtain indemnification from CONTRACTOR or any
18 third parties, CONTRACTOR, at its sole expense, shall maintain in full force and effect, the following
19 insurance policies or a program of self-insurance, including but not limited to, an insurance pooling
20 arrangement or Joint Powers Agreement (JPA) throughout the term of the Agreement:

21 ///

22 A. Commercial General Liability

23 Commercial General Liability Insurance with limits of not less than Two Million Dollars
24 (\$2,000,000.00) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000.00). This
25 policy shall be issued on a per occurrence basis. COUNTY may require specific coverages including
26 completed operations, products liability, contractual liability, Explosion-Collapse-Underground, fire legal
27 liability or any other liability insurance deemed necessary because of the nature of this contract.

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1 B. Automobile Liability

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

5 C. Professional Liability

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

9 D. Worker's Compensation

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

12 E. Molestation

13 Sexual abuse/molestation liability insurance with limits of not less than One Million Dollars
14 (\$1,000,000.00) per occurrence. Two Million Dollars (\$2,000,000.00) annual aggregate. This policy shall
15 be issued on a per occurrence basis.

16 Additional Requirements Relating to Insurance

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

24 Within Thirty (30) days from the date CONTRACTOR signs and executes this Agreement,
25 CONTRACTOR shall provide certificates of insurance and endorsement as stated above for all of the
26 foregoing policies, as required herein, to the County of Fresno, Department of Public Health, P.O. Box
27 11867, Fresno, CA 93775, Attention: Contracts Section – 6th Floor, stating that such insurance coverage
28 have been obtained and are in full force; that the County of Fresno, its officers, agents and employees will

1 not be responsible for any premiums on the policies; that such Commercial General Liability insurance
2 names the County of Fresno, its officers, agents and employees, individually and collectively, as additional
3 insured, but only insofar as the operations under this Agreement are concerned; that such coverage for
4 additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained
5 by COUNTY, its officers, agents and employees, shall be excess only and not contributing with insurance
6 provided under CONTRACTOR's policies herein; and that this insurance shall not be cancelled or changed
7 without a minimum of thirty (30) days advance, written notice given to COUNTY.

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

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

14 13. AUDITS AND INSPECTIONS:

15 The CONTRACTOR shall at any time during business hours, and as often as the COUNTY
16 may deem necessary, make available to the COUNTY for examination all of its records and data with
17 respect to the matters covered by this Agreement. The CONTRACTOR shall, upon request by the
18 COUNTY, permit the COUNTY to audit and inspect all of such records and data necessary to ensure
19 CONTRACTOR compliance with the terms of this Agreement.

20 If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be
21 subject to the examination and audit of the Auditor General for a period of three (3) years after final
22 payment under contract (Government Code Section 8546.7).

23 In addition, CONTRACTOR shall cooperate and participate with COUNTY's fiscal review
24 process and comply with all final determinations rendered by the COUNTY's fiscal review process. If
25 COUNTY reaches an adverse decision regarding CONTRACTOR's services to consumers, it may result in
26 the disallowance of payment for services rendered; or in additional controls to the delivery of services, or in
27 the termination of this Agreement, at the discretion of COUNTY's DPH Director or designee. If as a result of
28 COUNTY's fiscal review process a disallowance is discovered due to CONTRACTOR's deficiency,

1 CONTRACTOR shall be financially liable for the amount previously paid by COUNTY to CONTRACTOR
2 and this disallowance will be adjusted from CONTRACTOR's future payments, at the discretion of
3 COUNTY's DPH Director or designee. In addition, COUNTY shall have the sole discretion in the
4 determination of fiscal review outcomes, decisions and actions.

5 14. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT

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

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

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

1 CONTRACTOR's obligations under this Agreement.

2 C. CONTRACTOR, including its subcontractors and employees, shall not disclose any
3 such identifying information or genetic information to any person or entity, except as otherwise specifically
4 permitted by this Agreement, authorized by Subpart E of 45 CFR Part 164 or other law, required by the
5 Secretary, or authorized by the client/patient in writing. In using or disclosing PHI that is permitted by this
6 Agreement or authorized by law, CONTRACTOR shall make reasonable efforts to limit PHI to the
7 minimum necessary to accomplish intended purpose of use, disclosure or request.

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

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

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

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

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

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

16 County of Fresno
17 Dept. of Public Health
18 HIPAA Representative
19 (559) 600-6439
P.O. Box 11867
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

20 H. CONTRACTOR shall make its internal practices, books, and records relating to the
21 use and disclosure of PHI received from COUNTY, or created or received by the CONTRACTOR on behalf
22 of COUNTY, in compliance with HIPAA's Privacy Rule, including, but not limited to the requirements set
23 forth in Title 45, CFR, Sections 160 and 164. CONTRACTOR shall make its internal practices, books, and
24 records relating to the use and disclosure of PHI received from COUNTY or created or received by the
25 CONTRACTOR on behalf of COUNTY, available to the United States Department of Health and Human
26 Services (Secretary) upon demand.
27
28

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

6 I. Safeguards

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

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

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

- 1 a. Eight (8) characters or more in length;
- 2 b. Changed every ninety (90) days;
- 3 c. Changed immediately if revealed or compromised; and
- 4 d. Composed of characters from at least three (3) of the following four

5 (4) groups from the standard keyboard:

- 6 1) Upper case letters (A-Z);
- 7 2) Lowercase letters (a-z);
- 8 3) Arabic numerals (0 through 9); and
- 9 4) Non-alphanumeric characters (punctuation symbols).

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

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

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

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

27 J. Mitigation of Harmful Effects

28 CONTRACTOR shall mitigate, to the extent practicable, any harmful effect that is

1 suspected or known to CONTRACTOR of an unauthorized access, viewing, use, disclosure, or breach of
2 PHI by CONTRACTOR or its subcontractors in violation of the requirements of these provisions.
3 CONTRACTOR must document suspected or known harmful effects and the outcome.

4 K. CONTRACTOR's Subcontractors

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

10 L. Employee Training and Discipline

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

15 M. Termination for Cause

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

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

25 N. Judicial or Administrative Proceedings

26 COUNTY may terminate this Agreement in accordance with the terms and
27 conditions of this Agreement as written hereinabove, if: (1) CONTRACTOR is found guilty in a criminal
28 proceeding for a violation of the HIPAA Privacy or Security Laws or the HITECH Act; or (2) a finding or

1 stipulation that the CONTRACTOR have violated a privacy or security standard or requirement of the
2 HITECH Act, HIPAA or other security or privacy laws in an administrative or civil proceeding in which
3 the CONTRACTOR is a party.

4 O. Effect of Termination

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

13 P. Disclaimer

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

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21 Q. Amendment

22 The parties acknowledge that Federal and State laws relating to electronic data
23 security and privacy are rapidly evolving and that amendment of these provisions may be required to
24 provide for procedures to ensure compliance with such developments. The parties specifically agree to
25 take such action as is necessary to amend this agreement in order to implement the standards and
26 requirements of HIPAA, the HIPAA regulations, the HITECH Act and other applicable laws relating to
27 the security or privacy of PHI. COUNTY may terminate this Agreement upon thirty (30) days written
28 notice in the event that CONTRACTOR does not enter into an amendment providing assurances

1 regarding the safeguarding of PHI that COUNTY in its sole discretion, deems sufficient to satisfy the
2 standards and requirements of HIPAA, the HIPAA regulations and the HITECH Act.

3 R. No Third-Party Beneficiaries

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

8 S. Interpretation

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

13 T. Regulatory References

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

16 U. Survival

17 The respective rights and obligations of CONTRACTORS as stated in this Section
18 shall survive the termination or expiration of this Agreement.

19 V. No Waiver of Obligations

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

23 W. Public Health Exception Extended

24 1. The HIPAA Privacy Rule creates a special rule for a subset of public
25 health activities whereby HIPAA cannot preempt state law if, "[t]he provision of state law, including
26 state procedures established under such law, as applicable, provides for the reporting of disease or
27 injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or
28 intervention." (45 C.F.R. § 160.203(c) [HITECH Act, § 13421, sub. (a)].) ;

1 2. To the extent a disclosure or use of information received under this
2 agreement may also be considered a disclosure or use of "Protected Health Information" (PHI) of an
3 individual, as that term is defined in Section 160.103 of Title 45, Code of Federal Regulations, the
4 following Privacy Rule provisions apply to permit such data disclosure and/or use by COUNTY and
5 CONTRACTOR, without the consent or authorization of the individual who is the subject of the PHI:

6 a) HIPAA cannot preempt state law if, "[t]he provision of state law, including
7 state procedures established under such law, as applicable, provides for the reporting of disease or
8 injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or
9 intervention." (45 C.F.R. § 160.203(c) [HITECH Act, § 13421, sub. (a)].);

10 b) A covered entity may disclose PHI to a "public health authority" carrying
11 out public health activities authorized by law; (45 C.F.R. § 164.512(b).);

12 c) A covered entity may use or disclose protected health information to the
13 extent that such use or disclosure is required by law and the use or disclosure complies with and is
14 limited to the relevant requirements of such law." (Title 45 C.F.R. §§ 164.502 (a)(1)(vii),
15 164.512(a)(1).)

16 15. NON-DISCRIMINATION:

17 During the performance of this Agreement, CONTRACTOR shall not unlawfully discriminate
18 against any employee or applicant for employment, or recipient of services, because of race, religious
19 creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic
20 information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, military
21 status or veteran status pursuant to all applicable State of California and Federal statutes and regulation.

22 16. REPORTS:

23 CONTRACTOR shall work with the COUNTY to develop quarterly reports.

24 17. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND
25 VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTIONS:

26 A. COUNTY and CONTRACTOR recognize that CONTRACTOR is a recipient of
27 Federal funds under the terms of this Agreement. By signing this Agreement, CONTRACTOR agrees to
28 comply with applicable Federal suspension and debarment regulations, including but not limited to: 7 CFR

1 3016.35, 29 CFR 97.35, and Executive Order 12549. By signing this Agreement, CONTRACTOR attests
2 to the best of its knowledge and belief, that it and its principals:

- 3 1. Are not presently debarred, suspended, proposed for debarment, declared
4 ineligible, or voluntarily excluded by any Federal department or agency; and
- 5 2. Shall not knowingly enter into any covered transaction with an entity or
6 person who is proposed for debarment under Federal regulations, debarred,
7 suspended, declared ineligible, or voluntarily excluded from participation in
8 such transaction.

9 B. CONTRACTOR shall provide immediate written notice to COUNTY if at any time
10 during the term of this Agreement CONTRACTOR learns that the representations it makes above were
11 erroneous when made or have become erroneous by reason of changed circumstances.

12 C. CONTRACTOR shall include a clause titled "Certification Regarding Debarment,
13 Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transactions" and similar in nature
14 to this paragraph in all lower tier covered transactions and in all solicitations for lower tier covered
15 transactions.

16 D. CONTRACTOR shall, prior to soliciting or purchasing goods and services in excess
17 of \$25,000 funded by this Agreement, review and retain the proposed vendor's suspension and debarment
18 status at <https://sam.gov/SAM/>.

19 18. PROPERTY OF COUNTY:

20 CONTRACTOR agrees to take reasonable and prudent steps to ensure the security of
21 any and all said hardware and software provided to it by COUNTY under this Agreement, to maintain
22 replacement-value insurance coverages on said hardware and software of like kind and quality
23 approved by COUNTY.

24 All purchases over Five Thousand Dollars (\$5,000) made during the life of this
25 Agreement that will outlive the life of this Agreement shall be identified as fixed assets with an assigned
26 Fresno County DPH Accounting Inventory Number. These fixed assets shall be retained by COUNTY,
27 as COUNTY property, in the event this Agreement is terminated or upon expiration of this Agreement.
28 CONTRACTOR agrees to participate in an annual inventory of all COUNTY fixed assets and shall be

1 physically present when fixed assets are returned to COUNTY possession at the termination or
2 expiration of this Agreement. CONTRACTOR is responsible for returning to COUNTY all COUNTY
3 owned fixed assets upon the expiration or termination of this Agreement.

4 19. PROHIBITION ON PUBLICITY:

5 None of the funds, materials, property or services provided directly or indirectly under this
6 Agreement shall be used for CONTRACTOR's advertising, fundraising, or publicity (i.e., purchasing of
7 tickets/tables, silent auction donations, etc.) for the purpose of self-promotion. Notwithstanding the
8 above, publicity of the services described in Paragraph One (1) of this Agreement shall be allowed as
9 necessary to raise public awareness about the availability of such specific services when approved in
10 advance by the Director or designee.

11 20. CONFLICT OF INTEREST:

12 No officer, employee or agent of the COUNTY who exercises any function or
13 responsibility for planning and carrying out of the services provided under this Agreement shall have any
14 direct or indirect personal financial interest in this Agreement. In addition, no employee of the COUNTY
15 shall be employed by the CONTRACTOR under this Agreement to fulfill any contractual obligations with
16 the COUNTY. The CONTRACTOR shall comply with all Federal, State of California and local conflict of
17 interest laws, statutes and regulations, which shall be applicable to all parties and beneficiaries under
18 this Agreement and any officer, employee or agent of the COUNTY.

19 ///

20 21. CHANGE OF LEADERSHIP/MANAGEMENT:

21 In the event of any change in the status of CONTRACTOR's leadership or management,
22 CONTRACTOR shall provide written notice to COUNTY within thirty (30) days from the date of change.
23 Such notification shall include any new leader or manager's name, address and qualifications.
24 "Leadership or Management" shall include any employee, member, or owner of CONTRACTOR who
25 either a) directs individuals providing services pursuant to this Agreement, b) exercises control over the
26 manner in which services are provided, or c) has authority over CONTRACTOR's finances.

27 22. LOBBYING ACTIVITY:

28 None of the funds provided under this Agreement shall be used for publicity, lobbying or

1 propaganda purposes designed to support or defeat legislation pending in the Congress of the United
2 States of America or the Legislature of the State of California

3 23. SINGLE AUDIT CLAUSE:

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

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

20 24. STATE ENERGY CONSERVATION:

21 CONTRACTOR must comply with the mandatory standard and policies relating to energy
22 efficiency which are contained in the State Energy Conservation Plan issued in compliance with 42 United
23 States (US) Code sections 6321, et. seq.

24 25. CLEAN AIR AND WATER:

25 In the event the funding under this Agreement exceeds One Hundred Thousand and No/100
26 Dollars (\$100,000), CONTRACTOR shall comply with all applicable standards, orders or requirements
27 issued under the Clear Air Act contained in 42 U.S. Code 7601 et seq.; the Clean Water Act contained in
28 U.S. Code 1368 et seq.; and any standards, laws and regulations, promulgated thereunder. Under these

1 laws and regulations, CONTRACTOR shall assure:

2 A. No facility shall be utilized in the performance of the Agreement that has been
3 listed on the Environmental Protection Agency (EPA) list of Violating Facilities;

4 B. COUNTY shall be notified prior to execution of this Agreement of the receipt of
5 any communication from the Director, Office of Federal Activities, U.S. EPA indicating that a
6 facility to be utilized in the performance of this Agreement is under consideration to be listed on
7 the EPA list of Violating Facilities;

8 C. COUNTY and U.S. EPA shall be notified about any known violation of the
9 above laws and regulations; and,

10 D. This assurance shall be included in every nonexempt subgrant, contract, or
11 subcontract.

12 26. NOTICES:

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

<u>COUNTY</u>	<u>CONTRACTOR/S</u>
Director, County of Fresno Department of Public Health P.O. Box 11867 Fresno, CA 93775	Family HealthCare Network 305 E. Center Avenue Visalia, CA 93277

15 All notices between the COUNTY and CONTRACTORS provided for or permitted under this
16 Agreement must be in writing and delivered either by personal service, by first-class United States mail, by
17 an overnight commercial courier service, or by telephonic facsimile transmission. A notice delivered by
18 personal service is effective upon service to the recipient. A notice delivered by first-class United States
19 mail is effective three COUNTY business days after deposit in the United States mail, postage prepaid,
20 addressed to the recipient. A notice delivered by an overnight commercial courier service is effective one
21 COUNTY business day after deposit with the overnight commercial courier service, delivery fees prepaid,
22 with delivery instructions given for next day delivery, addressed to the recipient. A notice delivered by
23 telephonic facsimile is effective when transmission to the recipient is completed (but, if such transmission is
24 completed outside of COUNTY business hours, then such delivery shall be deemed to be effective at the
25 next beginning of a COUNTY business day), provided that the sender maintains a machine record of the
26
27
28

1 completed transmission. For all claims arising out of or related to this Agreement, nothing in this section
2 establishes, waives, or modifies any claims presentation requirements or procedures provided by law,
3 including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code,
4 beginning with section 810).

5 27. GOVERNING LAW:

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

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

10 28. DISCLOSURE OF SELF-DEALING TRANSACTIONS:

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

14 Members of the CONTRACTOR'S Board of Directors shall disclose any self-dealing
15 transactions that they are a party to while CONTRACTOR is providing goods or performing services
16 under this agreement. A self-dealing transaction shall mean a transaction to which the CONTRACTOR
17 is a party and in which one or more of its directors has a material financial interest. Members of the
18 Board of Directors shall disclose any self-dealing transactions that they are a party to by completing and
19 signing a Self-Dealing Transaction Disclosure Form, attached hereto as Exhibit D and incorporated
20 herein by reference, and submitting it to the COUNTY prior to commencing with the self-dealing
21 transaction or immediately thereafter.

22 29. SEVERABILITY:

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

25 30. ENTIRE AGREEMENT:

26 This Agreement, including all exhibits constitutes the entire agreement between the
27 CONTRACTORS and COUNTY with respect to the subject matter hereof and supersedes all previous
28 Agreement negotiations, proposals, commitments, writings, advertisements, publications, and

1 understanding of any nature whatsoever unless expressly included in this Agreement.

2 ///

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

5 **CONTRACTOR:**
6 **[Family HealthCare Network]**

COUNTY OF FRESNO:

7
8 
9 _____
(Authorized Signature)



Jean Rousseau, County Administrative Officer of
the County of Fresno

10
11 Kerry L. Hydash, President & CEO
12 _____
13 Print Name & Title
(Chairman of the Board, or President or Vice
14 President)

14 
15 _____
(Authorized Signature)

16
17 Chad Vawter, Financial & Strategy Officer
18 _____
19 Print Name & Title
(Corporation, or any Assistant Secretary, or Chief
20 Financial Officer, or any Assistant Treasurer)

21 305 E. Center Ave. Visalia, CA 93291
22 _____
23 Mailing Address

24
25 FOR ACCOUNTING USE ONLY:
26 ORG No.: 56201019
27 Account No/ 7295/ 10000/ 0001
28 Subclass/
Fund:

Exhibit A

**SCOPE OF WORK
Responsibilities of Parties**

**Family HealthCare Network (FHCN)
And
County of Fresno (“County”)**

FHCN and County are entering into this Memorandum of Understanding (MOU) for the provision of Direct Healthcare Services.

NOW THEREFORE, FHCN and County, inconsideration of the premises stated above, and the terms and conditions specified within the contract agree as follows:

A. Service/Collaboration Responsibilities of the Parties

Parties, FHCN and County understand that each should be able to fulfill its responsibilities under this MOU, in accordance with the provisions of law and regulation that govern their individual activities. Nothing in this MOU is intended to negate or otherwise render ineffective any such provisions or operating procedures. If at any time any Parties are unable to perform their functions under this MOU consistent with such Parties statutory and regulatory mandates, the affected Parties shall immediately provide written notice to the others seeking a mutually agreed upon resolution.

FHCN will provide:

1. Administration and oversight of all services related to COVID 19 testing
2. Collaborate/Coordinate with County to conduct mobile testing at locations as specified/requested by County and agreed by Agency.
3. Provide COVID-19 testing
4. Provide COVID-19 test results
5. Management of claim submission and reimbursement.
6. Report number of encounters and encounter types per event. Report to include;
 - a. Event location
 - b. number of encounters and encounter types (i.e. screening, testing, treatment)

County will provide:

1. Work with Agency to market the COVID 19 testing program to Fresno County communities.
2. Work with Agency to coordinate testing events with Fresno County partners and other community organizations.

3. Allow and coordinate sufficient space for the setup of testing events at offsite non-FHCN locations when necessary.

B. Billing and Compensation

FHCN will issue claims on an event basis to the patient's personal insurance. Additionally, FHCN will bill the County a daily fee as specified in *Exhibit A-1* to cover for additional cost (mobile vans, staff, supplies, etc.)

County shall reimburse FHCN within 30 days following receipt of the claim for all authorized Services Covered under this Agreement at the rates listed in *Exhibit A-1*. Services Covered is defined by all services noted in this agreement in *Exhibit A-1*. Any other service(s) rendered are excluded from this agreement.

FHCN shall submit all County claims to:

County of Fresno

1221 Fresno Street, 6th floor (Business Office)

Fresno, CA 93721

Point of contact for Reimbursement/Invoice Questions:

Agency

Name: Javier Diaz, Vice President of Finance

Phone number: 559-737-4700, ext.4786

Fax number: 559-737-4912

Email address: javdiaz@fhcn.org

COUNTY

Name: Reyna Villalobos

Phone number: (559) 600-0778

Email address: revillalobos@fresnocountyca.gov

Exhibit A-1

Fee Schedule

- I. \$3,000 per event fee with a minimum quota of seventy (75 to 100) encounters, and/or 2 to 4 hour events. Encounters may be any combination of COVID 19 screening, testing and/or treatment.
- II. \$1,500 per event fee with a minimum quota of (15-74) encounters, and/or 1 to 2 hour events. Encounters may be any combination of COVID 19 screening, testing and/or treatment.
- III. \$6,000 per event fee with a minimum quota of (101 to 200) encounters, and/or 4 to 6 hours events. Encounters may be any combination of COVID 19 screening, testing and/or treatment.
- IV. \$9,000 per event fee with a minimum quota of (201 to 350) encounters, and/or 6 to 8 hour events. Encounters may be any combination of COVID 19 screening, testing and/or treatment.

Activities covered during events shall include the services listed below:

1. Provide COVID-19 testing (i.e. sample collection)
2. Submit test for lab diagnostics
3. Provide COVID-19 test results to consumers
4. Management of COVID-19 related care
5. Management of claim submission and reimbursement
6. For activities 1 thru 3 above that cannot be covered through your agency's funding structure and/or other sources of funding (including but not limited to insurance) the County would compensate at a maximum rate of \$140. This rate covers sample collection, lab diagnostic, patient follow-up for test results.

Note: For the purpose of clarification the word "event" covers any venue where the need for testing is identified by the County (i.e. labor camps, packing plants, specific rural communities)