



**ADMINISTRATION & INDIGENT HEALTH**  
1000 San Leandro Blvd., Suite 300  
San Leandro, CA 94577  
TEL (510) 618-3452  
FAX (510) 351-1367

January 6, 2015

The Honorable Board of Supervisors  
County Administration Building  
1221 Oak Street  
Oakland, CA 94612

Dear Board Members:

**SUBJECT: APPROVE THE SECOND AMENDMENT TO THE STANDARD SERVICES AGREEMENT WITH ALTERNATIVES IN ACTION**

**RECOMMENDATION**

Approve the Second Amendment to Standard Services Agreement (Procurement Contract No: 9146) with Alternatives in Action (Principal: Patricia Murillo; Location: Oakland) to include the Cost of Living Adjustments for Fiscal Year 2013-14 and Fiscal Year 2014-15, increasing the contract amount from \$895,000 to \$905,100 (an increase of \$10,100), with no change to the contract periods of 7/1/13 to 6/30/16

**DISCUSSION/SUMMARY**

On 6/4/2013, your Board approved a 2% Cost of Living Adjustment (COLA) beginning in Fiscal Year (FY) 2013-2014 for all community-based organizations funded with Measure A base allocations. At that time, the Health Care Services Agency's Center for Healthy Schools and Communities had already negotiated with the Youth and Family Opportunities (YFO) Program providers for their 3-year contracts that started on 7/1/2013. To avoid delay of program services, the 2% COLA for FY 2013-2014 were not included in the contracts. Instead, the COLA would be included at a later date through contract amendments within the contract period of 7/1/2013 to 6/30/2016. Subsequently, on 6/3/14, your Board approved another 2% COLA for community-based organizations funded by Measure A for Fiscal Year 2014-2015. Contract amendments are now being submitted to provide the contractors with the 2% COLA each for both fiscal years.

The Standard Services Agreements with Alternatives in Action was approved by your Board on 9/17/2013 to provide Youth and Family Opportunities Program services for the next three years. A First Amendment was approved by your Board on 3/18/14 to provide one-time funding to hire one full-time behavioral health clinician to provide comprehensive behavioral health services at McClymonds Youth and Family. Alternatives in Action received an annual Measure A base funding of \$250,000 in Fiscal Year 2012-2013. The amount of COLA (\$10,100) Alternatives in Action is receiving under this Amendment is calculated as follows:

|   |                  |
|---|------------------|
| FY 13-14 MOE Base Allocation                                  | \$250,000        |
| 2% COLA (\$100,000 x .02) Approved in Final Budget Adjustment | \$5,000          |
| FY 13-14 Final Adjusted Base Allocation                       | <b>\$255,000</b> |
| <br>  |                  |
| FY 14-15 MOE Base Allocation                                  | \$255,000        |
| 2% COLA (\$102,000 x .02) Approved in Final Budget Adjustment | \$5,100          |
| FY 14-15 Final Adjusted Base Allocation                       | <b>\$255,100</b> |

**BACKGROUND**

On 11/6/2012, your Board approved the annual funding allocation of \$2,450,000 of Measure A revenue over the next three years to develop and sustain Youth and Family Opportunity Programs in the County's five major geographic regions. The goal of the countywide Youth and Family Opportunity Program is to strengthen the capacity of "anchor" community-based organizations/providers to provide a continuum of high quality, accessible school-linked health and wellness supports to youth and families experiencing poor health and educational outcomes. The providers included in the Youth and Family Opportunity Program will engage youth and families in a wide range of specific prevention activities aimed at improving physical, social and emotional health and strengthening families in their communities.

**SELECTION CRITERIA**

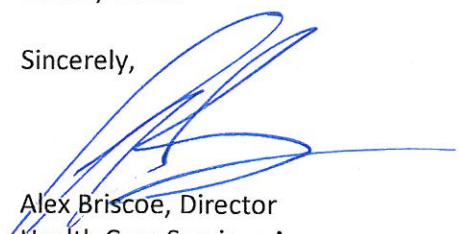
*Alternatives in Action was selected through a public hearing process held on January 24, 2011 in the Board of Supervisors' Board Chambers at 1221 Oak St., Oakland, CA 94612. The Measure A funding allocation and providers that included Alternatives in Action were recommended by the Health Care Services Agency, approved by the Board of Supervisors on April 12, 2011, and reauthorized on November 6, 2012.*

*Alternatives in Action is a community-based organization that provides direct services to Alameda County residents and is exempt from the Small, Local and/or Emerging Business (SLEB) Program requirements.(SLEB Waiver No. 3450, approved on 2/3/15)*

**FINANCING**

Funding for this amendment (\$10,100) is provided by Measure A as approved by the Board and is included in the Fiscal Year 2014-2015 approved budget. Approval of the recommendation will have no impact on net County costs.

Sincerely,



Alex Briscoe, Director  
Health Care Services Agency

## SECOND AMENDMENT TO AGREEMENT

This Second Amendment to Agreement ("Second Amendment") is made by the County of Alameda ("County") and Alternatives in Action, ("Contractor") with respect to that certain agreement entered by them on July 30, 2013 (referred to herein as the "Agreement") pursuant to which Contractor provides Youth and Family Opportunity (YFO) Initiative services to County.

County and Contractor agree as follows:

1. For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Contractor agree to amend the Agreement in the following respects:
  - Increase the amount by \$10,100, bringing the total contract amount to \$905,100
  - Exhibit B2, Adjusted Payment Terms, is replacing the original Exhibit B & B1, Payment Terms and is hereby incorporated into this Agreement by this reference.
  
2. Except as otherwise stated in this Second Amendment, the terms and provisions of this Amendment will be effective as of the date this Second Amendment is executed by the County ("*Effective Date*").
  
3. The term of the Agreement is currently scheduled to expire on June 30, 2016.
  
4. In consideration for Contractor's eligibility of receiving Cost Of Living Adjustment for Fiscal Year 2013-2014 & 2014-2015, the County shall pay Contractor in an additional amount not to exceed Ten Thousand One Hundred U.S. Dollars (\$10,100). As a result of these additional services the not to exceed amount has increased from Eight Hundred Ninety-Five U.S. Dollars (\$895,000) to Nine Hundred Five Thousand One Hundred U.S. Dollars (\$905,100) over the term of the Agreement and any amendments.
  
5. Item 20 of the Standard Services Agreement shall be deleted in its entirety and replaced with

9146-2

the following language:

- The County has and reserves the right to suspend, terminate or abandon the execution of any work by the Contractor without cause at any time upon giving to the Contractor prior written notice. In the event that the County should abandon, terminate or suspend the Contractor's work, the Contractor shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment. Said payment shall be computed in accordance with Exhibits B, B1, and B2 hereto, provided that the maximum amount payable to Contractor for its Youth and Family Opportunity (YFO) Initiative Services shall not exceed Nine Hundred Five Thousand One Hundred U.S. Dollars Only (\$905,100.00) payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment.

6. An Exhibit B-2, Adjusted Payment Terms, is added to this Agreement.

7. DEBARMENT AND SUSPENSION CERTIFICATION:

- a. By signing this Second Amendment and Exhibit D, Debarment and Suspension Certification, Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations, including but not limited to 7 Code of Federal Regulations (CFR) 3016.35, 28 CFR 66.35, 29 CFR 97.35, 34 CFR 80.35, 45 CFR 92.35 and Executive Order 12549.
- b. By signing this agreement, Contractor certifies to the best of its knowledge and belief, that it and its principals:
  - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntary excluded by any federal department or agency;

(2) Shall not knowingly enter into any covered transaction with a person who is proposed for debarment under federal regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction.

8. SMALL, LOCAL AND EMERGING BUSINESS (SLEB) PARTICIPATION: Contractor has been approved by County to participate in contract without SLEB participation. As a result, there is no requirement to subcontract with another business in order to satisfy the County's Small and Emerging Locally owned Business provision.

**However, if circumstances or the terms of the contract should change**, Contractor may be required to immediately comply with the County's Small and Emerging Local Business provisions, including but not limited to:

- a. Contractor must be a certified small or emerging local business(es) or subcontract a minimum 20% with a certified small or emerging local business(es).
- b. SLEB subcontractor(s) is independently owned and operated (i.e., is not owned or operated in any way by Prime), nor do any employees of either entity work for the other.
- c. Small and/or Emerging Local Business participation and current SLEB certification status must be maintained for the term of the contract. Contractor shall ensure that their own certification status and/or that of participating subcontractors (as is applicable) are maintained in compliance with the SLEB Program.
- d. Contractor shall not substitute or add any small and/or emerging local business(s) listed in this agreement without prior written approval from the County. Said requests to substitute or add a small and/or emerging local business shall be submitted in writing to the County department contract representative identified under Item #13 above. Contractor will not be able to substitute the subcontractor without prior written approval from the Alameda County Auditor Controller Agency, Office of Contract Compliance (OCC).
- e. All SLEB participation, except for SLEB prime contractor, must be tracked and monitored utilizing the Elation compliance System.

County will be under no obligation to pay contractor for the percent committed to a SLEB (whether SLEB is a prime or subcontractor) if the work is not performed by the listed small and/or emerging local business.

For further information regarding the Small Local Emerging Business participation requirements and utilization of the Alameda County Contract Compliance System contact the County Auditor- Controller's Office of Contract Compliance (OCC) located at 1221 Oak St., Rm. 249, Oakland, CA 94612 at Tel: (510) 891-5500, Fax: (510) 272-6502 or via E-mail at [ACSLEBcompliance@acgov.org](mailto:ACSLEBcompliance@acgov.org).

9. Except as expressly modified by this Second Amendment, all of the terms and conditions of the Contract are and remain in full force and effect.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to the Agreement as of the day and year first above written.

COUNTY OF ALAMEDA

ALTERNATIVES IN ACTION

By:   
Signature

By:   
Signature

Name: Scott Haggerty  
(Printed)

Name: Patricia Murillo  
(Printed)

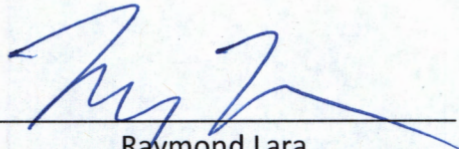
Title: President of the Board of Supervisors

Title: Executive Director

Date: SCOTT HAGGERTY

Date: 2-18-15

Approved as to Form: DONNA ZIEGLER,  
County Counsel for the County of Alameda

By:   
Raymond Lara  
Senior Deputy County Counsel

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

**EXHIBIT B2  
Adjusted Payment Terms**

CONTRACTOR: Alternatives in Action  
 CONTRACT PERIOD: July 1, 2013 to June 30, 2016  
 ORIGINAL CONTRACT AMOUNT: \$750,000  
 FIRST AMENDMENT AMOUNT: \$895,000 (an increase of \$145,000)  
 NEW CONTRACT AMOUNT: \$905,100 (An increase of COLAs \$10,100)  
 NEW CONTRACT PERIOD: July 1, 2013 to June 30, 2016 (No change)

**I. Adjusted Budget (July 1, 2013 to June 30, 2016)**

| SERVICE DESCRIPTION   | MAXIMUM EXPENSES 7/1/13-6/30/14 | MAXIMUM EXPENSES 7/1/14-6/30/15 | MAXIMUM EXPENSES 7/1/15-6/30/16 |
|---|---------------------------------|---------------------------------|---------------------------------|
| <b>Personnel</b>  |                                 |                                 |                                 |
| Executive Director  | \$10,000                        | \$10,000                        | \$10,000                        |
| MYFC Community Program Director   | \$65,000                        | \$65,000                        | \$65,000                        |
| Youth Leadership Coordinator  | \$42,000                        | \$42,000                        | \$42,000                        |
|   |                                 |                                 |                                 |
| <b>Subtotal Personnel</b>   | \$117,000                       | \$117,000                       | \$117,000                       |
| Benefits @ 23 %   | \$ 26,910                       | \$26,910                        | \$26,910                        |
| <b>Total Personnel</b>  | \$143,910                       | \$143,910                       | \$143,910                       |
| <b>Operations (Non-Personnel)</b>   |                                 |                                 |                                 |
| Contract Services - Attitudinal Healing                                   | \$35,000                        | \$35,000                        | \$35,000                        |
| Youth Stipends  | \$11,000                        | \$11,000                        | \$11,000                        |
| Parent Stipends   | \$25,000                        | \$25,000                        | \$25,000                        |
| Program Supplies/Food   | \$7,590                         | \$7,590                         | \$7,590                         |
| Total Operations  | \$78,590                        | \$78,590                        | \$78,590                        |
| Indirect Costs @ 11% (Maximum 11.4%)                                      | \$27,500                        | \$27,500                        | \$27,500                        |
| Total Operations  | \$250,000                       | \$250,000                       | \$250,000                       |
|   |                                 |                                 |                                 |
| <b>First Amendment –Mental Health Clinician Personnel</b>                 | \$72,500                        | \$72,500                        |                                 |
|   |                                 |                                 |                                 |
| <b>NOT TO EXCEED TOTAL AMOUNT</b>   | \$322,550                       | \$322,550                       | \$250,000                       |
| <b>Second Amendment –Cost of Living Adjustment for FY13-14 &amp;14-15</b> |                                 | \$10,100                        |                                 |
| <b>TOTAL CONTRACT AMOUNT</b>  |                                 | \$905,100                       |                                 |



## II. Conditions of the Funding Source

Funds for this Second Amendment come from Alameda County Measure A and included Cost of Living Adjustment (COLA) of \$10,100 for Fiscal Year 2013-14 & 2014-15. The County in no way obligates itself to award future grants to Contractor beyond this funding period.

## III. Terms and Conditions of Payment

### A. Reimbursement

1. Contractor shall invoice the county for \$10,100 for COLAs upon execution of the contract amendment.
2. The total amount of reimbursement under the terms of the Standard Services Agreement and the Second Amendment shall not exceed **\$905,100**. The total amount of reimbursement under the terms of the Second Amendment shall not exceed \$10,100. Funds shall be used solely in support of the project's adjusted program budget. Funds may not be used for any purpose other than those specified in this Agreement.
3. Contractor shall invoice the County no more than four (4) times during each Fiscal Year for actual expenses incurred, not to exceed \$80,625 per quarter in Fiscal Year 2014-15, \$62,500 per quarter in Fiscal Year 2015-16. **The final invoice for this contract and all amendments must be received no later than July 30, 2016**, and shall not exceed the NOT TO EXCEED TOTAL AMOUNT for each Fiscal year. Invoice must include all required reports and documentation.
4. Director of Center for Healthy Schools and Communities shall review invoice, accompanying reports or supporting documentation required by the Alameda County Health Care Services Agency and sign off on invoice for payment upon successful completion and acceptance of the service deliverables.
5. County shall use its best efforts to process invoice submitted for reimbursement by Contractor within ten (10) days from receipt of invoice, reports and any other back up documentation as requested.

### B. Invoicing Procedures

Contractor shall invoice School Health Services. Invoice must include the county-assigned PO number, the service period covered by the invoice, and invoice number, and should be sent to:

Alameda County Health Care Service Agency  
ATTN: Eric Yuan/Connie Yale  
1000 San Leandro Blvd., Suite 300  
San Leandro, CA 94577

**EXHIBIT C**

**COUNTY OF ALAMEDA MINIMUM INSURANCE REQUIREMENTS**

Without limiting any other obligation or liability under this Agreement, the Contractor, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following minimum insurance coverage, limits and endorsements:

| TYPE OF INSURANCE COVERAGES |   | MINIMUM LIMITS  |
|-----------------------------|---|---|
| A                           | <b>Commercial General Liability</b><br>Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability  | \$1,000,000 per occurrence (CSL)<br>Bodily Injury and Property Damage             |
| B                           | <b>Commercial or Business Automobile Liability</b><br>All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities  | \$1,000,000 per occurrence (CSL)<br>Any Auto<br>Bodily Injury and Property Damage |
| C                           | <b>Workers' Compensation (WC) and Employers Liability (EL)</b><br>Required for all contractors with employees   | WC: Statutory Limits<br>EL: \$1,000,000 per accident for bodily injury or disease |
| D                           | <p><b><u>Endorsements and Conditions:</u></b></p> <ol style="list-style-type: none"> <li>1. <b>ADDITIONAL INSURED:</b> All insurance required above with the exception of Commercial or Business Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers, and representatives. The Additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13.</li> <li>2. <b>DURATION OF COVERAGE:</b> All required insurance shall be maintained during the entire term of the Agreement. In addition, insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire term of the Agreement and until 3 years following the later of termination of the Agreement and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement.</li> <li>3. <b>REDUCTION OR LIMIT OF OBLIGATION:</b> All insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to the County. The primary and non-contributory endorsement shall be at least as broad as ISO Form 20 01 04 13. Pursuant to the provisions of this Agreement insurance effected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties.</li> <li>4. <b>INSURER FINANCIAL RATING:</b> Insurance shall be maintained through an insurer with a A.M. Best Rating of no less than A:VII or equivalent, shall be admitted to the State of California unless otherwise waived by Risk Management, and with deductible amounts acceptable to the County. Acceptance of Contractor's insurance by County shall not relieve or decrease the liability of Contractor hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor.</li> <li>5. <b>SUBCONTRACTORS:</b> Contractor shall include all subcontractors as an insured (covered party) under its policies or shall verify that the subcontractor, under its own policies and endorsements, has complied with the insurance requirements in this Agreement, including this Exhibit. The additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13.</li> <li>6. <b>JOINT VENTURES:</b> If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by one of the following methods:             <ul style="list-style-type: none"> <li>— Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured" (covered party), or at minimum named as an "Additional Insured" on the other's policies. Coverage shall be at least as broad as in the ISO Forms named above.</li> <li>— Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured".</li> </ul> </li> <li>7. <b>CANCELLATION OF INSURANCE:</b> All insurance shall be required to provide thirty (30) days advance written notice to the County of cancellation.</li> <li>8. <b>CERTIFICATE OF INSURANCE:</b> Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to County, evidencing that all required insurance coverage is in effect. The County reserves the rights to require the Contractor to provide complete, certified copies of all required insurance policies. The required certificate(s) and endorsements must be sent as set forth in the Notices provision.</li> </ol> |   |



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED - DESIGNATED  
PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

**Name Of Additional Insured Person(s) Or Organization(s)**

Alameda County Health Care Services Agency  
1000 San Leandro Blvd., Suite 300  
San Leandro, CA 94577

The County of Alameda, its Board of Supervisors and the Individual Members Thereof and all the County Officers, Agents, Employees, and Representatives are listed as an Additional Insured with respects to their interest as a Funding Source, per all terms and conditions of the policy.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

**Section II - Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- A. In the performance of your ongoing operations; or
- B. In connection with your premises owned by or rented to you.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## POLICY CHANGES

Policy Change  
Number 4

|  |   |  |
|--|---|--|
| POLICY NUMBER<br><br>CHP70001387-01  | POLICY CHANGES<br>EFFECTIVE<br><br>02/20/2015 | COMPANY<br><br>Markel Insurance Company    |
| NAMED INSURED<br>Alternatives in Action<br>DBA: Bay Area School of Enterprise, Home<br>3666 Grand Avenue, Suite A<br>Oakland, CA 94610   |   | AUTHORIZED REPRESENTATIVE<br>Greg Thompson |
| COVERAGE PARTS AFFECTED<br>Commercial General Liability  |   |  |
| <p style="text-align: center;">CHANGES</p> <p>It is understood and agreed that the following additional insured is added to this policy per the attached form CG 20 26 07 04:</p> <p>Alameda County Health Care Services Agency<br/>1000 San Leandro Blvd., Suite 300<br/>San Leandro, CA 94577</p> <p>The County of Alameda, its Board of Supervisors and the Individual Members Thereof and all the County Officers, Agents, Employees, and Representatives are listed as an Additional Insured with respects to their interest as a Funding Source, per all terms and conditions of the policy.</p> <p>It is further agreed that the following General Liability class code is added:</p> <p>Class Code: 49950 (Additional Insured)<br/>Premium Base: 1</p> <p>All other terms and conditions remain unchanged.</p> |   |  |

Additional Total Premium:

\$50.00



Authorized Representative Signature

Copyright, Insurance Services Office, Inc., 1983  
Copyright, ISO Commercial Risk Services, Inc., 1983

**EXHIBIT D**

**COUNTY OF ALAMEDA  
DEBARMENT AND SUSPENSION CERTIFICATION**

(Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).

**The contractor, under penalty of perjury, certifies that, except as noted below, contractor, its principals, and any named and unnamed subcontractor:**

- **Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;**
- **Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;**
- **Does not have a proposed debarment pending; and**
- **Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.**

**If there are any exceptions to this certification, insert the exceptions in the following space.**

**Exceptions will not necessarily result in denial of award, but will be considered in determining contractor responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.**

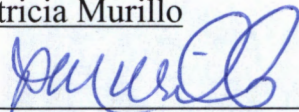
**Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Standard Services Agreement. Signing this Standard Services Agreement on the signature portion thereof shall also constitute signature of this Certification.**

CONTRACTOR: Alternatives in Action

PRINCIPAL: Patricia Murillo

TITLE: Executive Director

SIGNATURE: \_\_\_\_\_



DATE: \_\_\_\_\_

2-18-15

**EXHIBIT E**  
**HIPAA BUSINESS ASSOCIATE AGREEMENT**

This Exhibit, the HIPAA Business Associate Agreement (“Exhibit”) supplements and is made a part of the underlying agreement (“Agreement”) by and between the County of Alameda, (“County” or “Covered Entity”) Alternatives in Action (“Contractor” or “Business Associate”) to which this Exhibit is attached. This Exhibit is effective as of the effective date of the Agreement.

**I. RECITALS**

Covered Entity wishes to disclose certain information to Business Associate pursuant to the terms of the Agreement, some of which may constitute Protected Health Information (“PHI”);

Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the “HITECH Act”), the regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”), and other applicable laws; and

The Privacy Rule and the Security Rule in the HIPAA Regulations require Covered Entity to enter into a contract, containing specific requirements, with Business Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, sections 164.314(a), 164.502(e), and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and as contained in this Agreement.

**II. STANDARD DEFINITIONS**

Capitalized terms used, but not otherwise defined, in this Exhibit shall have the same meaning as those terms are defined in the HIPAA Regulations. In the event of an inconsistency between the provisions of this Exhibit and the mandatory provisions of the HIPAA Regulations, as amended, the HIPAA Regulations shall control. Where provisions of this Exhibit are different than those mandated in the HIPAA Regulations, but are nonetheless permitted by the HIPAA Regulations, the provisions of this Exhibit shall control. All regulatory references in this Exhibit are to HIPAA Regulations unless otherwise specified.

The following terms used in this Exhibit shall have the same meaning as those terms in the HIPAA Regulations: Data Aggregation, Designated Record Set, Disclosure, Electronic Health Record, Health Care Operations, Health Plan, Individual, Limited Data Set, Marketing, Minimum Necessary, Minimum Necessary Rule, Protected Health Information, and Security Incident.

The following term used in this Exhibit shall have the same meaning as that term in the HITECH Act: Unsecured PHI.

**III. SPECIFIC DEFINITIONS**

*Agreement.* “Agreement” shall mean the underlying agreement between County and Contractor, to which this Exhibit, the HIPAA Business Associate Agreement, is attached.

*Business Associate.* “Business Associate” shall generally have the same meaning as the term “business associate” at 45 C.F.R. section 160.103, the HIPAA Regulations, and the HITECH Act, and in reference to a party to this Exhibit shall mean the Contractor identified above. “Business Associate” shall also mean any subcontractor that creates, receives, maintains, or transmits PHI in performing a function, activity, or service delegated by Contractor.

*Contractual Breach.* “Contractual Breach” shall mean a violation of the contractual obligations set forth in this Exhibit.

*Covered Entity.* “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 C.F.R. section 160.103, and in reference to the party to this Exhibit, shall mean any part of County subject to the HIPAA Regulations.

*Electronic Protected Health Information.* “Electronic Protected Health Information” or “Electronic PHI” means Protected Health Information that is maintained in or transmitted by electronic media.

*Exhibit.* “Exhibit” shall mean this HIPAA Business Associate Agreement.

*HIPAA.* “HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

*HIPAA Breach.* “HIPAA Breach” shall mean a breach of Protected Health Information as defined in 45 C.F.R. 164.402, and includes the unauthorized acquisition, access, use, or Disclosure of Protected Health Information which compromises the security or privacy of such information.

*HIPAA Regulations.* “HIPAA Regulations” shall mean the regulations promulgated under HIPAA by the U.S. Department of Health and Human Services, including those set forth at 45 C.F.R. Parts 160 and 164, Subparts A, C, and E.

*HITECH Act.* “HITECH Act” shall mean the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the “HITECH Act”).

*Privacy Rule and Privacy Regulations.* “Privacy Rule” and “Privacy Regulations” shall mean the standards for privacy of individually identifiable health information set forth in the HIPAA Regulations at 45 C.F.R. Part 160 and Part 164, Subparts A and E.

*Secretary.* “Secretary” shall mean the Secretary of the United States Department of Health and Human Services (“DHHS”) or his or her designee.

*Security Rule and Security Regulations.* “Security Rule” and “Security Regulations” shall mean the standards for security of Electronic PHI set forth in the HIPAA Regulations at 45 C.F.R. Parts 160 and 164, Subparts A and C.

#### **IV. PERMITTED USES AND DISCLOSURES OF PHI BY BUSINESS ASSOCIATE**

Business Associate may only use or disclose PHI:

- A. As necessary to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or Disclosure would not violate the Privacy Rule if done by Covered Entity;
- B. As required by law; and
- C. For the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

#### **V. PROTECTION OF PHI BY BUSINESS ASSOCIATE**

- A. *Scope of Exhibit.* Business Associate acknowledges and agrees that all PHI that is created or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording and electronic display, by Covered Entity or its operating units to Business Associate, or is created or received by Business Associate on Covered Entity’s behalf, shall be subject to this Exhibit.
- B. *PHI Disclosure Limits.* Business Associate agrees to not use or further disclose PHI other than as permitted or required by the HIPAA Regulations, this Exhibit, or as required by law. Business Associate may not use or disclose PHI in a manner that would violate the HIPAA Regulations if done by Covered Entity.
- C. *Minimum Necessary Rule.* When the HIPAA Privacy Rule requires application of the Minimum Necessary Rule, Business Associate agrees to use, disclose, or request only the Limited Data Set, or if that is inadequate, the minimum PHI necessary to accomplish the intended purpose of that use, Disclosure, or request. Business Associate agrees to make uses, Disclosures, and requests for PHI consistent with any of Covered Entity’s existing Minimum Necessary policies and procedures.
- D. *HIPAA Security Rule.* Business Associate agrees to use appropriate administrative, physical and technical safeguards, and comply with the Security Rule and HIPAA Security Regulations with respect to Electronic PHI, to prevent the



use or Disclosure of the PHI other than as provided for by this Exhibit.

- E. *Mitigation.* Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or Disclosure of PHI by Business Associate in violation of the requirements of this Exhibit. Mitigation includes, but is not limited to, the taking of reasonable steps to ensure that the actions or omissions of employees or agents of Business Associate do not cause Business Associate to commit a Contractual Breach.
- F. *Notification of Breach.* During the term of the Agreement, Business Associate shall notify Covered Entity in writing within twenty-four (24) hours of any suspected or actual breach of security, intrusion, HIPAA Breach, and/or any actual or suspected use or Disclosure of data in violation of any applicable federal or state laws or regulations. This duty includes the reporting of any Security Incident, of which it becomes aware, affecting the Electronic PHI. Business Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized use or Disclosure required by applicable federal and/or state laws and regulations. Business Associate shall investigate such breach of security, intrusion, and/or HIPAA Breach, and provide a written report of the investigation to Covered Entity's HIPAA Privacy Officer or other designee that is in compliance with 45 C.F.R. section 164.410 and that includes the identification of each individual whose PHI has been breached. The report shall be delivered within fifteen (15) working days of the discovery of the breach or unauthorized use or Disclosure. Business Associate shall be responsible for any obligations under the HIPAA Regulations to notify individuals of such breach, unless Covered Entity agrees otherwise.
- G. *Agents and Subcontractors.* Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions, conditions, and requirements that apply through this Exhibit to Business Associate with respect to such information. Business Associate shall obtain written contracts agreeing to such terms from all agents and subcontractors. Any subcontractor who contracts for another company's services with regards to the PHI shall likewise obtain written contracts agreeing to such terms. Neither Business Associate nor any of its subcontractors may subcontract with respect to this Exhibit without the advanced written consent of Covered Entity.
- H. *Review of Records.* Business Associate agrees to make internal practices, books, and records relating to the use and Disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity available to Covered Entity, or at the request of Covered Entity to the Secretary, in a time and manner designated by Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the HIPAA Regulations. Business Associate agrees to make copies of its HIPAA training records and HIPAA business associate agreements with agents and subcontractors available to Covered Entity at the request of Covered Entity.
- I. *Performing Covered Entity's HIPAA Obligations.* To the extent Business Associate is required to carry out one or more of Covered Entity's obligations under the HIPAA Regulations, Business Associate must comply with the requirements of the HIPAA Regulations that apply to Covered Entity in the performance of such obligations.
- J. *Restricted Use of PHI for Marketing Purposes.* Business Associate shall not use or disclose PHI for fundraising or Marketing purposes unless Business Associate obtains an Individual's authorization. Business Associate agrees to comply with all rules governing Marketing communications as set forth in HIPAA Regulations and the HITECH Act, including, but not limited to, 45 C.F.R. section 164.508 and 42 U.S.C. section 17936.
- K. *Restricted Sale of PHI.* Business Associate shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of Covered Entity and as permitted by the HITECH Act, 42 U.S.C. section 17935(d)(2); however, this prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to the Agreement.
- L. *De-Identification of PHI.* Unless otherwise agreed to in writing by both parties, Business Associate and its agents shall not have the right to de-identify the PHI. Any such de-identification shall be in compliance with 45 C.F.R. sections 164.502(d) and 164.514(a) and (b).
- M. *Material Contractual Breach.* Business Associate understands and agrees that, in accordance with the HITECH Act and the HIPAA Regulations, it will be held to the same standards as Covered Entity to rectify a pattern of activity or practice that constitutes a material Contractual Breach or violation of the HIPAA Regulations. Business Associate further understands and agrees that: (i) it will also be subject to the same penalties as a

Covered Entity for any violation of the HIPAA Regulations, and (ii) it will be subject to periodic audits by the Secretary.

## **VI. INDIVIDUAL CONTROL OVER PHI**

- A. *Individual Access to PHI.* Business Associate agrees to make available PHI in a Designated Record Set to an Individual or Individual's designee, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. section 164.524. Business Associate shall do so solely by way of coordination with Covered Entity, and in the time and manner designated by Covered Entity.
- B. *Accounting of Disclosures.* Business Associate agrees to maintain and make available the information required to provide an accounting of Disclosures to an Individual as necessary to satisfy Covered Entity's obligations under 45 C.F.R. section 164.528. Business Associate shall do so solely by way of coordination with Covered Entity, and in the time and manner designated by Covered Entity.
- C. *Amendment to PHI.* Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set as directed or agreed to by Covered Entity pursuant to 45 C.F.R. section 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. section 164.526. Business Associate shall do so solely by way of coordination with Covered Entity, and in the time and manner designated by Covered Entity.

## **VII. TERMINATION**

- A. *Termination for Cause.* A Contractual Breach by Business Associate of any provision of this Exhibit, as determined by Covered Entity in its sole discretion, shall constitute a material Contractual Breach of the Agreement and shall provide grounds for immediate termination of the Agreement, any provision in the Agreement to the contrary notwithstanding. Contracts between Business Associates and subcontractors are subject to the same requirement for Termination for Cause.
- B. *Termination due to Criminal Proceedings or Statutory Violations.* Covered Entity may terminate the Agreement, effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which Business Associate has been joined.
- C. *Return or Destruction of PHI.* In the event of termination for any reason, or upon the expiration of the Agreement, Business Associate shall return or, if agreed upon by Covered Entity, destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall retain no copies of the PHI. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

If Business Associate determines that returning or destroying the PHI is infeasible under this section, Business Associate shall notify Covered Entity of the conditions making return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Exhibit to such PHI and limit further uses and Disclosures to those purposes that make the return or destruction of the information infeasible.

## **VIII. MISCELLANEOUS**

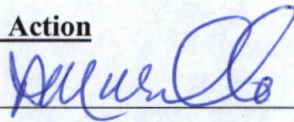
- A. *Disclaimer.* Covered Entity makes no warranty or representation that compliance by Business Associate with this Exhibit, HIPAA, the HIPAA Regulations, or the HITECH Act will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate is or will be secure from unauthorized use or Disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- B. *Regulatory References.* A reference in this Exhibit to a section in HIPAA, the HIPAA Regulations, or the HITECH Act means the section as in effect or as amended, and for which compliance is required.

- C. *Amendments.* The parties agree to take such action as is necessary to amend this Exhibit from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA, the HIPAA Regulations, and the HITECH Act.
- D. *Survival.* The respective rights and obligations of Business Associate with respect to PHI in the event of termination, cancellation or expiration of this Exhibit shall survive said termination, cancellation or expiration, and shall continue to bind Business Associate, its agents, employees, contractors and successors.
- E. *No Third Party Beneficiaries.* Except as expressly provided herein or expressly stated in the HIPAA Regulations, the parties to this Exhibit do not intend to create any rights in any third parties.
- F. *Governing Law.* The provisions of this Exhibit are intended to establish the minimum requirements regarding Business Associate's use and Disclosure of PHI under HIPAA, the HIPAA Regulations and the HITECH Act. The use and Disclosure of individually identified health information is also covered by applicable California law, including but not limited to the Confidentiality of Medical Information Act (California Civil Code section 56 *et seq.*). To the extent that California law is more stringent with respect to the protection of such information, applicable California law shall govern Business Associate's use and Disclosure of confidential information related to the performance of this Exhibit.
- G. *Interpretation.* Any ambiguity in this Exhibit shall be resolved in favor of a meaning that permits Covered Entity to comply with HIPAA, the HIPAA Regulations, the HITECH Act, and in favor of the protection of PHI.

This EXHIBIT, the HIPAA Business Associate Agreement is hereby executed and agreed to by **CONTRACTOR:**

**Name:** Alternatives in Action

**By (Signature):** \_\_\_\_\_



**Print Name:** Patricia Murillo

**Title:** Executive Director